

Form- A

FORM OF ORDER SHEET

Court of _____

Implementation Petition No. 251/2024

Order or other proceedings with signature of judge

3

19.03.2024

The implementation petition of Mr. Imdad Ullah submitted today by Syed Noman Ali Bukhari Advocate. It is fixed for implementation report before Single Bench at Peshawar on
Original file be requisitioned. AAG has noted the next date. Parcha Peshi is given to counsel for the Petitioner.

By the order of Chairman


REGISTRAR

BEFORE THE KP SERVICE TRIBUNAL PESHAWAR.

E. P. no-251/24
C.M No. _____/2024

In

Execution Petition No. _____/2024

Imdadullah

VERSUS

Education Deptt:

Subject:-

**APPLICATION FOR FIXATION OF THE
ABOVE MENTIONED EXECUTION
PETITION AT PRINCIPAL SEAT
PESHAWAR.**

Respectfully Sheweth;

1. That the above mentioned education petition is file before this Hon'ble Tribunal, wherein no date fixed so for
2. That the petitioner engage the counsel belongs to Peshawar and petitioner going to reach age of superannuation within nine month.
3. That the execution petition needs speedy disposal.

It is, therefore, requested kindly allowed this application as per order of Hon'ble Chairman and the execution petition may be fixed at principal bench Peshawar.

[Signature]
Petitioner

Through

[Signature]
Syed Noman Ali Bukhari
Advocate High Court
Peshawar.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR.

Execution Petition No. 251 /2024
In
Service Appeal No.70/2019

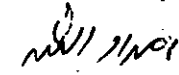
Imdad Ullah

V/S

Education Deptt:

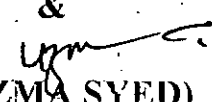
INDEX

| S.No. | Documents | Annexure | Page No. |
|-------|----------------------------|----------|----------|
| 1. | Memo of Execution Petition | ----- | 01-02 |
| 2. | Copy of Judgment | - A - | 03-07 |
| 3. | Copy of application | -B- | 08 |
| 4. | Vakalat Nama | ----- | 09 |


PETITIONER
Imdad Ullah

THROUGH:


SYED NOMAN ALI BUKHARI

&

(UZMA SYED)
ADVOCATEs, HIGH COURT

Cell No: 0306-5109438

1

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR.

Execution Petition No. 251 /2024

In

Service Appeal No.70/2019

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 11790

Dated 18-03-2024

Mr. Imdad Ullah S/o Musa Khan
r/o Shareen Abad, Cum kUza banda
p/o Ghidari Tehsil and District Battagram.

.....(Petitioner)

VERSUS

1. The District Education Officer Battagram.
2. The Director E&SE, Deptt: Khyber Pakhtunkhwa Peshawar.
3. The Secretary to Govt: of KP, E&SE Deptt: Civil Secretariat Peshawar.

.....(Respondents)

.....
**EXECUTION PETITION FOR DIRECTING THE
RESPONDENTS TO IMPLEMENT THE
JUDGMENT DATED: 23-01-2024 OF THIS
HONOURABLE TRIBUNAL IN LETTER AND
SPIRIT.**
.....

RESPECTFULLY SHEWETH:

1. That the applicant/Petitioner filed Service Appeal No.70/2019 against the dismissal order.
2. That the above mentioned Appeal before the Service Tribunal was decided on 23-01-2024. The Honourable Tribunal was kind enough to accept the appeal of appellant as prayed for. **(Copy of judgment is attached as Annexure-A).**
3. That the appellant also filed application to respondents for the implementation of judgment and but the respondents were totally failed in taking any action regarded this. **Copy of application is attached as annexure-B.**

- 4. That the respondent totally violated the judgment of Hon'able Service Tribunal, is totally illegal amount to disobedience and Contempt of Court.
- 5. That the judgment is still in the field and has not been suspended or set aside by the Supreme Court of Pakistan, therefore, the respondents are legally bound to implement the same in letter and spirit.
- 6. That the petitioner has having no other remedy to file this Execution Petition.

It is, therefore, most humbly prayed that the respondents may be directed to obey the judgment dated 23-01-2024 of this august Tribunal in letter and spirit. Any other remedy, which this august Tribunal deems fit and appropriate that, may also be awarded in favor of applicant/appellant.

Imdad Ullah
PETITIONER
 Imdad Ullah

THROUGH:

Syed Noman Ali Bukhari
SYED NOMAN ALI BUKHARI
 &
Uzma Syed
(UZMA SYED)
 ADVOCATES, HIGH COURT

AFFIDAVIT:

It is affirmed and declared that the contents of the above Execution Petition are true and correct to the best of my knowledge and belief.

Imdad Ullah
DEPONENT



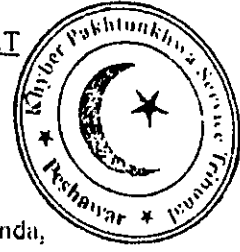
18 MAR 2024

Answer A

3

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR AT
CAMP COURT ABBOTTABAD

Service Appeal No. 70/2019



Mr. Imdad Ullah S/O Musa Khan, R/O Shareen Abad, Cuni Kuza Banda,
P/O Ghidari Tehsil & District Battagram.

.... (Appellant)

VERSUS

1. The Government of Khyber Pakhtunkhwa, through Secretary Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
2. The Director Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
3. The District Education Officer, Battagram.
4. The District Accounts Officer, Battagram.

.... (Respondents)

Mr. Malik Masood Ur Rehman Awan
Advocate

... For appellant

Mr. Asif Masood Ali Shah
Deputy District Attorney

... For respondents

Date of Institution.....15.01.2019
Date of Hearing.....23.01.2024
Date of Decision.....23.01.2024

JUDGMENT

Rashida Bano, Member (J): The instant appeal instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as below:

“On acceptance of the instant service appeal, the impugned order may graciously be set aside and the appellant be ordered to be reinstated in service with all back benefits. Any other relief deemed fit and proper in the circumstances of the case.”

2. Brief facts of the case are that appellant was appointed as PTC Teacher vide order dated 29.10.1995. That while serving in the said capacity, he was

R.

ATTESTED
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

terminated in the year 1997. That the Government introduced Sack Employees Reinstatement Act, 2010, amended 2013 and in view of the said Act, he was reinstated vide order dated 15.02.2013. That at the time of reinstatement, condition of educational qualification was imposed upon appellant which was fulfilled by the appellant and he submitted his educational testimonials. That in the year 2016, his salary was stopped, therefore, he approached the Peshawar High Court through Writ Petition No.859-A/2016, and the Peshawar High Court sent back that petition to the Secretary Education with direction to decide the issue through a uniform policy within 30 days. That the Secretary Education did not resolve the same, therefore, the appellant filed COC in the Peshawar High Court, wherein, the then EDO committed for compliance but failed to do so. Consequently, the appellant filed another COC for implementation of the judgment of the Peshawar High Court and during the pendency of that COC, he came to know that he has been terminated from service vide order dated 31.01.2018. Feeling aggrieved, he filed departmental appeal, which was rejected on 26.09.2018, hence, the instant service appeal.

4. Respondents were put on notice who submitted written replies/comments on the appeal. We have heard the learned counsel for the appellant as well as the learned Deputy District Attorney and perused the case file with connected documents in detail.

5. Learned counsel for the appellant argued that the impugned order was illegal, against law, facts and was liable to be set aside. He submitted that proceedings had been initiated without any notice, information and in the absence of appellant; that no charge sheet was issued to the appellant and the impugned order was against rules and basic principles of natural justice. Further submitted that the appellant had not given any opportunity

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

of defense. Lastly, he concluded that the impugned order was against the fundamental rights of the appellant and in clear violation of natural justice, hence, liable to be set aside.

6. Conversely, learned Deputy District Attorney argued that the impugned order had been passed after proper verification of documents and in the light of proper inquiry. He submitted that there was no need of notice to the appellant as it had been mentioned in the terms & conditions of the appointment order that no notice shall be given. Further submitted that the impugned order had been issued as per law and full opportunity of defense had been given to the appellant. Lastly, he submitted that the appellant had submitted fake documents for his appointment, therefore, he was rightly dismissed from service. Therefore, he requested for dismissal of the instant service appeal.

7. Perusal of record reveals that the appellant was removed from service on the allegation of not completing requisite training/prescribed qualification within three years in accordance with terms and conditions No.15 of their appointment/reinstatement order dated 15.02.2013. It is admitted fact that appellant was appointed in the 1995 and was terminated during the 1997. Worthy Peshawar High Court, Peshawar provided three year time to acquire prescribed qualification to the sacked employee/present appellant in the judgment dated 14.02.2017 in writ petition No 859-A/2016 but arrangements of training to acquire prescribed qualification was the job and responsibility of the respondents and not of the appellant who was performing his duty. So respondent department failed to discharge his burden of arranging training courses for appellant in light of judgment of Worthy Peshawar High Court Peshawar given in writ petition No 859-A/2016. Respondent also in their written reply mentioned that despite giving time, appellant failed to attain

ATTESTED


 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar

6

required training and acquire prescribed qualification which is now BA. Therefore, they were removed from service in this regard.

8. In our humble view requisite qualification at that time of appointment of appellant was matric and not F.A or B.A. Qualification of F.A and B.A were introduced later on 13.11.2012 and is not applicable retrospectively in case of appellant when he got the right of appointment by operation of law promulgated on 20.09.2012. It is not disputed that the appellant was appointed during the year 1995. It is a matter of fact that the Khyber Pakhtunkhwa Sacked Employees (Appointment) Act, 2012 was promulgated on 20.09.2012 to provide relief to those sacked employees who were dismissed, removed, or terminated from service during the period from 1st day of November 1996 to 31st day of December 1998. A sacked Employee as defined under Section 2(g) of the said Act means a person who were appointed on regular basis to a civil posts in the province of Khyber Pakhtunkhwa and who possessed the prescribed qualification and experience for the said post at that time, during the period from 1st day of November 1993 to 30th day of November 1996 (both days inclusive) and was dismissed, removed, or terminated from service during the period from 1st day of November 1996 to 31st day of December 1998 on the ground of irregular appointments. By virtue of Section-3 of the said Act, sacked employees were to be appointed in respective cadre of their concerned department. The notification dated 13.11.2012 on its face does not provide for its retrospective effect. Appellant was reinstated into service vide sacked employees Act 2012 which means by operation of law, therefore, any subsequent amendment with respect to qualification of FA & B.A for the post of PST will not be applicable to appellants. So both the reason advanced by the respondents for


ATTESTED


Khyber Pakhtunkhwa
Services Tribunal
Peshawar


removal of appellants have no logic and no legal force in it, hence declared arbitrary and not binding upon appellants.

9. As a sequel to above discussion, we accept the appeal as prayed for. Costs shall follow the event. Consign.


10. Pronounced in open court in Abbottabad and given under our hands and seal of the Tribunal on this 23rd day of January, 2024.


(MUHAMMAD AKBAR KHAN)
Member (E)
Camp Court, Abbottabad

Kaleemullah


(RASHIDA BANO)
Member (J)
Camp Court, Abbottabad

Certified to be true copy


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application 28-2-24
Number of Words 5-1
Copying Fee 25/-
Urgent 25/-
Total 25/-
Name of Copyist _____
Date of Completion of Copy 01-3-24
Date of Delivery of Copy 01-3-24

درخواست برائے Re-instalment آف سروس

صنایع عالی

B-8

مورد مذکور گزارش دیکھیں کہ آپ کے سروسز کلائمٹل کو بحال کرنے کے لیے

سروس سے ہر طرف کیا گیا۔ چونکہ سروس ٹریبونل کے فیصلے

کی مطابق سروس ایپل نمبر 70/2019 بنام امداد اللہ خان ولد

موسیٰ خان 23/24 کو سروس پر Re-instate کیا ہے۔

اس لیے التماس دیکھیں کہ آپ سائل کو ملازمت پر Re-instate
کرائے کے احکامات صادر فرما کر مشکور و مزاج بنیں۔

دعا گو رہینگے

Imdad Allah Khan

S/o

Musa Khan

CNIC: 13202-0745833-5

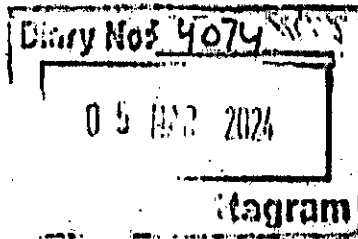
APNO: 70/2019

Sign: امداد اللہ

Date: 05/03/2023

Tumb: _____

ADEO (Lit)
05/03/2024



VAKALAT NAMA

NO. _____ /20

IN THE COURT OF KP Saivee Ribon Peshawar

Imdad Ullah

Appellant
Petitioner
Plaintiff

VERSUS

Education Deptt

Respondent (s)
Defendants (s)

I Imdad Ullah (Appellant) do hereby appoint and constitute the **SYED NOMAN ALI BUKHARI Advocate High Court** for the aforesaid Appellant(s), Petitioner(S), Plaintiff(s) / Respondent(s), Defendant(s), Opposite Party to commence and prosecute / to appear and defend this action / appeal / petition / reference on my / our behalf and all proceedings that may be taken in respect of any application connected with the same including proceeding in taxation and application for review, to draw and deposit money, to file and take documents, to accept the process of the court, to appoint and instruct council, to represent the aforesaid Appellant, Petitioner(S), Plaintiff(s) / Respondent(s), Defendant(s), Opposite Party agree(s) ratify all the acts done by the aforesaid.

DATE _____ /20

Ullah
(CLIENT)

Accepted

**SYED NOMAN ALI BUKHARI
ADVOCATE HIGH COURT
BC-15-5643**

Uzma Syed