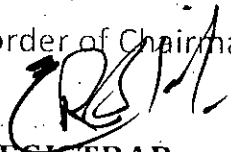


Form- A

FORM OF ORDER SHEET

Court of \_\_\_\_\_

Implementation Petition No. 388/2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	20.05.2024	<p>The implementation petition of Dr. Dawood Iqbal submitted today by Naila Jan Advocate. It is fixed for implementation report before Single Bench at Peshawar on <u>23-5-24</u>. Original file be requisitioned. AAG has noted the next date. Parcha Peshi given to the counsel for the petitioner.</p> <p>By the order of Chairman  REGISTRAR</p>

**BEFORE THE KHYBER PAKHTUNKHWA**  
**SERVICE TRIBUNAL PESHAWAR**

Execution petition No. 388 /2024

In

Service Appeal No: 1023/2017

Dr. Dawood Iqbal

**V**ersus

Secretary Health KPK & Others

**INDEX**

S#	Description of Documents	Annex	Pages
1.	Execution Petition with Affidavit		1-3
2.	Addresses of Parties		4
3.	Copy of Judgment & Application	"A"	5-9
4.	Copy of Application	"B"	10
4.	Wakalat Nama		11

Dated: 20-05-2024

Through

*Dawood Iqbal*  
Petitioner

*Naila Jan*  
Naila Jan Advocate,  
Supreme Court  
of Pakistan

D

**BEFORE THE KHYBER PAKHTUNKHWA**  
**SERVICE TRIBUNAL PESHAWAR**

Execution petition No. 388 /2024

In

Service Appeal No: 1023/2017

Khyber Pakhtunkhwa  
Service Tribunal

No. 12892

Date 20-05-2024

Dr. Dawood Iqbal, Homeo Doctor (BPS-16) Naseer  
Ullah Khan Babar Memorial Hospital, Peshawar.

.....Petitioner

**V**ersus

1. Government of Khyber Pakhtunkhwa through  
Secretary Health Department, Khyber  
Pakhtunkhwa, Peshawar.
2. The Secretary Finance Department, Khyber  
Pakhtunkhwa, Peshawar.
3. Director General, Health Services, Khyber  
Pakhtunkhwa, Peshawar.

.....Respondents

**EXECUTION PETITION FOR**  
**IMPLEMENTATION OF THE**  
**JUDGMENT OF THIS HON'BLE**  
**TRIBUNAL IN APPEAL No.**  
**1023/2017 DECIDED ON**  
**27.11.2023.**

**Respectfully Sheweth,**

1. That the above mention appeal was decided by  
this Hon'ble Tribunal vide Judgment dated

27.11.2023. (Copy of the judgment is annexed as annexure "A")

2. That the relevant portion of the judgment is reproduced *"In view of the forgoing discussion the instant appeal is remitted back to the respondent to decide the departmental appeal of the appellant through a speaking order in accordance with the law treating him at par with other similarly placed employees within a period of 90 days after receipt of copy of this judgment. Costs shall follow the event. Consign"*.
3. That the Petitioner after getting of the attested copy of same approached the Respondents several time for implementation of the above mention judgment. However they are using delaying tactics and reluctant to implement the judgment of this Hon'ble Tribunal. (Copy of Application is Annexure "B")
4. That the Petitioner has no other option but to file the instant petition implementation of the judgment of this Hon'ble Tribunal.
5. That there is nothing which may prevent this Hon'ble Tribunal from implementing of its own judgment.

3

*It is, therefore, requested that on acceptance of this petition the Respondents may directed to implement the judgment of this Hon'ble Tribunal by reinstating the Petitioner with all back benefits.*

Dated: 20-05-2024

*Dawood*  
Petitioner

Through

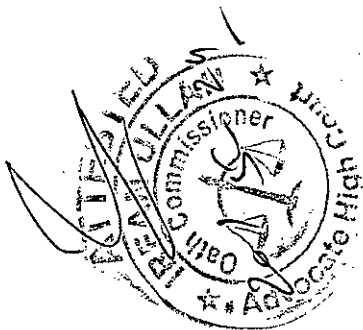
*Naila Jan*  
Asc

Naila Jan Advocate,  
Supreme Court  
of Pakistan

**AFFIDAVIT:-**

I, Dr. Dawood Iqbal, Homeo Doctor (BPS-16) Naseer Ullah Khan Babar Memorial Hospital, Peshawar, do hereby solemnly affirm and declare on oath that all the contents of above application are true and correct to the best of my knowledge and belief and nothing has been misstated or concealed from this Hon'ble Court.

*Dawood*  
Deponent



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**BEFORE THE KHYBER PAKHTUNKHWA**  
**SERVICE TRIBUNAL PESHAWAR**

Execution petition No. \_\_\_\_\_/2024

In

Service Appeal No: 1023/2017

Dr. Dawood Iqbal

**V**ersus

Secretary Health KPK & Others

**ADDRESSES OF PARTIES**

***PETITIONER***

Dr. Dawood Iqbal, Homeo Doctor (BPS-16) Naseer  
Ullah Khan Babar Memorial Hospital, Peshawar.

**RESPONDENTS**

1. Government of Khyber Pakhtunkhwa through  
Secretary Health Department, Khyber  
Pakhtunkhwa, Peshawar.
2. The Secretary Finance Department, Khyber  
Pakhtunkhwa, Peshawar.
3. Director General, Health Services, Khyber  
Pakhtunkhwa, Peshawar.

Dated: 20-05-2024

*Daniel*  
Petitioner

Through

*Naila Jan*  
Naila Jan Advocate,  
Supreme Court  
of Pakistan

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- A -  
Nader

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,**  
**PESHAWAR**

Service Appeal No. 1023/2017

**BEFORE:** RASHIDA BANO --- MEMBER (J)  
MUHAMMAD AKBAR KHAN --- MEMBER (E)

Dr. Dawood Iqbal, Homeo Doctor (BPS-16) Naseer Ullah Khan Babar  
Memorial Hospital, Peshawar.....(*Appellant*)

**VERSUS**

1. Government of Khyber Pakhtunkhwa through Secretary Health  
Department, Khyber Pakhtunkhwa, Peshawar.
2. The Secretary, Finance Department, Khyber Pakhtunkhwa, Peshawar.
3. The Director General Health Services, Khyber Pakhtunkhwa Peshawar  
.....(*Respondents*)

**Present:-**

NOOR MUHAMMAD KHATTAK,  
Advocate --- For Appellant

MUHAMMAD JAN,  
District Attorney --- For respondents.

Date of Institution.....13.09.2017  
Date of Hearing..... 27.11.2023  
Date of Decision..... 27.11.2023

**JUDGMENT.**

**MUHAMMAD AKBAR KHAN, MEMBER(E):-** The instant service  
appeal has been instituted under Section 4 of the Khyber Pakhtunkhwa  
Service Tribunal, Act 1974 with the prayer copied as under;

*"That on acceptance of this appeal the respondents may be  
directed to count the previous service of the appellant towards  
regular service i.e. pay fixation may be allowed to appellant  
w.e.f. 17.05.2007 instead of 27.05.2014 in light of the judgment  
of this august Tribunal dated 02.07.2010 and subsequent order*

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*dated 16.07.2012. Any other remedy which this august Tribunal deems fit that may also be awarded in favour of the appellant."*

02. Brief facts of the case are that the appellant was appointed as Homeo Doctor on contract basis in City Hospital Peshawar vide order dated 17.05.2007; that his services with effect from the date of initial appointment were regularized after promulgation of Khyber Pakhtunkhwa Tibb and Homeopathic Employees (Regularization of Services) Act, 2014 vide notification dated 26.03.2014; that several meetings were held for fixation of pay and payment of arrears to those employees who were regularized after promulgation of the Khyber Pakhtunkhwa Tibb and Homeopathic Employees (Regularization of Services) Act, 2014; that the pay fixation of other employees was resolved with effect from their initial appointment but the pay of the appellant was fixed with immediate effect i.e. 27.05.2014. Feeling aggrieved, the appellant filed departmental appeal on 18.05.2017 to respondent No. 1 which was not decided within the statutory period, hence preferred the instant service appeal on 13.09.2017.

03. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions raised by the appellant in his appeal. We have heard arguments of learned counsel for the appellant and learned District Attorney and have gone through the record with their valuable assistance.

04. Learned counsel for the appellant contended that not counting the project service served by the appellant in the respondent department is against the law, facts and norms of natural justice; that the appellant has not been treated in accordance with law, rules and as such the respondent violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973; that



it is clear from the regularization order dated 27.05.2014, the appellant is entitled for pay fixation but inspite of that the respondents are not willing; that under Article 38 (e) of the Constitution of Islamic Republic of Pakistan 1973, State is bound to reduce disparity in the income and earning of the individuals including persons in the various services of Pakistan. Moreover, similar nature case titled Main Siraj Vs. Government of Khyber Pakhtunkhwa has been decided by this Tribunal vide judgment dated 02.07.2010; therefore, under the principle of consistency reported in 2009 SCMR page 1 the appellant is also entitled for the grant of similar relief; that the action and inaction of the respondents is discriminatory and based on malafide;

05. On the other hand, learned District Attorney contended that the appellant was not entitled for counting/including the project service as he did perform the duty under Tibb/Homeopathic Employment (Regularization Service) Act, 2014 and the appellant was regularized w.e.f. 26.03.2014; that the case titled "Main Siraj Vs. Government of Khyber Pakhtunkhwa has no nexuses with the instant appeal and there was no gap period and pertains to Class-IV employees; that there is no discrimination and fraud with the Government exchequer and Article 38(e) of the Constitution of Islamic Republic of Pakistan 1973 is not applicable in the instant case.

06. Scrutiny of record shows that the appellant alongwith 23 others were appointed as Homeo Doctor BS-16 in the respondent Department vide order dated 17.05.2007 on contract basis for period of three years. The project stood completed on 30.06.2010. It is also admitted fact that regular posts of Homeo Doctors were created with effect from 01.07.2010. However, the appellant was neither adjusted against the sanctioned post nor his contract service was

dispensed with after completion of the project as per available record. The Provincial Assembly passed Tibb and Homeopathic Employees (Regularization of Services) Act 2014 and consequently the appellant's services were regularized vide notification dated 27.05.2014 w.e.f 17.05.2007 which is the initial date of appointment of the appellant. Pay record of the Accountant General Office Khyber Pakhtunkhwa reveals that the entry of the appellant into Government service is shown as 26.05.2007 but the benefit of seven years service is not being given to him. Counsel for the appellant placed record of another similarly placed employee of the respondent Department namely Mr. Abdur Rehman, Tabeeb who has been allowed the benefit of service with effect from his initial appointment. Both the employees stand regularized under the same law and same regularization order and serving in the same hospital. Moreover this Tribunal has remitted similarly placed Service Appeal 269/2016 title "Syed Nizam Ali Shah versus Government" to the respondent Department for deciding departmental appeal of the appellant vide judgment dated 10.10.2018.

07. In view of foregoing discussion the instant appeal is remitted back to the respondent to decide the departmental appeal of the appellant through a speaking order in accordance with the law treating him at par with ~~his~~ other similarly placed employees within a period of 90 days after receipt of copy of this judgment. Costs shall follow the event. Consign.

08. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 27<sup>th</sup> day of November, 2023.*

(Rashida Bano)  
Member (J)

Certified to be true copy

*[Signature]*  
Secretary  
Service Tribunal  
Peshawar

(Muhammad Akbar Khan)  
Member (E)

*[Signature]*

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Attest

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11-1-84

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Daily No. 341  
Date 11-01-24  
Health Department

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قیمت 50 روپے	42665	پشاور بار ایسوسی ایشن، خیبر پختونخواہ
ایڈوکیٹ: <u>Haila Jan</u>	بار کونسل ایسوسی ایشن نمبر: <u>BC-13-472</u>	  
رابطہ نمبر: <u>03129215471</u>		

بعدالت جناب: EP سروس سٹریٹ سٹاپ

مخانب: <u>Peltoner</u>	دعویٰ: <u>E.P</u>
ڈاکٹر داؤد اقبال	علت نمبر:
بنام	مورخہ:
حکومت	جرم:
	تھانہ:

### باعث تحریر آگہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کاروائی متعلقہ آن مقام لٹھا ور کیلے سٹریٹ سٹاپ کے لئے ڈاکٹر داؤد اقبال کو مدعو کیا گیا ہے۔ ان کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا، نیز وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ بر حلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری بیکطرفہ یا اپیل کی برآمدگی اور منسوخی، نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا اور صاحب مقرر شدہ کو وہی جملہ مذکورہ بالا اختیارات حاصل ہوں گے اور اس کا سائنت پر داخستہ منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جائے التوائے مقدمہ کے سبب سے ہوگا قانونی تاریخ پیشی مقام دورہ یا حد سے باہر ہو تو وکیل صاحب بابت نہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ سند رہے

المرقوم: 7/05/2024  
PESHAWAR BAR ASSOCIATION  
KHYBER PAKHTOONKHWA

مقام لٹھا ور واہ شد کے لیے منظور ہے۔

Accepted by M. Khatun ASE