


Form- A
FORM OF ORDER SHEET

Court of _____

Implementation Petition No. 339/2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	03.05.2024	<p>The implementation petition of Dr. Muhammad Zahid submitted today by Mr. Muhammad Imran Khan 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 given to counsel for the Petitioner.</p> <p>By the order of Chairman</p> <p> REGISTRAR</p>



۸۹

دستور العمل

حکومت پاکستان

قومی شناختی کارڈ

17101-3421656-3

نام: محمد زاہد

پیدائش: ۱۹۶۴

والد کا نام: سعید احمد

شناختی ثابت: پاسپورٹ پر نشان رقم

تاریخ پیدائش: 18/05/1964

دستخط: مسٹر. جنرل



شماره قومی نمبر: 3-17101-3421656-3 خانہ نمبر: T5T5CK

مقامی دفتر: جسر ڈیگڑہ تریابہ تحصیل و ضلع ہارسہ

مکمل پتہ: ایضاً

تاریخ اجراء: 24/07/2014 تاریخ سرج: 24/07/2024

گمشدہ کارڈ سے پر قریبی لیٹر میں ڈال دیں

پیشہ ورانہ تنظیم: 1111



**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR**

Imp App 339 /2024

Appeal No-2052/23

Dr. MUHAMMAD ZAHID

Petitioner

Versus

GOVERNMENT OF KPK AND OTHERS

Respondents


INDEX

S.No.	Description of Document	Annex	Pages
1	implementation petition		1-3
2	affidavit		4
5	Judgement dated 07.12.23 + <i>Application</i>	A	5-10
7	Waqalat nama		10

Petitioner

Dated: 03.05.2024

Through


Muhammad Imran Khan
Muhammad Zia Ullah
Advocate High Court,
Peshawar

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR**

Imp App 339 /2024

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 12534

Dated 03-05-2024

DR. MUHAMMAD ZAHID, DIRECTORATE GENERAL OF HEALTH SERVICES KHYBER PAKHTUNKHWA, PESHAWAR.

Petitioner

VERSUS

1. GOVERNMENT OF KHYBER PAKHTUNKHWA, THROUGH CHIEF SECRETARY, CIVIL SECRETARIATE PESHAWAR.
2. THE SECRETARY HEALTH, GOVERNMENT OF KHYBERPAKHTUNKHWA, CIVIL SECRETARIATE PESHAWAR.
3. DIRECTOR GENERAL HEALTH SERVICES, OLD FATA SECRETARIATE, WARSAK ROAD, PESHAWAR.

Respondents

APPLICATION FOR IMLEMENTATION OF ORDER DATED 07/12/2023 IN SERVICE APPEAL NO: 2052/2023 IN ITS TRUE SPIRIT ON THE RESPONDENTS AS PER JUDGMENT OT THE HON'BLE COURT AND IN CASE OF RETIRMENT, THE ORDER OF RELEASE OF PREVIOUS SALARIES TILL RETIRMENT AND PENSION AND PENSIONARY BENEFITS OF THE PETITIONER.

Respectfully Sheweth:

The petitioner most humbly submits as under:

Brief Facts:

1. That petitioner filed service appeal before the Hon'ble Court, against the Respondents on 13.11.2023.
2. That after service of notices and after proper proceeding, the Hon'ble Court decided the service appeal, in favour of petitioner/appellant on 07.12.2023 and against respondents

(Copy of judgment is annexure-A)

3. That thereafter petitioner/appellant time and again contacted with the respondents for implementation of the Order of the Hon'ble Court, and provided attested copies of the Hon'ble Court to follow the same in its True spirit, but they are delaying the matter on one pretext or the other.
4. That as no post is given to the petitioner/appellant and the petitioner is at the verge of retirement i.e. 18.05.2024 and if post is not given to him till date, then there will be difficulties in the release of salary and pension benefit of the petitioner
5. That even after clear cut direction of Hon'ble Court, the respondents failed to fulfill the order of Court.
6. That feeling aggrieved from such reluctant behavior of respondents, the petitioner/appellant filed the instant petition on the following grounds inter-alia;

Grounds:

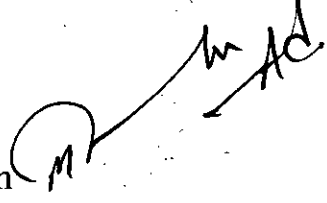
- A. That after passing of the said order of this Hon'ble Court, the petitioner time and again approached the respondents and he also handed over a copy of the said order to the respondent, but he on one pretext or the other was lingering on the aforesaid implementation and disposal of the order of the petitioner. The respondent was least interested to follow and to obey the order of of this August Court, hence the Respondent rendered themselves responsible for punishment on account of not obeying the order of this August Court.
- B. That the non implementation of the order of this August Court clearly shows the contemptuous attitude and conduct of the respondent. What to say in respect of their this mistake and contempt of a judicial forum even the afore quoted order of of this august court is intentionally shelved and put in the back burner but still the question of implementation/disposal of the order of the petitioner is not only awaited and from his conduct it can easily be predicted that they even would not bother in future to implement the said order of judicial forum, hence they are liable to implement the order in its true spirit..
- C. That the above noted contemptuous behavior of the respondent on one side made mockery of the order of this August Court and on the other side increased the agonies and miseries of the petitioner, so in such a situation how a contemnor could be spared as on one hand he is not taking care of the judicial order and on the other hand he is about to deprive the petitioner from the fruits of order of legal competent forum.
- D. That as no post is given to the petitioner/appellant and the petitioner is at the verge of retirement i.e. 18.05.2024 and if post is not given to him till date, then there will be difficulties in the release of salary and pension benefit of the petitioner
- E. That in prevailing circumstances and facts mentioned above the respondent did not deserve any leniency, their contemptuous attitude is crystal clear and need no inquiry or recording of evidence and they are liable for punishment.

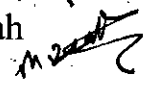
IT IS, THEREFORE, MOST RESPECTFULLY PRAYED THAT STRICT DIRECTION FOR IMLEMENTATION OF ORDER DATED 07/12/2023 IN ITS TRUE SPIRIT ON THE RESPONDENTS AS PER JUDGMENT OT THE HON'BLE COURT AND IN CASE OF RETIRMENT, THE ORDER OF RELEASE OF PREVIOUS SALARIES TILL RETIRMENT AND PENSION AND PENSIONARY BENEFITS OF THE PETITIONER. ANY OTHER

**REMEDY WHICH THIS HON'BLE COURT MY DEEMS FIT ALSO
BE AWARDED.**

Dated: 04.05.2024

Petitioner

Through 


Muhammad Imran Khan,
Muhammad Zia Ullah 

Advocate Supreme Court
of Pakistan.

CERTIFICATE:

It is certified that prior to this petition no such like petition is
moved by the petitioner before this Hon'ble Court.

ADVOCATE



4

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR**

Imp App _____/2024

Dr. MUHAMMAD ZAHID

Petitioner

Versus


GOVERNMENT OF KPK AND OTHERS

Respondents

AFFIDAVIT

-I, Muhammad Ziaullah Advocate High Court, as per instructions of my client, do hereby solemnly affirm and declare that the contents of the Petition are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.

DEPONENT

M 



annexure - A (5)

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR**

BEFORE: **KALIM ARSHAD KHAN ...CHAIRMAN**
SALAH UD DIN ... MEMBER (J)



Service Appeal No.2052/2023

Date of presentation of appeal.....13.11.2023
Date of Hearing.....07.12.2023
Date of Decision.....07.12.2023

Dr. Muhammad Zahid, Directorate General of Health Services
Khyber Pakhtunkhwa, Peshawar*Appellant*

Versus

1. **Government of Khyber Pakhtunkhwa**, through Chief Secretary, Civil Secretariat Peshawar.
2. **The Secretary Health**, Government of Khyber Pakhtunkhwa, Civil Secretariat Peshawar.
3. **Director General Health Services**, Old FATA Secretariat, Warsak Road, Peshawar.
4. **Dr. Muhammad Shoaib**, Medical Superintendent DHQ Charsadda.

Present:

Mr. Subhan Sher, Advocate, Advocate.....For the appellant.
Mr. Asad Ali Khan, Assistant Advocate General ...For Respondents

**APPEAL UNDER SECTION 4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974.**

JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: The facts gathered from the memorandum and grounds of appeal are that the appellant was serving as Medical Superintendent in DHQ Hospital Charsadda. That vide impugned transfer order dated 10.07.2023, private respondent No.4, Dr. Muhammad Shaoib was adjusted against his post while the appellant was directed to report to the Directorate General Health Services. Accordingly, he relinquished the charge of the post and

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar



reported to DG Health Khyber Pakhtunkhwa, Peshawar; that despite his arrival, his salary was stopped w.e.f 01.08.2023. Feeling aggrieved, he filed departmental appeal, which was not responded, hence, the instant service appeal.

2. On receipt of the appeal and its admission to full hearing, the respondents were summoned. Respondents put appearance and contested the appeals by filing written reply raising therein numerous legal and factual objections. The defence setup was a total denial of the claim of the appellant.

3. We have heard learned counsel for the appellant and learned Assistant Advocate General for the respondents.

4. The learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned Assistant Advocate General refuted the same by pressing their stances.

5. The impugned notification from which the appellant was aggrieved is reproduced as under:

"NOTIFICATION"

No.SO(E-V)/2-2/2023 The competent authority (Chief Minister, Khyber Pakhtunkhwa) is pleased to order posting/transfer of the following doctors, with immediate effect, in the best public interest:-

S.No.	NAME	FROM	TO
1.	Dr. Muhammad Shoaib, General Cadre (BS-19)	Medical Superintendent Cat-D Hospital Lachi, Kohat	Medical Superintendent (BS-20), DHQ Hospital Charsadda in OPS. Vice S. No.2
2.	Dr. Zahid Ullah	Medical	Report to Directorate


ATTENDED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

	<i>Khan General Cadre (BS-19)</i>	<i>Superintendent (BS-20), DHQ Hospital Charsadda in OPS.</i>	<i>General Health Services, Khyber Pakhtunkhwa</i>
3.	<i>Dr. Adil Khan, Specialist Cadre (BS-18)</i>	<i>District Specialist (ENT) DHQ Hospital, Charsadda</i>	<i>Medical Superintendent (BS- 19), Women & Children Hospital Rajjar, Charsadda in OPS against the vacant post</i>

The fact that the appellant and private respondent, both are serving on OPS basis as is evident from the above notification, therefore, none of the two are having any *locus standi* to strive for posting in their own pay and scale, against a post in a higher grade or not relevant to their service cadre. Even the civil servant, who is in the relevant grade cannot claim posting against his choice post rather it is the domain and prerogative of the departmental authorities to post a Civil Servant against any post. Reliance is placed on 2018 SCMR 1411 titled "Khan Muhammad versus Chief Secretary Government of Balochistan and others", wherein the Supreme Court of Pakistan held that "*The impugned notification stipulates that the petitioner and the respondent No.3 were posted/transferred in their "own pay and scale". In the case of Province of*



ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Sindh v. Ghulam Fareed (above) it was held, that posting/transferring a civil servant on his own pay and scale (OPS) is not legally permissible:

"11. We have inquired from the learned Additional Advocate-General to show us any provision of law and or rule under which a Civil Servant can be appointed on higher grade/post on OPS basis. He concedes that there is no specific provision in the law or rule which permits appointment on OPS basis. He, however, submitted that in exigencies the Government makes such appointments as a stop gap arrangement. We have examined the provisions of Sindh Civil Servants Act and the Rules framed thereunder. We do not find any provision which could authorize the Government or Competent Authority to appointment [of] any officer on higher grade on "Own Pay And Scale Basis". Appointment of the nature that, too of a junior officer causes heart burning of the senior officers within the cadre and or department. This practice of appointment on OPS basis to a higher grade has also always been discouraged by this Court, as it does not have any sanction of law, besides it impinges the self respect and dignity of the Civil Servants who are forced to work under their rapidly and unduly appointed fellow officers junior to them. Discretion of the nature if allowed to be vested in the Competent Authority will offend valuable rights of the meritorious Civil Servants besides blocks promotions of the deserving officers." The Supreme Court further held that

"18. Under section 10 of the Act a civil servant cannot insist to be posted or transferred to a particular post but this does not mean that a civil servant can be made to serve under a subordinate. Moreover, while section 10 does not prescribe a minimum period during which a civil servant must serve at his post it does not mean that the Government without assigning any reason can move a civil servant from the place he was posted to after a month or

[Handwritten signature]

ATTESTED

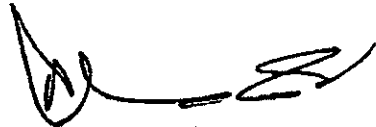
[Handwritten signature]
MEMBER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

(a)

subject the civil servant to repeated postings in a short period of time because this would amount to punishing him. Such postings also adversely affect the public interest and result in the wastage of scarce resources and constitute bad governance."

6. For the reasons we hold that neither the appellant nor private respondent but in view of the Posting/Transfer Policy clause xiii, the concerned authorities shall ensure the posting of proper person in grade 20 against the post of Medical Superintendent. However, it is expected that the appellant, being at the verge of retirement, he may be posted in the district of his domicile. The appeal is disposed of in the above terms. Consign.

7. Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 7th day of December, 2023.



KALIM ARSHAD KHAN
Chairman



SALAH UD DIN
Member (Judicial)

Certified true copy
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Mutazam Shah

Date of Presentation of Application 12/12/23
Number of Words 58
Copying Fee 25/-
Urgent ✓
Total 30/-
Name of Copyist _____
Date of Copying 12/12/23
Date of Delivery 12/12/23

16
مذکورہ ذیل کے مطابق
مذکورہ

مذکورہ ذیل کے مطابق

1
مذکورہ ذیل کے مطابق

12/7/2023
مذکورہ ذیل کے مطابق

2
مذکورہ ذیل کے مطابق

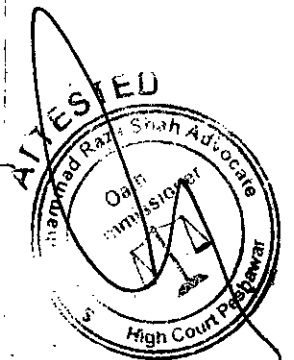
مذکورہ ذیل کے مطابق

مذکورہ ذیل کے مطابق

18-12-2023

مذکورہ ذیل کے مطابق

مذکورہ ذیل کے مطابق



19

MUHAMMAD ZIA ULLAH

Advocate Supreme Court of Pakistan, Legal Consultant & Practitioner,
Cell # 0314-9806895

WAKALAT NAMA

(POWER OF ATTORNEY)

IN THE COURT OF KP Service Tribunal Peshawar

Dr. Muhammad Zahid

(Petitioner)

VERSUS

Govt. of KP & others

(Respondent)

I/We, Dr. Muhammad Zahid (petitioner) in the above noted petition, do hereby appoint and constitute **MUHAMMAD ZIA ULLAH DURRANI, ADVOCATE SUPREME COURT OF PAKISTAN** to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our counsel in the above noted matter, without any liability for their default and with the authority to engage/appoint any other Advocate/Counsel at my/our matter.

Dated:

Attested & Accepted.



MUHAMMAD ZIA ULLAH DURRANI

En No# 5840

Advocate High Court, Peshawar.
Chamber: J. Waqar Ahmad Seth Block,
2nd floor, District Courts, Peshawar.



Client ()

17101-3421656-3

Accepted M. Zahid

