


Form- A
FORM OF ORDER SHEET

Court of _____

Implementation Petition No. 289/2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	15.04.2024	<p>The implementation petition of Mst. Sobia submitted today by Mr. Noor Muhammad Khattak 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>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Execution Petition No. 289 /2024

In

Appeal No. 3989/2021

SOBIA

VS

EDU: DEPTT:

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PETITIONER

Sobia

Through:

Noor Mohammad Khattak
Advocate Supreme Court

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Execution Petition No. 289 /2024

In

Appeal No. 3989/2021

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 12196

Dated 15-04-2024

Sobia D/o Said Kareem
ASDEO (Female), District Mardan
R/o Irum Colony, Nowshera Road, Mardan

.....PETITIONER

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education, Peshawar.
2. Director Elementary & Secondary Education Department, Peshawar.
3. Chairman Khyber Pakhtunkhwa Public Service Commission, Fort Road, Peshawar Cantt.
4. Secretary Khyber Pakhtunkhwa Public Service Commission, Fort Road, Peshawar Cantt.
5. District Education Officer (F) Mardan.
6. Sub Divisional District Education Officer (F) Mardan.

..... RESPONDENTS

EXECUTION PETITION UNDER SECTION 7(2)(d) OF THE KP SERVICE TRIBUNAL ACT 1974, RULE 27 OF THE KP SERVICE TRIBUNAL RULES 1974 READ WITH SECTIONS 36 AND 51 OF THE CIVIL PROCEDURE CODE AND ALL ENABLING LAWS ON THE SUBJECT FOR THE IMPLEMENTATION OF THE JUDGMENT DATED 03/11/2023 IN LETTER AND SPIRIT.

R/SHEWETH:

- 1- That the petitioner filed service appeal bearing No. 3989/2021 before this august Service Tribunal, against the impugned notifications dated 28/02/2019 & 20/03/2019, whereby the respondents disowned the appointment notification of the petitioner.
- 2- That the appeal of the petitioner was finally heard on dated 03/11/2023 and as such the ibid appeal was allowed with the following terms by this august Service Tribunal:

In view of the above discussion, we set-aside the impugned orders dated 28/02/2019 & 20/03/2019 and reinstate the appellant into service for the purpose of denovo inquiry with direction to respondents to provide opportunity of personal hearing, self-defense and cross which are pre-requisite of fair trial and to conclude the inquiry within 90 days after receipt of copy of this judgment. Consign". Copy of the judgment dated 03/11/2023 is attached as annexure.....**A**

- 3- That after obtaining copy of the judgment dated 03/11/2023 the same was submitted with the respondents for implementation of his grievance coupled with an application, but the respondents/ department failed to do so, which is the violation of the judgment supra. Copy of application is attached as annexure.....**B**
- 4- That petitioner having no other remedy but to file this implementation petition.

It is therefore, most humbly prayed that on acceptance of the instant execution petition the respondents may kindly be directed to implement the Judgment dated .03/11/2023 passed in Appeal No. 3989/2021 in letter and spirit. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the petitioner.

Sobia
PETITIONER
Sobia

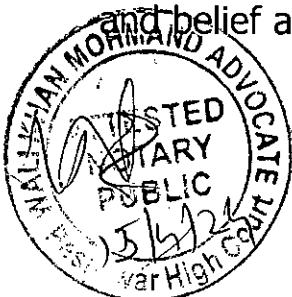
THROUGH:

Noor Mohammad Khattak
NOOR MOHAMMAD KHATTAK
ADVOCATE SUPREME COURT

AFFIDAVIT

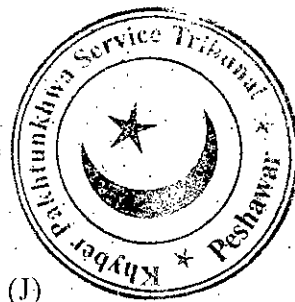
I, Sobia D/o Said Kareem R/o Irum Colony, Nowshera Road, Mardan, do hereby solemnly affirm that the contents of this Execution Petition are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Court.

Sobia
DEPONENT



"A" - 3 -

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR



Service Appeal No. 3989/2021.

BEFORE: MRS. RASHIDA BANO MEMBER (J)
MR. MUHAMMAD AKBAR KHAN MEMBER (E)

Sobia D/O Said Kareem, R/O Irum Colony, Nowshera Road, Mardan.
..... (Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Civil Secretariat, Peshawar.
 2. Director Elementary & Secondary Education Department Peshawar.
 3. Chairman, Khyber Pakhtunkhwa Public Service Commission, Fort Road, Peshawar Cantt.
 4. Secretary Khyber Pakhtunkhwa Public Service Commission, Fort Road, Peshawar Cantt.
 5. District Education Officer (F), Mardan..
 6. Sub-Divisional District Education Officer (F), Mardan.
- (Respondents)

Mr. Noor Muhammad Khattak
Advocate For appellant

Mr. Muhammad Jan
District Attorney For respondents

Date of Institution.....22.03.2021
Date of Hearing.....03.11.2023
Date of Decision.....03.11.2023

JUDGMENT

RASHIDA BANO, MEMBER (J): The instant service appeal has been instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as below:

"On acceptance of this appeal, the impugned notification dated 28.02.2019 and 20.03.2019 may kindly be set aside and the appellant may graciously be reinstated with all back benefits with costs."

ATTESTED

EXCISENER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

2. Brief facts of the case, as given in the memorandum of appeal, are that pursuant to advertisement No. 5/2009 dated 13.06.2009, issued by respondent No.4, the appellant being disable, applied against the post of Female Assistant District Education Officer (BPS-16), allocated against 2% quota of disable candidates, appearing at Serial No.10 of the advertisement. She appeared in test & interview, qualified the same and accordingly vide Notification dated 28.02.2012, she was appointed against the said post and was performing her duties when all of sudden respondent No.2 vide notification dated 28.02.2019, disowned her appointment notification and directed the respondent No.5 to recover salaries and other allied benefits drawn by her. Appellant filed writ petition bearing 2206/2019 which was sent to this Tribunal with direction to treat it service appeal vide order dated 24.02.2021, hence the instant service appeal.

3. 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 District Attorney and perused the case file with connected documents in detail.

4. Learned counsel for the appellant argued that impugned orders are against law, facts and norms of natural justice, hence not tenable and liable to be set side; that the appellant has not been treated in accordance with law, as the appellant was not afforded appropriate opportunity to defend her cause as enshrined in Article 10-A of the Constitution, hence the respondents acted without jurisdiction; that is well settled law that regular inquiry is must before imposition of major penalty of removal from service, which however was not done in case of appellant...



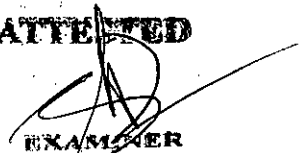
ATTENDED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Mushawar

5. Conversely, learned District Attorney for the respondents has contended that the appellant could not produce any cogent proof and legal justification in support of her stand regarding her recommendations by the public service commission and it was found that the recommendation letter by the public service commission was fake; that the appellant could not prove that she has been recommended by public service commission, therefore her claim regarding her appearance before medical board and her service rendered makes no legal ground; that due to the above reason, services of the appellant has been disowned by the respondents after due process of law alongwith the recovery of salaries received by her; that appeal of the appellant is baseless and without any cogent proof and justification, therefore is liable to be dismissed.


6. Perusal of record reveals that when after performing duties for long seven year by the appellant, respondents found that recommendation letter of the Public Service Commission in respect of the appellant was fake bogus and all of a sudden appointment order of the appellant was disowned without providing any opportunity of self-defence. Appellant challenged her disowning of appointment order dated 20.03.2019 in a writ petition bearing No 2206-P/2019 which was sent to this Tribunal by the worthy Peshawar High Court Peshawar vide order dated 24.02.2021 with direction to treat writ petition as service appeal. Record further reveals that Public Service Commission advertised four posts of female Assistant District Officer (Disable Quota BPS-16 vide advertisement No 5/2009). Appellant being qualified having degrees of B.Ed and M.A applied for the post of ADEO, placed on record letter dated 27.05.2010 for interview was issued by Khyber Pakhtunkhwa Public Service Commission, which would suggest that appellant had applied for the post. It is also important to note appellant

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EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

placed on record application form submitted to Public Service Commission. Appellant was appointed upon recommendation of Public Service Commission vide note dated 28.02.2012 alongwith three others on disable quota by respondent. In pursuance of the order, the appellant assumed the charge on 20-02-2017 and started performing her duty. After assuming duty, the process of verification of her document started. The directorate of education verified that appointment order dated 02-02-2017 in respect of the appellant has been checked with office record and was found correct. Letters dated 14.04.2012, 24.04.2012 and 21.05.2012 of Dy. DEO (F) Mardan, Dy. Controller of Examination, University of Peshwar and Assistant Secretary, BISE Peshawar would show that educational and professional certificates/degrees/DMCs have been verified from the concerned Board/universities and were found correct. After verification of antecedents of the appellant, salary of the appellant was activated in the district account office Mardan and the appellant served for almost seven years, until her appointment order was withdrawn vide order date 28-02-2019.

7. Since no inquiry was conducted either by education department or by public-service commission and upon query of this tribunal, the respondent could not ascertain as to what was the source, which pointed out that recommendation in respect of the appellant were fake, rather we were informed that it was due to rumors in the department that some individual entered the system illegally and upon verification, it was found that documents of the appellant as well as other were fake. Due to incomplete information and absence of inquiry, we are confined to the available record to evaluate the stance of the respondents with respect to their claim. We have observed that the appellant was equipped with the prescribed

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 MEMBER
 (Cyber Pakhtunkhwa
 Service Tribunal)
 Peshawar

qualification as well as experience required for the post of ADO. Sufficient material is available on record to show that the appellant had applied for the subject post. The process of advertisement of the post until final selection and her posting against the post is in order and in a sequence, which took almost three years fulfilling all the codal formalities and the appellant served against the post for seven years performing her duty to the entire satisfaction of her superior, which is evident from the commendation certificates awarded to the appellant. As per practice in vogue, the respondents placed requisition for recommendation of 4 posts of ADO (Female), whereas the commission recommended candidates, which does not exceed the requisite number. It is un-believable that a lengthy process of selection spreading over three years of time and culminating into selection of the appellant being female would be maneuvered by her illegally. Antecedents of the appellant had gone through the process of verification and everything was clear during her initial appointment, which is evident from record of the respondents, which is un-disputed and not fake. Appointment order of the appellant was issued by the competent authority, which also is not disputed. Similarly, her medical fitness, preparation of service book, her posting against a post by district education officer and her salary are also not fake and are un-disputed. The appellant has served against the post for quite longer and has developed vested right over the post, but was relieved of her duty overnight without observing the legal formalities under the pretext that her recommendation letter was fake. It was the statutory duty of the appointing authority to check and re-check the appointment procedure, which however was done in case of the appellant well before time, but later in time, the respondents denied its own acts and to this effect, the Supreme Court of Pakistan in its judgment


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MEMBER
Pakhtunkhwa
Service Tribunal
Peshawar

reported as 1996 SCMR 1350 have held that authority having itself appointed civil servant could not be allowed to take benefit of its lapses in order to terminate service of civil servant merely because it had itself committed an irregularity in violating procedure governing appointment. Appointment of the appellant was made by competent authority by following the prescribed procedure, petitioner were having no nexus with the mode of selection process and they could not be blamed or punished for the laxities on part of the respondents. The order affecting the rights of a person had to be made in accordance with the principle of natural justice; order taking away the rights of a person without complying with the principles of natural justice had been held to be illegal. Government was not vested with the authority to withdraw or rescind an order if the same had taken legal effect and created certain legal rights in favor of the appellant. Reliance is place on 2017 PLC (CS) 585.

8. It is a well settled legal proposition that regular inquiry is must before imposition of major penalty of removal from service, whereas in case of the appellant, no such inquiry was conducted. The Supreme Court of Pakistan in its judgment reported as 2008 SCMR 1369 have held that in case of imposing major penalty, the principles of natural justice required that a regular inquiry was to be conducted in the matter and opportunity of defense and personal hearing was to be provided to the civil servant proceeded against, otherwise civil servant would be condemned unheard and major penalty of dismissal from service would be imposed upon him without adopting the required mandatory procedure, resulting in manifest injustice. In absence of proper disciplinary proceedings, the appellant was condemned unheard, whereas the principle of Audi Alterm Partem was always deemed to be imbedded in the statute and even if there was no such

ATTESTED

EXAMINER
 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar

9.


express provision, it would be deemed to be one of the parts of the statute, as no adverse action can be taken against a person without providing right of hearing to him. Reliance is placed on 2010 PLD SC 483.

9. In view of the above discussion, we set-aside the impugned orders dated 28.02.2019 and 20.03.2019 and reinstate the appellant into service for the purpose of denovo inquiry with direction to respondents to provide opportunity of personal hearing, self defense and cross which are pre-requisite of fair trial and to conclude the inquiry within 90 days after receipt of copy of this judgment. Costs shall follow the event. Consign.

10. Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 3rd day of November, 2023.

SCANNED
Khyber Pakhtunkhwa
Peshawar

Kaleemullah


(MUHAMMAD AKBAR KHAN)
Member (E)


(RASHIDA BANO)
Member (J)

Certified to be true copy

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application 05-12-2023
Number of Words 779
Copying Fee 35/-
Urgent 5/-
Total 40/-
Name of Copyist _____
Date of Completion 05-12-2023
Date of Delivery of Copy 05-12-2023

10- "B"

بخدمت جناب سیکرٹری محکمہ ایمنٹری اینڈ سیکنڈری ایجوکیشن رول سیکرٹریٹ پشاور

سیکرٹری ایجوکیشن دہلیہ

نام

مہلت

سروس ایڈول نمبر 2021/3989 فیصلہ محرمہ 03-11-2023

درخواست برائے عمل درآمد فرمائے یہ فیصلہ جناب سید صاحب kpk سروس ٹرمینول پشاور

جناب عالی! سالانہ حسب ذیل فرض رسالہ ہے۔

1. یہ کہ پانچویں حکم 2019/02/28/03/2019 سالانہ نے kpk سروس ٹرمینول پشاور زیر اہل
2021/3989 داخل کیا تھا۔

2. یہ کہ بحوالہ حکم 2021/3089 فیصلہ محرمہ 03-11-2023 عدالت حضور نے میں سالانہ کو اپنی ملازمت پر
سہل کر دیا ہے۔

3. یہ کہ فیصلہ مذکورہ پر عمل درآمد کیا جائے اور مجھے Adjust فرمائیں۔ تاکہ سالانہ اپنی ملازمت دوبارہ شروع کرے۔

المترجم: 12/12/2023

العبد

صوبہ دختر حاجی سید کریم ASDEO مردان

سکنہ ارم کالونی نوشہرہ روڈ مردان

شناختی کارڈ نمبر: 4-8731467-16101

موبائل نمبر: 0311-9938556 / 03109812000

بیان حقیقی

Attested to be True
Copy

حلفاً بیان کرتی ہوں کہ جملہ مراتب درخواست
ہذا میرے علم و قہم کے مطابق درست و صحیح ہے

اور کوئی امر غلط یا پوشیدہ نہ رکھا گیا ہے۔



العبد

11-

VAKALATNAMA
BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Appeal E.P No 12024

Sobia

(APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

Edy Dept

(RESPONDENT)
(DEFENDANT)

I/We Sobia

Do hereby appoint and constitute **Noor Mohammad Khattak Advocate Supreme Court** to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate Counsel on my/our cost. I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter.

Dated. ___/___/202


CLIENT

ACCEPTED


NOOR MOHAMMAD KHATTAK
ADVOCATE SUPREME COURT


WALEED/ADNAN


UMAR FAROOQ MOHMAND

&


MEHMOOD JAN
ADVOCATES

OFFICE:
Flat No. (TF) 291-292 3rd Floor,
Deans Trade Centre, Peshawar Cantt.
(0311-9314232)