


Form- A
FORM OF ORDER SHEET

Court of _____

Implementation Petition No. 292/2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	17.04.2024	<p>The implementation petition of Mr. Wakeel Khan submitted today by Mr. Saadullah Khan Marwat Advocate. It is fixed for implementation report before Single Bench at Peshawar on <u>23.04.24</u>. 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 KPK SERVICE TRIBUNAL, PESHAWAR

Misc Pett: No. 292 /2024

IN

S.A. No. 220 / 2022

Wakeel Khan

versus

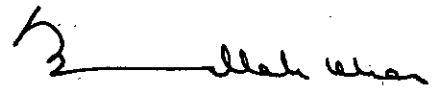
District Judge & Others

I N D E X

S.#	Description of Documents	Annex	Page
1.	Memo of Misc Petition		1-3
2.	Copy of Appeal dated 23-02-2022	"A"	4-7
3.	Copy of Judgment dated 28-11-2023	"B"	8-12
4.	Compliance letter dated 10-02-2024	"C"	13

Applicant

Through



(Saadullah Khan Marwat)
Advocate
21-A Nasir Mension,
Shoba Bazar, Peshawar.
Ph: 0300-5872676

Dated: 16-04-2024

BEFORE THE KPK SERVICE TRIBUNAL, PESHAWAR

Misc Pett: No. 292 / 2024

IN

S.A. No. 220 / 2022

Wakeel Khan S/O Sawab Gul,

R/O Hadi Khel, Tehsil Khewezai,

District Mohmand.

Driver of Court of Additional

Session Judge District Mohmand Appellant

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 12242

Dated 17-4-2024

VERSUS

1. District & Session Judge,
District Mohmand.

2. Registrar, Peshawar
High Court, Peshawar. Respondents

**APPLICATION FOR IMPLEMENTATION OF THE
JUDGMENT DATED 28-11-2023 OF THE HON'BLE
TRIBUNAL, PESHAWAR:**

Respectfully Sheweth:

1. That on 23-02-2022, applicant filed Service Appeal before this hon'ble Tribunal to reinstate him in service with all consequential benefits (Copy as annex "A")
2. That the said appeal came up for hearing on 28-11-2023 and then the hon'ble Tribunal was pleased to hold that:-

"We are unison to set aside impugned order dated 30-08-2019 and reinstate the appellant into service, however respondents are at liberty to proceed in accordance with law on the issue of domicile and intervening period will be treated as leave without pay". (Copy as annex "B")

3. That on 10-02-2024, applicant as well as Registrar of the hon'ble Service Tribunal remitted the judgment to respondents for compliance but so far no favorable action was taken there and then and the judgment of the hon'ble Tribunal was put in a waste box. (Copy as annex "C")
4. That the respondents are not complying with the judgment of the hon'ble Tribunal in letter and spirit and flouts the same with disregard, so are liable to be proceeded against the Contempt of Court Law for punishment.

It is, therefore, most humbly requested that the judgment dated 28-11-2023 of the hon'ble Tribunal be complied with hence forthwith.

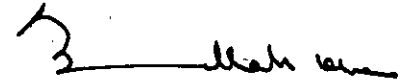
OR

In the alternate, respondents be proceeded for contempt of court and they be punished in accordance with Law.



Applicant

Through



Saadullah Khan Marwat



Arbab Saif-ul-Kamal

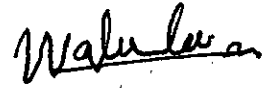


Amjad Nawaz
Advocates

Dated: 16-04-2024

AFFIDAVIT

I, Wakeel Khan S/O Sawab Gul R/O Hadi Khel, Tehsil Khewezai, District Mohmand, Driver of Court of Additional Session Judge District Mohmand (Applicant), do hereby solemnly affirm and declare that contents of **Implementation Petition** are true and correct to the best of my knowledge and belief.

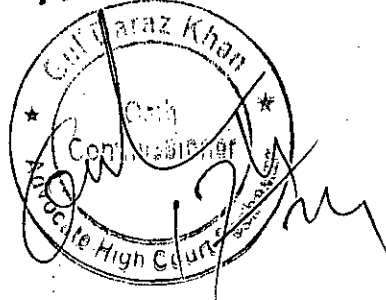


DEPONENT

CERTIFICATE:

As per instructions of my client, no such like Implementation Petition has earlier been filed by the appellant before this Hon'ble Tribunal.

ATTESTED


ADVOCATE

IN THE PESHAWAR HIGH COURT, PESHAWAR

W. P. No. _____ / 2019

Wakeel Khan S/O Sawab Gul,
R/O Hadi Khel, Tehsil Khewezai,
District Mohmand,
Ex-Driver of Court of Additional
Session Judge District MohmandPetitioner

VERSUS

- 1. District & Sessions Judge,
District Mohmand.
- 2. Registrar, Peshawar High
Court, Peshawar. Respondent



WRIT PETITION UNDER ARTICLE 199
OF THE CONSTITUTION OF ISLAMIC
REPUBLIC OF PAKISTAN, 1973:



Respectively Sheweth:

- 1. That on 02-09-1996, Domicile Certificate was issued to the brother of petitioner namely Mohammad Rehman S/O Sawab Gul by the then Assistant Political Agent, Mohmand Agency at Ghalani. (Copy as annex "A")
- 2. That on 29-04-2018, petitioner was also issued Domicile Certificate of the said cast. (Copy annex "B").
- 3. That R. No. 01 advertised numerous posts of various categories including ten (10) posts of Drivers at S. No. 01. (Copy annex "C")

Handwritten signature

4. That after observing the due code formalities, petitioner was appointed as Driver at S. No. 02 of the appointment order on the recommendation of Departmental Selection Committee vide order dated 14-06-2019 by R. No. 01. (Copy annex "D")
5. That on 13-03-2019, the Police Department clarified the status of petitioner to be true and correct of the aforesaid case, area, etc. (Copy annex "E")
6. That Domicile Certificate of petitioner was sent for verification to the office concerned, but record of the same was not available in the office of the then APA, Mohmand Agency at Ghalani and the District & Session Judge, Mohmand compelled him to submit resignation application from the post to save him from criminal liability and as a consequence, appellant submitted application to him on 29-08-2019. (Copy annex "F")
7. That on 30-08-2019, R. No. 01 issued office order wherein appellant was relieved from his post / duty which copy was received from the office Superintendent on 05-10-2019. (Copy annex "G")
8. That on 16-09-2019, petitioner was issued original Domicile Certificate by Assistant Commissioner, Mohmand Tribal District, Office of Deputy Commissioner Mohmand Tribal District at Ghalani on the aforesaid pattern. (Copy annex "H") (13)
9. That as stated earlier, record of Domicile Certificate dated 29-04-2018 of petitioner was not available in the said office, so he submitted application before Assistant Commissioner Mohmand Tribal District to initiate legal action against Noman S/O Kamel R/O Prang Ghar, Utman khel Mohmand, followed by subsequent application before District Police Officer, District Mohmand at Ghalani the then Levy Constable now Police Constable for the said purpose by handing over to him the said Certificate. Noman Constable was / is performing duty in the said office. (Copy annex "I")
10. That on 08-10-2019, petitioner submitted representation before R. No. 02, but without any response till date. (Copy as annex "J")

Hence this Writ Petition, inter alia, on the following grounds:

6


GROUNDS:

1. That in the Domicile Certificate dated 29-04-2018 and 16-09-2019, there exists no difference but both are of Village Khadi Khel, Tehsil Khewezai, subsection Samghakhy.
2. That petitioner has passed up to 8th Class and was not in knowledge as to whether the record of Domicile Certificate dated 29-04-2018 was available in the said office record or otherwise.
3. That petitioner never tendered resignation from service at his own free and sweet will, but he was threatened by the Session Judge, District Mohmand to resign from the office, otherwise he will be booked for criminal liability.
4. That petitioner submitted representations to the authority to book Constable Noman for criminal liability which is pending disposal till date.
5. That petitioner served the department for 2 ½ months without any complaint from the officers. Codel formalities were not observed in the matter.

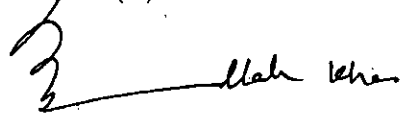

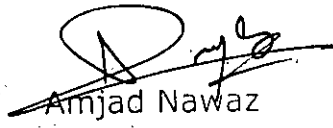
It is, therefore, most humbly prayed that on acceptance of the Writ Petition, in exercise of the extraordinary constitutional jurisdiction, this Hon'ble Court be pleased to:

- a. Declare order dated 30-08-2019 of R. No. 01 to be illegal, improper, unjust, malafide, discriminatory, without lawful authority and of no legal effect.
- b. Direct the authority to reinstate petitioner in service with all consequential benefits of service;

AND / OR

A. A. A. A.


c. Any other writ / order / direction deemed proper and just in the circumstances of the case may also be issued / order / given.

Petitioner(s)
 Through: 
 Saadullah Khan Marwat

 Arbab Saif-ul Kamal

 Anjad Nawaz
 Advocates

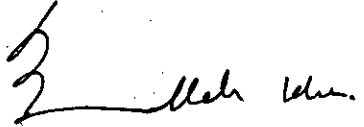
Dated 10-10-2019

LIST OF BOOKS:

Constitution.

CERTIFICATE:

As per instructions of my client, certified that no such like Writ Petition was earlier filed by the petitioner before this Honorable Court.
(D.B Case)


 Advocate




B 8



KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 220/2022

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

Wakeel Khan, Ex-Driver S/o Sawab Gul, Ex-Driver of Court of
Additional Session Judge, District Momand, R/o Hadi Khel, Tehsil
Khewezai, District Mohmand. (Appellant)

VERSUS

1. District & Sessions Judge, District Mohmand.
2. Registrar, Peshawar High Court, Peshawar.

.... (Respondents)

Mr. Arbab Saiful Kamal
Advocate ... For appellant

Mr. Muhammad Jan
District Attorney ... For respondents

Date of Institution.....23.02.2022
Date of Hearing.....28.11.2023
Date of Decision.....28.11.2023

JUDGMENT

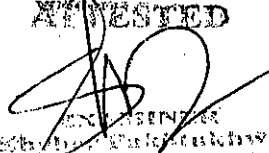
RASHIDA BANO, MEMBER (J):The instant service appeal has been
instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act
1974 with the prayer copied as below:

**“It is therefore, most humbly prayed that on acceptance of
this appeal, this Hon’able Court be pleased to;**

- a. **Declare order dated 30-08-2019 of R. No.01 to be
illegal, improper, unjust, malafide, discriminatory,
without lawful authority and of no legal effect.**
- b. **Direct the authority to reinstate petitioner in service
with all consequential benefits of service.**





ATTESTED

SECRETARY
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

c. Any other writ / order / direction deemed proper and just in the circumstances of the case may also be issued / order / given.”

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was appointed as Driver upon the recommendation of Departmental Selection Committee vide order dated 14.06.2019. After appointment domicile certificate of the appellant was sent for verification to the office concerned, but record of the same was not found and the District & Session Judge, Mohmand compelled him to submit resignation application from the said post to him from criminal proceedings and as a consequence appellant submitted his resignation application. On 30.08.2019 respondent No.1 issued relieving order of the appellant. Feeling aggrieved, he filed departmental appeal, which was not responded to, hence 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 appellant is the bonafide resident of Village Khadi Khel Tehsil Khewezai Mohmand which is evident from his domicile certificate. He further argued that appellant has passed upto 8th class and he was no knowledge as to where the record of domicile certificates will be kept. He submitted that appellant has never submitted resignation application on his own will but he was threatened by the respondents to resign from the post. Lastly he submitted that no codal formalities were observed in the matter, therefore, his appeal might be accepted.

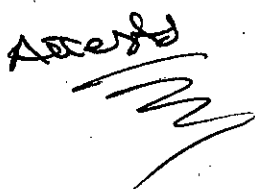
5. Conversely, learned District Attorney contended that domicile certificate dated 30.04.2018 of the appellant on the basis of which he applied for the post of driver has been declared fake and bogus by the local administration during the process

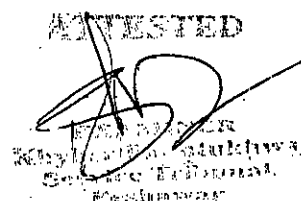
ATTESTED

 DISTRICT ATTORNEY
 KHAWAZAIB PAKISTAN
 SERVICE TRIBUNAL
 PESHAWAR

of verification, therefore, the subsequent domicile certificate dated 16.09.2019 if at all issued by any authority cannot be considered of retaining the post and may a manipulated move on his part for which the appellant is liable to be processed under criminal liability. He further contended that appellant at his free will and consent submitted an application for resignation from the post of driver before the respondent No.1 which was personally verified by the respondent No.1, thereafter, he was relieved from the said post.

6. Perusal of record reveal that appellant applied for post of Driver in light of advertisement published in newspaper was appointed as such by respondent No.1 upon recommendation of Departmental Selection Committee vide order dated 14.06.2019 after fulfillment all the codal formalities. Appellant and his family members are resident of Mohmand Agency that is why domicile certificate to his brother on 02.09.1996 and to the appellant on 29.04.2018 was issued by the then Assistant Political Agent, Mohmand Agency at Ghalani. When domicile certificate of the appellant was sent for verification to the Deputy Commissioner Mohmand office record of it was not found which was misplaced by one Noman S/o Kamal R/o Prang Ghar, Utman Khel Mohmand against which appellant also filed application for initiation of departmental proceeding. Police Department after verification declared appellant as bona-fide resident of Mohmand Agency vide letter dated 13.03.2019 before appointment of the appellant by respondent on 14.06.2019. That on 29.06.2019 appellant was issued with original domicile certificate by Assistant Commissioner, Mohmand Tribal District on 16.09.2019. That authority on the basis of non-verification of domicile certificate and due to non-availability of its record at Assistant Commissioner, Office forcefully under pressure and coercion obtained resignation from appellant which is not voluntarily. Authority issued impugned order dated 30.08.2019 after acceptance of

Attested


ATTESTED

 Assistant Commissioner
 Mohmand Tribal District
 Peshawar

resignation of the appellant with order of forfeiture of one month salary of the appellant as no notice one month prior to the resignation was given by the appellant.

7. Perusal of application for acceptance of resignation reveals that it is not resignation rather application for its acceptance which read as (کہ بمنظوری) درخواست بڈامن سائل کا استعفی منظور فرمایا جائے۔ مجھے کسی قسم کا کوئی اعتراض نہ ہوگا۔ So on record there is no proper resignation which was accepted. It is held in PLD 1994 Supreme Court 79 that;

Resignation of member of Provincial Assembly--- Duty of Authority receiving the resignation --- Anybody receiving the resignation has a duty to ascertain personally whether it was signed by the man resigning; where the it was voluntary and whether it was intended to act as a resignation---Unless said three requirements of the resignation were satisfied it was dangerous in the political milieu in which people of Pakistan were living to give effect to such resignation.

Moreover mentioning of words (درخواست بمراد منظوری استعفی) speaks about the presence and undue influence upon the appellant other otherwise there was no need to mention such words (مجھے اعتراض نہیں ہوگا) if appellant himself voluntarily submitted resignation and application for its acceptance. Moreover it is not acceptable to prudent mind that how appellant just after two and half month of his appointment tender resignation that too in absence of any blood fluid enmity. Appellant contended that due to non-verification of domicile certificate he was forced and pressurized for signing said application by the authority. Respondents also in reply mentioned that appellant due to factum of non-verification of his domicile certificate by Assistant Commissioner Office tender resignation which means that issue is non-verification of domicile certificate of the appellant. In such a situation when

ATTENDED


Attended


SECRETARY
Khyber Pakhtunkhwa
Services Commission
Peshawar

domicile certificate of the appellant is not verified by the Assistant Commissioner proper procedure which will be adopted by the authority is to recall/withdraw appointment order of the appellant on the ground of non-verification of domicile certificate and not obtaining application for acceptance of resignation by exhorting undue influence and pressure upon him.

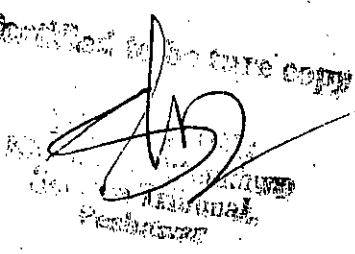
8. For what has been discussed above, we are unison to set aside impugned order dated 30.08.2019 and reinstate the appellant into service, however respondents are at liberty to proceed in accordance with law on the issue of domicile and intervening period will be treated as leave without pay. Costs shall follow the event. Consign.

9. Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 28th day of November, 2023.


(MUHAMMAD AKBAR KHAN)
Member (M)


(RASHIDA BANO)
Member (J)

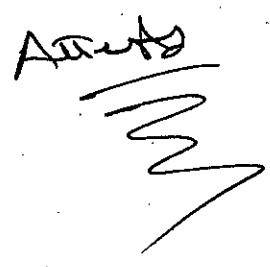
*Kaleemullah


Certified to be true copy
Tribunal
Peshawar

Date of Presentation of Appeal
Number of Words 5-P
Copying Fee 25/-
Urgent -
Total 25/-
Name of
Date of
Date of Delivery

28/11/2023

09-02-2024
09-02-2024



To

- 1) District and Sessions Judge, District Mohmand
- 2) Registrar, Peshawar High Court, Peshawar

APPLICATION FOR COMPLIANCE OF
THE ORDER DATED 28.11.2023 OF THE
HON'BLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR IN
S.A.No.220/2022 TITLED AS WAKEEL
KHAN V/S DISTRICT AND SESSIONS
JUDGE, MOHMAND ETC IN LETTER AND
SPIRIT.

Respected Sir,

Please comply with the order dated 28.11.2023 of the Hon'ble
Khyber Pakhtunkhwa Service Tribunal, Peshawar in letter and spirit
without fail and obliged. (Certified copy attached)

Moreoso, my this application may kindly be treated as my arrival
report.

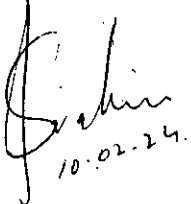
Thanking you, Sir

Dated: 10.02.2024

Applicant



Wakeel Khan s/o Sawab Gul
Driver of Court of ASJ, District Mohmand
R/o Hadi Khel, Tehsil Khewezai,
District Mohmand
CNIC No.17101-1292680-5
Cell: 0301-8887028



10.02.24

