


Form- A

FORM OF ORDER SHEET

Court of _____

Implementation Petition No. 392/2024

S.No. 1	Date of order proceedings 2	Order or other proceedings with signature of judge 3
1	21.05.2024	<p>The implementation petition of Mst. Najmul Huda received today by registered post through Mushtaq Ahmad Khan. Advocate. It is fixed for implementation report before touring Single Bench at Swat on 05.06.2024. Original file be requisitioned. AAG has noted the next date. Counsel for the petitioner has been informed telephonically.</p> <p>By the order of Chairman  REGISTRAR</p>

**BEFORE THE SERVICE TRIBUNAL KHYBER PUKHTOONKHWA
PESHAWAR .**

Implementation Petition No. 392 /2024 in service appeal no 523 of 2023

Najmul huda D/o Said farosh Ex SST GGHS Shadam Buner ,R/O Village Nawagai
,Tehsil mandarn district
Buner.....petitioner

Vs

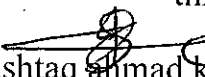
Nazim, District Education officer (f) Buner and others.....Respondents

Index

S.NO	Description of Documents	Annexure	Pages
1	Implementation petition/COC		1-2
2	Addresses of parties		3
3	Affidavit		4
4	Service appeal	A	5-7
5	Judgment/order dated <u>7.12.2023</u>	B	8-12
6	Application for implementation to respondent along with p/o receipt	C,D	13-14
7	Wakalat nama		15

Dated: 13 .5.2024


Petitioner

through

Mushtaq Ahmad Khan and
Inayat shah

Advocate

Office at district
court Buner.

Cell no 03479515727

(A)

**BEFORE THE SERVICE TRIBUNAL KHYBER PUKHTOONKHWA
PESHAWAR .**

Implementation Petition No. 392/2024 in service appeal no 523 of 2023

Najmul huda D/o Said farosh Ex SST GGHS Shadam Buner ,R/O Village Nawagai
,Tehsil mandarn district Buner.....petitioner

Vs

**Khyber Pukhtoonkhwa
Service Tribunal**

Dist. No. 12898

Date 21/5/24

1. Nergus begum ,District Education officer (f) Buner .
2. Samina iltaf ,Director E & SE khyber pukhtoon khwa at Peshawar.
3. Secretary E & SE Khyber pukhtoon khwa at Peshawar.
4. Govt of K.P.K through secretary E & SE Khyber pukhtoon khwa at Peshawar.....respondents

**Petition for implementation of order and judgement dated 7/12/2023
passed by this worthy tribunal in appeal No 523 of 2023 and
initiation of contempt proceedings against the respondents for not
honoring the judgment/order ibid .**

Respectfully sheweth:

1. That the captioned service appeal was decided by this honorable tribunal in favor of the petitioner and the impugned order of removal of appellant from service set aside and he was restored in service. (appeal no 523 of 2023 and judgment/order dated 7.12.2023 attached as annexure A and B).
2. That after the aforesaid Judgment the petitioner several time visited the office of the respondents for the implementation of the judgment/order of this honorable tribunal but the respondent No 1 and 2 were very much annoyed and had got contemptuous attitude towards the aforesaid order of this worthy tribunal ,hence no proper heed was paid to the request of the petitioner .(copy of the applications for implementation of the judgment/order of this worthy tribunal along with post office receipt attached attached as annexure C and D).
3. That the respondents are willfully disobeying the order/ judgment of this honorable tribunal and despite the passage of about 5 months they have not implemented the aforesaid order and are not paying the salary of the petitioner which amounts to contempt of court and the respondents needs to be prosecuted under the contempt laws.
4. That about one week ago the petitioner met the respondent No 1 and 2 for implementation of the order of this worthy tribunal and told them that she

will approach the worthy tribunal if the order was not implemented and requested him to ventilate her grievances by implementing the order as she was a lady teacher.

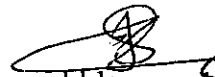
- 5. That respondents are willfully disobeying the order/ judgment of this honorable tribunal and despite the passage of about 5 months they have not implemented the aforesaid order and are not paying the salary of the petitioner which amounts to contempt of court and the respondents needs to be prosecuted under the contempt laws.
- 6. That since the impugned order of removal the petitioner has not been paid a single penny due to which she is in dismal economic situation.
- 7. That the respondents are constitutionally bound to give respect to and implement the judgments'/orders of this worthy tribunal and their refusal in this regard is unlawful and contemptuous.
- 8. That the petitioner seeks the permission of this honorable tribunal to rely on additional ground at the time of arguments.

It is therefore kindly prayed that on acceptance of this petition the judgment and order dated 7/12/2023 of this worthy tribunal may kindly be implemented in its letter and spirit and contempt of court proceedings be initiated against the respondents.

Dated: 13.05.2024


Petitioner

through


Mushtaq ahmad khan and
Inayat shah Advocate
Office at district court Buner.

Cell no 03479515727

Certificate: As per instruction of my client it is certified that no such like Implementation/COC application have earlier been filled in the matter.


Advocate

List of books:

- 1. C.P.C
- 2. Any other law book as per need.


Advocate

(3)

**BEFORE THE SERVICE TRIBUNAL KHYBER PUKHTOONKHW
PESHAWAR .**

Implementation/ COC No...../2024 in service appeal no 523 of 2023

Najmul huda D/o Said farosh Ex SST GGHS Shadam Buner ,R/O Village Nawagai
,Tehsil mandarn district Buner.....petitioner

Vs

Negus Begum

1. District Education officer (f) Buner and others.....Respondents

Addresses of parties:

Addresses of petitioner:

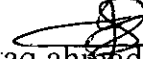
Najmul huda D/o Said farosh Ex SST GGHS Shadam Buner ,R/O Village
Nawagai ,Tehsil mandarn district Buner

Adresses of the respondents

2. Negus Begum ,District Education officer (f) Buner .
3. Samina Iltaf ,Director E & SE khyber pukhtoon khwa at Peshawar.
4. Secretary E & SE Khyber pukhtoon khwa at Peshawar.
5. Govt of K.P.K through secretary E & SE Khyber pukhtoon khwa at
Peshawar.....respondents


Petitioner

through


Mushtaq ahmad khan and
Inayat shah

Advocate

Office at district
court Buner.

(4)

**BEFORE THE SERVICE TRIBUNAL KHYBER PUKHTOONKHWA
PESHAWAR .**

Implementation/ COC No...../2024 in service appeal no 523 of 2023

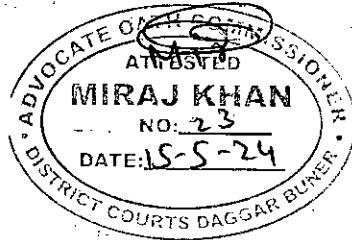
Najmul huda D/o Said farosh Ex SST GGHS Shadam Buner ,R/O Village Nawagai
,Tehsil mandarn district Buner.....petitioner

Vs

Mrs. Wazir, District Education officer (f) Buner and others.....Respondents

Affidavit

I, Najmul Huda, petitioner, do hereby solemnly affirm and declare on oath that the contents of the instant c.o.c is correct to the best of my knowledge and belief and nothing has been concealed from this honorable court.



Deponent..... *Najmul Huda*

Najmul Huda

AM/A 3 (5) (4)

Before the service tribunal khyber pukhtoonkhwa Peshawar .

Service appeal No. 523 2023

Najmul Huda d/o said farosh Ex SST GGHS shadam Buner, r/o village nawagai
tehsile mandanr district Buner.....appellant



Vs

1. District Education officer(f). Buner .
2. Director E & SE khyber pukhtoonkhwa at Peshawar.
3. Secretary E & SE khyberpukhtoonkhwa at Peshawar.
4. Govt of K.P.K through secretary E & SE khyberpukhtoonkhwa at Peshawar.

**Appeal against the impugned order dated 13/10/2022 Endst No
1137.40/A.17/PF /najumul Huda/SST/Buner whereby the respondent No 2
removed the appellant from service in total derogation of law and rules.**

Respectfully sheweth;

1. That the appellant had been serving as Government school teacher since the year 1996 and was lastly promoted as SST on 1/11/2014 and was performing her duties efficiently, with full zeal and devotion. (promotion order to SST attached as an x A)
2. That the appellant remained in the aforesaid service for about 26 long years with unblemished service record and never ever absented from her duty and it is evident from her service record that neither had she remained absent nor any disciplinary action has been taken against her.
3. That at the end of February 2022 the appellant got some personal/domestic nature issues due to which attending the school was highly risky for her and under compelling situation she was going to sought retirement but the office of the respondent no 1 told her that she had a lot of leave in her credit hence she should request for leave and after solution of her problems she would be able to join the service hence she filled an application for leave on 2/3/2022 before the respondent no 1 who assured her for leave .(application for leave attached as annex B)
4. That the appellant was never informed that her application for leave was either rejected or not entertained rather she had been told that her case for leave is genuine and was promised for leave, hence the appellant was under legitimate expectancy that her application for leave had been accepted.
5. That in October 2022 the appellant wanted to join her duty but came to know that she had been removed from service without issuance any show cause notice and without following the principle of natural justice hence after obtaining the impugned order of removal she preferred a departmental appeal before the respondent no 3. (impugned order of

ATTESTED

[Signature]
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

(B)

(7)

8. That the respondent have penalized the appellant for their own wrongs which penalty is not sustainable in the eye of law.
9. That the appellant seek the permission of this worthy tribunal to rely on additional grounds at the time of arguments.

It is therefore kindly prayed that on acceptance of this appeal the impugned order dated 13/10/2022 may kindly be set aside and the appellant may kindly be re-instated in service with all back benefits.

Any other relief not specifically prayed for and which this worthy tribunal deem fit and appropriate in the facts and circumstances of the instant case may also kindly be granted for the end of justice.

Dated: 2/12/2023



Appellant

Through



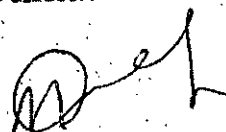
Mushtaq Ahmad Khan Alizai

Advocate, office district court

Buner, cell No 03469014199.

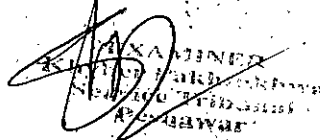
Certificate:

Certified that as per instruction of my client that no such like appeal has earlier been filed on the subject matter before this Hon'ble Tribunal.



ADVOCATE

Certified to be true copy



Stamp: **EXAMINED**
District Court Buner
Signature: [Handwritten signature]

Amr 'B' (8)

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
CAMP COURT SWAT**



Service Appeal No. 523/2023

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

Najmul Huda D/o Said Farosh Ex-SST GGHS Shadam Buner, R/o Village Nawagai, Tehsil Mandanr District Buner.....(Appellant)

VERSUS

1. District Education Officer (F) Buner.
2. Director Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
3. Secretary Elementary & Secondary Education, Khyber Pakhtunkhwa Peshawar.
4. Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Khyber Pakhtunkhwa at Peshawar.....(Respondents)

Present:-

MUHSTAQ AHMAD KHAN ALIZAI,
Advocate --- For Appellant

MUHAMMAD JAN,
District Attorney --- For respondents.

Date of Institution.....03.03.2023
Date of Hearing..... 07.12.2023
Date of Decision..... 07.12.2023

JUDGMENT.

MUHAMMAD AKBAR KHAN, MEMBER(E):- Brief facts of the case are that, the appellant joined respondent department in the year 1996 and was promoted to the post of SST on 01.11.2014; that on February, 2022 the appellant faced some domestic issue due to which she was seeking early retirement but the office of respondent No. 1 verbally informed that she had a lot of leave at her credit, therefore, appellant filed application for leave on

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

(9)

02.03.2022 before respondent No. 1; that the appellant was never informed that her application for leave was either rejected or not entertained; that in October, 2022 the appellant wanted to join her duty but she came to know that she had been removed from service. Feeling aggrieved from the impugned order dated 13.10.2022, the appellant filed departmental appeal before the respondent No. 3. The appellant was called for personal hearing but she was not heard on the date fixed and was adjourned to 20.12.2022. That on the said date the appellant was heard in person by the appellate authority but no order was passed on the appeal of the appellant within the statutory period, hence preferred the instant service appeal.

02. 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.

03. Learned counsel for the appellant contended that the impugned order dated 13.10.2022 is against the law, rules and norms of natural justice; that the appellant had performed her duties for more than 25 years; that the appellant has not been treated in accordance with law and rules and as such respondents violated Article 4 & 25 of the Constitution of Islamic Republic of Pakistan. Learned counsel for the appellant further contended that proper charge sheet/statement of allegations was not issued to the appellant. No Show Cause Notice was issued to the appellant and no chance of personal hearing was provided to the appellant. She has, therefore, been condemned unheard. He submitted that no regular inquiry has been conducted in the

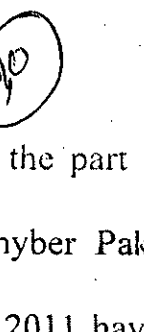
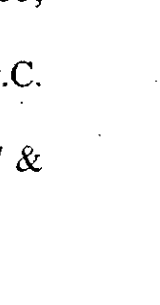
ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

(10)

matter which is mandatory obligation on the part of competent authority. That the procedures contained in the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 have not been followed by the respondents which is contrary to the law on the subject hence liable to be set aside. Learned counsel for the appellant relied on 2006 PLC (C.S) 953, 2008 PLC (C.S) 1055, 2008 SCMR 214, PLJ 2009 SC 1013, PLJ 2016 Tr.C. (Services) 335, 2007 SCMR 152, 2008 PLC (C.S.) 77, 2009 SCMR 1197 & 2011 PLC (C.S.) 808.

04. Learned District Attorney for the respondents controverted the assertions made in the service appeal as well as arguments of the learned counsel for appellant and contended that the appellant was treated in accordance with law and rules; that the appellant absented herself from lawful duty, therefore, a first notice was issued to the appellant on 11.05.2022 but the appellant did not reply to the said notice and remained absent from duty while another notice was issued to his home address on 13.06.2022 but again the appellant did not reply to the notice. That two notices were published in daily Urdu Newspaper "Mashriq" dated 15.08.2022 and Daily "Azadi" Swat dated 17.08.2022 to resume duty but the appellant failed to resume her duty. He further contended that the appellant never performed her duty and remained absent from duty as mentioned in the impugned order. Since all the codal formalities were fulfilled before passing the impugned order, the appeal in hand may therefore, be dismissed, he concluded


ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar



05. Perusal of record and contention of the appellant during course of arguments reveal that the appellant faced compelling personal reasons hindering her performance of duty. She was living in such a situation that compelled her to opt for getting early retirement as she had completed 25 years of Government Service. On the advice of her well wishers in her parent department she applied for two years earned leave with effect from 02.03.2022 to 01.03.2024 which was forwarded by the Principal to DEO (Female) District Buner. However, the fate of the application for leave is not forthcoming on record as no intimation regarding its rejection was conveyed to the Principal of the school where the appellant posted. Consequently disciplinary proceedings were initiated against the appellant for her absence and after observing codal formalities she was removed from service vide impugned order dated 13.10.2022. The appellant preferred departmental appeal dated 04.11.2022 and she was provided opportunity of personal hearing by the appellate authority on 20.12.2022 but no order by the appellate authority was passed on the departmental appeal of the appellant.

We observe that the appellant served the respondent department for 25 years and 7 months with full devotion. We have gone through her service record which speaks unblemished service on her part. The actual period of absence of the appellant comes to 8 months and we feel that the imposition of major penalty of removal from service does not correspond to the 8 months absence. She applied for leave and the reasons were in the knowledge of her immediate controlling officers. We also observe that leave sanctioning authority in her case was Director Elementary & Secondary Education (respondent No. 2) to whom the application was required to be submitted for

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

(12)

consideration but respondent No. 1 never submitted the matter rather communicated/reported absence of the appellant from duty which is not a just act on part of the respondent. Nowhere in the notices issued and published it is mentioned that she applied for leave which was regretted and she proceeded on leave without approval of the same. She is rather shown as willfully absent which speaks malafide on part of her immediate superiors i.e. Principal of the School and DEO (Female) Buner (respondent No. 1). In the aforementioned circumstances we believe that the appellant who had a long unblemished service of about 26 years had by force of her domestic circumstances was unable to perform duty and had applied for leave which was not duly processed.

06. In view of foregoing findings we accept the appeal in hand by setting aside the impugned order dated 13.10.2022. The appellant is reinstated into service and her absence period from 01.03.2022 till the date of judgment shall be treated as leave without pay. Costs shall follow the event. Consign.

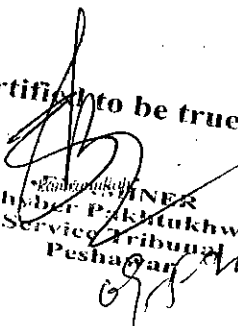
07. Pronounced in open court at camp court Swat and given under our hands and seal of the Tribunal on this 07th day of December, 2023.



(Rashida Bano)
Member (J)
Camp Court Swat



(Muhammad Akbar Khan)
Member (E)
Camp Court Swat

Certified to be true copy

 Khader Pakhtukhwa
 Service Tribunal
 Peshawar

Date of Presentation of Application 09-5-23
 Number of Words 5-1
 Copying Fee 25/-
 Urgent 5/5
 Total 30/-
 Name of Copyist _____
 Date of Completion of Copy 09-5-23
 Date of Delivery of Copy 09-5-23

To,

AMM "C" (13)

The DEO (Female) Distt Buner

Subject, Restoration of service

Dear madam,

Respectfully it is stated that I had been performing my services as SST Court Civils High Shadani. But due to some reasons and my earned leave - I was terminated under your office notification. I tried my level best to reperform my duties but your office could not accept my presence. So I appealed the Honourable court which decided the service in my favour under order No 523/2023. Therefore, it is requested that my restoration of service order may please be issued and obliged -

D-NO-833-

Dated = 26-2-2024

Yours. obediently (Signature)

NAJMUL HUDA (G.G.H.S Shadani)

Date 11/02/2024

