


Form- A
FORM OF ORDER SHEET

Court of _____

Implementation Petition No. 305/2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	23.04.2024	<p>The implementation petition of Syed Muhammad Younas submitted today by Syed Ghufan Ullah Shah 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 PAKHTUNKHUWA
SERVICE TRIBUNAL PESHAWAR

Execution Petition No.....305 / 2024

In

Service Appeal No. 1076/ 2016.

Syed Muhammad Younas

V E R S U S

Government of Khyber Pakhtunkhwa & others

INDEX

S.No	Description of Documents	Annexure	Pages
1.	Memo of petition for implementation		1-3
2.	Affidavit		4
3.	Addresses of parties		5
4.	Copy of order/judgment dated 27-10-2022	"A"	6-13
5.	Copy of the application	"B"	14
6.	Wakalatnama		15

Appellant / Petitioner

Through

.....
Syed Ghufanullah Shah
(Advocate Supreme Court of Pakistan)
Office; 22-A Nasir Mansion
Railway Road, Peshawar
Cell No.0334-9185580

①

BEFORE THE KHYBER PAKHTUNKHUWA
SERVICE TRIBUNAL PESHAWAR

Execution Petition No.....305...../2024

In

Service Appeal No. 1076/ 2016.

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 12353

Dated 23/4/24

Syed Muhammad Younas Social Welfare Officer,
Community Development Malakand at Batkhela,
R/O Village Kagan P/O Mandanay Tehsil Tangi District Charsadda.

.....Petitioner /Appellant

VERSUS

1. Government of Khyber Pakhtunkhwa (KPK) through Chief Secretary at Civil Secretariat Peshawar.
2. Secretary Establishment Department Government of K.P.K at Civil Secretariat Peshawar.
3. Secretary to Government of Khyber Pakhtunkhwa (KPK) Social Welfare and Women Development Department, Peshawar.
4. Director Social Welfare and Women Development Department K.P.K Peshawar.
5. Secretary Finance Government of K.P.K at Civil Secretariat Peshawar.

.....Respondents

APPLICATION FOR IMPLEMENTATION OF THE
ORDER/JUDGMENT OF THIS HONOURABLE TRIBUNAL
DATED 27/10/2022 PASSED IN SERVICE APPEAL

(2)

NO.1076/2016, WHEREBY SERVICE APPEAL OF THE APPELLANT/PETITIONER HAS PARTIALLY BEEN ALLOWED AND PETITIONER HAS BEEN HELD ENTITLED TO ALL FINANCIAL BACK BENIFITS FROM 24- 09- 2009 TO 30-03-2011.

PRAYER;

ON ACCEPTANCE OF THE INSTANT APPLICATION THE SUBJECT ORDER & JUDGEMENT OF THIS HONOURABLE TRIBUNAL DATED 27-10-2022 BE IMPLEMENTED /SATISFIED IN ITS TRUE SPIRIT . ANY OTHER RELIEF ACCORDING TO THE CIRCUMSTANCES OF THE CASE MAY ALSO BE GRANTED TO THE PETITIONER AGAINST RESPONDENTS.

RESPECTFULLY SHEWETH:-

1. *That the above titled Service Appeal was decided by this honorable tribunal in favour of the petitioner /appellant vide order/judgment dated 27/10/2022.*
(Copy of order/judgment dated 27/10/2022 is annexure "A")
2. *That this Honorable Tribunal has partially allowed the appeal of the petitioner/appellant and held him entitled to all financial back benefits with effect from 24 -09-2009 to 30-03-2011.*
3. *That the appellatnt several times approached to the respondents for the implementation of the judgment and*

3

order passed by this honorable tribunal, vide order and judgment dated 27-10-2022 but in vain.

(Copy of the application is annexed as annexure "B")

4. That since date respondents have been failed to comply with the order/judgment dated 27-10-2022 passed by this honorable tribunal; and the petitioner is suffering from their deliberate delaying tactics.
5. That any other ground will be furnished at any stage of the proceeding with the prior permission of this Honorable Tribunal.

It is, therefore, most humbly prayed that on acceptance of this application, the respondents may kindly be directed to implement the order/judgment of this Honourable Tribunal dated 27-10-2022 with all consequential relief.

Petitioner /Appellant

Through



**Syed Ghufuran Ullah Shah
Advocate Supreme Court of Pakistan**

4

BEFORE THE KHYBER PAKHTUNKHUWA
SERVICE TRIBUNAL PESHAWAR

Execution Petition No.....2024

In

Service Appeal No. 1076/ 2016.

Syed Muhammad Younas

V E R S U S

Government of Khyber Pakhtunkhwa & others

AFFIDAVIT:

I, Syed Muhammad Younas Social Welfare Officer, Community Development Malakand at Batkheia, R/O Village Kagan P/O Mandanay Tehsil Tangi District Charsadda. Petitioner /appellant; do hereby solemnly verify and declare on oath that all the contents of the subject application; are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honourable Court.



[Handwritten Signature]
Deponent

C.N.I.C No.

1710211885459 -

Verified by:

[Handwritten Signature]

Syed Ghufan Ullah Shah
Advocate Supreme Court of Pakistan

5

BEFORE THE KHYBER PAKHTUNKHUWA
SERVICE TRIBUNAL PESHAWAR

Execution Petition No.....2023

In

Service Appeal No. 1076/ 2016.

Syed Muhammad Younas

V E R S U S

Government of Khyber Pakhtunkhwa & others

ADDRESSES OF PARTIES

PETITIONER;

Syed Muhammad Younas Social Welfare Officer, Community Development Malakand at Batkhela, R/O Village Kagan P/O Mandanay Tehsil Tangi District Charsadda.

RESPONDENTS;

1. Government of Khyber Pakhtunkhwa (KPK) through Chief Secretary at Civil Secretariat Peshawar.
2. Secretary Establishment Department Government of K.P.K at Civil Secretariat Peshawar.
3. Secretary to Government of Khyber Pakhtunkhwa (KPK) Social Welfare and Women Development Department, Peshawar.
4. Director Social Welfare and Women Development Department K.P.K Peshawar.
5. Secretary Finance Government of K.P.K at Civil Secretariat Peshawar.

Petitioner/Appellant

Through

Syed Ghuffan Ullah Shah

Advocate Supreme Court of Pakistan

6

Amended = A

**BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR**



Service Appeal No. 1076 2016.

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 1099

Dated 18/10/2016

Syed Muhammad Younas Social Welfare Officer,
Community Development Malakand at Batkhela,

R/O Village Kagan P/O Mandanay Tehsil Tangi District Charsadda.

.....Appellant

V E R S U S

1. Government of Khyber Pakhtunkhwa (KPK) through Chief Secretary at Civil Secretariat Peshawar.
2. Secretary Establishment Department Government of K.P.K at Civil Secretariat Peshawar.
3. Secretary to Government of Khyber Pakhtunkhwa (KPK). Social Welfare and Women Development Department, Peshawar.
4. Director Social Welfare and Women Development Department K.P.K Peshawar.
5. Secretary Finance Government of K.P.K at Civil Secretariat Peshawar.

.....Respondents

Filed by
Southern
Registrar

Re-submitted to-day
and filed.

Appeal U/S, 4 of KPK, Service Tribunal Act 1974 with effect to consider Seniority of the Appellant from 10-12-2008 instead of 30-03-2011 and to grant all back benefits including pay fixation, increments, arrears and other monetary benefits of

ATTESTED

[Signature]
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

REGISTRAR
18/10/16

the intervening period with effect from 10-12-2008 in compliance of Judgment Passed in Writ Petition No.702/2010 resultantly to set aside the impugned Order bearing No.SO-II (SWD)/II-198/2015 /PC dated 19-09-2016 whereby Respondents No.3 has rejected departmental Appeal/representation of the appellant. Any other relief which deems Just and proper may also be granted to the appellant keeping in view facts and circumstance of the case.

Respectfully Sheweth:

That brief facts and grounds giving rise to the instant Service Appeal are as under;


1. That the appellant was firstly appointed as Social Welfare Officer, (BPS-17) on 08-12-2007 by Government of Khyber Pakhtunkhwa (KPK) Social Welfare and Women Development Department, Peshawar where he served at Community Development Office Malakand at Batkhela when relieved from service vide Letter dated 10-01-2009.

(Copies of appointment/posting orders along with relieving order are annexed as Annexure-"A" & "B")

2. That in the meanwhile KPK Employees (Regularization of Service) Act, 2009 was promulgated and the appellant was held as regular Government servant.

3. That act and omission of Respondents with effect to deny applicability of the afore mentioned law on the appellant resulted Litigation before Peshawar High Court Peshawar through Writ Petition No. 702/2010 which was allowed on 01-12-2010.

(Copy of Order/Judgment is annexed as Annexure-"C")

ATTESTED

 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar

8

4. That the matter remained under consideration between the Respondents offices for some time and lastly on 30-03-2011 vide Notification No. SO - II (SWD) /V171 /204/PF issued by Respondent No.3 ,the appellant was re-instated in service with effect from 10-12-2008 and his service was considered as regular with effect from 24-10-2009. However the intervening period with effect from 10 -12-2008 to taking over the charge was considered as Extra Ordinary Leave without pay.

(Notification of re-instatement is annexed as Annexure "D")

5. That being aggrieved from the impugned portion of the aforementioned Notification the appellant filed Departmental Appeal/Representation (Annexure "E") before Respondent No.3 on 24-06-2016, which was rejected on 19 -09-2016 vide impugned Notification No. SO -II (SWD) /II-198 /2015/PC /5465-68 issued by Respondent No.3 (Annexure "F")

6. That as a matter of right in terms of Government Service of the appellant and having no other remedy; the appellant approaches this honourable Tribunal amongst the following other grounds;

GROUND:

A) The admittedly the appellant was duly entitle for his regular service as per applicability of KPK Employees (Regularization of Service) Act, 2009 soon after its promulgation but respondents deliberately deprived him from the same, therefore the Respondents are bound by law to grant him all the service benefit of the intervening period with effect from 10-12-2008 or 24-09-2009 what may be the case of appellant.

B) That to consider the intervening period as leave without pay is illegal and in effective upon the legal rights of the appellant because as per applicable Leave Rules there is no such rule to grant the same for such long duration and that's too without request or application of the appellant.

C) That the impugned order with effect to reject the departmental appeal of the appellant being time bared is also based on evasive ground because

ATTESTED

3Kb/Secy/PC/Chitrawa
Service Tribunal
Peshawar



firstly in terms of financial benefit a Government Servant at any time seeks remedy for such financial benefit, secondly the departmental appeal of the appellant was well within time.

D) That the restoration of the service of the appellant is based upon the order/judgment passed by the Peshawar High Court, whereby no such order for considering the intervening period as leave without pay has been mentioned, therefore the same is against the letter and spirit of the subject judgment.

E) That to consider the intervening period as leave without pay is against the vested rights of the appellant as well as having adverse effect upon the seniority, fixation and other financial benefit of the appellant, therefore the appellant is not bound by the same.

F) That the impugned act and omission of the respondents is based on malafide intention, against the well established norms of administration of justice as well as against the fundamental rights of the appellant.

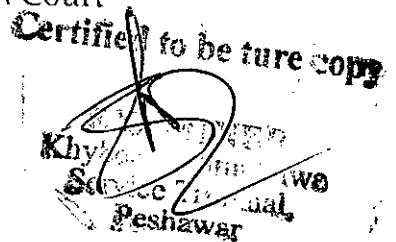
G) That the instant appeal relates to terms and conditions of civil servant and this honorable tribunal has been vested with statutory power to entertain the matter.

H) That any other grounds will be furnished at the time of final arguments with the prior permission of this honourable court.

Therefore, it is, most humbly prayed that the instant service appeal be accepted as prayed for.

Syed Ghufuran-Ullah Shah
Appellant

Syed Ghufuran-Ullah Shah
Advocate High Court
Peshawar.



Date of Presentation of Application 07/11/22 Through _____

Number of Words 1600

Copying Fee 18/-

Urgent _____

Total 18/-

Date of Delivery of Copy 15/12/22

10

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR

Service Appeal No. 1076/2016

Date of Institution ... 18.10.2016

Date of Decision ... 27.10.2022



Syed Muhammad Younas Social Welfare Officer, Community Development Malakand at Batkhela. R/O Village Kagan P.O Mandanay Tehsil Tangi District Charsadda.

(Appellant)

VERSUS

Government of Khyber Pakhtunkhwa (KPK) through Chief Secretary at Civil Secretariat Peshawar and two others.

(Respondents)

SYED GHUFRAN ULLAH SHAH,
Advocate

For appellant.

MR. MUHAMMAD RIAZ KHAN PAINDAKHEL,
Assistant Advocate General

For respondents.

SALAH-UD-DIN
MIAN MUHAMMAD

MEMBER (JUDICIAL)
MEMBER (EXECUTIVE)

JUDGMENT:

SALAH-UD-DIN, MEMBER:- Precisely stated the averments as raised by the appellant in his appeal are that he was initially appointed as Social Welfare Officer (BPS-17) on contract basis in Zakat, Ushr, Social Welfare and Women Development Department vide appointment Notification dated 08.12.2007. Services of the appellant were terminated vide order dated 10.01.2009 constraining the appellant to file Writ Petition before the honourable Peshawar High Court. The writ petition filed by appellant was allowed vide judgment dated 01.12.2010 and vide order dated 30.03.2011, he was reinstated in service with effect from 10.12.2008. Similarly, his services were regularized with effect from

ATTESTED

MEMBER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

24.10.2009, however the intervening period with effect from 10.12.2008 till the date of taking over the charge of his post was treated as extra-ordinary leave without pay. The appellant was entitled to all consequential benefits with effect from 09.12.2008, however the same were not granted to him, therefore, he filed departmental appeal, which was rejected through a single order dated 19.09.2016, hence the instant service appeal.

2. Respondents contested the appeal by way of submitting written reply, wherein they refuted the assertions raised by the appellant in his appeal.

3. It is pertinent to mention here that at the very outset of the arguments, learned counsel for the appellant stated at the bar that as no seniority list regarding the post of the appellant has ever been issued by the department, therefore, as per instructions of the appellant, he does not want to press the appeal to the extent of prayer regarding seniority. In this respect, he submitted written application, which is placed on file of connected Service Appeal No. 1064/2016 titled "Jawad Hussain Versus Government of Khyber Pakhtunkhwa through Chief Secretary and 04 others".

4. Learned counsel for the appellant has argued that the appellant was entitled for regularization of his services in light of Khyber Pakhtunkhwa Employees (Regularization of Services) Act, 2009 but the respondents deliberately deprived him of the same, therefore, he filed Writ Petition, which was allowed and the appellant was reinstated in service as regular employee with effect from 24.10.2009; that the appellant was entitled to all service benefits for the period with effect from 24.10.2009, however

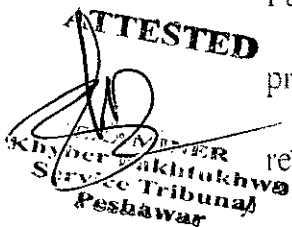
the same were not granted to him and the intervening period with effect from 10.12.2008 till the taking over the charge by the appellant was wrongly and illegally treated as extra-ordinary leave without pay; that nothing was mentioned by honourable Peshawar High Court, Peshawar in its judgment dated 01.12.2010 for treating the intervening period as leave without pay, therefore, competent Authority was not justified in treating the intervening period with effect from 10.12.2008 till the assumption of the charge as leave without pay; that as the matter pertains to financial benefits, therefore, no limitation would run against the same, however departmental appeal of the appellant was regretted on the ground that the same was barred by time.



5. On the other hand, learned Assistant Advocate General for the respondents has argued that the judgment of honourable Peshawar High Court, Peshawar has been implemented in letter and spirit; that the request of the appellant for granting him service benefits of intervening period is wrong and baseless; that the departmental appeal of the appellant was time barred, therefore, the appeal in hand is not maintainable and is liable to be dismissed.

6. We have heard the arguments of learned counsel for the parties and have perused the record.

7. A perusal of the record would show that the appellant was serving as Social Welfare Officer (BPS-17) on contract basis in Zakat, Ushr, Social Welfare and Women Development Department, when Khyber Pakhtunkhwa Employees (Regularization of Services) Act, 2009 was promulgated. The services of the appellant were, however not regularized, therefore, he approached the honourable Peshawar High

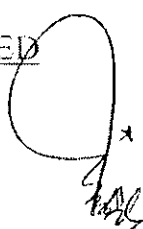
ATTESTED

 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar

(13)

Court, Peshawar through filing of Writ Petition No. 702/2010, which was allowed vide judgment dated 01.12.2010. The competent Authority issued Notification dated 30.03.2011, whereby the appellant was reinstated in service with effect from 10.12.2008, while his services were regularized with effect from 24.10.2009 by treating the intervening period with effect from 10.12.2008 till the assumption of the charge as extra-ordinary leave without pay. During the period with effect from 24.09.2009 till the assumption of the charge by the appellant, he was kept out of service on account of fault of the respondents. Furthermore, when the competent Authority had itself regularized the services of the appellant with effect from 24.10.2009 then the appellant was entitled to all financial back benefits from the said date. So far as the question of limitation is concerned, the matter being one of financial benefits, is not hit by bar of limitation.

8. In view of the above discussion, the appeal in hand is partially allowed and the appellant is held entitled to all financial back benefits with effect from 24.10.2009 till the date of charge assumption i.e 30.03.2011 (F.N). The claim of the appellant regarding seniority stands dismissed being not pressed, however the same shall not preclude the appellant from seeking this remedy afresh, if he feels aggrieved of tentative seniority list upon its issuance and circulation. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
27.10.2022

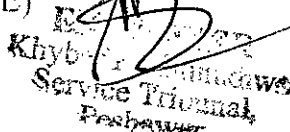


(MIAN MUHAMMAD)
MEMBER (EXECUTIVE)



(SALAH-UD-DIN)
MEMBER (JUDICIAL)

Certified to be true copy


Khyber Pakhtunkhwa
Service Tribunal
Peshawar

14

Annex B



Government of Khyber Pakhtunkhwa
Directorate of Social Welfare, Special Education
& Women Empowerment, Jamrud Road, Peshawar.

No. E-2/136/DSW/ 900-03
Dated Peshawar the 06/09/2023.

To
The Secretary,
Social Welfare, Special Education &
Women Empowerment, Khyber Pakhtunkhwa.

Subject **IMPLEMENTATION OF JUDGMENT DATED 27.10.2022 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL IN SERVICE APPEAL NO. 1076/2016 TITLED SYED MUHAMMAD YOUNIS VERSUS VS GOVERNMENT**

Respected Sir,
I am directed to refer to District Officer, Social Welfare Charsadda letter No. DO/SW/CHD/7821-22 dated 21-08-2023 on the subject noted above (copy enclosed) and to state that the Khyber Pakhtunkhwa Service Tribunal Peshawar vide its judgment dated 27-10-2022 in Service Appeal No. 1076/2016 titled "Syed Muhammad Younis, Social Welfare Officer" VS Government of Khyber Pakhtunkhwa allowed all financial back benefits with effect from 24-10-2009 till the date of charge assumption i.e. 30-03-2011 (F.N).

It is pertinent to mention here that the Administrative Department vide its notification dated 26-07-2023 (copy attached) has granted all the financial back benefits in pursuance of the judgment in Service Appeal No. 1064/2016 titled "Jawad Hussain VS Government" subject to the fate CPLA led in the Supreme Court of Pakistan.

To avoid further litigation, your good self is requested to treat the appellant (Syed Muhammad Younis, Social Welfare Officer (presently posted as Principal (BPS-17) in Government Institute Children with Hearing & Speech Impairment, Charsadda) at par with his counterpart (Mr. Jawad Hussain, Rehabilitation Officer, RCDA Peshawar) by allowing him all financial back benefits w.e.f 24-10-2009 to 30-03-2011, please.

: As Above.

Assistant Director
(Establishment-I)

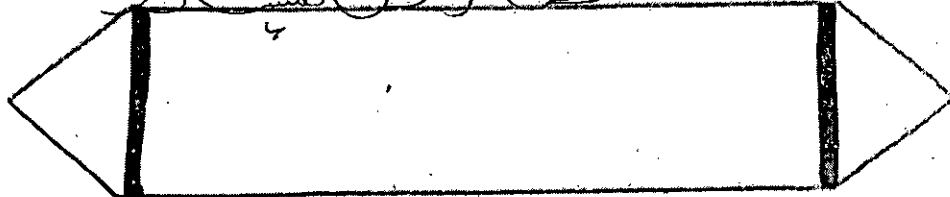
The Section Officer (Litigation), Social Welfare, Khyber Pakhtunkhwa, Peshawar.
The Assistant Director (Litigation), Social Welfare, Khyber Pakhtunkhwa, Peshawar.
P.A to Director, Social Welfare, Khyber Pakhtunkhwa, Peshawar.

Assistant Director
(Establishment-I)

of

Assistant Director

بعد الت سروس ٹرسٹل ایس اور



2 منتخب

بنام گورنمنٹ وائس

سید محمد یونس

---	موزونہ
---	مقدمہ
---	دعویٰ
---	م.ج

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی دکن کارروائی متعلقہ آن مقام لیسٹ اور کیا گیا ہے۔ سید غفران اللہ شاہ (ASC) مقرر کر کے اتر کر کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا مکمل اختیار دیا گیا۔ نیز دیکل صاحب کو راضی نامہ کرنے و تقرر ثالثہ فیصلہ بر حلاف دینے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء اور وصولی چیک درو پیار عرضی دعویٰ اور درخواست ہر قسم کی تصدیق زرائیں پر دستخط کرنے کا اختیار دیا گیا۔ نیز بصورت عدم پیروی یا ڈگری کی طرف یا اپیل کی برآمدگی اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار دیا گیا۔ از بصورت ضرورت مقدمہ مذکور کے کل یا جزوی کارروائی کے واسطے اور دیکل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار دیا گیا۔ اور صاحب مقرر شدہ کو کسی دہی جملہ مذکورہ با اختیار حاصل ہوں گے اور اس کا ساختہ پرواختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ ہر چنانہ التزامے مقدمہ کے سبب سے دہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہوا یا حد سے باہر ہوا تو دیکل صاحب پابند ہوں گے۔ کہ پیروی نہ کروا کریں۔ لہذا ادا کا نام لکھ دیا کہ سند ہے۔

الرقوم ۲۶ ماہ ۰۴ 20۲۹

_____ واد الع

کے لئے منظور ہے۔

بمقام لیسٹ اور

B.C 11-1272

15202-4540915-7

03349185580

E-mail: ghufraanullah.shah@gmail.com