Form- A

FORM OF ORDER SHEET

Court of_____

Implementation Petition No. 315/2024

| S.No. | Date of order proceedings | Order or other proceedings with signature of judge | | |
|---------|------------------------------|--|--|--|
| 1 | 2 | 3 | | |
| 1 | 29.04.2024 | The implementation petition of Mr. Mehboob | | |
| | • | Ullah submitted today by Mr. Ashraf Ali 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. | | |
| | | By the order of Chairman | | |
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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Execution Petition No. 3/172024

In

Service Appeal No.1571 /2011

1

Mehboob Ullah, Clinical Technician (BPS-12), Type "C" Hospital, Karak City...... Applicant / Petitioner

Versus

INDEX

| S.No. | Description of Documents | Date | Annexure" | Pages |
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| 2. | Copy of order / Judgment passed by this Hon'ble Tribunal | 10-11-2015 | A | 5-8 |
| 3. | Copy of Execution Petition and re-instatement order | 11-01-2017 | В | q. |
| 4. | Copy of disposal of Execution Petition | 13-01-2017 | С | 10 |
| 5. | Copy of applications | i. | : D | 11-14 |
| 6. | Wakalat Nama. | | | 15 |

Applicant/Petitioner

Through

As L______(u) Ashraf Ali Khattak

Advocate, Supreme Court of Pakistan

æ

Ali Bakht Mughal Advocate, District Courts, Peshawar

Dated: ____/ 04/2024

3EFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

2nd Execution Petition No.____/2024

In

Service Appeal No.1571 /2011

Mehboob Ullah, Clinical Technician (BPS-12), Type "C" Hospital, Karak City.....

.....Applicant / Petitioner

Versus

- The Director General, Health Services, Khyber Pakhtunkhwa, Peshawar
- 2. The District Health Officer, District Karak.
- 3. The District Account Officer,
- District Karak

EXECUTION PETITION UNDER SECTION 7(d) OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974.

Respectfully Sheweth,

Facts giving rise to the present execution petition are as under:-

1. That the petitioner filed the above titled service appeal, which was disposed of by this Hon'ble Tribunal on 10-11-2015. The operative part of the Judgment is reproduced as under for easy reference;-

In the circumstances the Tribunal is of the considered view to remit the case to respondent No.1, who is appellate authority with direction to examine the case strickly in accordance with law and rules and decide the departmental appeal of the appellant within a period of 60 days of the receipt of this judgment failing which the instant appeal shall be deemed to have been accepted. Meanwhile the impugned order is set aside and the appellant is re-instated in service' for the of proceeding for decision on the departmental

appeal. Parties are left to bear their own costs. File be consigned to the record.

Copy of Order / Judgment dated 10-11-2015 passed by this Hon'ble Tribunal is attached as Annexure-A.

2. That respondent No.1 failed to honor the judgment/directions of this Hon'ble Tribunal and appellant was constrained to file execution petition No.20 of 2016 before this Hon'ble Tribunal and during the course of execution proceeding applicant was reinstated w.e from the date of decision.

Copy of Execution Petition and re-instatement order dated 11-01-2017 is attached as Annexure-B.

- 3. That re-instatement means assigning of charge with effect from the date of discharge/removal/dismissal. Applicant appointment order was withdrawn by respondent No.2 vide order dated 11-05-2011 with effect from the initial date of appointment order dated 18-03-2011 therefore, as per direction of this Hon'ble Tribunal, he was entitled to be re-instated with effect from the date of initial appointment order i.e w.e.from 18-03-2011, but applicant was re-instated with effect from the date of the order/judgment of this Hon'ble Tribunal dated 10-11-2015 and thus applicant was caused loss of about 4/5 years of service. More over since the appeal of the appellant was accepted in toto, therefore he was also entitled for all back benefits, which too are out standing against the defaulter Judgment debtor.
- 4. That erroneously the Execution Petition was disposed of vide order dated 13-01-2017 without reference to the direction of this Hon'ble Tribunal vide its judgment dated 10-11-2015, which is clear in all respect. The disposal of the execution petition is erroneous in its nature and spirit, therefore the present 2nd Execution Petition.

Copy of disposal of Execution Petition is attached as Annexure-C.

5. That applicant submitted various applications for the true implementation of the Judgment of this Hon'ble Tribunal, but the respondents have paid no head to the disposal of the applicantions.

Copy of applications are attached as Annexure-D.

It is therefore, humbly prayed that on acceptance of this application, this Hon'ble Tribunal may graciously be pleased to take action and initiate Contempt of Tribunal proceedings against the respondents and directs them to immediately re-instate the appellant/applicant in true spirit of the Judgment/order dated 10-11-2015 with all back benefits from the date of withdrawal of initial appointment order without further loss of time.

Through

i

Applicant/Petitioner

As L____S(1) Ashraf Ali Khattak Advocate, Supreme Court of Pakistan

R

Ali Bakht Mughal Advocate, District Courts, Peshawar

Dated: ____/ 04/2024

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

2nd Execution Petition No. /2024

In

Service Appeal No.1571 /2011

Mehboob Ullah, Clinical Technician (BPS-12), Type "C" Hospital, Karak City......Applicant / Petitioner

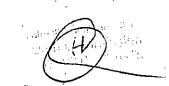
Versus

AFFIDAVIT

I, Mehboob Ullah, Clinical Technician (BPS-12), Type "C" Hospital, Karak City do hereby solemnly affirm and declare on oath that the contents of this petition are true and correct to the best of my knowledge, and nothing has been concealed from this Hon'ble Tribunal. It is further declare on Oath that applicant has not moved any execution petition previously for the same matter.

Deponent

CNIC: 14202-8713629-5 Cell: 0332-9190741



ANX. A.

Order or other proceedings with signature of judge or Magistrate KHYBER PAKHTUNKHWA SERVICE TRIBUNA PESHAWAR.

APPEAL NO.1571/2011

(Mehboob Ullah-vs- Director General Health Civil Secretariat, Peshawar and others).

JUDGMENT

ABDUL LATIF, MEMBLER:

10.11.2015

2.

Date of

order. proceedings

S.No.

Counsel for the appellant (Mr. Ashraf Ali Khattuk, Advocate), Dr. Inaam, Coordinator and Mr. Niaz Muhammad. Senior Clerk alongwith Mr. Ziaullah, GP for respondents present.

The instant appeal has been filed by the appellant under Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act-1974 against the impugned order dated 11.05.2011 passed by respondent No.3, wherein he withdrew the appointment order of the appellant and against which appellant filed departmental appeal before the respondent No.1 which is still pending before him without disposal. He prayed that on acceptance of this appeal the impugned order may please be set aside and directs the respondents to grant salaries for the services he rendered before the impugned withdrawal order.

Brief facts giving rise to the instant appeal are that the 3. appellant was appointed as Junior Clinical Technician, Pathology (BPS-09) vide order dated 29.11.2010 at Khalifa Gul Nawaz Teaching Hospital, Bannu. That the appellant applied for the same post through proper channel and was selected and appointed vide order dated 18.03." UI1 at Type "D" Hospital Latamber. That appellant served as such for about more than two months without salaries, which is still pending against the department and the appellant is also entitle for the same. That to the utter dismay and surprise the legal services of the appellant was terminated with a single stroke of pen. Respondent No.3 vide order dated 11.05.2011 withdraw the appointment order of the appellant without adhering to the legal procedure prescribed for the same on the flimsy ground that the appellant has procured his appointment on bogus documents, which has not factual backing. That appellant being aggrieved from the unlawful order preferred departmental appeal before respondent No.1 which was not responded, hence this appeal.

4. Counsel for the appellant argued that respondent had not treated the appellant in accordance with law, rules and policy on the subject and acted in violation of Article-04 of the Constitution of Islamic Republic of Pakistan, 1973. He further argued that appellant never submitted fake certificate/diploma and withdrawn order of his appointment was therefore, illegal, unlawful and had no legal backing hence liable to be interfered with by this Tribunal. He further submitted that legal service of the appellant had been terminated without conducting any enquiry, without any show cause notice hence was not maintainable in the eves of law. He further argued that appellant was condemned unheard which was against the principle of natural justice and added that impugned order had been made in order to accommodate the favourites of Political bosses. He further argued that impugned order had no mention of the relevant law, rules in support of sacking of the appellant from his legal service hence was liable to be set aside by this Hon'able Tribunal.

The learned GP argued that terms and conditions of the appointment of the appellant provided that the appellant was initially appointed on probation of one year. His continuation in service was contingent upon satisfactory performance and his services were liable to be terminated without any notice in the probation period. The impugned order was accordingly made in pursuance of the provision of Khyber Pakhtunkhwa Civil Servani Act, 1973 and the rules made there-under and the competent authority who made his order of appointment was competent enough to withdraw the said orders. He further argued that departmental representation was presented before the respondent No.3 but the same was straight-away taken by the appellant Without any process for the order of respondent No.1. He argued that on this count also the instant appeal before the Service Tribunal was not maintainable and prayed that the appeal may be dismissed,

6 Arguments of learned counsels for the parties heard at length and record perused with their assistance.

7. From hearing of the counsel for the parties and from perusal of the record, it transpired that the appellant was appointed as Junior Clinical Technicians (Pathology) (BPS-09) vide order

dated 18.03.2011 by respondent No.3. The said order was however withdraw by the same authority on 41.05.2011 on account of fake/bogus documents of the appellant as declared by Khyber Pakhtunkhwa Medical Faculty Peshawar with immediate effect. The written reply/comments of the respondents of the instant appeal however made no mention of fake documents rather the termination of the appellant was attributed to unsatisfactory performance of the appellant and reliance was made on Section-10 (i) of the Khyber Pakhtunkhwa Civil Servant Act, 1973 and rules relating to probation made there-under. A clear contradiction in the stance of the respondent-department has. therefore surfaced which cannot be decided in the absence of O Perceli Judgmen Dart relevant material pertaining to the case in hand (In the circumstances, the Tribunal, is of the considered view to remit the case to respondent No.1 who is appellate authority with direction to examine the case strictly in accordance with law and rules and decide the departmental appeal of the appellant within a period of 60 days of the receipt of this judgment failing which the instant appeal shall be deemed to have been accepted. Meanwhile the impugned order is set aside and the appellant is reinstated in service for the purpose of the proceedings for decision on the departmental appeal. Parties are left to bear their own costs. File ANNOBOLED Also pis obro huses Steens be consigned to the record.

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20.11.2015

2.11.2015

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DISTRICT HEALTH OFFICER KARAK Phone & Fax No. 0927290537

ANX B.

OFFICE ORDER

In light of the decision of Khyber Pakhtunkhwa, Service Tribunal Pääfiawart dated 10.11.2015 in Service Appeal No. 1571/2011 (Mehboob Ulah) We Governer KPK & Director General Health Services, Khyber Pakhtunkhwa Peshawar office letter No. 61-62/AE-VI dated 04/01/2017, Mr. Mehboob Ulah S/O Rat Gul Village Spina Banda PO Jandri Tehsil & District Karak is hereby refinerate onto service as Clinical Technician Pathology-BPS-12 with effect from the court decision date 10.11.2015, he is hereby directed to perform duty at

HI DISTINICT HEAL-TH OFFICER KARAK ZA 222 // /2017

The Director General Health Serices, Khyber Pakhtunkhwa, Peshawar for Information w/ritorhis.office letter referred above please 2. The Registrar Khyber Pakhtunkhwa, Service Fribunal Peshawar for Jinformation please 3. Jinformation please 3. Jinformation please 3. Jinformation please

Any Pleakhtunkhwa Peshawanfor Information please. An IIne PMOINC Trybe-C-Hospital Takhti Nasrati Katak for information Sectors District Account: Officer Karak for Information Counter Sector Local Officer Karak for Information Mr. Mehoboon Ullan S/O Rai Gul Milage Spina Bandat P.O. Jandi Tehsil & District Karak for information & compliance of the torder.

BISTRICT HEALTH OFFICERS

DEPORETHE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR Execution Petition No. 20/20/6 all. W. . P. ST. No Tolan BOIVING STIDEMAN In The Matt: Of Glary 1:0 Appeal No. 15/1/2011 Station? Mehboob ullah S/O Rai Gol R/o Village Spina Banda P.O Jahdrai Tehsil and District asarak Appellant Vakhin.

The Director General Health Civil Secretariat Peshawar. The District Coordination Officer Karak. The Executive District Officer (Health) Karak And the spondents

ANX.C, (D)

AND CATEGORIES FOR THE IMPLEMENTATION OF THE JUDGMENT

lsearectraily submitted,

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13.01.2017

Petitioner with counsel and Addl. AG alongwith Dr. Fuzie Hadi, DHO Korak for the respondents present. Submitted copy of order dated 11.01.2017 according to which the petitioner has been reinstated in service as Clinical Technician Pathology BPS-12 w.c.f. the date of decision of the Tribunal i.e. 10.11.2015. In view of the afore-stated situation learned counsel for the petitioner requested for withdrawal of the petition.

Dismissed as withdrawn. File be consigned to the

Sa/ ~ e copy

The Worthy, District Health Officer; District Karak.

Subject: APPLICATION FOR IMPLEMENTATION OF THE JUDGMENT OF THE HON'BLE SERVICE TRIBUNAL DATED 10-11-2015 PASSED IN SERVICE APPEAL NO.1571 OF 2011, WHEREBY APPLICANT HAS BEEN DIRECTED TO BE RE-INSTATED WITH EFFECT FROM INITIAL APPOINTMENT I.E 18-03-2011.

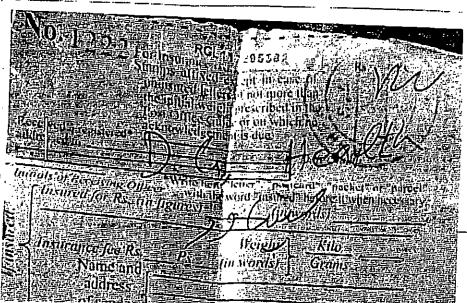
Respected Sir,

Applicant humbly submits as to the following:-

 That applicant filed Service Appeal No: 1571/2011, which was disposed of by Hon'ble Service Tribunal, Peshawar vide Order/Judgment dated 10-11-2015 directing the Your Good Office to re-instate the appellant with all back benefits. Copy attached as Flage-I.

2. That applicant was re-instated during the course of execution proceeding before the Hon'ble Service Tribunal vide order dated 13-01-2017 with effect from the date of Judgment of Hon'ble Service Tribunal dated 10-11-2015 and execution petition was accordingly dispose of vide order dated 13-01-2017.

3. That since applicant initial order was withdrawn with effect from initial appointment dated 18-03-2011 therefore as per direction of the Hon'ble Service Tribunal; applicant was entitled to be re-instated with all back benefits.



Attest

AN X "D,, 1

То

That applicant has neither been re-instated with effect from his original appointment nor paid back benefits as per direction of the Hon'ble Service Tribunal.

It is therefore, humbly requested that applicant may kindly be re-instated with effect from 18-03-2011 and may be paid his back benefits for the intervening period.

Your's Obediently, Mehboob Ullah, Clinical Technician. Type C, Hospital, Karak City. \bigcirc

Dated :20/07/2021

4.

The Worthy, Director General Health Services, Khyber Pakhtunkhwa, Peshawar.

Subject: APPLICATION FOR IMPLEMENTATION OF THE JUDGMENT OF THE HON'BLE SERVICE TRIBUNAL DATED 10-11-2015 PASSED IN SERVICE APPEAL NO.1571 OF 2011, WHEREBY APPLICANT HAS BEEN DIRECTED TO BE RE-INSTATED WITH EFFECT FROM INITIAL APPOINTMENT I.E 18-03-2011.

Respected Sir,

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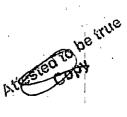
To

Applicant humbly submits as to the following:-

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3. That since applicant initial order was withdrawn with effect from initial appointment dated 18-03-2011 therefore as per direction of the Hon'ble Service Tribunal; applicant was entitled to be re-instated with all back benefits.



That applicant has neither been re-instated with effect from his original appointment nor paid back benefits as per direction of the Hon'ble Service Tribunal.

It is therefore, humbly requested that applicant may kindly be re-instated with effect from 18-03-2011 and may be paid his back benefits for the intervening period.

Attrest Copy

Dated :15 /09/2020

4,

WAKALAT NAMA

IN THE COURT OF KHXBER PAKHTUNKHWA Service TRIBUNAL RE PESHAWAR

Mehbooh Ullah Appellant(s)/Petitioner(s)

VERSUS

The disector general Health

SCAVILES KPK PESHAWA and Others Respondent(s)

I/We ______ do hereby appoint Mr. Ashraf Ali Khattak Advocate Supreme Court of Pakistan & Mr. Ali Bakht Mughal Advocate High Courts Peshawar in the above mentioned case, to do all or any of the following acts, deeds and things.

- 1. To appear, act and plead for me/us in the above mentioned case in this Court/Tribunal in which the same may be tried or heard and any other proceedings arising out of or connected therewith.
- 2. To sign, verify and file or withdraw all proceedings, petitions, appeals, affidavits and applications for compromise or withdrawal or for submission to arbitration of the said case, or any other documents, as may be deemed necessary or advisable by them for the conduct, prosecution or defence of the said case at all its stages.
- 3. To receive payment of, and issue receipts for, all moneys that may be or become due and payable to us during the course of proceedings.

AND hereby agree:-

a. That the Advocate(s) shall be entitled to withdraw from the prosecution of the said case if the whole or any part of the agreed fee remains unpaid.

In witness whereof I/We have signed this Wakalat Nama hereunder, the contents of which have been read/explained to me/us and fully understood by me/us this

Attested & Accepted by

Ashraf Ali Khattak Advocate, Supreme Court of Pakistan

Signature of Executants

Ali Bakht Mughal Advocate

Advocate, High Court, Peshawar