Form- A FORM OF ORDER SHEET

	•
Implementation Petition No.	649 /2024

1	07.2024	The implementation petition of Mst. Naheed Bibi legal heir of Aurangzeb (deceased) submitted today by		
1 01	07.2024	•		
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		The state of the s		
		Mr. Muhammad Irshad Mohmand Advocate. It is fixe for implementation report before Single Bench a		
	·	Peshawar on 03.07.2024. Original file be requisitioned AAG has noted the next date. Parcha peshi given to		
	counsel for the petitioner.			
-				
		By the order of Chairman		
		REGISTRAR		

BEFORE ENYBER PKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Case Title: Oke Crise

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#	Contents	Yes	No
1.	This appeal has been presented by:		adera e an indicagna representa da P
	Whether Counsel / Appellant / Respondent / Deponent have signed the		
2.	requisite documents?		
3.	Whather Armed is within time?		
<u>2.</u> 4.	1 37 - the disconnectment under which the appeal is filed mentioned:		
4. 5.	Whether the enactment under which the appeal is filed is correct?	<u></u>	ļ
<u>ی.</u> بآ,	1975-other affidavit is annended?		ļ
0. 7.	Whether affidavit is duly attested by competent oath commissioner?		<u> </u>
. <u>/:</u> 8.	Whather appeal/annexures are properly paged?		<u> </u>
0	Whether certificate regarding filing any earlier appeal on the		
) .	subject, furnished?	 	
10.	Whether annexures are legible?	10	
	Whether annexures are attested?		
11.	Whether copies of annexures are readable/clear?		. ـــــ ، بسبر، ـــــ .
12.	yrd demonstrated is delivered to A.U/D.A.U.		 -
<u> 13.</u>	Whether Power of Attorney of the Counsei engaged is attested and	1	
<u>1</u> 4.	signed by petitioner/appellant/respondents?		<u> </u>
	Whether numbers of referred cases given are correct?	<u> </u>	<u> </u>
15.	Type of a second contains cuttings/overwriting/		 -
16.	Whether list of books has been provided at the end of the appeal?	<u></u>	
17.	Whether list of ocoks has been provided whether case relate to this Court?		
18.	Whether requisite number of spare copies attached? Whether requisite number of spare copies attached?	<u> </u>	-
19.	Whether complete spare copy is filed in separate file cover?		
<u>20.</u>	Whether addresses of parties given are complete?		ļ
<u>21.</u>	Whether index filed?	<u> </u>	·
22.	Whether index is correct?		-
23.	1 December 1 December 1 Por deposited / Oil		
24.			
n 5	Rule 11, notice along with copy of appeal and annexures has been sent		
25.			
	to respondents? on Whether copies of comments/reply/rejoinder submitted? on	Ì	
. 26.			
<u> </u>	Whether copies of comments/reply/rejoinder provided to opposite		
27.	party? on		

It is certified that formalities/documentation as required in the above table have been fulfilled.

Namie:

Signature:

Dated:

01/07/24

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Execution Petition:

/2024

In Service Appeal No: 1267 / 2023

Decided on: - 26-02-2024

Aurangzeb Deceased (Ex-Primary School Head Teacher) GPS Wanna Khel Tehsil Takhtbhai District Mardan Through his Widow namely

Mst Naheeb bibi (Applicant)

VERSUS

District Education Officer (Male) Mardan

(Respondents)

INDEX

S.No	Description of Documents	Annex	Pages
1.	Implementation / Execution Petition		1-3
2.	Copy of Service Appeal & Judgment / Order dated 26-02-2024 Passed by this Honorable Tribunal	"A"	4-10
3	Copy of Application	"B"	
4.	Wakalat Nama		12

Naheed BiBi
Applicant: Mst Naheed bibi (widow)

Through

Muhammad Irshad Mohmand Advocate High Court

Peshawar

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Execution Petition:

49 1

2024

In Service Appeal No: 1267 / 2023

Decided on: - 26-02-2024

Service Tribunal

No. 13888

Aurangzeb Deceased (Ex-Primary School Head Teacher) GPS Wanna Khel Tehsil Takhtbhai District Mardan Through his Widow namely

Mst Naheed bibi

(Applicant)

VERSUS

District Education Officer (Male) Mardan

(Respondents)

APPLICATION FOR IMPLEMENTATION / EXECUTION OF JUDGEMENT & ORDER DATED 26-02-2024 IN LETTER & SPIRIT.PASSED BY THIS HONORABLE TRIBUNAL IN SERVICE APPEAL NO 1267/2023 TITLE AURANGZEB (EX-PRIMARY SCHOOL HEAD TEACHER) VS GOVT OF KPK THROUGH SECRETARY EDUCATION & OTHERS.

Respectfully Sheweth:-

That the Applicants submit as under:-

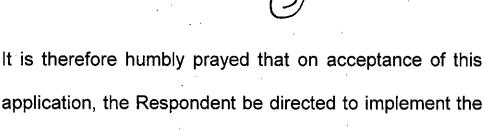
1. That the Appellant (Deceased Aurangzeb) was performing his duty as Primary School Head Teacher in the Respondent Department and was posted at GPS Wanna Khel Tehsil Takhtbhai District Mardan, who was awarded Major Penalty of Compulsory retirement from service vide order dated 12-10-2022 by Respondent and thereafter the appellant (Deceased) filed Service

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Appeal before this Honorable Tribunal and during pendency of service appeal, the appellant died and then the legal heirs of appellant filed an application for impleadment in service appeal and after hearing of Argument, this Honorable Tribunal was pleased to allowed the service appeal of the appellant vide order dated 26-02-2024.(Copy of Service Appeal & judgment / order dated 26-02-2024 is attach as Annex "A")

- 2. That thereafter time & again the applicant submitted an application along with judgment & order of this Honorable Tribunal to the Respondent for compliance, but the Respondent is delaying the matter on one pretext and others.(Copy of application is attach as Annex "B")
- 3. That by not honoring the judgment / order of this Honorable Tribunal, the Respondent is not only abusing the law and rules, and also intentionally, willfully and deliberately violating the judgment / order of this Honorable tribunal by not implementing the same.
- 4. That if this practice is continued on the part of Respondent and not restrained, this will have a bad impression in the eye of public regarding the court order.
- 5. That not implementing the judgment / order of this Honorable Tribunal is also the violation of the judgment rendered by the august Supreme Court of Pakistan as reported in 2007 SCMR Page 35

Prayer:-



Honorable Tribunal in letter and spirit.

Any other remedy which this august Tribunal deems appropriate may also be granted to the Applicant.

judgment / order dated 26-02-2024 passed by this

Naheed BiBi

Applicant: Mst Naheed bibi (widow)

Through

Muhammad Irshad Mohmand Advocate High Court

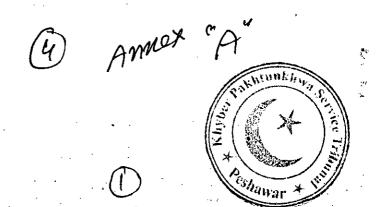
Peshawar

AFFIDAVIT

I Mst Naheed bibi widow of Aurangzeb (Ex-Primary School Head Teacher) GPS Wanna Khel Tehsil Takhtbhai District Mardan, do hereby declare that the contents of this implementation / execution petition is true and correct to the best of my knowledge & belief and nothing has been concealed from this Honorable Tribunal.



Vaheed Bibi DEPONENT



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL AT PESHAWAR

Service Appeal No: 1267. 12023

Aurangzeb (Ex-Primary School Head Teacher) GPS Wanna Khei Tehsil Takhtbhai District Mardan (Appellant)

VERSUS

- Government of Khyber Pakhtunkhwa through Secretary Elementary
 Secondary Education Department KPK Peshawar
- 2. Director Education Elementary & Secondary Education Department KPK Peshawar
- District Education Officer (Male) Mardan
- 4. Sub Divisional Education Officer (Male)Takhtbhai
- 5. District Account Officer Mardan (Respondents)

APPEAL UNDER SECTION OF THE **KHYBER** PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974, AGAINST THE OFFICE ORDER ENDST NO 8474-75 DATED 12-10-2022 PASSED BY RESPONDENT NO 3 / DEO (Male) MARDAN, WHEREBY MAJOR PENALTY OF COMPULSORY RETIREMENT FROM SERVICE HAS BEEN IMPOSED ON THE APPELANT, WHICH IS ILLEGAL, UNLAWFUL AND IN DISREGARD OF LAW & FACT AS WELL AS AGAINST REJECTION ORDER PASSED ON THE DEPARTMENTAL APPEAL OF THE APPELLANT BY THE RESPONDENT NO 2 / DIRECTOR E & SE DEPARTMENT KPK PESHAWAR BUT THE REJECTION ORDER OF DEPARTMENTAL APPEAL HAS NOT BEEN CONVEYED TO THE APPELLANT AND THE APPELLANT GOT THE KNOWLEDGE OF REJECTION ESTED OF DEPARTMENTAL APPEAL ON 24-05-2023.



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUI PESHAWAR

Service Appeal No. 1267/2023

BEFORE:

RASHIDA BANO

-- MEMBER (J)

MUHAMMAD AKBAR KHAN ---

MEMBER (E)

VERSUS

- 1. Government of Khyber Pakhtunkhwa, through Secretary Elementary & Secondary Education Department Khyber Pakhtunkhwa, Peshawar.
- 2. Director Elementary & Secondary Department Khyber Pakhtunkhwa, Peshawar.
- 3. District Education Officer (Male) Mardan.
- 4. Sub Divisional Education Officer (Male) Takhtbhai.
- 5. District Accounts Officer, (Mardan)......(Respondents)

Present:-

MUHAMMAD IRSHAD MOHMAND,

Advocate

For Appellant

MUHAMMAD JAN, District Attorney

For respondents.

 Date of Institution
 .02.06.2023

 Date of Hearing
 .26.02.2024

 Date of Decision
 .26.02.2024

JUDGMENT.

MUHAMMAD AKBAR KHAN, MEMBER(E):- The instant service appeal has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as under;

"On acceptance of this appeal, the impugned office order Endst. No. 8474-75 dated 12.10.2022 passed by respondent No.

3/DEO (Male) Mardn as well as rejection order passed on the

Departmental appeal of the appellant by the respondent No.





2/Director E&SE Department Khyber Pakhtunkhwa Peshawar, may kindly be set aside, and the appellant be reinstated into his service with all back benefits. Any other remedy, which this Honorable Tribunal deems appropriate, may also be granted to the appellant."

- 02. Brief facts of the case are that appellant was serving as Primary School Head Teacher (PSHT); that in the meanwhile, without any codal formalities i.e. charge sheet/statement of allegations or inquiry, major penalty of compulsory retirement form service was imposed upon appellant vide order dated 12.10.2022. Feeling aggrieved from the impugned order dated 12.10.2022, the appellant filed departmental appeal which was not responded, therefore, he filed another application to the Secretary Education (respondent No. 1) and in the light of directions of the Director Education (respondent No. 2), his appeal was considered and accordingly rejected vide order dated 07.04.2023 by the District Education Officer (Male) Mardan (respondent No. 3), hence preferred the instant service appeal on 02.06.2023.
- 03. Notices were issued to the respondents, who submit 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.
- 04. Learned counsel for the appellant contended that the impugned order was illegal, unlawful and without jurisdiction. He submitted that the appellant was regularly performing his duty to the entire satisfaction of his high-ups and

ATTESTED

Khyber Falchrukhwa

Service Tribunal

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was punctual in the duty; that without issuance of any charge sheet/statement of allegations and without conducting of inquiry, the impugned order had been issued; that the appellant had not been given any opportunity of defense under the law which was the violation of his constitutional rights guaranteed under the Constitution of Islamic Republic of Pakistan, 1973; that the appellant had compulsorily retired from service which act of the respondents was against the law and was not sustainable under the law. Lastly, he submitted that the appellant had at his credit more than 25 year service and his retirement was due in the year 2033, however, was compulsorily retired which was harsh punishment on the basis of unauthentic and baseless allegations, therefore, he requested for acceptance of the instant service appeal.

- O5. As against that, learned District Attorney argued that the respondent department had properly issued Show Cause Notice on 16.09.2022. He submitted that after observance of all codal formalities, the impugned order of compulsory retirement from service was issued; that there were many complaints against the appellant on the basis of which he was awarded the impugned penalty; that as the order of compulsory retirement was legal, therefore, was not liable to be set aisde. Lastly, he submitted that no constitutional right of the appellant had been infringed and had been treated in accordance with law and rules, therefore, he requested for dismissal of the instant service appeal.
- 06. It is evident from record available on the case file that the appellant was proceeded against on the basis of complaints from the community people. The nature of the miscellaneous complaints were generic that required detail

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probe/inquiry to substantiate and bring material evidence on record. Instead the respondent No. 3 in his capacity as competent authority served a direct Show Cause Notice upon the appellant and imposed major penalty of compulsory retirement from service upon him. Serving a direct Show Cause Notice without observing the legal procedure is in contravention to the provisions of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011. Rule 5 of the said rules provide the following procedure for initiation of disciplinary proceedings against government servants.

- 5. Initiation of proceedings.—(1) If on the basis of its own knowledge or information placed before it, the competent authority is of the opinion that there are sufficient grounds for initiating proceedings against a Government servant under these rules it shall either:-
 - (a) proceed itself against the accused by issuing a show cause notice under rule 7 and, for reasons to be recorded in writing, dispense with inquiry: Provided that no opportunity of showing cause or personal hearing shall be given where-
 - the competent authority is satisfied that in the interest of security of Pakistan or any part thereof, it is not expedient to give such an opportunity; or
 - (ii) a Government servant has entered into plea bargain under any law for the time being in force or has been convicted on the charges of corruption which have led to a sentence of fine or imprisonment; or
 - (iii) a Government servant is involved in subversive activities; or
 - (iv) it is not reasonably practicable to give such an opportunity to the accused; or
 - (b) get an inquiry conducted into the charge or charges against the accused, by appointing an inquiry officer or an inquiry committee, as the case may be, under rule 11:

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Provided that the competent authority shall dispense wunt the inquiry where-

- (i) a Government servant has been convicted of any offence other than corruption by a court of law under any law for the time being in force; or
- (ii) a Government servant is or has been absent from duty without prior approval of leave:

Provided that the competent authority may dispense with the inquiry where it is in possession of sufficient documentary evidence against the accused or, for reasons to be recorded in writing, it is satisfied that there is no need to hold an inquiry. The charge sheet or statement of allegations or the show cause notice, as the case may be, shall be signed by the competent authority.

authority in writing giving reasons for dispensing with the regular inquiry as provided under the provision of above quoted Rule. We observe that the competent authority should have conducted at least fact finding inquiry to verify the complaints so as to satisfy himself to dispense with the inquiry proceedings and going for direct Show Cause Notice and then imposition of major penalty against the appellant who had served the respondent department for 25 years. Imposition of major penalty on certain oral complaints without issuing charge sheet, statement of allegations, conduct of proper inquiry, affording opportunity of defense to the accused is against fundamental rights and universal principle of natural justice.

08. Foregoing in view we are constrained to set aside the impugned order dated 12.10.2022 and the appellate order 07.04.2023 and reinstate the appellant into service with effect from the date of issuance of impugned order i.e. 12.10.2022. Since the appellant has died during pendency of his service

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appeal in the Tribunal, he shall be treated to have died during service. Costs shall follow the event. Consign.

09. Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 26th day of February, 2024.

(Rashida Bano) Member (J)	ATTESTED	(Muhammad Akbar Kha Member (E)	aı
	ENAMIDER Khyber Fakkterflyg Service Tribuan Pentamon)17m	
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Date of Presentation of Application	6/20
Number of Words 6-1	1-14
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Urgent	
Total	
Name of Copylest	
Date of Complection of Copy 01-7	24
Date of Delivery of Copy	24

Kamranullah

یدمت جناب D.E.O صاحب مردان Anax "B

عنوان: - ورخواست بمراد جادي كرف مراعات وديكر بقايا جات بنام برحوم اور عمر تب سابقه PSHT بمقام GPS وناخیل

جناب عالى: درخواست حسب ذيل مرض ب_

- يك من ما كلسهاة تابيد في في زودادر تخزيب مردوم ما كن كله يوبان كالون تخت بعالى منك مردان مال نواب وادرز یاتی مجال مخلر منبهار کالولی تخت محالی منبلع مردان کی موں۔
- بيك ما ممايشو برسن اورنگزيب ولد ظهيرالدين محكمة تعليم من بحيثيت PSHT بمقام GPS و تاخيل فراي في المرانجام وسن وباقعا بوك إلا يل جرأ ويناثر ذكيا مميار جسك بعد شوبرام في محمد بذا مح طاف مقندمه الجيس درج كيارا در بددران مقندر أكيس ما كله كاشو برنوت: وا
 - يكاب ماكله كاوار شده كيس أس كن من فيصله ويكاب اور عدالت في اليي تكم وفيصله مين مرحوم كانام واضربروس قرارديا بيني ومنته سيلري مين مرحوم كانام قرارويا ب-(نقولات نيسلولف ي)
 - ۔ کواے ماکل متدعیہ ہے کہ ماکلہ کے مرتوز شریر کے نام فی حدیثاری میں جیتے مرانات بتایا جات وغیرونے وی ووساکلکوچاری کرنامطلوب ۔۔
- ۔ کے مراملہ نمایت فریب بیوہ ذات ہوں ۔اوراب بھی اسے مرحوم شو ہر سے گھر عمی اربائش پذیرہ وں ۔ اورُولَ وَوالمِيا أَمَانِ أَلَيْنَ عِيدٍ

فبذااستد عاسية كرجعظه رى ووخواست بذاساكل كمرجوم شوبرك نام ويتحصيرى يش مملها ب وبقالیا جات جاری کرنے کے لئے احتابات صادر فرمانی جائے۔ ما کار سنتھوروو ما کودسکن کے آرب _ 13/05/2024

Nohead PiR:

العامر نسد من وقام يدني في زود واورتكن يب مرحوس كن كفريد إن كالولى تخت إلال تشلع مردان ATTEST على فواب ووفرزي في كابل الأرجي وكابون في تخت بوا في تشليم ووال و روما كار

غراق و را اير . 4-5897382 16102-5897382

المراعب المراع

کوبدین شرط و کیل مقرر کیا ہے۔ کہ بیل ہر چیٹی کا خود یا بذر بعیر نتایار فاص دو برو عدالت حاضر ہوتا رہوں گا۔ اور بوقت پگارے جانے مقدمہ و کس صاحب موصوف کوا طلاع وے کر حاضر عدالت کروں گا جیٹی ہر من مظہر حاضر نہ ہوا اور مقدمہ میری غیر حاضری کی وجہ ہے کی طور پزیرے بر ظاف ہوگیا تو صاحب موصوف اس کے کی طرح ذمہ دار نہ ہو گئے۔ نیز و کس صاحب موصوف معدر مقام مجبری کی کی اور جگہری کے مقررہ او قات ہے آئے ہی بیا پر وز تھیل میں منظم ہوگو کی نقصان مجبج و اس کے ذمہ دار نہ ہو گئے۔ اگر مقدمہ علاہ وصدر مقام مجبری کی کا اور جگہری کے اوقات کے آئے ہی بیا پر وز تھیل میں منظم ہوگو کی نقصان مجبج و اس کے ذمہ دار نہ ہو گئے۔ اگر مقدمہ علاہ وصدر مقام مجبری کے کا اور جگہری کے اوقات کے آئے بیچے ہوئے ۔ بیچے ہوئے گئے۔ منظم ہوگا۔ اور صاحب موصوف کوعرضی دعوی و جو گل وجواب دعوی اور دو تواست اجرائے ذکری بیچے ہوئے کی اختیار انہ دوا ہوگو کی تعقیل ہوگا۔ اور وسید موصوف کوعرضی دعوی و بیچ و کسی اور دو تواست پر اے ذکری میں موسوف کوعرضی دعوی و بیچ و کسی اور و بید وصول کرنے اور رسید و نظر ہانی ایک و گئے مقام اور کی میں اور و کسی اور و کسی اور ایک و اور و کسی و اور و کسی و کسی

مورخہ 26/06/2024 مضمون مختیار نامہ ن لیا ہے اور اچھی طرح سمجھ لیا ہے اور منظور ہے۔

بمقام مسلم الدوكيث باني كورث

Attested and arcepted

ADVOCTE HIGH COURT 0300-5917749

سماة تا بيد بالى جدود يُركِّز بيب ساكن كله يوبان كاول تجنت بيماني خلير وان