


Form- A

FORM OF ORDER SHEET

Court of _____

Implementation Petition No. 759/2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	23.07.2024	<p>The implementation petition of Mr. Mujahid Din received today by registered post through Mr. M. Waqar Alam Advocate. It is fixed for implementation report before Single Bench at Peshawar on 19.08.2024. 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 KPK SERVICES TRIBUNAL, KPK PESHAWAR CAMP
COURT DERA ISMAIL KHAN

In execution petition No. 759 /2023

Mujahid Din
(petitioner)

Versus

DHO Tank etc
(Respondents)

Execution petition
INDEX

S.No.	Description of document	Annexure	Pages
1	Execution petition alongwith affidavit	--	1-3
2	Service appeal NO 1491/2018	A	4
3	Judgment dated 22/09/2020	B	5-9
4	Copy of office order No. 7197-7205 dated 03/10/2022	C	10-13
5	Copy of order dated 26/10/2022 in earlier execution No. 89/2021	D	14
8	Vakalatnama	--	15

Dated: 24/6/2024

Your Humble petitioner

Mujahid Din

Mujahid Din
Sweeper DHO Tank
Through Counsel

Muhammad Waqar Alam
Muhammad Waqar Alam
Advocate Supreme Court

24/6/24

- / -

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

CAMP COURT DERA ISMAIL KHAN Khyber Pakhtukhwa
Service Tribunal

EXECUTION PETITION NO. 759 **OF 2023**

Diary No. 14437

Dated 23-07-2024

Mujahid Din son of Shams Ud Din r/o Qilla Nawab House No. 1458/82
Mohalla Maidan Tank City. Sweeper Type D Hospital Amakhel.

(Petitioner)

Versus

1. **District Health officer (DHO), District Tank.**

2. **District Accounts Officer Tank.**

(Respondent)

EXECUTION PETITION

That the petitioner hereby applies for execution of the Judgement herein below as follows:

1	Appeal No.	Service Appeal No. 1491/2018
2	Name of Parties	Mujahid Din son of Shams Ud Din r/o Qilla Nawab House No. 1458/82 Mohalla Maidan Tank City. Sweeper Type D Hospital Amakhel. (Petitioner) 1. Government of KPK, through secretary Health Department, KPK Peshawar. 2. Director General Health services, KPK Peshawar. 3. District Health officer (DHO), District Tank. 4. District Accounts Officer, District Tank (RESPONDENTS)
2	Date of Judgment	22/09/2020
3	Whether any Appeal preferred from Department	Yes
4	Previously execution petition is filled or not	Yes
5	Relief granted in the judgment	The appeal is accepted, by setting aside the impugned order dated 26/07/2018 and the

		appellant is reinstated in service with all back benefits.
6	Amount of Costs, if any	Nil
7	Against whom to be executed	1. District Health officer (DHO), District Tank. 2. District Accounts Officer Tank.
8	Mode in which the assistance of the court if required	By issuing appropriate order against the respondents to issue all the back benefits to the appellant and implement the judgment dated 22/09/2020 in its true letter and spirit

Respectfully Sheweth:

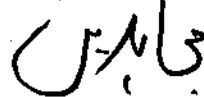
1. That the present petitioner filed the above mentioned service appeal, which was allowed in favour of appellant / petitioner vide judgment dated 22/09/2020 vide which the Worthy Tribunal held that, "Appeal is accepted by setting aside the impugned order dated 26/07/2018 and the appellant is reinstated in service with all back benefits". Copies of service appeal, judgment of service tribunal are enclosed herewith.
2. That the respondents/DHO Tank misinterpret the judgment of this Worthy Tribunal and issued an order No 7197-7205 dated 03/10/2018, vide which the petitioner was conditionally adjusted/reinstated into the service. Similarly in the same order the respondent department has mechanically reinstated/appointed the petitioner subject to some terms and conditions, which are as under;
 - i. He will bound to Deposit all benefits (salary) in Govt. treasury,
That the same is liable to be corrected to the extent that the conditions in the reinstatement order may kindly be rectified accordingly.
3. That up till now back benefits of the petitioner has not been issued to the petitioner and petitioner had also moved several applications to the respondents regarding the same but the request of the petitioner is shuffling from desk to desk without any fruitful result.
4. Hence, being aggrieved the petitioner approaches this honourable Tribunal. Copy enclosed.

5. That this learned court has got vast power to entertain the instant petition.

It is therefore, humbly prayed that the instant petition may kindly be accepted.

Dated: ~~24/6/24~~ 24

Your Humble petitioner



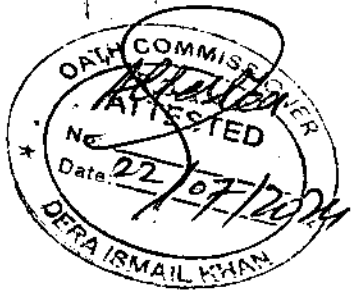
Mujahid Din
Sweeper DHO Tank
Through Counsel



Muhammad Waqar Alam
Advocate Supreme Court

Affidavit:

I, the petitioner, do hereby solemnly affirm and declared on Oath that all the contents of the petition are true and correct to the best of my knowledge and belief and no other petition on the same subject matter was filed earlier.



Deponent

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR, CAMP COURT D.I.KHAN**



In service Appeal No. 1491 /2018

Mujahideen son of Shams-Ud-Din r/o Qilla Nawab, House No. 1458/82 Mohallah Medan Tank City. Ex-Sweeper DHO, Tank.

(Appellant)

VERSUS

1. Government of KPK through Secretary Health, Peshawar.
2. Director General Health, Peshawar.
3. District Health Officer, Tank.
4. District Account Officer, Tank.

..... **(RESPONDENTS)**

APPEAL UNDER SECTION 4 OF THE KPK SERVICES TRIBUNAL ACT, 1974, AGAINST THE IMPUGNED ORDER DATED 26/07/2018 ISSUED BY RESPONDENT NO. 3/DHO, TANK, WHEREBY APPELLANT WAS REMOVED FROM SERVICE AND AGAINST THE OMISSION ON THE PART OF RESPONDENT NO. 2 FOR INDECISION OF THE DEPARTMENTAL APPEAL WHICH IS AGAINST THE LAW AND IN VIOLATION OF SERVICES LAWS AND RULES AND THE APPELLANT WAS CONDEMNED UNHEARD WITH MALAFIDES.

PRAYER

On acceptance of this appeal, impugned order DATED 26/07/2018 issued by respondent No. 3 may please be reversed and set-aside and the respondents be directed to reinstate the appellant in service with all back benefits.

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR
- AT CAMP COURT, D.I. KHAN.**

Service appeal No. 1491/2018

Date of institution ... 17.12.2018
Date of decision ... 22.09.2020



Mujahideen S/O Shams Ud Din R/O Qilla Nawab, House No.1458/82 Mohaliah
Medan Tank City, Ex-Sweeper DHO Tank.

(Appellant)

Versus

Government of Khyber Pakhtunkhwa through Secretary Health Peshawar and
four others.

(Respondents)

Present

Mr. Waqar Alam,
Advocate

For appellant.

Mr. Usman Ghani,
District Attorney

For respondents.

MRS. ROZINA REHMAN
MR. ATIQ-UR-REHMAN WAZIR

MEMBER (J)
MEMBER (E)

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

JUDGMENT

ROZINA REHMAN, MEMBER : The appellant Mujahideen impugns the
order dated 26.07.2018 issued by District Health Officer Tank whereby
appellant was removed from service.

2. Brief facts of the case are that the appellant was appointed in the
Health Department as Sweeper on 07.06.2014 against the reserved post for
disabled person. After joining the department, his monthly salary was
stopped. He, therefore, moved an application to the concerned quarter but in
vain. He filed writ petition in the Hon'ble Peshawar High Court and vide order
dated 30.05.2018, directions were issued to the respondents to consider the

22/9/20

grievance of the appellant, who issued the impugned order dated 26.07.2018. He then filed departmental appeal which was not attended to hence the present service appeal.

3. It was submitted by the learned counsel for appellant that the appellant being fully eligible applied for the post of Sweeper and he was accordingly selected against the reserved post for disabled person. Order of appointment was accordingly passed by competent authority and the appellant being eligible for the post performed his duties honestly but he was shocked when his services were terminated vide impugned order dated 26.07.2018. Learned counsel further contends that the appellant could not be penalized for a wrong act committed by the department. Opportunity of personal hearing was not provided to him and he was condemned unheard. He submitted that it is a clear manifestation of incompetence and slackness on the part of respondents having failed to adhere to the criteria prescribed for the recruitment in the rules. Reliance was placed on 2011 PLC (C.S) 331 and judgment of this Tribunal passed in Appeal No.874/2016.

4. Conversely, learned District Attorney submitted that sanctioned post was not available and that the appellant was not physically fit and was appointed by not fulfilling the codal formalities by the competent authority. He argued that on the request of the appellant, his wife was appointed as Dai, therefore, the appellant left his legal right of appointment in Health Department and lastly it was contended that the appointment of appellant was made against the rules and in excess of sanctioned post. Reliance was placed on judgment of this Tribunal passed in Appeal No.943/2012.

5. As per record, the present appellant was appointed against the vacant post (disabled quota) as sweeper in BPS-01 vide order dated 07.06.2014.

ATTESTED

ATTESTED

[Handwritten signature]

-7-

After medical examination by Medical Superintendent of DHQ Hospital Tank, report was submitted. He also annexed his disability certificate where-after arrival report was submitted on 16.06.2014. All these facts are not disputed. As per record, he performed his duties and in this regard copy from attendance register was produced not only in the Hon'ble Peshawar High Court but also placed on file of the main service appeal. He then submitted an application before the competent authority for the release of his salary but in vain. He, therefore, filed writ petition in Peshawar High Court and it was on 13.10.2015 when an order was passed by the Hon'ble Peshawar High court that:

"Notice has already given to respondents, however, none is present on their behalf, so the petitioner shall be paid his monthly salary."

6. Parawise comments were filed in Peshawar High Court and it was on 30.05.2018 when writ petition was disposed of in the following terms:

"In any case, there may be mutual understanding between the parties regarding issuance of appointment order of the wife of petitioner, however, no order regarding the fate of the appointment of the petitioner has so far been issued. Accordingly, we direct the respondent No.3 to consider the grievance of the petitioner and pass an appropriate order regarding the fate of the appointment of the petitioner strictly in accordance with law within a period of 60 days from the issuance of order of this Court. This writ petition is disposed of in the above terms."

[Handwritten signature]
22/9/10

[Handwritten signature]
ATTESTED

ATTESTED

[Handwritten signature]
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

From the above discussion it is evident that right from the appointment order of appellant i.e. 07.06.2014 till the order by the Hon'ble Peshawar High Court dated 30.05.2018 nothing was paid to appellant in

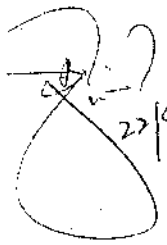
shape of salary. There is no order of termination or removal from service in respect of appellant on record and therefore, the respondent No.3 was directed by the Hon'ble Peshawar High Court to consider the grievance of the appellant and pass an appropriate order regarding the fate of his appointment. There is nothing on file which could show that petitioner's wife was appointed by mutual understanding in between the appellant and respondent department. Nothing was produced in this regard in shape of any application on behalf of appellant or his wife that his wife may be appointed in lieu of his service and lastly it was on 26.07.2018 when the impugned order was passed whereby office order bearing No.1409-11/Dated 07.06.2014 (appointment order of appellant) was withdrawn in the interest of public on the following grounds:

1. Not maintained fulfilling codal formalities by Ex-DHO Tank.
2. Not suitable candidate for the post of Sweeper as per Government rules.
3. Not physically fit.
4. Non availability of post of Sweeper.

ATTESTED

EXAMINER
 Cyber Punjabi News
 Service Tribunal
 Peshawar

8. It has been held by the superior courts in various judgments that in case illegal appointments are made then action should be taken against the authority who made these appointments instead of penalizing the employees. In the present case, as per record, he was appointed against the disabled quota. Proper disability certificate was produced before the authority and post was available, therefore, he was appointed as Sweeper against disabled quota. The fulfillment of codal formalities is the responsibility of authority. Nothing was brought on record that wife of appellant was appointed as Dai by mutual agreement with the appellant.


 27/9/20

ATTESTED


[Handwritten scribble] - 9-

9. As a sequel to above, appeal is accepted by setting aside the impugned order dated 26.07.2018 and the appellant is reinstated in service with all back benefits. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED.
22.09.2020

[Signature]
(Attiq-ur-Rehman Wazir)
Member (E)
Camp Court, D.I.Khan.

[Signature]
(Rozina Rehman)
Member (J)
Camp Court, D.I.Khan.

Certified true & correct copy
[Signature]
Khyber Pakhtunkhwa
Services Tribunal
Peshawar

Date of Presentation of Application 06/10/2020
Number of Words 2000
Copying Fee 22-00
Urgent 4-00
Total 26-00
Name of Copy [Signature]
Date of Completion 06/10/2020
Date of Delivery of Copy 06/10/2020

ATTESTED
[Signature]

Annexure "c" - 10-



OFFICE OF THE DISTRICT
HEALTH OFFICER DISTRICT TANK

Phone: 0963 310735
Fax: 0963 310735



OFFICE ORDER.

Reference Khyber Pakhtunkhwa Service Tribunal Peshawar Camp Court D.I.Khan
Judgment dated 22/09/2022 vide service appeal No.1491/2018, Mr. Mujahidin S/O
Mr. Shamas-ud-Din R/o Qila Nawab House No.1458/82, Mohallah Maidan Tank City is
hereby conditionally adjusted/posted as S/O/Depy BPS-3 against the vacant of Ward
Orderly at Type D Hospital Amakhel for drawl of pay till the decision of CPLA Filed by
Govt. of Khyber Pakhtunkhwa Health Department in Supreme Court of Pakistan.

The appointment will be subject to the following term & condition.

1. He will bound to Deposit all benefit (salary) in govt. treasury as he provided surety
bound on 100 Rupees stamp paper attested by oath Commissioner District Bar Tank
Mr. Adnan Aziz Advocate dated 14/07/2022.
2. If he accepts the post on the above term & condition, he should be report to I/C
concern within fifteen days, the offer will be cancelled if he fail to report for duty
with above mentioned period.

XXXXSDXXXXXX

DISTRICT HEALTH OFFICER
DISTRICT TANK

No. 7197-7205

Dated 3 /10/2022

Copy is forwarded to the:-

1. Registrar Khyber Pakhtunkhwa Services tribunal Peshawar camp Court D.I.Khan
2. Deputy Secretary Litigation Health Department Peshawar.
3. Director General Health Services Khyber Pakhtunkhwa.
4. Deputy Commissioner District Tank.
5. District Account Officer Tank.
6. Account Clerk.
7. I/C Concern.
8. Mr. Mujahidin S/O Mr. Shamas-ud-Din R/o Qila Nawab House No.1458/82 Mohallah
Maidan Tank City.
9. Office Assistant for information.

DISTRICT HEALTH OFFICER
DISTRICT TANK

ATTACHED

5/10/2022
action
for further
investigation
of the
case

Handwritten signature or initials at the top left.

Handwritten text, possibly a name or title, located below the signature.

Handwritten text, possibly a date or reference number.

Handwritten text, possibly a name or title.

Handwritten text, possibly a date or reference number.

Handwritten text, possibly a date or reference number.

Handwritten text, possibly a date or reference number.

Handwritten text, possibly a date or reference number.

Handwritten text, possibly a date or reference number.

Handwritten text, possibly a name or title.

Handwritten text, possibly a name or title.

Handwritten text, possibly a name or title.

ARRIVAL/CHARGE REPORT

- 12 -

In compliance with the court order dated 22/09/2020 passed by the Honourable KPK Service Tribunal in Service Appeal No. 1491/2018, the undersigned hereby submit the arrival report for duty as Sweeper in the office of District Health Office Tank.

Dated 23/09/2020

Mujahid Din
Son of Shams ud Din
Sweeper DHO Tank

محمد الدین

ATTESTED

[Handwritten signature]

13

2188215

Handwritten notes at the top of the page, including a date and some illegible text.

Main body of handwritten notes, appearing to be a list or series of entries.

Handwritten notes at the bottom of the page, including the text "DHO" and a signature.

ATTES ED
Handwritten signature or stamp.

Annexure "D"



- 14 -

Execution Petition 89/2021, *Mujahiddin*

- 26th Oct 2022
1. Petitioner, alongwith his counsel present. Mr. Kabirullah Khattak, Addl: AG alongwith Mr. Sher Khan, DHO, Tank for respondents present.
 2. Representative of the respondents submitted copy of office order No. 71-92-7205 dated 03.10.2022 whereby in compliance of the judgment of the Tribunal, the grievance of the petitioner has been redressed. Since the order of the Tribunal has been complied with, therefore, the instant execution petition is disposed off in the above terms. Consign.
 3. *Pronounced in open court in D.I.Khan and given under my hand and seal of the Tribunal on this 26th day of Oct, 2022.*

Certified to be true copy

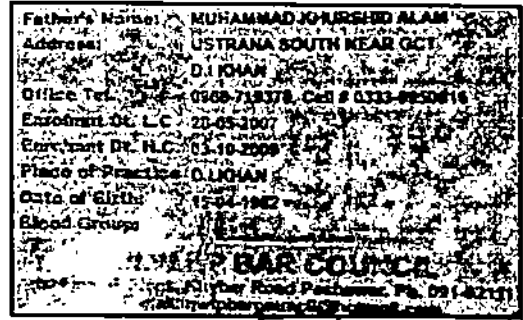
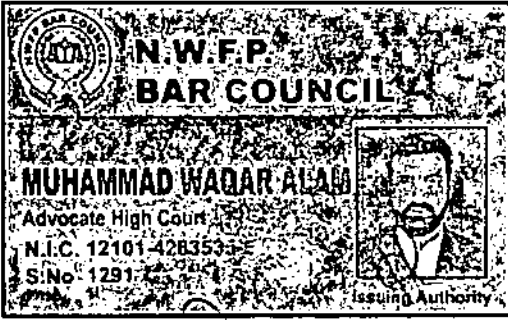
EXA: LN/27
Khyber P. Pakhtunkhwa
Service Tribunal
Peshawar

(Signature)
(Kalim Arshad Khan)
Chairman
Camp Court D.I.Khan

Date of Presentation of Application 20-01-23
 Number of Page 1-2
 Copying Fee 5/-
 Urgent 5/-
 Total 10/-
 Name of Co _____
 Date of Copying of Copy 20-01-23
 Date of Delivery of Copy 20-01-23

ATTESTED
(Signature)

وکالت نامہ



Khyber Pakhtunkhwa Service Tribunal

Petitioner

Mujahidul

منجانب

D. H. O & others

Execution Petition

دعویٰ یا جرم

تفصیل دعویٰ یا جرم

باعث تحریر آنکہ

مقدمہ مندرجہ بالا عنوان میں اپنی طرف واسطے پیروی و جواہد ہی برائے پیشی یا تصفیہ مقدمہ بمقام D. H. O & others

محمد وقار عالم ایڈووکیٹ ہائی کورٹ

کو حسب ذیل شرائط پر وکیل مقرر کی ہے، کہ ہر پیشی پر خود بذریعہ مختیار خاص رو برو عدالت حاضر ہوتا رہوں گا۔ اور ہر وقت پکارے جانے مقدمہ وکیل صاحب موصوف کو اطلاع دیکر حاضر عدالت کروں گا، اگر پیشی پر مظہر حاضر نہ ہوا، اور مقدمہ میری غیر حاضری کی وجہ سے کسی طور پر میرے برخلاف ہو گیا، تو صاحب موصوف اسکے کسی طرح ذمہ دار نہ ہوں گے۔ نیز وکیل صاحب موصوف صدر مقام پکھری کے علاوہ کے اوقات سے پہلے یا پیچھے یا بروز تعطیل پیروی کرنے کے ذمہ دار نہ ہوں گے۔ اور مقدمہ صدر پکھری کے علاوہ اور جگہ سماعت ہونے یا بروز تعطیل یا پکھری کے اوقات کے آگے پیچھے پیش ہونے پر مظہر کو کوئی نقصان پہنچے تو اس کے ذمہ دار یا اس کے واسطے کسی معاوضہ کے ادا کرنے یا بیان دہاں کرنے کے بھی موصوف ذمہ دار نہ ہوں گے۔ مجھ کو کل ساختہ پر داخلہ صاحب موصوف مثل کردہ ذات خود منظور قبول ہوگا۔ اور صاحب موصوف کو عرضی دعویٰ یا جواب دعویٰ یا درخواست اجراءے ڈگری و نظر ثانی اپیل و ہجرتی و ہجرتی درخواست پر دستخط و تصدیق کرنے کا بھی اختیار ہوگا۔ اور کسی حکم یا ڈگری کرانے اور ہرجم کا روپیہ وصول کرنے اور رسید دینے اور داخل کرنے اور ہرجم کے بیان دینے اور اس پر حثاتی یا راضی نامہ و فیصلہ پر حلف کرنے، اقبال دعویٰ کا بھی اختیار ہوگا، اور بصورت مقرر ہونے تاریخ پیشی مقدمہ مذکورہ بیرون از پکھری صدر پیروی مقدمہ مذکورہ نظر ثانی و اپیل و ہجرتی و ہجرتی و ہجرتی مقدمہ یا منسوخی ڈگری یکطرفہ یا درخواست حکم امتناعی یا ترقی یا گرفتاری قبل از فیصلہ اجراءے ڈگری بھی صاحب موصوف کو بشرط ادائیگی علیحدہ جتنا نہ پیروی کا اختیار ہوگا اور تمام ساختہ پر داخلہ صاحب موصوف مثل کردہ ذات خود منظور قبول ہوگا۔ اور بصورت ضرورت صاحب موصوف کو یہ بھی اختیار ہوگا کہ مقدمہ مذکورہ یا اسکے کسی جزو کی کارروائی یا بصورت درخواست نظر ثانی اپیل یا ہجرتی یا دیگر معاملہ مقدمہ مذکورہ کسی دوسرے وکیل یا ہیر منڈ کو اپنے بجائے یا اپنے ہمراہ مقرر کریں، اور ایسے مشیر قانون کو بھی ہر امر میں وہی اور ویسے اختیارات حاصل ہوں گے، جیسے صاحب موصوف کو حاصل ہیں، اور وہ ان مقدمہ میں جو کچھ ہر جانہ التواہ پڑیگا، وہ صاحب موصوف کا حق ہوگا۔ مگر صاحب موصوف کو پوری فیس تاریخ پیشی سے پہلے ادا نہ کروں گا۔ تو صاحب موصوف کو پورا اختیار ہوگا کہ کسی مقدمہ کی پیروی نہ کریں اور ایسی صورت میں میرا کوئی مطالبہ کسی قسم کا صاحب موصوف کے برخلاف نہیں ہوگا۔

لہذا وکالت نامہ لکھ دیا ہے۔ تاکہ سند رہے

Accepted

مورخہ _____ ہا _____ 20

مضمون وکالت نامہ سن لیا ہے۔ اور اچھی طرح سمجھ لیا ہے اور منظور ہے
 محمد وقار عالم ایڈووکیٹ

العبد

العبد

محمد وقار عالم ایڈووکیٹ ہائی کورٹ

مجاہدین