


Form- A
FORM OF ORDER SHEET

Court of _____

Implementation Petition No. 710/2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	09.07.2024	<p>The implementation petition of Mr. Wahid Ullah submitted today by Mahmood Jan Advocate. It is fixed for implementation report before Single Bench at Peshawar on 11.07.2024. 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  REGISTRAR</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Execution NO. _____/2024

Wahid Ullah

VS GOVT. OF KPK & OTHERS

APPLICATION FOR FIXATION OF THE ABOVE TITLED Execution AT
PRINCIPAL SEAT, PESHAWAR

Respectfully Sheweth:

1. That the above mentioned Execution is pending adjudication before this Hon'ble Tribunal in which no date has been fixed so far.
2. That according to Rule 5 of the Khyber Pakhtunkhwa Service Tribunal Rules 1974, a Tribunal may hold its sittings at any place in Khyber Pakhtunkhwa which would be convenient to the parties whose matters are to be heard.
3. That it is worth mentioning that the offices of all the respondents concerned are at Peshawar and Peshawar is also convenient to the appellant/applicant meaning thereby that Principal Seat would be convenient to the parties concerned.
4. That any other ground will be raised at the time of arguments with the permission of this Hon'ble tribunal.

It is therefore prayed that on acceptance of this application the Execution may please be fixed at Principal Seat, Peshawar for the Convenience of parties and best interest of justice.

Appellant/Applicant

Dated: 09/07/24 Through

Man
MAHMOOD Jan

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Execution Petition No. 710 /2024
In
Appeal No. 7039/2021

Wahid Ullah, SPST (BPS-14)
GPS, Shiringal, District Dir Upper.....**PETITIONER**

VERSUS

The Secretary (E& SE) Departmental, Khyber Pakhtunkhwa,
Peshawar & Others..... **RESPONDENTS**

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Petitioner
Wahid Ullah

THROUGH:


MAHMOOD JAN
Advocate High Court, Peshawar

-|-

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Execution Petition No. 710 /2024

In

Appeal No. 7039/2021

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 14102

Dated 09/07/2024

Wahid Ullah, SPST (BPS-14)
GPS, Shiringal, District Dir Upper.

.....PETITIONER

VERSUS

1. The Secretary (E& SE) Departmental, Khyber Pakhtunkhwa, Peshawar.
2. The Director (E& SE) Departmental, Khyber Pakhtunkhwa, Peshawar.
3. The District Education Officer, District Upper Dir.

..... RESPONDENTS

EXECUTION PETITION UNDER SECTION 7(2)(d) OF THE KP SERVICE TRIBUNAL ACT 1974, RULE 27 OF THE KP SERVICE TRIBUNAL RULES 1974 READ WITH SECTIONS 36 AND 51 OF THE CIVIL PROCEDURE CODE AND ALL ENABLING LAWS ON THE SUBJECT FOR THE IMPLEMENTATION OF THE JUDGMENT DATED 19/05/2023 IN LETTER AND SPIRIT.

R/SHEWETH:

- 1- That the petitioner filed service appeal bearing No. 7039/2021 before this august Service Tribunal, against the impugned order dated: 10/03/2021 whereby the intervening period W.e.f 20/07/2011 to 10/06/2016 I, e., from the date of termination till the date of re-instatement has been treated as leave without pay.
- 2- That the appeal of the petitioner was finally heard on dated 19/05/2023 and as such the ibid appeal was allowed with the following terms by this august Service Tribunal:

"7. In view of the foregoing, the service appeal is allowed as prayed for. Parties are left to bear their own cost." (Copy of the judgment dated 19/05/2023 is attached as annexure....."A")

- 3- That after obtaining copy of the judgment dated 19/05/2023 the same was submitted with the respondents for implementation of his grievance coupled with an application, but the respondents/ department failed to do so, which is the violation of the judgment supra. Copy of application is attached as annexure....."B")
- 4- That petitioner having no other remedy but to file this implementation petition.

It is therefore, most humbly prayed that on acceptance of the instant execution petition the respondents may kindly be directed to implement the Judgment dated 19/05/2023 passed in Appeal No. 7039/2021 in letter and spirit. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the petitioner.

**Petitioner
Wahid Ullah**

THROUGH:


MAHMOOD JAN

Advocate High Court, Peshawar

AFFIDAVIT

I, Wahid Ullah, SPST (BPS-14) GPS, Shiringal, District Dir Upper. (The appellant) do hereby solemnly affirm that the contents of this Execution Petition are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Court.





DEPONENT

"A" 3-

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. _____/2021

Mr. Wahid Ullah, SPST (BPS-14),
GPS, Shiringal, District Dir Upper.

..... **APPELLANT**

VERSUS

- 1- The Secretary (E &SE) Department, Khyber Pakhtunkhwa, Peshawar.
- 2- The Director (E &SE) Department, Khyber Pakhtunkhwa, Peshawar.
- 3- The District Education Officer, District Dir Upper.

..... **RESPONDENTS**

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDER DATED 10-03-2021 WHEREBY THE INTERVENING PERIOD W-E-F 20-07-2011 TO 10-06-2016 I.E. FROM THE DATE TERMINATION TILL THE DATE OF RE-INSTATEMENT HAS BEEN TREATED AS LEAVE WITHOUT PAY AND AGAINST THE INACTION OF THE RESPONDENTS BY NOT DECIDING THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS.

PRAYER:

That on acceptance of this appeal the impugned order dated 10-03-2021 may very kindly be modified/rectified to the extent that the intervening period w-e-f 20-7-2011 to 10-06-2016 i.e. from the date of termination till the date of re-instatement may kindly be treated as period spent on duty by allowing consequential benefits to the appellant. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

R/SHEWETH:

ON FACTS:

Brief facts giving rise to the present appeal are as under:

R/SHEWETH:

1. That the appellant was initially appointed as PST (BPS-7) in the respondents department vide order dated 20-07-2011 against which the appellant submitted his arrival and started performing his duty with zeal and zest. Copies of the

ATTESTED

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BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

Service Appeal No. 7039/2021

Date of Institution ... 13.07.2021

Date of Decision... 19.05.2023



Wahid Ullah, SPST (BPS-14), GPS, Shiringal, District Dir Upper.

... (Appellant)

VERSUS

The Secretary (E&SE) Department, Khyber Pakhtunkhwa, Peshawar and 02 others.

... (Respondents)

MR. KAMRAN KHAN,
Advocate

For appellant.

MR. ASAD ALI KHAN,
Assistant Advocate General

For respondents.

MR. SALAH-UD-DIN
MR. MUHAMMAD AKBAR KHAN

MEMBER (JUDICIAL)
MEMBER (EXECUTIVE)

JUDGMENT:

SALAH-UD-DIN, MEMBER:-

Briefly stated the relevant


facts of the case are that the appellant was appointed as PST in Education Department vide appointment order dated 20.07.2011, who assumed the charge of his post and started performing of his duty. The appellant was terminated from service vide order dated 07.10.2011 on the allegations of having two domiciles. The appellant filed departmental appeal, which was rejected. The appellant then filed Service Appeal No. 1760/2011 before this Tribunal, which was allowed vide judgment dated 05.06.2014 and the matter was remitted to the competent

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Authority for passing order afresh in accordance with law. It was also observed therein that the issue of back benefits, if any, will be subject to the decision/order of the competent Authority. The judgment dated 05.06.2014 passed by this Tribunal was challenged by the respondents through filing of Civil Petition No. 448-P of 2014 before the august Supreme Court of Pakistan, which was dismissed vide order dated 20.04.2016. The appellant was then reinstated in service vide order dated 10.06.2016 passed by the competent Authority, wherein it was mentioned that the seniority of the appellant will be intact from the date of his first appointment. The appellant partially challenged the order dated 10.06.2016 through filing of departmental appeal, seeking back benefits, however the same was not responded within the stipulated period. The appellant then filed an Execution Petition for implementation of the judgment dated 05.06.2014 passed in his previous Service Appeal No. 1760/2011. It was during the proceedings in the Execution Petition that the learned Additional Advocate General produced copy of order dated 10.03.2021 of the competent Authority, whereby the appellant was reinstated in service by keeping his seniority intact from the date of his first appointment, however he was not held entitled to grant of back benefits/financial benefits with effect from 20.07.2011 to 10.06.2016.

2. On admission of the appeal for regular hearing, notices were issued to the respondents, who contested the appeal by way of


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filing of reply, wherein they refuted the assertion raised by the appellant in his appeal.

3. Learned counsel for the appellant has addressed his arguments supporting the grounds agitated by the appellant in his service appeal. On the other hand, learned Assistant Advocate General for the respondents has controverted the arguments of learned counsel for the appellant and has supported the comments submitted by the respondents.

4. Arguments have already been heard and record perused.

 5. A perusal of the record would show that after his appointment as Primary School Teacher in BPS-07, the appellant took over the charge of his post and was performing his duty, however in the meanwhile, the competent Authority issued office order dated 07.10.2011, whereby services of the appellant were terminated from the date of his appointment i.e 20.07.2011. The appellant had challenged the order of his termination from service through filing of Service Appeal No. 1760/2011 before this Tribunal, which was allowed vide judgment dated 05.06.2014 by reinstating the appellant into service and issuing directions to the competent Authority to proceed against him afresh in accordance with law. The judgment of this Tribunal was challenged by the respondents through filing of Civil Petition No. 448-P of 2014 before the august Supreme Court of Pakistan, however the same was also dismissed vide order dated 20.04.2016. The previous

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service appeal of the appellant was disposed of by this Tribunal in the terms reproduced as below”-

“In the light of foregoing discussion, the appeal is accepted and both the impugned orders dated 07.10.2011 of the competent Authority and that of appellate authority dated nil/10/2011 are set-aside. Resultantly, the appellant is reinstated in service, and the case is remanded/sent back to the competent authority for an order afresh, in accordance with law, of course, after serving the appellant with a show-cause notice, if need be, within reasonable time, but not beyond the period of one month after receipt of this judgment/order. The issue of back benefits, if any, will be subject to the decision/order of the competent authority. In case the appellant is still aggrieved of the order of the competent authority, he may have recourse to the remedy available to him under the law. There shall, however, be no order as to costs.



6. The competent Authority, however did not conducted any fresh proceedings in the matter and reinstated the appellant into service vide order dated 10.06.2016 by mentioning therein that he was reinstated into service in light of judgment dated 05.06.2014 passed by this Tribunal as well as judgment dated 20.04.2016 passed by the august Supreme Court of Pakistan. The appellant was though granted seniority from the date of his first appointment, however nothing was mentioned in the said order as to how the intervening period with effect from 20.07.2011 to 10.06.2016 was treated. During the proceedings in the Execution

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Petition for implementation of the judgment dated 05.06.2014 of this Tribunal, another office order dated 10.03.2021 was produced by the respondents, wherein it was clarified that the appellant was not entitled to grant of back/financial benefits with effect from 20.07.2011 to 10.06.2016. While passing the reinstatement order dated 10.06.2016 as well as 10.03.2021, the competent Authority has not mentioned therein that there existed any fault on the part of the appellant for not performing his duty during the intervening period. In such a situation, the appellant could not be deprived of the back benefits particularly when nothing is available on the record which could show that he had remained gainfully employed in any service during the period during which he remained out of service on account of his termination vide order dated 07.10.2011. Otherwise too, the impugned order dated 10.03.2021 is technically incorrect to the extent that it does not mention as to how the intervening period with effect from 20.07.2011 till 10.06.2016 was treated by the competent Authority.

7. In view of the above discussion, the appeal in hand is allowed as prayed for. Parties are left to bear their own costs. File be consigned to the record room.

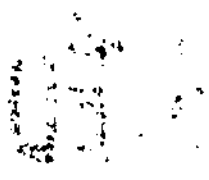
ANNOUNCED
19.05.2023


(MUHAMMAD AKBAR KHAN)
MEMBER (EXECUTIVE)


(SALAH-UD-DIN)
MEMBER (JUDICIAL)

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application ... 03-7-24
Number of Vols. ... 5-8
Copying Fee ... 25/-
Urgent ... 8/16
Total ... 30/-
Name of ...
Date of Copying ... 03-7-24
Date of Delivery of Copy ... 03-7-24



"B" -9-

To

The Director Elementary & Secondary Education
Khyber Pakhtunkhwa, Peshawar

Through Proper Channel

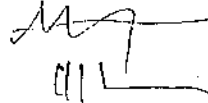
Subject:- REPRESENTATION FOR IMPLEMENTATION OF JUDGMENT
DATED 19/05/2023 OF THE HONOURABLE SERVICES
TRIBUNAL, KP PESHAWAR IN SERVICE APPEAL
NO.7039/2021.

Respected Sir

1. It is stated that the applicant was serving in your esteemed department as SPST (BPS-14).
2. That the respondent department has not considered the intervening period i.e 20.07.2011 to 10.06.2016 on duty, when re-instatement order was passed.
3. That the applicant filed departmental appeal against the inaction of the respondents mentioned above, which was regretted with no good ground.
4. That feeling aggrieved, the applicant filed Service Appeal No. 7039/2021, which was allowed vide order dated 19/05/2023 with certain observations mentioned therein.




It is, therefore, most humbly requested that on acceptance of this representation, the judgment dated 19/05/2023 of Services Tribunal KP, Peshawar in Service Appeal No 7039/2021 may please be implemented in letter and spirit.

Dated:- 09/06/2023



Wahid Ullah, SPST (BPS-14)
GPS, Shiringal, District Dir
Upper

ATTESTED

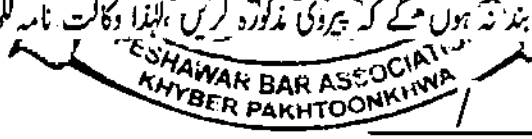
50 48052 ایڈویکیٹ: mah بار کونسل ایسوسی ایشن نمبر: 181208 رابطہ نمبر: 03417524145	پشاور بار ایسوسی ایشن، خیبر پختونخوا PESHAWAR BAR ASSOCIATION   
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بعدالت جناب: سروس ٹریونل خیر مخونجا صاحب

دعویٰ: اجراء علت نمبر: مورث: جرم: تھانہ:	منجانب: Wahid ulah SPST بنام Secretary (SPST)
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باعت تحریر آگہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کارروائی متعلقہ
 آن مقام سپاس کے لیے محمد جان عرف فاروقی رولہ علیہ کو وکیل مقرر
 کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کالغ اختیار ہوگا، نیز وکیل صاحب کو
 راضی نامہ کرنے و تقررات ثالث و فیصلہ بر حلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تھم
 زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسختی، نیز
 دائر کرنے اپیل عمرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا اجزائے
 کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا اور صاحب
 مقرر شدہ کو وہی جملہ مذکورہ بالا اختیارات حاصل ہوں گے اور اس کا ساختہ پر داخستہ منظور و قبول ہوگا
 دوران مقدمہ میں جو خرچہ ہر جانب التوائے مقدمہ کے سبب سے ہوگا کوئی تاریخ پیشی مقام دورہ یا حد سے
 باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ سند رہے



المرقوم: /20

بدا واہ شد الع بد
 مقام کے لیے منظور ہے۔