Form- A

FORM OF ORDER SHEET

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Implementation Petition No. 299/2024

| S.No. | Date of order proceedings | Order or other proceedings with signature of judge | | |
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| 1 | · 2· | 3 | | |
| 1 | 19.04.2024 | The implementation petition of Mst. Afnan Lega | | |
| | | heir of Abdul Subhan resubmitted today by Mr. Taimur | | |
| . ; | • | Ali Khan 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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The execution petition in appeal no. 7122/2021 received today i.e. on 16.04.2024 is returned to the counsel for the petitioner with the following remarks.

. The documents attached with the petition are unattested.

No. 788 /S.T.

PESHAWAR

Taimur Ali Khan Adv. High Court Peshawar.

Respected Sei, 1- Renoved.

Resubmitted ofter amplianing

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL **PESHAWAR**

Execution petition No. <u>299</u> /2024 In Service Appeal No.7122/2021

Afnan Widow of Abdul Subhan

V/S

Education Department

INDEX

| S.No. | Documents | Annexure | P. No. |
|-------|--|----------|--------|
| 1 | Memo of execution petition | | 01-03 |
| 2 | Copy of memo of appeal | A | 04-07 |
| 3 | Copy of judgment dated 14.07.2022 | В | 08-11 |
| 4 | Copies of application | C | 12 |
| `5 | Copies of death certificate and CNIC of the petitioner and FRC of Abdul Subhan | D,E&F | 13-16 |
| 6 | Vakalat Nama | | 17 |

PETITIONER

THROUGH:

(TAIMUR ALI KHAN) ADVOCATE HIGH COURT Cell# 0333-9390916



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Execution Petition No. 299 /2024 In Service Appeal No.7122/2021

Khyher Pakhtukhwa

Diam No 12222

Dated 16-04-2084

Afnan, Widow of Abdul Subhan Retired Chowkidar, R/O Mohallah Qureshan, Zara Miana, Nowshera.

(PETITIONER)

VERSUS

- 1. The Secretary, Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Civil Secretariat Peshawar.
- 2. The Director Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
- 3. The District Education Officer (Female), Nowshera.
- 4. The Secretary Finance Department, Khyber Pakhtunkhwa, Civil Secretariat Peshawar.
- 5. The District Account Officer, Nowshera.

RESPONDENTS

EXECUTION PETITION FOR DIRECTING THE RESPONDENTS TO IMPLEMENT THE JUDGMENT DATED 14.07.2022 OF THIS HONOURABLE TRIBUNAL IN LETTER AND SPIRIT.

RESPECTFULLY SHEWETH:

1. That the husband of the petitioner has filed service appeal No. 7122/2021 in this Honorable Tribunal with the prayer that the respondents may kindly be directed to make the payment of recovered/deducted amount of worth of Rs.569782/-, which was illegally recovered/deducted from the pension of the husband of the petitioner for the period on which he has performed duty. (Copy of memo of appeal is attached as Annexure-A)

- 2. The appeal of the husband of the petitioner was heard and decided by this Honorable Tribunal" on 14.07.2022. The Honorable Tribunal allowed the appeal of the husband of petitioner as prayed for. (Copy of judgment dated 14.07.2022 is attached as Annexure-B)
- 3. That the husband of petitioner has filed an application to respondent No.3 on 13.09.2022 for implementation of judgment dated 14.07.2022 of this Honorable Tribunal, but the respondents did not implement the judgment dated 14.07.2022 of this Honorable Tribunal. (Copy of application is attached as Annexure-C)
- 4. That in-action and not fulfilling formal requirements by the department after passing the judgment of this august Tribunal, is totally illegal amount to disobedience and Contempt of Court.
- 5. That the judgment is still in the field and has not been suspended or set aside by the Supreme Court of Pakistan, therefore, the department is legally bound to obey the judgment dated 14.07.2022 of this Honorable Tribunal in letter and spirit.
- 6. That the husband of the petitioner namely Abdul Subhan (appellant in service appeal No.7122/2022) became sick and later on died on 04.03.2024, which is evident from the death certificate of the husband of the petitioner and the petitioner being the widow of the appellant and pensioner of his husband Abdul Subhan wants to file to file this execution petition for implementation of judgment dated 14.07.2022 in its true letter and spirit. (Copies of death certificate and CNIC of the petitioner and FRC of Abdul Subhan are attached as Annexure-D,E&F)

It is, therefore, most humbly prayed that the department may kindly be directed to implement the judgment dated 14.07.2022 of this Honorable Tribunal in letter and spirit. Any other remedy, which this Honorable Tribunal deems fit and appropriate that, may also be awarded in favour of petitioner.

PETITIONER

Afana Widow of Abdul Subhan

THROUGH:

(TAIMUR ALI KHAN) ADVOCATE HIGH COURT

(SHAKIR UĽĽÁH TORANI) ADVOCTAE

AFFIDAVIT:

It is affirmed and declared that the contents of the execution petition are true and correct to the best of my knowledge and belief.



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. /2021

Abdul Subhan, Retired-Chowkidar GGCMS Zara Miana, Nowshera.

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 (Female), Nowshera.
- 4. The Secretary Finance Department, Khyber Pakhtunkhwa, Peshawar.
- 5. The District Account Officer, Nowshera.

RESPONDENTS

KHYBER APPEAL UNDER SECTION OF THE SERVICE **TRIBUNAL** 1974 PAKHTUNKHWA ACT, **IMPUGNED** ACTION OF. AGAINST THE RESPONDENTS OF RECOVERY/DEDUCTION OF AMOUNT OF RS.569782/- FROM THE PENSION OF THE APPELLANT **TAKING** AND **AGAINST** NOT **ACTION** DEPARTMENTAL APPEAL OF APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS.

PRAYER

THAT ON THE ACCEPTANCE OF THIS APPEAL, THE RESPONDENTS MAY KINDLY BE DIRECTED TO MAKE THE PAYMENT OF RECOVERED/DEDUCTED AMOUNT OF WORTH OF RS. 569782/-, WHICH WAS ILLEGALLY RECOVERED/DEDUCTED FROM THE PENSION OF THE APPELLANT FOR THE PERIOD ON WHICH HE HAS PERFORMED DUTY. ANY OTHER REMEDY WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE

(5)

THAT MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.

RESPECTFULLY SHEWETH:

FACTS:

- 1. That the appellant being illiterate was appointed as Naib Qasid on 24.04.1998 in the education department and since his appointment the appellant has performed his duty with great devotion and honesty whatsoever assigned to him.
- 2. That the appellant was born in the year 1953 and would be retired on 30.06.2013 on attaining the age of superannuation, but the respondent No.4 did not pass an order in respect of retirement of the appellant in time and the appellant being illiterate has continued his duty and regularly performed duty till March 2016 and also received salaries for that period, which is evident from the attendance register of the concerned school. (Copy of attendance register is attached as Annexure-A)
- 3. That the respondent No.3 passed an order dated 20.10.2020, whereby the appellant was retired from service on superannuation with effect from 30.06.2013. (Copy of order dated 20.10.2020 is attached as Annexure-B)
- 4. That the appellant has granted his commutation and pension on his retirement, but received salaries of worth of Rs.569782/- for the period with effect from 1.07.2013 till March 2016 on which the appellant has performed his duty was illegally recovered from the pension of the appellant, which is evident from the pension slip of the appellant. (Copy of pension slip is attached as Annexure-C)
- 5. That the appellant filed compliant to Provincial Ombudsman for recovery of that deducted amount which is evident from the notice dated 12.03.2021 of the Provincial Ombudsmen, but no positive response has been given to the appellant on that complaint by Provincial Ombudsman. (Copy of notice dated 12.03.2021 is attached as Annexure-D)
- 6. That as the amount of worth of Rs.569782/- was illegally recovered/deducted from the pension of the appellant, because he was not retired in time i.e 30.06.2013 by the competent authority and was







continuously and regularly performed duty till March 2016 due to which he received salaries for that period, therefore the appellant filed departmental appeal on 07.04.2021 for grant of that recovered/deducted amount of worth of Rs. 569782/- on which detail reports/comments was called from respondent No.4 by the appellant authority vide letter dated 19.04.2021, however the departmental appeal of the appellant was not decided with in the statutory period of ninety days. (Copies of departmental appeal and letter dated 19.04.2021 are attached as Annexure-E&F)

7. That appellant being aggrieved and having no other remedy except to file the instant service appeal on the following grounds amongst the others.

GROUNDS:

- A) That recovery/deduction of Rs.569782/- from the pension of the appellant is against facts, norms of justice and material on record, therefore, not tenable and the recovered/deducted amount of worth of Rs.569782/- may kindly be granted to the appellant.
- B) That the appellant was born in the year 1953 and would be retired on 30.06.2013 on attaining the age of superannuation, but the respondent No.4 did not pass an order in respect of retirement of the appellant in time and the appellant being illiterate has continued his duty and regularly performed duty till March 2016 and also received salaries for that period, therefore the appellant could not punished for the fault of the other in shape of recovery/deduction for the period on which he has performed his duty.
- C) That the appellant would be retired on 30.06.2013 on attaining the age of superannuation and it was the responsibility of the competent authority to pass the order of retirement of the appellant in time and not allowed him to perform after his superannuation, but the retirement order of the appellant was passed on 20.10.2020 and the appellant being illiterate has continued his duty and performed that duty till March 2016, and now recovery of worth of Rs.569782/- from the pension for the period on which he has performed his duty is against the norms of justice and fair play.







- D) That the appellant has regularly performed duty with effect from 01.07.2013 till March 2016, which is evident from the attendance register of the school and recovery of Rs.569782/- from the pension of the appellant for that period amounts to force labour, which is violation of Article-11 of Constitution of Islamic Republic of Pakistan, 1973.
- E) That the appellant being a low paid employee (Class-IV) and recovery/deduction of Rs.569782/- from his pension on the fault of the others has badly effect his financial position.
- F) That the action of the respondents is without any legal authority, discriminatory and in clear violation of fundamental rights duly conferred by the Constitution and is liable to be declared as null and void.
- G) That as the act of the respondents is illegal, without any legal authority and not only discriminatory but also the result of malafide on the part of respondents.
- H) That the appellant seeks permission of this Honorable Tribunal to advance other grounds and proofs at the time of hearing.

It is, therefore most humbly prayed that the appeal of the appellant may be accepted as prayed for.

APPELLANT

Abdul Subhan

THROUGH:

(TAIMUR ALI KHAN) ADVOCATE HIGH COURT

CERTIFICATE:

It is certified that no other similar service appeal between the parties has been filed earlier.

T. D

DEPÓNENT

RE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

Service Appeal No. 7122/2021

Date of Institution

29.07.2021

Date of Decision

14.07.2022



Abdul Subhan, Retired Chowkidar, GGCMS Zara Miana, Nowshera.

... (Appellant)

VERSUS

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

(Respondents)

MR. TAIMUR ALI KHAN,

Advocate

For appellant.

MR. NASEER-UD-DIN SHAH, Assistant Advocate General

For respondents.

MR. SALAH-UD-DIN

MEMBER (JUDICIAL) MEMBER (JUDICIAL)

MS. ROZINA REHMAN

JUDGMENT:

SALAH-UD-DIN, MEMBER:- Precisely stated the facts giving rise to filing of instant service appeal are that the appellant was appointed as Naib Qasid on 24.04.1998. The appellant was born, in the year 1953 and was to retire on 30.06.2013 on attaining the age of superannuation but the competent Authority did not issue his order of retirement and the appellant thus carried out his duties till March 2016. The appellant received salaries till March 2016 i.e beyond the age of superannuation. The competent Authority belatedly issued retirement order of the appellant on 20.10.2020, whereby theappellant was retired from service with effect from 30.06.2013. The appellant was granted commutation and

AWTESTED

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pension on his retirement, however salaries amounting to Rs. 569782/- received by the appellant for the period from 01.07.2013 to March 2016 were deducted from his, pension, which compelled the appellant to file departmental appeal, however the same was not responded within the statutory period of 90 days, hence the instant service appeal.

- 2. Respondents contested the appeal by way of submitting para-wise comments, wherein they refuted the assertions, raised by the appellant in his appeal.
- Learned counsel for the appellant has contended that the retirement of the appellant was due on 30.06.2013 but the competent Authority did not issue retirement order of the appellant in time and he thus actively performed his duty till the month of March 2016; that copies of attendance register, annexed with the appeal supports the stance of the appellant that he had performed his duties till the month of March 2016; that the appellant was an illiterate Class-IV employee and it was fault of the competent Authority that his issued after considerable delay on retirement order was 20.10.2020 instead of 30.06.2013; that the appellant suffered mental torture agony at the hands of competent Authority as the pensionary benefits were handed over to him after considerable long period; that nothing is available on the record, which could show that the appellant was having any connivance in the late issuing of retirement order of the appellant, therefore, the respondents were not justified in recovery of salaries received by the appellant after attaining the age of superannuation. Reliance was placed on 2001 PLC (C.S) 1092 and 2017 PLC (C.S) 331.
 - for the respondents has contended that the appellant was well aware of the date of his superannuation but he inlegally received salaries till March 2016; that the appellant somehow managed to get lost his service book; therefore, the competent Authority could not issue retirement order of the appellant in time; that on attaining the age of superannuation, the

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appellant automatically stood retired on 30.06.2013, therefore, the salaries received by him beyond the age of his superannuation were rightly deducted from his pension; that the appellant had intentionally concealed the age of his superannuation and his appeal is liable to be dismissed with cost.

- 5. We have heard arguments of learned counsel for the parties and have perused the record.
- A perusal of the record would show that the date of birth of the appellant is 01.07.1953 and his retirement was due on 30.06.2013. The competent Authority, however did not issue any notification regarding the retirement of the appellant and he continued his duties till March 2016. The respondents have not denied the fact that the appellant actively performed his duties till March 2016. It appears that the appellant was not given any salary beyond the month of March 2016 but the competent Authority delayed issuing of retirement order of the ultimately issued on appellant and the same was 20.10.2020, whereby the appellant stood retired with effect from 30.06.2013. The appellant has categorically alleged that he being illiterate was unaware of the date of his retirement. Respondents have not brought anything on the record, which could show that the delayed issuing of order of retirement of the appellant was the result of any fault on the part of the appellant. The date of birth of a civil servant is entered in his service book and other relevant service documents, therefore, it was the responsibility of the competent Authority to have issued the retirement order of the appellant in time. The appellant had attained the age of superannuation on 30.06.2013 but the notification regarding his retirement was issued on 20:10.2020, regarding which no plausible reason has been furnished by the respondents in their comments. According to Pension Roll Data Sheet issued to the appellant, an amount of Rs. 569782/- was deducted from his pension as the salaries received by him beyond the age of superannuation. It is evident from the record that it was the

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7. In view of the above discussion, the appeal in hand is allowed as prayed for. Parties are left to bear their own cost.

ANNOUNCED 14.07.2022

> (SALAH-UD-DIN) MEMBER (JUDICIAL)

(ROZINA REHMAN) MEMBER (JUDICIAL) Service Tribunal

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47/0930

عنوان: درخواشت بمراد بحالی / کلوتی مالیت برلغ-5,69,782 کی بید منت بنام ریٹائر چوکیدار عبدالسجان ولدشاه سید حناب عالی

مؤدبان گزارش میکہ بورڈ آف خیبر تخونخوا سروس ٹربیونل بیٹاور کی طرف سے سروس ایل نمبر 7122/2021 بنام ریٹائر چوگیدار عبدالسجان ولد شاہ سید، گورنمنٹ گرلز کمیونٹی ماڈل سکول زڑہ میانہ کے ڈائری نمبر 7382 مورخہ 202-07-29 کے مطابق مبلغ -5,69,782/ روپیہ کی ادائیگی کرنامقصود ہے ۔ (تمام ضروری کاغذات کی کا بیال درخواست ہذا کے ساتھ منسلک ہیں)۔

اسلے التماس ہے کہ متعلقہ شاف کو مذکورہ رقم ادا کرنے کے احکامات صاور فر ما کرمشکور فرمائیں ۔ جناب کی عین نوازش ہوگی۔

الـــــــــارض

مسرا سی ل ریٹائر چوکیدارعبدالسبحان ولدشاہ سید گورنمنٹ گرلز کمیونٹی ماڈل سکول زڑہ میانہ سکنہ محلّہ قریشان ، زڑہ میانہ بخصیل وضلع نوشہرہ المرقوم:2022-09-13

0307-54-10930



OFFICE OF THE DMS ADMINISTRATION/ SMO/QHAMC-MTI, NOWSHERA KHYBER PAKHTUNKHWA



No 694

Phone No : (0923-9220489) /DMS ADMIN/QHAMC

Dated 19 /03/2024





DEATH CERTIFICATE

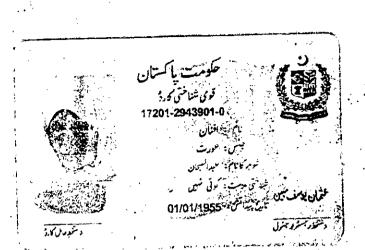
It is certified that Mr. Abdulsubhan S/O Shah Siad Age 71 year having CNIC No: 17201-5388885-3 resident Moh, Quershian, Zara Mina, Tehsil & District Nowshera. Died on 04/03/2024 at 02:40 AM in Maie Emergence Ward of QHAMC (MTI) Nowshera due to cardiopulmonary arrest.

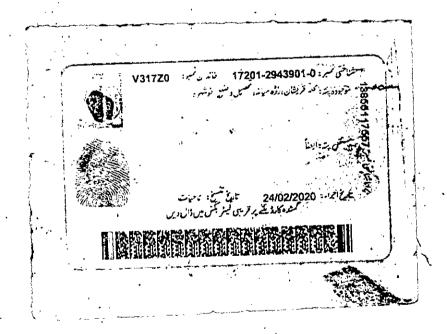
Dr.Mashtaq Khar Wall DMS Admin/SMO WALL OHAMC (MTD) NORTH

DR. MUSHTAO KHALIL DMS ADMIN/SMO QHAMC-MTI, NOWSHERA



Address: Near Kabul River, Mardan Road Nowshero, Khyber Pakhlunkhwa, Pakistan





AN PATERTED







EA99299764

FAMILY REGISTRATION

Applicant Name:

Abdul Subhan

Citizen Number:

1720163888853

Document Number:

EA99299764

It is to certify that the family comprising of the following members is registered in NADRA with the particulars mentioned below as per the information provided.



Name: Identity No:

Abdul Subhan 17201-6388885-3

Date of Birth: Father Name:

1953 Shah Said

Paro Mother Name: Relation With Self

Applicant:

مبرالبحان

والدكا تام : والدوكا نام:

پرانام:



Name: Identity No:

Noor Ul Hadi 17201-5917886-9 24/04/1983

Date of Birth: Abdul Subhaner Name: Ainan

Mother Name: Relation With Applicant:

تورالعادي خبزالبحال

يورانام : والدكانام:

أنكن والدوكا تام :



Shamia

01/01/1992 Date of Birth: Father Name:

Mother Name: Relation With

Daughter

پورانام: والدكانام:



Family Members:

Afran Name: (_17201-2943901-0 Identity No:

01/01/1955 Date of Birth: Sahib Ullah Father Name: Mother Name: Khanzadgai

Relation With Applicant:

افان

Name

Identity No:

Date of Birth: Father Name:

Mother Name: Relation With Applicant

Afnan .

Abdu. Subhan

Abdul Hadi

01/01/1989

17201-7/66507-3

ميدالهادى مدانبمان پرانام. . والدكا تام :

يورايام:

والدوكا تام:

וטט والدوكا نام:



Name: Identity No:

17201-6212939-8

Abdul Subhan Afnan

Applicant:

والدوكانام:



Name:

Identity No: Date of Birth: Father Name:

Mother Name: Relation With Applicant:

Farman Ullah 17201-2479508-1

01/01/1992 Abdul Subhan

بجداناع فرمان الله والدكانام: حبزالبحال افان والدوكا تام :

Note:

1. The above mentioned family members are linked in NADRA database

2. There could be other family members that may be registered but not linked to this family in NADRX database

3. This certificate is not valid in any court of law for inheritance/property issues



Usman 4. mole REGISTRAR GENERAL OF PAKISTAN

Date of Issue: 06/01/2021



1720163888853

This certificate can be verified at https://id.nadra.gov.pl/o-id/

Page 1 of 2







Name: Baswar Vilah
Identity No: 17201-9824960-7
Date of Birth: 01/01/1999
Father Name: Abdul Subhan
Mother Name: Afnan
Relation With
Applicant: Son

يودانام: بسورالله والدكانام: حيذالسجال والدةكابام: افان

Note:

- The above mentioned family members are linked in NADRA database
- 2. There could be other family members that may be registered but not linked to this family in NADRA database
- 3. This certificate is not valid in any court of law for inheritance/property issues.



This certificate can be verified at https://id.nadra.gov.pk/e-ld

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REGISTRAR GENERAL OF PAKISTAN

Date of Issue: 06/01/2021



1720163888853

Page 2 of 2

VAKALAT NAMA

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| NO/2024 | | |
| IN THE COURT OF K.P Service | tribunal i | Peso |
| VERSUS Education department I/We, Afron widow of Abdul Do hereby appoint and constitute TAIMUR ALI KHAN, ADVO appear, plead, act, compromise, withdraw or refer to arbitrat Counsel/Advocate in the above noted matter, without any lia with the authority to engage/appoint any other Advocate/Coun- I/We authorize the said Advocate to deposit, withdraw and rec- sums and amounts payable or deposited on my/our account in | (Appellant) (Petitioner) (Plaintiff) (Respondent) (Defendant) CATE HIGH COURT, to ion for me/us as my/our ability for his default and sel on my/our behalf all | |
| The Advocate/Counsel is also at liberty to leave my/our ca proceedings, if his any fee left unpaid or is outstanding against | ise at any stage of the | |
| Dated/2024 | | |
| (0 | CLIENT) | |

TAIMURALI KHAN Advocate High Court

BC-10-4240 CNIC: 17101-7395544-5

Adv: Shakir Unah Toroni