Form- A

FORM OF ORDER SHEET

Court of _____

Implementation Petition No. 620/2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	21.06.2024	The implementation petition of Mr. Zia ur Rehman submitted today by Mr. Noor Muhammad Khattak Advocate. It is fixed for implementation report before Single Bench at Peshawar on 25.06.2024. 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 THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Execution Petition No. 620 /2024
In
Appeal No. 7548/2021

MR. ZIA UR REHMAN VS GOVT: OF KP & OTHERS

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Petitioner
Mr. Zia Ur Rehman

THROUGH:
NOOR MOHAMMAD KHATTAK
ADVOCATE SUPREME COURT

(1)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Execution Petition No. 620 /2024
In
Appeal No. 7548/2021

Mr. Zia Ur Rehman, SST (BPS-16)
GHS Ekka Ghund, District Mohmand

.....PETITIONER

VERSUS

1. The Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Department, Civil Secretariat, Peshawar.
2. The Director Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.
3. The Chairman Khyber Pakhtunkhwa Public Service Commission, Fort Road, Peshawar Cantonment.

..... 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 04/03/2024 IN LETTER AND SPIRIT.

R/SHEWETH:

1- That the petitioner filed service appeal bearing No. 7548/2021 before this august Service Tribunal, against the impugned notification dated 25/06/2021, whereby the appointment order of the appellant was disowned and he was declared bogus employee.

2- That the appeal of the petitioner was finally heard on dated 04/03/2024 and as such the ibid appeal was allowed with the following terms by this august Service Tribunal:

"9. As a sequel to above discussion, we set aside the impugned notifications and reinstate the appellant for the purpose of de-novo inquiry and remand the case back to the respondent to conduct de-novo inquiry within a period of sixty days, by providing proper opportunity of self defense and cross examination. The

issue of back benefits shall be decided subject to the outcome of de-novo inquiry. Costs shall follow the event. Consign.". Copy of the consolidated judgment dated 04/03/2024 is attached as annexure.....**A**

3- That after obtaining copy of the judgment dated 04/03/2024 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 04/03/2024 passed in Appeal No. 7548/2021 in letter and spirit. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the petitioner.

Petitioner
Mr. Zia Ur Rehman

THROUGH:
NOOR MOHAMMAD KHATTAK
ADVOCATE SUPREME COURT

AFFIDAVIT

I, Mr. Zia Ur Rehman, Ex-SST (BPS-16) GHS Ekka Ghund, District Mohmand (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

Gul Daraz Khan
Commissioner
Advocate High Court Peshawar

(A)

(3)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

1012

APPEAL NO. 7548 /2021

7701

06/10/2021

Mr. Zia-ur-Rehman, SST (BPS-16),
GHS Ekka Ghund, District Mohmand. ..... APPELLANT

VERSUS

1- The Secretary E&SE Department, Khyber Pakhtunkhwa, Peshawar.
2- The Director E&SE Department, Khyber Pakhtunkhwa, Peshawar.
3- The Chairman Khyber Pakhtunkhwa Public Service Commission, Fort Road, Peshawar. ..... RESPONDENTS

SERVICE APPEAL UNDER SECTION-4 OF THE SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED NOTIFICATION DATED 11-06-2021 WHEREBY THE APPOINTMENT NOTIFICATION DATED 17-04-2012 HAS BEEN DISOWNED AND AGAINST NOT TAKING ACTION ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS

PRAYER:

That on acceptance of this appeal the impugned Notification dated 11.6.2021 may very kindly be set aside and the appellant may kindly be re-instated into service with all back benefits. Any other remedy which this august Tribunal deems fit that may also be awarded in favour of the appellant.

6/10/21

R.SHEWETH:
ON FACTS:

1- That the Khyber Pakhtunkhwa Public Service Commission advertised various posts including the post of SST (G) (BPS-16), the appellant having the requisite qualification applied for the said post and resultantly recommended by the KP public Service Commission. Copies of the advertisement and Educational testimonials are attached as annexure ..... **A and B.**

2- That in light of the ibid recommendation the respondents appointed the appellant as Secondary School Teacher (BPS-16) vide Notification dated 17-04-2012. That in response the

ATTESTED

ATTESTED
EXAMINER
Khyber Pakhtunkhwa Service Tribunal
Peshawar

(4)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 7667/2021

BEFORE: **MRS. RASHIDA BANO** ... **MEMBER (J)**
MISS FAREEHA PAUL ... **MEMBER (E)**

Mst. Zubaida Begum, Ex. SST (BPS-16), GGMS Kuta Trap, District Mohmand.

... (Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Department, Civil Secretariat Peshawar.
2. Director Elementary & Secondary Education, Khyber Pakhtunkhwa Peshawar.
3. The Chairman, Khyber Pakhtunkhwa Public Service Commission, Fort Road, Peshawar Cantonment.

... (Respondents)

Mr. Noor Muhammad Khattak
Advocate ... For appellant

Mr. Muhammad Jan
District Attorney ... For respondents

Date of Institution.....26.10.2021
Date of Hearing.....04.03.2024
Date of Decision.....04.03.2024

CONSOLIDATED JUDGMENT

RASHIDA BANO, MEMBER (J): The instant service appeal has been instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as below:

"On acceptance of this appeal, the impugned Notification dated 25.06.2021 may be set aside and the appellant may be reinstated into service with all back and consequential benefits.

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

(5)

Any other remedy which this august tribunal deems fit and appropriate that may also be awarded in favour of appellant."

2. Through this single judgment, we intend to dispose of the instant service appeal as well as connected service appeals, which are mentioned below as in all these appeals common questions of law and facts are involved:

1. Service Appeal No. 7548/2021
2. Service Appeal No. 7549/2021
3. Service Appeal No. 7550/2021
4. Service Appeal No. 7551/2021
5. Service Appeal No. 7563/2021
6. Service Appeal No. 7564/2021

3. Brief facts of the case, as given in the memorandum of appeals, are that appellants were appointed as Secondary School Teacher (BPS-16) on the recommendation of Khyber Pakhtunkhwa Public Service Commission in the year 2012 and 2013 in response of which they started performing their duties at the concerned station quite efficiently and up to the entire satisfaction of his/her superiors. After proper verification of educational documents and service documents, the salary of the appellants started. Unfortunately, during service, appointment order of the appellants were disowned and they were declared bogus employee by the department vide notification dated 11.06.2021 & 25.06.2021. Feeling aggrieved, they preferred departmental appeal, which was not responded, hence, the present service appeal.

4. Respondents were put on notice who submitted written replies/comments on the appeal. We have heard the learned counsel for the appellants as well as the learned District Attorney and perused the case file with connected documents in detail.

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

(6)

5. Learned counsel for appellant argued that the notifications dated 11.06.2021 & 25.06.2021 are against law, facts, norms of justice and material on record, therefore, not tenable and liable to be set aside. He further argued that appellant was appointed in accordance with law and rules by following the prescribed procedure and hence cannot be held as fake appointment. He further argued that neither proper regular inquiry was conducted nor she was associated with the inquiry proceedings. He contended that neither statement was recorded nor she was given the chance of cross examination and without final show cause notice the impugned order was passed which is against the law and principle of natural justice. He submitted that no opportunity of personal hearing was afforded to her and she was condemned unheard. Reliance is placed on 2011 SCMR 1581; 2004 SCMR 303; 2016 SCMR 1299 and 2010 PLD SC 483.

6. Conversely learned District Attorney appearing on behalf of respondents, controverted the contentions of learned counsel for appellant by contending that claim of the appellant regarding their appointment is baseless and liable to be rejected as they never applied for the said post nor appeared in any interview, therefore, their appointment was declared fake & bogus and have been disowned by the Department vide notifications dated 11.06.2021 & 25.06.2021. He submitted that treated as per law, rules and policy and there is no question of violation of Article 10-A of the Constitution of Islamic Republic of Pakistan 1973, hence stance of the appellant is baseless and liable to be rejected and lastly, he submitted that those appellants who claimed to have been recommended by the Khyber

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Pakhtunkhwa Public Service Commission, failed to produce any proof of their recommendation by Public Service Commission.

7. Perusal of record reveals that appellant was appointed as SST on the recommendations of Khyber Pakhtunkhwa Public Service Commission and it was on 11.06.2021 & 25.06.2021 when they received notification vide which their appointment orders was found bogus, thus, their appointment/adjustment notification was disowned. Before disowning their appointment order, neither any show cause notice was served upon the appellants nor any personal hearing as well as regular inquiry was conducted by the respondents, which was the necessity of law and their appointment orders were straight away disowned by the respondents. The hurry shown by the department in disowning the appellant's appointment order was not in accordance with law. Appellant must be provided with opportunity of personal hearing and cross examination for fulfilling purpose of fair trial. Respondent awarded major penalty of disowning appellant's appointment order who served for long eight years.

8. It is a well settled legal proposition, that regular inquiry is must before imposition of major penalty, whereas in case of the appellant, no such inquiry was conducted. The Supreme Court of Pakistan in its judgment reported as 2008 SCMR 1369 have held that in case of imposing major penalty, the principles of natural justice required that a regular inquiry was to be conducted in the matter and opportunity of defense and personal hearing was to be provided to the civil servant proceeded against, otherwise civil servant would be condemned unheard and major penalty of dismissal from service would be imposed upon him/her without adopting the required

ATTESTED

FIAMINEY
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

(8)

mandatory procedure, resulting in manifest injustice. In the absence of proper disciplinary proceedings, the appellant was condemned unheard, whereas the principle of '*audi alteram partem*' was always deemed to be embedded in the statute and even if there was no such express provision, it would be deemed to be one of the parts of the statute, as no adverse action can be taken against a person without providing right of hearing to him/her. Reliance is placed on 2010 PLD SC 483.

9. As a sequel to above discussion, we set aside the impugned notifications and reinstate the appellants for the purpose of de-novo inquiry and remand the cases back to the respondents to conduct de-novo inquiry within a period of sixty days, by providing proper opportunity of self-defense and cross examination. The issue of back benefits shall be decided subject to the outcome of de-novo inquiry. Costs shall follow the event. Consign.

10. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 4th day of March, 2024.*

(FAREEHA PAUL)
Member (E)

(RASHIDA BANO)
Member (J)

*Kaleemullah

ATTESTED

Date of Presentation of Application 14-6-24
Number of Words 500
Copying Fee 20/-
Urgent 50/-
Total 30/-
Name of Copyist
Date of Completion of Copy 14-6-24
Date of Delivery of Copy 14-6-24

"B"

9

To

The Secretary Elementary & Secondary,
Education Govt of Khyber Pakhtunkhwa Peshawar.

Subject: **REQUEST FOR INQUIRY IN SERVICE APPEAL NO. 7667/2021 MST. ZUBIDA BEGAM EX-SST (BS-16) GMSS KOTA TRAP DISTRICT MOHMAND AND OTHERS.**

R/Sir

With due respect, we the following appellants submit that Honorable Service Tribunal Peshawar has decided our appeal with the direction to conduct "Denovo inquiry" and reinstate the appellant for the purpose of inquiry on 04-03-2024 (copy attached)

So far neither inquiry has been conducted nor reinstatement notification has been issued by the directorate. Further fair, impartial and transparent inquiry is not expected from the directorate of Elementary & Secondary Education Khyber Pakhtunkhwa.

Keeping in view the above explained facts it is requested to kindly conduct inquiry through Elementary and Secondary Education Department so that impartiality, fairness and transparency may be maintained please.

1. Mst: Zubda Begam Service Appeal No. 7667/2021 0823 893243 1
2. Zia ur Rahman Service Appeal No. 7548/2021 0346 9030620
3. Muhammad Zeb Service Appeal No. 7549/2021 0345 8199618
4. Nahida Akhtar Service Appeal NO. 7550/2021
5. Iftekhar Ali Service Appeal No. 7551/2021 0333 9206961
6. Hira Shams Service Appeal No. 7563/2021
7. Alia Taj Service Appeal No. 7564/2021

Copy forwarded to

1. Director, Directorate of Elementary & Secondary Education Khyber Pakhtunkhwa.

29/5/24

DIRECTOR ELEMENTARY & SECONDARY EDUCATION
Diary No. 2251
Dated 29-5-2024

ATTESTED

(10)

VAKALATNAMA

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Execution No _____/2024

MR ZIA UR REHMAN (APPELLANT) (PLAINTIFF) (PETITIONER)

VERSUS

Govt of KP (RESPONDENT) (DEFENDANT)

I/~~We~~ MR ZIA UR REHMAN.

Do hereby appoint and constitute **Noor Mohammad Khattak Advocate Supreme Court** to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate Counsel on my/our cost. I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter.

Dated._____/_____/202

CLIENT Zia ur Rehman

ACCEPTED

NOOR MOHAMMAD KHATTAK
ADVOCATE SUPREME COURT

WALEED ADNAN

UMAR FAROOQ MOHMAND

MAHMOOD JAN

&

ABID ALI SHAH
ADVOCATES

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