


Form- A

FORM OF ORDER SHEET

Court of _____

Implementation Petition No. 94 /2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	10.09.2024	<p>The implementation petition of Mr. Muhammad Zakariya submitted today by himself. It is fixed for implementation report before Single Bench at Peshawar on 18.09.2024. Original file be requisitioned. AAG has noted the next date. Parcha Peshi given to petitioner.</p> <p>By order of the Chairman  REGISTRAR</p>

EFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Execution Petition No 944 /2024

In

Service Appeal No.1173/2023

Date of Decision 11.07.2024

Muhammad Zakariya, SST, R/o Mohallah Eid Gah Akora Khattak,
Nowshera.....**Petitioner**

Versus

The Secretary (E&SE) Khyber Pakhtunkhwa, Peshawar. And others

.....**Respondents**

I N D E X

S.No.	Description of Documents	Annex	Pages
1.	Memo of execution petition		1-5
2.	Address of parties		6
3.	Judgment of this Tribunal dated 11.07.2024	"A"	7-12
4.	Application for implementation submitted to respondent	"B"	13
5.			

Petitioner



Muhammad Zakariya
Cell No. 0333 9131443

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Execution Petition No 441 /2024

In

Khyber Pakhtunkhwa
Service Tribunal

Service Appeal No. 1173/2023

Diary No. 15622

Date of Decision 11.07.2024

Dated 10/9/24

Muhammad Zakariya, SST, R/o Mohallah Eid Gah Akora Khattak,
Nowshera.....**Petitioner**

Versus

1. The Secretary (E&SE) Khyber Pakhtunkhwa, Peshawar.
2. The Director Education, Khyber Pakhtunkhwa, Peshawar.
3. The District Education Officer (Male) Nowshera.

.....**Respondents**

EXECUTION PETITION FOR IMPLEMENTATION OF
JUDGMENT DATED 11.07.2024 OF THIS HONORABLE
TRIBUNAL IN SERVICE APPEAL NO. 1173/2023 TITLED
MUHAMMAD ZAKARIYA VS THE SECRETARY (E&SE)
KHYBER PAKHTUNKHWA AND OTHERS.

RESPECTFULL SHEWETH:-

- 1) That the petitioner was appointed as SST (BPS{6) in District Nowshera vide Order dated 11.11.2011.
- 2) That later the petitioner applied for project post of Regional Electric Inspector BS-18 in Energy and Power Deptt: through proper channel and was appointed against the same vide Order dated 13.12.2016.

- 3) That the petitioner requested to retain lien in Education department which was entertained and lien was retained by the department and was extended from time to time.
- 4) That the petitioner was conditionally/provisionally regularized against the post of Deputy Inspector BS-18 in light of Peshawar High Court, Peshawar Judgment/Order dated 02.06.2021 passed in W.P No.3454-p/2019, 3552/2019 & 3472/2019, however, against the said Order the said department filed CPLA before the Hon'ble Supreme Court of Pakistan which was accepted/allowed on 19.01.2023. Resultantly the service of the petitioner was terminated being temporary in Energy & Power Department vide order dated 09.03.2023.
- 5) That the petitioner approached parent department (Education Department) on 27.01.2023 for joining his previous post as SST but the department refused to allow the petitioner to join post by stating that petitioner has been relieved from the post and lien has been terminated and handed over Order dated 06.01.2020 whereby the petitioner was relieved from the post of SST.
- 6) That the petitioner filed departmental appeal which was not replied by the respondents within statutory period (90 days)
- 7) That thereafter the petitioner filed Service Appeal No. 1173/2023 before this Honourable Tribunal for declaring the Order dated 06.01.2020 as illegal and ineffective upon the rights of petitioner and for setting aside the said Order and allowing the petitioner to rejoin the parent department as SST, which service appeal (1173/2023) was partly allowed vide Order/Judgment dated 11.07.2024 by holding that lien is not terminated and impugned order being against the law and rules is set aside [**copy of Order dated 11.07.2024 is attached as Annexure - A**].
- 8) That the petitioner submitted above Order of this Honourable Tribunal dated 11.07.2024 to the respondents No. 2 i.e. Director Education, Khyber Pakhtunkhwa, Peshawar, for

implementation but no implementation has been made and still pending (**copy of application for implementation as Annexure-B**).

- 9) That the petitioner visited to the office of respondents time and again for the purpose of implementation of Order/Judgment dated 11.07.2024 of this Honourable Tribunal, but no positive response has been made by the respondents for implementation of the judgment dated 11.07.2024.
- 10) That now the petitioner has got no other adequate remedy except to file this execution petition for immediate proceedings in accordance with law, equity and justice on with following grounds:-


Grounds:-

- A. That as per judgment of the august Supreme Court of Pakistan reported as 2022 SCMR 1765 that once any judgment in favour of Civil Servant / employee is announced it should be implemented and the department if delayed implementation of the said judgment benefit of that judgment shall be extended to the employee/ civil servant.
- B. That the respondents are wilfully reluctant not to implement Order/Judgment dated 11.07.2024 of this Honourable Tribunal and the respondents are wilfully delaying the matters for ulterior motives, which amount to abuse of authority.
- C. That Order/Judgment of this Honourable Tribunal dated 11.07.2024 is in field and no stay or suspension order has been granted against the same.
- D. That as per Law of Civil Procedure code (CPC) and service laws, the respondents should have implemented Order/Judgment dated 11.07.2024 of this Tribunal on priority basis but the respondents have failed to implement judgment of this Honourable Tribunal as mentioned above.

- E. That the respondents have floated Order/Judgment of this Honourable Tribunal and no appropriate action has been taken in spite of order/direction of this Honourable Tribunal, which amounts to contempt of this Tribunal.
- F. That the respondents / contemnors are duty bound to implement the Order/Judgment of this Honourable Tribunal dated 11.07.2024 and if the respondents not implement judgment of this Honourable Tribunal contempt of Court proceeding under Art. 204 (2) (a) and section 3 and 4 of the Contempt Act may kindly be initiated against the respondents.
- G. Any other relief as deemed appropriate in the circumstances of case not specifically asked for, may also be granted to petitioners.

It is therefore, most humbly prayed that on acceptance this execution petition the respondents may very kindly be directed to implement Order/Judgment of this Honourable Tribunal dated 11.07.2024 in letter and spirit with all benefits in accordance with Judgment of this Honourable Tribunal.

Dated: 09.09.2024

Petitioner

(Muhammad Zakariya)
Cell No. 0333 9131443

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Execution Petition No _____/2024

In

Service Appeal No.1173/2023

Date of Decision 11.07.2024

Muhammad Zakariya, SST, R/o Mohallah Eid Gah Akora Khattak,
Nowshera.....**Petitioner**

Versus

The Secretary (E&SE) Khyber Pakhtunkhwa, Peshawar. And others

.....**Respondents**

AFFIDAVIT

I, Muhammad Zakariya, SST (Petitioner), hereby solemnly affirm and declare that all the contents of the instant Execution Petition are true and correct to the best and belief of my knowledge and nothing has been concealed from this Honourable Tribunal.

Dated: 10.09.2024

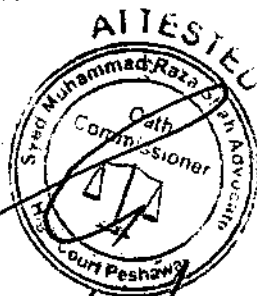
Deponent

[Signature]

Muhammad Zakariya

CNIC No. 17201-2088099-3

Cell No. 0333 9131443



10/9/2024

10 SEP 2024

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Execution Petition No _____/2024

In

Service Appeal No.1173/2023

Date of Decision 11.07.2024

Muhammad Zakariya, SST, R/o Mohallah Eid Gah Akora Khattak,
 Nowshera.....**Petitioner**

Versus

1. The Secretary (E&SE) Khyber Pakhtunkhwa, Peshawar. And
 others

.....**Respondents**

ADDRESSES OF PARTIES


APPELLANT:

Muhammad Zakariya, SST, R/o
 Mohallah Eid Gah Akora Khattak, Nowshera
 Cell No. 0333 9131443

RESPONDENTS:

1. The Secretary (E&SE) Khyber Pakhtunkhwa, Peshawar.
2. The Director Education, Khyber Pakhtunkhwa, Peshawar.
3. The District Education Officer (Male) Nowshera

Petitioner


 Muhammad Zakariya
 Cell No. 0333 9131443

Service Appeal No. 1173/2023 titled "Muhammad Zakariya versus The Secretary (E&SE) Khyber Pakhtunkhwa Peshawar and others" decided on 11.07.2024 by Division Bench comprising Kalim Arshad Khan, Chairman, and Rashida Bano, Member, Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar.



**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.**

**BEFORE: KALIM ARSHAD KHAN ...CHAIRMAN
RASHIDA BANO ...MEMBER (Judicial)**

Service Appeal No.1173/2023

Date of presentation of appeal25.05.2023
Dates of Hearing.....11.07.2024
Date of Decision.....11.07.2024

**Muhammad Zakariya SST (BPS-16) R/o Mohallah Eid Gah Akora
Khattak, Nowshera.....(Appellant)**

Versus

1. The Secretary (E&SE) Khyber Pakhtunkhwa Peshawar.
2. The Director Education Khyber Pakhtunkhwa Peshawar.
3. The District Education Officer (Male) Nowshera.....(**Respondents**)

Present:

Syed Noman Ali Bukhari, Advocate.....For appellant.

Mr. Muhammad Jan, District Attorney.....For respondents.

.....
**SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974, AGAINST
THE ORDER 06.01.2020 RECEIVED BY THE APPELLANT WAS
RELIEVED FROM SERVICE AND NOT ALLOWING THE
APPELLANT TO REJOIN HIS DEPARTMENT (RETAIN LIEN
ON) AND AGAINST NOT TAKING ACTION ON THE
DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN
STATUTORY PERIOD OF NINETY DAYS.**
.....

ATTESTED
A. J. Shah
9-8-24
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

JUDGMENT

RASHIDA BANO, MEMBER (JUDICIAL): Brief facts gathered from the memo and grounds of appeals are that the appellant was appointed as SST (BPS-16) vide order dated 11.11.2011; that the appellant was applied for the project post of Regional Electric Inspector (BPS-18) in Energy and Power

R

ATTESTED

Department through proper channel and the appellant was appointed against the same post vide order dated 13.12.2016; that the appellant request to retain lien in Education Department which was entertained and the lien was retained by the department which was extended time to time; that the appellant was conditionally/provisionally regularized against the post of Deputy Electric Inspector (BPS-18) in light of the Peshawar High Court judgment in writ petition No. 3454-p/2019, 3552/2019 and 3479/2019 vide order dated 02.06.2021; that the regularization of the appellant was conditional for the reason that the department filed CPLA against the judgment of the Peshawar Court. The CPLA of the department was accepted on 19.01.2023, in light of which appellant was terminated from the service being temporary employee vide order dated 09.03.2023; that thereafter the appellant approached to his parent department on 27.01.2023 for joining his previous post as SST but the department refused to allow the appellant to join his post by stating that you are already relieved from the post your lien has terminated and handed over the order dated 06.01.2020, wherein the appellant was relieved from the post of SST; That the appellant feeling aggrieved, filed departmental appeal, which was not responded within statutory period of ninety days, hence, the instant service appeals.

- ATTESTED
9-8-24
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar
2. On receipt of the appeal and its admission to full hearing, the respondents were summoned. Respondents put appearance and contested the appeal by filing written reply raising therein numerous legal and factual objections. The defence setup was a total denial of the claim of the appellant.
 3. We have heard learned counsel for the appellant and learned District Attorney for the respondents.

Service Appeal No. 1173/2023 titled "Muhammad Zakariya versus The Secretary (EdSE) Khyber Pakhtunkhwa Peshawar and others" decided on 11.07.2024 by Division Bench comprising Kalim Arshad Khan, Chairman, and Rashida Bano, Member, Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

4. The learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned District Attorney controverted the same by supporting the impugned order(s).

5. Respondent\department relieved the appellant on the ground of expiry\ termination of his lien vide order impugned order dated 06.01.2020 which is against the settled law on the submitted as Supreme Court of Pakistan verdicts held that lien of a civil servant would be terminated only when he got confirmed in his new job to which as regular employee was appointed latter than the post upon which had refused lien. We place reliance on 1996 SCMR 284(b) Civil Petition no. 543-p of 2016 decided on 21.03.2019 which reads as:

Rr. 9(13), 13(b) & 14(a)(2)—Confirmed post office employee seeking jobs in other departments and joined employment of those departments on temporary basis—Civil servant in course of time having joined Supreme Court as Court Associate, his probation period was not extended—Civil servant applying to his parent department viz. post office for re-employment—Registrar of Supreme Court also recommended civil servant's re-employment in post office on the ground that his lien therein was not terminated—Post Office Department refused to re-employ civil servant on the pretext that he had resigned before joining service in other department—Civil servant's appeal before Service Tribunal was dismissed—Validity—

Held in order to disentitle civil servant to reclaim his confirmed service, it would be essential to show that civil servant was confirmed in any of his new jobs which he got later in time-Civil servant having not been confirmed in any of his subsequent jobs, his lien with his parent

ATTESTED
A. J. Khan
9-8-24
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

~~ATTESTED~~

Service Appeal No. 1173/2023 titled "Muhammad Zakariya versus The Secretary (G&SE) Khyber Pakhtunkhwa Peshawar and others" decided on 11.07.2024 by Division Bench comprising Kalim Arshad Khan, Chairman, and Rashida Bano, Member, Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

department remained intact throughout in spite of the fact that he joined service in other departments—Decision of Service Tribunal and Office Memorandum whereby civil servant was refused to be re-absorbed in service were set aside being without, jurisdiction---Civil servant was deemed to be in service but would not be entitled to back benefits: --[Civil service].

It was also held in 2005 SCMR 1212 that :

(b) civil service --- lien ---Termination --- lien of a permanent service could not be terminated even with his consent, unless he had been confirmed against some other permanent posts.

6. In our humble view, appellant lien was not terminated and impugned order is against the law and rules is hereby set aside by partially accepting appeal but appellant would not be entitled for back benefits. Costs shall follow the event. Consign.

7. Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 11th day of July, 2024.



KALIM ARSHAD KHAN
Chairman



RASHIDA BANO
Member (Judicial)

Certified to be true copy

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Adnan Shah, PA

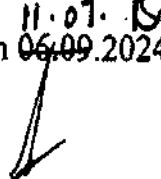
~~ATTESTED~~


26.06.2024

1. Appellant in person present. Mr. Muhammad Jan, District Attorney for the respondents present.

2. Appellant requested for adjournment on the ground that his counsel ~~for the appellant~~ is not available today. To come up for arguments on ~~06.09.2024~~ ^{11.07.2024} before D.B. P.P given to the parties.

SCANNED
KPST
Peshawar


(Muhammad Akbar Khan)
Member (E)



(Rashida Bano)
Member (J)

ORDER

11.07.2024

1. Learned counsel for the appellant present. Mr. Muhammad Jan, learned alongwith Muhammad Rizwan, Assistant Director (Litigation) for official respondents present.
2. Vide our detailed judgment of today placed on file, appellant lien was not terminated and impugned order is against the law and rules is hereby set aside by partially accepting appeal but appellant would not be entitled for back benefits. Costs shall follow the event. Consign.
3. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 11th day of July, 2024.*


KALIM ARSHAD KHAN
Chairman


RASHIDA BANO
Member (Judicial)

ATTESTED

09th May, 2024

1. Appellant is present in person. Mr. Muhammad Rizwan, Assistant Director (Litigation) alongwith Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present.

2. Counsel are on strike, therefore, the case is adjourned for 05.06.2024 for arguments before the D.B. Parcha Peshi given to the parties.



(Muhammad Akbar Khan)
Member (Executive)



(Kalim Arshad Khan)
Chairman

Naveen Anbi

5th June, 2024

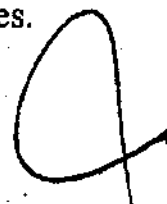
1. Junior to counsel for the appellant present. Mr. Arshad Azam, Assistant Advocate General for the respondents present.

2. Junior to counsel for the appellant seeks adjournment on the ground that learned senior counsel is not available today. Adjourned by way of last chance. To come up for arguments on 05.09.2024 before D.B. P.P given to the parties.

SCANNED
KPST
Peshawar



(Fareeha Paul)
Member(E)



(Kalim Arshad Khan)
Chairman

~~ATTESTED~~

To

The Directress,
Elementary and Secondary Education,
Khyber Pakhtunkhwa, Peshawar.

Subject: **REQUEST FOR IMPLEMENTATION OF JUDGMENT DATED 11-07-2024 PASSED BY KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR, IN SERVICE APPEAL NO.1173/2023 AND ALLOWING APPLICANT TO RESUME DUTY IN TERMS OF SAID JUDGMENT/ORDER.**

Respected Madam,

With all due respect it is humbly submitted that the applicant filed the above service appeal before the Khyber Pakhtunkhwa Service Tribunal, Peshawar and the Hon'ble Tribunal has been pleased to allow the appeal of the applicant vide Judgment/Order dated 11.07.2024 (Attested copy attached).

It is therefore requested that the applicant may kindly be allowed to join/resume the duty in light of the Judgment/Order passed by the Hon'ble Tribunal.

I Shall be highly thankful.

Yours sincerely,

Date: 09.08.2024



Muhammad Zakariya S/o Gul Rahman
Mohallah:Eid Gah Akora Khattak District, Nowshera.
Contact no. 0333-9131443

~~ATTESTED~~