


FORM OF ORDERSHEET

Court of _____

Misc. application No. 1127/2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	01/10/2024	<p>The Misc. application in appeal no. 138/2019 submitted by Mr. Fazal Shah Mohmand Advocate. It is fixed for hearing before Division Bench at Peshawar on 04.10.2024. Original file be requisitioned. Parcha Peshi given to counsel for the applicant.</p> <p>By order of the Chairman</p> <p> REGISTRAR</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

CM No. 1127 /2024
In
CM No. 147/2023
in
Service Appeal No 138/2019

Dr Yahya Ahmad.Petitioner
VERSUS
Govt. & Others.Respondents

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Dated:-30-09-2024

Ad
Petitioners/Appellants
Through
Fazal Shah
Fazal Shah Mohmand
Advocate,
Supreme Court of Pakistan,
Ibad Ur
Ibad Ur Rehman Khalil
&
Baseer Ahmad
Baseer Ahmad Shah
Advocates High Court

OFFICE:- Cantonment Plaza Flat 3/B Khyber Bazar Peshawar Cell# 0301 8804841
Email:- fazalshahmohmand@gmail.com

①

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

CM No 1127 /2024
In
CM No. 147/2023
in
Service Appeal No 138/2019

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 162e1

Dated 01-10-2024

Dr Yahya Ahmad through legal heirs,

1. Adnan Aqeel
2. Kamran Danish both sons of Deceased Yahya Ahmad R/O House No 1066 near Qureshi Diary Bukhari Street, Colonial Amana Ullah Road Bara Kahu Islamabad.
3. Gulela Daughter of Deceased Yahya Ahmad, Wife of Rizwan Ullah R/O Warsak Road Peshawar.**Petitioners**

V E R S U S

1. Govt of, Khyber Pakhtunkhwa, through Chief Secretary, Civil Secretariat, Peshawar.
2. Secretary, Higher Education Department, Govt. of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
3. Director, Higher Education Department, Govt. of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.

.....**Respondents**

SUBJECT:- Application for clarification of judgment dated 07-04-2022 passed in the titled Service Appeal.

Respectfully Submitted:-

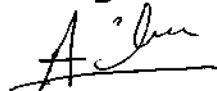

1. That the Petitioners/appellants earlier filed C.M No 147/2023 for clarification of judgment dated 07-04-2022 passed in Service Appeal No 138/2019, before this honorable Tribunal wherein notice was issued, however despite efforts thw file could not be traced hence this application.
2. That the above titled Service appeal was initially filed by Dr Yahya Ahmad (deceased) who was awarded the penalty of removal from Service with recovery of 17 months salary, against which the stated Yahya Ahmad filed the above titled Service appeal, during the pendency of which, the stated Dr Yahya Ahmad expired, where after, upon application this honorable Tribunal was pleased to substitute his legal heirs through his widow namely Mst. Razia Bibi and finally this honorable Tribunal was pleased to convert the penalty of removal from service into premature retirement w.e.f 30-08-

2017, and the recovery of 17 months salary was also apparently set aside vide judgment dated 07-04-2022, however the issue of 17 months salary was not clarified **(Copy of judgment dated 07-04-2022 is enclosed as Annexure A).**

- 3. That in the appeal both the penalties were challenged however the respondents due to stated reason have yet not processed for implementation of stated judgment, hence the impugned judgment is liable to be clarified to such extent.
- 4. That it is worth to mention that the mother of the petitioners namely Mst. Razia Bibi also expired on 30-03-2020, hence the petitioners are the only legal heirs of deceased Yahya Ahmad. **(Copy of Death Certificate is enclosed as Annexure B).**
- 5. That even it is by now settled law that recovery of benefits once paid cannot be effected, even recovery of the benefits/salaries paid to employees who were allowed out of turn promotions was declared illegal by the Apex Court. Recovery of paid benefits/salaries has been held to be illegal the Apex Court as well as honorable High Court as per the reported judgments including 2021 SCMR 4749b0, 2021 SCMR 1305, 2020 PLC CS 352 (LHC), WP No 535-A/2019 decided on 03-09-2019
- 6. That the stated Dr Yahya Ahmad has expired and the applicants are adversely suffering due to harsh financial constraints besides the valuable rights of the applicants are at stake and this honorable Tribunal has got ample powers to order accordingly.

It is therefore prayed, that on acceptance of this Application, the Judgment dated 07-04-2022 passed in Service Appeal No 138/2019, may kindly be clarified thereby declaring the recovery of 17 months salary as illegal.

Dated:-30-09-2024


Petitioners/Appellants
 Through

Fazal Shah Mohmand
Advocate,
Supreme Court of Pakistan,

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

3

CM No _____/2024

In

CM No. 147/2023

in

Service Appeal No 138/2019

Dr Yahya Ahmad.

.....Petitioner

VERSUS

Govt. & Others.

.....Respondents

AFFIDAVIT

I, Adnan Aqeel S/O Dr Yahya Ahmad R/O , House No 1066 near Qureshi Diary Bukhari Street, Colonal Amana Ullah Road Bara Kahu Islamabad, do hereby solemnly affirm and declare on oath that the contents of the accompanying **APPLICATION** are true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable Tribunal.



Adnan
DEPONENT

(4)

Amer A



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 138/2019

Date of Institution 29.01.2019
Date of Hearing 05.04.2022
Date of Decision 07.04.2022

Dr. Yahya Ahmed, Ex-Associate Professor, Govt. Degree College Tank. (Appellant)

VERSUS.

1. The Government of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa Civil Secretariat Peshawar.
2. Secretary, Higher Education Department, Govt. of Khyber Pakhtunkhwa Peshawar Civil Secretariat Peshawar.
3. Director, Higher Education Department, Govt. of Khyber Pakhtunkhwa Peshawar Civil Secretariat Peshawar.

..... (Respondents)

Present:

MR. FAZAL SHAH MOHMAND, Advocate,	---	For Appellant.
MUHAMMAD ADEEL BUTT, Additional Advocate General	---	For respondents.
KALIM ARSHAD KHAN MIAN MUHAMMAD	---	CHAIRMAN MEMBER(E)

JUDGEMENT:

MIAN MUHAMMAD, MEMBER(E):- The instant service appeal has been instituted invoking jurisdiction of Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the impugned order dated 17.10.2018 whereby major penalty of removal from service with recovery of 17 months pay was awarded to the appellant as well as appellate order dated 16.01.2019 when his departmental appeal was rejected. Both the impugned orders have

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[Signature]
Khyber Pakhtunkhwa Service Tribunal

therefore been assailed and are under scrutiny for adjudication before this Bench.

02. Brief facts, as per memorandum of appeal, are that the appellant was serving in the respondent-department since 12.09.1989 and was posted as Principal Govt. Degree College Tank, when disciplinary proceedings were initiated against him for his alleged absence from duty and drawing fraudulently salaries for doing double job simultaneously. The enquiry culminated on the imposition of major penalty of "removal from service" vide order dated 17.10.2018, which was challenged through departmental appeal. However, the same was turned down vide order dated 16.01.2019.

03. Notices were issued to the parties who submitted written replies/comments on contents of the appeal. We have heard learned counsel for the appellant as well Additional Advocate General and perused the case file with connected documents thoroughly.

04. Learned counsel for the appellant contended that the appellant had rendered about 29 years unblemished service to his credit. He submitted an application for pre-mature retirement on grounds of poor health condition, on 24.05.2015 intimating therein that he may be allowed to proceed on pre-mature retirement w.e.f 01.09.2015. However, it was not processed and remained un-responded in the respondent-department then another application was moved on 30.09.2015 requesting for pre-mature retirement w.e.f 01.10.2015. After repeated requests through formal applications when the respondent- department did not take action for unknown

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[Signature]
 Additional Advocate General
 Service Tribunal
 Bangalore

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(b)

reasons, the appellant was left with no option but to institute writ petition No. 3528-P/2017 in the Hon'ble Peshawar High Court, Peshawar. The Hon'ble Peshawar High Court, Peshawar specifically directed respondent No.2 to decide application of the appellant within fifteen days, vide order dated 22.11.2017. The departmental enquiry was thereafter initiated against the appellant on 08.01.2018 when an enquiry committee was constituted to enquire into the charge sheet/statement of allegations. Even the enquiry committee had gone through the facts and circumstances and recommended that the appellant be allowed retirement from service w.e.f 30.08.2017 and salary of 17 months be recovered from him. But the Competent Authority, instead of keeping in view the clean service record and recommendations of the enquiry committee, awarded him the major penalty of "removal from service" alongwith recovery of 17 months salary. It was further contended that the appellant had served for about 29 years in the respondent-department with clean and unblemished service record but the pensionary benefits were denied to the appellant depriving him and his family of due legal rights. The impugned order is, therefore, illegal, void ab-initio and the enquiry not conducted in a proper mode and manner depriving and negating the appellant his due rights.

05. Learned Additional Advocate General on the other hand argued that the appellant applied for LPR (365 days) w.e.f 01.04.2015 and left the college without getting himself properly relieved. Thereafter he applied for pre-mature retirement w.e.f 01.06.2015 and requested to convert LPR into leave encashment

ATT/STEO

ATTESTED

Signature
 Name of the Officer
 Designation
 Office

vide his application dated 01.06.2015. Since the appellant applied for pre-mature retirement on altered dates but the earlier requests of the appellant were turned down due to certain deficiencies. Moreover, the appellant applied for retirement on 01.09.2015 instead of 01.06.2015 vide his application dated 08.06.2015. The case of pre-mature retirement was under process in the department when the Principal Govt. Degree College Amakhel Tank sent report of his absence w.e.f. 01.04.2015 and drawing of monthly pay during the absence period un-authorizedly. Therefore, initially a preliminary enquiry was conducted and based thereon its findings a formal enquiry was conducted through the enquiry committee comprising Commissioner, DIK and Principal Government Degree College, Hayatabad Peshawar. It was further argued that it is not necessary that recommendations of the enquiry so conducted would be binding on the Competent Authority. The Competent Authority after consideration of facts, material and circumstances and after having served upon him show cause notice, finally passed the order of his "removal from service" with recovery of 17 months salary he fraudulently drawn. Since all codal formalities have been completed before awarding him the major penalty and recovery, the appeal may be dismissed.

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06. Thorough perusal and scrutiny of the record reveals that initial request of the appellant submitted three months in advance through respondent No.3 was recommended to respondent No.2 on 24.06.2015 to allow the appellant to proceed on premature retirement on 01.09.2015. It was followed by several

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reminders/requests and lastly he relinquished the charge on 30.09.2015 in a disparate manner without waiting for formal relieving order and even made endorsement to the District Accounts Officer to stop his salary from 01.10.2015. The appellant joined NCHR on 01.10.2015 where he served till 30.05.2016. During this period, he did not draw salary from the respondent department. However, on the directions of his department, he rejoined the department and drew his salary w.e.f 01.06.2016 to 31.08.2017. When he could not get his legal right materialized for pre-mature retirement despite repeated requests, he approached the Hon'ble Peshawar High court, Peshawar in writ petition and the august Peshawar High Court, Peshawar had directed respondent No.2 on 22.11.2017 to decide his application within fifteen days positively. Astonishingly, the inquiry committee was constituted on 08.01.2018 and issued him charge sheet/statement of allegations. On submission of the enquiry report the competent authority was obligated to have followed Rule-14(6) of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011. In case he did not agree with findings or noticed some lapses he was required to have recorded reasons in writing. Natural justice and directions of the august Courts emphatically demand that authority is not to be exercised in whimsical manner but in a judicious manner.

07. It is evident that the appellant was entitled for pre-mature retirement under the Pension Rules who exercised his legal right when intimated to respondent department on his sweet will to be allowed to proceed on pre-mature retirement due to health reasons

ATTORNEY GENERAL
KHYBER PAKHTUNKHWA
GOVERNMENT

9

three months in advance. It was laxity on the part of the department that his request for pre-mature retirement was lingered on turning a deaf ear to his repeated requests which compelled him to relinquish the charge on 30.09.2015 without waiting for formal approval and sought job as Member National Commission for Human Rights for his livelihood. Even the imposed penalty does not seem to be commensurate with the quantum of guilt on the face of 29 years clean service rendered in the respondent department. The appellant passed away on 29.01.2019 during pendency of the present service appeal and her widow instituted miscellaneous application for substitution as appellant in the caption appeal on 12.07.2019.

08. As a sequel to the above and considering merit of the service appeal, the penalty of removal from service is converted into pre-mature retirement w.e.f 30.08.2017 and recovery of 17 months salary for the period w.e.f 01.04.2015 to 30.09.2015 and 01.10.2016 to 30.08.2017. Costs shall follow the event. Consign.

09. Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 7th day of April, 2022.

[Signature]

(KALIM ARSHAD KHAN)
CHAMIRMAN



[Signature]

(MIAN MUHAMMAD)
MEMBER(E)

Date of Presentation of Application 20/4/22
 Number of Words 2400
 Copy Fee 26/-
 Amount 9/-
30/-
 Date of Copy 20/4/22
 Date of Copy 20/4/22

Certified to be true copy

[Signature]
 MEMBER
 Peshawar Service Tribunal
 Peshawar

ATTACHED

Annex B

10



PAKISTAN INSTITUTE OF MEDICAL SCIENCES
ISLAMABAD

786

DEATH
CERTIFICATE

DEPARTMENT ER. PIMS

HOSPITAL NO P-03/20-05594
I.D. CARD NO.

NAME Razia Bibi MEDICO-LEGAL NO. YES/NO ✓ AGE 55

FATHER/HUSBAND'S NAME Yahya Ahmed. SEX M ✓

ADDRESS 69/4 Jinnah 55 Rd. (Dh) OCCUPATION TELEPHONE

EMPLOYMENT STATUS EMPLOYED UNEMPLOYED DEPENDENT

MODE OF REFERRAL SELF ✓ G.P. HOSPITAL OTHER

ENTITLEMENT STATUS ENTITLED GRADE NON-ENTITLED PRIVATE ACADEMIC OTHER

CONSULTANT/SPECIALIST INCHARGE DR. Farooq Khan

DATE OF ADMISSION 3-3-2020 TIME OF ADMISSION 10:11 AM DATE OF DEATH 3-3-2020 TIME OF DEATH 10:11 AM

PROVISIONAL DIAGNOSIS AT THE TIME OF ADMISSION Brought Dead

PRIMARY DIAGNOSIS AT THE TIME OF DEATH Brought - Dead

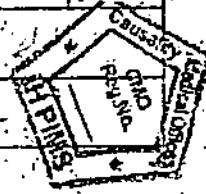
ASSOCIATED OR COMPLICATING DIAGNOSIS

OPERATIONS OR DIAGNOSTIC PROCEDURES

BODY HANDED OVER TO Son RELATIONS Mother SIGNATURE/NAME MORTUARY FOR AUTOPSY OTHER

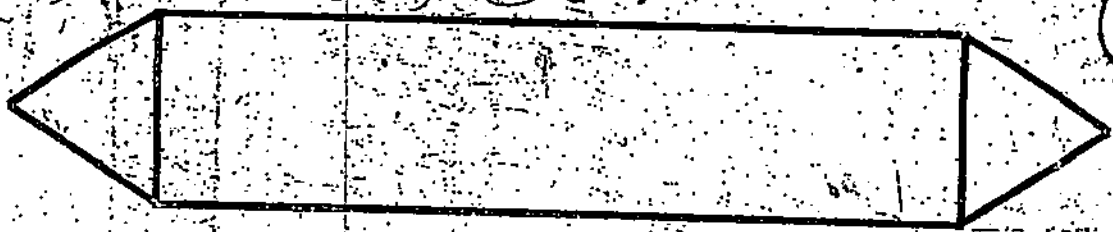
CAUSE OF DEATH: CLINICAL ON AUTOPSY 12101-9279587-5

M.O. NAME/ADDRESS



TESTED
TESTED

یعدالت عمران سندھ میں نیشنل سٹیٹس



Petitioner
2024

الحمد لله رب العالمین
بسم الله الرحمن الرحیم
الحمد لله رب العالمین

مورخہ
مقدمہ
دعویٰ
جرم

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دی وکل کاروائی متعلقہ

آج مقام لاہور کیلئے حاصل شدہ محمدہ عمارت لہور میں حلیہ سہ

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز
وکیل صاحب کو راضی نامہ کرنے کے تقرر ثالث و فیصلہ پر حلف دینے جواب دی اور اقبال دعویٰ اور
بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ از عرضی دعویٰ اور درخواست ہر قسم کی تصدیق
زرائی پر دستخط کرانے کا اختیار ہوگا۔ نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی بزمانگی
اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا محتاج ہوگا۔ از بصورت ضرورت
مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے

تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ اختیارات حاصل ہوں گے
اور اس کا بلاشبہ پرواختہ منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جائہ التوائے مقدمہ ہوں گے
سب سے وہ ہوگا۔ کوئی تاریخ پیشی مقام دورہ نہ ہو یا حد سے باہر ہو وکیل صاحب ناہند ہوں گے

کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سند ہے۔

Attested
to
Accepted

تاریخ 20

ماہ ستمبر

المرقوم

الحمد لله رب العالمین

العبد

Base

سندھ

عمران عقیل

ناصران صاحب

Guidance