



OFFICE OF THE DISTRICT

Phone: 0963-510755

HEALTH OFFICER DISTRICT TANK

Fax: 0963-510755

No. 6241

Dated 10/10/2024



To

The Registrar, Khyber Pakhtunkhwa Service Tribunal  
Peshawar

Subject: -

EXECUTION PETITION NO.759/2023 IN SERVICE APPEAL  
NO.1491/2018 MUJAHID DIN VS. GOVT. OF KPK



Respected Sir

With due admire it is submitted that in subject case the undersigned implemented the judgment of Honorable Tribunal forthwith in due letter and spirit in spite of no post of sweeper lying vacant under the control of the undersigned. Mr. Mujahid Din is adjusted against the post of "Ward Orderly" for purpose of drawl of pay till further order. Thus it is evident that the judgment of this Honorable Tribunal was implemented timely. The appellant previously a writ petition was filed against the department of undersigned before the Honorable Peshawar High Court Dera Ismail Khan Bench for release of salary, in which, the department of undersigned step-up the case of appellant and the wife of appellant was duly appointed against the post of Dai for financial compensation to the appellant. Copies of related documents for ready reference are attached. As per Govt. Health Department Notification No.SOH-(1-1)2017(Gen:Misc) dated Peshawar 16 February 2017, the Muslim Person is not entitled for the post Sweeper (Copy Annexed. In this regard the health Department KP has been filed Civil Petition Leave for Appeal (CPLA) in Honorable Supreme Court of Pakistan.

It is, therefore, most humbly requested that in light of submissions made above, this Honorable Tribunal may very graciously be please to exempt the undersigned from the execution proceeding.

  
DISTRICT HEALTH OFFICER  
DISTRICT TANK

Dated. 10/10/2024

Endst:No.and date even.

Copy to the:

1. Registrar Khyber Pakhtunkhwa Service Tribunal Peshawar.
2. DS Litigation, Health Department Khyber Pakhtunkhwa Peshawar.
3. PS to Secretary Health, Khyber Pakhtunkhwa Peshawar.
4. Section Officer (lit-II) Health Department Peshawar.
5. Litigation officer District Health Office Tank.
6. Office Assistant.

  
DISTRICT HEALTH OFFICER  
DISTRICT TANK

POF  
A  
18/10/24  
Pending Sec.



## ORDER

### HEALTH DEPARTMENT.

No. SOH-(Lit-I) 1-1/2017 (Gen: Misc)  
Dated Peshawar the 16<sup>th</sup> February, 2017

1. WHEREAS attention is invited to the minutes of the meeting dated 12.07.2006 held under the Chairmanship of Secretary Health Khyber Pakhtunkhwa circulated vide Govt of Khyber Pakhtunkhwa Health Department letter No SOH-III/1-179/06 (Class-IV) dated 25.07.2006. Extract of the decision taken in the meeting is reproduced below:-

#### Decision:-

It was decided that all the Health Institutions should promote the Muslim Sweepers against existing vacancies of Ward Orderly, Chowkidar, Mali, Dai, Aya and other Class-IV posts, on seniority basis and not to appoint Muslim Sweepers against the post of Sweepers in future.

2. AND WHEREAS the above decision was also affirmed by the Hon'ble Peshawar High Court Peshawar vide judgment dated 27.09.2013 in Writ Petition No. 293-P/2013 - Titled "Noor ul Qamar S/O Shams ul Qamar Muslim Sweeper THQ Hospital Shabqadar, District Charsadda & 9 others versus Govt of Khyber Pakhtunkhwa Health Department & others.
3. NOW THEREFORE in pursuance of the above decision taken/judgment of the Hon'ble Court, it is sufficiently clear that those who were appointed as Muslim Sweepers before 12.07.2006 are entitled for adjustment against the aforementioned posts without disturbing the quotas reserved under the Rules for appointment of Class-IV Govt. Servants and children of Retiring/Incapacitated/deceased civil servants etc. However, those who were appointed as Muslim Sweeper after 12.07.2006 in violation of the above decision/judgment are not covered under the policy.

SECRETARY TO GOVT OF KHYBER PAKHTUNKHWA  
HEALTH DEPARTMENT.

#### Endst No. & Date even.

Copy of the above is forwarded to the:-

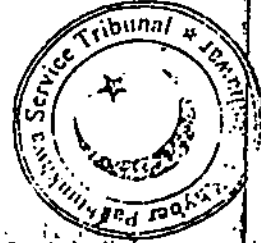
1. The Director General Health Services, Khyber Pakhtunkhwa, Peshawar.
2. The Director Health Services, FATA.
3. All District Health Officers in Khyber Pakhtunkhwa.
4. All Medical Superintendent of Hospitals in Khyber Pakhtunkhwa.
5. All Medical Directors/Hospital Directors of MTIs in Khyber Pakhtunkhwa.
6. PS to Senior Minister Health, Khyber Pakhtunkhwa.
7. PS to Secretary Health, Khyber Pakhtunkhwa.
8. Provincial President Paramedical Class-IV Employees Association, LRH Peshawar.

(B. Ijaz Ali)  
Section Officer (Lit-I)

**THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**  
**AT CAMP COURT, D.I.KHAN,**

Service appeal No. 1491/2018

Date of institution ..... 17.12.2018  
Date of decision ..... 22.09.2020



Mujahideen S/O Shams Ud Din R/O Qilla Nawab, House No.1458/82 Mohallah  
Medan Tank City, Ex-Sweeper.DHO Tank. .... (Appellant)

Versus

Government of Khyber Pakhtunkhwa through Secretary Health Peshawar and  
four others. .... (Respondents)

Present

Mr. Waqar Alam,  
Advocate

For appellant.

Mr. Usman Ghani,  
District Attorney

For respondents.

MRS. ROZINA REHMAN  
MR. ATIQ-UR-REHMAN WAZIR

MEMBER (J)  
MEMBER (E)

**ATTESTED**  
  
EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

JUDGMENT

ROZINA REHMAN, MEMBER The appellant Mujahideen impugns the  
order dated 26.07.2018 issued by District Health Officer Tank whereby  
appellant was removed from service.

2. Brief facts of the case are that the appellant was appointed in the  
Health Department as Sweeper on 07.06.2014 against the reserved post for  
disabled person. After joining the department, his monthly salary was  
stopped. He, therefore, moved an application to the concerned quarter but in  
vain. He filed writ petition in the Hon'ble Peshawar High Court and vide order  
dated 30.05.2018, directions were issued to the respondents to consider the

grievance of the appellant, who issued the impugned order dated 26.07.2018. He then filed departmental appeal which was not attended to hence present service appeal.

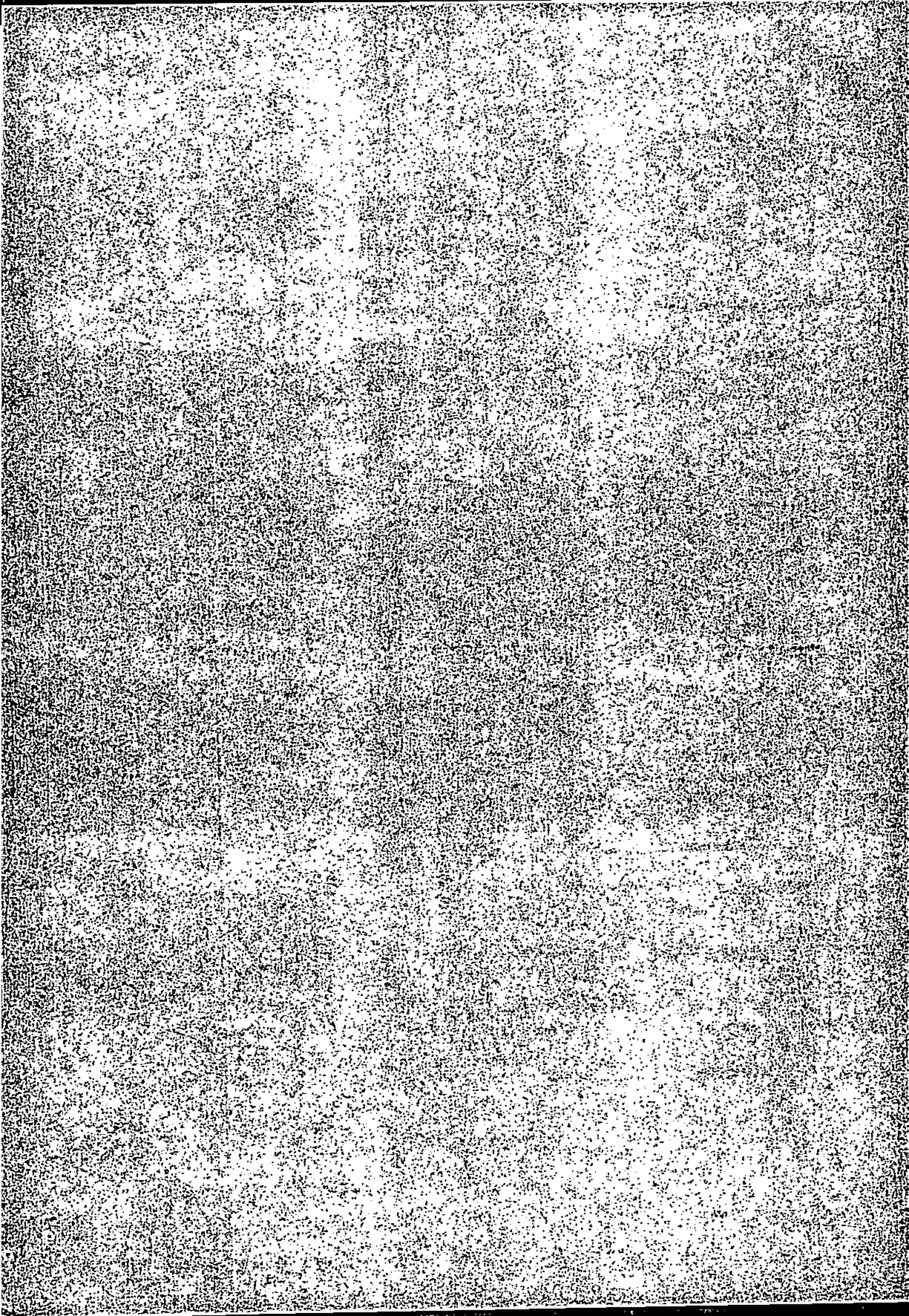
3. It was submitted by the learned counsel for appellant that the appellant being fully eligible applied for the post of Sweeper and he was accordingly selected against the reserved post for disabled person. Order of appointment was accordingly passed by competent authority and the appellant being eligible for the post performed his duties honestly but he was shocked when his services were terminated vide impugned order dated 26.07.2018. Learned counsel further contends that the appellant could not be penalized for a wrong act committed by the department. Opportunity of personal hearing was not provided to him and he was condemned unheard. He submitted that it is a clear manifestation of incompetence and slackness on the part of respondents having failed to adhere to the criteria prescribed for the recruitment in the rules. Reliance was placed on 2011 PLC (C.S) 331 and judgment of this Tribunal passed in Appeal No.874/2016.

ATTESTED  
20/11/20  
EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

Conversely, learned District Attorney submitted that sanctioned post was not available and that the appellant was not physically fit and was appointed by not fulfilling the codal formalities by the competent authority. He argued that on the request of the appellant, his wife was appointed as Dai, therefore, the appellant left his legal right of appointment in Health Department and lastly it was contended that the appointment of appellant was made against the rules and in excess of sanctioned post. Reliance was placed on judgment of this Tribunal passed in Appeal No.943/2012.

5. As per record, the present appellant was appointed against the vacant post (disabled quota) as sweeper in BPS-01 vide order dated 07.06.2014.

medical examination report was submitted. His arrival report was submitted. As per record, his attendance register is submitted. Court but also in application



medical examination by Medical Superintendent of DHQ Hospital Tank, report was submitted. He also annexed his disability certificate where-after annual report was submitted on 16.06.2014. All these facts are not disputed. As per record, he performed his duties and in this regard copy from attendance register was produced not only in the Hon'ble Peshawar High Court but also placed on file of the main service appeal. He then submitted an application before the competent authority for the release of his salary but in vain. He, therefore, filed writ petition in Peshawar High Court and it was on 13.10.2015 when an order was passed by the Hon'ble Peshawar High Court that:

"Notice has already given to respondents, however, none is present on their behalf, so the petitioner shall be paid his monthly salary."

6. Parawise comments were filed in Peshawar High Court and it was on 30.05.2018 when writ petition was disposed of in the following terms:

"In any case, there may be mutual understanding between the parties regarding issuance of appointment order of the wife of petitioner, however, no order regarding the fate of the appointment of the petitioner has so far been issued.

Accordingly, we direct the respondent No.3 to consider the grievance of the petitioner and pass an appropriate order regarding the fate of the appointment of the petitioner strictly in accordance with law within a period of 60 days from the issuance of order of this Court. This writ petition is disposed of in the above terms."

7. From the above discussion it is evident that right from the appointment order of appellant i.e. 07.06.2014 till the order by the Hon'ble Peshawar High Court dated 30.05.2018 nothing was paid to appellant in

*Handwritten signature and date:*  
22/9/10

*Handwritten signature*


shape of salary. There is no order of termination or removal from respect of appellant on record and therefore, the respondent No. directed by the Hon'ble Peshawar High Court to consider the grievance of appellant and pass an appropriate order regarding the fate of his appointment. There is nothing on file which could show that petitioner's wife was appointed by mutual understanding in between the appellant and respondent department. Nothing was produced in this regard in shape of any application on behalf of appellant or his wife that his wife may be appointed in lieu of his service and lastly it was on 26.07.2018 when the impugned order was passed whereby office order bearing No.1409-11/Dated 07.06.2014 (appointment order of appellant) was withdrawn in the interest of public on the following grounds:

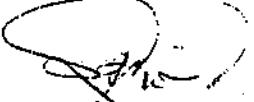
1. Not maintained fulfilling codal formalities by Ex-DHO Tank.
2. Not suitable candidate for the post of Sweeper as per Government rules.
3. Not physically fit.
4. Non availability of post of Sweeper.

8. It has been held by the superior courts in various judgments that in case illegal appointments are made then action should be taken against the authority who made these appointments instead of penalizing the employees. In the present case, as per record, he was appointed against the disabled quota. Proper disability certificate was produced before the authority and post was available, therefore, he was appointed as Sweeper against disabled quota. The fulfillment of codal formalities is the responsibility of authority. Nothing was brought on record that wife of appellant was appointed as Dai by mutual agreement with the appellant.


As a sequel to above, appeal is accepted by setting aside the impugned order dated 26.07.2018 and the appellant is reinstated in service with all back benefits. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED  
22.09.2020

  
(Attiq-ur-Rehman Wazir)  
Member (E)  
Camp Court, D.I.Khan.

  
(Rozina Rehman)  
Member (J)  
Camp Court, D.I.Khar.

**Certified to be true copy**

  
EXAMINER  
Khyber Pakhtunkhwa  
Services Tribunal  
Peshawar





**OFFICE OF THE DISTRICT  
HEALTH OFFICER DISTRICT TANK**

Phone: 0963-510755

Fax: 0963-510755



**OFFICE ORDER.**

Reference Khyber Pakhtunkhwa Service Tribunal Peshawar Camp Court D.I.Khan Judgment dated 22/09/2022 vide service appeal No.1491/2018 , Mr. Mujahidin S/O Mr. Shamas-ud-Din R/o Qila Nawab House No.1458/82 Mohallah Maidan Tank City is hereby Conditionally adjusted / posted as sweeper BPS-3 against the vacant of Ward Orderly at Type D Hospital Amakhel for drawl of pay till the decision of CPLA Filed by Govt. of Khyber Pakhtunkhwa Health Department in Supreme Court of Pakistan .

The appointment will be subject to the following term & condition.

1. He will bound to Deposit all benefit (salary) in govt. treasury as he provided surety bound on 100 Rupees stamp paper attested by oath Commissioner District Bar Tank Mr. Adnan Aziz Advocate dated 14/07/2022.
2. If he accepts the post on the above term & condition, he should be report to I/C concern within fifteen days, the offer will be cancelled if he fail to report for duty with above mentioned period.

XXXXSDXXXXXX

**DISTRICT HEALTH OFFICER  
DISTRICT TANK**

Dated 3 /10/2022

No. 7192-7205 /

Copy is forwarded to the:-

1. Registrar Khyber Pakhtunkhwa Services tribunal Peshawar camp Court D.I.Khan
2. Deputy Secretary Litigation Health Department Peshawar.
3. Director General Health Services Khyber Pakhtunkhwa.
4. Deputy Commissioner District Tank.
5. District Account Officer Tank.
6. Account Clerk.
7. I/C Concern.
8. Mr. Mujahidir S/o Mr. Shamas-ud-Din R/o Qila Nawab House No.1458/82 Mohallah Maidan Tank City.
9. Office Assistant for information.

**DISTRICT HEALTH OFFICER  
DISTRICT TANK**

JUDGMENT SHEET  
IN THE PESHAWAR HIGH COURT  
D.I.KHAN BENCH  
(Judicial Department)



W.P. No.509-D/2015

Mujahideen

Versus.

Govt. of K.P.K and others

JUDGMENT

For petitioner: Muhammad Waqar Alam Advocate.  
For respondents: Mr. Kamran Hayat Miankhel, Addl. A.G alongwith respondent No.3 in person.

Date of hearing: 30.5.2018.

ATTESTED  
*[Signature]*

\*\*\*

IJAZ ANWAR, J.- Through the instant constitutional petition, the petitioner has prayed for issuance of directions to the respondents for release of his salary.

2. Briefly stated the facts of the case are that vide order dated 07.6.2014, the petitioner was appointed as sweeper on disable quota in Health Department, District Tank. He joined his duty on 16.6.2014 and since then performing his duty, but he has not been paid any salary till date. The petitioner approach the authorities for the release of his salary but to no avail, hence, this petition.

3. Arguments heard and record perused.

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Inwaid

(D.2) Hon'ble Mr. Justice Ijaz Anwar and Hon'ble Mr. Justice Shaukat Ahmad

ATTESTED  
*[Signature]*  
EXAMINOR  
Peshawar High Court  
D.I.Khan Bench

4. The main grievance of the petitioner pertains to non payment of his monthly salaries. This Court initially on 13.10.2015, while entertaining the writ petition directed the respondents to release the monthly salary of the petitioner. This case was taken up on 29.5.2018 and in view of the insistence of the learned counsel for the petitioner, respondent No.3 was directed to appear in person and explain the non payment of salary. Today both the petitioner and respondent No.3 appeared in person.

TESTED  
Reference on

5. The petitioner was appointed as sweeper on disable quota vide order dated 07.6.2014, however, physical appearance of the petitioner shows that he is unable to perform the duty of sweeper. The respondent No.3 stated that at the relevant time since the petitioner was not in a position to perform the duties of sweeper, as such, in order to compensate him and to comply with the direction of this Court, the petitioner was asked that if he agrees they will appoint his wife as Dai (BPS-2) to which he has readily agreed. Accordingly, vide order dated 09.01.2015, his wife namely Mst. Musarat Nazeer was appointed as Dai (BPS-2) against the vacant post in CD Warroki and since then she is performing duties and is in receipt of her salaries. It was also brought to the notice of

Imran\*

(D.B) Hon'ble Mr. Justice Ijaz Anwar & Hon'ble Mr. Justice Shakeel Ahmad

TESTED  
17-08-18  
EXAMINOR  
Sindh High Court  
Sindh Aligarh Bench

-31-

the Court that since then the petitioner has never performed any duty due to the above understanding.

6. In any case, there may be mutual understanding between the parties regarding issuance of appointment order of the wife of petitioner, however, no order regarding the fate of the appointment of the petitioner has so far been issued. Accordingly, we direct the respondent No.3 to consider the grievance of the petitioner and pass an appropriate order regarding the fate of the appointment of the petitioner strictly in accordance with law within a period of 60 days from the issuance of order of this Court. This writ petition is disposed of in the above terms.

Announced:  
Dr.30.5.2018. ATTESTED

*[Handwritten signature]*

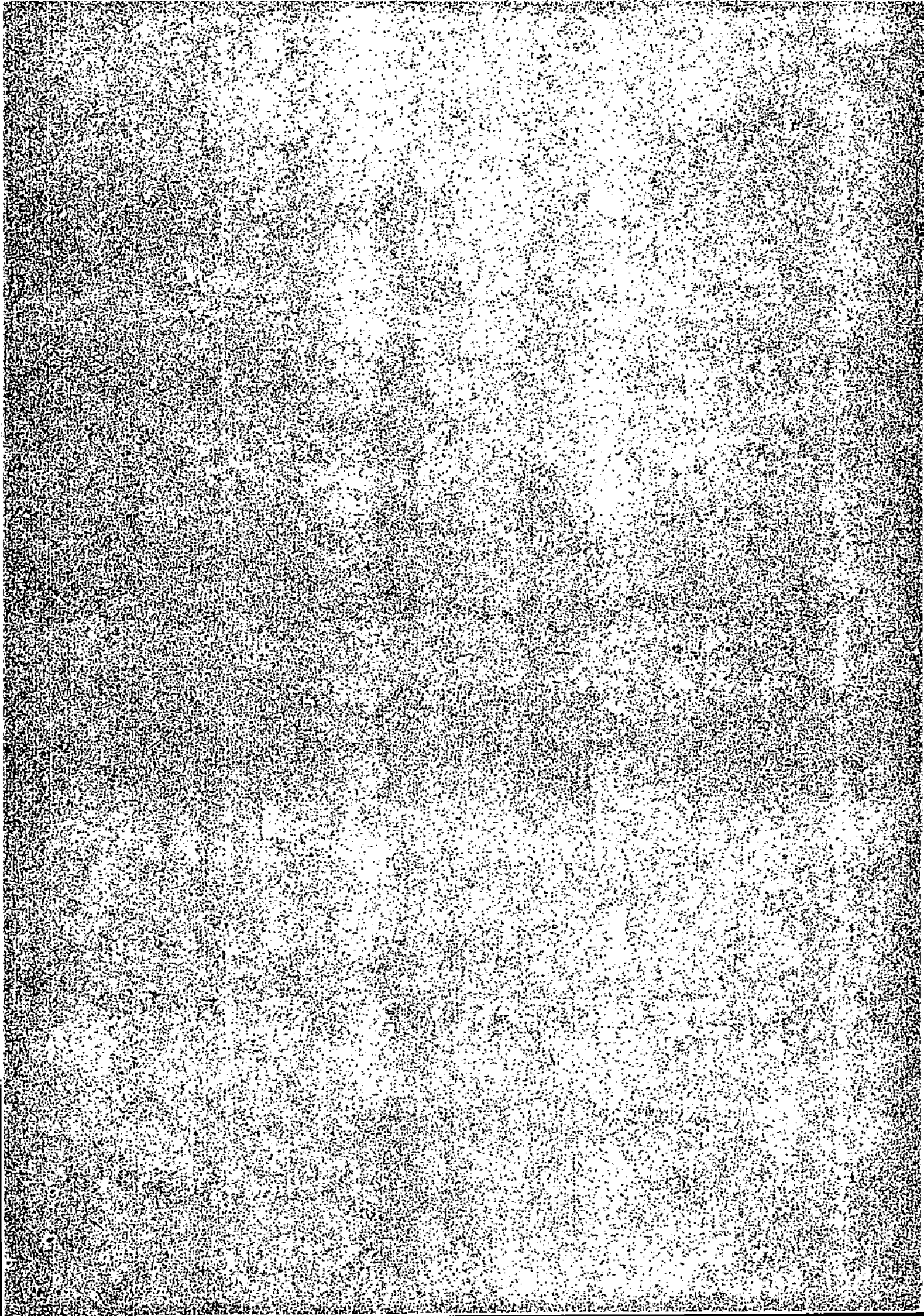
JUDGE

JUDGE

*24/11/18*

G.R.No. 2532  
Application Received on 16-08-18  
Copying Fee deposited Rs             
No of Papers 07/08  
Copying Fee 0.00  
Urgent Fee             
Total Fee 2532  
Copy ready for delivery 17-08-18  
Copy delivered on 17-08-18  
Signature of Examiner [Signature]

Certified to be true Copy  
17-08-18  
EXAMINER  
Peshawar High Court Bench No. 1, Peshawar  
Authorized Signatory



Annexure - B  
10



OFFICE OF THE DISTRICT  
HEALTH OFFICER, DISTRICT TANK

Phone 0983-510752  
Fax 0983-510755

OFFICE ORDER

Consequent upon the Direction of Honourable Court of High Court  
which D.I. Khan, regarding release of pay of Mr. Mujahideen. As there is no vacant post in that  
District Tank Tehsil & District Tank, is hereby appointed as Dal BPS-02 against the vacant post CD  
Warroki plus usual allowances as admissible under the rules and subject to revision time to  
time on the following terms and conditions:-

1. Her appointment in the Health Department is purely on temporary Basis
2. She has to join duty at your own expenses in case you wish to resign at any time one month notice will be essential or in lieu thereof one month pay shall be forfeited.
3. She will be governed by such rules and orders relating to leave, TA, Medical Charges as may be issued by the Govt. from time to time for the category of Government Servant to which you may belong.
4. If she accepts the offer on the above terms & conditions, she is directed to report to the I/C CD Warroki for duty within fifteen (15) days of the receipt of this letter, failing which your services will be terminated.
5. The appointment will be subject to the production of Medical Fitness Certificate.

XXXXXXXXXXXX  
District Health Officer  
District Tank.

4500-02

Dated Tank the 9/1/01 2015

Copy to the:-

1. District Accounts Officer, District Tank.
2. Mat. Musrat Nazeer W/O Mujahideen R/o Mohalla Maldan Cit. Tank Tehsil & District Tank.
3. I/C CD Warroki.
4. Office Assistant of this Office.

District Health Officer  
District Tank.



**OFFICE OF THE DISTRICT  
HEALTH OFFICER DISTRICT TANK**

Phone: 0963-510755

Fax: 0963-510755



**OFFICE ORDER.**

This office even order No & dated, Mr. Mujahidin S/O Mr. Shamas-ud-Din R/o Qila Nawab House No.1458/82 Mohallah Maidan Tank City is hereby Conditionally Re-Instated in services as sweeper BPS-3 with all back benefit against the vacant of Ward Orderly at Type D Hospital Amakhel for drawl of pay till the decision of CPLA Filed by Govt: of Khyber Pakhtunkhwa Health Department in Supreme Court of Pakistan.

XXXXSDXXXXXX

**DISTRICT HEALTH OFFICER  
DISTRICT TANK**

**No.7192-7205/**

**Dated 03/10/2022**

**Copy is forwarded to the:-**

1. Registrar Khyber Pakhtunkhwa Services tribunal Peshawar camp Court D.I.Khan
2. Deputy Secretary Litigation Health Department Peshawar.
3. Director General Health Services Khyber Pakhtunkhwa.
4. Deputy Commissioner District Tank.
5. District Account Officer Tank.
6. Account Clerk.
7. I/C Concern.
8. Mr. Mujahidin S/o Mr. Shamas-ud-Din R/o Qila Nawab House No.1458/82 Mohallah Maidan Tank City.
9. Office Assistant for information.

  
**DISTRICT HEALTH OFFICER  
DISTRICT TANK**

*R*