

31st Oct, 2022

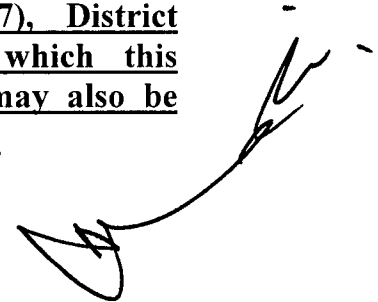
1. Learned for the petitioner present. Mr. Kabirullah Khan, Addl: AG alongwith Mr. Safiullah, Focal Person for respondents present.

02. This single order shall also dispose of executions petitions No. 171/2022 titled "Syed Mohammad Asad Halimi-vs-Health Department", No. 172/2022 titled "Muhammad Arif Hussain-vs- Health Department", No. 236/2022 titled "Tayyab Abbas-vs-Health Department", No. 533/2022 titled "Zia Ullah-vs-Health Department", No. 534/2022 titled "Manzoor Ahmad-vs-Health Department", No. 535/2022 titled " Shoaib Khan-vs-Health Department", No. 536/2022 titled "Gohar Ali-vs-Health Department" as all are regarding execution of the judgment dated 06.12.2021, passed in the appeals of the petitioners in all the petitions. The relief granted in the judgment was as under:-

"For what has gone above, all the appeals with their respective prayers are accepted as prayed for. Consequently, the impugned order is set aside and respondents are directed not to transfer the appellants from the post of Drug Inspector or Drug Analyst as the case may be. Parties are left to bear their own costs. File be consigned to record room after completion".

3. In the instant matter the prayer of the petitioner Amin Ul Haq was as under:-

"That on acceptance of this appeal the impugned notification dated 06.10.2020 may very kindly be set aside to the extent of appellant and the respondents may kindly be directed not to transfer the appellant from the post of Drug Inspector (BS-17), District Peshawar. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant".



4. Similarly in the appeal of the petitioner in execution petition No. 171/2022 titled "Syed Mohammad Asad Halimi-vs-Health Department" his prayer was as under:-

"On acceptance of this appeal the respondents may kindly be directed to pass an order in favor of the appellant in the following terms:-

- i. **Declare that the impugned notification No. SOH-III/7-262/2020 dated 30th April, 2020 is void ab initio. Therefore, the respondents may kindly be directed to withdraw the impugned notification.**
- ii. **The posting/transfer be done in a rational manner as per the prevailing laws, the appellant is redressed & to get his constitutional rights through this Hon'ble Service Tribunal.**
- iii. **That the appellant order of illegal ex-cadre transfer/posting may kindly revoked and continue his services in his own cadre i.e, Drug Inspector.**
- iv. **Grant any other relief which is deemed appropriate by this Hon'ble Service Tribunal in the circumstances of the case."**

5. In appeal of the petitioner in execution petition No. 172/2022 titled "Muhammad Arif Hussain-vs-Health Department" his prayer was as under:-

"that on acceptance of this appeal the impugned notification dated 06.10.2020 may very kindly be set aside to the extent of appellant and private respondent No.5 and the respondents may kindly be directed not to transfer the appellant from the post of Drug Analyst (BS-18), Drug testing laboratory, Peshawar. Any other remedy which this august Tribunal deems fit that may also be awarded in favour of the appellant"

6. In appeal of the petitioner in execution petition No. 236/2022 titled "Tayyab Abbas-vs-Health Department" his prayer was as under:-

"On acceptance of this appeal the respondents may kindly be directed to pass an order in favor of the appellant in the following terms:-

- i. Declare that the impugned notification No. SOH-III/7-262/2020 dated 30th April, 2020 is void ab initio. Therefore, the respondents may kindly be directed to withdraw the impugned notification.
- ii. The posting/transfer be done in a rational manner as per the prevailing laws, the appellant is redressed & to get his constitutional rights through this Hon'ble Service Tribunal.
- iii. That the appellant order of illegal ex-cadre transfer/posting may kindly revoked and continue his services in his own cadre i.e, Drug Inspector.
- iv. Grant any other relief which is deemed appropriate by this Hon'ble Service Tribunal in the circumstances of the case."

7. In appeal of the petitioner in execution petition No. 533/2022 titled "Zia Ullah-vs-Health Department" his prayer as under:-

"That on acceptance of this appeal the impugned notification dated 06.10.2020 may very kindly be set aside to the extent of appellant and the respondents may kindly be directed not to transfer the appellant from the post of Drug Control Unite, Temargara, District Dir Lower. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant".

8. In appeal of the petitioner in execution petition No.534/2022 titled "Manzoor Ahmad-vs-Health Department" his prayer as under:-

"That on acceptance of this appeal the impugned notification dated 06.10.2020 may very kindly be set aside to the extent of appellant and the respondents may kindly be directed not to transfer the appellant from the post of Drug Inspector (BS-17), District

Peshawar. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant".

9. In appeal of the petitioner in execution petition No. 535/2022 titled "Shoaib Khan-vs-Health Department", his prayer as under:

"That on acceptance of this appeal the impugned notification dated 06.10.2020 may very kindly be set aside to the extent of appellant and the respondents may kindly be directed not to transfer the appellant from the post of Drug Inspector (BS-17), District Mardan. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant".

10. In appeal of the petitioner in execution petition No. 536/2022 titled "Gohar Ali-vs-Health Department" his prayed as under:

"That on acceptance of this appeal the impugned notification dated 11.01.2021 may very kindly be set aside to the extent of appellant and the respondents may kindly be directed not to transfer the appellant from the post of Drug Inspector (BS-17), District Swat. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant".

11. The prayer in the instant petition is to initiate contempt proceedings and to implement the judgment of this Tribunal while in the connected execution petitions No.171/2022, 172/2022 and 236/2022, the prayers are to implement the judgment in letter & spirit.

12. During the pendency of the above petitions, respondents, in compliance with the judgment dated 06.12.2021, in Service Appeal No.16578/2020, produced a copy of Notification No.SOH-III/7-262/2022(Drug Inspector) dated 22.08.2022, vide which the petitioners were dealt with in the following manner:-

S.No	Name of Officers & Designation	From	To	Remarks
1.	Syed Muhammad Asad Halimi Chief Drug Inspector BS-19	Chief Pharmacist (BS-19), KDA, Kohat	Chief Drug Inspector (BS-19), District D.I. Khan	Against the vacant post
2.	Tayyab Abbas Chief Drug Inspector BS-19	Chief Pharmacist (BS-19) Services Hospital Peshawar	Chief Drug Inspector (BS-19), District Abbottabad	Against the vacant post.
3.	Amin ul Haq Senior Drug Inspector (BS-18)	Already under report to DG.DC&PS on account of disciplinary proceeding under E&D Rules, 2011		
4.	Arif Hussain Analyst (BS-18)	Senior Pharmacist (BS-18), Services Hospital, Peshawar	Drug Analyst (BS-18), Drug Testing Laboratory (DTL), Peshawar.	Against the vacant post.
5.	Manzoor Ahmad, Drug Inspector (BS-17)	Drug Inspector (BS-17), District Peshawar	Drug Inspector (BS-17), District 17, District, Dir Lower.	Against the vacant post
6.	Zia Ullah Drug Inspector BS-17	Drug Inspector (BS-17) District Dir, Lower.	Drug Inspector (BS-17) District Bannu	Against the vacant post
7.	Muhammad Shoaib Khan Drug Inspector (BS-17)	Already under report to DG, DC&PS on account of disciplinary proceedings under E&D Rules, 2011.		
8.	Shazada Mustafa Anwar Drug Inspector BS-17	Waiting for posting at Directorate of Drug Control & Pharmacy	Drug Inspector (BS-17) District Karak	Against the vacant post.

			Services, Khyber Pakhtunkhw a, Peshawar		
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13. The above petitions were taken up for decision on 14.09.2022 when the learned counsel for the petitioners informed the Tribunal that he had filed four (4) more execution petitions on 14.09.2022, so it was deemed appropriate that let all the petitions be decided together and, therefore, the above petitions were adjourned for 31.10.2022 for decision of the same.

14. In the newly instituted execution petitions No.533/2022, 534/2022, 535/2022 and 536/2022, the petitioners prayed that the judgment might be implemented in true letter and spirit without wasting the precious time of the Tribunal as well as to avoid unnecessary rounds of litigation.

It is, however, urged in paragraph 6 of all the newly filed execution petitions that the respondent/department submitted compliance notification issued on 22.08.2022, which was totally in defiance of the judgment whereas proper compliance of the judgment as desired by the Tribunal was to be made and for which basically the appeals were accepted as prayed for.

15. The main stress of the learned counsel for the petitioners was that as all the appeals with their respective prayers were accepted as prayed for, therefore, the petitioners

could not be transferred from the stations they were already posted.

16. It is cardinal principle that while judging the intention of a document, the construction of the document has to be seen and for the purpose not any portion but the whole/entire document has to be seen. Keeping in view the above principle, paragraph 10 of the judgment is worth reproduction, which reads as under:

"10. From the divergent pleadings of parties particularly discussed herein before, the main question wanting determination is, whether vice versa transfer of the holders of the post of Drug Inspector/Analyst and of Pharmacist is reasonably doable?"

17. The rest of the paragraphs of the judgment have answered the above, one and the only formulated question/point for determination in detail and the finding was in negative, which by all means very clearly speaks that the only issue before the Tribunal was whether vice versa transfer of the holders of the post of Drug Inspector/Analyst and of Pharmacist is reasonably doable and that was decided in negative. Thus by no stretch of imagination it could be inferred from the judgment that it also intended not to transfer the petitioners from one station to another. True that all the appeals with their respective prayers were accepted as prayed for but with specific and quite clear resultant consequence of setting aside the impugned order and not transferring the appellants from the post of DRUG INSPECTOR or DRUG

ANALYST as the case may be. This condition of the order, after acceptance of the appeals, has restricted the relief to the above extent only i.e. the Drug Inspectors should remain posted as Drug Inspectors while Drug Analyst should remain posted as such etc and none of the two or of any other category could be given posting against any other category. Therefore, this Tribunal, while executing the judgment and sitting as executing court, cannot extend the relief by giving that any other meaning or import, especially, to extract the meaning that the petitioners could not be transferred from the stations they are already posted.


18. There is no denying the fact that the executing court cannot go beyond the terms of the decree/order/judgment it stands for and it cannot modify these terms or deviate from them in exercise of its power of execution rather it has to execute/implement the judgment/decreed/order strictly in the terms of the same.

19. In the above state of affairs when we see the notification dated 22.08.2022, issued in compliance of the judgment, it appears that the judgment had been implemented in its letter and spirit and we cannot allow anybody to exploit the terms by making self-beneficial interpretation and to get any relief which was not granted in the judgment. Therefore, the contention of the petitioners that they could not be transferred from the stations they were previously posted, is not well founded.

20. It was also argued by the petitioners Amin ulHaq and Muhammad Shoab that instead of compliance of judgment, the department did not give them any posting because of some disciplinary proceedings. It is in this regards observed that in the appeals of the above two petitioners there is no mention of the disciplinary proceedings nor the same were discussed anywhere in the judgment. Therefore, the Tribunal, in the respective execution petitions of the petitioners, cannot direct the department not to take any disciplinary action against them. Needless to say that the above named two petitioners have every right to separately challenge the disciplinary proceedings, which they might have and if they did not already challenge those. In case they challenge the same now, those would definitely have to be decided subject to all limitations and restrictions and in accordance with law.

Copy of this order to be placed on all the connected matters. Con sign.

21. *Pronounced in open court in Peshawar and given under my hand and seal of the Tribunal on this 31st day of October, 2022.*


(Kalim Arshad Khan)
Chairman