

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 4923/2020

Date of Institution ... 18.03.2020

Date of Decision ... 20.01.2022

Tanveer S/O Muhammad Amin, R/o Pir Kot Nowshera, EX-Naib Qasid, Govt. Middle School Pir Kt, Abbotabad. ... (Appellant)

VERSUS

District Education Officer (M) Abbottabad and others. ... (Respondents)

Arbab Saiful Kamal,
Advocate ... For Appellant

Muhammad Adeel Butt,
Additional Advocate General ... For respondents

AHMAD SULTAN TAREEN ... **CHAIRMAN**
ATIQ-UR-REHMAN WAZIR ... **MEMBER (EXECUTIVE)**

JUDGMENT

ATIQ-UR-REHMAN WAZIR MEMBER (E):-

Brief facts of the

case are that the appellant, while serving as Naib Qasid in Education Department was charged in FIR U/Ss 376/342/109 PPC Dated 22-12-2016 and was arrested. While in judicial custody, the appellant was proceeded departmentally and was ultimately awarded with major punishment of removal from service vide order dated 02-10-2017. The appellant was acquitted of the criminal charges vide judgment dated 10-10-2019, thereafter, the appellant filed departmental appeal, which was rejected vide order dated 17-02-2020, hence the instant service appeal with prayers that the impugned orders dated 02-10-2017 and 17-02-2020 may be set aside and the appellant may be re-instated in service with all back benefits.

02. Learned counsel for the appellant has contended that the appellant has not been treated in accordance with law, as the appellant was behind the bars and disciplinary proceedings were conducted against him in his absence, hence the appellant was kept deprived of the opportunity to defend his cause; that the appellant was also kept deprived of the opportunity to record statements of witnesses in his presence as well as no opportunity was afforded to the appellant to cross-examine such witnesses; that the appellant has been acquitted of the same charges by the competent court of law, upon which he was removed from service departmentally, hence there remains no ground to maintain such penalty.

03. Learned AAG for the respondents has contended that the appellant was charged for abetment under section 109PPC of offences 342 and 376PPC; that the appellant was properly proceeded against and charge sheet/statement of allegation was served upon him in jail; that proper inquiry was conducted but the appellant did not opt to be associated in the inquiry proceeding; that after fulfillment of all codal formalities, the appellant was removed from service as per law and rule; that the appellant was acquitted of the criminal charges giving him benefit of doubt, but it is a well settled legal proposition that criminal and departmental proceedings can run side by side without affecting each other, hence his acquittal from criminal charges does not affect his departmental proceedings; that the impugned order of removal from service was issued on 02-10-2017, whereas the appellant filed departmental appeal on 13-11-2019, which is badly barred by time.

04. We have heard learned counsel for the parties and have perused the record.

05. Record reveals that the appellant being involved in case FIR U/Ss 376/342/109PPC Dated 22-12-2016, was proceeded departmentally in absentia as the appellant was in jail and was released after acquittal from the criminal charges vide judgment dated 10-10-2019, but before his release from jail, the

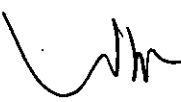
appellant was removed from service on 10-02-2017, hence the appellant in the first place was not afforded opportunity of defense, as the appellant was not associated with proceedings of the departmental inquiry, as he was proceeded against in absentia. To this effect, the Supreme Court of Pakistan in its judgment reported as 2008 SCMR 1369 has 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, otherwise civil servant would be condemned unheard and major penalty of dismissal from service would be imposed upon him without adopting the required mandatory procedure, resulting in manifest injustice.

06. Being involved in a criminal case, the respondents were required to suspend the appellant from service under CSR-194, which specifically provides for cases of the nature, hence the respondents were required to wait for the conclusion of the criminal case, but the respondents hastily initiated departmental proceedings against the appellant and removed him from service before conclusion of the criminal case. It is a settled law that dismissal of civil servant from service due to pendency of criminal case against him would be bad unless such official was found guilty by competent court of law. Contents of FIR would remain unsubstantiated allegations, and based on the same, maximum penalty could not be imposed upon a civil servant. Reliance is placed on PLJ 2015 Tr.C. (Services) 197, PLJ 2015 Tr.C. (Services) 208 and PLJ 2015 Tr.C. (Services) 152.

07. The criminal case was decided vide judgment dated 10-10-2019 and the appellant was exonerated of the charges as well as released from jail. In a situation, if a civil servant is dismissed from service on account of his involvement in criminal case, then he would have been well within his right to claim reinstatement in service after acquittal from that case. Reliance is placed on 2017 PLC (CS) 1076. In 2012 PLC (CS) 502, it has been held that if a person is acquitted of a charge, the presumption would be that he was innocent. Moreover, after acquittal of the appellant in the criminal case, there was no material

available with the authorities to take action and impose major penalty. Reliance is placed on 2003 SCMR 207, 2002 SCMR 57 & 1993 PLC (CS) 460. It is a well-settled legal proposition that criminal and departmental proceedings can run side by side without affecting each other, but in the instant case, we are of the considered opinion that the departmental proceedings were not conducted in accordance with law. The authority and the inquiry officer badly failed to abide by the relevant rules in letter and spirit. The procedure as prescribed had not been adhered to strictly. All the formalities had been completed in a haphazard manner, which depicted somewhat indecent haste. Moreover, the appellant was acquitted of the same charges by the criminal court; hence, there remains no ground to further retain the penalty so imposed.

08. On the question of limitation contention of the appellant, hold force, as the appellant filed departmental appeal just after acquittal from criminal charges.

 In a situation, if a civil servant is dismissed from service because of his involvement in criminal case, then he would have been well within his right to claim re-instatement in service after acquittal from that case. Reliance is placed on 2017 PLC (CS) 1076. The august Supreme Court of Pakistan in its judgment reported as PLD 2010 SC 695 has held that it would have been a futile attempt on part of civil servant to challenge his removal from service before earning acquittal in the relevant criminal case. It was unjust and oppressive to penalize civil servant for not filing his departmental appeal before earning his acquittal in criminal case, which had formed the foundation for his removal from service. Moreover, it is a well settled legal proposition that decision of cases on merit is always encouraged instead of non-suiting litigants on technical reason including ground of limitation, Reliance is placed on 2004 PLC (CS) 1014 and 1999 SCMR 880, where as the appellant has a strong case on merit and the respondents have no arguments except limitation. In view of situation, the delay so occurred is condoned. We are


of the considered opinion that absence of the appellant cannot be counted as absence, as the appellant was behind the bars and facing criminal proceedings.

09. We are of the considered opinion that the appellant has not been treated in accordance with law and was removed from service without adhering to the method prescribed in law. Now the appellant has been acquitted of the same charges, upon which he was dismissed, has vanished away in view of his acquittal. In circumstance, we are inclined to accept the instant appeal. The impugned orders are set aside and the appellant is re-instated in service with all back benefits. Parties are left to bear their own costs.

ANNOUNCED

20.01.2022


(AHMAD SULTAN TAREEN)
CHAIRMAN


(ATIQ-UR-REHMAN WAZIR)
MEMBER (E)

ORDER

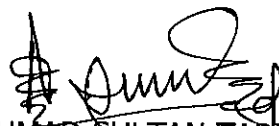
20.01.2022


Learned counsel for the appellant present. Mr. Muhammad Adeel Butt, Additional Advocate General for respondents present. Arguments heard and record perused.

Vide our detailed judgment of today, separately placed on file, we are inclined to accept the instant appeal. The impugned orders are set aside and the appellant is re-instated in service with all back benefits. Parties are left to bear their own costs.

ANNOUNCED

20.01.2022


(AHMAD SULTAN TAREEN)
CHAIRMAN


(ATIQ-UR-REHMAN WAZIR)
MEMBER (E)

23.06.2021

Miss. Uzma Syed, Advocate, junior of learned counsel for the appellant present.

Mr. Muhammad Adeel Butt, learned Additional Advocate General for respondents present.

Junior of learned counsel for the appellant seeks adjournment on the ground that learned senior counsel for appellant is busy before the august Peshawar High Court, Peshawar. Adjourned. To come up for arguments on 29.09.2021 before D.B.



(Rozina Rehman)
Member(J)



Chairman

29-9-21


DB is on Tour case to come up
For the same on Dated. 20/11/22

Reeder

19.02.2021

Counsel for the appellant and Addl. AG for the respondents present.

Learned counsel requests for time to submit rejoinder. To come up for arguments on 25.03.2021. The appellant may submit rejoinder on or before the date fixed.


(Mian Muhammad)
Member(E)


Chairman

25.03.2021

Counsel for the appellant present. Mr. Riaz Khan Painsakhel learned Asst. AG for respondents present.

The Worthy Chairman is on leave, therefore, the case is adjourned to 23.06.2021 for arguments before D.B.


(Atiq-Ur-Rehman Wazir)
Member (E)

29.07.2020

Counsel for the appellant and Addl. AG alongwith for the respondents present.

Learned AAG seeks time to procure written reply/comments from the respondents. Adjourned to 21.09.2020 on which date the requisite reply/comments shall positively be furnished.



Chairman

21.09.2020

Junior to counsel for the appellant and Addl. AG alongwith Irfan Ali, Assistant for the respondents present.

Representative of the respondents has furnished joint parawise comments which are made part of the record. The matter is assigned to D.B for arguments on 07.12.2020. The appellant may furnish rejoinder, within one month, if so advised.




Chairman

07.12.2020

Junior to counsel for the appellant and Mr. Muhammad Jan, learned Deputy District Attorney for respondents present.

Due to general strike of the bar, the matter is adjourned to 19.02.2021 for hearing before D.B.



(Atiq-Ur-Rehman Wazir)
Member (E)



Chairman

12.06.2020

Counsel for the appellant present. Preliminary arguments heard and case file perused. The appellant was appointed as Naib Qasid vide office order dated 20.06.2015. That FIR No. 282 dated 26.12.2016 Police Station Dungagali U/S 376/342/109 PPC was registered against the appellant and arrested by the Police. On the other hand enquiry proceedings were initiated against the appellant during the period of confinement. That in pursuance of the said enquiry report, appellant was removed from service vide impugned order dated 02.10.2017. On acquittal of the charge by Peshawar High Court vide its judgment dated 10.10.2019 in Cr. Appeal No. 197-A/2018, the appellant preferred departmental appeal against the impugned order on 13.11.2019 which was rejected on 17.02.2020, hence the instant service appeal on 18.03.2020. Learned counsel for the appellant further argued that the appellant has not been treated according to law and rules because neither charge sheet/statements of allegation, show cause notice have been issued nor afforded an opportunity of personal hearing to the appellant which is a glaring violation of natural justice and Government Servants (Efficiency and Discipline) Rules 2011. The learned counsel further contended that the Appellant has been condemned unheard as no procedure and course of law has been followed by the respondents.

Points urged need consideration. Service appeal is admitted subject to all legal objections. Appellant is directed to deposit security and process fee within 10 days, thereafter, notices be issued to the respondents for written reply/comments for 29.07.2020 before S.B.

Appellant Deposited
Security & Process Fee
24/6/20

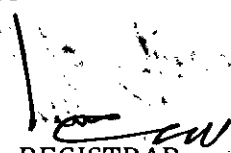

(MAIN MUHAMMAD)
MEMBER

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 4923 /2020


S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	01/06/2020	<p>The appeal of Mr. Tanveer resubmitted today by Mr. Saadullah Khan Marwat Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p> <p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>12/06/2020</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
2-		

The appeal of Mr. Tanveer son of Muhammad Amin Ex-Naib Qasid GMS Pir Kot, Abbottabad received today i.e. on 18.03.2020 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Annexures of the appeal may be attested.
- 2- Annexures of the appeal may be flagged.
- 3- Index of the appeal may be prepared according to the Khyber Pakhtunkhwa Service Tribunal rules 1974.
- 4- Copy of judgment dated 23.10.2018 mentioned in para-5 of the memo of appeal is not attached with the appeal which may be placed on it.
- 5- Five more copies/sets of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.

No. 967 /S.T,

Dt. 18/3 /2020.


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Saadullah Khan Marwat Adv. Pesh.

Sir

Re-submitted after completion.



BEFORE THE KPK SERVICE TRIBUNAL PESHAWARS.A. No. 4923/2020

Tanveer

versus

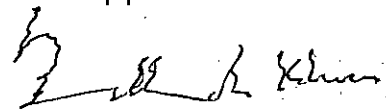
DEO (M) & Others

INDEX

S. No.	Documents	Annex	P. No.
1.	Memo of Appeal		1-3
2.	Appointment order dated 20-06-15	"A"	4-9
3.	FIR, dated 22-12-2016	"B"	10-11
4.	Inquiry Report dated 22-02-2017	"C"	12-16
5.	Removal order dated 02-10-2017	"D"	17
6.	Conviction / Judgment by Learned Session Judge dated 23-10-2018	"E"	18-39
7.	Judgment of HC dated 10-10-2019	"F"	40-55
8.	Departmental appeal	"G"	56
9.	Rejection order dated 17-02-2020	"H"	57

Appellant

Through



Saadullah Khan Marwat
Advocate
21-A, Nasir Mansion,
Shoba Bazaar, Peshawar
Ph: 0300-5872676
0311-9266609

Dated: 17-03-2020

BEFORE KPK SERVICE TRIBUNAL PESHAWAR

S.A No. 4923/2020

Khyber Pakhtukhwa
Service Tribunal

Diary No. 2294

Dated 18/3/2020

Tanveer S/O Muhammad Amin,

R/O Pir Kot Nowshera,

Ex - Naib Qasid, Govt. Middle

School Pir Kot, Abbottabad Appellant

VERSUS

1. District Education Officer (M),
Abbottabad.
2. Director, Elementary & Secondary
Education, KP, Peshawar.
3. Secretary, Government of KP, Elementary
& Secondary Education Department,
Peshawar. Respondents

⇔<=>⇔<=>⇔<=>⇔<=>⇔

**APPEAL U/S 4 OF SERVICE TRIBUNAL ACT, 1974
AGAINST OFFICE ORDER NO. 10625-30 DATED 02-
10-2017 OF R. NO. 01, WHEREBY APPELLANT WAS
REMOVED FROM SERVICE OR OFFICE ORDER NO.**

Filed to-day 729-33 DATED 17-02-2020 OF R. NO. 02, WHEREBY

DEPARTMENTAL APPEAL OF APPELLANT WAS

REJECTED:

⇔<=>⇔<=>⇔<=>⇔<=>⇔

Respectfully Sheweth:

1. That appellant was appointed as Naib Qasid on 20-06-2015 along with numerous others Class-IV employees on regular basis and his name was figured at S. No.77. (Copy as annex "A")

Re-submitted to-day
and filed.

Registrar
11/6/2020

2. That appellant was serving the department to the best of his ability and without any complaint, when FIR No. 282 dated 22-12-2016 Police Station Dungagali U/S 376/342/109 PPC was registered by complainant Mst. Tahira Sarfaraz to the effect that appellant facilitated Hashim Khan Theology Teacher to commit zina with her by use of force. (Copy as annex "B")
3. That appellant was arrested in the case, yet during confinement enquiry proceedings were initiated against appellant as well as Muhammad Hashim TT and both were recommended for major penalty of removal from service without associating him with the same. (Copy as annex "C")
4. That in pursuance of the said enquiry report, appellant was removed from service by R. No. 01 vide order dated 02-10-2017. At the same time, appellant was behind the bar and the said order was not served upon him. (Copy as annex "D")
5. That on the other hand, trial into the matter was initiated by Learned Session Judge, Abbottabad and after recording evidence in pro & contra in the case, appellant was convicted and sentenced with imprisonment for one year and fine of Rs. 10,000/- vide judgment dated 23-10-2018. (Copy as annex "E")
6. That thereafter appellant preferred appeal to the Peshawar High Court, Circuit Bench Abbottabad for acquittal of the baseless charges along with Interim Relief which was allowed and the main case came up for hearing on 10-10-2019 and as a result, he was acquitted by the hon'ble Court vide judgment dated 10-10-2019. (Copy as annex "F")
7. That after acquittal, appellant submitted departmental appeal before R. No. 02 for reinstatement in service which was rejected on 17-02-2020, which was received on 27-02-2020. (Copies as annex "G" & "H")

Hence this appeals, inter alia, on the following grounds:


GROUNDS:


- a. That the matter was not taken to task as per the mandate of law as neither any Show Cause Notice, Charge Sheet and Statement of Allegations was served upon appellant prior to removal from service.
- b. That enquiry, being mandatory, was not conducted as per the mandate of law as no statement of any witnesses(s) was recorded in presence of appellant nor appellant was afforded opportunity of cross examination what to speak of self defense.
- c. That appellant was behind the bar and the department was well aware of the same but no heed was paid to contact appellant in Jail either to record his evidence or to serve him with any Charge Sheet, Statement of Allegation or Show Cause Notice.
- d. That ex-party action was taken in the matter which is against the mandate of law.
- e. That as soon as appellant was acquitted form the baseless charges, then the department was legally bound to reinstate him in service but with malafide such action was not taken in the matter.

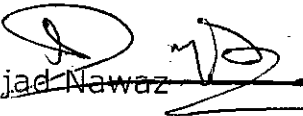
It is, therefore, most humbly prayed that on acceptance of the appeal, orders dated 02-10-2017 and 17-02-2020 of the respondents be set aside and appellant be reinstated in service with all consequential benefits, with such other relief as may be deemed proper and just in circumstances of the case.

Through

Tanveez
Appellant


Saadullah Khan Marwat


Arbab Saiful Kamal

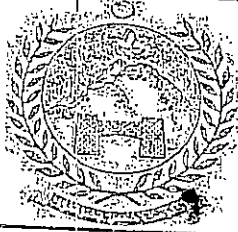

Amjad Nawaz
Advocates

Dated: 17-03-2020

09/12/14

A 4

OFFICE OF THE DISTRICT EDUCATION OFFICER (M) ABBOTTABAD



Phone: 0992-9310102

Email: edo.education.atd@gmail.com

APPOINTMENT

Consequent upon recommendation of the Departmental Selection Committee, the following candidates are hereby appointed as Class-IV in BPS-1 (Rs.4800-150-9300) PM plus usual allowances as due admissible under the rules in the schools noted against their names in the interest of public service with effect from the date of their taking over charge on the terms and conditions given below:-

Open Merit


S.#	Name of Candidate.	Father's Name	Post	Place of Posting	Remarks
1	Inran Khan	Muhammad Farooq	Sweeper	GHS Sheikhu Bandi	Ag: V.Post
2	Azeem Murad	Abdul Rasheed	N/Qasid	GCMSS Abbottabad	Ag: V.Post
3	Sulcjan Khan	Noor Gul Khan	L/Attd:	GHS No.4 ATD	Ag: V.Post
4	Muhammad Wajabat	Khursheed Azam	Chowk:	GHSS Nawanshehr	Ag: V.Post
5	Shoaib Khan	Khan Afsar Khan	Chowk:	GPS Tara	Ag: V.Post
6	Muhammad Iqbal	Gul Zeb	Chowk:	GPS Lower Danna	Ag: V.Post
7	Qasim Shah	Sabir Hussain Shah	Chowk:	GPS Gurdawara Gali	Ag: V.Post
8	Ehsan Ullah	Sardar Shoukat Ali	Chowk:	GPS Chooria Colony (Gati Maira)	Ag: V.Post
9	Almas Khan	Abdul Hamid	N/Qasid	GHS Mirpur	Ag: V.Post
10	Aftab Ahmed	Abdul Ghani	N/Qasid	GHS Nakar Khan Kalan	Ag: V.Post
11	Muhammad Shakeel	Sain Muhammad	Sweeper	GHS Pattan Khurd	Ag: V.Post
12	Muhammad Iqbal	Ghulam Mustafa	N/Qasid	GHS Hadora Bandi	Ag: V.Post
13	Muhammad Waqas	Ghulam Rabbani	Sweeper	GMS Pall	Ag: V.Post
14	Muhammad Liaqat	Ghulam Rabbani	N/Qasid	GMS Pall	Ag: V.Post
15	Muhammad Farooq	Muhammad Yousaf	Chowk:	GPS Doga	Ag: V.Post
16	Muhammad Dawood	Muhammad Imtiaz	Chowk:	GPS Masooma	Ag: V.Post
17	Muhammad Raqeeb	Muhammad Adeel	Chowk:	GPS Choloota	Ag: V.Post
18	Shoukat Mehmood	Muhammad Sadiq	Chowk:	GPS Hatrol	Ag: V.Post
19	Muhammad Zulqar	Muhammad Nawaz Khan	Chowk:	GPS Hotrary	Ag: V.Post
20	Muhammad Jehangir	Bashir Ahmed	Chowk:	GPS Jandala	Ag: V.Post

A. A. A.

21	Muhammad Nawab	Muhammad Ismail	Chowk:	GPS Riali	Ag: V.Post
22	Muhammad Waseem Shakoor	Abdul Shakoor	Chowk:	GPS Nakhtar	Ag: V.Post
23	M. Sohail Haroon	Muhammad Haroon	Chowk:	GPS Sirla	Ag: V.Post
24	Abid Hussain	Muhammad Akram	Chowk:	GPS Khui Bagla	Ag: V.Post
25	Muhammad Shahid Ali	Ali Khan	Chowk:	GPS Sumbli	Ag: V.Post
26	Waseem Khan Abbasi	Ali Khan Abbasi	Chowk:	GPS Garmal	Ag: V.Post
27	Muhammad Bilal	Muhammad Irshad	Chowk:	GPS Saranda	Ag: V.Post
28	Muhammad Shafqat	Muhammad Ayub	Chowk:	GHS Sarhan	Ag: V.Post
29	M. Kamran	Ali Mardan	Chowk:	GPS Gali Meeran	Ag: V.Post
30	Naveed Khan	Chanzeb Khan	Chowk:	GHS Banda Pir Khan	Ag: V.Post
31	Muhammad Adnan Khan	Muhammad Iqbal Khan	L/Atddd:	GHS Pawa	Ag: V.Post
32	Muhammad Saeed	Mir Afzal	N/Qasid	GMS Hazeera	Ag: V.Post
33	Muhammad Taj	Kamal Din	Chowk:	GPS Thati Sharif	Ag: V.Post
34	Nabeel Ahmed	Qazi Wahced ud Din	Chowk:	GPS Gehal Qazian	Ag: V.Post
35	Asad Mehmood	Tariq Mehmood	Chowk:	GPS Kakote	Ag: V.Post
36	Malik Atif	Lal Khan	Chowk:	GPS Soban Gali	Ag: V.Post
37	Muhammad Saqib	Khoai Dad	Chowk:	GPS Gojri	Ag: V.Post
38	Muhammad Mehrban	Malik Aman	Chowk:	GPS Kokhar	Ag: V.Post
39	Hafeez	Mashal	Chowk:	GPS Kamar Bandi	Ag: V.Post
40	Muhammad Adil Khan	Nazeer Khan	Chowk:	GPS Makri	Ag: V.Post
41	Methab Khan	Akram Khan	Chowk:	GPS Upper Salhad	Ag: V.Post
42	Muhammad Amir	Bashir Ahmed	Chowk:	GPS Kangar Payeen	Ag: V.Post
43	Ziafat Hussain	Muhammad Azeem	Chowk:	GPS Tandara	Ag: V.Post
44	S.Abrar Shah	Zahoor Shah	Chowk:	GPS Sherby Syedan	Ag: V.Post
45	Zafar Hussain	Ali Hussain	Chowk:	GHS Sherwan	Ag: V.Post
46	Majid Ali	Taj Muhammad	Chowk:	GPS Sial	Ag: V.Post
47	Sajjad Ahmed	Abdul Rashid	Chowk:	GPS Soya Gali	Ag: V.Post
48	Muhammad Zaheer	Muhammad Nazeer	N/Qasid	GMS Bandi Matrach	Ag: V.Post
49	Faizan Ahmed	Dur e aman	Chowk:	GPS Ban Sari	Ag: V.Post
50	Muhammad Zareen	Muhammad Miskeen	Chowk:	GPS Ratta	Ag: V.Post
51	Muhammad Maqsood	Muhammad Zaman	Chowk:	GPS Kayian	Ag: V.Post
52	Umair	Muhammad Sabir	Chowk:	GHS Chamunrati	Ag: V.Post
53	Mehboob ur Rehman	Muhammad Ilyas	Chowk:	GHS Kokal Barseen	Ag: V.Post
54	Muhammad Adeel	Muhammad Riasat	Chowk:	GPS Dara Salhad	Ag: V.Post
55	Nishat Ahmed Khan	Hadayat Muhammad Khan	Chowk:	GHS Rajoyia	Ag: V.Post
56	Irfan	Muhammad Younis	N/Qasid	GHS No.2 Havelian	Ag: V.Post
57	Haq Nawaz	Khaliq Dad	Sweeper	GHS Hari Khater	Ag: V.Post

Arif

58	Zahir Khan	Bashir Khan	N/Qasid	GMS Nowshera	Ag: V.Post
59	Saqib Khan	Barkat Khan	Chowk:	GPS Banda Bazdar	Ag: V.Post
60	Waqas Khalid	Khalid	Chowk:	GPS Sultanpur	Ag: V.Post
61	Abdul Basit	Aurangzeb	Chowk:	GPS Kashika	Ag: V.Post
62	Sakawat Khan	Aslam Khan	Chowk:	GPS Banda Said Khan	Ag: V.Post
63	Badi uz Zaman	Gohar Rehman	Chowk:	GPS Hirlan	Ag: V.Post
64	Muhammad Rifaqat	Muhammad Aslam	Chowk:	GPS Jaffar (Makol Payeen)	Ag: V.Post
65	Asif	Astam Khan	Chowk:	GPS Kund Kaprai	Ag: V.Post
66	Shahid Mehmood	Aurangzeb	Sweeper	GMS Hirlan	Ag: V.Post
67	Qaiser Mehmood	Munshi Khan	N/Q	GMS Hirlan	Ag: V.Post
68	Sajjad	Inayat ur Rehman	Chowk:	GPS Lunday	Ag: V.Post
69	Muhammad Faizan	Muhammad Javed	Chowk:	GPS Beri Bagla	Ag: V.Post
70	Sajid Muhammad	Muhammad Yousaf	Chowk:	GPS Sajikot (Hvn)	Ag: V.Post
71	Naveed Ahmed	Munraiz Khan	Chowk:	GPS Nalla Thamer Thalla	Ag: V.Post
72	Muhammad Saad Saif	Saif ur Rehman	Chowk:	GPS No.3 Havelian	Ag: V.Post
73	Rashid Melmood	Yar Muhammad	Chowk:	GPS Chamnaka	Ag: V.Post
74	Inran Hussain Shah	Kala Shah	Chowk:	GPS Rahi	Ag: V.Post
75	Sattar Ahmed	Nisar Ahmed	L/Attd:	GHSS Lora	Ag: V.Post
76	Hafeez ur Rehman	Munshi Khan	Sweeper	GMS Pirkote	Ag: V.Post
77	Tanveer	Muhammad Ameen	N/Qasid	GMS Pirkote	Ag: V.Post
78	Muhammad Sadaqat	Muhammad Yousaf	N/Qasid	GMS Gali Battangi	Ag: V.Post
79	Sardar Rizwan	Muhammad Irfan	Sweeper	GMS Gali Battangi	Ag: V.Post
80	Abdul Majeed Abbasi	Dil Bagh Ali Abbasi	N/Qasid	GMS Dannah	Ag: V.Post
81	Minhaz	Muniraz	Sweeper	GMS Dannah	Ag: V.Post
82	Muhammad Khalil	Nazakat Ali	Chowk:	GPS Dheri Rakhala	Ag: V.Post
83	Muhammad Ismail	Wali Muhammad	Chowk:	GPS Benani	Ag: V.Post
84	Qamar Zaman	Muhammad Suleman	Chowk:	GPS Mian	Ag: V.Post
85	Hassan Ali	Shandar Khan	Chowk:	GPS Garhi	Ag: V.Post
86	Sajid Mehmood	Abdul Rashid	Chowk:	GPS Tajwal	Ag: V.Post
87	Muhammad Sarfaraz	Muhammad Razzaq	Chowk:	GPS Bovri	Ag: V.Post
88	Yasir Mehmood	Muhammad Riaz	Chowk:	GPS Jhaffar	Ag: V.Post
89	Muhammad Basharat	Abdur Rehman	Chowk:	GPS Gadir	Ag: V.Post
90	Naveed Ameen	Muhammad Ameen	Chowk:	GPS Toheed Abad	Ag: V.Post
91	Muhammad Ashiq	Nazar Muhammad	Chowk:	GHS Pballah	Ag: V.Post
92	Muhammad Haroon	Muhammad Sarwar	N/Q	GHS Tajwal	Ag: V.Post
93	Tariq Mehmood	Muhammad Maqsood	Chowk:	GPS Panjooth	Ag: V.Post
94	Alam Sher Khan	Azram Khan	Chowk:	GHS Maira Rehmat Khan	Ag: V.Post
95	Noroz Khan	Javed Khan	Lab/Attd	GHS Maira Rehmat Khan	Ag: V.Post
96	Bakhtawar	Abdul Qayyum	Chowk:	GPS Thunda	Ag: V.Post
97	Khalid	Muhammad Aslam	Chowk:	GPS Tatial	Ag: V.Post
98	Aurang Zeb	Fazal ur Rehman	Chowk:	GPS Dheri Kehala	Ag: V.Post

Attd


Retiring Class-IV Servants Quota

99	Muhammad Khurshid	Ghulam Sarwar	Chowk:	GPS Pawa	Ag: V.Post
100	Muhammad Manzoor	Noor Khan	L/Attd	GHSS Bagnotar	Ag: V.Post
101	Badar Islam	Muhammad Ayub	Chowk:	GPS Gajjal	Ag: V.Post
102	Naheem Gul	Muhammad Banaris	Chowk:	GHS No.1 ATD	Ag: V.Post
103	Muhammad Aqeel	Abdur Rashid	Chowk:	GPS Palasi	Ag: V.Post
104	Muhammad Kashif	Kala Khan	Chowk:	GPS Dhand Khater	Ag: V.Post
105	Muhammad Yasir	Sher Muhammad	N/Qasid	GHS Sherwan	Ag: V.Post
106	Khuram Shahzad	Mehmood Sultan	Sweeper	GHS No.4 ATD	Ag: V.Post
107	Touseef	Tahir Hussain	Chowk:	GPS Birote	Ag: V.Post
108	Waqas Khan	Khadi Khan	Sweeper	GHS Pawa	Ag: V.Post
109	Ishtiaq Ahmed	Muhammad Jan	N/Q	GHS Moolia	Ag: V.Post
110	Sohrab Gul	Muhammad Younis	Chowk:	GPS Kathiala Bagh	Ag: V.Post
111	Haq Nawaz	M.Khisro Abbasi	Lab/Attd	GHS Phallah	Ag: V.Post
112	Muhammad Jamsheed	Muhammad Rafiq	Chowk:	GPS Tarikote	Ag: V.Post
113	Shahid Nawaz	Muhammad Khalid	N/Q	GHS Lakhala	Ag: V.Post
114	Muhammad Imran	Gul Badshah	Sweeper	GMS Battian	Ag: V.Post
115	Muhammad Naveed	Muhammad Zareed	Chowk:	GPS Chattri	Ag: V.Post
116	Abdul Razzaq	Abdul Rehman	Chowk:	GPS Pall	Ag: V.Post
117	Muneer Ahmed	Fazal ur Rehman	Chowk:	GPS Manu De Gali	Ag: V.Post
118	Nazim Ali	Maqbool ur Rehman	Chowk:	GPS Kurli	Ag: V.Post
119	Azhar Khan	Shamraiz Khan	Chowk:	GHS Mirpur	Ag: V.Post
120	Babar Ali	Shahzaman Khan	Chowk:	GPS Payeen	Ag: V.Post
121	Muhammad Zafran	Qalandar Khan	Chowk:	GMS Rankot	Ag: V.Post
122	Safeer Ahmed	Muhammad Nazir	Chowk:	GHS Nakar Khan Kalan	Ag: V.Post
123	Muhammad Shafqat	Muhammad Younis	N/Qasid	GHSS Boi	Ag: V.Post
124	Waqas	Kala Khan	Chowk:	GHSS Nawanshehr	Ag: V.Post
125	Muhammad Sohail	Taj Muhammad	Chowk:	GPS Pirkote	Ag: V.Post
126	Hafeez ur Rehman	Kala Khan	N/Q	GMS Mallah	Ag: V.Post
127	Shabeer Ahmed	Zulfiqar Ali	Mali	GHSS Lora	Ag: V.Post
128	Imran Khan	Mian Gul	Mali	GHS Sherwan	Ag: V.Post
129	Abdul Waheed	Abdul Kareem	Chowk:	GPS Chalasian	Ag: V.Post
130	Qaisar Iqbal	Muhammad Iqbal	Chowk:	GPS Bad Gran	Ag: V.Post
131	Muhammad Imran	Maqbool ur Rehman	N/Q	GHS Banda Pir Khan	Ag: V.Post
132	Muhammad Shehraz	Aurangzeb	Chowk:	GPS Baga Kote	Ag: V.Post
133	Muhammad Ejaz	Muhammad Riaz	Chowk:	GPS Noor Mang	Ag: V.Post
134	Kamran Abbasi	Gulistan	Chowk:	GHS Bakote	Ag: V.Post

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135	M.Gul Faraz	Karam Dad Khan	Sweeper	GMS Marri	Ag: V.Post
136	Shabeer Ahmed	Gul Khatab	L/Attd	GHS Kasala	Ag: V.Post
137	Rafaqat Iqbal	Muhammad Iqbal	N/Qasid	GHS Bagh	Ag: V.Post

Minority

138	Kashif Bashir	Basheer Mashee	Sweeper	GCMSS Abbottabad	Ag: V.Post
139	Patras Mashee	Daniel Mashee	Sweeper	GHS No.3 Abbottabad	Ag: V.Post

Deceased Sons

140	Muldhtiar Ahmed	Muhammad Ramzan	Chowk:	GHS Bagh	Ag: V.Post
141	Mujeeb ur Rehman	Abdul Manan	Lab/Attd	GHS Bodla	Ag: V.Post
142	Sayam Ahmed Abbasi	Zahir Hussain	Chowk:	GHSS Khanispur Ayubia	Ag: V.Post
143	Attaur Rehman	Ihsan ur Rehman	N/Qasid	GHS Malsa	Ag: V.Post
144	Saif ur Rehman	Abdul Wahid	Chowk:	GHS Ghora Baz Gran	Ag: V.Post
145	Amad Daud	Muhammad Daud	Chowk:	GPS Sial-Khan	Ag: V.Post
146	Idrees Khan	Irshad Khan	N/Qasid	GHS Rajoyia	Ag: V.Post
147	Shazia Bibi	W/O Shoukat Ali	Chowk:	GPS Kuthwal	Ag: V.Post
148	Zeeshan Ali	Muhammad Nazeer	Chowk:	GPS Nary Boji	Ag: V.Post

Court Cases

149	Liaqat Hussain	Khan Zaman	Chowk:	GHS Nammal	Ag: V.Post
150	Abid Khan	Nobat Khan	Lab/Attd:	GHS Makool Payecu	Ag: V.Post

TERMS & CONDITIONS

- In the light of Govt of Khyber Pakhtunkhwa Peshawar, Finance Department (Regulation Wing) letter No.SO(SR-III)FD/12-1/2005 dated 27/2/2013, all Civil Servants appointed to a service or post on or after 1st July 2001 shall be deemed to have been appointed on regular basis & will be eligible for Pension/deduction of G.P. Fund as such prescribed by the Govt;
- They will get salary in BPS- 01 plus usual allowances as due and admissible under the rules.
- Their services can be terminated at any time in case their performance is found unsatisfactory. In case of misconduct they will be proceeded under the rules framed by Govt: of Khyber Pakhtunkhwa from time to time & E&D Rules 2011.
- If they want to resign from service they will have to serve one month's prior notice failing which the appointee will have to deposit one month's pay in lieu of such notice in the Govt: treasury.
- Only one member of the family have right to get appointment against the retiring Class-IV servant's/deceased son's quota. Therefore if detected at any stage on that quota other than one (01) family member has taken appointment, the proceedings will be initiated for termination of service of the appointee over and above the quota with recovery of payment received through irregular appointment on the charges of concealing facts.
- They should join the post within 15 days of issuance of this order. The DDO concerned should furnish a certificate to the effect that the candidate appointed has join the post or otherwise after 15 days of the issuance of this order.
- They should produce Health and Age Certificate from the Medical Superintendent DHQ Hospital Abbottabad within seven days of taking over charge.
- They should not be handed over charge if their age exceeds 40 years or below 18 years.

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9. Age relaxation is granted to S.No.02, 18, 58 & 119 in the light of Govt. of Khyber Pakhtunkhwa Establishment and Administration Department (Establishment Wing) Notification NO. SOE-III (E&AD)2-1/2007 dated 01-03-2008 & of even number dated 25-10-2011.
 10. They should provide character certificate duly verified by the two gazetted officers at the time of taking over charge.
 11. They will be on probation for a period of one year.
 12. They will be required to furnish copies of all Certificates/Degrees along with the original receipts and photo copies thereof pertaining to the verification fee of the concerned Boards/University to the appointing authority. DDO concerned is directed that their case for the purpose of release of pay should not be submitted to District Accounts Office Abbottabad till the verification of all Certificates / Degrees.

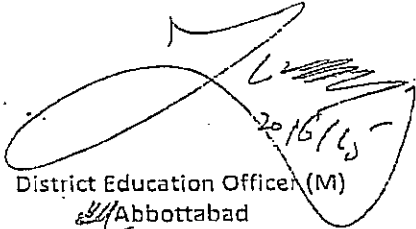
ZIA-UD-DIN
District Education Officer (M)
Abbottabad

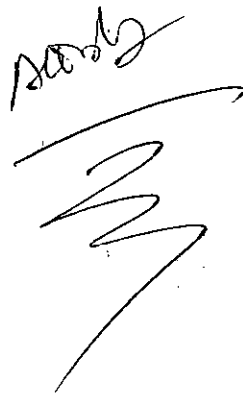
Endst No. 5761-69 /EB

Dated 20-6- /2015

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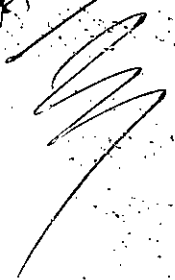
1. Director E&SE Khyber Pakhtunkhwa, Peshawar.
2. District Accounts Officer, Abbottabad.
3. PS to Secretary to Govt. of Khyber Pakhtunkhwa E&SED Peshawar.
4. Principal/ Headmaster of concerned Schools.
5. SDEO(M) Abbottabad.
6. Budget & Accounts Officer Local Office.
7. EMIS Cell Local Office.
8. Candidates concerned.
9. Master File.


District Education Officer (M)
Abbottabad



ایک نیا رنگ جو کہ عین جگہ ملے گی 26-12-2016 کارروائی نمائندہ اصولیہ درخواست خیر حلالی
تعمیرات کے لیے اس کے لیے صدر عدلیہ عالیہ کے نام پر درخواست لکھ کر
آپ کے پاس لے کر آئی ہے اس کے ساتھ ساتھ ایک درخواست لکھ کر

ASB-PS-D gali
26-12-2016

ASB


اطلاع کے لیے اطلاع دینا کہ اس کی بہرہ نشانی لگایا جائے گا اور اس کے تحت کٹنے والی اطلاع کا دستخط بطور قفل لکھ کر حروف الف با ب سرخ روشانی سے بالقابل
ایک مضمون یا شہر علی الترتیب واسطے باشندگان علاقہ غیر یا وسط البیضاء افغانستان کے درون ہوں لکھنا چاہئے۔

C 12

OFFICE OF THE PRINCIPAL GOVERNMENT HIGH SCHOOL KOKAL BARSEEN ABBOTTABAD.
OFFICE OF THE PRINCIPAL GOVERNMENT CENTENNIAL MODEL SECONDARY SCHOOL
ABBOTTABAD.

No. 4377 Dated:- 22/02/2017
No. 44 Dated:- 22/02/2017

To The District Education Officer (Male),
Abbottabad.

Sub: SUBMISSION OF INQUIRY REPORT IN RESPECT OF MR. MUHAMMAD HASHIM TT AND
MR. MUHAMMAD TANVEER N/Q GMS PIRKOT.

Memo: Vide your office Endst: No. 10828-34/EB-II complaint file of dated 27.12.2016. Enquiry report regarding
Muhammad Hashim TT and Muhammad Tanveer N/Q is submitted herewith.

T. O. Rs.

An enquiry was marked by District Education Officer(Male) Elementary & Secondary Education .
Abbottabad under Endst: No. 10828-34/EB-II/Complaint file of dated 27.12.2016 regarding the involvement of
Mr. Muhammad Hashim TT GMS Pirkote and Mr. Muhammad Tanveer N/Q GMS Pirkote in Sexual Abuse and
gang rape of Mst. Tahira Sarfaraz D/O Sarfaraz Khan of Class 7th.

BRIEF HISTORY OF THE CASE

- a) On dated 26.12.2016, a complaint was lodged by Mst. Tahira Sarfaraz D/O Sarfaraz Khan, student of
class 7th GMS Pirkote. In her complaint, she accused Mr. Muhammad Hashim TT GMS Pirkote for being
involved in rape with her at a shop owned by Muhammad Tanveer N/Q GMS Pirkote. She also accused
Mr. Muhammad Tanveer for being directly involved in planning of her rape. Her complaint was
supported by some members of Union Council Tajwal.
- b) Another complaint with similar allegations was filed by Mr. Tahir Mehmood (SST) Head Master GMS
Pirkote duly supported by all his staff members. Furthermore, Muhammad Hashim TT GMS Pirkote was
also accused of taking school Security Android Mobile with him. Both Muhammad Hashim TT and
Muhammad Tanveer Naib Qasid along with Tahira Sarfaraz were absent from the school on 22/12/2016.
- c) On dated 26/12/2016, an FIR having No. 282 at police station Dunga Gali was lodge by Tahira Sarfaraz
accusing Muhammad Hsahim TT for being involved in rape with her with the facilitation of Muhammad
Tanveer Naib Qasid.

ADCE)

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27-2-17

INQUIRY PROCEEDINGS:

Enquiry proceeding started from dated 4th of January 2017. Some of the stake holders were personally
called at GCMSS Abbottabad. Tahira Sarfaraz was personally interviewed at her residence in Pirkote. Muhammad
Hashim TT and Muhammad Tanveer Naib Qasid were interrogated at central Jail Mansehra, while GMS Pirkote,
GPS Pirkote and shop of Muhammad Tanveer were also visited by enquiry committee.

ENQUIRY TOOLS:

Statements of the witnesses were recorded and copies of the same were provided to both the accused for
the purpose of cross examination. Furthermore, opportunity of cross examination was provided to accused and the
same was availed by them. Statements, in depth interviews and focused discussions from the accused and
witnesses were recorded from the officials / all concerned as under:

- | | |
|---|---|
| 1. Muhammad Hashim TT GMS Pirkote (Annex:-A) | 20. Letter regarding the opportunity of <u>SELF</u>
<u>DEFENSE</u> and <u>CROSS</u>
<u>EXAMINATION</u> of the witnesses to
Muhammad Tanveer N/Q (Annex:-U) |
| 2. Tahira Sarfaraz class 7 th GMS Pirkote (Annex:-B) | |
| 3. Muhammad Tanveer N/Q GMS Pirkote (Annex:-C) | |
| 4. Muhammad Sohail class:-IV GPS Pirkote (Annex:-D) | |

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<p>5. Nazeer Ahmed PSHT GPS Pirkote (Annex:-E) 6. Muhammad Riaz PST GPS Pirkote (Annex:-F) 7. Tahir Mahmood Head Master GMS Pirkote (Annex:-G) 8. Sarfaraz Khan CT GMS Pirkote (Annex:-H) 9. Muhammad Bashir CT GMS Pirkote (Annex:-I) 10. Ghulam Mujtaba DM GMS Pirkote (Annex:-J) 11. Abdil Hanan AT GMS Pirkote (Annex:-K) 12. Sarfaraz F/O Tahira Sarfaraz (Annex:-L) 13. Muhammad Banaras Nazim Village council Pirkote Tajawal (Annex:-M) 14. Muhammad Zareen Uncle Tahira Sarfaraz (Annex:-N) 15. Umair student of Class 6th GMS Pirkote (Annex:-O) 16. Saira Sarfaraz student 8th class GMS Pirkote (Annex:-P) 17. Saigra Younas Student 8th class Pirkote (Annex:-Q) 18. Applications regarding threats given to Nazir Ahmed and staff members of GPS Pirkote by Muhammad Tanveer (Annex:-R, S) 19. Letter regarding the opportunity of <u>SELF DEFENSE</u> and <u>CROSS EXAMINATION</u> of the witnesses to Muhammad Hashim TT (Annex:-T)</p>	<p>21. Reply of Muhammad Hashim TT stating no need to avail opportunity of <u>SELF DEFENSE</u> and <u>CROSS EXAMINATION</u> (Annex:-V) 22. Reply of Muhammad Tanveer NQ stating no need to avail opportunity of <u>SELF DEFENSE</u> and <u>CROSS EXAMINATION</u> (Annex:-W) 23. Photo copy of attendance register attached (Annex:-X) 24. CD having video clip of the accused's confessional statement (Annex:-Y) 25. Absence report by Head Master GMS Pirkote regarding the accused (Annex:-Z) 26. Statement of Gul Khitab Member Mosalehat Committee R/O Pirkote (Annex:-Z1) 27. Statements regarding mobile of school's recovery (Annex:-Z2-4)</p>
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Moreover, Teacher Attendance register, student attendance register, AWR register, order book etc were also checked.

FINDING:

- Muhammad Hashim TT, Muhammad Tanveer Naib Qasid and Tahira Sarfaraz student of class 7th were absent from school on dated 22/12/2016 (Annex:-X). Absent reports of Muhammad Hashim TT and Muhammad Tanveer NAIB Qasid was send to DEO office by Head Master GMS Pirkote well in time (Annex:-Z).
- Around 80 girls and 25 boys have been studying in GMS Pirkote.
- The event occurred in the shop of Muhammad Tanveer Naib Qasid, which is a little away from GMS Pirkote and quite adjacent to GPS Pirkote.
- The event occurred on dated 22/12/2016 while FIR was lodged on 26/12/2016. The case has been filed and judicial proceedings are under process.
- Muhammad Hashim TT accused is working as a TT at GMS Pirkote for the last one year and nine month. He was recruited through NTS, 32 year old married and Hafiz Quran. He was staying in GPS Pirkote while rest of his staff members of GMS Pirkote was staying at GMS Pirkote. Muhammad Hashim TT failed to give sound reason for his prolong stay at Muhammad Tanveer Shop (till 9.30 am on 22/12/2016). Moreover, he gave confessional video statement, when doors of shop were opened by Nazir Ahmed followed by Muhammad Riaz PST GPS Dhaki Pirkote. This video clipping is in the custody of Nazir Ahmed PSHT Pirkote.
- Muhammad Tanveer (Accused-II) is working as a Naib Qasid at GMS Pirkote for the last one year and seven months and is local resident of Pirkote. He is 25 year old and also a Hafiz Quran. The event occurred in his shop on 22/12/2016 and he locked Muhammad Hashim TT and Tahira Sarfaraz in his shop. He failed to justify his action and did not give sound reason for locking Muhammad Hashim TT & Tahira Sarfaraz in his shop as per report of the complainant and witnesses. An eye witness Muhammad Sohail C-IV GPS Dhaki Pirkote saw Muhammad Tanveer locking his shop (Annex:-D, Q. No. 27) Muhammad Nazir PSHT GPS Pirkote and all the staff members of GMS Pirkote have given written applications to enquiry committee regarding the threats given by Muhammad Tanveer N/Qasid GPS Pirkote and his brother Muhammad Munir CT GMS Beri Bagla (Annex:-R&S).
- Muhammad Sohail C-IV GPS Dhaki Pirkote is actually the eye witness of the event of dated 22.12.2016. On that very day, he was draining water from the roof of the school. He saw arrival of Tahira Sarfaraz and Muhammad Hashim, their entry in the shop and locking of shop by Muhammad Tanveer (Annex:-D) Q. No. 21-22, Q. No. 24-27). Again when Muhammad Nazir PSHT GPS Pirkote along with Muhammad Riaz PST GPS Pirkote opened the door of shop, he saw Muhammad Hashim TT and Tahira Sarfaraz in the shop giving

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- statements like that have regular nikah (Annex: -D Qno 33, Qno 36) Muhammad sohail is also an eye witness of confessional statement given by Muhammad Hashim TT when shop was reopened.
8. Muhammad Nazir PSHT GPS Pirkote is an eye witness of the event and has given statement that
 - a) Muhammad Sohail C-IV GPS Dhaki Pirkote informed him that Muhammad Hashim TT and Tahira Sarfaraz were in the shop and Muhammad Tanveer had locked the shop's door (Annex:-E Q. No. 29).
 - b) Both Muhammad Hashim and Tahira sarfaraz were in objectionable and vulgar condition when the door of the shop was opened (Annex:-E, Q. No. 32).
 - c) Muhammad Hashim TT has also given Video confessional statement in front of Muhammad Nazir PSHT GPS Dhaki Pirkote and Muhammad Riaz PST GPS Dhaki Pirkote. This video clipping is in the custody of Muhammad Nazir (Annex: -E Q No. 33, Q. No. 36, Annex:-Y).
 - d) Both Muhammad Hashim and Tahira Sarfaraz gave statements as per report of Muhammad Nazir PSHT that they had rightful Nikah (Annex:-E Q. No. 33-34).
 - e) Muhammad Nazir also gave an application to inquiry committee regarding the threats given to him by Muhammad Tanveer via Muhammad Sohail C-IV and Muhammad Riaz PST GPS Dhaki Pirkote (Annex:-R).
 9. Muhammad Riaz PST GPS Dhaki Pirkot is also an eye witness of the event. He gave the following statement:
 - a) Muhammad Nazir, PSHT GPS Dhaki Pirkote asked him to accompany towards Muhammad Tanveer's shop.
 - b) When he entered the shop, Muhammad Hashim TT was tying his *narrah* of *shahwar* (Annex:-F Q. No. 32)
 - c) Both Muhammad Hashim and Tahira sarfaraz have stated that they have done rightful Nikah (Annex: -F, Q. No. 33, Q. No. 36)
 - d) Muhammad Hashim also confessed his misdeed before Muhammad Riaz PST GPS Dhaki Pirkote.
 10. Tahir Mahmood HM GMS Pirkote and other staff members have also recorded their statements (Annex:-G to K) According to them:
 - a) Muhammad Hashim TT, Muhammad Tanveer Naib Qasid and Tahira Sarfaraz all the three were absent from school on 22.12.2016.
 - b) According to Muhammad Tahir mehmoood HM GMS Pirkote, School SOS Android mobile was with Muhammad Hashim TT. Muhammad Hashim TT has admitted that SOS Android Mobile was in his possession (Annex: -A; Q. No. 3)
 - c) All the staff members were upset on the unexpected shameful act of Muhammad Hashim TT.
 - d) All the staff members have given an application regarding threats given to them by Muhammad Tanveer NQ GMS Pirkote and his brother. (Annex:-S)
 - e) All the staff members have denied the statement regarding the girls' service in school kitchen yet students under interrogation stated that they prepare tea in the absence of Muhammad Tanveer NQ.
 11. Muhammad Hashim TT refuted the allegations and declared it as a conspiracy and scandal against him. He failed to give justified reasons and answers of questions like:
 - a) Why did he wait at Muhammad Tanveer's shop and did not attend the school till 9:30 am on 22.12.2016, while the attendance register of school shows his accurate arrival at school on preceeding days?
 - b) Why did he keep his luggage in Muhammad Tanveer's shop on dated 22.12.2016 while he was residing in GPS Pirkote, which is adjacent to Muhammad Tanveer's shop?
 - c) What effort did he exercise for his escape, as he was locked in Muhammad Tanveer's shop along with Tahira Sarfaraz?
 - d) How can he justify his objectionable and vulgar condition with Tahira Sarfraz in the presence of eye witnesses?
 - e) How can he disown his personal confessional video statement before the eye witnesses?
 12. Tahira Sarfaraz student class 7th was aggrieved yet and finished her questionnaire with shedding tears.
 13. After receiving the statements, questionnaires and having focused interviews from the respondents, the enquiry committee gave an opportunity of SELF DEFENSE and CROSS EXAMINATION of witnesses to Muhammad Hashim TT and Muhammad Tanveer Naib Qasid GMS Pirkote through letter dated 07-02-2017 (Annex:-T&U).

14. Photo copies of statements given by the witnesses were also provided to Muhammad Hashim TT and Muhammad Naib Qasid for SELF DEFENSE and CROSS EXAMINATION.
15. Both of them received the letter and submitted their reply on dated 10-02-2017 (Annex:-T&U).
16. Muhammad Hashim TT stated in his reply of SELF DEFENSE and CROSS EXAMINATION that he has studied thoroughly all the statements given by the witnesses. And he did not want the SELF DEFENSE and CROSS EXAMINATION (Annex:-V)
17. Similarly, Muhammad Tanveer Naib Qasid stated in his reply of SELF DEFENSE and CROSS EXAMINATION that he has studied thoroughly all the statements given by the witnesses. And he did not want the SELF DEFENSE and CROSS EXAMINATION (Annex:-W).
18. Parents and local residents gave warning, to keep closing of GMS Pirkote, verbally, uptill sanction of GGMS at Pirkote.

CONCLUSIONS

The facts/conclusions, apparent from the findings, were as under:

1. Muhammad Hashim TT was absent from duty on 22-12-2016 willfully without information to his immediate authorized officer. Hence, he proved himself inefficient under the rules.
2. Muhammad Hashim TT abused sexually his 7th class student outside the school during school duty hours. It is violation of code of conduct under the rule.
3. Muhammad Tanveer NQ was absent from duty on 22-12-2016 willfully without information to his immediate authorized officer. Hence, he proved himself inefficient under the rules.
4. Muhammad Tanveer NQ's facilitation, to Muhammad Hashim TT for provision of safe place, became root cause of this unlawful and shameful event, as abusing sexually his 7th class student outside the school premises during school duty hours. It is also his breach of code of conduct under the rule.
5. Threatening of bad consequences by Muhammad Tanveer NQ and his brother Muhammad Muneer CT u/a giving true statements to the eye witness (i. e., whole GPS Dhaki staff) is also misconduct under the rule.
6. Recovery of school mobile of SOS is still pending against Muhammad Hashim TT, which is also misappropriation of government property on his part. It is also his breach of code of conduct under the rule.

RECOMMENDATIONS

The above cited facts and findings level the grounds to recommend punishment vide ref. prevailing Khyber Pakhtunkhwa Government of Service (Efficiency & Discipline) Rules 2011 as under:

1. Major penalty of removal from service under Rule-4 may be imposed upon Muhammad Hashim TT, as he abused sexually his female student of 7th class during the school duty hours, committed misconduct, followed by willful absence from school duty on 22-12-2016 without information to his immediate authorized officer, and held liable for inefficiency.
2. Major penalty of removal from service under Rule-4 may be imposed upon Muhammad Tanveer NQ, as he committed misconduct in terms of facilitation to Muhammad Hashim TT, providing safe place and became root cause of sexual abuse of a female student of 7th class during the school duty hours, followed by his willful absence from school duty on 22-12-2016 without information to his immediate authorized officer, and held liable for inefficiency.
3. Whole GMS staff may be transferred to re-build parents' trust upon schooling.
4. Muhammad Nazir PSHT, Muhammad Riaz PST, and Muhammad Sohail Chowkidar may also be transferred, as they have received life threats, for being non-locals.
5. Muhammad Munir CT GMS[Beri Bagla, brother of Muhammad Tanveer Naib Qasid may also be warned for his misconduct of threatening.
6. As 80 girls have been studying in GMS Pirkote. So separate GGMS for girls may be given at earliest in order to curtail such incidents in future.
7. Any kind of service for staff by students especially girls may be banned.
8. Mutation Deed of GMS Pirkote may please be demanded at earliest and boundry wall of the school be constructed with proper demarcation.

Handwritten signature

- 9. School SOS android mobile set may be recovered from Muhammad Hashim TT and handed over to HM GMS Pirkote.
- 10. One day proper orientation session on "Girls Behaviour Management" may be arranged for the male staff members of all GMS/GHS staff, where there is co-education.

Respected Sir,

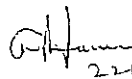
Teaching is a merely not a profession, in fact, it is more than that. Society, parents and our students trust upon us with core of their hearts. Our standards of morality, virtue and character are higher than other professions. Our conduct is role model for the society. We being the builders of the nation have to be careful and conscious. May Allah give us enough strength and wisdom to spread justice for humanity.

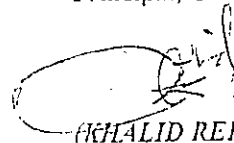
Thanking you.

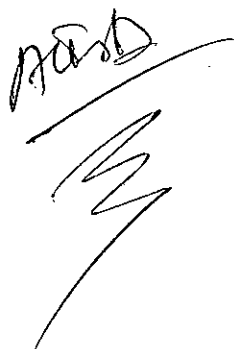
Sincerely Yours.

Note:

All the original documents i. e., statements, questionnaires, Video Clipping of confessional Statement etc are submitted herewith enquiry report


 22/2/17.
 (TARIQ SAMAR)
 Principal, GHS Kokal Barseen, Atd.


 22/2/2017
 (KHALID REHMAN)
 V/Principal GCMSS Abbottabad.

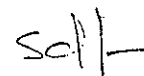


OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) ABBOTTABAD

ORDER

1. WHEREAS, you Mr. Muhammad Tanveer S/O Muhammad Amin. Naib Qasid, GMS Pirkot Abbottabad was proceeded for having committed the following gross irregularities which constitute inefficiency, misconduct, corruption and absents without prior approval of the Competent Authority under Rule-3 of the Khyber Pakhtunkhwa, Government Servants (Efficiency & Discipline) Rules. 2011.
2. AND WHEREAS, you was found absent from duty on 22.12.2016 without any information/approval of the Competent Authority. You alongwith Mr. Muhammad Hashim. TT GMS Pirkot was also found involved in sexual abuse & gang rape case with Mst: Tahira Sarfaraz. Student of 7th Class of your School on 22.12.2016 and destroyed the dignity of holy profession of teaching as per report of Headmaster GMS Pirkot Abbottabad.
3. AND WHEREAS, inquiry Committee was appointed vide this Office Notification issued under Endst: No.10828-34 dated 27.12.2016. The Inquiry Committee submitted its report dated 22.2.2017 and provided you full opportunity of defence as well as cross examination the witness against you.
4. AND WHEREAS, as per findings and recommendation of inquiry report, you have facilitated Mr. Muhammad Hashim TT of your school by providing him safe place and became root cause of sexual abuse of Mst:Tahira Sarfaez D/O Sarfaraz Khan student of Class 7th GMS Pirkot on 22.12.2016 during school hours and also remained absent from duty on 22.12.2016 without any information/approval of the Competent Authority & the charges levelled against you have been proved.
5. AND WHEREAS, after receipt of inquiry report, Show Cause Notice was served upon you vide this office Memo No 3606 dated 03.4.2017 through Head Master GMS Pirkot, Abbottabad under the charge of misconduct, inefficiency & willful absence from duty, wherein major penalty was tentatively proposed under Rule-4(1) Sub Rule (b) of Khyber Pakhtunkhwa, Government Servants (Efficiency & Discipline) Rule.2011.
6. AND WHEREAS you failed to reply of the show cause notice and were summoned for personal hearing on 12.6.2017 to avail the opportunity of self defence vide this office Memo No 6406-7 dated 8.6.2017 and you again failed to appear for personal hearing on the scheduled date and upto now.
7. AND By reason of above, charges levelled against you have been proved and you are found guilty of gross misconduct, inefficiency & willful absence from duty under Rule-3 of the Khyber Pakhtunkhwa Govt: Servants (Efficiency & Discipline) Rule, 2011.

NOW THEREFORE, the Competent Authority in exercise of the power conferred upon him under Rule-4(1) Sub Rule (b) (iii) of Khyber Pakhtunkhwa, Government Servants (Efficiency & Discipline) Rule.2011 is pleased to impose major penalty of "REMOVAL FROM SERVICE" upon Mr. Muhammad Tanveer S/O Muhammad Amin, Naib Qasid, GMS Pir Kot Abbottabad with immediate effect.


DISTRICT EDUCATION OFFICER (M)
ABBOTTABAD


Endst: No. 10828-34 /EB-III/PF/Pirkot

Dated 22.12 /2017.

Copy for information & necessary action to the:-

1. Director E&SE Khyber Pakhtunkhwa Peshawar.
2. District Comptroller of Accounts Abbottabad
3. PS to Secretary to Govt; of Khyber Pakhtunkhwa, E&SED Peshawar.
4. Head Master GMS Pirkot Abbottabad.
5. Budget & Accounts Officer Local Office.
6. Mr. Muhammad Mr. Muhammad Tanveer S/O Muhammad Amin. Naib Qasid, GMS Pir Kot Abbottabad
7. Master File.




DISTRICT EDUCATION OFFICER (M)
ABBOTTABAD

IN THE COURT OF SOFIA WAQAR KHATTAK,
SESSIONS JUDGE, ABBOTTABAD.

Case # 42/VII of 2017

Date of commencement of trial: 25.09.2017

Date of Decision: 23.10.2018

THE STATE

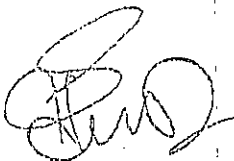
Versus.

Hashim son of Qari Muhammad Azam caste Pathen
r/o Bandi Said Khan at presently Teacher Government
Middle School Pirkot Tehsil & District Abbottabad. 2.
Tanveer son of Muhammad Amin caste Karlal resident
of Pirkot Noshehra, District Abbottabad (ACCUSED)

CASE FIR # 282 DATED 26.12.2016 U/S
376/342/109 PPC, POLICE STATION DONGA GALI,
ABBOTTABAD.

J U D G M E N T

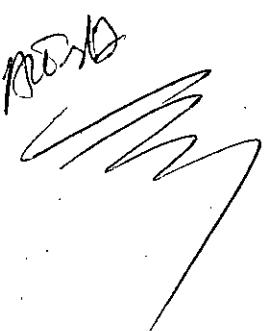
1. Accused Hashim and Tanveer stood trial in case FIR #
282 dated 26.12.2016 u/ss 376/342 read with section
109 PPC, at police station Donga Gali, Abbottabad.



Received
District & Sessions Judge
Abbottabad

F A C T S

2. Concise background of present case is that Tahira
Sarfaraz D/o Sarfaraz Khan complainant/victim
submitted an application that she is student of class
7th at GMS Berot. As routine, after study hours, a
student was deputed for cooking food on daily basis.
One month prior to the occurrence when she went
inside the kitchen for cooking food, teacher Hashim
entered, locked the kitchen, took her snapshots and



told that if she opened her mouth she will be expelled and snapshots will be uploaded on internet and she will face dire consequences. Whereupon, she kept mum. After few days, she was called in his office and obtained her signature on blank paper and told that it is for sending admission. On 22.12.2016, at about 08:00 hours Hashim accused called her through watchman for bringing milk from shop of Tanveer where Hashim was already present. When she entered into the shop, door was locked from outside by Tanveer. Hashim informed that you had signed a blank paper that was the Nikah form and now she is legally his wife. He undressed her and then forcibly committed Zina with her. On fermentation/hue & cry, Nazir and Riaz associate teachers came, beaten Hashim, who decamp from the spot. She put on clothes and proceeded to home. Her mother took her to father serving in Pak Army at Kharrian. And on return she lodged the report. On written version, case u/s 376/342/109 PPC was registered against the culprits. Hence, present trial.

3. After completion of usual investigation, the case was sent up for trial in this court. On their appearance, relevant documents delivered within terms of section 265-CC Cr.PC. There was formal indictment to which they pleaded not guilty and claimed trial.

4. In order to prove its case, prosecution has examined thirteen (13) witnesses in support of its contentions. Gist of the prosecution evidence is as under: -

PW # 01 Faisal Insp, submitted complete challan Ex PW 1/1

PW # 02 Sabir Khans SI, on receipt of written complaint, contents of which incorporated in the FIR Ex PA.

PW # 03 Amjad # 1295, on receipt of injury sheet of victim/complainant and her father transmitted to Mochi Dara Hospital, after examination to DHQ Hospital. He is also marginal witness to recovery memo Ex PW 3/1 vide which lady Dr. handed over 03 swab tubes sealed in khaki envelop for DNA to ASI Changla gali.

PW # 04 Abdul Shakoor, marginal witness to recovery memo Ex PW 4/1, vide which Dr. handed over sealed phial having blood 3 cc for onward transaction of DNA and cross match.

PW# 05 Asim, on 30.12.2016, the IO handed over two parcels in entry incorporated in registered # 5/21 copy whereof is Ex PW 5/1, handed over to Tufail # 41 for FSL Islamabad.

PW# 06 Tariq zaman, marginal witness to recovery memo vide which Dr. handed over CP phial sealed in parcel # 01 along with swab taken from victim containing 3 cc blood for onward transmission for DNA test.

PW# 07 Tufail FC # 41, On 03.01.2017 MM Asim handed over parcel # 01 and 02 to him for onward submission to FSL through receipt # 3/21 Ex PW 7/1, which was taken vide parcel # 03 and 1&2 including # 03 were delivered to fSL Islamabad. Receipt already Ex PW 5/1.

PW# 07 (a) Dr. Shahzeena Mehtab PMC, On 27.12.2016 at 12:45 hours, examined Miss Tahira Sarfarazi aged about 13/14 years brought by Amjad # 1295 and Mst Shumaila Kousar, on examination found the following:- History of sexual assault. One month back then again on 22.12.2016. She was conscious well oriented time and space. No mark of violence or resistance on body or clothes. Hymen ruptured old heal tear admitting two fingers with slight difficulty. Uterus antverted seems normal size. Fornix clear. Swabs from posterior fornix and cervix taken in three tubes for DNA testing. Advised

District Sessions Judge
Islamabad

ultrasound to exclude or confirm pregnancy report Ex PW 7/1.

PW# 08, Tasira Sarfaraz that she was student of class 7th. Our teachers used to taken kitchen works from the students. One day when her kitchen duty came she went to kitchen for cooking, Master Hashim entered and closed the door of the kitchen inside, taking her pictures on mobile and told that if she did not accept his talk, he will spread these pictures on net and warned not to tell anybody, if happened so she will be ousted for school. On day he called her to his office and obtained her signature on document calling it an admission from for sending admission. She signed the document. On 22.12.2016, at about 08:00 am, accused Tarveer told her to bring milk from his shop. She went there, accused Hashim was already present there. When she entered, accused Tarveer closed the shop door from outside and accused Hashim was inside the shop. He informed to that signature which he had taken, basically nikhsanama and now she is his wife. He removed her clothes forcibly and also removed his own clothes, committed zina with her, she made hiee and cry and Mast Riaz and Nazeer attracted to the spot and they opened the door of shop, started beating accused Hashim and he decamped from the spot, thereafter she dressed up and went to her home. Her mother took her to Kharian for her father. On our returned, she lodged report on 26.12.2016 vide application Ex PW 8/1. She was medically examined, police prepared site plan on her instance and pointation. She charged accused both accused.

PW # 09 Muliammad Riaz, on 22.12.2016, when he reached to the gate of school, received a call from his friend and attended, at that time teacher Nazir Ahmad who was already present in school came and wanted to tell him something and he did not give any attention, he again came and asked what is the mater and Nazir Ahmad told him that class-IV servant had told him that Hashim and a girl were present in a shop near. He told that let they will see it and the person Tarveer was coming from his shop towards body middle school pirkg. Nazir Ahmad told Tarveer that he needed a juice from the shop. Nazir Ahmad and Tarveer sent back to the shop and after some minutes, he also followed them. Nazir Ahmad was telling some harsh talks with Hashim, due to hiee and cry other people were attracted to the spot. He asked about the situation, Nazir Ahmad replied that there were clothes in the bag of the girl and they



Sessions Judge
Muzaffargarh

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wanted to go somewhere. (as per court order. Witness was declared as hostile).

PW # 10 Muhammad Khalid ASI. He through application examined victim Tahira, conducted her ultrasound, result whereof is Ex PW 10/1-A. Lady Dr. handed over to him three sealed phila swabs, he prepared recovery memo Ex PW 3/1 On 27.12.2016, determined age of the victim vide Ex PW 6/1. The report of Radiologist is Ex PW 10/2. On 28.12.2016 he prepared site plan Ex PW 10/3, recorded statement of eyewitness Nazir and Riaz On 29.12.2016, one accused Qari Hasi was arrested, issued card of accused Ex PW 10/5, obtained 05 days custody of accused, medical examined the accused by Dr. He was capable of sexual intercourse. On 31.12.2016, accused Hashim volunteered that he wants to point out the place so they proceeded under the supervision of OII and SHO, where Hashim pointed out the place of in this respect pointation memo Ex PW 10/10 was prepared. He also took phot snaps of accused Hashim at time of pointation which consist of 08 photographs Ex PW 10/12 to Ex PW 10/19. He through application also conducted DNA test of accused and victim through blood sample Ex PW 10/25 and result whereof is received on 10.01.2018.

PW # 11 Muhammad Amin marginal witness of pointation memo Ex PW 10/31, vide which Tanveer pointed out the place of occurrence to the Investigation Officer.

Pw # 12 Muhammad Zareen, marginal witness to pointation memo already Ex PW 10/31 vide which accused Tanveer pointed out the place of occurrence.

PW # 13 Dr. Muhammad Irshad CMO. Examined accused Hashim on 30.12.2016 at 11:00 am and submitted report Ex PW 10/8 and found the following: Both primary and secondary sexual characters are present and marked. No congenital and physical abnormality noted. Accused disclosed that he is married one and having one baby.

5. After close of prosecution evidence, accused were examined U/S 342 Cr. PC wherein they denied the allegations and professed innocence. However, he did

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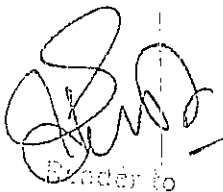
not wish to be examined on oath or produce evidence in defense.

6. APP for the state assisted by counsel for complainant and Counsel for the accused present. Arguments heard and record perused.

Arguments.

7. Learned counsel for complainant argued that both the accused are directly charged in the promptly lodged FIR on the written application of complainant. He argued that accused Tanveer had sent the complainant to his shop and thereafter closed the door of shop and principal accused Hashim committed rape with her in the shop. He further submitted that on the hue and cry of complainant, PWs Nazir and Riaz were attracted to the spot who opened the door and found inside the shop complainant and accused Hashim. He further argued that the occurrence is supported by independent/uninterested eye witnesses. Similarly other record available on file fully support the version of complainant. He argued that relationship of teacher and student is based on trust and confidence and taking benefit of this relation, accused have committed a heinous offence and they both are liable to maximum punishment available under the law.

8. Conversely, learned counsel for accused vehemently argued that complainant has no



District Sessions Judge
Abbottabad

evidence to substantiate her allegations levelled against accused. Even during course of investigation allegations set out in application based FIR were not established. Version of complainant pertaining to rape by accused Hashim in the shop of co-accused Tanveer is not supported by the eye witnesses. Similarly, straight forward and clear narration of occurrence by the accused disclosed at very first instance that accused were charged with malafide intention in order to grab money from the accused. He argued that actually complainant herself had asked for friendship with accused Hashim. She remained in touch with accused and she planned to elope with accused but accused was not ready to do so, therefore accused were charged falsely.

FINDINGS.

9. With able assistance of both the learned counsel I sifted through material on record. Case of prosecution arises out of an application dated 26.12.2016 addressed to SHO Police Station Donga Gali, Abbottabad by complainant/prosecutors Mst. Tahira Sarfraz d/o Sarfraz Khan aged about 13 years. Application is available as EXPW8/1. As per contents thereof complainant is resident of Pirkot and student of 7th class. One day she was busy cooking food in kitchen of school when her teacher namely Hashim, present accused entered in Kitchen, he locked door of


District Judge

kitchen and made excesses upon her and threatened to keep her mouth shut else her photos would be uploaded on internet which he had taken at that time. Later on, on 22.12.2016 Chowkidar of school namely Tanveer, co-accused came to complainant and sent her to shop of co-accused Tanveer to bring milk. When complainant went to shop of accused Tanveer she found principal accused Master Hashim present in shop. Co-accused Tanveer closed doors of the shop and principal accused forcibly removed clothes of complainant and committed rape upon her. Upon hue and cry raised by complainant, Master Nazir and Master Riaz were attracted to the shop, they opened door of the shop. Principal accused Hashim was snubbed, abused and beaten by said master Nazir and Riaz while complainant went to her house. Her father is Laundry Man in army presently posted at Kharran. Mother of complainant took the complainant to her father therefore matter was reported on 4th day of occurrence through EXPWS/1 which was incorporated in FIR EXPA. Prosecution in support of its case has produced as many as 11 PWS out of which complainant herself appeared and was examined as PWS. Complainant as PWS testified exactly the same facts as set out in her initial report. Age of complainant was mentioned as 13 years in initial report however, through ossification test, EXPW10/2 her approximate age was opined to be about 17 years

with difference of 6 months meaning thereby her age as per Radiologist opinion could be about 16 years.

On the other hand, it has been held by the superior courts "age of victim/girl determined by ossification test not accurate proof. Though a better guide to the age of a person yet it is not an accurate estimated margin of one year on either side is possible".

1968 P.Cr.L.J 529

AIR 1928 Lahore 250

1975 P.Cr.L.J page 936.

In these circumstances approximate age of complainant though claimed by her to be 13 years at the time of occurrence at the most approximately could be up to 16 years and not above.

10. Complainant as PW8 during her examination in chief has provided explanation for delay in report. In such like situation where youthful girl is subjected to such an offence of moral turpitude this is quite natural that family does not straightaway come for report. There are many considerations and impediments including family honor, name as well as reputation and future of victim/girl which is at stake if the offence of rape is disclosed by lodging report. In present case father of victim admittedly was not available in the village, complainant was living alone with mother therefore situation became further critical and grave for mother to take decision. Therefore, mother of complainant took her to her father posted in Kharrian. Complainant as PW8 admitted even during course of

Reader to
District Sessions Judge
Abbottabad

cross examination that she had disclosed the occurrence only to her mother. All these facts explaining reason for delay were never shattered even during course of cross examination of PW8. Besides, minor discrepancies which are negligible in nature, material facts would stand established through testimony of PW8 even during course of cross examination. It has been established that occurrence took place in shop of Tanveer. Therefore accused has been charged for abetment. Tanveer accused never denied running said shop rather a suggestion was put during course of cross examination that Tanveer accused used to run said shop in evening. However, factum of running said shop by co-accused would stand established. Interestingly all the material facts including happening of occurrence, place of occurrence i.e shop of accused, later on entry of PWs Riaz and Nazir in said shop and reason for delay in report above all medical examination of complainant at given time have been established even through cross examination of PW8 (whereby principal accused Hashim could not deny his presence on the spot). No specific plea in defense could be produced on record to diminish/shatter credibility of testimony of complainant.

11. Lady doctor Shaheena Mehtab had examined complainant on 27.12.2016 at 1245 AM. Although no mark of violence or resistance were observed on any

part of body or clothes, however it appeared as an admitted fact that complainant was examined after 04 days of the occurrence therefore absence of any mark of violence or resistance on any part of body or clothes was very obvious, as complainant was not wearing the same apparel. However, important part of medical examination was the observations of the doctor after conducting medical examination according to which: "Hymen ruptured old healed tear admitting two fingers with slight difficulty". Swabs were taken for detection of semen for DNA. Medical report is produced as EXPW7A/1. Lady doctor had not given time elapsed between commission of offence and medical examination as it was related to forensic report. PW7 admitted during course of cross examination that as per her examination and observations first sexual contact took place with the victim more than two weeks back and there was "old healed tear of hymen" such tear is healed within two weeks. Principal accused was also medically examined and as per report EXPW10/3 accused was observed by the doctor "able to perform sexual intercourse".

12.10 in present case examined as PW10" also deposed during course of cross examination that principal accused was married and was father of one child. Therefore, medical examination of principal accused would stand strengthened through this factual

position. Admittedly, swabs were taken from victim after medical examination and after arrest of principal accused Hashim on 29.12.2016 3CC blood taken from accused was also sent for forensic analysis and DNA test. Unfortunately, at first instance laboratory had returned samples with observations that blood of victim was also required for the purpose of DNA however later on when 3CC blood of victim was also taken and sent for FSL and DNA test as per EXPW10/26 sample were again returned with further observation that after lapse of three days detection of semen and DNA was not possible. Admittedly, due to want of matching result of DNA test confidence inspiring deposition of victim in such a young age could not be negated straightaway. Reliance is placed on:

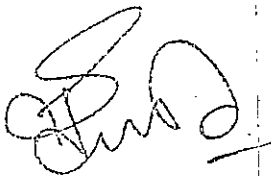
2011 PCr.LJ 1443

2013 SCMR page.203 (FB)

"non-receipt of matching report of DNA test would not negate the ocular account of PWs nonappearance of accused as his own witness to make statement on oath when he has been falsely implicated may help drawing inference against him".

13. In these circumstances testimony of prosecutors would stand corroborated through medical evidence. No specific plea in defense could be raised by accused. Complainant admittedly is a minor girl she remained student of principal accused Hashim, as

relationship of student and teacher is never denied by witnesses. Complainant is never termed as girl of easy virtues. Her present medical/physical condition that she had lost virginity at hands of accused Hashim never stood shattered by defense. Surprisingly there appear very weak, shaky, and fragile defense plea in the manner that on the one hand reason assigned for delay in report has been brought on surface through cross examination of PW8 was "greed to grab money from accused". Interestingly, during further course of cross examination another plea came on surface that complainant and accused Hashim remained in touch on mobile phone as evident from mobile data produced as EXPW10/28 whereby defense through implied admission of the offence attempted to give impression that complainant was consenting party and sexual contact between complainant and principal accused was a consensual act. Accused Hashim during his statement recorded within terms of Section 342 Cr.P.C admitted that he remained in relationship with complainant but again complainant was termed to be initiative of the relationship and a consenting party. As already discussed herein before present age of victim/complainant by no stretch of imagination would be above 16 years. Even if admitted for a moment that complainant because of relationship with accused Hashim had consented for sexual contact, what would be status of consent of a minor girl being already under influence of her



For District Judge
 District Judge
 Allahabad

teacher. So when she/complainant was induced or seduced to surrender herself consent would become insignificant. Complainant was the student of accused Hashim aged about 31 years was teacher. He was teaching "Islamyiat". Having fiduciary relationship of pupil and teacher even admission of such like relationship with a minor student would by itself blemish character of accused.

"Accused who has come forward with a specific plea must bring on record some material to establish the same"

2015 P.Cr.L.J 1633.

14. Out of two private witnesses namely Master Nazir and Master Riaz only Master Riaz was produced in witness box and examined as PW9. He has partially deposed on the same line as already stated during his examination recorded U/S 161 Cr.PC, however he made an improvement which prompted prosecution to seek permission to cross examine its own witness U/S 150 Qanoon-e-Shahdat Order. With permission of court PW9 passed through test of cross examination by the prosecution as well as by worthy defense counsel. Interestingly in-spite of slight improvement in his statement PW9 admitted all the material facts even during course of cross examination. On fateful day at relevant time accused Hashim was admitted to be present along with complainant in shop of Tanveer. PW Riaz admittedly followed Master Nazir

who had received information of presence of accused Hashim with a girl in shop of Tanveer which was closed. PW9 however admitted that when he reached at the shop of Nazir was present inside the shop and he was abusing accused Hashim. PW9 further admitted his statement recorded U/S 161 Cr.P.C during course of investigation dated 28.12.2016 to be correct. Similarly, PW9 admitted that accused Hashim is the teacher of complainant Tahira Sarfraz. Although PW9 urged that he has not seen accused and victim in objectionable condition in the shop, however from careful analysis of the sequences of facts it appeared that one Nazir received information about presence of accused Hashim with a girl in the shop of Tanveer. Upon which Nazir asked PW Riaz to accompany him to the shop of said Nazir went ahead who was followed by PW Riaz therefore when PW Riaz reached at the spot he found Hashim being abused by Nazir. Accused Hashim and victim had already taken care of their apparel. Interestingly, during course of cross examination of PW9 defense raised plea that because of having relationship with accused Hashim complainant planned to elope with him, accused Hashim was not ready for elopement therefore accused was falsely implicated in the present case. Surprisingly, from trend of cross examination of witnesses defense could not remain stuck to this plea. So far as credibility of testimony of PW9 is concerned cumulative effects of deposition of PW9 would not

render him totally unreliable because real facts pertaining to the occurrence have been established through mouth of PW9, though he slightly improved his statement. My view in this regard is augmented by the following judgments of the Superior Courts.

PLD 1970 AJK 1.

"Such witness even after being impeached by party calling him does not become unreliable parties can rely on his statement in support of their respective pleas and court can treat his statement on same level as of other PWs".

AIR 1931 Calcutta 401 (FB)

AIR 1933 Patna page 517

"simply if a witness is declared hostile his evidence cannot be considered worthless. Value of his testimony would be judged from cross examination".

District Sessions Judge
Allahabad

15. During course of arguments learned defense counsel vehemently argued that prosecution has withheld best available evidence i.e parents of complainant as they were never produced in witness box to depose in favour of complainant. Fact of matter is that both of the parents of complainant are neither eye witnesses of the occurrence nor they are witnesses to any other material fact. Besides, merely being parents having no material role regarding occurrence their testimony would be totally insignificant and of no material benefit to prosecution. Therefore, non-production of

parents of complainant would not adversely affect case of prosecution within meaning of Section 129(g) of Qanoon-e-Shahadat order.

16. In addition to PW9 another witness namely Muhammad Amin examined as PW11 was also declared hostile. However, fact of matter is that said Muhammad Amin was witness of a pointation memo EXPW10/31. As result of said pointation no recovery or discovery of new fact could be brought on surface therefore regardless of testimony of PW 11 this piece of evidence i.e EXPW10/31 would be of no significance under Article 40 of Qanoon-e-Shahadat Ordinance.

17. In these circumstances case of prosecution would stand established through testimony of complainant/victim corroborated through medical evidence. In spite of all efforts prosecution failed to obtain DNA test. Nevertheless, even absence of DNA in presence of medical evidence would not be fatal to case of prosecution. Testimony of PW9 and PW10 would also lend support to case of prosecution. In this regard reliance is placed on:

2002 PCr.L.J 976

"Technicalities procedural or otherwise if any would not be given serious thought if the case stands otherwise proved"

2002 YLR page 2413

Signature

"courts should have a dynamic and not a static approach while appraising evidence and should record the conviction of having been satisfied about the commission of offence by the accused despite some technical lapses on the part of investigating agency".

18. In present case no specific, valid or confidence inspiring plea in defense can be raised to create dent in case of prosecution. There was a suggestion that complainant had consensual sexual contact with accused Hashim and present case was registered after accused Hashim refused to act upon plan of elopement by prosecution. This suggestion is not worth credence. In this regard reliance is placed on:

PLD 2005 SC page 40

"mere suggestion denied by witness does not lead to any conclusion"

"While appraising the evidence court has to take into consideration whether the contradictions/omission, improvements/embellishment have been of such magnitude that they might materially affect the trial. Minor contradiction, inconsistencies, omission or improvements on trivial matters without affecting the case of prosecution not to be made the basis by the court to reject the evidence in its entirety".

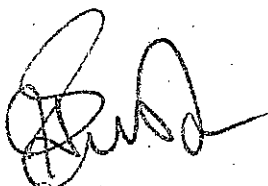
2002 SCMR page 1869.

19. In order to sift grains from chaff while analyzing, assessing and evaluating intrinsic value of prosecution evidence commission of offence of rape.

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upon prosecutrix being minor girl would stand established with facilitation, assistance and abetment of co-accused Tanveer who also had mens-rea. It has been established that accused Tanveer provided safe place to accused Hashim to commit rape of complainant. Accused Tanveer locked his shop from outside and went away. Later on upon receipt of information by Teacher Nazir, accused Tanveer was asked to give juice from his shop, upon which Tanveer had to go to his shop. He was followed by Nazir and Riaz and consequently accused Hashim was caught red handed. Although Nazir was not produced during evidence however story narrated by complainant would stand established/corroborated through PW Riaz.

20. No plausible reason could be assigned to falsely implicate accused with specific role for such an offence of moral turpitude which could entail stigma on the character of complainant as well as whole of her family. Not even iota of evidence could be produced to suggest substitution of actual culprit. Nothing produced on record to show that accused was falsely implicated as it would be even harder for complainant to come up with charge of rape, which would serve stigma on her face for throughout her life. As already been discussed herein before accused Hashim during cross examination of all the PWs even during his statement U/S 342 Cr.P.C never denied his

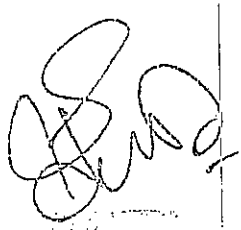


Reader to
District Sessions Judge
Lahore

presence on the spot at the time of occurrence. Similarly, mode and manner in which commission of offence was disclosed by PW Riaz and Nazir was also never denied. Relationship of pupil and teacher and minority of girl/victim also appeared as admitted facts.

21. Admittedly, there are minor discrepancies but fact of matter is that cumulative effect of prosecution evidence would connect principal accused with commission of offence with role of abetment attributed to co-accused. My view in this regard is augmented through judgment of Supreme Court reported as under.

2010 SCMR page 1706, which provides as under,

 "moral certainty cannot be equated by jurors with evidentiary certainty if standard proof is equivalent to moral certainty without more the jurors may think that he is entitled to convict if he feels certain even though the state failed to prove its case beyond reasonable doubt. Prosecution is not required to prove its case to an absolute certainty since such an unrealistically high standard can seldom be achieved".

Reliance also placed on:
2005 MLD page 85

22. As sequel to above made discussion, it is concluded that prosecution has succeeded to bring home charges so leveled against accused beyond any shadow of doubt. Therefore, both the accused Hashim s/o Qari Muhammad Azam and accused Tanveer s/o

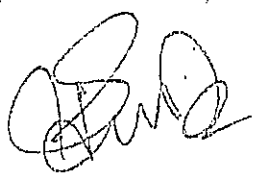
Muhammad Amin would stand convicted on the following charges.

23. Accused Hashim is convicted U/S Section 376 PPC and he is sentenced with rigorous imprisonment for 10 years together with fine of Rs. 50,000/-. Fine if recovered, shall be payable to complainant Tahira Sarfraz as compensation with in terms of Section 544-A Cr.P.C. In default of payment of fine, accused Hashim shall further undergo simple imprisonment for 06 months. Accused Hashim is also convicted U/S 342 PPC and sentenced with rigorous imprisonment for 01 year together with fine of Rs. 10,000/-. The fine if recovered, shall be paid to complainant/victim U/S 544-A Cr.P.C. In default of payment of fine accused shall further undergo SI for 06 months. Both the sentences shall run concurrently. As accused Hashim is already in custody therefore benefit of Section 382-B Cr.P.C is extended to convict.

24. Accused Tanveer is also convicted for abetment U/S 109 PPC of offences U/S 342 and 376 PPC and he is also sentenced with rigorous imprisonment for one year along with fine of Rs. 10,000/-. Fine when recovered shall be payable to victim/complainant as compensation U/S 544-A Cr.P.C. Failing which accused shall further undergo SI for 06 months. Accused Hashim is present in custody, he is sent

along with detail conviction warrant to Superintendent District Jail to undergo his sentence. Accused Tanveer is present on bail before court, he is taken into custody and also sent to Jail to serve the conviction along with conviction warrant. Copy of this judgment is provided free of cost to both the accused U/S 371 Cr.P.C. Signature of both the accused obtained on margin of order sheet in this regard. Copy of this judgment shall also be forwarded to In-charge District Prosecution U/S 373 Cr.P.C. Case property shall be disposed away according to law after the expiry of period for appeal/revision. File be consigned to Record Room.

Announced.
23.10.2018.

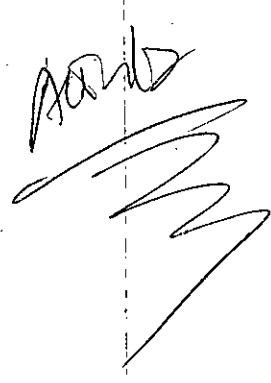
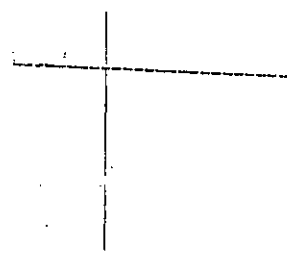


(Sofia Waqar Khattak)
Sessions Judge
Abbottabad

CERTIFICATE

Certified that this judgment consists of (22) pages. Each page has been read, signed and corrected by me where necessary.

(Sofia Waqar Khattak)
Sessions Judge
Abbottabad

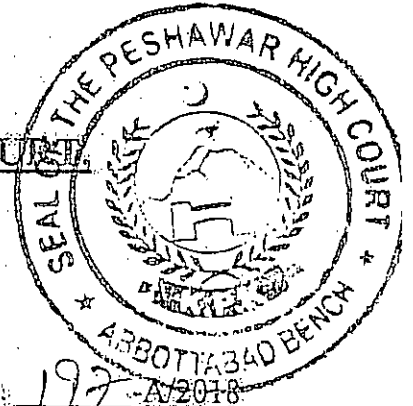



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BEFORE THE PESHAWAR HIGH COURT,
ABBOTTABAD BENCH



Cr. Appeal No. 197-A/2018

Tarveer son of Muhammad Amin caste Karlal, resident of Pirkot Nowshehra,
District Abbottabad.

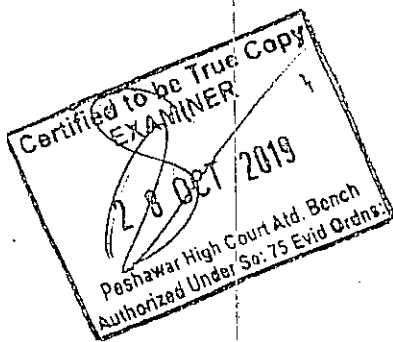
...CONVICT/ APPELLANT

VERSUS

1. The State.
2. Tahira Sarfaraz daughter of Sarfaraz Khan, resident of Pirkot Nowshehra, District Abbottabad.

...COMPLAINANT/ RESPONDENTS

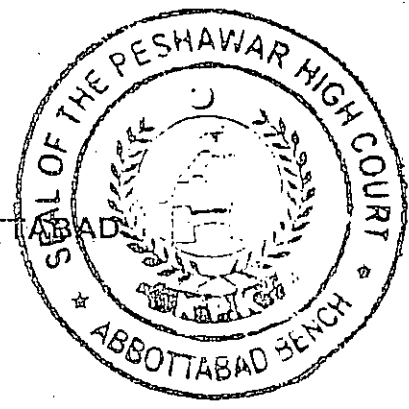
CASE FIR NO. 282 DATED 26/12/2016 UNDER
SECTIONS 376/342/109 PPC POLICE STATION
DONGA GALI, DISTRICT ABBOTTABAD.



APPEAL UNDER SECTION 410 G.P.C., AGAINST
THE JUDGMENT DATED 23/10/2018 PASSED BY
LEARNED SESSIONS JUDGE ABBOTTABAD
VIDE WHICH HE CONVICTED THE APPELLANT
UNDER SECTION 109 PPC OF OFFENCE UNDER
SECTION 342 AND 376 PPC AND HE IS
SENTENCED WITH RIGOROUS IMPRISONMENT
FOR ONE YEAR ALONGWITH FINE OF RS.

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Judgment Sheet
IN THE PESHAWAR HIGH COURT, ABBOTTABAD
BENCH
JUDICIAL DEPARTMENT
Cr. Appeal No. 197-A/2018

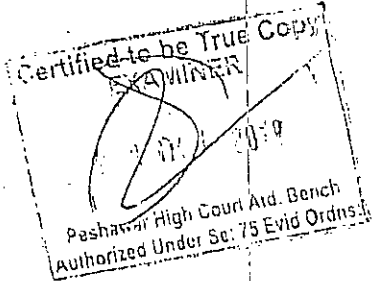
JUDGMENT

Date of hearing.....10.10.2019.....

Appellant (Tanveer) By Mr. Masood-ur-Rehman Tanoli, Advocate:

Respondents. (State) By Sardar Muhammad Asif, Assistant A.G
and (Complainant) By Sardar Basharat, Advocate:

SHAKEEL AHMAD, J. For the reasons recorded in our detailed judgment of even date in the connected Cr. Appeal No. 203-A/2018 titled "*Hashim Vs. The State & another*", this appeal is allowed. Conviction and sentence of the appellant Tanveer are set-aside and he is acquitted of the charge, levelled against him. As the appellant is on bail, therefore, his sureties are discharged from the liability of bail bonds.



Announced:
10.10.2019.

SAJ JUDGE

SAJ JUDGE

Self CS

Justices Ijaz Anwar and Shakeel Ahmad

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Judgment Sheet
IN THE PESHAWAR HIGH COURT, ABBOTTABAD
BENCH
JUDICIAL DEPARTMENT

Cr. Appeal No. 203-A/2018

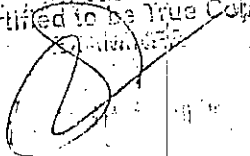
JUDGMENT

Date of hearing.....10.10.2019.....

Appellant (Hashim) By Mr. Abdul Saboor Khan, Advocate.

Respondents. (State) By Sardar Muhammad Asif, Assistant A.G
and (Complainant) By Sardar Basharat, Advocate.

SHAKEEL AHMAD, J.- In a trial conducted by the learned Sessions Judge Abbottabad, appellant Hashim, aged about 31 years, was found guilty of committing rape with Mst. Tahira Sarfaraz (complainant), thus, he was sentenced to rigorous imprisonment for ten (10) years with a fine of Rs.50,000/- or in default of payment of fine to suffer further six (06) months S.I under Section 376 PPC and to one year R.I with a fine of Rs.10,000/- or in default of payment of fine to six (06) months S.I under Section 342 PPC. The fine, if realized, was ordered to be paid to the victim. Similarly, in the same trial, appellant Tanveer, aged about 24 years, was also found guilty of facilitating the offence to one year R.I with a fine of Rs.10,000/- or in default to suffer

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Peshawar High Court, Abbottabad Bench
Authorized Under Sec. 75 Evid Ordns.

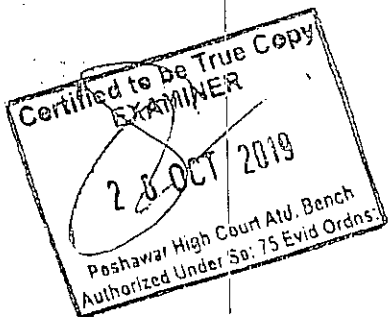
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further six (06) months S.I under Section 109 PPC. Benefit of Section 382-B Cr.P.C was extended to both the appellants. Since the appellants have filed their separate appeals, therefore, through this single judgment we shall also decide Cr.Appeal No. 197-A/2018 titled "*Tanveer Vs. The State & another*" being the outcome of one and the same impugned judgment dated 23.10.2018.

2. The incident took place on 22.12.2016 at 08:00 A.M inside the shop allegedly owned by accused Tanveer. The report was lodged by the complainant Mst. Tahira Sarfaraz (PW-8) on 26.12.2016 at 19:40 hours at Police Station Donga Gali Tehsil and District Abbottabad. The distance between the police station and place of occurrence is 25 / 26 kilometers.

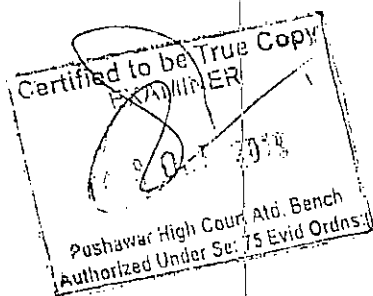
3. The prosecution case is that Mst. Tahira Sarfaraz d/o Sarfaraz (complainant / victim) submitted an application to the effect that she is a student of 7th class at Government Middle School Pirkot. As routine, after working hours, a student used to be deputed for cooking of food on daily



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basis. One month prior to the occurrence, when she went inside the kitchen for cooking food, teacher Hashim entered into the kitchen, locked it and took her snapshots and asked her to keep her mouth shut, otherwise, he would upload her snapshots on internet and she would also be expelled from school, whereupon she kept mum. After a few days, he called her in his office and obtained her signature on a blank paper posing it to be an admission form. On 22.12.2016, at about 08:00 A.M Hashim accused called her through watchman for bringing milk from shop of co-accused Tanyeer. Hashim asked her that the document over which her signature was obtained was the Nikah Nama form and now she is his legally wedded wife. He undressed her forcibly and committed Zina with her by use of force. On her hue and cry Nazir and Riaz, associate teachers came there, beat Hashim, whereafter he decamped from the spot. She put on her clothes and proceeded to house. Her mother took her to her father, who was serving in Pak Army at Kharian. On return, she lodged the report,



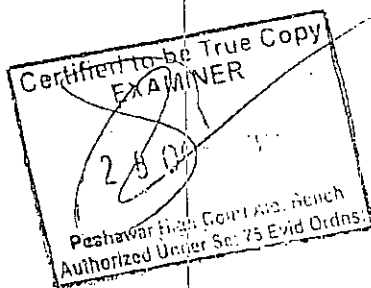
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which was incorporated into FIR. She was referred to BBS Teaching Hospital Abbottabad, where she was medically examined on 27.12.2016 and observed as under:-

"Conscious, well oriented in date and place. No mark of violence or resistance on any part of body or clothes."

4. On 30.12.2016, accused Hashim was examined by Dr. Muhammad Irshad (PW-13) and found him fit to do sexual intercourse; his report was exhibited as Ex.PW-10/8. Ex.PW-7/1 is the medico-legal report of the complainant / victim. According to report of Radiologist Ex.PW-10/2 complainant was aged about seventeen and a half years. Muhammad Khalid, ASI, (PW-10) arrested the appellant Hashim on 29.12.2016.

5. In order to prove its case, the prosecution examined as many as thirteen (13) witnesses. Sabir Khan, SI (PW-2) only recorded FIR Ex.PA. Amjad, Constable, is witness of recovery memo Ex.PW-3/1 vide which lady doctor handed over three swab



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tubes sealed in Khaki envelop for DNA to ASI Donga Gali. Abdul Shakoor (PW-4) is witness of recovery memo Ex.PW-4/1 vide which doctor handed over to him a phial 3cc for onward transmission for DNA and cross match. Asim (PW-5) brought the docket, which he incorporated in the entry of two parcels in Register No.5/21 Ex.PW-5/1, whereafter, he handed over the same to constable Tufail for sending the same to FSL Islamabad. Tariq Zaman, Constable No. 697 9PW-6) is marginal witness of recovery memo through which doctor handed over 3cc blood for onward transmission for DNA test alongwith swabs of victim. The recovery memo was exhibited as Ex.PW-6/1. PW-7 and PW-13 are the medical officers, gist of whose statements have been given whereas Mst. Tahira Sarfaraz, complainant, appeared as PW-8 and supported the contents of FIR. Muhammad Riaz (PW-9) the alleged eyewitness of the occurrence was declared hostile, he was cross-examined by the learned counsel for the complainant as well as defence counsels. The second eyewitness

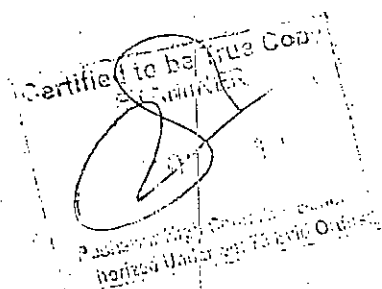
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EXAMINER
Peshawar High Court Sd. Bench
Authorized Under Sec: 75 Evid Ordns

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of the occurrence namely, Nazir Ahmad was given up by the prosecution on the ground of having been won over. Muhammad Khalid, ASI (PW-10) investigated the case and after completion of investigation handed over the case file to PW-1 for submission of challan. Muhammad Amin (PW-11) and Muhammad Zareen (PW-12) are witnesses of pointation memo Ex.PW-10/31 vide which Tanveer pointed out the place of occurrence to the I.O. The accused when examined denied the charge and pleaded innocence, however, did not produce evidence in defence.

6. It has been argued by learned counsels for the appellants that appellants are innocent and have falsely been implicated in the case; that complainant i.e. alleged victim was sixteen (16) years of age at the time of occurrence; that the prosecution has failed to bring home the guilt of the accused beyond a ray of doubt; that the medico-legal report does not support the version of the complainant; that there is inordinate delay in lodging the report; that evidence so furnished is not sufficient to sustain conviction; that PW-



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9 Muhammad Riaz did not support the stance of the complainant and prayed for acquittal of the accused by extending benefit of doubt.

7. On the other hand, learned counsel appearing on behalf of the complainant and the learned Assistant Advocate General, representing the State, jointly argued that statement of victim is straightforward and rings true; that complainant is aged about 13 / 14 years, she has got no ill will or personal enmity with the accused to falsely implicate them; that appellant Hashim is attached to a noble and sacred profession and was supposed to impart knowledge to the students not to outrage their modesty; that all the prosecution witnesses are consistent on the manner, mode, time and place of occurrence, they were cross-examined at length but no dent could be caused in their statements; that prosecution has proved its case beyond a ray of doubt and that the impugned judgment needs no interference.

8. We have heard the arguments of learned counsel for the parties and scanned the record with their valuable assistance.

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9. In our opinion Mst. Tahir Sarfaraz, complainant, at the time of alleged occurrence was not below the age of sixteen (16) years as stated by her and recorded by the investigating officer. According to report of Radiologist Ex.PW-10/2, she is seventeen and half years (17½) old. Although lady Doctor Shaheen Mahtab stated that she was aged about 13 / 14 years, she admitted in cross examination that her age was written as 13 / 14 years at the instance of Investigating Officer, however, the determination of age by medical officer is always probable determination and one cannot say with certainty about the age of the person examined by the medical officer. Thus, keeping in view report of Radiologist, we hold that Mst. Tahira Sarfaraz was above sixteen (16) years of age at the time of occurrence.

10. We have gone through the statements of the victim (Mst. Tahira Sarfaraz) and lady Doctor. The medical evidence Ex.PW-7/1 shows that there are no marks of violence or injury on any part of the body of victim. Her hymen was found torn, but

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EXAMINER
28 OCT 2019
Peshawar High Court At. Bench
Authorized Under Sec. 75 Evid Ordns.

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it was an old tear, admitting two fingers with slight difficulty. According to the allegation of the victim, her clothes were removed by the accused Hashim forcibly and thereafter he committed *Zina-Bil-Jabar* with her, but despite that neither her clothes were torn nor any injury was given nor any resistance was found on her body or clothes by the lady Doctor nor any sign of resistance was found or observed on the scene of crime by the I.O during spot inspection.

11. Another important aspect of the case is that PW-7, the lady doctor, who examined Tahira Sarfaraz, while answering to a question stated in cross-examination that the mention of old healed tear of hymen means that the first sexual contact took place with the victim more than two weeks back as this tear heals within two weeks. Admittedly, she was examined on 27.02.2016, seven (07) days after the occurrence. The above discussion leads us to the conclusion that occurrence has not taken place in the manner, mode, place and time as described by the prosecution.

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EXAMINER
27/02/2016
District High Court Atd. Bench
Authorized Under Sec. 75 Evid Ordns

12. We also noticed that the lady Doctor had taken her swabs from posterior fornix and cervix in three tubes and handed over the same for detection of semen and DNA. However, it was returned with the observation that possibility of semen detection for vaginal swabs sample of victim after three (03) days is very rare as is depicted from letter Ex.PW-10/24 and Ex.PW-10/26. No doubt, she was examined seven (07) days after the occurrence, but it is known phenomena / proposition, that semen remains active and alive upto 17 days at the best. In this respect reliance can be placed on the judgment reported as 2002 P.Cr.L.J 831 *Mst. Sherman Vs. The State*. Though in the instant case she was examined seven (07) days after the occurrence but despite that the report of swabs and DNA was not given.

Examination Report
 Date: 10/24/2010
 Time: 11:00 AM
 Location: ...
 Signature: ...
 Doctor's Name: ...
 Hospital Name: ...

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13. Now adverting to statement of Muhammad Riaz, the eyewitness of the alleged occurrence, who appeared as PW-9. The second eyewitness Nazir was abandoned on his being won over. In this case, at the relevant stage when examination in chief of

PW-9 was being recorded, the complainant side felt that PW is speaking in a different tone, which is not favourable to the prosecution, the learned counsel for the complainant requested that the witness may be declared hostile. After due hearing and perusing the record, he was declared hostile and the parties were given opportunity to cross-examine him. We have gone through his statement minutely to adjudge the credibility and veracity of his statement. It is by now established that statement of such witness cannot be discarded altogether and has to be considered like the evidence of any other witness, but with a caution. In this context reliance can well be placed on the judgments reported as *Zahid Khan Vs. Gul Sher and another* 1972 SCMR 597, *Muhammad Sadiq Vs. Muhammad Sarwar* 1979 SCMR 214. After perusal of the statement of Muhammad Riaz (PW-9), we came to the conclusion that despite opportunity of cross-examination this witness was not confronted with his earlier statement recorded under Section 161 Cr.P.C.

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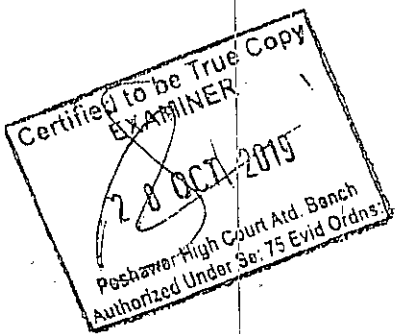
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Furthermore, nowhere he stated that he had seen the accused Hashim committing Zina with Tahira Sarfaraz. Thus, evaluation of entire evidence available on the record leads us to the irresistible conclusion that there is no corroboration to the statement of Mst. Tahira Sarfaraz.

14. There is delay of six (06) days in lodging of the FIR. Mst. Tahira Sarfaraz has stated in her statement that after the occurrence, she came to her house, her mother took her to her father at Kharian, thereafter, they came back to Abbottabad on 27.12.2016 and lodged the report. In support of her this stance neither her mother nor her father was produced by the prosecution we are afraid, this explanation is too common to be given weight.

15. Now adverting to pointation of the accused Tanveer. Nothing was recovered or discovered or nothing new was added on his pointation, therefore, the same does not carry weight.

16. Coming to charge against accused Tanveer, he was charged for facilitating the



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crime. Neither it was proved through evidence that the shop in question belongs to him nor PW-9 stated in his statement that he closed the door of the shop and facilitated the crime. Even otherwise, the prosecution has failed to prove the main charge against principal accused Hashim, therefore, conviction and sentence under Section 109 PPC is not sustainable against accused Tanveer.

17. The basic principle of Sharia law is that the conviction must be based on evidence beyond any shadow of doubt. The principle can be deduced from an undisputed Hadith: -

"Ayesha reported that the Messenger of Allah said "Drive off the ordained crimes from the Muslims as far as you can. If there is any place of refugee for him, let him have his way, because the leader's mistake in pardon is better than his mistaken in punishment: Mishkatul Msabill (Eng. Translation by Fazl-ul-Karim) Vol.II,P.544 Law Publishing Company, Lahore."

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Peshawar High Court. Attd. Bench
Authorized Under Sec: 75 Evid Ordns.

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18. Because the damage resulting from erroneous sentence is irreversible. The principle that it is better to acquit a guilty person than to punish an innocent one had been proclaimed by the Holly Prophet of Islam fourteen hundred (1400) years ago has now become the guiding principle for the safe administration of justice.

19. For the reasons stated hereinabove, we do not uphold the conviction of the appellants and allow this and the connected appeal, set-aside their conviction and sentences and acquit them of the charges, levelled against them by extending them benefit of doubt. They be set at liberty forthwith, if not required in any other case.

Announced:
10.10.2019.

[Signature] JUDGE

[Signature] JUDGE

^Salf CS^/

Justices Ijaz Anwar and Shakeel Ahmad

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خدمت جناب ڈائریکٹر سپر ایجنسی اینڈ سکنڈری ایجوکیشن KPK لشکر

عنوان :- ایس ایل بیٹے جالی ملازمت

جناب عالی! گزارش ہے کہ مسائل اکتیو ملازم درہم و بہارم (C.IV) گورنمنٹ ہڈل سکول بہرکوٹ ضلع ایسٹ آباد میں فرائض جنسی انجام دے رہا تھا

مخوضہ 2/10 بجلہ اوڈر نمبر 29-10625 از (DEON) ایسٹ آباد کے

تحت مسائل کو بے بنیاد من گھڑت اور استغاثی کارروائی کرنے ہوئے

ملازمت سے برطرف کر دیا گیا اور مسائل سے خلاف فوجداری مقدمہ بھی قائم کیا گیا جس کے خلاف

مسائل نے لشکر ایسٹ آباد میں ایس ایل کی

مسائل سے خلاف گھانٹے سے تمام الزامات کو بے بنیاد قرار دیکر

مسائل کو بے مقصد قرار دیا گیا اور درہم 10/10 کو منسلک بنانے ہوئے

ملازمت سے مسائل کو باعزت بری کر دیا

لیکن جناب سے ایس ایل کی جالی ہے کہ مسائل کو ملازمت پر بحال بنانے

جناب آجی مگر درازی آئیے دعا گو رہوں گا۔

الغافل

شہر منویر ولد شہد امین
Ex نائب قائد (C.IV)

GMS بہرکوٹ (ایسٹ آباد)

موبائل نمبر 0304-5233037

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13-11-19
سید محمد

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NOTIFICATION

1. **WHEREAS**, Mr. Muhammad Tanveer Ex-Naib Qasid GMS Pir Kot Abbottabad was removed from Government Service under Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011 by the DEO (Male) Abbottabad vide Endst No 10625-30 dated 02/10/2017
2. **AND WHEREAS**, the said aggrieved Naib Qasid filed a departmental appeal dated 13/11/2019 to the Director E&SE Khyber Pakhtunkhwa Peshawar (appellate Authority) for redressal of his grievances/reinstatement in service.
3. **AND WHEREAS**, the appellate authority in pursuance of Section 17 read with sub rule (1) & (2) of the E&D Rules 2011 called for the record of the case and comments from the DEO (Male) Abbottabad vide this office letter No 7703 dated 26/12/2019 for consideration of the appeal.
4. **AND WHEREAS**, the DEO Concerned provided the requisite record/comments, accordingly vide his letter No 184 dated 06/01/2020 merely describing the reason/circumstances under which the appellant had removed from service.
5. **NOW, THEREFORE**, in exercise of the powers conferred under Section-17 rule (2) (a) of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules-2011, the Director E&SE/appellate authority has **decided to reject the appeal** lodged by Mr. Muhammad Tanveer Ex-Naib Qasid GMS Pir Kot Abbottabad (appellant) for re-instatement in service and uphold the order of the DEO (Male) Abbottabad issued vide Endst No 10625-30 dated 02/10/2017

DIRECTOR

Elementary & Secondary Education
Khyber Pakhtunkhwa, Peshawar


Endst: No. 729-33 /F.No. 72/A-20/C-IV/Abbottabad

Dated Peshawar the 17/2/2020.

Copy of the above is forwarded for information and n/action to the:-

- 1- District Education Officer (Male) Abbottabad w/r to his letter No. cited above.
- 2- District Account Officer Abbottabad.
- 3- Principal/HM Concerned.
- 4- Appellant concerned.
- 5- PA to the Director E&SE Khyber Pakhtunkhwa Peshawar.


Assistant Director (Admn)
E&SE, Khyber Pakhtunkhwa, Peshawar



بعد التّ جناب سرورس ٹریبونل صوبہ سرحد پشاور

منجانب اہلانت
شمارہ پنجم
دعویٰ اپیل

باعث تحریر یہ ایٹک

مستقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ آن مقام پشاور کیلئے اسعد احمد خان سرور سے ایڈووکیٹ ہائی کورٹ کو وکیل مقرر کر کے اقرار کیا جاتا ہے کہ صاحبہ موصوف کو مقدمہ کی کل کاروائی کا کابل اختیار ہوگا نیز وکیل صاحبہ کو کرنے رضی نامہ و اقرار ثالث و فیصلہ برتلاف دینے جواب دہی اور قبیل دعویٰ اور بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ اور مرضی دعویٰ اور درخواست ہر قسم کی تقدیر اور اس پر دستخط کرنے کا اختیار ہوگا نیز بصورت عدم پیروی یا ڈگری کیسٹرف یا اپیل کی برآمدگی اور مستثنیٰ نیز دائر کرنے اپیل نگران و نظر ثانی و پیروی کرنے کا اختیار ہوگا اور بصورت ضرورت مقدمہ مندرجہ کے کل یا جزوی کاروائی سے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنی بجائے تقدیر کا اختیار ہوگا اور صاحبہ مقرر شدہ کو بھی وہی جملہ مذکورہ بالا اختیارات حاصل ہوں گے اور اس کا ساختہ پرواختہ منٹاورڈ قبول ہوگا و دوران مقدمہ میں جو خرچہ و تر جانہ التوا مقدمہ کے سبب سے ہوگا اس کے مستحق وکیل صاحبہ موصوف ہوں گے نیز بقایا دفر سپہ کی وصولی کرنے کا بھی اختیار ہوگا اگر کوئی تاریخ پیشی مقام روزہ پر ہو یا حد سے باہر ہو تو وکیل صاحبہ پابند نہ ہوں گے کہ پیروی مذکور کریں۔

لہذا وکالت نامہ رکھ دیا کہ سند ہے۔

المرقوم 2020-03-18

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