

16th June 2022

Learned counsel with appellant present. Mr. Kabirullah Khattak, Addl. AG for the respondents present.

Respondents have not submitted written reply/comments. Learned AAG seeks time for submission of written reply/comments. To come up for written reply/comments on 02.08.2022 before S.B.



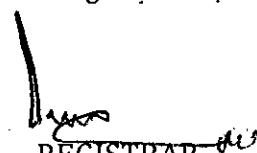


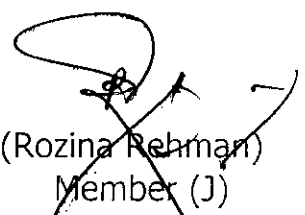
(Kalim Arshad Khan)
Chairman

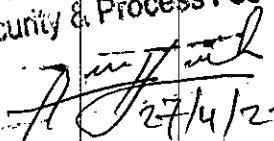
Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 7884/2021

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	17/12/2021	<p>The appeal of Mr. Khan Nazir resubmitted today by Syed Noman Ali Bukhari Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p> REGISTRAR</p>
2-	10.02.2022	<p>This case is entrusted to S. Bench at Peshawar for preliminary hearing to be put there on <u>10/02/22</u>.</p> <p> CHAIRMAN</p> <p>Due to retirement of the Worthy Chairman, the Tribunal is defunct, therefore, case is adjourned to 27.04.2022 for the same as before.</p> <p> Reader</p>
	27.04.2021	<p>Appellant present through counsel. Preliminary arguments heard. Record perused.</p> <p>Points raised need consideration. Instant appeal is admitted for regular hearing subject to all legal objections. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notice be issued to respondents for submission of written reply/comments. To come up for reply/comments on 16.06.2022 before S.B.</p> <p> (Rozina Rehman) Member (J)</p>

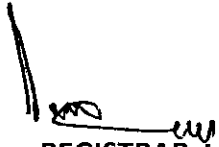
Rs 600/-
Appellant Deposited
Security & Process Fee

27/4/22

The appeal of Mr. Khan Nazir T.B Control Program Health Department received today i.e. on 15.11.2021 is incomplete on the following score which is returned to the counsel for the appellants for completion and resubmission within 15 days.

1. Check list is not attached with the appeal.
2. Appeal has not been flagged/ marked with annexures marks.
3. Annexures of the appeal may be attested.
4. Affidavit may be got attested by the Oath Commissioner.
5. Memorandum of appeal may be got signed by the appellant.
6. Departmental appeal having no date be dated.
7. Copy of rejection order in respect of appellant mentioned in the memo of appeal is not attached with the appeal which may be placed on it.
8. Notification dated 6.2.2014 is illegible which may be replaced by legible/better one.
9. Six more copies/sets of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.

No. 2266 /S.T,

Dt. 16/11 /2021


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Syed Noman Ali Bukhari Adv.

Sir All objections removed and file
Re-submitted

⑦ ~~Final~~ Rejection order was ^{✓ sheet} provided to the appellants


BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Appeal No. 7384/2021

Khan nazir

VS

Govt: OF KPK

INDEX

S.No.	Documents	Annexure	Page No.
1.	Memo of Appeal	-----	01-06
2.	Copy of condonation		07-08
3.	Copy of order	- A -	09
4.	Copy of regularization order	- B -	10
5.	Copy of salary slip	- C -	11
6.	Copy of new salary slip	- D -	12
7.	Copy of departmental appeal	- E -	13
8.	Copy of Rejection order	- F -	14
9.	Copy of finance notification	-G-	15-16
10.	Vakalat Nama	-----	17

Khan
APPELLANT
Khan nazir

THROUGH

Noman
(S. NOMAN ALI BUKHARI)
ADVOCATE HIGH COURT.

&

SHAHKAR KHAN YOUSAFZAI
Advocate Peshawar

(1)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Appeal No. _____ /2021

Diary No. 7878

Dated 15/11/2021

Mr. Khan nazir Sweeper,
TB Control Program Health deptt .

APPELLANT

VERSUS

1. The Government of KPK through Chief Secretary KPK, Peshawar.
2. The Secretary health Deptt Govt of KPK, Civil Secretariat, Peshawar.
3. The director General Health Services Khyber Pakhtunkhwa Peshawar.
4. The Secretary Finance KPK, Civil Secretariat, Peshawar.

RESPONDENTS

APPEAL UNDER SECTION 4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNALS ACT, 1974
AGAINST INACTION AND OMISSION OF THE
RESPONDENTS TO CONSIDER THE APPELLANT'S
CONTRACT PERIOD FOR THE BENEFITS OF PAY
PROTECTION AND PENSION W.E.F 2007 TILL 2018
AND AGAINST REJECTION ORDER DATED 13.08.2020
RECEIVED ON 12/10/2021 WHEREIN THE APPEAL OF
THE APPELLANT WAS REJECTED WITHOUT
SHOWING ANY REASON.

Filed to-day

Registrar

15/11/2021

PRAYER

2

ON THE ACCEPTANCE OF THIS APPEAL DECLARE THE INACTION AND OMISSION OF THE RESPONDENT REGARDS NOT GRANTING PAY PROTECTION TO THE APPELLANT AS ILLEGAL AGAINST THE LAW, RULES AND FACTS AND RESPONDENT MAY PLEASE BE DIRECTED TO CONSIDER THE CONTRACT PERIOD W.E.FROM 2007 TILL REGULARIZATION 2018 OF THE APPELLANT FOR THE BENEFITS OF PAY PROTECTION AND PENSION TILL DATE AND ONWARD. ANY OTHER REMEDY WITH THIS AUGUST TRIBUNAL DEEMS FIT AND PROPER MAY ALSO BE AWARDED THE FAVOR OF THE APPELLANT.

R. SHEWETH

FACTS

1. That the appellant was appointed by the health deptt as Naib Qasid in the year 2007 for Tb Control Program. The appellant working with full zeal and zest since appointment. (copy of order is attached as Annexure-A)
2. That the service of the appellant was regularized w.e.from 2018 vide regularization Act 2018 but the salary of the appellant was started from initial pay stage and ignores all the previous service of the appellant. (Copy of regularization order and both salary slips is attached as annexure-B, C & D).
3. That the appellant made several request but in vain therefore he filed departmental appeal for his claim which was rejected vide order dated 13.08.2020 received to the appellant on 12/10/2021

(3)

without showing any reason. (Copy of departmental appeal and rejection order is attached as annexure-E & F).

4. That the appellant constraint to file this service in August Tribunal on the following grounds amongst others

GROUND

- A. That depriving the appellant from the legal right of benefits of pay protection and pensionary benefits as against the law rules norms of justice.
- B. That the depriving the appellant from the benefits of pay protection is the violation of the superior Court judgments and Pension Rules.
- C. That the similarly nature service appeal decided by the Federal Service Tribunal in favour of appellant and the Supreme Court Judgment maintained the same. On the principal of consistency appellant also entitle to the same relief.
- D. That the appellant was serving as Naib Qasid on contract basis and latter on confirmed on the same post after rendering 11 year of service. therefore the appellant was eligible to the pay protection.
- E. That the appellant is entitled for pensionary benefits of the period which was rendered by the appellant on contract basis under the shelter of west Pakistan Pension rules 2.3 and under fincance notification dated 06/02/2014. **Copy of notification is attached as annexure-G**
- F. That the appellant was entitled for the pensionary benefits under 361CSR for the service which he rendered on contract basis against the permanent post.

4
G. That the appellant was treated according to the law and rules and was depriving from his legal right in arbitrary manner.

H. That the appellant seeks permission to advance other ground proof at the time of hearing.

It is therefore most humbly prayed that the appeal of the appellant may be accepted as prayed for.

Khan
APPELLANT
Khan nazir.

THROUGH:

Noman Ali Bukhard
(S. NOMAN ALI BUKHARD)
ADVOCATE HIGH COURT.

&

SHAHKAR KHAN YOUSAFZAI
Advocate Peshawar

8

BEFORE THE KP SERVICE TRIBUNAL PESHAWAR

Appeal No. _____ /2021

Khan nazir

VS

Govt: OF KPK

CERTIFICATE:

It is certified that no other service appeal earlier has been filed between the present parties in this Tribunal, except the present one.

DEPONENT

LIT OF BOOKS:

1. Constitution of the Islamic Republic of Pakistan, 1973.
2. The ESTA CODE.
3. Any other case law as per need.


(SYED NOMAN ALI BUKHARI)
ADVOCATE HIGH COURT

6

BEFORE THE KP SERVICE TRIBUNAL PESHAWAR

Appeal No. _____ /2021

Khan nazir

VS

Govt: OF KPK

AFFIDAVIT

I Khan nazir, (Appellant) do hereby affirm that the contents of this service appeal are true and correct, and nothing has been concealed from this honorable Tribunal.


DEPONENT

7

BEFORE THE KP SERVICE TRIBUNAL, PESHAWAR

Appeal No. _____ /2021

Khan nazir

VS

Govt: OF KPK

.....

**APPLICATION FOR CONDONATION OF
DELAY IN THE INSTANT APPEAL IF ANY.**

RESPECTFULLY SHEWETH,

1. That the applicant/ appellant filed a service appeal along with this application in which no date has been fixed so far.
2. That the applicant/ appellant received the rejection order dated 13/08/2020 on 12 /10/2021, due to which the applicant/ appellant could not approach the Tribunal or seek a legal counsel to make an appeal in time but the appeal of the appellant was in time after receiving order.
3. That the appellant has a good prima facie case and that the august Supreme Court of Pakistan has held that decision on merit should be encouraged rather than knocking out the litigants on technicalities including limitation. Therefore, the appeal needs to be decided on merit (**2003 PLD (SC) 724.**)
4. That the appeal of the appellant involves monetary benefits and according to superior court judgment the limitation not runs in case of monetary benefits due to reason it is recurring cause of action.
5. That under the Epidemic Relief Act, Section 30 which is still in field limitation has been condoned by the government.
6. That the delay of days may be condoned in the interest of justice and that it may be decided on merit.

It is, therefore, most humbly prayed that the instant appeal may be decided on merit by condoning the delay to meet the ends of justice.

Chamot
APPELLANT
Khan nazir

THROUGH

Noman Ali Bukhari
(S. NOMAN ALI BUKHARI)
ADVOCATE HIGH COURT.

&

SHAHKAR KHAN YOUSAFZAI
Advocate Peshawar

(A) (9)

TB CONTROL PROGRAMME NWFP, PESHAWAR.

No. 806-8 / TB,

Dated Peshawar the, 18 / 8 / 2007.

OFFICE ORDER.

On the recommendation of Departmental Selection Committee, Mr. Khan-Nazeer S/O Gul Wazir resident of Mohallah Hidayatullah House No.20 G.T Road Peshawar is hereby offered appointment against the vacant post of Sweeper BPS-1 plus usual allowances as admissible under the Government rules on contract basis till 30th June 2008 (till the project life) w.e. from 20th August 2007 in TB Control Programme NWFP, on the following terms and conditions, in addition to other prevalent rules and regulations applicable:

- 1- He is declared medical fit for Govt. service by authorized Medical Superintendent Police and Services Hospital Peshawar.
- 2- He will be governed by the same rules and regulations as may be issued by the Government from time to time.
- 3- If he wishes to resign, he will have to submit the resignation in writing on one month notice or in lieu thereof one month salary will be forfeited.
- 4- His appointment is purely on contract basis and can be terminated without any notice or reason being assigned.
- 5- He will not be entitled for any pension / gratuity for the services rendered.
- 6- He has to join duty at his own expenses.
- 7- If he accepts this offer on the above mentioned terms and conditions, he should report for duty to the office of the undersigned within one week of the issue of this office order, failing which the offer will be considered as withdrawn.

DIRECTOR GENERAL HEALTH
SERVICES, NWFP, PESHAWAR.

C.c.

For information and necessary action.

- 1- PA to DG Health Services, NWFP, Peshawar.
- 2- Mr. Khan Nazeer S/O Gul Wazir resident of Mohallah Hidayatullah House No.20 G.T Road Peshawar
- 3- Accountant TB Control Programme NWFP, Peshawar.



GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT

10
B

NOTIFICATION

Dated Peshawar the 11th July, 2018 ✓

NO. E&A(Health)/2-65/2018 (Regularization): In pursuance of Section 4 of the Khyber Pakhtunkhwa employees (Regularization of Services) Act, 2018, the following employees of "Strengthening of TB Control Program, Khyber Pakhtunkhwa" appointed on contract basis, shall stand regularized against the below mentioned posts with effect from the date of commencement of Act.

S. No	Name of Employee	BPS	Designation against regularized
1	Mr Khair ul Bashir	17	Coordinator
2	Mr Asif Kamal	17	Assistant Director IT
3	Mr. Asad Ur Rehman	17	Electro Medical Engineer
4	Ms Haniya Humayun	16	Accountant
5	Mr Quais Aurangzeb	16	Administrative Officer
6	Mr Amir Farzand	11	Data/Surveillance Assistant
7	Ms Rafia Altig	11	Data/Surveillance Assistant
8	Mr Saddam Hussain	11	Data/Surveillance Assistant
9	Mr Muhammad Jawad	11	Data/Surveillance Assistant
10	Mr Muhammad Shoaib	11	Data/Surveillance Assistant
11	Mr Salman Jalal ud Din	11	Data/Surveillance Assistant
12	Mr Muhammad Ibrahim Khan	11	Data/Surveillance Assistant
13	Mr Umar Sadig	11	Data/Surveillance Assistant
14	Mr Anwar Zeb	11	Data/Surveillance Assistant
15	Mr Shahid Ahmad	11	Data/Surveillance Assistant
16	Mr Shehbaz Khan	11	Data/Surveillance Assistant
17	Ms Qazi Nida ur Rehman	11	Data/Surveillance Assistant
18	Ms Lubna Kiran	11	Data/Surveillance Assistant
19	Mr Moeen Abid Syed	11	Office Assistant-cum-Com/Operator
20	Muhammad Amir	11	Office Assistant-cum-Com/Operator
21	Ms Shamim Akhtar	09	Laboratory Supervisor
22	Mr Awal Zaman	09	Laboratory Technician
23	Mr Abdul Ghafoor	09	Store keeper
24	Mr Abid ullah	06	Driver
25	Mr Muhammad Shahid	06	Driver
26	Mr Shehzad Ahmed	06	Driver
27	Mr Naeem Khan	06	Driver
✓ 28	Mr Umara Khan ✓	03	Lab Attendant ✓
29	Mr Naimal ullah	03	Naib Qasid
✓ 30	Mr Maqsood Khan ✓	03	Naib Qasid ✓
31	Mr. Sami ullah	03	Loader
32	Mr Qaus Khan	03	Loader
33	Mr Bilal	03	Chowkidar
34	Mr Wali Khan	03	Chowkidar
35	Mr Khan Nazir	03	Chowkidar
36	Mr. Shahid Masih	03	sweeper

2. All the Controlling officers shall verify the credentials of above mentioned staff from concerned boards and universities. In case found fake/ambiguous, the regularization shall be cancelled.

3. The entre-c-seniority shall be determined as per rules.

SECRETARY HEALTH
Govt. of Khyber Pakhtunkhwa

Government of Khyber Pakhtunkhwa
Accountant General Khyber Pakhtunkhwa, Peshawar
Monthly Salary Statement (December-2017)



Personal Information of Mr KHAN NAZEER d/w/s of GUL WAZEER

Personnel Number: 00370006 CNIC: 1730166447419 NTN:
 Date of Birth: 29.12.1978 Entry into Govt. Service: 21.08.2007 Length of Service: 10 Years 04 Months 012 Days

Employment Category: Active Temporary

Designation: CHOWKIDAR 80346513-GOVERNMENT OF KHYBER PAKH

DDO Code: PR5093-Preventive Programme KP

Payroll Section: 009

GPF Section: 005

Cash Center:

GPF A/C No: 370006

Interest Applied: Yes

GPF Balance:

24,168.00

Vendor Number: -

Pay and Allowances:

Pay scale: BPS For - 2017

Pay Scale Type: Civil

BPS: 03

Pay Stage: 7

Wage type		Amount	Wage type		Amount
0001	Basic Pay	12,340.00	1001	House Rent Allowance 45%	1,413.00
1210	Convey Allowance 2005	1,785.00	1300	Medical Allowance	1,500.00
1516	Dress/ Uniform Allowance	150.00	1567	Washing Allowance	150.00
2148	15% Adhoc Relief All-2013	292.00	2199	Adhoc Relief Allow @10%	202.00
2211	Adhoc Relief All 2016 10%	1,031.00	2224	Adhoc Relief All 2017 10%	1,234.00

Deductions - General

Wage type	Amount	Wage type	Amount
-----------	--------	-----------	--------

Deductions - Loans and Advances

Loan	Description	Principal amount	Deduction	Balance
------	-------------	------------------	-----------	---------

Deductions - Income Tax

Payable: 0.00 Recovered till December-2017: 0.00 Exempted: 0.00 Recoverable: 0.00

Gross Pay (Rs.): 20,097.00 Deductions: (Rs.): 0.00 Net Pay: (Rs.): 20,097.00

Payee Name: KHAN NAZEER

Account Number: 1002360

Bank Details: MCB BANK LIMITED, 240693 G. T. ROAD. G. T. ROAD., PESHAWAR

Leaves: Opening Balance: Aailed: Earned: Balance:

Permanent Address:

City: PESHAWAR

Domicile: -

Housing Status: No Official

Temp. Address:

City:

Email: kn89014@gmail.com

(E)

13

Date: 22/07/2020

To

1. The secretary to Govt. of Khyber Pakhtunkhwa Finance Department Peshawar.
2. The secretary to Govt. of Khyber Pakhtunkhwa Health Department Peshawar.
3. Director General Khyber Pakhtunkhwa Finance Department Peshawar.

SUBJECT: Application for Regularization of contract service towards pension and Previous service.

Respected Sir

It is stated we (the following mentioned employees) were hired for TB Control programme during 2007 by Director General Health services Khyber Pakhtunkhwa purely on contract basis where no rules of project policy were implemented on us.

Under the Govt. of Khyber Pakhtunkhwa Regularization Act 2018, the services were also regularized but our previous services were not regularized and ignored toward pension for which we have faced great financial lose i.e. considered as fresh recruitment.

Now it is humbly requested that our previous services may therefore, be regularized towards pension i.e. from the date of 1st appointment to save our more than 11 years of services and protect our pay.

Your obediently

Mr. Khan Nazir, Chowkidar TB Control Programme

w.e.f 18 / 08 / 2007

(Khan)

Copy for information to:-

*Project Director TB Control Programme Khyber Pakhtunkhwa.

(F)

F

(14)

DIRECTORATE GENERAL HEALTH SERVICES KHYBER PAKHTUNKHWA PESHAWAR

E-Mail Address: nwfdghs@yahoo.com office Ph# 091-9210269 Exchange# 091-9210187, 9210196 Fax # 091-9210230
No. _____ / Personnel Dated: _____ / _____ / 2020

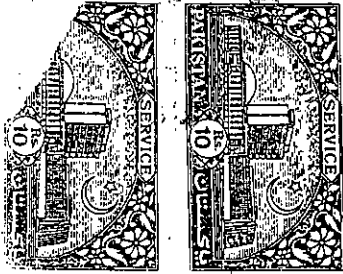
To,

Mr. Maqsood Khan Naib Qasid & others
T.B Control Program Khyber Pakhtunkhwa. HMC Phase-4

Subject: APPLICATION FOR REGULARIZATION OF CONTRACT SERVICE
TOWARDS PENSION AND PREVIOUS SERVICE.

Memo:

Reference to your application dated 22.07.2020 on the subject noted above and to state that project service cannot be regularized under Provision Regularization Act 2018.



Directorate
General Health Services
K.P. Peshawar

[Signature]
30/07
ADDITIONAL DG (ADMIN)
DIRECTORATE GENERAL HEALTH
SERVICES, K.P. PESHAWAR. *[Signature]*



GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGULATION WING)

(6)

(39)

G

(15)

NO. FD (SOSR-1) 12-7/2014
Dated Peshawar the 6th February, 2014

To:

1. All Administrative Secretaries to Govt. of Khyber Pakhtunkhwa
2. The Senior Member, Board of Revenue, Khyber Pakhtunkhwa.
3. The Secretary, Government, Khyber Pakhtunkhwa
4. The Principal Secretary to Chief Minister, Khyber Pakhtunkhwa
5. The Secretary, Provincial Assembly, Khyber Pakhtunkhwa
6. The Secretary Finance FATA, FATA Secretariat, Peshawar
7. All Heads of Attached Departments, in Khyber Pakhtunkhwa.
8. All Divisional Commissioners in Khyber Pakhtunkhwa.
9. All Political Agents / District & Sessions Judges in Khyber Pakhtunkhwa
10. The Registrar, Peshawar High Court, Peshawar.
11. The Chairman, Public Service Commission, Khyber Pakhtunkhwa
12. The Chairman, Services Tribunal, Khyber Pakhtunkhwa.
13. The Accountant General, Khyber Pakhtunkhwa, Peshawar.

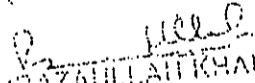
Subject: PROTECTION OF PAY OF CONTRACT EMPLOYEES ON
REGULARIZATION / APPOINTMENT ON REGULAR BASIS:

Dear Sir,

In pursuance to the Finance Division's Office Memorandum No. 709R-1/2012 dated 31st May, 2013, the competent authority is pleased to allow the pay protection to non-Gazetted contract employees on their regularization / appointment on regular basis with immediate effect subject to the following conditions:-

- i) That the contract appointment has been made on standard terms and conditions, circulated by this Provincial Government as amended from time to time.
- ii) That the contract employee has applied through proper channel and has been properly relieved by the appointing authority. This condition shall not apply in case of regularization on the same post.
- iii) That regularization / regular appointment has been made with the approval of competent authority.
- iv) That there is no break / interruption between contract service and regular service.
- v) That the service rendered on contract basis shall not qualify for pension / gratuity.
- vi) That in case of regular appointment in lower grade, pay shall not be protected.

Yours faithfully,


(RAZAULLAH KHAN)
Addl. Secretary (Regulation)

P.T.O

SOSR-1) 12-7 /2014

Dated 6th Feb, 2014

16

information & necessary action to the:-

Director, Treasuries & Accounts, Khyber Pakhtunkhwa.
The District Comptroller of Accounts in Khyber Pakhtunkhwa.
Director, Local Fund Audit, Khyber Pakhtunkhwa, Peshawar.
Director, FMU, Finance Department
Treasury Officer, Peshawar.
Secretary, Board of Revenue, Khyber Pakhtunkhwa.
The District & Agency Accounts Officers in Khyber Pakhtunkhwa / FATA

(MASOOD KHAN)
Deputy Secretary (Reg-II)

Ends te Even

information is forwarded to:-

the Section Officers / Budget Officers in Finance Department, Khyber
Pakhtunkhwa, Peshawar.
The Private Secretary to Senior Minister for Finance, Khyber Pakhtunkhwa
The Private Secretary to Secretary / P.As to Special Secretary / Additional
Secretaries / Deputy Secretaries in Finance Deptt.

(Wazir Muhammad Afsar)
Section Officer (SR-1)

11
95

2

2

VAKALATNAMA

NO. _____ /20

IN THE COURT OF KP SERVICE TRIBUNAL PESHAWAR

خان نذر

Appellant
Petitioner
Plaintiff

VERSUS

گورنمنٹ آف ایجوکیشن

Respondent (s)
Defendants (s)

I/WE Khan Nadeem

do hereby appoint and constitute the **SYED NOMAN ALI BUKHARI Advocate High Court** for the aforesaid Appellant(s), Petitioner(S), Plaintiff(s) / Respondent(s), Defendant(s), Opposite Party to commence and prosecute / to appear and defend this action / appeal / petition / reference on my / our behalf and all proceedings that may be taken in respect of any application connected with the same including proceeding in taxation and application for review, to draw and deposit money, to file and take documents, to accept the process of the court, to appoint and instruct council, to represent the aforesaid Appellant, Petitioner(S), Plaintiff(s) / Respondent(s), Defendant(s), Opposite Party agree(s) ratify all the acts done by the aforesaid.

DATE _____ /20

Khan Nadeem
(CLIENT)

ACCEPTED

Syed Noman Ali Bukhari
SYED NOMAN ALI BUKHARI
ADVOCATE HIGH COURT