

7<sup>th</sup> July, 2022

Petitioner in person present. Mr. Muhammad Adeel Butt, Addl:AG alongwith Mr. Munawar Khan, ADEO for respondents present.

Representative of the respondents seeks time to submit implementation report. Last opportunity is granted for implementation. To come up for implementation report on 08.09.2022 before S.B.







(Kalim Arshad Khan)  
Chairman

Form- A  
FORM OF ORDER SHEET

Court of \_\_\_\_\_

Execution Petition No. \_\_\_\_\_ 175/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	06.04.2022	<p>The execution petition of Mr. Abdul Malik submitted today by Roeda Khan Advocate may be entered in the relevant register and put up to the Court for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-	<p>Noted</p> <p> 18/4/22</p>	<p>This execution petition be put up before Single Bench at Peshawar on <u>27-05-2022</u>. Notices to the appellant and his counsel be also issued for the date fixed.</p> <p style="text-align: right;"> CHAIRMAN</p>
27 <sup>th</sup>	May, 2022	<p>Clerk of counsel for the appellant present. Mr. Kabir Ullah Khattak, AAG for respondents present.</p> <p>Due to general strike of the bar. Case is adjourned. To come up for the same on 07.07.2022 before S.B.</p> <p style="text-align: right;"> (Kalim Arshad Khan) Chairman</p>

**BEFORE THE KHYBER PAKHTUNKHWASERVICE TRIBUNAL,**  
**PESHAWAR.**

Execution Petition No. 175 /2022

**In Service Appeal: 4904/2021**

Abdul Malik Son of Nasrullah Jan, resident of Qayum Khel Bar Qambar  
Khel Khajori Tehsil Bara District Khyber.

**Appellant**

**VERSUS**


- (1) Director Education FATA Secretariat, Warsak Road Peshawar.
- (2) District Education Officer Kurram District Kurram Para Chinar.
- (3) Additional District Education Officer Lower and Central Kurram  
Sadda.
- (4) District Education Officer Khyber at Jamrud.

**Respondents**

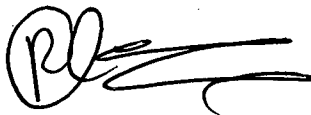
Index

S.No.	Description of documents	Annexure	Pages
1.	Copy of petition		1-2
2.	Copy of Judgment	A	3-13
3.	Wakalat Nama		

Dated 05/04/2022

  
Appellant/Petitioners

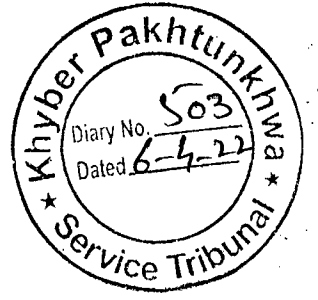
Through

  
**Roeda Khan**  
Advocate High Court,  
Peshawar.

①

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,**  
**PESHAWAR.**

Execution Petition No. 175 /2022



**In Service Appeal: 4904/2021**

Abdul Malik Son of Nasrullah Jan, resident of Qayum Khel Bar  
Qambar Khel Khajori Tehsil Bara District Khyber.

Appellant/Petitioner

VERSUS

- (1) Director Education FATA Secretariat, Warsak Road  
Peshawar.
- (2) District Education Officer Kurram District Kurram Para  
Chinar.
- (3) Additional District Education Officer Lower and Central  
Kurram Sadda.
- (4) District Education Officer Khyber at Jamrud.

Respondents

.....

**EXECUTION PETITION FOR DIRECTING THE**  
**RESPONDENTS TO IMPLEMENT THE**  
**JUDGMENT DATED: 31/01/2022 OF THIS**  
**HONOURABLE TRIBUNAL IN LETTER AND**  
**SPIRIT.**

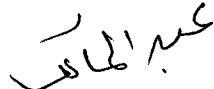
.....

2)


**Respectfully Sheweth:**

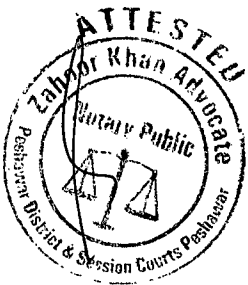
1. That the appellant/Petitioners filed Service Appeal No. 4904/2021 alongwith nine others before this Hon' able Tribunal which has been accepted by this Hon' able Tribunal vide Judgment dated 31/01/2022. (Copy of Judgment is annexed as Annexure-A).
2. That the Petitioners after getting of the attested copy approached the respondents several times for implementation of the above mention Judgment. However they using delaying and reluctant to implement the Judgment of this Hon' able Tribunal.
3. That the Petitioners has no other option but to file the instant petition for implementation of the Judgment of this Hon' able Tribunal.
4. That the respondent Department is bound to obey the order of this Hon' able Tribunal by implementing the said Judgment.

It is therefore requested that on acceptance of this Petition the respondents may kindly be directed to implement the Judgment of this Hon' able Tribunal.

  
Appellant/Petitioners

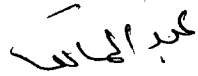
Through

  
Rooeda Khan  
Advocate High Court Peshawar



**AFFIDAVIT**

I, Abdul Malik Son of Nasrullah Jan, resident of Qayum Khel Bar Qambar Khel Khajori Tehsil Bara District Khyber. do here by solemnly affirm and declare on oath that all the contents of the above petition are true and correct to the best of my knowledge and belief and nothing has been misstated or concealed from this Hon' able Tribunal.

  
DEPONENT

3)

1)



**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.**

Khyber Pakhtunkhwa Service Tribunal

In Re S.A No. 4909 of 2021

Diary No. 4562

Dated 5/4/2021

Kheyal Muhammad S/o Fida Hussain R/o House No. 4684, Kakshal P/O Namak Mandi Peshawar.

..... Appellant

**VERSUS**

- 1) Director Education FATA Secretariat Warsak Road Peshawar.
- 2) District Education Officer Kuram District Kuram Para Chinar.
- 3) Additional District Education Officer Lower and Central Kuram Sadda.
- 4) District Education Officer District Khyber at Jamrud.

..... Respondents

**Filed to-day**

Registrar  
25/04/2021

Re-submitted to-day and filed.

Registrar  
19/4/2021

**APPEAL U/S 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974 AGAINST THE ORDER DATED 30/12/2020 WHEREBY THE SERVICE OF THE APPELLANT HAS BEEN CANCELLED AGAINST WHICH THE APPELLANT FILED DEPARTMENTAL APPEAL ON 01/01/2021 WHICH HAS NOT BEEN DECIDED WITHIN THE STATUTORY PERIOD 90 OF DAYS.**

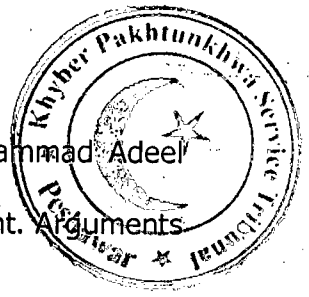
**PRAYER**

**ON ACCEPTANCE OF THIS APPEAL THE IMPUGNED ORDERS DATED**

ATTESTED

Registrar  
Khyber Pakhtunkhwa Service Tribunal  
Peshawar

41




ORDER  
31.01.2022

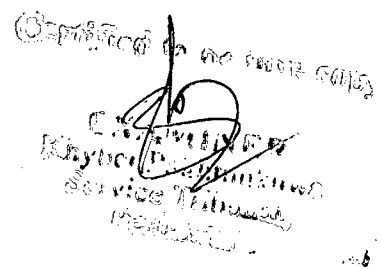
Learned counsel for the appellant present. Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today, passed in Service Appeal bearing No. 4904/2021 "titled Abdul Malik Versus Director Education FATA Secretariat Warsak Road Peshawar and others", the instant appeal is partially accepted by modifying the impugned order dated 30-12-2020 into compulsory retirement for the purpose of pensionary benefits alongwith ancillary benefits, with direction to the respondents to finalize the pension cases of the appellant for the entire period of his service. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED  
31.01.2022

  
(AHMAD SULTAN TAREEN)  
CHAIRMAN

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

  
Certified to be true copy  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

Date of Presentation of Application 02/03/22  
Number of Words 800  
Copying Fee 10/-  
Urgent 31/1  
Total 14/-  
Name of Applicant \_\_\_\_\_  
Date of Completion of Copy 02/03/22  
Date of Delivery of Copy 02/03/22

(5)

(1)



**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.**

Khyber Pakhtunkhwa Service Tribunal

In Re S.A No. 4904 of 2021

Diary No. 4541

Dated 05/4/2021

Abdul Malik s/o Nasrullah Jan R/o Qayyum Khel, Bar Qamber Khel, Khajori Tehsil Bara District Khyber,  
..... **Appellant**

**VERSUS**

- 1) Director Education FATA Secretariat Warsak Road Peshawar.
- 2) District Education Officer Kuram District Kuram Para Chinar.
- 3) Additional District Education Officer Lower and Central Kuram Sadda.
- 4) District Education Officer District Khyber at Jamrud.

..... **Respondents**

**Filed to-day**

Registrar

**APPEAL U/S 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974 AGAINST THE ORDER DATED 30/12/2020 WHEREBY THE SERVICE OF THE APPELLANT HAS BEEN CANCELLED AGAINST WHICH THE APPELLANT FILED DEPARTMENTAL APPEAL ON 01/01/2021 WHICH HAS NOT BEEN DECIDED WITHIN THE STATUTORY PERIOD 90 OF DAYS.**

**PRAYER**

**ON ACCEPTANCE OF THIS APPEAL THE IMPUGNED ORDERS DATED**

REGISTERED  
Khyber Pakhtunkhwa Service Tribunal  
Peshawar

Re-submitted to -day and filed.

Registrar



(b)

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

Service Appeal No. 4904/2021

Date of Institution ... 05.04.2021

Date of Decision ... 31.01.2022



Abdul Malik S/o Nasrullah Jan R/o Qayyum Khel, Bar Qamber Khel, Khajori Tehsil  
Bara District Khyber ... (Appellant)

VERSUS

Director Education FATA Secretariat Warsak Road Peshawar and others.  
... (Respondents)

Roeeda Khan,  
Advocate ... For Appellant

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


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

JUDGMENT

ATIQU-UR-REHMAN WAZIR MEMBER (E):- This single judgment shall dispose of the instant service appeal as well as the following connected service appeals, as common question of law and facts are involved therein:-

1. 4905/2021 titled Irfan Ullah
2. 4906/2021 titled Salamat Ullah
3. 4907/2021 titled Zaheer Zada
4. 4908/2021 titled Saqib Khan
5. 4909/2021 titled Kheyal Muhammad
6. 4910/2021 titled Sher Alam
7. 4911/2021 titled Azim Ullah
8. 4912/2021 titled Mst. Zalida

**ATTESTED**

  
**EXAMINER**  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

9. 4913/2021 titled Syed Rehman

02. Brief facts of the case are that the appellants were appointed as PTC Teacher in Communal School in BPS-7 in the year 1998 to 2004 at erstwhile Khyber Agency (Now District Khyber). Being un-trained, services of the appellants were terminated vide dated 31-12-2012, but such order was rescind vide order dated 03-01-2013, as the competent authority vide order dated 05-04-2013 circulated the decision to consider appointment of all those un-trained/un-qualified local community school teachers for re-appointment against the available sanctioned posts of PST with the existing recruitment criteria subject to the condition that they will acquire the prescribed professional and academic qualification for the post within 24 months after their re-appointment against the regular PST post. Upon appointment against regular posts, the appellant failed to acquire the same, hence were terminated from service vide order dated 31-07-2015, against which the appellant filed departmental appeal followed by Writ Petition No. 3682-P/2015, which was dismissed vide judgment dated 28-09-2016. The appellant challenged the decision of the High Court in the Supreme Court of Pakistan vide CPLA No. 3464-P/2016, which was disposed of vide judgment dated 27-04-2017 on the terms that let the petitioners submit applications to the respondents and we are confident that they will look into this matter sympathetically in view of the facts and circumstances of the case, obviously, anybody already legally appointed, should not be disturbed. In pursuance of the judgment, the appellants submitted applications to the respondents but they were not appointed and such decision was communicated to the appellants vide order dated 27-09-2017, hence they again filed Writ Petition No. 4283-P/2017, which was accepted vide judgment dated 28-06-2018. In pursuance of the judgment, the appellant were re-appointed vide order dated 22-06-2019 subject to decision of the supreme court in CPLA already filed. The august Supreme Court of Pakistan decided the case in favor of the petitioners (the present respondents) vide

ATTESTED

EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

judgment dated 28-06-2018 and in pursuance of the judgment the re-appointment order dated 22-06-2019 was cancelled vide order dated 30-12-2020. Feeling aggrieved, the appellants filed departmental appeals, which were not responded, hence the instant service appeal with prayers that the impugned order dated 30-12-2020 may be set aside and the appellants may be re-instated in service with all back benefits or any other remedy which this tribunal deems fit may also be granted in favor of the appellants.

03. Learned counsel for the appellants has contended that the appellants has not been treated in accordance with law, hence their rights secured under the Constitution has badly been violated; that the impugned order dated 30-12-2020 is void ab initio as it has been passed without fulfilling the codal formalities; that services of the appellants were dispensed with, without observing the procedure as prescribed in law; that the appellants are having services of almost 20 years at their credit and it would not be just on part of the appellants to ignore their services rendered so far; that the appellants were initially project employees but later on were regularized, hence they are entitled to pensionary benefits, as the apex court in various judgments has already granted relief in similar nature cases; that cases of the appellants may also be considered on the same footings on the principle of consistency and they may be granted pensionary benefits keeping in view their length of service.

04. Learned Additional Advocate General for the respondents has contended that the appellants were initially appointed on project posts PST Communal School Teachers for the project period only; that the appellants were terminated from service on 31-12-2012 for the reason that they were un-trained; that the appellants were re-appointed subject to the condition to acquire the prescribed academic and professional qualifications within 24 months after their appointments, otherwise their re-appointment orders would stand cancelled; that the appellant failed to acquire the required qualification, hence they were again

ATTESTED

EXAMINER  
 Sh. J. Pakhtukhwa  
 Services Tribunal  
 Patna

terminated vide order dated 31-07-2015, against which the appellant filed WP No 3682-P/2015, which was dismissed vide judgment dated 28-09-2016; that the appellants filed CPLA No 3464-P/2016, which was also disposed of on 27-04-2017 with the remarks that the petitioners will submit application before respondents; that upon submission of applications, their requests were examined but were found devoid of merit, hence were rejected; that in compliance with judgment dated 28-06-2018 of Peshawar High Court the appellants were re-instated again with the condition of decision of supreme court in CPLA already filed; that the supreme court of Pakistan decided in favor of the appellants (the present respondents) vide judgment dated 28-06-2018, hence they were again terminated from service vide order dated 30-12-2020; that cases of the appellants had already been decided by the Apex Court, hence the present appeals being devoid of merit may be dismissed.

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

06. Record reveals that the appellants were appointed as PTC teachers/communal school teachers (BPS-7) on contract basis in communal schools in erstwhile Khyber agency (now district Khyber) in the year, 1998 to 2004. In the year 2006, three months PTC short-term training courses were offered to all such teachers and nominated 57 un-trained PTC teachers, while the appellants were dropped by informing them that they will be selected in the next available training course in the near future. The appellants were performing their duties to the entire satisfaction of their high ups and when they shocked that vide order dated 31-12-2012, their services were terminated on the ground of being un-trained, however the above said termination order was cancelled and the appellants were re-appointed against regular posts under the policy letter dated 05-04-2013, subject to the condition that they will acquire the prescribed professional training within 24 months. Record is silent as to whether any such

training was offered to the appellants within the prescribed period or otherwise, as the appellants themselves were unable to acquire such qualification, rather it was responsibility of the respondents to arrange such training for them. After expiry of the period, the appellants were again terminated vide order dated 31-07-2015, against which the appellants filed departmental appeals followed by writ petition No. 3682-P/2015, which was dismissed vide judgment dated 28-09-2016 on the grounds that the appellants failed to acquire the prescribed qualifications. It however was responsibility of the respondents to equip them with the required qualification, as it was beyond control of the appellants to select themselves for such training, rather it was upon discretion of the respondents to select candidates by turn for such trainings. The appellants probably found such opportunity at a belated stage, but during the course of litigation, the appellants failed to convince the honorable court on the point that professional trainings are conducted by respondents and they must not suffer for follies of the respondents, hence they lost their case before the court, against which the appellants filed CPLA No. 3464/2016, which was decided vide judgment dated 27-04-2017 on sympathetic terms that let the appellants submit applications to respondents as they have worked for quite some time against regular posts and we are confident that respondents will look into this matter sympathetically in view of the facts and circumstances of the case, obviously, anybody already legally appointed, should not be disturbed. In pursuance of the judgment, the appellants filed applications before the respondents but their requests were turned down, against which the appellants again filed writ petition No 4283-P/2017, which was decided in favor of the appellants vide judgment dated 28-06-2018 and in pursuance of the judgment, the appellants were re-appointed vide order dated 22-06-2019 subject to decision of supreme court in CPLA already filed. The august Supreme Court of Pakistan decided the case in favor of the petitioners (the present respondents) and in compliance, the order of their appointment dated 22-06-2019 was cancelled vide order dated 30-12-2020,

ATTESTED


EXAMINER  
Khayr Bakhtukhwa  
Service Tribunal  
Peshawar

against which the appellants filed departmental appeals, which were not responded, hence the instant service appeals.

07. We have observed that the appellants worked against the PTC posts on contract against project posts for quite some time, thereafter, they were appointed against regular posts under the policy devised by the government that all un-trained/un-qualified local community teachers will be re-appointed against available sanctioned posts of PST with the existing recruitment criteria subject to the condition that they will acquire the prescribed qualification within 24 months. The appellants, however, were penalized for not acquiring the prescribed qualification within the stipulated timeframe, which however was responsibility of the respondents to arrange such training for them well within time and the appellants were not supposed to suffer for lapses of the respondents. While relying on judgment in Writ Petition No. 4657-P/2016, the honorable High Court Peshawar decided in their favor vide judgment dated 28-06-2018. It is pertinent to mention that in Writ Petition No. 4657-P/2016 decided on 29-03-2018, the petitioners were also similarly placed employees being PTC teachers in communal schools and in pursuance of that judgment, their services were regularized. The only difference between the present appellants and the appellants in that case was that they had acquired the prescribed qualifications but the present appellants did not find opportunity to acquire such training, hence they lost the opportunity on this single point inspite of the fact that it was not their responsibility to select themselves for such training, rather it was mandatory upon the respondents to select and send them for such training.

08. The appellants contested their case for quite longer time but they did not succeed due to technicalities of not acquiring the prescribed qualification. They however served the department for a period of almost 20 years and there is no single complaint against them. The appellants, even otherwise has become overage to get their jobs elsewhere. Equity and fair play demands that the long

ATTESTED

  
EXAMINER  
Syed Pakhtun  
Service Tribunal  
Peshawar

services rendered by the appellants against the posts shall not go in waste and it would be un-just to ignore their long and un-blemished service. It is also an admitted fact that the appellants served initially on contract but later on they were appointed against regular posts. We are of the considered opinion that they deserve to be treated sympathetically on the issue of grant of pensionary benefits. Regarding the question of entitlement of the appellants to the pension, we would like to reproduce the relevant rules of the pension rules, 1963 as under:

*2.2. Subject to any special rules, the services of the government servant begins to qualify for pension when he takes over charge of the post to which he is first appointed.*

*2.3. Temporary and officiating service shall count for pension as indicated below-*

- (i) government servant borne on temporary establishment who have rendered more than five years continuous temporary service for the purpose of pension or gratuity; and*
- (ii) Temporary and officiating service followed by confirmation shall also count for pension or gratuity.*

The rules *ibid* reveals that service of the government servant begins to qualify for pension from the very first day of his/her taking over charge, irrespective of the fact whether his/her appointment and entry into service was temporary or regular. It is also clear from sub-rule-(i) that continuous temporary service of a civil servant shall also be counted for the purpose of pension or gratuity and by virtue of sub rule- (ii) temporary and officiating service followed by confirmation shall be counted for pension or gratuity.

09. The august Supreme Court of Pakistan in its judgment reported as PLD 1973 SC 514 has held that "it must now be taken as well settled that a person who enters government service has also something to look forward after his retirement to what are called retirement benefits, grant of pension being the most valuable of such benefits. It is equally well settled that pension like salary of

ATTESTED

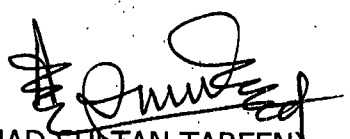


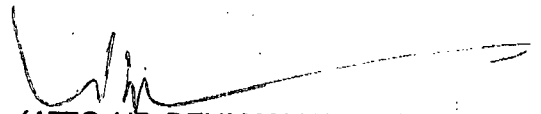
EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

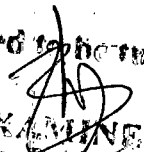
a civil servant is no longer a bounty but a right acquired after putting in satisfactory service for the prescribed minimum period. A fortiori, it cannot be reduced or refused arbitrarily except to the extent and in the manner provided in the relevant rules."

10. In the instant case, the appellants served continuously for almost 20 years, initially on contract and followed by regular service and as per pension rules, 1963 the appellants has qualified the prescribed service for pensionary benefits. In view of the foregoing discussion, the instant appeal as well as the connected service appeals are partially accepted by modifying the impugned order dated 30-12-2020 into compulsory retirement for the purpose of pensionary benefits alongwith ancillary benefits, with direction to the respondents to finalize the pension cases of the appellants for the entire period of their service. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED  
31.01.2022

  
(AHMAD SULTAN TAREEN)  
CHAIRMAN

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

Certified to be true copy  
  
EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

Date of Presentation of Application 02/03/22  
Number of Words 3600  
Copying Fee 28/-  
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Date of Completion of Copy 02/03/22  
Date of Delivery of Copy 02/03/22



قیمت  
50 روپے

119544



ایڈوکیٹ:

بار کونسل / ایسوسی ایشن نمبر:

رابطہ نمبر: 03330268955

پشاور بار ایسوسی ایشن، خیبر پختونخواہ

بعدالت جناب:

منجانب:	دعوی:
	علت نمبر:
	موزعہ
	جرم:
	تھانہ

**باعث تحریر آگہ**

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

آن مقام کے لیے کو وکیل مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا، نیز وکیل صاحب کو راضی نامہ کرنے و تقریر ثالث و فیصلہ برحلف دینے جو اب دعویٰ اقبال و دعویٰ اور درخواست از ہر قسم کی تصدیق زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی، نیز دائر کرنے اپیل انگریزی و نظر ثانی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو ایسے پھر راہ مالے کے اختیار کا اختیار ہوگا اور صاحب مقرر شدہ کو وہی جملہ مذکورہ بالا اختیارات حاصل ہوں گے اور اس کا ساختہ پر داخلہ منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جائزہ التوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ سند رہے

المقوم:

الع بد الع بد

کے لیے منظور ہے۔

نوٹ: اس وکالت نامہ کی فونو کاپی ناقابل قبول ہوگی۔