

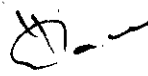


Form-A

FORM OF ORDERSHEET


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

Case No. 628/2018

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	09/05/2018	<p>The appeal of Mr. Muhammad Zakaria resubmitted today by Mr. Abid Ali Khan 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 9/5/18 </p>
2-	15/05/18.	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>28/05/18.</u></p> <p style="text-align: right;">   CHAIRMAN </p>
	28.05.2018	<p>Learned counsel for the appellant present and seeks adjournment. Adjourn. To come up for preliminary hearing on 13.07.2018 before S.B</p> <p style="text-align: right;">   Member </p>

13.07.2018

Appellant in person present and requested for adjournment. Adjourned. To come up for preliminary hearing on 01.08.2018 before S.B.

  
(Muhammad Amin Kundi)  
Member

01.08.2018

Mr. Shahab Faheem, Advocate put appearance on behalf of counsel for the appellant and made a request for adjournment on the ground that senior counsel due to some family problem he is not in a position to attend the court. Case to come up for preliminary hearing on 13.09.2018 before S.B.

  
Chairman

13.09.2018

Clerk of counsel Touseef Gul present and requested for adjournment as counsel for the appellant was busy before the august High Court, Peshawar. Granted. Case to come up for ~~Preliminary hearing~~ on 29.10.2018 before S.B.

  
Chairman

29.10.2018

Due to retirement of Hon'ble Chairman, the Tribunal is defunct. Therefore, the case is adjourned. To come up on 07.12.2018.

  
Reader

07.12.2018

Appellant in person. He has submitted an application for adjournment on account of illness ~~position~~ of learned counsel.

Adjourned to 18.01.2019 for preliminary hearing before S.B.

  
Chairman

18.1.2019

Learned counsel for the appellant requests for time to further document the appeal by placing on record the copy of order whereby punishment was imposed upon the appellant. May do so before next date of hearing.

Adjourned to 18.02.2019 before S.B.

  
Chairman

17.02.2019

Appellant present. Clerk to counsel for the appellant present and seeks adjournment. Adjourn. To come up for preliminary hearing on 04.04.2019 before S.B

  
Member

04:04.2019

None for the petitioner present. Addl: AG for respondents present. Due to general strike of the bar, the case is adjourned. Case to come up for further proceedings on 06.05.2019 before S.B.

  
(Ahmad Hassan)  
Member

06.05.2019

Appellant in person present and requested for adjournment on the ground that his counsel is not available today. Adjourned to 21.06.2019 for preliminary hearing before S.B.

  
(MUHAMMAD AMIN KHAN KUNDI)  
MEMBER

21.06.2019

Counsel for the appellant present and requested for adjournment. Adjourned to 07.08.2019 for preliminary hearing before S.B.

  
(Muhammad Amin Khan Kundi)  
Member

07.08.2019

Mr. Mukhtar Ahmad Malik, Advocate on behalf of counsel for the appellant present.

Once again a request for adjournment is made on account of non-availability of learned counsel.

Instant matter has been adjourned on a number of dates on the request on behalf of the appellant, therefore, as a last chance the matter is adjourned to 18.09.2019 for preliminary hearing before S.B.

  
Chairman

628/18

18.09.2019

Counsel for the appellant present.

Learned counsel is required to address arguments regarding maintainability of instant appeal as order of removal from service pertaining to the appellant passed in the year 2013 has not been impugned in the appeal.

Adjourned to 07.11.2019 before S.B.



Chairman

07.11.2019

Counsel for the appellant present.

Issue notice to respondents for production of record pertaining to the regularization of service of appellant and his removal from service in the year 2013, if any.

Adjourned to 19.12.2019 before S.B.



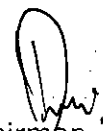
Chairman

19.12.2019

Appellant in person and Addl. AG alongwith Fazole Khaliq, ADEO for the respondents present.

The representative of respondents has produced the requisite record including copies of absence notices published in newspaper against the appellant. The record also includes notification dated 19.02.2013 in respect of removal of appellant from service. The documents are placed on record. On the other hand, the appellant requests for adjournment due to general strike of the Bar.

Adjourned to 29.01.2020 before S.B.



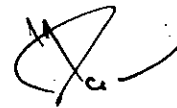
Chairman

29.01.2020 Clerk to counsel for the appellant present. Lawyers are on strike on the call of Khyber Pakhtunkhwa Bar Council. Adjournment requested. Adjourned to 18.03.2020 before S.B for preliminary arguments.



Member

18.03.2020 Appellant in person present and seeks adjournment as his counsel is not available. Adjourn. To come up for preliminary hearing on 23.04.2020 before S.B.



Member

23.04.2020 Due to public holiday on account of COVID-19, the case to come up for the same on 29.07.2020 before S.B.



Reader

29.07.2020

Mr. Abid Ali Khan, Advocate, for appellant alongwith appellant Muhammad Zakaria himself, are present. Mr. Kabirullah Khattak, Additional AG for the respondents, is also present.

Learned counsel for the appellant submitted that issues involved in the instant appeal with regard to facts as to whether appellant has been employed on contract basis by the competent authority or his services have been regularized. Relevant record in this regard has been sought from the respondent-department which has not been submitted, therefore, learned counsel for appellant submitted that the requisite record from the respondent-department may again be requisitioned for perusal and appropriate order. Additional AG agree with the proposition. File to come up for requisite record and preliminary hearing on 21.10.2020 before S.B.

(MUHAMMAD JAMAL KHAN)  
MEMBER

21.10.2020

Since the Members of the High Court as well as of the District Bar Association Peshawar are observing strike today therefore, the case is adjourned to 10.12.2020 on which date to come up for requisite record as per preceding order sheet dated 29.07.2020 and preliminary hearing before S.B.

(Muhammad Jamal Khan)  
Member (Judicial)

10.12.2020

Appellant with counsel present.

Kabir Ullah Khattak learned Additional Advocate General present.

From the record, it is evident that the case has been pending since 09.05.2018 and despite repeated directions, requisite record was not submitted. Let pre-admission notice be issued to respondents: To come up for reply and preliminary arguments on 11.03.2021 before S.B.



(Rozina Rehman)  
Member (J)

11.03.2021

Appellant alongwith junior counsel for appellant present.

Kabir Ullah Khattak learned Additional Advocate General alongwith Fazal Khaliq ADO for respondents present.

Reply submitted on behalf of all the respondents.

Senior counsel was stated to be busy in the august Peshawar High Court, Peshawar, therefore, last chance is given for preliminary hearing on 17 / 06 / 2021 before S.B.



(Rozina Rehman)  
Member (J)



17.06.2021

Junior to counsel for the appellant and Mr. Muhammad Adeel Buttl, Addl. AG for the respondents present. Senior counsel for the appellant is not in attendance due to general strike of the bar.

Adjourned to 21.09.2021 for preliminary hearing before S.B.

  
Chairman

21.09.2021

Appellant in person present.

Appellant submitted fresh Wakalatnama of Mr. Amjid Ali, Advocate which is placed on file. He requested for adjournment. Adjourned. To come up for preliminary hearing before the S.B on 09.11.2021.

  
(MIAN MUHAMMAD)  
MEMBER (E)

09.11.2021

Appellant seeks adjournment due to non-availability of his counsel. Request is accorded. To come up preliminary hearing on 18.01.2022 before the S.B.

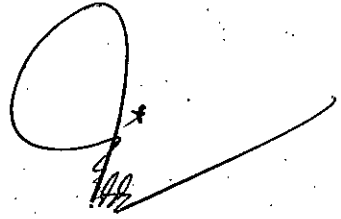
  
Chairman

18.01.2022

Learned counsel for the appellant present.

Learned counsel for the appellant submitted an application for withdrawal of the instant service appeal with permission to file a fresh one. Application is allowed and the instant service appeal is therefore, dismissed as withdrawn. File be consigned to the record room.

Announced:  
18.01.2022




(Mian Muhammad)  
Member(E)

The appeal of Mr. Muhammad Zakria son of Muhammad Naeem r/o Mohallah Sheikh Abad Post office Shawa Razzar Distt. Swabi received today i.e. on 19.04.2018 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Memorandum of appeal may be got signed by the appellant.
- 2- Annexures of the appeal may be attested.
- 3- Annexures of the appeal may be flagged.
- 4- Copy of departmental appeal and its rejection order mentioned in the memo of appeal are not attached with the appeal which may be placed on it.
- 5- Copy of discharged order mentioned in the memo of appeal is not attached with the appeal which may be placed on it.

No. 838 /S.T,

Dt. 19/4 /2018.

  
REGISTRAR  
SERVICE TRIBUNAL  
KHYBER PAKHTUNKHWA  
PESHAWAR.  
19/4/18

Mr. Abid Ali Khan Adv. Pesh.

*Sir, Complete with in all Res*  
*Respect*  
*A*

*4/5/18*  
*objections no. 4+5 are still stand*  
*therefore the appeal is again returned to the*  
*counsel for the appellant for its completion*  
*with 15 days.*

No. 947 /S.T  
dt. 04/05 2018

*Assistant*  
*to Registrar*  
*P.T.O*

There is no termination  
or discharge order passed  
against the appellant.

ABU

**BEFORE THE KHYBER PUKHTUNKHWA SERVICE TRIBUNAL**  
**PESHAWAR**

Service Appeal No. 628/2018

Mohammad Zakria s/o Mohammad Naeem r/o Mohallah Sheikh Abad, Post Office  
Shawa Tehsil Razzar District Swabi.

Appellant

VS

Government of Khyber Pakhtunkhwa and others


Respondents

**INDEX**

S.No	Description of Document	Annexure	Pages
1	Appeal		1-3
2	Affidavit		4
3.	Addresses of parties		5
4.	Copy of Appointment order	A	6-12
5.	Copy of FIR	B	13
6.	Copy of order dated 25.03.2016	C	14-17
7.	Copy of application/appeal	D	18-19
8	Wakalatnama		20

Appellant

Through

  
Abid Ali Khan,  
Advocate,  
Peshawar.

①

**BEFORE THE KHYBER PUKHTUNKHWA SERVICE TRIBUNAL**  
**PESHAWAR**

Khyber Pakhtunkhwa  
Service Tribunal

Service Appeal No. 628/2018

Diary No. 598

Dated 19-4-2018

Mohammad Zakria s/o Mohammad Naeem r/o Mohallah Sheikh Abad, Post  
Office Shawa Tehsil Razzar District Swabi.

Appellant

VS

1. Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education, Civil Secretariat Peshawar.
2. Director Education, Khyber Pakhtunkhwa civil Secretariat Peshawar.
3. District Education Officer (F) District Swabi.
4. District Education Officer (Male) District Swabi.
5. Principal Government Girls Higher Secondary School Shawa Tehsil Razzar District Swabi.
6. Executive District Officer Schools and literacy Swabi.

Respondents

**APPEAL U/S 4 OF THE SERVICE TRIBUNAL ACT 1973, WHEREBY THE APPEAL FILED BY THE APPELLANT AGAINST THE ORDER DATED NIL FOR HIS REINSTATEMENT WAS DISMISSED ON 26.03.2018.**

**PRAYER:-**

on acceptance of this appeal the impugned order No.2864 dated 26.03.2018 and the order dated Nil whereby the appellant was refused posing be set aside and the appellant may graciously be reinstated to the post of Chowkidar in the large interest of justice.

**Respectfully Sheweth:**

Filed to-day

Registrar

The Appellant was appointed as Chowkidar in Govt. Girls Higher Secondary School Shawa Tehsil Razzar District Swabi. (Copy of the appointment order is annexed as annexure "A").

The appellant is serving the department from his appointment to the best of his capability.

Re-submitted to-day  
and filed.

Registrar 4/5/18

3. The appellant was charged in a murder case on 01.02.2012. (Copy of the FIR is annexed as annexure "B").
4. The appellant became fugitive from law after being charged in the murder case mentioned above.
5. The appellant was acquitted by the learned Additional Session Judge-IV swabi on 25.03.2016 from the charges leveled against him on the basis of compromise. (Copy of the order dated 25.03.2016 is annexed as annexure "C").
6. The appellant after his acquittal approached the respondent for his posting against the post of Chowkidar by filing representation/appeal, but his appeal was dismissed vide order dated 26.03.2018.(copy of the application/appeal and order are annexed as annexure "D").
7. That the appellant being aggrieved hence, approaches this Hon'ble Tribunal in appeal on the following amongst other grounds:-

**GROUND:-**

- a) Because the non posting of the appellant by the respondent is illegal void ab-initio and against the norms of justice.
- b) Because there is no order of suspension nor any other order regarding his dismissal, but even then he is not been given a post which is arbitrary and malafide at the hands of respondents.
- c) Because the appellant are running from pillor to post as both the District Education Officers (Male/Female) are not considering him for posting .
- d) Because the non posting of the appellant by the respondents against the seat of Chowkidar is exceeding of jurisdiction not vested in them under the law.
- e) Because the appellant is poor person and there is no other source of his income, but inspite of that the respondents are not considering him for his posting.
- f) That any other ground will be taken at the time of arguments, with the kind permission of this Hon'ble Court.

It is therefore, most humbly prayed that on acceptance of this appeal ,the respondents may graciously be directed to post the

8

appellant against the seat of Chowkidar in the large interest of justice.

Any other relief, which is not specifically asked for and deems appropriate in the circumstances of the case may also be granted to the appellant.

Appellant

Through

(Abid Ali Khan)

Advocate, Peshawar.



4

**BEFORE THE KHYBER PUKHTUNKHWA SERVICE TRIBUNAL**  
**PESHAWAR**

Service Appeal No. /2018

Mohammad Zakria s/o Mohammad Naeem r/o Mohallah Sheikh Abad, Post Office Shawa Tehsil Razzar District Swabi.

Appellant

VS


Government of Khyber Pakhtunkhwa and others

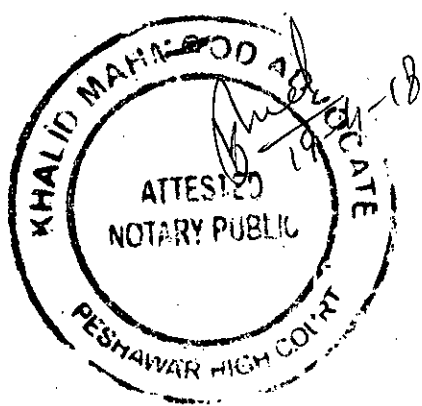
Respondents

**AFFIDAVIT**

I, Mohammad Zakria s/o Mohammad Naeem r/o Mohallah Sheikh Abad, Post Office Shawa Tehsil Razzar District Swabi, do hereby solemnly affirm and declare on oath that the contents of the of this appeal are true and correct to the best of my knowledge and belief that nothing has been concealed from this Hon'ble Court.

Identified by:

  
Abid Ali Khan,  
Advocate Peshawar.



  
Deponent

5

**BEFORE THE KHYBER PUKHTUNKHWA SERVICE TRIBUNAL**  
**PESHAWAR**

Service Appeal No. /2018

Mohammad Zakria s/o Mohammad Naeem r/o Mohallah Sheikh Abad, Post Office  
Shawa Tehsil Razzar District Swabi.

Appellant

VS

Government of Khyber Pakhtunkhwa and others

Respondents

**ADDRESSES OF THE PARTIES**

**Appellant.**


Mohammad Zakria s/o Mohammad Naeem r/o Mohallah Sheikh Abad, Post Office  
Shawa Tehsil Razzar District Swabi.

**Respondents:-**

1. Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education, Civil Secretariat Peshawar.
2. Director Education, Khyber Pakhtunkhwa civil Secretariat Peshawar.
3. District Education Officer (F) District Swabi.
4. District Education Officer (Male) District Swabi.
5. Principal Government Girls Higher Secondary School Shawa Tehsil Razzar District Swabi.
6. Executive District Officer Schools and literacy Swabi.

Through

Appellant

  
Abid Ali Khan,  
Advocate, Peshawar.

Annex A

(5/6)

CONTRACT(FIXED) CLASS-IV APPOINTMENT -

Consequent upon the approval of the Departmental Selection Committee as per Notification/Letter No.SOK-V(E&A)2-25/03/dated 22.10.2005, the following Class-IV Servants are hereby appointed against vacant Fixed Contract posts purely @ Rs.3500/- PM (fixed) in the schools noted against their names with immediate effect in the best interest of public service.

S#	Name	Parentage	Posted As	Posted At	Mark
1	S. Shamid Iqbal	Muhammad Naeem	Lab Attendant	GHS, Todher	AVP
2	Iqbal Sadi	Muhammad Saeed	Chowkidar	GHS, Todher	AVP
3	Syed Tilawat Shah	Syed Jaus Ali Shah	N/Oasid	GMS, Zakarya Khurd	AVP
4	Wilayat Shah	Syed Yaqoob Shah	Chowkidar	GMS, Zakarya Khurd	AVP
5	Mst. Ishrat Naz	W/O Fazlullah	Sweepress	GGHS, Lahor Shargi	AVP
6	Inayat Ullah	Habibullah	N/Oasid	GMS, Wisal Abad (JHR)	AVP
7	Muzamil Shah	Amjad Ali Shah	Chowkidar	GGPS, No.1-Zarobi	AVP
8	Abdul Wasigh	Muhammad Usman	Chowkidar	GGPS, Zarobi	AVP
9	Kamran Khan	Sher Daraz Khan	Chowkidar	GPS, Kotha	AVP
10	Naeem Zada	Faqir Muhammad	Chowkidar	GPS, No.3 Kotha	AVP
11	Asif Zada	Sahib Zada	Chowkidar	GPS, No.1 Kotha	AVP
12	Sadig Rahman	Shah Zaman	Chowkidar	GGHS, Kotha	AVP
13	Imtiyaz Ahmad	Muhammad Qayyum	Schistiti	GHS, Marghuz	AVP
14	Aminul Haq	Abdur Rauf	Sweeper	GHS, Dodher	AVP
15	Ozairur Rahman	Abdur Rahman	Chowkidar	GGHS, Mansoor Khel Zaida	AVP
16	Mst. Rashida	W/O Sardar Bahader	Lab Attendant	GGHS, Mansoor Khel Zaida	AVP
17	Abdur Rauf	Amir Muhammad	Lab Attendant	GHSS, Bamkhel	AVP
18	Fazil Hadi	Fazil Rabbi	N/Oasid	GMS, Gar Aka Khel	AVP
19	Muhammad Ayaz	Muhammad Iqbal	Sweeper	GMS, Gar Aka Khel	AVP
20	Mst. Shahbaz Begum	Muhammad Yousif	Sweepress	GGMS, Pak Kaya	AVP
21	Mehbur Rahman	Khalilur Rahman	N/Oasid	GGMS, Pak Kaya	AVP
22	Mst. Shamim Begum	W/O Obaidur Rahman	Sweepress	GGMS, Hund	AVP
23	Ikram Hussain	Khr Bahader	N/Oasid	GGMS, Hund	AVP
24	Qudrat Ullah	Safiqullah	Chowkidar	GGHS, Baja	AVP
25	Q. Faizur Rahman	M. Khan	Chowkidar	GGHS, Topi	AVP
26	Faqir Zada	Taj Muhammad	N/Oasid	GGMS, Garhi Juma Khan (M)	AVP
27	Mst. Fursat Begum	D/O M. Sanam	Sweepress	GGMS, Garhi Juma Khan (M)	AVP
28	Bash Ali	Salah Uddin	Lab Attendant	GGHS, Yaqoobi	AVP
29	Rashid Ali	Muhamad Zay	Chowkidar	GGPS, No.3 Ismaila	AVP
30	Khalil Ullah	Abdul Hakeem	N/Oasid	GGHS, Shewa	AVP
31	Muhammad Zakarya	Muhammad Naeem	Chowkidar	GGHS, Shewa	AVP
32	Shamir Ali Khan	Said Azam	Chowkidar	GGPS, Tara Kai	AVP
33	Yasin Iqbal	Fida Muhammad	Chowkidar	GHS, Rashakai	AVP
34	Rajwali Khan	Babar	Chowkidar	GGPS, Rafiq Abad	AVP
35	Sahib Zar	Mateen	N/Oasid	GHS, Naranjee	AVP
36	Said Akram	Allah Yar	Chowkidar	GHS, Spin Kani	AVP
37	Husan Wahab	Babuzay	Lab Attendant	GHS, Spin Kani	AVP
38	Irfan	Hamid Khan	Chowkidar	GPS, Kalu Dher	AVP
39	Fazal Sher	Gul Sher	Chowkidar	GGPS, Farlandi	AVP
40	Syed Qadar Shah	Sahib Dil Shah	N/Oasid	GGHS, Gulshan Abad (M/P)	AVP
41	Gul Haider Khan	Abdullah Jan	Chowkidar	GGHS, Gulshan Abad (M/P)	AVP
42	Mujeebur Rahman	Mowsher Khan	Lab Attendant	GGHS, Gulshan Abad (M/P)	AVP
43	Mst. Hamida Begum	Musharraf Khan	Sweepress	GGHS, Gulshan Abad (M/P)	AVP
44	Noorul Wail	Shafiqullah	N/Oasid	GHS, Panj Pir	AVP

Attested

ABUUL JALAL MA, M.Ed  
HEAD MASTER  
G.M.S Gharib Abad, KSK (Swabi)

ATTESTED

7

53	Basher Ahmad	Rulmat Shah	Sweeper	GMS, Ulla (Gadoon)	AVP
64	Sultaan Akbar	Ali Akbar	Lab Attendant	GHSS, Kabgani (Gadoon)	AVP
65	Mulang Khan	Anwar Khan	Chowkidar	GPS, Malak Abad (Gadoon)	AVP
66	Shamsul Anwar	Noorul Haq	Chowkidar	GPS, Jungal Khel (K. Khan)	AVP
67	Subhan Bibi	W/O Ali Rahnman	Sweepress	GGMS, Rafiq Abad	AVP
68	Yasir Khan	Shir Afzal Khan	IN/Onsid	GGMS, Rafiq Abad	AVP
69	Muhammad Izhar (Disable)	Noor Zaman	Lab Attendant	GHSS, Baja	AVP

**Terms & Conditions:-**


1. No TA/DA is allowed.
2. Charge reports should be submitted to all concerned.
3. The appointment is purely made on Fixed Contract basis & liable to termination at any stage/time without assigning any notice.
4. The posts are not pension able.
5. They will produced health & age certificate from the medical Superintendent DHQ Hospital, Swabi.
6. They will not be handed over charge if their age is less than 18 years and above 45 years.
7. In case of resignation they will have to give one month prior notice to the Department or forfeit one month pay in lieu thereof to the Government.
8. They will be permanently Domilled of Swabi District.
9. They will have no right of transfer to any other school or post.

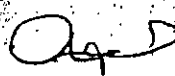
(SAIFUR RAHMAN)  
EXECUTIVE DISTRICT OFFICER  
SCHOOLS & LITERACY, SWABI

Endst: No. 5398-G/C-IV Apptt. File/ED (S&L), dated Swabi the, 07.10.2006

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

1. Hon'able Minister for Education Govt. of NWFP, Peshawar.
2. Secretary Schools & Literacy Department Govt. of NWFP, Peshawar.
3. Director Schools & Literacy NWFP, Peshawar.
4. District Nazim Swabi
5. District Coordination Officer, Swabi
6. District Accounts Officer, Swabi
7. District Officer (M&F) Local Office
8. Principals/Headmasters/Headmistresses and Head Teachers concerned schools.
9. Deputy District Officers (M & F) Swabi/Lahor.
10. ADO (B&A/Establishment) Local Office.
11. Supdt (M&F) Branch Local Office.
12. Dealing Assistant concerned.

  
EXECUTIVE DISTRICT OFFICER  
SCHOOLS & LITERACY, SWABI

Attested  


ABDUL JALAL MA, M.Ed  
HEAD MASTER  
GMS Charb Abad, KSK (Swabi)

  
ATTESTED

BETTER COPY

63.	Basher Ahmad	Rahmat Shah	Sweeper	GHS, Utrla (Gadoon)	AVP
64.	Sultan Akbar	Ali Akbar	Lab:Attendant	GHSS, Kabgani (Gadoon)	AVP
65.	Malang Khan	Anwar Khan	Chowkidar	GPS Malak Abad (Gadoon)	AVP
66.	Shamsul Anwar	Noorul Haq	Chowkidar	GPS, Jangal Khel (K.Khan)	AVP
67.	Subhan Bibi	W/o Ali Rahman	Sweeprress	GGMS, Rafiq Abad	AVP
68.	Yasir Khan	Sher Afzal Khan	N/Qasid	GGMS, Rafiq Abad	AVP
69.	Muhammad Izhar (Disable)	Noor Zaman	Lab:Attendant	GHS, Baja	AVP

**Terms & Conditions:-**

1. No TA/DA is allowed.
2. Charge reports should be submitted to all concerned.
3. The appointment is purely made on Fixed/ Contract basis & liable to termination at any stage/ time without assigning any notice.
4. The posts are not pension-able.
5. They will produced health & age certificate from the medical Superintendent DHQ Hospsital, Swabi .
6. They will not be handed over charge if their age is less then 18 years and above 45 years.
7. In case of resignation they will have to give one month prior notice to the Department or forfeit one month pay in lieu thereof to the government.
8. They will be permanently Domicile of Swabi District.
9. They will have no right of transfer to any other school or post.

Sd/-

(SAIFUR RAHMAN)  
EXECUTIVE DISTRICT OFFICER,  
SCHOOLS & LITERACY SWABI.

Endst:No.5398-G/C-IV. Apptt:File/ED(S&L), dated Swabi the 07.10.2006.

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

1. Hon'ble Minister for Education Govt: of NWFP, Peshawar.
2. Secretary Schools & Literacy Department Govt: of NWFP, Peshawar.
3. Director Schools & Literacy NWFP, Peshawar.
4. District Nazim Swabi.
5. District Coordination Officer, Swabi.
6. District Accounts Officer, Swabi.
7. District Officer (M&F) Local Office.
8. Principals/Headmasters/Headmistresses and Head Teachers concerned schools.
9. Deputy District Officers, (M & F) Swabi/ Lahor.
10. ADO (B&A/Establishment) Local Office.
11. Supdt: (M&F) Branch Local Office.
12. Dealing Assistant concerned.

Sd/-

EXECUTIVE DISTRICT OFFICER,  
SCHOOLS & LITERACY SWABI.

ATTESTED

ATTESTED

BETTER COPY

CONTRACT ( FIXED ) CLASS-IV APPOINTMENT:-

Consequent upon the approval of the Department Selection Committee as per Notification/ Letter No.SOR-V(E&AD)2-25/3/ dated: 22.10.2003, the following Class-IV (fixed) in the schools noted against their names with immediate effect in the best interest of public service.

S.No.	Name	F/Name	Posted as	Posted At.	Remarks
1.	S. Shahid Iqbal	Muhammad Naeem	Lab.Attendant	GHS, Tordher	AVP
2.	Iqbal Said	Muhammad Saeed	Chowkidar	GHS, Tordher	AVP
3.	S.Tilawat Shah	S.Ghaus Ali Shah	N/Qasid	GMS, Zakarya Khurd	AVP
4.	Wilayat Shah	S. Yaqoob Shah	Sweeper	GMS, Zakarya Khurd	AVP
5.	Mst.Ishrat Naz	W/o Fazlullah	Sweepress	GGHS,Lahor Sharqi	AVP
6.	Inayat Ullah	Habibullah	N/Qasid	GMS, Wisal Abad (JHR)	AVP
7.	Muzammil Shah	Anjad Ali Shah	Chowkidar	GGPS, No.1 Zarobi	AVP
8.	Abdul Wasigh	Muhammad Usman	Chowkidar	GGPS, Zarobi	AVP
9.	Kamran Khan	Sher Daraz Khan	Chowkidar	GPS, Kotha	AVP
10.	Naeem Zada	Faqir Muhammad	Chowkidar	GPS, No.3 Kotha	AVP
11.	Asif Zada	Sahib Zada	Chowkidar	GPS No.1 Kotha	AVP
12.	Sadiq Rahman	Shah Zaman	Chowkidar	GGHSS, Kotha	AVP
13.	Imtiaz Ahmad	Muhammad Qayyum	Behishti	GHS, Marghuz	AVP
14.	Aminul Haq	Abdur Rauf	Sweeper	GHS, Doebr	AVP
15.	Q.Zairur Rahman	Abdur Rahman	Chowkidar	GGHS, Mansoor Khel Zaida	AVP

  
ATTESTED

1. Name: MUHAMMAD ZAKARYA

2. Race: Abghar

3. Residence: Village and P.O. Shewa Mahallan  
Sheik Khan Tehsil and District Swabi



4. Father's name and residence: MUHAMMAD NAEEM



5. Date of birth by Christian era as nearly as can be ascertained: 01-01-1988  
Pirbat Sonwari N.H. 8 Eighty Eight


6. Exact height by measurement: 5.6


7. Personal marks for identification:

8. Left hand thumb and Finger impression of (Non-Gazetted) officer:

Little Finger:  Ring Finger: 

Middle Finger:  Fore Finger: 

Thumb: 

9. Signature of Government Servant: 

*Attested*  
*Agd*

ASST. COMMISSIONER  
P. & W. DEPT.  
G. S. Ghansabul, Swabi

10. Signature and designation of the Head of the office, or other Attesting Officer.

  
ATTEST

Name of Post      and whether permanent or temporary.      (ii) whether service counts for pension under Art. 371 C.S.R.      substantive post      pay for officiating      falling under the term "pay"      of Appointment      Signature of Government servant

Chowkidar, central Post at G.H.S.S. Sheva -						3500/- P.M (Fixed)	9 <sup>10</sup> / <sub>06</sub>	23
do						4000/- P.M (fixed)	9 <sup>10</sup> / <sub>06</sub>	23
do						4000/- P.M	12 <sup>12</sup> / <sub>06</sub>	23
do						4000/- P.M	12 <sup>12</sup> / <sub>07</sub>	23
do						2970/- P.M Contd.	1 <sup>7</sup> / <sub>08</sub>	23
BPS-I (Rs. 2150-65-4100) Pay fixed in BPS-I on 09-10-2006 = Rs. 2150/- P.M Annual Increment on 01-12-2006 = Rs. 2150/- " Revision of Pay Scale BPS-I (Rs. 2475-75-4725) 01-07-2007 Pay fixed in BPS-I on 01-07-2007 = Rs. 2475/- P.M Annual Increment on 01-12-2007 = Rs. 2550/- " " "								
BPS-I (Rs. 2970-90-5670) Current pay Rs. 2970/- P.M Revised in B-1 w.e.f. 1-7-08 Sheva (Distt. Sambli) Panch - Rs. 3060/- P.M - - - 01 <sup>07</sup> / <sub>2008</sub>								
do	do					Rs. 3150/- P.M ✓	12 <sup>12</sup> / <sub>08</sub>	23
do	do					Rs. 3240/- P.M	12 <sup>12</sup> / <sub>09</sub>	23
do	do					Rs. 3330/- P.M	01 <sup>12</sup> / <sub>10</sub>	23

Attested  
Age 1  
AEDUL  
HEAD MASTER  
G.M.S. Ghaziabad, KSK (Sambli)  
ATTESTED



<p>CC-10/10</p> <p>Drain No=3824/1-</p> <p>in the AR.50/-</p> <p>Wef-1-10-09/10 (2 Months)</p> <p>DRD</p>		<p>Appointment as Chaplain</p> <p>Fixed Contract Post purely @</p> <p>Rs.3500/- P.M Fixed Newly created</p> <p>Post at Govt Girls Higher</p> <p>Secondary School Shewa, vide</p> <p>E.D. School and library</p> <p>Swabi. Encls. No 5398-G/C. IV</p> <p>APP. File/E.D. (small) Swabi</p> <p>Dated 07-10-2006</p>
<p>6</p> <p>30/08</p>	<p>Converted to</p> <p>Contract</p> <p>Revised</p> <p>Entries</p>	<p>PRINCIPAL</p> <p>G H S S Shewa</p> <p>Dist (Swabi)</p>
<p>PRINCIPAL</p> <p>G H S S Shewa</p> <p>Distt (Swabi)</p>		<p>2007</p> <p>OFFICE OF THE ACCOUNTANT GENERAL</p> <p>N.W.F.P. PESHAWAR</p> <p>PAY FIXED IN THE REVISED BASIC</p> <p>PAY SCALES</p> <p>OF RS.....</p> <p>AT RS.....</p> <p>With Next Incr.....</p> <p>2007</p> <p>2007</p> <p>e. e. v. v. v. 8/09.</p> <p>to 31-7-09. Rs. 720/-</p>
<p>PRINCIPAL</p> <p>G H S S Shewa</p> <p>Distt (Swabi)</p>	<p>30/11/08</p> <p>PRINCIPAL</p> <p>G H S S Shewa</p> <p>Distt (Swabi)</p>	<p>Accounts Officer</p> <p>Pay Fixation Party N.W.F.P. Peshawar</p> <p>to 30/11/08</p> <p>and other office work.</p>
<p>PRINCIPAL</p> <p>G H S S Shewa</p> <p>Distt (Swabi)</p>	<p>30/11/09 (A.9)</p> <p>PRINCIPAL</p> <p>G H S S Shewa</p> <p>Distt Swabi</p>	<p>PRINCIPAL</p> <p>G H S S Shewa</p> <p>Distt Swabi</p> <p>OF RS 2970-</p> <p>AT RS 3067</p> <p>N.W.F.P. 1-07-2008</p> <p>1-12-2008</p> <p>Accepted</p>
<p>PRINCIPAL</p> <p>G H S S Shewa</p> <p>Distt Swabi</p>	<p>30/11</p> <p>PRINCIPAL</p> <p>G H S S Shewa</p> <p>Distt Swabi</p>	<p>Accounts Officer</p> <p>N.W.F.P. Peshawar</p> <p>PRINCIPAL</p> <p>G H S S Shewa</p> <p>ABDUL JALAL MA. M. Ed</p> <p>HEAD MASTER</p> <p>G.M. Chahab Abad, K.K.R (Swabi)</p> <p>ATTESTED</p>





فارم نمبر ۲۳-۱۵

5653346-5 - 16202 - 77  
 0340 - 77  
 2286/13

ابتدائی اطلاعی رپورٹ

13

ابتدائی اطلاع نسبت جرم قابل دست اندازی پولیس رپورٹ شدہ زیر دفعہ ۱۵۳ مجموعہ ضابطہ فوجداری

ضلع	صوابی
تاریخ و وقت وقوع	02/12/01 وقت 15:16 بجے
تاریخ و وقت	02/12/01 وقت 19:00 بجے
پورٹ	02/12/01 وقت 18:40 بجے
اطلاع دہندہ	دستان علی ولد سرد سہال قوم افغان نمبر 38/14 سال سکڑ شوہ قلم علام خیل
جرم (معدومہ) حال اگر کچھ ایسا گیا ہو۔	جان بھادر خان سکڑ شوہ جائے شرق شمال خواہم 6 کوٹوال
فاصلہ قاعدے اور سمت	راستہ جلال نرڈ پور ازان
ملزم	احتمل علی @ ندیم لبران الراجہ سن 30
تفتیش سے متعلق کی گئی اگر اطلاع درج کرنے میں توقف ہوا تو وجہ بیان کرو	انسانی دراصل عدم درج رجسٹر کیا جانا ہے
روائی کی تاریخ و وقت	سپورٹ اسپتال رپورٹ

ابتدائی اطلاع نیچے درج کرو۔ اس وقت ایک تقریری دراصل سوانہ فضل امین ASI کے پیش کردہ تھا۔ 25/26 سالہ سوانہ فضل امین کے والد سرد سہال قوم افغان نمبر 38/14 سال سکڑ شوہ قلم علام خیل بوقت پورٹ کر رہا تھے۔ دستان علی ولد سرد سہال قوم افغان نمبر 38/14 سال سکڑ شوہ قلم علام خیل بوقت پورٹ کر رہا تھے۔ دستان علی ولد سرد سہال قوم افغان نمبر 38/14 سال سکڑ شوہ قلم علام خیل بوقت پورٹ کر رہا تھے۔

دستان علی ولد سرد سہال قوم افغان نمبر 38/14 سال سکڑ شوہ قلم علام خیل بوقت پورٹ کر رہا تھے۔ دستان علی ولد سرد سہال قوم افغان نمبر 38/14 سال سکڑ شوہ قلم علام خیل بوقت پورٹ کر رہا تھے۔ دستان علی ولد سرد سہال قوم افغان نمبر 38/14 سال سکڑ شوہ قلم علام خیل بوقت پورٹ کر رہا تھے۔

دستان علی ولد سرد سہال قوم افغان نمبر 38/14 سال سکڑ شوہ قلم علام خیل بوقت پورٹ کر رہا تھے۔ دستان علی ولد سرد سہال قوم افغان نمبر 38/14 سال سکڑ شوہ قلم علام خیل بوقت پورٹ کر رہا تھے۔ دستان علی ولد سرد سہال قوم افغان نمبر 38/14 سال سکڑ شوہ قلم علام خیل بوقت پورٹ کر رہا تھے۔

MHC-18-2-18

ATTESTED

## "Better Copy"

### "ابتدائی اطلاعی رپورٹ"

ضلع صوابی

تھانہ کالو خان

بوقت 16:15 بجے

تاریخ و وقت وقوعہ 01/02/12

عات 123

1	تاریخ و وقت رپورٹ -	01/02/12 وقت 18:40 بجے چاکیدگی پرچہ 01/02/12 وقت 19:00 بجے
2	نام مستغیث -	مشتاق علی ولد سید مشتاق قوم افغان بہر 38/40 سال سکندہ شیوہ محلہ غلام خیل
3	مختصر کیفیت جرم (معدہ دفعہ)	PPC 302/324/34
4	جائے وقوعہ	راستہ ملاں نزد ڈپو ازاں جان بہادر خان بجد شیوہ جانب شرق شمال بقاصلا 5/6 کلومیٹر از تھانہ
5	نام و سکونت ملزم	(۱) حضرت علی (۲) ندیم پسران ابوالحسن (۳) ذکیا ولد نعیم ساکنان شیوہ
6	کارروائی جو تفتیش کے متعلق کی گئی	برسیدگی مراسلہ مقدمہ درج رجسٹر کیا جاتا ہے۔
7	تھانہ سے روانگی کی تاریخ و وقت -	بطور سپیشل رپورٹ

**ابتدائی اطلاع نیچے درج کرو:-** اس وقت ایک تحریری مراسلہ منجانب فضل امین ASI بدست کنسٹیبل سید نگار 920

موصول ہو کر ذیل ہے۔ بخدمت ایسرا انچارج تھانہ کالو خان حسب اطلاع سول ہسپتال کالو خان آیا۔ بمقام کچولٹی مشتاق علی ولد سید مشتاق قوم افغان بہر 38/40 ساکن شیوہ محلہ غلام خیل بوقت صدر بجے رپورٹ کرتا ہے کہ میں بمع اسد علی ولد صفر علی، نور الامین ولد نور القمر۔ مقصود علی ولد خیر علی ساکنان دیہام بمقائے جائے وقوعہ آپس میں باتیں کرتے ہوئے موجود تھے کہ بوقت 16:15 بجے مسمیان اختر علی، ندیم پسران ابوالحسن، ذکیا ولد نعیم ساکنان دیہام مسلح بہ کلاشکوف آ کر آتے ہی اسد علی پر بہارادہ قتل فائرنگ شروع کی۔ جسکی فائرؤں سے اسد علی لگ کو موقع پر جانب حق ہوا جبکہ ملزمان کی فائرنگ سے ایک راہ گیر فقیر محمد ولد نزر محمد سکندہ دیہام بھی لگ کر زخمی ہوا۔ وجہ عناد یہ ہے کہ اسد علی مقتول اور ملزمان کے مابین چند یوم قبل زبانی تکرار ہوا تھا رپورٹ میں دیری گاڑی نہ ملنے کی وجہ سے ہوئی ہے۔ وقوعہ ہذا میرے علاوہ نور الامین اور مقصود علی ہریان ام کا چشم دید ہے۔ میں اسد علی کی قتل اور فقیر محمد کی مجروحیت کا برخلاف اختر علی، ندیم، ذکیا متذکرہ بالا دعویٰ درج ہوں۔ العبد نور الامین ولد نور القمر قوم افغان بہر 25/26 سال ساکن شیوہ محلہ ابراہیم خیل نے رپورٹ بالا کی تائید کی۔ العبد کاروائی پولیس حسب گفتہ سائل درج ہو کر پڑھ کر سنایا سمجھایا گیا بعد سننے زیر رپورٹ خود دستخط جبکہ تائید کنندہ نے تائیدی دستخط ثبت کر کے جسکی میں تصدیق کرتا ہوں۔ مقتول کے کاغذات مرگ اور مجروح فقیر محمد کا نقشہ ضرر بمطابق زخماں مرتب ہو کر بغرض پوسٹ مارٹم و علاج زیر حفاظت کنسٹیبل خست اکبر 1092 حوالہ ڈاکٹر صاحب کیا گیا مضمون رپورٹ سے صورت جرم بالا کاپائی جا کر مراسلہ بغرض قائی مقدمہ و تفتیش بدست کنسٹیبل سید نگار 920 ارسال تھانہ ہے۔ افسران الا کو بطور سپیشل رپورٹ اطلاع دی جائے مراسلہ گزارش ہے۔ دستخط انگریزی فضل امین ASI مورخہ 1/2/17 پس آمدہ مراسلہ حرف بھرف درج بالا ہو کر نقول FIR بمع مراسلہ بمراء تفتیش حوالہ انوشی گیشن سٹاف کئے جاتے ہیں۔ اور افسران بالا کو بطور سپیشل رپورٹ اطلاع دی جاتی ہے۔ پرچہ گزارش ہے۔

-sd-

MHC.PS.KK

1.2.12

ATTESTED

*Amur e*

*Urgent Case No. 153/2016 - 253/16 - 22/16 - 15/16*

Order.....03  
25/02/2016

*153*  
*2016*      *253*  
*16*      *22*  
*16*      *15*  
*16*

Accused Zakaria present on bail with his counsel. Muhammad Tariq SPP for the state present. Mushtaq Ali (complainant), Faqir Muhammad (injured) and Safdar Ali (father of deceased Asad Ali) present and their separate statements to the effect of compromise recorded.

Learned defence counsel and accused also brought into the notice of the court, that the statements of major LRs namely Safdar Ali (father of deceased Asad Ali), Mst: Musarat (mother of the deceased), Mst: Zahra (widow of the deceased), Faqir Ahmed (injured), Mushtaq Ali (complainant) alongwith statement of elders of the locality have already been recorded during bail stage of the accused Zakaria and the major legal heirs of the deceased had raised no objection on the acquittal of accused Zakaria in their statements. The accused party had also already transferred a constructed house measuring 05 marlas through registered deed worth Rs: 12,00,000/- (twelve lacs) in the names of Umar Ali, Mosa Khan and Esa Khan (sons) minors LRs of the deceased at the stage of the bail. They produced copies of court order EX.PF, joint statement of LRs EX.PC, compromise deed EX.PA, affidavit EX.PB and copy of registered deed EX.PD. The original registered deed had already been handed over to grand father of the minors Safdar Ali for safe custody during the stage of bail of the accused facing trial. That the legal heirs of the deceased have made compromise with accused Zakaria and they have stated, that the compromise is genuine and effected without any force and coercion and is in the best interest of both the parties. They have also not objected on the acquittal of the accused facing trial Zakaria. As the matter has already been patched up at the stage of

*HA*

*Ae/4/16*

*Attested*  
*Agad*

ABDUL JALAL MA, M.Ed  
HEAD MASTER  
G.M.S Gharib Aoad, KSK (Swat)

*Attested*

Continued Order.....03  
25/03/2016

contest the case, further proceedings in the case will be a futile exercise and the ultimate result of the case in compromise is acquittal.

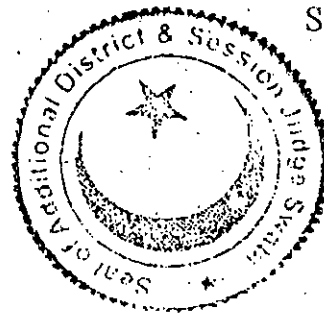
So, keeping in view the above mentioned compromise statements and the fact that offences u/s 302 PPC, vide underlying FIR No.123, dated 01.02.2012, registered at Police Station Kalu Khan, is compoundable as provided u/s 345 Cr.PC and the compromise seems to be in the interest of parties. The ultimate result of compromise is always acquittal, hence, accused Zakaria son of Naeem resident of Village Shewa is discharged in the instant case. He is on bail. His sureties are discharged from the liabilities of his bail bonds.

Case property be kept intact till the expiry of period of appeal/revision and thereafter be dealt in accordance with law. File be consigned to record room after its completion and necessary compilation.

ANNOUNCED  
25/03/2016

*Arrested*  
*Q*  
**ABDUL JALAL MA, M.Ed**  
**HEAD MASTER**  
G.M.S Charb Abad, KSK (Swabi)

*A 8/4/16*



*AA*  
(MALIK AMJAD RAHIM)  
Additional District & Sessions Judge-IV,  
Swabi.

*AA*


Order  
25/3/16

Joint statement of (1) Safdar Ali (father of the deceased Asad Ali resident of Village Shewa District Swabi major LR of the deceased, on Oath.

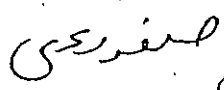
16

I am father of deceased Asad Ali who was murdered regarding which complainant Mushtaq Ali had lodged report against accused facing trial namely Zakaria son of Naeem vide case FIR No.123 dated 01.02.2012 U/S 302/324/34 PPC Police Station Kalu Khan. Beside me the deceased have also Mst: Musarat (mother) and Mst: Zahra (widow of the deceased) whose statements was recorded at the stage of bail to the effect of compromise. The deceased has also minors children namely Umar Ali, Mosa Khan and Esa Khan (sons). Through the efforts of the elders of the locality, we have effected compromise with the accused named above and pardoned him in the name of Allah Almighty by waiving our rights of Qisas and Diyat etc. While for the minor LR of the deceased the accused party has transferred landed property measuring 05 marlas situated at Village Shewa the market value of which is Rs:12,00,000/-. We the major LR of the deceased have got no objection, if this Honorable court acquit the accused facing trial namely Zakaria. To this effect we have already produced compromise deed Ex.PA alongwith an affidavit Ex.PB. The compromise is genuine, without any force, pressure and coercion and is in the best interest of both the parties. Joint statement of mine, Mst: Musarat and Mst: Zahra is EX.PC, the copy of registered deed EX.PD and court order is EX.PE. The compromise may kindly be accepted.

RO & AC  
25.03.2016


  
(Malik Amjad Rahim)  
Addl; Sessions Judge-IV, Swabi

Safdar Ali (father of the deceased)  
CNIC No.16202-0857863-9



Attested



  
(Malik Amjad Rahim)  
Addl; Sessions Judge-IV, Swabi

A 8/4/16

ABDUL JALIL B.A, M.Ed  
HEAD MASTER  
G.S. Gharib Abad, KSK (Swabi)

  
ATTESTED




16

17

Statement of Mushtaq Ali aged about 46 years son of Said Mashal Khan  
R/O Shewa (complainant) District Swabi, on Oath.

Stated that I am complainant of case FIR No.123 dated 01.02.2012 U/S  
302/324/34 PPC Police Station Kalu Khan for ineffective firing upon me. Now  
through the efforts of the elders of the locality, I have effected compromise with  
the accused facing trial namely Zakaria. Through the efforts of the elders of the  
locality I have effected compromise with the accused facing trial named above  
and pardoned the accused facing trial namely Zakaria in the name of Allah  
Almighty by waiving my rights of Qisas, Daman, Arsh etc. I have got  
objection, if this Honorable court acquit the accused named above. To this  
effect I produce copy of compromise deed Ex.PF. The compromise is genuine,  
without any force, pressure and coercion and is in the best interest of both the  
parties. The compromise may kindly be accepted.

RO & AC  
25.03.2016

  
(Malik Amjad Rahim)  
Addl; Sessions Judge-IV, Swabi

Mushtaq Ali (Complainant)  
CNIC No.16202-8246286-1



  
(Malik Amjad Rahim)  
Addl; Sessions Judge-IV, Swabi

*Attested  
Aged*

**ABDUL JALAL MA, M.Ed**  
**HEAD MASTER**  
G.M.S Gharib Abad, KSK (Swabi)

*A 8/4/16*

  
ATTESTES



*Kypts level* *Amman* (18)

**DISTRICT EDUCATION OFFICE (MALE) SWABI**  
(Office phone & Fax No 0938280239, [emis\\_swabi@yahoo.com](mailto:emis_swabi@yahoo.com))

To, No. 2664 Dated Swabi the 26 / 03 / 2018

Mr. Zakarya Ex-Chowkidar.  
GGHSS Shewa (Swabi)

Through The Principal,  
GGHSS, Shewa (Swabi)

Subject: **APPEAL FOR RE-INSTANTMENT IN GOV'T: SERVICE.**

Memo:

Kindly refer to your appeals of dated 05.12.2017 and 17.01.2018 on the above cited subject.

It is verified by the undersigned in this regard that one Mr. Zakarya Ex-Chowkidar was appointed at GGHSS Shewa (Swabi) against the Chowkidar post and took over on 01.09.2006. He performed his duty from 01.09.2006 to 31.01.2012 and on 01.02.2012 he was charged in a murder case under FIR No.123 dated 01.02.2012. The accused Chowkidar absconded from the above mentioned date and did not surrender to law till he was discharged by the District and Session Judge Swabi in 2016.

The accused Chowkidar has alleged in his appeals that the department has not taken any action against him and nothing has been written in his service book about his accusation in a murder case. His appeals are hereby rejected on the following grounds.

1. His case has been decided by the Honourable Session Court on 25.03.2016 while he has submitted his appeal on 05.12.2017 which is badly time barred.
2. According to the Khyber Pakhtunkhwa Government Servants Conduct rules 1987, rule 20 he has committed misconduct. Rules 20 of conduct rules 1987 states that "If a Government Servant is involved as an accused in a criminal case, he shall bring the fact of such involvement or conviction as the case may be to the notice of the Head of the office or department, immediately or if he is arrested and released on bail, soon after such release". As it was mandatory for the appellant but he did not do so, hence he committed misconduct as per E&D rules 2011,2(e)(ii) which states that misconduct includes conduct contrary to Khyber Pakhtunkhwa Government Servants, conduct rules 1987 for the time being enforced. Under the above mentioned rules the appellant, did not inform the department well in time but after discharge he informed the department a year later or more than a year.
3. He has submitted more than one appeals while the rules do not allow for repeated appeals/representation when the first one is not rejected/decided. It has been appeared in 2001 SCMR-912,2004 SCMR 497, 2009 OLC(CS)89. 2007 PLC (CS)15. The accused made/submitted 1st appeal in November 2017 to DEO(F) Swabi, 2nd appeal/representation was made to DEO(M) on 05.12.2017 both the appeals are badly time barred as per 2017 SCMR 695. 2nd appeal has also been made/submitted to DEO(F) Swabi on 19.01.2018 without knowing the rejection/acceptation of the previous ones.
4. The accused Chowkidar has stated in his appeal that department has not taken any action which is not correct as he has been sent absent notice by the Principal of the school. He has been given 1st notice on 21.02.2012, 2nd on 08.03.2012 and 3rd on 22.03.2012. He has been issued as show cause notice by the Principal of the school. All the letters/ notices issued to him did not receive by the accused Chowkidar and department received no response. The department has been informed by the Principal that the person has absconded from the law of the state. The total period of his abscontion is more than 04 years i.e. 01.02.2012 to 25.03.2016, but he remained willful absent up to November 2017, which becomes more than 05 years and in such cases the right of the re-instatement of an official automatically vanishes.

*[Signature]*  
**ATTESTED**

**ATTESTED**

(19)

5. The EDO post abolished on 31.12.2012 and on 01.01.2013 two new entities were established in E&SE Department with nomenclature of DEO(Male) and DEO(Female). Thus the staff and record was also separated and the Ex-Chowkidar remained at the strength of the DEO(F) and in the process of bifurcation his case remained out sight and could not be processed properly.

  
DISTRICT EDUCATION OFFICER  
(MALE) SWABI

Endst:No. \_\_\_\_\_ /

Copy of the above is forwarded to the:-

1. Director Elementary & Secondary Education Khyber Pakhtunkhwa, Peshawar.
2. District Education Officer (Female) Swabi.

  
DISTRICT EDUCATION OFFICER  
(MALE) SWABI

  
ATTESTED

ATTESTED

20

راوند شمالی

20

محضوَر جناب ڈسٹرکٹ ایجوکیشن آفسر صاحب صوابی

درخواست بمطابق دوبارہ تقرری

11/11/17

جناب عالی

مورد باذکر گزارش ہے

کہ میں نے 9/2016 سے یکم فروری 2012 تک گورنمنٹ ہائی سکول شیوہ

میں ڈیوٹی سرانجام دے رہا تھا۔ دشمن لیوج سے فدوی پرائیوی آر کی گئی اس وقت عید السلام جب ایگزیکٹو

سکول میں کوئی ریکارڈ نہیں ہے۔ سرورس ہٹ میں کوڈ انٹری اس کیس کے بارے میں ایسے ہی۔ محکمہ کی طرف سے جس کوئی نوٹس نہیں دیا گیا ہے مہری پوسٹ پر تعیناتی کی گئی ریکارڈ آئیے یا اس سے



کہ جناب عالی ہمارے درمیان راضی نامہ ہو گیا اور صوابی سیشن جج صاحب نے باعزت طور پر بری کر دیا ہے۔ اب میں اپنی ڈیوٹی پورا کرنا چاہتا ہوں لہذا مجھے ڈیوٹی پر لگانے کے احکامات صادر فرمائے کہ میں فرمادیں

(نوٹ) درخواست کے ساتھ درج ذیل مواد شامل ہے - بڑی مہربانی ہوگی

5.12.2017

جج

آپ کا تابع فرمان محمد زکریا ولد محمد نعیم مقام شیوہ محلہ شیخان محلہ صوابی

تفصیلی نامہ  
محکمہ ایجوکیشن  
محکمہ ایجوکیشن  
محکمہ ایجوکیشن  
محکمہ ایجوکیشن

Attested

As per

PTO

ABDUL JALAL MA, M.EJ  
HEAD MASTER

G.M.S Gharib Abad, (SK) (Swabi)

ATTESTED

(19)

باسمہ تعالیٰ

بعضو احباب ڈسٹرکٹ گورنرز ایجوکیشن آفیسر ہاؤس ہواہی

(اپیل برائے پوسٹنگ)

DA-111

24  
19/1/18

جناب عالی :- مؤدبانہ گزارش ہے

کہ میں گورنمنٹ گورنرز ہائیئر سیکنڈری سکول شیوہ میں کلاس سوم

(چوکیدار) پوسٹ پر تعینات تھا یکم فروری 2012ء کو

دعویٰ قتل کیا گیا محکمہ میں میرے خلاف کوئی کارروائی نہیں کی گئی

331  
19/1/18

اور نہ ریلیف مل سکا ہے

لہذا مجھے نزدیک ترین سکول میں تعینات کرنے کے احکامات

صادر فرمائیں کہ منوں فرماریں۔ فقط اطر قلم

17/9/2018

(نوٹ) اپیل مفدا کے ساتھ درج ذیل مواد منسلک ہے

العارجن واپیل کنندہ

1 متعلقہ درخواستیں

2 سروس بک نقل

3 فیصلہ (عدالتی) نقل (راضی نامہ)

محمد زکریا ولد محمد نعیم شیوہ ضلع ہواہی

Arrested  
Age

تجربہ  
تحصیل نذر

4 آرڈر رکابی یعنی تقرری نامہ

5 ادنیٰ ہائیڈرو گراف

ATTESTED

5665 Dated 26/12/2017

Forwarded in original to the DEO (M) Swabi with the remarks that the case is related to the period of EDO, and you are requested to provide the record to proceed the case for further n/action please.

Service book is not attached  
Tamy DA  
26/12/17

Dist. Ed. Officer  
(Female) Swabi



DA - II

OFFICE OF THE DISTRICT EDUCATION OFFICER (M) SWABI  
Endst. No 211 | Ab. Susp. File No. 3211-BIC-IV | Dated 27/12/2017



Returned in original to the DEO (F) Swabi as the case relates to her office. The letter issued to EDO Swabi on 19/11/2012. DEO (M) and DEO (F) both are separate entities w.e.f. from 1-1-2013. Termination comes under the ambit of DEO

ATTESTED

23

VAKALAT NAMA

Service Tribunal Peshawar

Muhammad Zakria PETITIONER

VERSUS

Govt of K.P. 15. RESPONEDENT

I Appellant in the above noted Appeal do hereby appoint and constitute ABID ALI KHAN, *Advocate* as my / our counsel in the subject proceedings and authorize them to appear and plead etc. Compromise, Withdraw or refer the matter for Arbitration for me / us, without any liability for their default and the authority, to engage / appoint any other advocate / Counsel at my / our expenses and receive all sums and amounts payable to me / us. And do all such acts in the matter. He / They are also authorized to file Appeal, Revision, Review, Application for Restoration or application for setting aside Ex-parte decree / proceedings on my / our behalf.

Dated. / /

Attested & Accepted

ABID ALI KHAN  
Advocates, High Court

23  
(Client / Clients)





(13)

**BEFORE THE PESHAWAR HIGH COURT, PESHAWAR.**

Writ Petition No. 1513-P/2018.

Muhammad Zakria S/O Muhammad Naeem R/O Mohalla Sheikh Abad, Post Office  
Shewa Tehsil Razzar District Swabi..... **Petitioner**

**VERSUS**

1. Secretary to Govt:of Khyber Pakhtunkhwa E&SE Department Civil Secretariat, Peshawar.
2. Director E&SE Khyber Pakhtunkhwa, Peshawar.
3. District Education Officer, Elementary & Secondary Education (Female) District Swabi.
4. District Education Officer, Elementary & Secondary Education (Male) District Swabi.
5. Principal GGHSS Shewa Tehsil Razzar District Swabi.
6. Executive District Officer Schools & Literacy Swabi.

.....Respondents.....

**PARAWISE COMMENTS ON BEHALF OF THE RESPONDENTS No. 2 TO 4**

Respectfully Sheweth,

**PRELIMINARY OBJECTIONS.**

1. That the petitioner absented himself from duty w.e.f. 02.02.2012 without giving any information to the department and was removed from service on 19.02.2013. Hence not-maintainable.
2. That the petitioner was appointed against Chwokidar post on contract fixed pay salary basis but he left the department without any permission/information on 02.02.2012 till 19.02.2013. Hence the petition is not maintainable.
3. That the instant petition is badly time barred because he was removed from service on 19.02.2013 while he filed appeal in Novemeber, 2017, hence not maintainable.
4. That the petitioner has no locus standi or cause of action to file the instant petition.
5. That the petition is bad for misjoinder and non joinder of necessary party.
6. That the petitioner has not come to the Court with clean hands, hence not maintainable.
7. That the petitioner concealed the material facts from Honourable Court. Hence not maintainable.
8. That the petitioner is, estopped by his own conduct to file the instant petition, hence not maintainable.

**FACTS.**

1. That the para relates to the appointment of the petitioner as Chowkidar at GGHSS Shewa. He is concealing the fact that his appointment was on contract fixed pay salary basis and due to willful absence he has already been removed from service after observing all the codal formalities in this regard. Removal from service order alongwith other relevant documents are attached as annexure-A.
2. That it is obligatory for each and every servant to discharge his duties up to the entire satisfaction of his superiors and up to the best of his capabilities, because he is paid for his job, failing which is liable to be treated under E&D Rules. When he absented himself willfully, he was removed form service on 19.02.2013.

FILED TODAY

Registry Registrar

11 APR 2018

3. That the petitioner himself confesses charge of murder against him, but he failed to inform the department well in time as per rules. This act of the petitioner divests him from the right to remain in service. As per 2017 SCMR 965, "Act of absconsion or being fugitive from law could not be regarded as a reasonable ground to explain absence".
4. That the petitioner himself confesses that he became fugitive of law after being charged in the murder case. "Act of absconsion or being a fugitive of law could not be regarded as a reasonable ground to explain absence". The same is reported in 2017 SCMR 965. As he has already been removed from service on 19.02.2013 after observing all the codal formalities due to willful absence from duty, he has no vested right to be posted against the Chowkidar post.
5. That the petitioner himself confesses that he was acquitted by the learned Additional Session Judge-IV Swabi on 25.03.2016 from the charges leveled against him on the basis of compromise. The acquittal was not an honourable acquittal. It shows that the petitioner could not remove the allegation of murder through legal proceedings on merit but the acquittal was given only on the basis of compromise, which not proves the validity of the charge or otherwise. It can not be assumed that the petitioner has proved his innocence. Furtermore, his removal from service had already been made due to his willful absence under E&D Rules, 2011 on 19.02.2013.
6. That the petitioner submitted belatedly more than one appeal which the rules do not allow for repeated appeals/representations when the first one is not rejected/decided. It has been reported in 2001 SCMR 912, 2004 SCMR 497, 2009 PLC(CS) 89, 2007 PLC(CS)15. The petitioner made/submitted first appeal in November, 2017 to DEO(F) Swabi, 2nd appeal/representation was made to DEO(M) Swabi on 05.12.2017, both the appeals were badly time barred, He has also been made/submitted another appeal to DEO(F) Swabi on 19.01.2018 without knowing the rejection/acceptance of the previous one. When the appeal before the authority is time barred, the appeal/petition before the Tribunal/Court is also time barred and hence not maintainable. As he has committed moral turpitude, hence he is not entitled to be posted/reinstated as Chowkidar. The same is reported in 2002 SCMR 1691. The petitioner knocked at the door of Honourable Court before 90 days after filing the 3rd departmental appeal which has no legal effect, hence the writ petition is not maintainable. Khyber Pakhtunkhwa Civil Servants (Appeal) rules, 1986, reply of appeal for reinstatement in government service and Court judgment are annexed as B, C & D.
7. That petitioner is not an aggrieved person. Hence has no cause of action to file the instant petition inter-alia on the following amongst other grounds.

**Grounds**

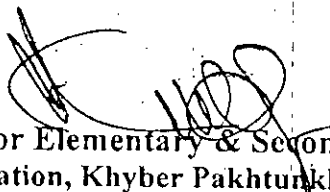
- a. Incorrect, hence strongly denied, the non posting/reinstatement of the petitioner by the respondent is legal, genuine and according to the norms of justice because he has already been removed from service on 19.02.2013.
- b. Incorrect, hence denied, according to Khyber Pakhtunkhwa Government servants conduct rules, 1987 rule 20, he has committed misconduct. This rule states, "If a government servant is involved as an accused in a criminal case, he shall bring the fact of such involvement or conviction as the case may be to the notice of the Head of office or department immediately or if he is arrested or released on bail, soon

10/03/2018  
 10/03/2018  
 10/03/2018

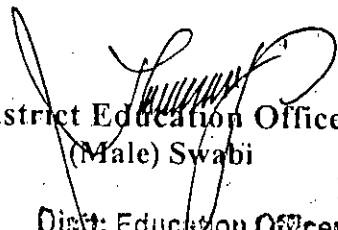
after such release". As it was mandatory for the petitioner but he did not do so, hence, he committed misconduct as per E&D rules 2011, 2(e) (ii) which states that misconduct includes conduct contrary to Government of Khyber Pakhtunkhwa Government Servants rules 1987 for the time being enforced. He has already been removed from service due to willful absence.

- c. Incorrect, hence denied, he has been sent absent absence notices by the Principal of concerned school. He has been served with first notice on 21.02.2012; 2nd on 08.03.2012 and 3rd on 22.03.2012. All the letters/ notices issued to him, the department received no response from him. Furthermore, it is stated that the EDO Schools and Literacy post was abolished on 31.12.2012 and on 01.01.2013 two new entities were established in Elementary & Secondary Education Department with nomenclature DEO(Male) & DEO(Female). Thus the staff and record was also separated and the Ex-Chowkidar remained at the strength of DEO(Female) and in the process of bifurcation his case remained out sight/misplace and could not process properly in time. Although his misconduct and willful absence had been proved and thus he has been removed from service by DEO(F) Swabi after observing all the codal formalities/legal procedure.
- d. Incorrect, hence denied, he is not entitled to be posted/reinstated due to his willful absence and negligence. Furthermore, due to his willful absence he has already been removed from service after observing all the codal formalities/legal requirements on 19.02.2013.
- e. Incorrect, hence denied, what was the source of his income in absconsion and ignorance of law is no excuse. His removal from service has already been made due to his willful absence after observing all the codal formalities/legal procedure on 19.02.2013.
- f. That the respondents seek permission to raise other grounds/points on the day of arguments.

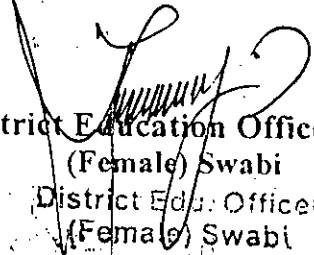
In view of the above submission, it is very humbly prayed that the writ petition may very graciously be dismissed with cost in favour of the respondents.

  
 Director Elementary & Secondary  
 Education, Khyber Pakhtunkhwa  
 Peshawar.

Director  
 Elementary & Secondary Education  
 Khyber Pakhtunkhwa Peshawar

  
 District Education Officer  
 (Male) Swabi

Distt: Education Officer  
 (Male) Swabi

  
 District Education Officer  
 (Female) Swabi  
 District Edu. Officer  
 (Female) Swabi

**FILED TODAY**  
 Deputy Registrar

11 APR 2018

حکومت سندھ، سندھ پبلک سروس کمیشن

منہ: کمیہ نڈن انہ

مراسلہ نمبر: پی۔ او۔ ا۔ ا۔ ۱۱۔ ۱۱۔ ۲۲/۸۱۔ ۲۰۰۷۔ ۲۰۰۷ ایف۔ ڈی

مورخہ ۲۹ جنوری، ۲۰۰۸ء

SA No 628/2018

بخدمت:

- ۱۔ تمام انتظامی معتمدین حکومت صوبہ سرحد۔
- ۲۔ معتمد برائے گورنر صوبہ سرحد، پشاور۔
- ۳۔ پرنسپل سٹاف آفیسر برائے وزیر اعلیٰ صوبہ سرحد۔
- ۴۔ تمام سربراہان ماتحت نکلہ جات صوبہ سرحد۔
- ۵۔ تمام ضلعی رابطہ افسران صوبہ سرحد۔
- ۶۔ رجسٹرار پشاور ہائی کورٹ، پشاور۔
- ۷۔ رجسٹرار، سروٹس ٹریبیونل، صوبہ سرحد، پشاور۔
- ۸۔ سیکرٹری، صوبائی پبلک سروس کمیشن، صوبہ سرحد، پشاور۔
- ۹۔ سیکرٹری بورڈ آف ریونیو، صوبہ سرحد۔

بجٹ تقریر ۰۸۔ ۲۰۰۷ میں درجہ پنجم کے مقررہ تنخواہ پانے واسلے (Fixed pay)

ملازمن کے لیے سی۔ پی۔ فنڈ کا اعلان۔

عنوان:

جناب عالی!

مجھے ہدایت کی گئی ہے کہ عنوان بالا کا حوالہ دیتے ہوئے عرض کروں کہ صوبائی حکومت نے تمام درجہ

چہارم (مقررہ تنخواہ Fixed pay) پانے والے ملازمین کو یکم جولائی ۲۰۰۸ سے این۔ ڈبلیو۔ ایف۔ پی سول

ملازمن ایکٹ ۱۹۷۳ء کے تحت سول ملازمین کا درجہ دیکر بنیادی سکیل۔ ۱ (BPS-1) دینے کی منظوری دی

ہے۔

۱۔ مذکورہ ملازمین کی تنخواہوں کا تئیں (Fixation of pay) ان کی بھرتی کے تاریخ (Date of

۲۔

Appointment) سے کیا جائے گا۔ تاہم یہ ملازمین تنخواہوں اور الاؤنسز وغیرہ کی مد میں کسی قسم کی بقاء

جات (arrears) کے حقدار نہیں ہونگے۔

۳۔ اس سلسلے میں پہلے سے جاری شدہ تمام پالیسی ہدایات یکم جولائی ۲۰۰۸ء سے منسوخ تصور

ہے۔

نقل برائے اطلاع:

- (۱) اکاؤنٹس جنرل، صوبہ سرحد بمقام ڈپٹی سیکرٹری، سوات ڈسٹرکٹ، سوات۔
- (۲) جملہ ایگزیکٹو ڈسٹرکٹ آفیسرز، فنانس اینڈ پرائیونٹ، صوبہ سرحد۔
- (۳) جملہ ضلعی آفیسران حساب داروں، صوبہ سرحد۔

میزانیہ اشرفی (۱) محکمہ خزانہ

تظہیر نمبر و تاریخ: ایضاً:

نقل برائے اطلاع:

- (۱) نجی معتمد برائے چیف سیکرٹری صوبہ سرحد۔
- (۲) جملہ اضافی معتمدین و نائب معتمدین محکمہ خزانہ، صوبہ سرحد۔
- (۳) جملہ بجٹ آفیسرز سیکشن آفیسرز محکمہ خزانہ، صوبہ سرحد۔
- (۴) ڈائریکٹران FM، محکمہ خزانہ صوبہ سرحد۔
- (۵) نجی معتمد برائے فنانس سیکرٹری صوبہ سرحد۔

میزانیہ اشرفی (۱) محکمہ خزانہ

OFFICE OF THE EXECUTIVE DISTRICT OFFICER (ELEMENTARY & SECONDARY EDUCATION) SWABI.

Distt: No. 175-82 / CASE NO/APPPOINTMENT FILE/DA:8/ DATED, 9/7/95.

Necessary action of the above is forwarded for information &

- 1. Deputy District Officer (M/F) Swabi/Leher & Topi.
- 2. Principal/Headmaster/Headmistress GHSS, GGHSS, GHS & GHS (Distt: Swabi)
- 3. District Account Officer Swabi.
- 4. District Officer, Social Office.
- 5. MPO (Establishment) District Office.
- 6. Supdt: (M&F) Local Office.
- 7. Darling Asstt: Officer.

EXECUTIVE DISTRICT OFFICER  
ELEMENTARY & SECONDARY EDUCATION SWABI.

9/7/95

Comments - 0 10353

6.6.18

**BEFORE THE PESHAWAR HIGH COURT, PESHAWAR.**

Writ Petition No. 1513-P/2018

Muhammad Zakria S/O Muhammad Naeem R/O Mohalla Sheikh Abad, Post Office Shewa Tehsil Razzar District Swabi..... **Petitioner**


**VERSUS**

1. Secretary to Govt:of Khyber Pakhtunkhwa E&SE Department Civil Secretariat, Peshawar.
2. Director E&SE Khyber Pakhtunkhwa, Peshawar.
3. District Education Officer, Elementary & Secondary Education (Female) District Swabi.
4. District Education Officer, Elementary & Secondary Education (Male) District Swabi.
5. Principal GGHSS Shewa Tehsil Razzar District Swabi.
6. Executive District Officer Schools & Literacy Swabi.

.....**Respondents**.....

**INDEX**

S#	Description of Documents	Annexure	Page
1	Parawise Comments	-	01-03
2	Affidavit	-	04
3	Removal from service order Alongwith relevant documents	"A"	05-19
3	Civil Servants (Appeal) Rules, 1986	"B"	20
4	Reply of appeal for reinstatement in Government Service	"C"	21-22
5	Judgment on moral turpitude	"D"	23-25

  
**DEPONENT**  
**CNIC NO. 16202-0893178-1**

**BEFORE THE PESHAWAR HIGH COURT, PESHAWAR.**

Writ Petition No. 1513-P/2018.

Muhammad Zakria S/O Muhammad Naeem R/O Mohalla Sheikh Abad, Post Office Shewa Tehsil Razzar District Swabi..... **Petitioner**

**VERSUS**

- 1. Secretary to Govt:of Khyber Pakhtunkhwa E&SE Department Civil Secretariat, Peshawar.
- 2. Director E&SE Khyber Pakhtunkhwa, Peshawar.
- 3. District Education Officer, Elementary & Secondary Education (Female) District Swabi.
- 4. District Education Officer, Elementary & Secondary Education (Male) District Swabi.
- 5. Principal GGHSS Shewa Tehsil Razzar District Swabi.
- 6. Executive District Officer Schools & Literacy Swabi.

.....**Respondents**.....

**PARAWISE COMMENTS ON BEHALF OF THE RESPONDENTS No. 2 TO 4**

**Respectfully Sheweth,**

**PRELIMINARY OBJECTIONS.**

- 1. That the petitioner absented himself from duty w.e.f. 02.02.2012 without giving any information to the department and was removed from service on 19.02.2013. Hence not maintainable.
- 2. That the petitioner was appointed against Chwokidar post on contract fixed pay salary basis but he left the department without any permission/information on 02.02.2012 till 19.02.2013. Hence the petition is not maintainable.
- 3. That the instant petition is badly time barred because he was removed from service on 19.02.2013 while he filed appeal in Novemeber, 2017, hence not maintainable.
- 4. That the petitioner has no locus standi or cause of action to file the instant petition.
- 5. That the petition is bad for misjoinder and non joinder of necessary party.
- 6. That the petitioner has not come to the Court with clean hands, hence not maintainable.
- 7. That the petitioner concealed the material facts from Honourable Court. Hence not maintainable.
- 8. That the petitioner is, estopped by his own conduct to file the instant petition, hence not maintainable.

**FACTS.**

- 1. That the para relates to the appointment of the petitioner as Chowkidar at GGHSS Shewa. He is concealing the fact that his appointment was on contact fixed pay salary basis and due to willful absence he has already been removed from service after observing all the codal formalities in this regard. Removal from service order alongwith other relevant documents are attached as annexure-A.
- 2. That it is obligatory for each and every servant to discharge his duties up to the entire satisfaction of his superiors and up to the best of his capabilities, because he is paid for his job, failing which is liable to be treated under E&D Rules. When he absented himself willfully, he was removed form service on 19.02.2013.

3. That the petitioner himself confesses charge of murder against him, but he failed to inform the department well in time as per rules. This act of the petitioner divests him from the right to remain in service. As per 2017 SCMR 965, "Act of absconsion or being fugitive from law could not be regarded as a reasonable ground to explain absence".
4. That the petitioner himself confesses that he became fugitive of law after being charged in the murder case. "Act of absconsion or being a fugitive of law could not be regarded as a reasonable ground to explain absence". The same is reported in 2017 SCMR 965. As he has already been removed from service on 19.02.2013 after observing all the codal formalities due to willful absence from duty, he has no vested right to be posted against the Chowkidar post.
5. That the petitioner himself confesses that he was acquitted by the learned Additional Session Judge-IV Swabi on 25.03.2016 from the charges leveled against him on the basis of compromise. The acquittal was not an honourable acquittal. It shows that the petitioner could not remove the allegation of murder through legal proceedings on merit but the acquittal was given only on the basis of compromise, which not proves the validity of the charge or otherwise. It can not be assumed that the petitioner has proved his innocence. Furtermore, his removal from service had already been made due to his willful absence under E&D Rules, 2011 on 19.02.2013.
6. That the petitioner submitted belatedly more than one appeal which the rules do not allow, for repeated appeals/representations when the first one is not rejected/decided. It has been reported in 2001 SCMR 912, 2004 SCMR 497, 2009 PLC(CS) 89, 2007 PLC(CS) 15. The petitioner made/submitted first appeal in November, 2017 to DEO(F) Swabi, 2nd appeal/representation was made to DEO(M) Swabi on 05.12.2017, both the appeals were badly time barred, He has also been made/ submitted another appeal to DEO(F) Swabi on 19.01.2018 without knowing the rejection/acceptance of the previous one. When the appeal before the authority is time barrèd, the appeal/petition before the Tribunal/Court is also time barred and hence not maintainable. As he has committed moral turpitude, hence he is not entitled to be posted/reinstated as Chowkidar. The same is reported in 2002 SCMR 1691. The petitioner knocked at the door of Honourable Court before 90 days after filing the 3rd departmental appeal which has no legal effect, hence the writ petition is not maintainable. Khyber Pakhtunkhwa Civil Servants (Appeal) rules, 1986, reply of appeal for reinstatement in government service and Court judgment are annexed as B, C & D.
7. That petitioner is not an aggrieved person. Hence has no cause of action to file the instant petition inter-alia on the following amongst other grounds.

### Grounds

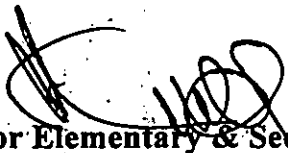
- a. Incorrect, hence strongly denied, the non posting/reinstatement of the petitioner by the respondent is legal, genuine and according to the norms of justice because he has already been removed from service on 19.02.2013.
- b. Incorrect, hence denied, according to Khyber Pakhtunkhwa Government servants conduct rules, 1987 rule 20, he has committed misconduct. This rule states, "If a government servant is involved as an accused in a criminal case, he shall bring the fact of such involvement or conviction as the case may be to the notice of the Head of office or department immediately or if he is arrested or released on bail, soon



after such release". As it was mandatory for the petitioner but he did not do so, hence, he committed misconduct as per E&D rules 2011, 2(e) (ii) which states that misconduct includes conduct contrary to Government of Khyber Pakhtunkhwa Government Servants rules 1987 for the time being enforced. He has already been removed from service due to willful absence.

- c. Incorrect, hence denied, he has been sent absent absence notices by the Principal of concerned school. He has been served with first notice on 21.02.2012, 2nd on 08.03.2012 and 3rd on 22.03.2012. All the letters/ notices issued to him; the department received no response from him. Furthermore, it is stated that the EDO Schools and Literacy post was abolished on 31.12.2012 and on 01.01.2013 two new entities were established in Elementary & Secondary Education Department with nomenclature DEO(Male) & DEO(Female). Thus the staff and record was also separated and the Ex-Chowkidar remained at the strength of DEO(Female) and in the process of bifurcation his case remained out sigh/misplace and could not process properly in time. Although his misconduct and willful absence had been proved and thus he has been removed from service by DEO(F) Swabi after observing all the codal formalities/legal procedure.
- d. Incorrect, hence denied, he is not entitled to be posted/reinstated due to his willful absence and negligence. Furthermore, due to his willful absence he has already been removed from service after observing all the codal formalities/legal requirements on 19.02.2013.
- e. Incorrect, hence denied, what was the source of his income in absconsion and ignorance of law is no excuse. His removal from service has already been made due to his willful absence after observing all the codal formalities/legal procedure on 19.02.2013.
- f. That the respondents seek permission to raise other grounds/points on the day of arguments.

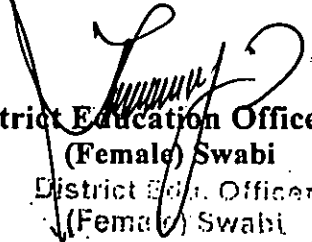
In view of the above submission, it is very humbly prayed that the writ petition may very graciously be dismissed with cost in favour of the respondents.

  
**Director Elementary & Secondary  
 Education, Khyber Pakhtunkhwa  
 Peshawar.**

**Director  
 Elementary & Secondary Education  
 Khyber Pakhtunkhwa Peshawar**

  
**District Education Officer  
 (Male) Swabi**

**Distt: Education Officer  
 (Male) Swabi**

  
**District Education Officer  
 (Female) Swabi  
 District Ed. Officer  
 (Female) Swabi**

(4)

**BEFORE THE PESHAWAR HIGH COURT, PESHAWAR.**

Writ Petition No. 1513-P/2018  
Muhammad Zakria S/O Muhammad Naeem R/O Mohalla Sheikh Abad, Post Office  
Shewa Tehsil Razzar District Swabi..... **Petitioner**

**VERSUS**

1. Secretary to Govt:of Khyber Pakhtunkhwa E&SE Department Civil Secretariat, Peshawar.
2. Director E&SE Khyber Pakhtunkhwa, Peshawar.
3. District Education Officer, Elementary & Secondary Education (Female) District Swabi.
4. District Education Officer, Elementary & Secondary Education (Male) District Swabi.-
5. Principal GGHSS Shewa Tehsil Razzar District Swabi.
6. Executive District Officer Schools & Literacy Swabi.

.....**Respondents**.....

**AFFIDAVIT**

I, **Mr. Fazle Khaliq (Litigation Officer) office of the District Education Officer (Male) Swabi** on the instruction of DEO(M) Elementary & Secondary Education Swabi, do hereby solemnly affirm & declare that the content of the para-wise comments submitted by respondents No.2 to 4 is true and correct to the best of my knowledge and belief that nothing has been concealed from this Honourable Court.

**IDENTIFIED BY**

*[Signature]*  
Suprell

**ADVOCATE GENERAL  
OF KHYBER PAKHTUNKHWA**

**DEPONENT**

**CNIC NO. 16202-0893178-1**

Not... 22167 .....

Certified that the above was verified on solemnly  
affirmation on the day of April 18 2018 at Swabi  
to Fazle Khaliq  
who was identified by [Signature]  
Who is present at [Signature]

*[Signature]*  
10/4/18

(5) 29

Annexure - A

OFFICE OF THE DISTRICT EDUCATION OFFICER (FEMALE) SWABI

NOTIFICATION.

WHEREAS Mr. Mohammad Zakarya, Chowkdiar GGHSS Shewa VPO, Shewa Tehsil & District Swabi was proceeded against under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules 2011 on account of his willful and un-authorized absence from duty w.e.f. 02.02.2012 and was directed to resume duty by the Principal concerned vide her No.016 dated 21.02.2012, No.18 dated 08.03.2012 and No.021 dated 22.03.2012, but he failed to resume his duty.

AND WHEREAS absentee notice was served upon the accused official Mr. Mohammad Zakarya, Chowkdiar GGHSS Shewa VPO, Shewa Tehsil & District Swabi through "Daily New Paper "Mashriq" Peshawar dated 15.12.2012 to resume duty within 15 days but he remained absent and did not report for duty in response of the above absence notice.

AND WHEREAS the competent authority i.e the DEO (Female) Swabi after having considered the charges and evidence on record is of the view that the charges of willful and un-authorized absence from duty against the accused have been proved.


NOW, THEREFORE, in exercise of the powers conferred under Section 3 b (iii) of the Khyber Pakhtunkhwa Removal from service under (Efficiency & Discipline) Rules 2011, the competent authority is pleased to impose the major penalty of removal from service upon Mr. Mohammad Zakarya, Chowkdiar GGHSS Shewa VPO, Shewa Tehsil & District Swabi with immediate effect. The period of his absence from duty w.e.f. 02.02.2012 till the issuance of this order be treated as un-authorized absence from duty with out pay.

(SAMINA GHANI)  
DISTRICT EDUCATION OFFICER  
(FEMALE) SWABI

Endst.No. 246 /F.No.          /C-IV (M/F) Side dated Swabi the: 11-2-2013.

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

1. Director Education Khyber Pukhtunkhwa, Peshawar.
2. District Accounts Officer, Swabi.
3. Principal GGHSS Shewa w/r to his No.139 dated 19.11.2011.
4. Mr. Mohammad Zakarya, Chowkdiar GGHSS Shewa VPO, Shewa Tehsil & District Swabi (Under Registered cover).

  
DISTRICT EDUCATION OFFICER  
(FEMALE) SWABI

(6)

NOTIFI

GHSS  
hyber  
count  
ectre  
02  
m



Kali

Md. Muhammad Za Karyya  
Chakki Kalay

Ch. A. S. Sheva  
Dost

لکھنؤ میں پوسٹ  
R-1169

5/11/69



روزنامہ

پشاور

پاکستان

ایڈیٹر  
عبدالواحد یوسفی

12

15

2012

1434

10

335

## نوائس فیئر ضری

آپ کی محنت و کوششوں کی وجہ سے (صوبائی) کاؤن و ڈاک خانہ شیوہ تحصیل روزنامہ صوبائی مورخہ 02-02-2012 سے مسلسل اپنی ڈیوٹی سے غیر حاضر ہیں دوران غیر حاضری بذریعہ متعلقہ پرنسپل آپ کو گھر کے پتہ پر ہاتھ تزیب چٹھی نمبر 016 مورخہ 21.02.2012 چٹھی نمبر 18 مورخہ 08.03.2012 اور چٹھی نمبر 021 مورخہ 22.03.2012 میں رد و سطر نوٹس جاری کئے گئے جن میں آپ کو ڈیوٹی پر حاضر ہونے کی ہدایت کی گئی لیکن اس کے باوجود بھی آپ اپنی ڈیوٹی پر حاضر نہیں ہوئے۔ لہذا آخری بار بذریعہ نوٹس ہذا آپ کو متنبہ کیا جاتا ہے کہ پندرہ (15) دن کے اندر اندر رد و سطر نوٹس کے رد و پتہ شیوہ کراٹھما روہڑہ برائے غیر حاضری پیش کریں کہ گھنٹوں نہ آپ کے خلاف تادیبی کارروائی کی جائے۔ عدم تعمیل کی صورت میں آپ کے خلاف حکومت کے موجودہ نواز اور ریگولیشن کے مطابق یکطرفہ کارروائی کی جائے گی جو کہ آپ کی ملازمت سے برخواستگی برآج ہوگی۔

INF/MR/149

عبد السلام: ایگزیکٹو ڈسٹرکٹ آفیسر (E&SE) صوبائی



Distt. Education Officer  
(Male) Swabi

①

**BEFORE THE PESHAWAR HIGH COURT PESHAWAR.**

W.P No. 1513P/2018

Mohammad Zakria s/o Mohammad Naeem r/o Mohallah Shawa Post Office  
Shawa Tehsil Razzar District Swabi.



VS

1. Government of Khyber Pakhtunkhwa through Secretary Elementary and Secondary Education, Civil Secretariat Peshawar.
2. Director Education, Khyber Pakhtunkhwa civil Secretariat Peshawar.
3. District Education Officer (F) District Swabi.
4. District Education Officer (Male) District Swabi.
5. Principal Government Girls Higher Secondary School Shawa Tehsil Razzar District Swabi.
6. Executive District Officer Schools and literacy Swabi.

Respondents

**WRIT PETITION UNDER ARTICLE 199 OF THE  
CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN 1973**

**RESPECTFULLY SHEWETH:**

**The Petitioner submits as under:-**

1. The petitioner was appointed as Chowkidar in Govt. Girls Higher Secondary School Shawa Tehsil Razzar District Swabi. (Copy of the appointment order is annexed as annexure "A").
2. The petitioner is serving the department from his appointment to the best of his capability.
3. The petitioner was charged in a murder case on 01.02.2012. (Copy of the FIR is annexed as annexure "B").
4. The petitioner became fugitive from law after being charged in the murder case mentioned above.
5. The petitioner was acquitted by the learned Additional Session Judge-IV swabi on 25.03.2016 from the charges leveled against him on the basis of compromise. (Copy of the order dated 25.03.2016 is annexed as annexure "C").
6. The petitioner after his acquittal approached the respondent for his posting against the post of Chowkidar by filing representation/appeal, but till now no order has been passed by the respondents nor he is posted anywhere. (copy of the application/appeal are annexed as annexure "D")

**ATTESTED**  
EXAMINER  
Peshawar High Court

18 JAN 2019

FILED TODAY

Deputy Registrar

09 MAR 2018

*JUDGMENT SHEET*

IN THE PESHAWAR HIGH COURT, PESHAWAR.

JUDICIAL DEPARTMENT

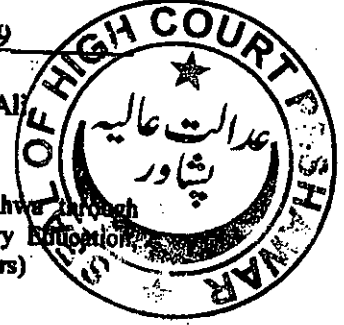
W.P No. 1513-P/2018.

*JUDGMENT*

Date of hearing 14-01-2019

Petitioner (s) (Muhammad Zakria) By Mr. Abid Ali  
Advocate.

Respondent (s) (Government of Khyber Pakhtunkhwa through  
Secretary Elementary & Secondary Education,  
Civil Secretariat Peshawar and others)  
By Mr. Rab Nawaz Khan, AAG,



**ISHTIAQ IBRAHIM, J:-**

Muhammad

Zakria son of Mohammad Naeem, the petitioner,  
has invoked the Constitutional jurisdiction of this  
Court under Article-199 of the Constitution of  
Islamic Republic of Pakistan, 1973, praying for:

*"It is, therefore, most humbly  
prayed that on acceptance of  
this writ petition, the  
respondents may graciously be  
directed to post the petitioner  
against the seat of Chowkidar  
in the large interest of justice."*

2. In essence, the grievance of the petitioner is  
that respondents No.3 & 4 are not considering the  
appeal of the petitioner for posting him against the  
seat of Chowkidar.

**ATTESTED**

EXAMINER  
Peshawar High Court

18 JAN 2019



3. The respondents were put to notice and they have submitted their para-wise comments to the writ petition, wherein they denied the assertions of the petitioner.

4. The moment the case was taken up for hearing, the learned counsel for the petitioner submitted that after submission of the comments by the respondent, wherein it was contended that the petitioner was contract employee, but during the pendency of this writ petition, it transpired that the services of the petitioner was regularized in the year 2008, and he being a civil servant, and his service appeal is pending before the Service Tribunal. The worthy Additional A.G present before the Court also affirmed and stated that all contract employees including the service of the petitioner has been regularized in the year 2008.

In view of the above, this writ petition is disposed of, accordingly.

Announced:  
14.01.2019

(D.3)  
Hon'ble Mr. Justice Ishaq Ibrahim,  
Hon'ble Mr. Justice Abdul Shauqar,  
(Kamrar All PS)

JUDGE

JUDGE

CERTIFIED TO BE TRUE COPY

EXAMINER  
Peshawar High Court, Peshawar  
Authorized Under Article 87 of  
The Qanun-e-Shahadat Order 1984

18 JAN 2019

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

Service Appeal No. 628/2018.


Muhammad Zakria S/O Muhammad Naeem R/O Mohalla Sheikh Abad, Post Office Shewa Tehsil Razzar District Swabi..... **Appellant**

**VERSUS**

1. Secretary to Govt:of Khyber Pakhtunkhwa E&SE Department Civil Secretariat, Peshawar.
2. Director E&SE Khyber Pakhtunkhwa, Peshawar.
3. District Education Officer, Elementary & Secondary Education (Female) District Swabi.
4. District Education Officer, Elementary & Secondary Education (Male) District Swabi.
5. Principal GGHSS Shewa Tehsil Razzar District Swabi.
6. Executive District Officer Schools & Literacy Swabi.... **Respondents**

**INDEX**

S#	Description of Documents	Annexure	Page
1	Parawise Comments along-with Affidavit	-	01-04
2	W/P No. 1515/2018 Grounds and Judgments	"A"	05-07
3	W/P No. 1513/2018 Comments	"B"	08-10
4	Absence Notices	C-1,C-2,C-3 C-4 & C-5	11-15
5	Removal from Service	"D"	16-17
6	Civil Servants Appeal Rules, 1986	"E"	18
7	2017 SCMR 965	"F"	19-21
8	Civil Appeal No.2100 of 2019	"G"	22-24
9	2002 SCMR 1691	"H"	25-27
10	Reply of Departmental appeals	"I"	28-29

  
**DISTRICT EDUCATION OFFICER  
(FEMALE) SWABI**

**District Edu. Officer  
(Female) Swabi**

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

Service Appeal No. 628/2018.  
Muhammad Zakria S/O Muhammad Naeem R/O Mohalla Sheikh Abad, Post  
Office Shewa Tehsil Razzar District Swabi..... **Appellant**

**VERSUS**

1. Secretary to Govt:of Khyber Pakhtunkhwa E&SE Department Civil Secretariat, Peshawar.
2. Director E&SE Khyber Pakhtunkhwa, Peshawar.
3. District Education Officer, Elementary & Secondary Education (Female) District Swabi.
4. District Education Officer, Elementary & Secondary Education (Male) District Swabi.
5. Principal GGHSS Shewa Tehsil Razzar District Swabi.
6. Executive District Officer Schools & Literacy Swabi,.... **Respondents**

**PARAWISE COMMENTS ON BEHALF OF THE RESPONDENTS No. 1 TO 6**

Respectfully Sheweth,

**PRELIMINARY OBJECTIONS.**

1. That the appellant absented himself from duty w.e.f. 02.02.2012 without giving any information to the department and was removed from service on 19.02.2013. Hence the appeal is not maintainable.
2. That the appellant was appointed against Chwokidar post on contract fixed pay salary basis and subsequently regularized but he left the department without any permission/information on 02.02.2012 . Hence the appeal is not maintainable.
3. That the instant appeal is badly time barred because he was removed from service on 19.02.2013, while he filed appeal in November, 2017. Hence the appeal is not maintainable.
4. That the appellant has no locus standi or cause of action to file the instant appeal.
5. That the appeal is bad for misjoinder and non joinder of necessary party.
6. That the appellant has not come to the Tribunal with clean hands. Hence the appeal is not maintainable.
7. That the appellant concealed the material facts from Honourable Tribunal. Hence the appeal is not maintainable.
8. That the appellant is, estopped by his own conduct to file the instant appeal. Hence the appeal is not maintainable.
9. That the appellant did not impugned his removal from service order. Hence the appeal is not maintainable.

**FACTS.**

1. That the para relates to the appointment of the appellant as Chowkidar at GGHSS Shewa. He is concealing the fact, that his appointment was on contact fixed pay salary basis and subsequently regularized w.e.f. 01.07.2008. The appellant was removed from service due to his willful long absence, after observing all the codal formalities in this regard. He

filed a writ petition No.1513-P/2018 on 09.03.2018 and also filed the instant appeal on 19.04.2018 on the same stance/plea, which is illegal and unlawful. Grounds of Writ Petition, comments, absence notices, Removal from service order, Civil Service Appeal rules 1986 annexed as annexure- **A,B,C,D & E.**

2. Incorrect, hence denied. The appellant is not serving now. It is obligatory for each and every Government servant to discharge his duties up to the entire satisfaction of his superiors and up to the best of his capabilities, because he is paid for his job, failing which is liable to be treated under E&D Rules, 2011. When he absented himself willfully, he was removed from service on 19.02.2013.
3. That the petitioner himself confesses charge of murder against him, but he failed to inform the department well in time as per rules. This act of the appellant divests him from the right to remain in service. As per 2017 SCMR 965, " Act of absconsion or being fugitive from law could not be regarded as a reasonable ground to explain absence". Judgments annexed as **F, G & H.**
4. That the appellant himself confesses that he became fugitive of law after being charged in the murder case. " Act of absconsion or being a fugitive of law could not be regarded as a reasonable ground to explain absence". The same is reported in 2017 SCMR 965. As he has already been removed from service on 19.02.2013 after observing all the codal formalities due to willful absence from duty, he has no vested right to be posted against the Chowkidar post.
5. That the appellant himself confesses that he was acquitted by the learned Additional Session Judge-IV Swabi on 25.03.2016 from the charges leveled against him on the basis of compromise. The acquittal was not an honourable acquittal. It shows that the appellant could not remove the allegation of murder through legal proceedings on merit but the acquittal was given only on the basis of compromise, which does not prove the validity of the charge or otherwise. It can not be assumed that the appellant has proved his innocence. Furthermore, his removal from service had already been made due to his willful absence under E&D Rules, 2011 on 19.02.2013.
6. That the appellant submitted belatedly more than one appeal which the rules do not allow for repeated appeals/representations when the first one is not rejected/decided. It has been reported in 2001 SCMR 912, 2004 SCMR 497, 2009 PLC(CS) 89, 2007 PLC(CS)15. The appellant made/submitted first appeal in November, 2017 to DEO(F)Swabi, 2nd appeal/representation was made to DEO(M) Swabi on 05.12.2017, both the appeals were badly time barred, He has also been made/ submitted another appeal to DEO(F) Swabi on 19.01.2018 without knowing the rejection/acceptance of the previous one. When the appeal before the authority is time barred, the appeal before the Tribunal is also time barred and hence not maintainable. As he has committed moral turpitude, hence he is not entitled to be posted/reinstated as chowkidar. The same is reported in 2002 SCMR 1691.

The appellant knocked at the door of Honourable Court before 90 days after filing the 3rd departmental appeal which has no legal effect. He filed a writ petition No.1513-P/2018 on 09.03.2018 and also the instant service appeal No.628-2018 on 19.04.2018 on the same stance/ plea. The writ petition was decided on 14.01.2019. Therefore, the instant service appeal is not maintainable and is liable to be dismissed.

- 7. That appellant is not an aggrieved person at all. Hence has no cause of action to file the instant service appeal inter-alia on the following grounds.

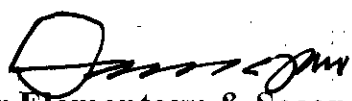
**Grounds**

- a. Incorrect, hence strongly denied, the non posting/reinstatement of the appellant by the respondent is legal, genuine and according to the norms of justice because he has already been removed from service on 19.02.2013.
- b. Incorrect, hence denied, according to Khyber Pakhtunkhwa Government servants conduct rules, 1987 rule 20, he has committed misconduct. This rule states, " If a government servant is involved as an accused in a criminal case, he shall bring the fact of such involvement or conviction as the case may be to the notice of the Head of office or department immediately or if he is arrested or released on bail, soon after such release". As it was mandatory for the appellant to inform head of the department about his involvement but he did not do so, hence, he committed misconduct as per E&D rules 2011, 2(e) (ii) which states that misconduct includes conduct contrary to Government of Khyber Pakhtunkhwa Government Servants rules 1987 for the time being enforced. He has already been removed from service due to willful absence on 19.02.2013. He is concealing the fact of his removal from service.
- c. Incorrect, hence denied. He has been sent absence notices by the Principal of concerned school. He has been served with first notice on 21.02.2012, 2nd on 08.03.2012 and 3rd on 22.03.2012. All the letters/ notices issued to him, the department received no response from him. Furthermore, it is stated that the EDO Schools and Literacy post was abolished on 31.12.2012 and on 01.01.2013 two new entities were established in Elementary & Secondary Education Department with nomenclature DEO(Male) & DEO(Female). Thus the staff and record was also separated and the Ex-Chowkidar remained at the strength of DEO(Female) and in the process of bifurcation his case remained out sight/misplace and could not process properly in time. Although his misconduct and willful absence had been proved and thus he has been removed from service by DEO(F) Swabi after observing all the codal formalities/legal procedure 19.02.2013.
- d. Incorrect, hence denied. He is not entitled to be posted/reinstated due to his willful absence and negligence. Furthermore, due to his willful absence he has already been removed from service after observing all the codal formalities/legal requirements on 19.02.2013.

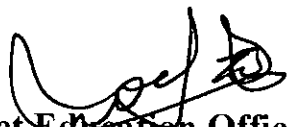
- e. Incorrect, hence denied. What was the source of his income in absconsion. Ignorance of law is no excuse. His removal from service has already been made due to his willful absence after observing all the codal formalities/ legal procedure on 19.02.2013.
- f. That the respondents seek permission to raise other grounds/points on the day of arguments.

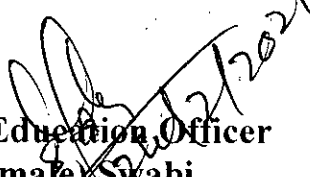
In view of the above submission, it is very humbly prayed that the service appeal may very graciously be dismissed with cost in favour of the respondents.

**Secretary  
E& SE Deptt: Khyber  
Pakhtunkhwa, Peshawar  
Respondent No.1**

  
**Director Elementary & Secondary  
Education, Khyber Peshawar.  
Respondent No.2**


*Director  
Elementary & Secondary Education  
Khyber Pakhtunkhwa Peshawar*

  
**District Education Officer  
(Male) Swabi  
Respondent No.4 & 6**  
*:District Education Officer  
Male Swabi*

  
**District Education Officer  
(Female) Swabi  
Respondent No.3,5&6**  
**District Edu. Officer  
(Female) Swabi**

**Affidavit**

I do hereby solemnly affirm and declare on oath that the contents of the comments submitted by respondents is true and correct to the best of my knowledge and belief and nothing has been concealed from this Honourable Tribunal.

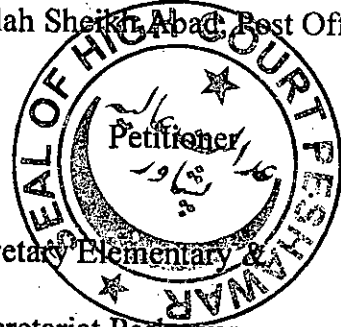
  
**DISTRICT EDUCATION OFFICER  
(FEMALE) SWABI**  
**District Edu. Officer  
(Female) Swabi**

Annexure - A

BEFORE THE PESHAWAR HIGH COURT PESHAWAR.

W.P No. 1513P/2018

Mohammad Zakria s/o Mohammad Naeem r/o Mohallah Sheikh Abad Post Office  
Shawa Tehsil Razzar District Swabi.



VS

1. Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education, Civil Secretariat Peshawar.
2. Director Education, Khyber Pakhtunkhwa civil Secretariat Peshawar.
3. District Education Officer (F) District Swabi.
4. District Education Officer (Male) District Swabi.
5. Principal Government Girls Higher Secondary School Shawa Tehsil Razzar District Swabi.
6. Executive District Officer Schools and literacy Swabi.

Respondents

WRIT PETITION UNDER ARTICLE 199 OF THE  
CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN 1973

RESPECTFULLY SHEWETH:

The Petitioner submits as under:-

1. The petitioner was appointed as Chowkidar in Govt. Girls Higher Secondary School Shawa Tehsil Razzar District Swabi. (Copy of the appointment order is annexed as annexure "A").
2. The petitioner is serving the department from his appointment to the best of his capability.
3. The petitioner was charged in a murder case on 01.02.2012. (Copy of the FIR is annexed as annexure "B").
4. The petitioner became fugitive from law after being charged in the murder case mentioned above.
5. The petitioner was acquitted by the learned Additional Session Judge-IV swabi on 25.03.2016 from the charges leveled against him on the basis of compromise. (Copy of the order dated 25.03.2016 is annexed as annexure "C").
6. The petitioner after his acquittal approached the respondent for his posting against the post of Chowkidar by filing representation/appeal, but till now no order has been passed by the respondents nor he is posted anywhere. (copy of the application/appeal are annexed as annexure "D")

**ATTESTED**

EXAMINER  
Peshawar High Court

18 JAN 2019

FILED TODAY

Deputy Registrar

09 MAR 2018

District Education Officer  
(Female) Swabi

06

JUDGMENT SHEET

IN THE PESHAWAR HIGH COURT, PESHAWAR.

JUDICIAL DEPARTMENT

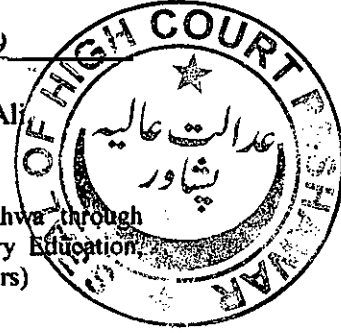
W.P No. 1513-P/2018.

JUDGMENT

Date of hearing 14-01-2019

Petitioner (s) (Muhammad Zakria) By Mr. Abid Ali  
Advocate.

Respondent (s) (Government of Khyber Pakhtunkhwa through  
Secretary Elementary & Secondary Education,  
Civil Secretariat Peshawar and others)  
By Mr. Rab Nawaz Khan, AAG,

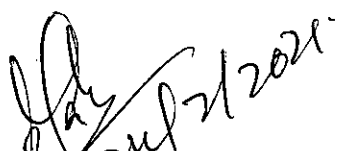


ISHTIAQ IBRAHIM. J:- Muhammad

Zakria son of Mohammad Naeem, the petitioner,  
has invoked the Constitutional jurisdiction of this  
Court under Article-199 of the Constitution of  
Islamic Republic of Pakistan, 1973, praying for:

*"It is, therefore, most humbly  
prayed that on acceptance of  
this writ petition, the  
respondents may graciously be  
directed to post the petitioner  
against the seat of Chowkidar  
in the large interest of justice."*

2. In essence, the grievance of the petitioner is  
that respondents No.3 & 4 are not considering the  
appeal of the petitioner for posting him against the  
seat of Chowkidar.

  
District Edu. Officer  
(Female) Swabi

**ATTESTED**  
EXAMINER  
Peshawar High Court  
18 JAN 2019



07

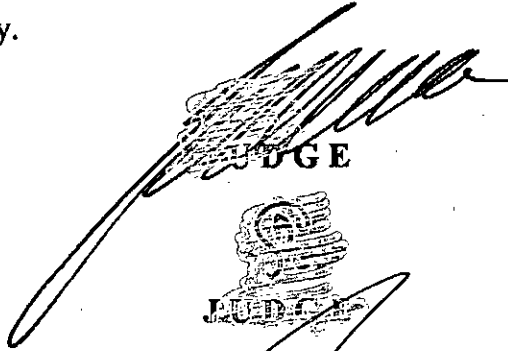

3. The respondents were put to notice and they have submitted their para-wise comments to the writ petition, wherein they denied the assertions of the petitioner.

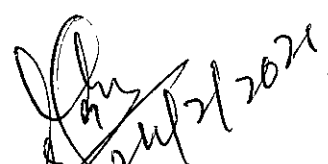
4. The moment the case was taken up for hearing, the learned counsel for the petitioner submitted that after submission of the comments by the respondent, wherein it was contended that the petitioner was contract employee, but during the pendency of this writ petition, it transpired that the services of the petitioner was regularized in the year 2008, and he being a civil servant, and his service appeal is pending before the Service Tribunal. The worthy Additional A.G present before the Court also affirmed and stated that all contract employees including the service of the petitioner has been regularized in the year 2008.

In view of the above, this writ petition is disposed of, accordingly.

**Announced:**  
14.01.2019

(D.B)  
Hon'ble Mr. Justice Ishaq Ibrahim,  
Hon'ble Mr. Justice Abdul Shakoor,  
(Kausar Ali PS)

  
JUDGE  
  
JUDGE  
CERTIFIED TO BE TRUE COPY  
EXAMINER  
Peshawar High Court Peshawar  
Authorized Under Article 8.7 of  
The Qanun-e-Shahadat Order 1984  
18 JAN 2019

  
District Edu. Officer  
(Female) Swabi

No. 1322  
Date of Presentation of Application 14/11/19  
No of Pages 30  
Copying Fee  
Urgent Fee  
Total 15 18/11/19  
Date of Preparation of Copy 18/11/19  
Date of Delivery of Copy 18/11/19  
Received by C. K. J. J.

Annexure - B

**BEFORE THE PESHAWAR HIGH COURT, PESHAWAR.**

Writ Petition No. 1513-P/2018.

Muhammad Zakria S/O Muhammad Naeem R/O Mohalla Sheikh Abad, Post Office  
Shewa Tehsil Razzar District Swabi..... **Petitioner**

**VERSUS**

1. Secretary to Govt:of Khyber Pakhtunkhwa E&SE Department Civil Secretariat, Peshawar.
2. Director E&SE Khyber Pakhtunkhwa, Peshawar.
3. District Education Officer, Elementary & Secondary Education (Female) District Swabi.
4. District Education Officer, Elementary & Secondary Education (Male) District Swabi.
5. Principal GGHSS Shewa Tehsil Razzar District Swabi.
6. Executive District Officer Schools & Literacy Swabi.

.....**Respondents**.....

**PARAWISE COMMENTS ON BEHALF OF THE RESPONDENTS No. 2 TO 4**

Respectfully Sheweth,

**PRELIMINARY OBJECTIONS.**

1. That the petitioner absented himself from duty w.e.f. 02.02.2012 without giving any information to the department and was removed from service on 19.02.2013. Hence not maintainable.
2. That the petitioner was appointed against Chwokidar post on contract fixed pay salary basis but he left the department without any permission/information on 02.02.2012 till 19.02.2013. Hence the petition is not maintainable.
3. That the instant petition is badly time barred because he was removed from service on 19.02.2013 while he filed appeal in Novemeber, 2017, hence not maintainable.
4. That the petitioner has no locus standi or cause of action to file the instant petition.
5. That the petition is bad for misjoinder and non joinder of necessary party.
6. That the petitioner has not come to the Court with clean hands, hence not maintainable.
7. That the petitioner concealed the material facts from Honourable Court. Hence not maintainable.
8. That the petitioner is, estopped by his own conduct to file the instant petition, hence not maintainable.

**FACTS.**

1. That the para relates to the appointment of the petitioner as Chowkidar at GGHSS Shewa. He is concealing the fact that his appointment was on contact fixed pay salary basis and due to willful absence he has already been removed from service after observing all the codal formalities in this regard. Removal from service order alongwith other relevant documents are attached as annexure-A.

That it is obligatory for each and every servant to discharge his duties up to the entire satisfaction of his superiors and up to the best of his capabilities, because he is paid for his job, failing which is liable to be treated under E&D Rules. When he absented himself willfully, he was removed form service on 19.02.2013.

  
**District Edu. Officer**  
**(Female) Swabi**

- (109)
3. That the petitioner himself confesses charge of murder against him, but he failed to inform the department well in time as per rules. This act of the petitioner divests him from the right to remain in service. As per 2017 SCMR 965, "Act of absconsion or being fugitive from law could not be regarded as a reasonable ground to explain absence".
  4. That the petitioner himself confesses that he became fugitive of law after being charged in the murder case. "Act of absconsion or being a fugitive of law could not be regarded as a reasonable ground to explain absence". The same is reported in 2017 SCMR 965. As he has already been removed from service on 19.02.2013 after observing all the codal formalities due to willful absence from duty, he has no vested right to be posted against the Chowkidar post.
  5. That the petitioner himself confesses that he was acquitted by the learned Additional Session Judge-IV Swabi on 25.03.2016 from the charges leveled against him on the basis of compromise. The acquittal was not an honourable acquittal. It shows that the petitioner could not remove the allegation of murder through legal proceedings on merit but the acquittal was given only on the basis of compromise, which not proves the validity of the charge or otherwise. It can not be assumed that the petitioner has proved his innocence. Furtermore, his removal from service had already been made due to his willful absence under E&D Rules, 2011 on 19.02.2013.
  6. That the petitioner submitted belatedly more than one appeal which the rules do not allow for repeated appeals/representations when the first one is not rejected/decided. It has been reported in 2001 SCMR 912, 2004 SCMR 497, 2009 PLC(CS) 89, 2007 PLC(CS)15. The petitioner made/submitted first appeal in November, 2017 to DEO(F) Swabi, 2nd appeal/representation was made to DEO(M) Swabi on 05.12.2017, both the appeals were badly time barred, He has also been made/ submitted another appeal to DEO(F) Swabi on 19.01.2018 without knowing the rejection/acceptance of the previous one. When the appeal before the authority is time barred, the appeal/petition before the Tribunal/Court is also time barred and hence not maintainable. As he has committed moral turpitude, hence he is not entitled to be posted/reinstated as Chowkidar. The same is reported in 2002 SCMR 1691. The petitioner knocked at the door of Honourable Court before 90 days after filing the 3rd departmental appeal which has no legal effect, hence the writ petition is not maintainable. Khyber Pakhtunkhwa Civil Servants (Appeal) rules, 1986, reply of appeal for reinstatement in government service and Court judgment are annexed as B, C & D.
  7. That petitioner is not an aggrieved person. Hence has no cause of action to file the instant petition inter-alia on the following amongst other grounds.


### Grounds

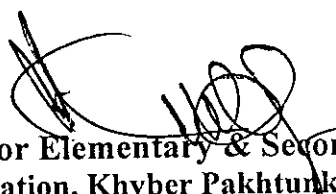
- a. Incorrect, hence strongly denied, the non posting/reinstatement of the petitioner by the respondent is legal, genuine and according to the norms of justice because he has already been removed from service on 19.02.2013.
- b. Incorrect, hence denied, according to Khyber Pakhtunkhwa Government servants conduct rules, 1987 rule 20, he has committed misconduct. This rule states, "If a government servant is involved as an accused in a criminal case, he shall bring the fact of such involvement or conviction as the case may be to the notice of the Head of office or department immediately or if he is arrested or released on bail, soon

after such release". As it was mandatory for the petitioner but he did not do so, hence, he committed misconduct as per E&D rules 2011, 2(e) (ii) which states that misconduct includes conduct contrary to Government of Khyber Pakhtunkhwa Government Servants rules 1987 for the time being enforced. He has already been removed from service due to willful absence.

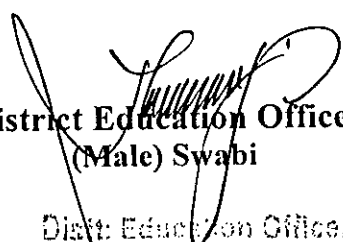
- c. Incorrect, hence denied, he has been sent absent absence notices by the Principal of concerned school. He has been served with first notice on 21.02.2012, 2nd on 08.03.2012 and 3rd on 22.03.2012. All the letters/ notices issued to him, the department received no response from him. Furthermore, it is stated that the EDO Schools and Literacy post was abolished on 31.12.2012 and on 01.01.2013 two new entities were established in Elementary & Secondary Education Department with nomenclature DEO(Male) & DEO(Female). Thus the staff and record was also separated and the Ex-Chowkidar remained at the strength of DEO(Female) and in the process of bifurcation his case remained out sight/misplace and could not process properly in time. Although his misconduct and willful absence had been proved and thus he has been removed from service by DEO(F) Swabi after observing all the codal formalities/legal procedure.
- d. Incorrect, hence denied, he is not entitled to be posted/reinstated due to his willful absence and negligence. Furthermore, due to his willful absence he has already been removed from service after observing all the codal formalities/legal requirements on 19.02.2013.
- e. Incorrect, hence denied, what was the source of his income in absconsion and ignorance of law is no excuse. His removal from service has already been made due to his willful absence after observing all the codal formalities/legal procedure on 19.02.2013.
- f. That the respondents seek permission to raise other grounds/points on the day of arguments.

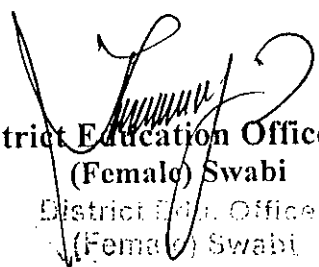
In view of the above submission, it is very humbly prayed that the writ petition may very graciously be dismissed with cost in favour of the respondents.

  
 District Edy. Officer  
 (Female) Swabi

  
 Director Elementary & Secondary  
 Education, Khyber Pakhtunkhwa  
 Peshawar.

Director  
 Elementary & Secondary Education  
 Khyber Pakhtunkhwa Peshawar

  
 District Education Officer  
 (Male) Swabi  
 Distt: Education Officer  
 (Male) Swabi

  
 District Education Officer  
 (Female) Swabi  
 District Edy. Officer  
 (Female) Swabi

1356 For Insurance Notices see reverse  
 Stamps affixed except in case of  
 uninsured letters of not more than  
 the initial weight prescribed in the  
 Post Office Guide or on which no  
 acknowledgement is due

Received a registered  
 addressed to: M. S. D. R. S. Date Stamp 11/11/12

Initials of Receiving Officer: M. S. D. R. S.  
 Write here, "letter", "postcard", "packet", or "parcel"  
 with the word "insured" before it when necessary.

Insured for Rs. (in figures) 1000 (in words) one thousand

Insurance fee Rs. 50 (in words) fifty Grams

Name and address of sender: Sheela B.

Weight: 100 Kilo

Annexure-c,  
 (11)

THE PRINCIPAL  
 JA (SWABI)  
 /Dated 23/4/2012.

SUBJECT:- SHOW CAUSE NOTICE.

Memo:-  
 You have been absent from your duty With effect from 02<sup>nd</sup> February/2012  
 without any information. You are warned to be present on your duty.

Otherwise strict disciplinary action will be taken against you.

D. S. D. R. S.  
 Principal  
 GGHSS Showa  
 PRINCIPAL  
 GGHSS SHEWA  
 (SWABI)

[Signature]  
 District Edu. Officer  
 (Female) Swabi

Annexure - ~~12~~  
12

OFFICE OF THE PRINCIPAL  
GGHSS SHEWA (SWABI)  
No. 013 /Dated 09/5 /2012.

To MR:MUHAMMAD ZAKARYA  
CHOWKIDAR GGHSS SHEWA

SUBJECT:- SHOW CAUSE NOTIE.

Memo:-  
You have been absent from your duty With effect from 02<sup>nd</sup> Feburary/2012  
without any information.You are warned to be present on your duty.

Otherwise strict disciplinary action will be taken against you.

*D. Basim*  
PRINCIPAL  
GGHSS Shewa  
(Swabi) District Swabi

*[Signature]*  
District Edu. Officer  
(Female) Swabi

Letter  
SW 22/11/12

Annexure  
C-3  
13

OFFICE OF THE PRINCIPAL  
GGHSS SHEWA (SWABI)  
No 139 /Dated 19/11 /2012.

To

The Executive District Officer  
(Elementary & Secondary) Edu:Swabui

SUBJECT:-

ABSENT REPORT IN RESPECT OF MUHAMMAD ZAKARYA CHOWKIDAR.

Memo:-

Enclosed please find herewith the all requirements in respect of Muhammad Zakarya Chowkidar in local Institution is submitted herewith for further necessary action.

Enclosed:- As above.

*Dastgeer*  
Principal  
GGHSS Showa  
PRINCIPAL Swabi  
GGHSS SHEWA  
(SWABI)

District Edu. Officer  
(Female) Swabi



~~Annexure A~~

Annexure D  
(16)

OFFICE OF THE DISTRICT EDUCATION OFFICER (FEMALE) SWABI

NOTIFICATION.

WHEREAS Mr. Mohammad Zakarya, Chowkdiar GGHSS Shewa VPO, Shewa Tehsil & District Swabi was proceeded against under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules 2011 on account of his willful and un-authorized absence from duty w.e.f. 02.02.2012 and was directed to resume duty by the Principal concerned vide her No.016 dated 21.02.2012, No.18 dated 08.03.2012 and No.021 dated 22.03.2012, but he failed to resume his duty.

AND WHEREAS absentee notice was served upon the accused official Mr. Mohammad Zakarya, Chowkdiar GGHSS Shewa VPO, Shewa Tehsil & District Swabi through "Daily New Paper "Mashriq" Peshawar dated 15.12.2012 to resume duty within 15 days but he remained absent and did not report for duty in response of the above absence notice.

AND WHEREAS the competent authority i.e the DEO (Female) Swabi after having considered the charges and evidence on record is of the view that the charges of willful and un-authorized absence from duty against the accused have been proved.


NOW, THEREFORE, in exercise of the powers conferred under Section 3 b (iii) of the Khyber Pakhtunkhwa Removal from service under (Efficiency & Discipline) Rules 2011, the competent authority is pleased to impose the major penalty of removal from service upon Mr. Mohammad Zakarya, Chowkdiar GGHSS Shewa VPO, Shewa Tehsil & District Swabi with immediate effect. The period of his absence from duty w.e.f. 02.02.2012 till the issuance of this order be treated as un-authorized absence from duty with out pay.

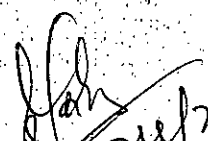
(SAMINA GHANI)  
DISTRICT EDUCATION OFFICER  
(FEMALE) SWABI

Endst: No. 246 /F.No. \_\_\_\_\_ /C-IV (M/F) Side dated Swabi the: 19-2-2013.

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

1. Director Education Khyber Pukhtunkhwa, Peshawar.
2. District Accounts Officer, Swabi.
3. Principal GGHSS Shewa w/r to his No.139 dated 19.11.2011.
4. Mr. Mohammad Zakarya, Chowkdiar GGHSS Shewa VPO, Shewa Tehsil & District Swabi (Under Registered cover).

  
DISTRICT EDUCATION OFFICER  
(FEMALE) SWABI

  
District Edu. Officer  
(Female) Swabi  
27/2/2013

ANNEXURE - E  
1029

Khyber Pakhtunkhwa  
Civil Servants (Appeal) Rules, 1986

18

[Gazette of Khyber Pakhtunkhwa, Extraordinary, Page No. 1290-1293, 2nd June, 1986]

No. **SORII (S&GAD) 3(4)/78 (Vol. 11)**.---In exercise of the powers conferred by section 26 of the Khyber Pakhtunkhwa Civil Servants Act, 1973, (Khyber Pakhtunkhwa Act XVIII of 1973), read with section 22 thereof, the Governor of the Khyber Pakhtunkhwa is pleased to make the following rules, namely:--

1. **Short title, commencement and application.**---(1) These Rules may be called the Khyber Pakhtunkhwa Civil Servants (Appeal) Rules, 1986.

(2) They shall come into force at once and shall apply to every person who is a member of the civil service of the Province or is the holder of a civil post in connection with the affairs of the Province and shall also apply to or in relation to a person in temporary employment in the civil service or post in connection with the affairs of the Province.

2. **Definitions.**---In these rules, unless there is anything repugnant in the subject or context;

(a) "Appellate Authority" means the officer or authority next above the competent authority;

(b) "Competent Authority" means the authority or authorised officer, as the case may be, as defined in the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 1973, or the authority competent to appoint a civil servant under the rules applicable to him; and

(c) "Penalty" means any of the penalties specified in rule 4 of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 1973:

3. **Right of Appeal.**---(1) A civil servant aggrieved by an order passed or penalty imposed by the competent authority relating to the terms and conditions of his service may, within thirty days from the date of communication of the order to him, prefer an appeal to the appellate authority:

Provided that where the order is made by the Government, there shall be no appeal but the civil servant may submit a review petition:

[Provided further that the appellate or the reviewing authority, as the case may be, may condone the delay in preferring the appeal or the review petition, if it is satisfied that the delay was for the reasons beyond the control of the appellant or that the earlier appeal or review petition was not addressed to the correct authority.]

**Explanation.**---For the purposes of the first proviso, the expression "appeal", where the context so requires, shall mean the "review petition" as well.

(2) Where the order of the competent authority affects more than one civil servant, every affected civil servant shall prefer the appeal separately.

1. Substituted by Notification No. SORII(S&GAD)3(4)/78/Vol.II dated 03-12-1989.

*[Signature]*  
District Edu. Officer  
(Female) Swabi

(1) any days wa nals  
y be; ected unal erty tion.  
rules, duty may emed ctive major  
the faith  
y &  
nding under  
nding e said made nanner  
-2012.  
At the  
edings ted by power

Annexure - F

(19)

**2017 S C M R 965****[Supreme Court of Pakistan]****Present: Sh. Azmat Saeed and Faisal Arab, JJ****FEDERATION OF PAKISTAN through Secretary Ministry of Defence and another---  
Petitioners****Versus****BASHIR AHMED, SBA IN MES, MINISTRY OF DEFENCE, GE(ARMY), NOWSHERA---  
Respondent**

Civil Petition No. 935 of 2015, decided on 18th April, 2017.

(On appeal against the judgment dated 24.03.2015 passed by the Federal Service Tribunal, Islamabad in Appeal No.745(P)CS-2013)

**Civil service---**

---Continuous absence from duty---Major penalty of compulsory retirement---Respondent was serving in the Military Engineering Services, Ministry of Defence---During service respondent was nominated as an accused in a murder case and an FIR was lodged against him---Respondent remained absent from duty without any authorization from the day the FIR was registered against him---Show-cause notice and opportunity of personal hearing was provided to respondent but he failed to appear before the Authorized Officer---Major penalty of compulsory retirement was imposed on the respondent on account of his continuous absence from duty---Service Tribunal had held that on account of murder charges and the enmity with the complainant party, his absence was justified, thus, the major penalty of compulsory retirement was converted into minor penalty of withholding of three increments with reinstatement back in service---Legality---Case record showed that during the period of absence, no attempt was made on behalf of the respondent to apply for leave---Criminal case came to an end and respondent was acquitted on account of compromise reached with the complainant party, nevertheless before reaching the compromise, he was not in custody but remained an absconder and only surrendered before the law after the compromise was reached with the victim's family members---To seek condonation of absence during his absconsion would amount to putting premium on such act---In the present case, if reason provided by respondent was made a ground for condonation of absence, then in every case where the civil servant was involved in a criminal case and absconded, his absence from duty would have to be condoned---Act of absconsion or being a fugitive from law could not be regarded as a reasonable ground to explain absence---Impugned judgment of Service Tribunal was set aside and departmental action of imposition of major penalty of compulsory retirement was restored---Appeal was allowed accordingly.

Central Board of Revenue v. Shafiq Muhammad 2008 SCMR 1666 distinguished.

Syed Nayyab Hassan Gardezi, Assistant Attorney General and Qari Abdul Rasheed, Advocate-on-Record (Absent) for Petitioners.

Muhammad Shoaib Shaheen, Advocate Supreme Court and Ahmed Nawaz Ch., Advocate-on-Record for Respondent.

Date of hearing: 18th April, 2017.

**JUDGMENT**

*[Signature]*  
District Edu. Officer  
(Female) Swabi

**FAISAL ARAB, J.**—The respondent was appointed as SBA in MES, Ministry of Defence in the year 1990. On 20.06.2010 he was nominated as an accused in a murder case registered vide FIR No.335/2010 under sections 302/34, P.P.C. at Police Station Azakhel, District Nowshera. He remained absent without any authorization from the day the FIR was registered against him. Between 27.06.2010 to 01.09.2010, he was issued five letters calling upon him to resume duty but he failed to do so. On account of his absence, disciplinary proceedings were initiated against him on 26.10.2010. He was then served with show cause notice on 25.04.2011, to which he failed to respond. Ultimately, major penalty of compulsory retirement was recommended on 15.09.2011. The respondent was then given an opportunity of personal hearing but he failed to appear, hence the Authorized Officer imposed major penalty vide order dated 31.01.2012 on account of his continuous absence from duty. The respondent belatedly filed departmental appeal on 03.07.2012 which was considered to be barred by time. The respondent then filed appeal before the Service Tribunal on the ground that he was not given the opportunity of hearing. The Tribunal while disposing of the appeal vide order dated 02.07.2013 directed the petitioner to hear the respondent's departmental appeal afresh and decide within 30 days. After hearing the respondent, the departmental appeal was rejected on 11.10.2013, whereafter he again preferred appeal before the Service Tribunal on 08.11.2013. Before the Tribunal, it was admitted by respondent's Advocate that after the registration, the respondent went underground as he could not live a normal life on account of his involvement in a criminal case and thus remained absent from duty. With regard to the disciplinary proceedings, the Service Tribunal held that on account of murder charges and the enmity with the complainant party, his absence was justified. The Service Tribunal thus converted the major penalty of compulsory retirement into minor penalty of withholding of three increments and reinstated him back in service. Against such decision, present petition for leave to appeal has been preferred. Notice was issued to the respondent.

2. Learned counsel for the petitioners contended that it is an admitted position that the respondent absented himself from 20.06.2010 onwards without seeking leave of absence from the department. The letters calling upon him to resume duty as well as show cause notice delivered at his known address were also not responded to, hence, the department was left with no other option but to initiate disciplinary proceedings. Learned counsel further submitted that the Authorized Officer in fact showed leniency by not dismissing the respondent from service and only imposed a penalty of compulsory retirement, which would still entitle him to receive pensionary benefits for the term that he served from 1990 until he was compulsorily retired on 31.01.2012.

3. Learned counsel for the respondent, on the other hand, contended that the respondent was involved in a murder case on 20.06.2010 and was finally acquitted on 20.09.2012, hence, his absence was not willful, therefore, imposition of major penalty was too harsh. He submitted that at best a minor penalty could have been imposed and the Service Tribunal after taking into consideration all this rightly converted major penalty into minor penalty. In support of his contention he relied upon the case of Central Board of Revenue v. Shafiq Muhammad (2008 SCMR 1666). He also submitted that even otherwise no case of public importance as envisaged under Article 212(3) of the Constitution is made out and this petition may be dismissed on this score alone.

4. It has come on the record that during the period of absence, no attempt was made on behalf of the respondent to apply for leave. The respondent's counsel himself stated before the Tribunal that the reason for his absence was that he went underground being involved in a murder case and it was only on the basis of a compromise with the victim's relatives that he was acquitted in September, 2012. Though the criminal case came to an end in September, 2012 and he was acquitted on account of compromise reached with the complainant party, nevertheless before reaching the compromise, he was not in custody but remained an absconder and only surrendered before the law after the

*[Signature]*  
District Judge Officer  
(Female) Swabi

21

compromise was reached with the victim's family members: To seek condonation of absence during his absconsion would amount to putting premium on such act. If this is made a ground for condonation of absence, then in every case where the civil servant is involved in a criminal case and absconds, his absence from duty would have to be condoned. The act of absconsion or being a fugitive from law cannot be regarded as a reasonable ground to explain absence. Even where a person is innocent, absconsion amounts to showing mistrust in the judicial system. Learned counsel for the respondent was asked to show as to whether in any case, this Court has condoned the absconsion and the departmental action was set aside, he was unable to satisfy this Court on this point. In the circumstances, the case relied upon by the respondent's counsel is of no help to the case of the respondent as it has no relevance in the facts and circumstances of this case.

5. For what has been discussed above, we convert this petition into appeal, allow it, set aside the impugned judgment and restore the departmental action of imposition of major penalty of compulsory retirement.

MWA/F-5/SC

Appeal allowed.

  
District Edu. Officer  
(Female) Swabi

IN THE SUPREME COURT OF PAKISTAN  
(APPELLATE JURISDICTION)

Annexure-6

PRESENT:  
MR. JUSTICE GULZAR AHMED, HCJ  
MR. JUSTICE IJAZ UL AHSAN

22

CIVIL APPEAL NO.2100 OF 2019.  
(Against the order dated 16.07.2019 passed by  
the Khyber Pakhtunkhwa Service Tribunal,  
Appellant in Service Appeal No.690 of 2018).

Government of Khyber Pakhtunkhwa through Secretary  
Elementary & Secondary Education, Peshawar and others.

...Appellant(s)

Versus

Riaz Ahmad.

...Respondent(s)

For the Appellant(s): Barrister Qasim Wadood, Addl.  
A.G. KP.

For the Respondent(s): Mr. Fazal Shah, ASC.

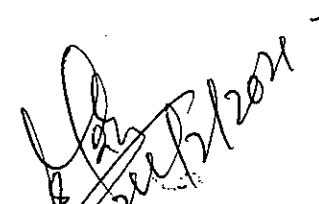
Date of Hearing: 25.03.2020.

ORDER

GULZAR AHMED, CJ.- The Respondent was employed as a Primary School Teacher in Education Department, Government of Khyber Pakhtunkhwa. An FIR bearing No.130 of 1998, dated 31.07.1998 under Sections 302, 324 & 34, PPC was registered against the Respondent at Police Station, Lachi, Kohat. From the very date of registration of the FIR, the Respondent absconded himself from duty. He was acquitted from the criminal case on 28.11.2013. After issuing a show cause notice, the Respondent was removed from service, vide order dated 20.03.2015. This was challenged by him before the Khyber Pakhtunkhwa Service Tribunal, Peshawar (the Tribunal).

ATTESTED

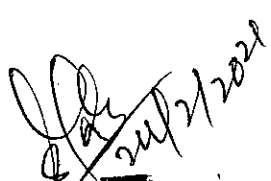
Senior Court Associate  
Supreme Court of Pakistan  
Islamabad

  
District Edu. Officer  
(Female) Swabi

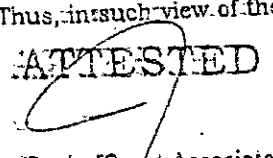
whereupon a de novo inquiry was ordered to be conducted. On conclusion of the de novo inquiry, the Respondent was again removed from service, vide order dated 13.03.2018. The Tribunal in the impugned judgment dated 16.07.2019 though found that the Respondent remained absent from duty for 18 years for which there is no plausible explanation from the side of the Respondent but taking into consideration that he had 14 years service prior to his absconson converted the penalty of removal from service into compulsory retirement.

2. The learned Additional Advocate General, Khyber Pakhtunkhwa contends that where the very fact of Respondent's absence from duty for 18 years stood established and admitted, there was no valid reason or justification by any means for the Tribunal to have taken any lenient view in that the Government Service is a mandatory service which a person is required to attend under the law and if he violates the law, an appropriate penalty has to be imposed upon him. He further contends that 18 years absence from duty attracts no lesser punishment than of dismissal from service, but still the department taking a lenient view imposed a penalty of removal from service upon the Respondent.

3. Heard Record perused. We find that the ground that the Respondent was having 14 years service was not a sufficient ground for the Tribunal to have taken any further lenient view than the one already taken by the department in the matter of imposition of penalty. Thus, in such view of the

  
District Edu. Officer  
(Female) Swabi

ATTESTED

  
Senior Court Associate  
Supreme Court of Pakistan  
Islamabad

Scanned with CamScanner

Scanned with CamScanner

24

matter we find that conversion of penalty of removal from service to that of compulsory retirement by the Tribunal was not in accordance with law more particularly in the peculiar facts and circumstances of the case in hand.

4. In view of the above, we find that the impugned judgment of the Tribunal is not sustainable in law. The same is accordingly set aside and the appeal is allowed.

5. All pending CMAs stand disposed of accordingly.

Sd/-HCJ

Sd/-J

Certified to be True Copy

Senior Court Associate  
Supreme Court of Pakistan  
Islamabad



GR No: 6417/20 CIVIL/Criminal

Date of Presentation: 25-03-20

No of Words: 900

No of Folios: 9

Requisition Fee Rs: 500

Copy Fee in: 500

Court Fee/Stamp: 1058

Date of Completion of work: 25/4/20

Date of delivery of Copy: 21-04-20

Completed by/Prepared by: [Signature]

Received by: [Signature]

[Signature]  
24/3/2020  
District Edu. Officer  
(Female) Swabi



2002 S C M R 1691

[Supreme Court of Pakistan]

Present: Nazim Hussain Siddiqui and Muhammad Nawaz Abbasi, JJ

GHULAM HUSSAIN ---Petitioner

versus

CHAIRMAN, P.O.F. BOARD, WAH CANTT and another---Respondents

Civil Petition No. 2650 of 2001, decided on 28th June, 2002.

(On appeal from the judgment dated 5-7-2001 of Federal Service Tribunal, Islamabad passed in Appeal No. 1932(R) of 1999).

(a) Civil service---

---- Pensionary benefits, claim of---Civil servant, who was convicted and sentenced to suffer imprisonment for five years for charge of murder was dismissed from service---Civil servant had contended that expression "moral turpitude" was not properly appreciated by the Departmental Authority and the Service Tribunal and that murder or attempt to murder, affrays, causing hurt to another under an emotional outburst of temper, did not come within the ambit of "moral turpitude" as only offences like fraud, cheating, rape kidnapping, abduction etc. fell under the scope of expression "moral turpitude"---Validity---Anything which was done contrary to the good principles of morality, was within the circuit of the expression "moral turpitude" ---Any act which ran contrary to justice, honesty, good moral values, established judicial norms of a society, fell within the scope of this expression---Offence of murder or attempt to murder was definitely against the well-recognized principles of a society---Narrow interpretation to the extent as provided by the civil servant was not only unrealistic but also contrary to law---Service Tribunal therefore correctly reached the conclusion that the civil servant was not entitled to the pensionary benefits in circumstances.

Words and Phrases, Permanent Edn. 27-A and Legal Terms and Phrases (Judicially defined) by M. Ilyas Khan, Advocate ref.

(b) Words and phrases---

-----"Moral turpitude" ---Connotation.

Words and Phrases, Permanent Edn. 27-A and Legal Terms and Phrases (Judicially defined) by M. Ilyas Khan, Advocate ref.

Fazal Ellahi Siddiqui, Advocate Supreme Court and M.S. Khattak, Advocate-on-Record for Petitioner.

Nemo for Respondents.

Date of hearing: 28th June, 2002.

## JUDGMENT

**NAZIM HUSSAIN SIDDIQUI, J.** ---Petitioner, Ghulam Hussain, has impugned the judgment, dated 5-7-2001 of learned Federal Service Tribunal, Islamabad, whereby his Appeal No.1932(R)/1999 claiming the pensionary benefits was dismissed.

2. The petitioner was appointed as Lower Division Clerk in Pakistan Ordnance Factories, Wah Cantt. in 1957. In the year 1977 a criminal case under sections 307/34, P.P.C. was registered against him and he was convicted and sentenced to suffer imprisonment for five years. Thereafter, he was dismissed from service against which he had filed an Appeal No.167(R) of 1998 and the same was dismissed in limine. This order was challenged before this Court through Civil Petition No.666 of 1998, which was disposed of, vide order dated 11-5-1999, in the following terms:--

"Learned counsel for the petitioner states that he will not press this petition and will instead approach the respondent No. 1 with a request for grant of pensionary benefits including gratuity and G.P. Fund etc. He may do so. If such an application is moved by him we are sure that the respondent shall consider and dispose of the same in accordance with law."

3. After above order, the petitioner again approached Chairman, P. O. F. for grant of pension and gratuity, etc. but his request was turned down by order dated 30-8-1999.

4. The petitioner still aggrieved, approached the Tribunal, but without any success.

5. It is contended on behalf of the petitioner that the expression "moral turpitude" was not properly appreciated by the departmental authority and the Tribunal as well. According to learned counsel, murder or attempt to murder affrays, causing hurt to another under an emotional outburst of temper, do not come within the ambit of above expression. Learned counsel also argued that only offences like fraud, cheating, rape, kidnapping, abduction etc. fall under the scope of above expression.

6. The expression "moral turpitude" has been explained in Words and Phrases, Permanent Edition 27-A, which is as follows:--

"In determining whether crime is one involving "moral turpitude", the test is whether the act denounced by the statute offend generally accepted moral code of mankind."

-----  
-----

"Moral turpitude" is a vague term, and its meaning depends to some extent on the state of public morals; it is anything that is done contrary to justice, honesty, principle, or good morals; and act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellow man, or to society in general, contrary to the accepted and customary rule of right and duty between man and man; it implies something immoral in itself, regardless of fact whether it is punishable by law."

Above expression has also been explained in Legal Terms and Phrases (Judicially defined) by M.



Annexure I

28

78



**DISTRICT EDUCATION OFFICE (MALE) SWABI**  
(Office phone & Fax No 0938280239, [emis\\_swabi@vclhon.com](mailto:emis_swabi@vclhon.com))

No. 2864 Dated Swabi the 26 / 03 / 2018

To, Mr. Zakarya Ex-Chowkidar.  
GGHSS Shewa (Swabi)

Through: The Principal,  
GGHSS, Shewa (Swabi)

Subject: APPEAL FOR RE-INSTATMENT IN GOVT: SERVICE.

Memo: Kindly refer to your appeals of dated 05.12.2017 and 17.01.2018 on the above cited subject.

It is verified by the undersigned in this regard that one Mr. Zakarya Ex-Chowkidar was appointed at GGHSS Shewa (Swabi) against the Chowkidar post and took over on 01.09.2006. He performed his duty from 01.09.2006 to 31.01.2012 and on 01.02.2012 he was charged in a murder case under FIR No.123 dated 01.02.2012. The accused Chowkidar absconded from the above mentioned date and did not surrender to law till he was discharged by the District and Session Judge Swabi in 2016.

The accused Chowkidar has alleged in his appeals that the department has not taken any action against him and nothing has been written in his service book about his accusation in a murder case. His appeals are hereby rejected on the following grounds.

1. His case has been decided by the Honourable Session Court on 25.03.2016 while he has submitted his appeal on 05.12.2017 which is badly time barred.
2. According to the Khyber Pakhtunkhwa Government Servants Conduct rules 1987, rule 20 he has committed misconduct. Rules 20 of conduct rules 1987 states that "If a Government Servant is involved as an accused in a criminal case, he shall bring the fact of such involvement or conviction as the case may be to the notice of the Head of the office or department, immediately or if he is arrested and released on bail, soon after such release". As it was mandatory for the appellant but he did not do so, hence he committed misconduct as per E&D rules 2011,2(e)(ii) which states that misconduct includes conduct contrary to Khyber Pakhtunkhwa Government Servants, conduct rules 1987 for the time being enforced. Under the above mentioned rules the appellant, did not inform the department well in time but after discharge he informed the department a year later or more than a year.
3. He has submitted more than one appeals while the rules do not allow for repeated appeals/representation when the first one is not rejected/decided. It has been appeared in 2001 SCMR-912,2004 SCMR 497, 2009 OLC(CS)89, 2007 PLC (CS)15. The accused made/submitted 1st appeal in November 2017 to DEO(F) Swabi, 2nd appeal/representation was made to DEO(M) on 05.12.2017 both the appeals are badly time barred as per 2017 SCMR 695. 2nd appeal has also been made/submitted to DEO(F) Swabi on 19.01.2018 without knowing the rejection/acceptation of the previous ones.
4. The accused Chowkidar has stated in his appeal that department has not taken any action which is not correct as he has been sent absent notice by the Principal of the school. He has been given 1st notice on 21.02.2012, 2nd on 08.03.2012 and 3rd on 22.03.2012. He has been issued as show cause notice by the Principal of the school. All the letters/ notices issued to him did not receive by the accused Chowkidar and department received no response. The department has been informed by the Principal that the person has absconded from the law of the state. The total period of his absention is more than 04 years i.e. 01.02.2012 to 25.03.2016, but he remained willful absent up to November 2017, which becomes more than 05 years and in such cases the right of the re-instatement of an official automatically vanishes.

*[Signature]*  
District Edu. Officer  
(Female) Swabi

5. The EDO post abolished on 31.12.2012 and on 01.01.2013 two new entities were established in E&SE Department with nomenclature of DEO(Male) and DEO(Female). Thus the staff and record was also separated and the Ex-Chowkidar remained at the strength of the DEO(F) and in the process of bifurcation his case remained out sight and could not be processed properly.

DISTRICT EDUCATION OFFICER  
(MALE) SWABI

Endst.No. 2865-661

Copy of the above is forwarded to the:-

- 1. Director Elementary & Secondary Education Khyber Pakhtunkhwa, Peshawar.
- 2. District Education Officer (Female) Swabi.

DISTRICT EDUCATION OFFICER  
(MALE) SWABI

District Edu. Officer  
(Female) Swabi



NOWSHERA MEDICAL COLLEGE & QAZI HUSSAIN AHMAD  
MEDICAL COMPLEX DEPARTMENT OF SURGERY



Professor Dr. Zahid Khan  
Professor & Head  
Department of Surgery  
Nowshera Medical College  
Visiting Consultant  
Qazi Hussain Ahmed Medical Complex, Nowshera  
Ph No: 0923-646891, Fax No: 0923-646891  
Email: dr.zahidkhan2013@gmail.com Web: www.nmcc.edu.pk

No \_\_\_\_\_ /NMC/SAW

Amjad Ali, 50yrs, Male  
Mardan

Dated: 16/09/2021

& Typhoid fever  
(tentatively)

Adv:

Blood Gs for  
Salmonella

Tab Ciprofloxacin

U/S - CW @

Tab Paracetamol  
1/1/1/2 + 2/2

Advised

Complete bed Rest for  
one week from today onwards

G/C.

1. Back Ache
2. Headache
3. On/off fever

Blood

- MP negative

- ESR 10

- WBC 16000

- Hb 12.6

- Hct 38.5

- Platelets 1.2

- CRP 1.2

- ALP 120

- AST 12

- ALT 12

بعد التمسك صاحب سروس ٹریبونل لاہور

19/2021  
مخانب اسپلانٹ

صوبہ گلگت بلتستان

بنام:

محمد زکریا  
SA 628/18

مورخہ:  
مقدمہ:  
دعویٰ:  
جرم:

باجت تحریر آفندہ

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

آن مقام لاہور کیلئے امجد علی ایڈووکیٹس، اسپریم کورٹ آف پاکستان اسپلٹ مردان

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا مکمل اختیار ہوگا، نیز وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ برحلاف دیئے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء و معمولی چیک دروپہ غرضی دعویٰ اور درخواست ہر قسم کی تصدیق زاریں پر دستخط کرانے کا اختیار ہوگا۔ نیز بصورت عدم پیروی یا ڈگری کی طرف یا اپیل کی برآمدگی اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختیار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی قلمہ مذکورہ بالا اختیارات حاصل ہوں گے اور اس کا ساختہ پر داخست منظور و قبول ہوگا دوران مقدمہ میں جو فرچہ و جانہ التوائے مقدمہ کے سبب سے ہوگا کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی مذکور کریں۔  
لہذا وکالت نامہ لکھ دیا کہ سندھ میں۔

المرقوم:  
العبد

دکبر

لاہور

کے لیے منظور ہے۔

محمد زکریا (اسپلانٹ)  
R

Accepted  
Amjad Ali  
Advocate  
Mardan

امجد علی ایڈووکیٹ سپریم کورٹ آف پاکستان انسٹرکٹ کورٹس، مردان

0321-9882434 0321-9870175

Be 105506

Before the KP Service Tribunal  
Peshawar

Muhammad Zakaria vs Govt.

Appeal

Silly, Applications for permission to withdraw  
the appeal to file a fresh one.

vs Appellant hereby submits as follows

1. That appellant filed service appeal for posting before this honorable Tribunal which is pending.
2. That reply has been filed by respondent and in reply respondent has submitted and annexed removal order which has not been communicated to the appellant
3. That appellant requests to file departmental appeal to next higher authority from DEO Rawalpindi to Director Education.
4. That it is right of the appellant that his appeal is heard by proper appellate authority as per P/Appeal Rules 1986.



5. That although DEO Male has passed same order but that is incompetent and without lawful authority.

6. That DEO Male states in said order that no proper dismissal order has been passed due to oversight.

7. That instant appeal is for posting.

8. That appellant requests for to challenge removal order though a proper departmental appeal and thereafter before this honorable Tribunal.

It is therefore humbly prayed that appellant may please be permitted to ~~amend or~~ withdraw instant appeal with permission to file fresh one.

Date 18/1/2022

Appellant  
@A  
Hajji Ali Adh  
Supreme Court 22