


05.03.2019


Clerk to counsel for the appellant present. Mian Amir Qadir, District Attorney alongwith Mr. Obaid Ur Rehman, ADO for respondents present. Clerk to counsel for the appellant seeks adjournment on the ground that counsel for the appellant was busy before the High Court, Swat Bench. Case to come up for further proceedings on 06.03.2019.


Member
Camp Court, Swat

06.03.2019

Counsel for the appellant present. Mian Amir Qadir, District Attorney for respondents present. Counsel for the appellant submitted an application for withdrawal of the instant appeal. As such application is allowed and the instant appeal is hereby withdrawn. File be consigned to the record room.

Announced:
06.03.2019


Member
Camp Court, Swat


09.01.2019 Clerk of the court for appellant present. Mr. Usman Ghani learned District present. Written reply not submitted. No one present on behalf of respondents. Notice be issued to the appellant as well as to the respondents for 09.01.2019.

Adjourn. To come up for written reply/comments on the date fixed before S.B at Camp Court Swat.


Member
Camp Court, Swat.


09.01.2019

Clerk of the counsel for appellant present. Mr. Obaid-ur-Rehman, ADO on behalf of respondent No. 3 alongwith Mr. Mian Ameer Qadir, District Attorney for the respondents present. Written reply on behalf of respondents not submitted. Learned District Attorney requested for further adjournment. Adjourned. Case to come up for written reply/comments on 05.03.2019 before S.B at Camp Court Swat.


(Muhammad Amin Khan Kundi)
Member
Camp Court Swat

04.07.2018

Mr. Shamsul Hadi Advocate counsel for the appellant present. Mr. Usman Ghani learned District Attorney for respondents present. Written reply not submitted. Adjourned. To come up for written reply/comments on 07.08.2018 before S.B at camp court Swat.


Chairman
Camp Court, Swat

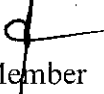
07.08.2018

Clerk to counsel for the petitioner present. Due to summer vacations, the case is adjourned. To come up for the same on 05.09.2018 at camp court Swat.


Reader

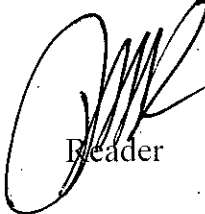
05.09.2018

Clerk of counsel for the appelnat present. Mr. Usman Ghani, District Attorney for respondents present. Written reply not submitted. Requested for adjournment to submit the same on the next date of hearing. Granted. Case to come up for written reply/comments on 05.11.2018 before S.B at camp court Swat.


Member
Camp Court Swat

05.11.2018

Due to retirement of the Hob'ble Chairman Service Tribunal is incomplete. Tour to Camp Court Swat has been cancelled. To come up for the same on 04.12.2018 at camp court Swat.


Reader

09.03.2018

Counsel for the appellant present. Preliminary arguments heard. Vide my detailed order of today in connected service appeal No. 209/2018 entitled "*Shamsher Vs. DEO (F) Baunir and others*", this appeal is also admitted to regular hearing. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents. To come up for written reply/comments on 05.04.2018 before S.B at camp court, Swat.

Appellant Deposited
Security & Process Fee

Chairman

Camp Court, Swat.

05.04.2018

Counsel for the appellant and Mr. Usman Ghani, District Attorney alongwith for the respondents present. Written reply not submitted. Learned District Attorney seeks adjournment. Granted. To come up for written reply/comments on 10.05.2018 before S.B at Camp Court, Swat.

Chairman

Camp court, Swat

09.05.2018

The Tribunal is non-functional due to retirement of the Worthy Chairman. To come up for the same on 07.06.2018 before the S.B at camp court, Swat.

Reader

07.06.2018

Neither appellant nor his counsel present. None is present on behalf of the respondents. However, Mr. Usman Ghani, District Attorney put appearance on behalf of the respondents. Adjourned. To come up for written reply/comments on 04.07.2018 before S.B at Camp Court, Swat.




Chairman

Camp Court, Swat

Form-A
FORM OF ORDERSHEET

Court of _____

Case No. 212/2018

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	15/02/2018	<p>The appeal of Mr. Safarash Khan presented today by Mr. Shamasul Hadi Advocate may be entered in the Institution Register and put up to Worthy Chairman for proper order please.</p> <p> REGISTRAR</p>
2	26-2-18	<p>This case is entrusted to Touring S. Bench at Swat for preliminary hearing to be put up there on <u>09-03-18</u>.</p> <p> CHAIRMAN</p>
	<p>JF </p>	

**BEFORE THE HON'BLE KHYBER PAKHTOON KHWA SERVICE
TRIBUNAL, PESHAWAR.**

Service Appeal No. 212 /2018.

Safarash Khan.....Appellant

V E R S U S

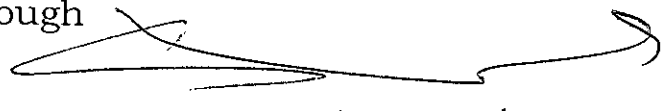
District Education Officer (F) Bunir and others.....Respondents

INDEX

S.N	Description of Documents	Annex	Pages
1.	Memo of Appeal.		1--- 3
2.	Affidavit.		4
3.	Addresses of the Parties.		5
4.	Copies of Appointment letter	A	6
5.	Copy of regularization notification of 2008.	B	7-10
6.	Copy of impugned office order dated:30.09.2013	C	11
7.	Copies of Judgment dated:04.10.2017 and application.	D	12-31
8.			
7.	Wakalat Nama		32

Appellant

Through



Shams ul Hadi

Advocate, Peshawar.

Dated: 12/02/2018.

Office: Near Al-Falah Mosque, Hayat
Abad, Mingora.

Cell No. 0347-4773440.

**BEFORE THE KHYBER PAKHTOON KHWA SERVICES
TRIBUNAL, PESHAWAR.**

Service Appeal No. 212 /2018.

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 213

Dated 15-2-2018

**Safarsh Khan S/o Hakim Khan
(Ex-Chowkedar GGPS Hall, Bunir)**

R/o Village Daggar Bunir District Bunir.....Appellant.

VS

1. District Education Officer(female) Bunir.
2. Director, Elementary & Secondary Education Khyber Pakhtunkhwa, Peshawar.
3. District Account Officer, Bunir.
4. Accountant General Khyber Pakhtunkhwa, Peshawar.
5. The Government of Khyber Pakhtunkhwa through Secretary Education, Civil Secretariat, Peshawar.....(Respondents)

**APPEAL UNDER SECTION 4 OF KHYBER
PUKHTUNKHWA SERVICES TRIBUNAL ACT 1974
AGAINST THE IMPUGNED OFFICE ORDER**

Filed to-day **DATED:30.09.2013.**

Safarsh Khan
Registrar

15/2/18

PRAYER IN APPEAL:

On acceptance of this appeal the impugned order :30.09.2013 regarding non sanctioning after retirement benefits i-e pension and gratuity of appellant may kindly be set aside and the appellant may kindly be awarded pension and gratuity etc of appellant of his service with all back benefits of after retirement of service.

Respectfully Sheweth:

1. That the appellant served as Class-IV Employee in the Education Department Bunir and as such got his retirement on the said post. (Copies of Appointment letter is annexure "A").

2. That keeping in view the agonies and the financial constrains of the family of the low grade retiring employees, the provincial government was pleased to regularized the services/Posts of the appellants in the year 2008 and as such they were declared civil servants and further the said order was confirmed according to "Regularization Act,2010" and as such the appellant performed his duties as permanent employees of Education Department in Bunir, till date of their retirement.(Copy of notification is annexure-B)
3. That the appellant keeping in view of the above circulation was hopeful to get pension benefits etc after his retirement and as such waited for the same when they were taken by surprise when the Respondents No.1 informed the appellant, that they are not qualifying for pension benefits and others benefits after retirement.(Copy of impugned office order dated:30.09.2013 is annexure-C)
4. That against the illegal actions of the respondents, the appellant finally approached Peshawar High court Mingora Bench as in similar nature issues pension benefits of the others similar placed employees were awarded by the Honorable high court through various judgments, but finally the a larger bench was constituted in the issue in hand, where writ petitions of the appellant and others treated as departmental appeals respondents were directed to decide the same in accordance with law and rules and in light of the judgment delivered in Amir Zeb's case.
5. That the judgment was communicated to the respondents in shape of departmental appeal but the same was not decided within the statutory period.(Copy of application and judgment are annexure-D)

That being aggrieved the appellants prefer this appeal on the following grounds amongst others inter-alia.

GROUND:

- A. That actions and inactions of the respondents are violative of the constitution and the relevant laws laid down for the purpose, hence needs interference of this august Court.
- B. That the appellant has a poor financial background and served the department for long considerable period with the hopes of further benefits after retirement but the respondents did not observe the prescribed rules, regulations and denied the benefits in shape of pension to the appellant.
- C. That the issue in hand has now already been decided by this august court through a similar nature cases hence the appellant deserve for the same treatment.

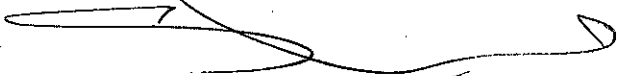
It is, therefore, humbly prayed that *On acceptance of this appeal the impugned Orders dated:30.09 .2013 regarding non sanctioning after retirement benefits i-e pension and gratuity of appellant may kindly be set aside and the appellant may kindly be awarded pension and gratuity etc of appellant of his service with all back benefits of after retirement of service.*

Or

Any other relief which this august Court deems appropriate may kindly be awarded to meet the ends of justice.

Appellant


Safarash Khan

Through 

Shams ul Hadi

Dated: 12/02/2018

Advocate, Peshawar.

BEFORE THE HON'BLE KHYBER PAKHTOON KHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. _____/2018.

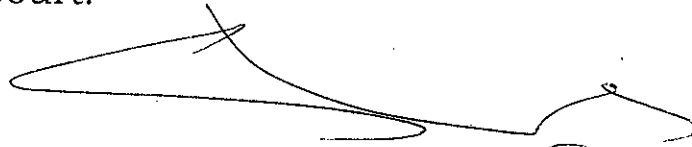
Safarash Khan.....Appellant

V E R S U S

District Education Officer (F) Bunir and others.....Respondents

AFFIDAVIT

I, **Shams ul Hadi**, Advocate, Peshawar do hereby as per information conveyed to me by my client solemnly affirm and declare that the contents of the **Service Appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.



ADVOCATE



(5)

**BEFORE THE HON'BLE KHYBER PAKHTOON KHWA SERVICE
TRIBUNAL, PESHAWAR.**

Service Appeal No. _____/2018.

Safarash Khan.....Appellant

V E R S U S

District Education Officer (F) Bunir and others.....Respondents

ADDRESSES OF THE PARTIES

APPELLANT:

Safarsh Khan S/o Hakim Khan

(Ex-Chowkedar GGPS Hall, Bunir)

R/o Village Hall District Bunir

Cell No.

RESPONDENTS:

1. District Education Officer(female) Bunir.
2. Director, Elementary & Secondary Education Khyber Pakhtunkhwa, Peshawar.
3. District Account Officer, Bunir.
4. Accountant General Khyber Pakhtunkhwa, Peshawar.
5. The Government of Khyber Pakhtunkhwa through Secretary Education, Civil Secretariat, Peshawar.

Appellant

Through

Shams ul Hadi

Advocate, Peshawar.

Dated: 12/02/2018

6 June '93

NOTIFICATION.

OFFICE ORDER.

[Handwritten signature]

Mr. Shafarash B/O Hakim Khan R/O Hal (K.K) and daughter
and is hereby appointed as Chowkidar at Govt. Girls Primary School
Hal (K.K) on contract basis at Rs.1200/- PM (Fixed) subject to the
availability of Budget provision under Head 47500-Prv-Education, 5000
Contingency.

Terms and conditions will be communicated later on as and
when received.

(Sd/-) (Sd/-) (Sd/-)
SUB-DIVISIONAL EDUCATION OFFICER (F)
DAGGAR DISTT: BUNIR

OFFICE OF THE SUB-DIVISIONAL EDUCATION OFFICER (F) DAGGAR DISTT: BUNIR.

Endst: No 79-83

Dated Daggur the 06/06/1993.

Copy forwarded for information to:-

1. The District Education Officer (M) Prv: Bunir at Bownai.
2. The District Accounts Officer Bunir at Daggur.
3. The Head Mistress Concerned.
4. Official Concerned.
5. The Accounts Clerk Local Office.

(A/Ghafoor.)

[Handwritten signature]
SUB-DIVISIONAL EDUCATION OFFICER (F)
DAGGAR DISTT: BUNIR.

[Handwritten signature]
[Handwritten signature]

Annex (7)

برائے سربراہان - اڈا - ۱۷۱ - ۲۲۲ - ۸۷ - ۲۰۰۷ - ۲۰۰۷ - ۲۰۰۷
بورد ۲۹ جنوری، ۲۰۰۸ء

- ۱- تمام انتظامی و مقتدرین حکومت صوبہ سرحد۔
- ۲- مستند برائے گورنر صوبہ سرحد، پشاور۔
- ۳- پرنسپل سٹاف آفیسر برائے وزیر اعلیٰ صوبہ سرحد۔
- ۴- تمام سربراہان ماتحت نکلر جات صوبہ سرحد۔
- ۵- تمام نسلی رابطہ افسران صوبہ سرحد۔
- ۶- رجسٹرار پشاور ہائی کورٹ، پشاور۔
- ۷- رجسٹرار سردکن ٹریڈنگ، صوبہ سرحد، پشاور۔
- ۸- سیکرٹری صوبائی پبلک سرورس کمیشن، صوبہ سرحد، پشاور۔
- ۹- سیکرٹری بورڈ آف ریویو صوبہ سرحد۔

رابطہ
محکمہ
کثرت

ATTESTED

Head Master
Govt. High School
Barh Malakand

بجٹ تقریر ۲۰۰۷-۰۸ء کے مقررہ تنخواہ ماننے والے (Fixed pay) ملازمین کے لئے کیا جائے۔ فیڈ کا اعلان۔

عنوان:-

جناب عالی!

نیچے ہدایت کی گئی ہے کہ عنوان بالا کا حوالہ دیتے ہوئے عرض کر دوں کہ صوبائی حکومت نے تمام درجہ چہارم (مقررہ تنخواہ Fixed pay) ماننے والے ملازمین کو یکم جولائی ۲۰۰۸ء سے این ڈبلیو ایف پی سول ملازمین ایکٹ ۱۹۷۳ء کے تحت سول ملازمین کا درجہ ویکر بنیادی سکیل - ۱ (BPS-1) دینے کی منظوری دی ہے۔

۲- مذکورہ ملازمین کی تنخواہوں کا تعین (Fixation of pay) ان کی بھرتی کے تاریخ (Date of Appointment) سے کیا جائے گا۔ تاہم یہ ملازمین تنخواہوں اور الاؤنسز وغیرہ کی مد میں کسی قسم کی بتایا جات (arrears) کے مقدار نہیں ہونگے۔

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

آرکائٹس

شاہد خان (سربراہ)

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نمبر و تاریخ الضم

نقل برائے اطلاع

- (۱) اکاؤنٹنٹ جنرل، صوبہ سرحد، جمعہ گزارش، کہ مندرجہ بالا اقتضات کی نافذ العمل کو یقین بنانا۔
- (۲) جملہ ایگزیکٹو ڈسٹرکٹ آفیسرز، فنانس اینڈ ٹیکس، صوبہ سرحد۔
- (۳) جملہ ضلعی آفیسران حساب داری، صوبہ سرحد۔

فنانس

میزانیہ افسر (۱) محکمہ خزانہ

تظہر نمبر و تاریخ الضم

نقل برائے اطلاع

- (۱) سبھی معتمد برائے چیف سیکرٹری، صوبہ سرحد۔
- (۲) جملہ اضافی معتمدین و نائب معتمدین محکمہ خزانہ، صوبہ سرحد۔
- (۳) جملہ ہیڈ آفیسرز ریکیشن آفیسرز محکمہ خزانہ، صوبہ سرحد۔
- (۴) ڈائریکٹر، FMIU، محکمہ خزانہ، صوبہ سرحد۔
- (۵) سبھی معتمد برائے فنانس سیکرٹری، صوبہ سرحد۔

فنانس
میزانیہ افسر (۱) محکمہ خزانہ

OFFICE OF THE ACCOUNTANT GENERAL NWFP PESHAWAR.
No.H-24(113)/RBPs-2006-07/Prov: Central Corresponds file/ 736 Dated: 20-02-2008

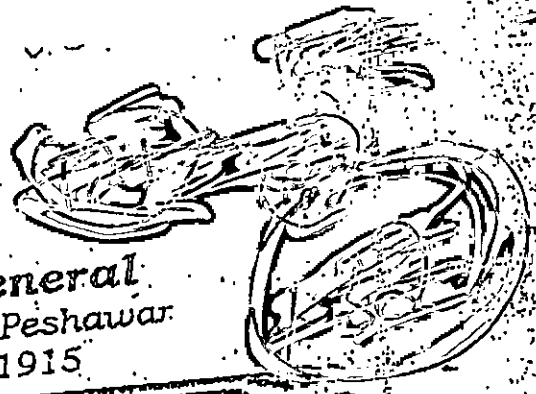
Copy of the above is forwarded for information and necessary action to all concerned.

1. All DAOs/AAOs in NWFP.
2. All Payrolls Section (L)
3. PAs to DAGs.

Asstt. Accounts officer (HAE),
NWFP, Peshawar

A.L.
A.L.
A.L.

9



Office of the
Accountant General
Khyber Pakhtunkhwa Peshawar
Phone: 091- 9211915

Dated: 24-01-2012

No. HAD/Fixed Employees / Corp./2011-12/ 73

The Secretary,
to Govt. of Khyber Pakhtunkhwa,
Finance Department (Regulation Wing).

[Handwritten initials]

01 FEB 2012

Subject: AWARD OF REGULAR BPS-1 TO CLASS -11

Kindly refer to your office letter in Urdu vide No. B.O-I/1-22/80-2008/FD dated: 29/01/2008 and letter containing clarification vide No. FD(SR-I)Miss/2008 dated: 13/07/2009 on the above subject.

Policy for appointment of class -IV on fixed salary was introduced w.e.f. 04/11/1992, hence several class-Iv were working against the contract post on fixed salary, till in the refer letter they first were regularized from the date of their first appointment without any arrears.

In light of policy 2008, their pay was fixed just like a regular employee from the date of initial appointment without any arrears of pay prior to 01/07/2008, however while fixing their salary the following points need clarification, that whether,

- 1) The employees appointed prior to 31/12/2001, having qualification over and above the prescribed qualification are entitled for advance increments in light of para-5 pay Revision 1991.
- 2) The Employees regularized in the refer letter from the date of initial appointment and appointed prior to 01/07/2007 are entitled for up-gradation in light of General up-gradation order vide your office letter No. FD/SO(FR)7-2/2007 dated: 01/07/2007.

This office is of the view that as the employees have been regularized from the date of their initial appointment hence they are entitled for the benefit of increments, provisions and up-gradation allowed from time to time as general on notional basis but no arrears is admissible prior to 01/07/2008.

The views of this office if correct may kindly be confirmed.

ACCOUNTS OFFICER (HAD)

[Handwritten signatures and initials: a.c., a.c., a.c., a.c., a.c.]

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Better copy of page No.12

Office of the
Accountant General
Khyber pakhtunkhwa Peshawar
Phone: 091-9211915



Dated: 24-01-2012.

No-Had/Fixed Employee/Corrp:/2011-12/

To,

The Secretary,
To. Govt of Khyber pakhtunkhwa,
Finance Department (Regulation Wing)

Subject: AWARD OF REGULAR BPS-1 TO CLASS.

Kindly refer to your office letter in urdu vide No. B.O-I/1-22/80-2008/FD dated: 29/01/2008.
And letter containing clarification vide FD/SR-I) Miss/2008 dated 13/07/2009 on the above subject.

Policy for appointment of class-IV on fixed salary was introduced w.e.f 04/11/1992, hence several class-IV were working against the contract post on fixed salary, till in the refer letter they first were regularized from the date of their first appointment without any arrear.

In the light of policy, 2003, their pay was just like a regular employee from the date of initial appointment without any arrear of pay prior to 01/07/2008, however while fixing their salary the following points need clarification that whether.

- 1) The employee appointed prior to 31/12/2001 having qualification over and above the prescribed qualification are entitled for advance increments in light of para-5 pay Revision-1991.
- 2) The Employee, regularized in the refer letter from the date of initial appointment and appointed prior to 01/07/2007 are entitled for up-gradation in light of General up-gradation order vide your office letter No. FD/SO (FR)7-2/2007 dated: 01/07/2007.

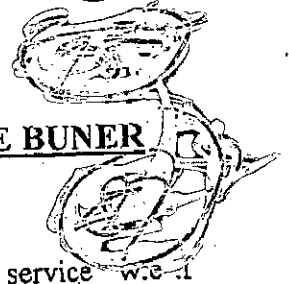
This office is of the view that as the employee have been regularized from the date of their initial appointment hence they are entitled for the benefits of increments, revisions and up-gradation allowed from time to time as general on national basis but no arrear is admissible prior to 01/07/2008.

The views of this office if correct may be confirmed.

ACCOUNTS OFFICER (HAD)

(11)

A. C. C.



OFFICE OF THE DISTRICT EDUCATION OFFICER FEMALE BUNER

SANCTION ORDER.

Sanction is hereby accorded to the grant of retirement from service w.e.f 30/06/2013(AN) in R/O Mr. Safarsh Khan Chowkidar GGPS Hall, Buner on the superannuation of 60 years age as recommended by the SDEO(Female) Daggar.

Encashment of LPR for the period w.e.f 01/07/2012 to 30/06/2013 (365 days) lumpsum on full pay as per revise rules 1981 amendment made vide No. (SO) (FR)FD/2-92/2005 Vol-V dated 13/12/2012.

NOTE:

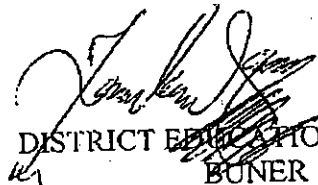
Necessary entry to this effect should be made in his Service Book accordingly.

(ZAIBUN NISA)
DISTRICT EDUCATION OFFICER (F)
BUNER

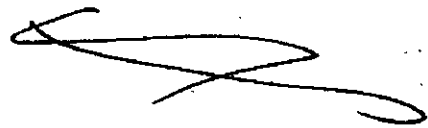
Endst: No. 72071 Dated 30-4 /2013.

Copy forwarded for information to the;

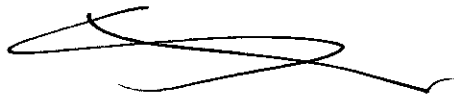
1. District Accounts Officer Daggar at Buner.
2. ADO (B&A) local office.
3. Sub: Divisional Education Officer Female Primary Buner w/r to her No. 2062 dated 16/08/2013.
4. Official Concerned.


DISTRICT EDUCATION OFFICER (F)
BUNER

etc



etc



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D:
Amir



**BEFORE THE PESHAWAR HIGH COURT (MINGORA BENCH
AT SWAT.**

W.P. No. 618-M/2017.

1. Gul Zamin Khan S/o Ajmal Khan
R/o Village Koz kalay Tehsil Mandanr , Bunir.
2. Piro S/o Shah Muham Jan
R/O Village Bikand Gokand, Tehsil Daggar District Bunir.
3. Shams ul Islam S/o Madash
R/o Village Bagra Tehsil Daggar, Bunir.
4. Shah Baros Khan S/o Madash
R/o Village Bazar Kot Chagharzay, Bunir.
5. Malang S/o Ummat Shah
R/o Village Giro Bagra, Bunir.
6. Shir Ghulam S/o Jumaraaz
R/o Village Shapalo Tehsil Daggar Bunir.
7. Sahib Zada S/o Amir Nawab
R/o Village Ashezo Mera Tehsil Daggar Bunir.
8. Shirullah Khan S/o Sahib Khan
R/o Sharshamo Tangay Tehsil Daggar, Bunir.
9. Aurang Zeb S/o Yaqoob
R/o Village Sharifay Nagray Tehsil Mandanr, Bunir.
10. Khan Said S/o Shamas Khan
Mohalla Usmani Khail Dagai Tehsil Mandanr, Bunir.
11. Nabi Ullah S/o Gharib Shah
R/o Tari Khail Dagai Bunir.
12. Taluq Said S/o Said Ahmad Khan
R/o Rasool Banda Chagarzay Bunir.
13. Safarash Khan S/o Hakim Khan
R/o Village Hall Tehsil Mandanr Bunir.
14. Sahi Lal Shah S/o Ghulam Shah
R/o Ashezo Newkalay Bunir.
15. Sahi Muhammad S/o Ghani
R/o Village Daggar Bunir.
16. Amroz Khan S/o Saidat Khan

FILED TODAY

29 AUG 2017

Additional Registrar

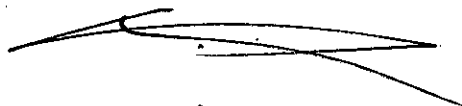
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- 24 - Muhammad Zaim s/o Muzafar R/O Bessa Hujra Ambala,
Tehsil Mandana, District Buner.
- 25 - Shamsher s/o Akram Khan R/O Bekstah shalbaraki,
Tehsil Daggai, District Buner.
- 26 - Mst. Zaigania D/o Aza Khan R/O shankhel/Bampokha
P.O. Jowar, District Buner.

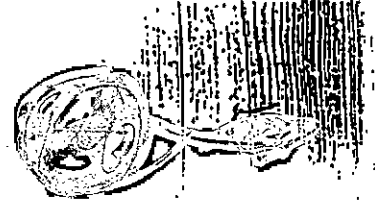
(Petitioners)

28/9/12

C.A.C



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- R/o Village Tangora Chagharzay Bunir.
- 17. Gul Hussain S/o Hazrat Ghulam
R/o Village Mian Dand Chamla Bunir.
- 18. Umar Dad S/o Bazmir
R/o Village Barjo Bayamdara Tehsil Daggar District Bunir.
- 19. Bakht Nasib S/o Abdul Wahid
R/o Village Dewana Baba Bunir.
- 20. Ihsanullah S/o Muhammad Taj
R/o Village Dhand Amazay Bunir.
- 21. Miraj Muhammad(late) through Bakht Zamina Bi Bi(widow)
R/o Durmai Kowga Bunir.
- 22. Bakhtawar Shah(late) through Said Mar Jan(widow)
R/o Village Marogay Tehsil Mandanr Bunir.
- 23. Shirin Zada
Ex- Chowkedar GPS Daggar No.1 Bunir.(Petitioners)

VERSUS

- 1. District Education Officer(male) Bunir.
- 2. District Education Officer (Female) Bunir.
- 3. District Account Officer, Bunir.
- 4. Accountant General Khyber Pakhtunkhwa, Peshawar.
- 5. The Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar.....(Respondents)

*Note: Writ Petition
is dated 28/7/17
as per
28/7/17.*

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

Respectfully Sheweth:

Brief facts giving rise to the instant Writ Petition are as under:

FACTS:

- 1. That the petitioners served as Class-IV Employees in the Education Department Bunir and such got their retirement on the said posts. (Copies of Appointment letters and relevant record are annexure "A").
- 2. That keeping in view the agonies and the financial constrains of the family of the low grade retiring

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Addl. Civil Registrar

J.C.

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employees, the provincial government was pleased to regularized the services/Posts of the petitioners in the year 2008 and as such they were declared civil servants and further the said order was confirmed according to "Regularization Act,2010" so the petitioners performed their duties as permanent employees of Education Department in Bunir, till date of their retirement.(Copy of Regularization Notifications and retirement letter are annexure-B)

3. That the petitioners keeping in view of the above circulation were hopeful to get pension benefits after their retirement and as such waited for the same when they were taken by surprise when the Respondents No.1 and 2 informed the petitioners, that their length of service is not qualifying for pension benefits and others benefits after retirement.

4. That the petitioners wrote applications to the concerned quarters but no heed was paid to their requests and one way or the others, the respondents adopted the delaying tactics and finally the petitioners were informed that they have no right of pension and other benefits after retirement.

That being aggrieved the petitioners prefer this petition on the following grounds amongst others inter-alia.

GROUND:

A. That actions and inactions of the respondents are violative of the constitution and the relevant laws laid down for the purpose, hence needs interference of this august Court.

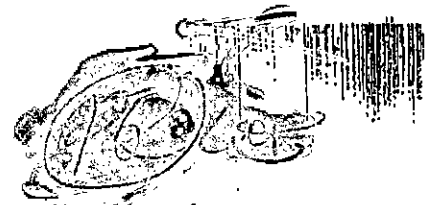
B. That the petitioners have poor financial background and served the department for long considerable period with the hopes of further benefits after retirement but the

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respondents did not observe the prescribed rules, regulations and denied the benefits in shape of pension to the petitioners.

C. That the issue in hand has now already been decided by this august court through Writ petition No.123-M/2015 dated:10.05.2016 hence the petitioners deserve for the same treatment.(Copies of judgments are annexure-D)

D. That any other ground may be adduced during the course of argument, with the kind permission of this Hon'ble Court.

It is, therefore, humbly prayed that on acceptance of this Writ Petition the respondents may kindly be directed to grant after retirement benefits to the petitioners in shape of pension and others for which the petitioners deserves.

Or

Any other relief which this august Court deems appropriate may kindly be awarded to meet the ends of justice.

Interim relief:

By way of interim relief the respondents may kindly be directed to finalize the pension cases of the petitioners on priority basis.

FILED TODAY
29 AUG 2017

Additional Registrar

Dated: 26/08/2017

Petitioners

Through

Shams ul Hadi

Advocate, Peshawar.

CERTIFICATE:

Certified on instructions of my client that petitioners have not previously moved this Hon'ble Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 regarding the instant matter.

ADVOCATE

LIST OF BOOKS:

1. Constitution of Islamic Republic of Pakistan, 1973.
2. Pension laws.
3. Any other law books according to need.

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**JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
MINGORA BENCH (DAR-UL-QAZA), SWAT
(Judicial Department)**

W.P No. 618-M/2017
With Interim Relief

Gul Zamin Khan and 22 others

(Petitioners)

Versus

District Education Officer (Male), Buner and 04 others.

(Respondents)

Present:

Mr. Shams-ul-Hadi, Advocate for the petitioners.

Date of hearing: **04.10.2017**

JUDGMENT

ISHTIAQ IBRAHIM, J.- Vide our detailed judgment in the connected W.P No. 22-M/2017, this writ petition bearing W.P No. 618-M/2017 is admitted and partially allowed to the extent of Petitioners No. 21 & 22 in the light of judgment dated 22.06.2017 in W.P No. 3394-P/2017. The respondents are directed to pay pension of the deceased employees to their legal heirs within two months positively after receipt of this judgment.

Announced
04.10.2017

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Mohammad Ibrahim Khan
JUDGE

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Ishtiaq Ibrahim
JUDGE

Office
11/10

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**JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
MINGORA BENCH (DAR-UL-QAZA), SWAT
(Judicial Department)**

W.P No. 22-M/2017
With Interim Relief

Hazrat Ghulam and 01 other (Petitioners)

Versus

District Education Officer (Male), Buner and 03 others.
(Respondents)

Present: *Mr. Shams-ul-Hadi, Advocate for the petitioners.*

W.P No. 218-M/2017
With Interim Relief

Sher Afzal and 02 others (Petitioners)

Versus

*Executive Engineer Public Health Engineering Division,
Dir Lower at Timergara and 03 others.*
(Respondents)

Present: *Mr. Shams-ul-Hadi, Advocate for the petitioners.*

W.P No. 618-M/2017
With Interim Relief

Gul Zamin Khan and 22 others (Petitioners)

Versus

District Education Officer (Male), Buner and 04 others.
(Respondents)

Present: *Mr. Shams-ul-Hadi, Advocate for the petitioners.*

Date of hearing: **04.10.2017**

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JUDGMENT

ISHTIAQ IBRAHIM, J.- Through this single judgment, we intend to decide this petition bearing W.P No. 22-M/2017 as well as the connected W.P Nos. 218-M & 618-M of 2017 as common questions of law and facts are involved in all these petitions.

2. Petitioners through these petitions crave the indulgence of this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 with the following prayer:

“It is, therefore, humbly prayed that on acceptance of this writ petition, the respondents may kindly be directed to grant after retirement benefits to the petitioners in shape of pension and others for which the petitioners deserve. Any other relief which this august Court deems appropriate may kindly be awarded to meet the ends of justice”.

3. Most of the petitioners in W.P No. 22-M/ 2017 and 618-M/2017 have served as Class-IV employees in Education Department Buner and got retirement on their

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respective posts except Petitioners No. 21 & 22 in W.P No. 618-M/2017 who are the widows of deceased employees namely Miraj Muhammad and Bakhtawar Shah respectively. Likewise, petitioners in W.P No. 218-M/2017 have also performed their duties as Class-IV employees till their retirement in Public Health and Engineering Department, Dir Lower. As per contentions of the petitioners, their services were regularized in 2008 and the order was further confirmed in view of Khyber Pakhtunkhwa Employees (Regularization of Services) Act, 2009 whereafter the petitioners performed their duties as regular employees till their retirement. The petitioners were hopeful that they will get pension benefits after their retirement but astonishingly they were informed by the concerned departments that the petitioners were not qualified for pension as well as other benefits after retirement. The petitioners submitted applications before the concerned authorities for redressal of their

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grievances but in vain, hence, these writ petitions.

4. Learned counsel for the petitioners, *inter alia*, contended that family pension of the petitioners has been denied by respondents without any legal justification and the same action and inaction, if not set aside, would cause serious miscarriage of justice to petitioners and LRs of the deceased employees. Further contended that the same issue has already been resolved by this Court through various judgments even a larger bench of this Court has delivered a judgment on the questions involved in these writ petitions whereby several contract employees have been awarded the benefit of family pension on their regularization. Learned counsel concluded that the petitioners, being at par with those employees, are also entitled to the same relief.

5. Learned Assistant Advocate General, present in Court in connection with

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- 5 -



some other cases, was put on notice of these writ petitions and he was confronted with the judgments of this Court especially the judgment passed by the larger bench at the principal seat of this Court. Learned A.A.G. opposed the contention of petitioners and submitted that the petitioners are not entitled to the benefit of family pension under the relevant rules.

6. Respondent No.1 in W.P No. 22-M/2017 and 218-M/2017 filed their Para-wise comments whereby they denied the claim of petitioners and contended that the petitioners were serving on fixed pay besides, they have not served as regular employees for the period prescribed under the relevant rules, therefore, they are not entitled to get the benefits they have prayed for.

Z. We have considered the submissions of learned counsel for the petitioners as well as of the learned A.A.G. and have gone through the available record.

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8. No doubt, the petitioners as well as predecessor of some of the petitioners had been appointed as Class-IV employees in the Education Department and Public Health and Engineering Department on contract basis and were retired on attaining the age of superannuation but it is also an admitted fact that services of contract/adhoc employees have been regularized in view of Khyber Pakhtunkhwa Employees (Regularization of Service) Act, 2009 and a proper notification has been issued by the Provincial Government to this effect. The question for resolution before this Court is whether the petitioners and LR's of the deceased employees are entitled to family pension in view of the Act *ibid* or not, this question has been resolved by the larger bench vide judgments dated 22.06.2017 in W.P No. 3394-P/2016 and W.P No. 2246-P/2016 however, a preliminary objection regarding maintainability of the writ petitions was raised by learned A.A.G before the said bench. It is noteworthy, that there were two sets of petitioners i.e the retired

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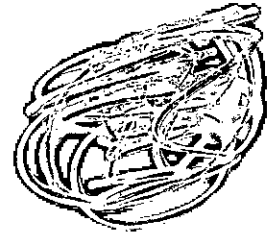
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employees who moved the petitions in personal capacity which were decided by the larger Bench vide judgment dated 22.06.2017 in W.P No. 2246-P/2016 whereas the remaining petitioners were legal heirs of the deceased employees who sought the benefit of family pension on the strength of regular service performed by their respective predecessors whose writ petitions were decided vide judgment dated 22.06.2017 in W.P No. 3394-P/2016.

9. Whether the writ petitions filed by retired employees/civil servants in personal capacity are maintainable before this Court or not, this question was adjudged by the larger bench in judgment dated 22.06.2017 in W.P No. 2246-P/2016. The relevant part of the judgment is reproduced herein below:-

“We are not in consonance with the first argument of learned counsel for the petitioners because under Section 2(a) of the Service Tribunal Act, 1973, “civil servant” means a person who is, or has been, a civil servant within the meaning of the Civil Servants Act, 1973. Petitioners are retired civil servants. Admittedly, dispute regarding pension of a civil

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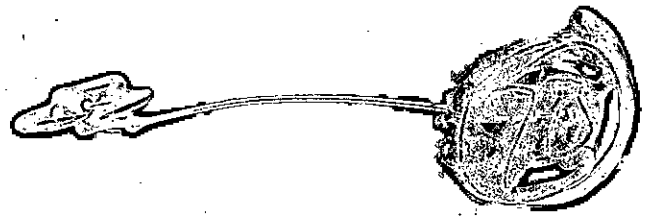
servants squarely falls in terms and conditions of service of a civil servant, hence, Service Tribunal is vested with exclusive jurisdiction in such like matter. It has persistently been held by this Court as well as by the august Supreme Court of Pakistan that a civil servant, if aggrieved by a final order, whether original or appellate, passed by the departmental authority with regard of his/her terms and conditions of service, the only remedy available to him/her would be filing of appeal before the Service Tribunal even if the case involves vires of particular Rule or notification”.

The larger bench in the above referred judgment also discussed the point of alleged discrimination and violation of Article 25 of the Constitution and held that:-

“We deem it necessary to clarify that a civil servant cannot bypass the jurisdiction of Service Tribunal by taking shelter under Article 25 of the Constitution in such like matter. The Service Tribunal shall have the exclusive jurisdiction in a case which is founded on the terms and conditions of service, even if it involves the question of violation of fundamental rights because the Service Tribunals constituted under Article 212 of the Constitution are the outcome of the constitutional provisions and vested with the powers to deal with the grievances of civil



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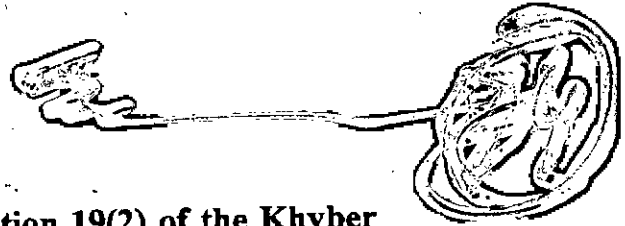
servants arising out from original or appellate order of the department".

In light of the above observations of the larger bench, the writ petitions filed by retired civil servants in personal capacity are not maintainable before this Court in view of the bar under Article 212 of the Constitution and we have no other option except to transmit such writ petitions to the concerned quarters to treat the same as departmental appeals.


10. Adverting to the maintainability of writ petitions to the extent of legal heirs of the deceased civil servants, in this regard too we rely on another judgment of the same date i.e 22.06.2017 rendered by the larger bench in W.P No. 3394-P/2016 wherein it was observed that:-

"11. Going through the law on the subject and deriving wisdom from the principles laid down by the Hon'ble apex Court in the judgments (supra), we are firm in our view that petitioners/legal heirs of the deceased employees have locus standi to file these petitions because the pensionary benefits are inheritable which

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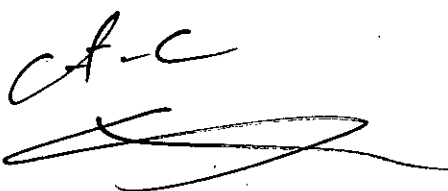


under section 19(2) of the Khyber Pakhtunkhwa Civil Servants Act, on the demise of a civil servant, devolves upon the legal heirs. The petitioners, as stated earlier, being LRs of the deceased civil servants do not fall within the definition of "Civil Servant", and they having no remedy under Section 4 of the Service Tribunal Act to file appeal before the Service Tribunal, the bar under Article 212 of the Constitution is not attracted to the writ petitions filed by them and this Court under Article 199 of the Constitution is vested with the jurisdiction to entertain their petitions. Resultantly, the objection regarding non-maintainability of the petitions stands rejected".

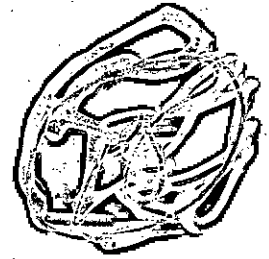


In light of the above observations recorded by the larger bench, W.P No. 618-M/2017 to the extent of Petitioners No.21 & 22, being legal heirs of the deceased civil servants, is maintainable before this Court in exercise of its powers under Article 199 of the Constitution.

11. Now adverting to merits of W.P No. 618-M/2017 to the extent of legal heirs of the deceased civil servants, while referring to Rules 2.2 and 2.3 of the West Pakistan Civil Services Pensions Rules, 1963 the larger



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bench in its judgment dated 22.06.2017 in

W.P No. 3394-P/2016 held that:-

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

As per contention of the petitioners/LRs, the respondents have refused their family pension on the ground that their predecessors have not completed the prescribed length of service after regularization. This point has also been discussed by the larger bench in the afore referred judgment in the light of Section 19 of the NWFP Civil Servant (Amendment) Act, 2005 and Khyber Pakhtunkwa Civil Servants (Amendment) Act, 2013 and it was held that:-

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From bare reading of section 19 of Amendment Act, 2005 and 2013 respectively, it is manifest that the persons selected for appointment on contract basis shall be deemed as regular employees and subsequently were held entitled for pensionary benefits. The deceased employees have completed the prescribed length of service as their service towards pension shall be counted from the first day of their appointment and not from the date of regularization of their service".

The similar relief sought by legal heirs of deceased civil servants through W.P No. 618-M/2017, has been granted by the larger bench to similarly placed persons, therefore, Petitioners No. 21 & 22 in W.P No. 618-M/2017 are also entitled to the same relief on the ground of parity.

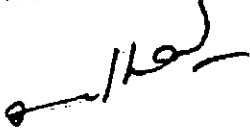
12. In the backdrop of the above, this writ petition i.e W.P No. 22-M/2017, W.P No. 618-M/2017 to the extent of Petitioners No. 1 to 20 & 23 as well as the connected W.P No. 218-M/2017, being not maintainable before this Court, are transmitted to the concerned Secretaries to the Government of Khyber Pakhtunkhwa to treat them as

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departmental appeals and decide strictly in accordance with Civil Servants Pension Rules, 1963. The concerned Secretaries while deciding the departmental appeals, may take guidance from the judgment of the larger bench referred to above. W.P No. 618-M/2017 is admitted and partially allowed to the extent of Petitioners No. 21 & 22 in the light of judgment dated 22.06.2017 in W.P No. 3394-P/2017. The respondents are directed to pay pension of the deceased employees to their legal heirs. Respondents are further directed to do the needful within two months positively after receipt of this judgment.

Announced
04.10.2017


Mohammad Ibrahim Khan
JUDGE


Ashtiaq Ibrahim
JUDGE

Office
11/10



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بخدمت جناب ڈسٹرکٹ آفیسر محکمہ تعلیم (فی میل) ضلع بونیر۔

مضمون :- درخواست بمراد عمل درآمد بروئے فیصلہ عدالت برائے عطا یگی پینشن۔

(1) جناب عالی :- گزارش کی جاتی ہے کہ سائیل نے محکمہ تعلیم میں ڈیوٹی انجام دے کر مدت ملازمت مکمل کر کے ریٹائرمنٹ حاصل کی۔

(2) یہ کہ بعد میں سائیل کو پینشن کا حق دار نہیں ٹھرایا گیا بدیں وجہ سائیل نے پشاور ہائی کورٹ میں گورنر مینگورہ پنچ میں رٹ پٹیشن نمبر 2017/618 دائر کی۔ جس نے سائیل کے حق میں فیصلہ کر کے آپ صاحبان کو ہدایت دی گئی ہیں کہ سائیل کو پینشن جاری کیا جائے اور تمام کارروائی عرصہ دو سالہ میں مکمل کیا جائے۔

لہذا آپ صاحبان سے گزارش ہے کہ ہائی کورٹ کے فیصلے مورخہ 04-10-2017 کی روشنی میں پینشن دینے کے مناسب احکامات جاری کرتے تو بندہ تا عمر دعا گو رہے گا۔
کورٹ کا فیصلہ منسلک ہے۔

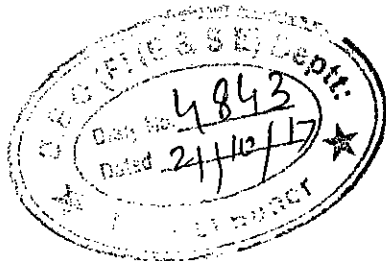
تابع دار

سفارشی خان رہنما ٹرڈ جو کبیر دہنر ہر اٹری سکول صل
مورخہ 17/10/17

کاپی برائے اطلاعاتی و ضروری کارروائی۔

1۔ سیکریٹری محکمہ تعلیم خیبر پختون خواہ پشاور۔

2۔ ڈائریکٹر محکمہ تعلیم خیبر پختون خواہ پشاور۔



at e

بعدالت روس لٹری بیونل کے

قیمت ایک روپیہ	کورٹ فیس
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۲۰ منجانب

سہارن خان بنام گورنمنٹ دہلی

مورخہ

مقدمہ

دعویٰ

جرم

باعث تحریر آنکہ

مقدمہ مندرجہ بالا میں اپنی طرف سے واسطے پیروی و جواب دہی و کل کاروائی متعلقہ آن مقام لٹری بیونل کے کسٹمرز کے لئے لٹری بیونل کو مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیاط ہوگا۔ نیز وکیل صاحب کو راضی نامہ و تقرر ثالث و فیصلہ پر حلف دینے جواب دی اور اقبال دعویٰ اور درخواست ہر قسم کی تصدیق زراس پر دستخط کرنے کا اختیار ہوگا نیز بصورت عدم پیروی یا ڈگری ایک طرف یا اپیل کی برآمد ہوگی اور منسوخ ڈائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ بصورت ضرورت مذکور کے نسل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنی ہمراہ یا اپنی بجائے تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی جملہ مذکورہ بالا اختیارات حاصل ہونگے اور اسکا ساختہ برواختہ منظور و قبول ہوگا اور دوران مقدمہ میں جو خرچہ و ہر جانہ التوائے مقدمہ کے سبب سے ہاگا اسکے مستحق وکیل صاحب ہونگے۔ نیز بقایا و خرچہ کی وصولی کرتے وقت کا بھی اختیار ہوگا اگر کوئی تاریخ پیشی مقام دورہ ہر ہو یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہونگے کی پیروی مقدمہ مذکور لہذا وکالت نامہ لکھ دیا ک سند ہے

المرقوم ۱۲ ماہ فروری ۱۸۲۰ء

العبد گواہ شدہ العبد

کے لئے منظور ہے

بمقام

روس لٹری بیونل
Attest

سہارن خان ولد حاجی خان