

30.01.2015

Appeal No. 1056/2014
Mr. Munir Khan

Appellant with counsel and Mr. Ziaullah, Government Pleader for the respondents present. Preliminary arguments heard and record perused.

Counsel for the appellant contended that the appellant has not been treated in accordance with law/rules. The appellant has impugned order dated 23.04.2014 vide which the appellant was transferred and adjusted at Govt. Girls Degree College, Chaghar Matti, Peshawar. Against the impugned order he filed departmental appeal on 28.04.2014 which has not been responded within the statutory period of 90 days, hence the instant appeal on 07.08.2014 which is within time. Counsel for the appellant prayed in his appeal that: *"On acceptance of this appeal the respondents may kindly be directed to make effective the Transfer/Adjustment order dated 23.04.2014 from Govt. Degree Girls College Mathra to Govt. Degree College Chaghar Matti, instead of immediate effect with all other service benefits. Any other remedy/relief, available in the circumstances of the case may also kindly be granted to the appellant."* He requested that the instant appeal may be admitted for regular hearing.

The learned Government Pleader while assisting the Court was of the view that the prayers of the appeal is ambiguous as it is not clear what remedy the appellant seek from this Hon'able Tribunal, hence not maintainable in its present form. He stated that the appellant has no cause of action as no vested right of the appellant has been violated in this context he relied on 1999 SCMR 2482. Posting and transferred is within the exclusive domain of Government hence this Hon'ble tribunal has got no jurisdiction to entertain the appeal he relied on 2005 SCMR 442. The impugned order is in accordance with Section-10 of the Khyber Pakhtunkhwa Civil Servant Act 1973 and in public interest. The impugned order did not violate terms and condition of the service of the appellant as the appellant has been transferred against the same post in the adjacent Union Council with in the same District, therefore no irreparable loss sustained by the appellant. He further stated that the impugned order has already been implemented by the appellant he relied on 1996 PLJ (S.C) 601. He requested that the instant appeal may be dismissed in limine.

Appeal No. 10561/2014.
Mr. Munir Khan.

From arguments advanced by the learned counsel for the parties and perusal of record, the Tribunal is of the view that the present appeal is not maintainable in its present form as the prayer of the appellant is not clear because the appellant prayed for direction the respondents to make effective the impugned transfer order which has already been implemented by the appellant and made effective by the respondents so the appeal in hand stand infructuose. Hence, the appeal is dismissed in limine. File be consigned to the record.

ANNOUNCED

30.01.2015

Q.F.I.
Member

6.

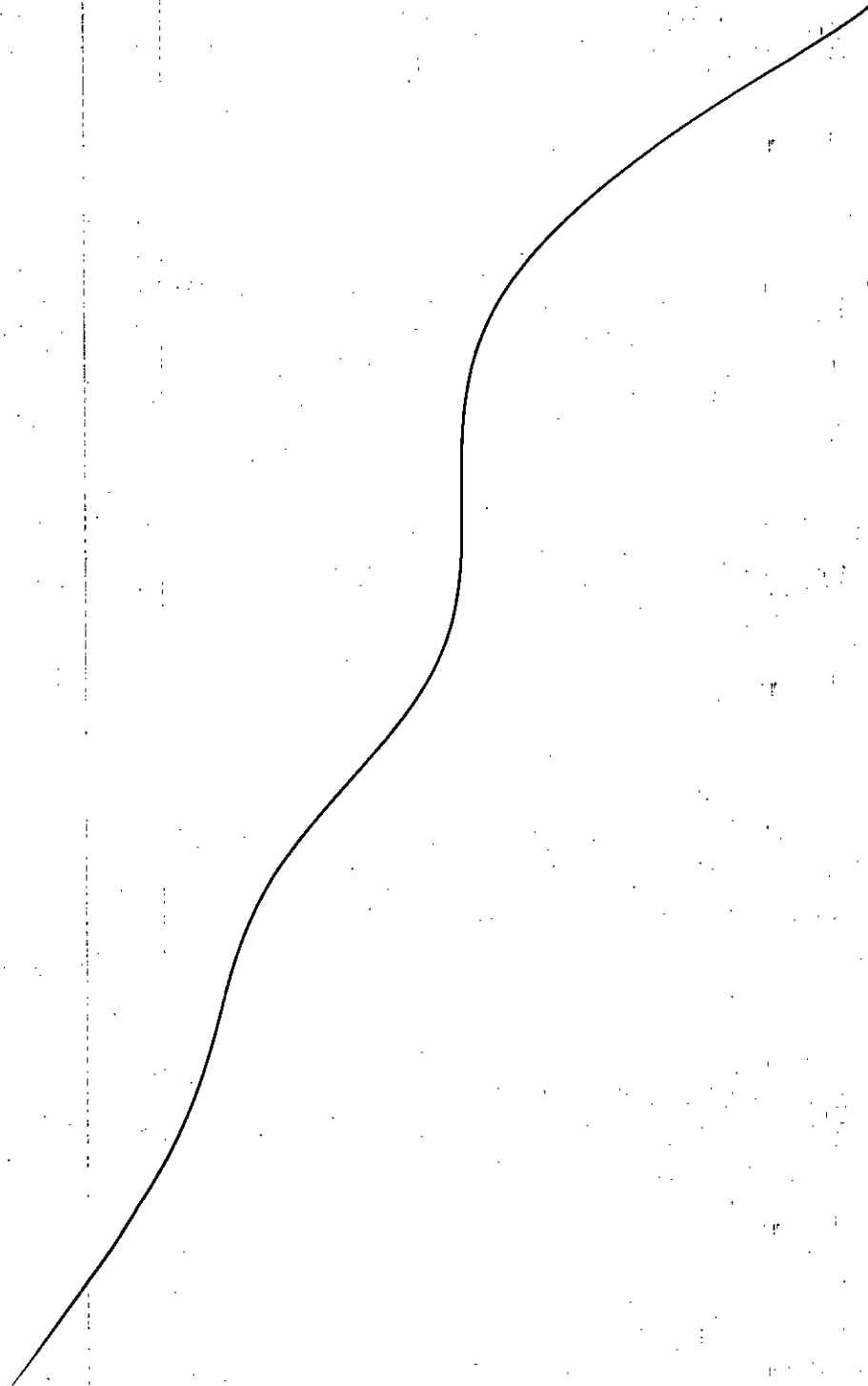
Reader Note:

22.12.2014

appellant in person and Mr. Kabirullah Khattak, Asst. Advocate General for the respondents present. Since the Tribunal is incomplete, therefore, case is adjourned to ~~30.12~~ 2015 for the same.

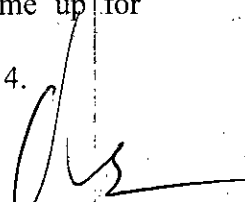


Reader




3. 02.09.2014

Counsel for the appellant present and filed an application for early hearing as well as application for temporary injunction. Case file requisitioned. Application allowed. To come up for preliminary hearing on 26.09.2014 instead of 17.11.2014.


Member

4. 26.09.2014

Appellant alongwith his counsel present. Preliminary arguments partly heard. The matter required further clarification, therefore, pre-admission notice be issued to the learned AAG/GP with the direction to produce complete record of the appellant. To come up for preliminary hearing on 18.11.2014.


Member

5. Reader Note:

18.11.2014



Appellant in person presents. Since the Tribunal is incomplete, therefore, case is adjourned to 22.12.2014 for the same.


Reader

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 1056/2014


| S.No. | Date of order Proceedings | Order or other proceedings with signature of judge or Magistrate |
|-------|---------------------------|---|
| 1 | 2 | 3 |
| 1 | 19/08/2014 | <p>The appeal of Mr. Muneer Khan resubmitted today by Mr. Muhammad Siddque Advocate may be entered in the Institution register and put up to the Worthy Chairman for preliminary hearing.</p> <p style="text-align: right;"> REGISTRAR</p> |
| 2 | 20-8-2014 | <p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on <u>17-11-2014</u>.</p> <p style="text-align: right;"> CHAIRMAN</p> |

The appeal of Mr. Munir Khan son of Tamash Khan r/o Mathra Tehsil and distt. Peshawar received today i.e. on 07.08.2014 is incomplete on the following score which is returned to the counsel for the appellatant for completion and resubmission within 15 days.

- 1- Memorandum of appeal may be got signed by the appellatant.
- 2- Law under which appeal is filed is not mentioned.
- 3- Address of appellatant and respondent No. 5 is incomplete which may be completed according to the Khyber Pakhtunkhwa Service Tribunal rules 1974.
- 4- Copy of departmental appeal against the impugned order is not attached with the appeal which may be placed on it.
- 5- Annexures of the appeal are illegible which may be replaced by legible/better one.
- 6- Annexures of the appeal may be attested.
- 7- Seven more copies/sets of the appeal along with the annexures i.e. complete in all respect may also be submitted with the appeal.

No. 1185 /S.T,

Dt. 07/8 /2014.


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Muhammad Siddque Adv. Pesh.

Reply of the objections
raised by Honorable Registrar
service Tribunal KPIC Peshawar.

- ① Memorandum of appeal have signed by the appellatant.
 - ② Appeal filed up 4 of civil servant Act
 - ③ Address of the parties has been completed.
 - ④ Copy of departmental appeal has attached.
 - ⑤ Annexure of appeal have been deleted.
 - ⑥ Annex of appeal have been attested.
 - ⑦ Seven copies/sets of appeal has submitted.
- It is therefore may kindly accept
of resubmission of appeal
~~Appellatant through~~
m-saddi q
M. Siddque Adv.

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

Appeal No. 1056 of 2014

Munir Khan

VERSUS

Director Higher Education and others

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| 4. | Copy of departmental appeal | "B" | 89-90 |
| 5. | Wakalat Nama | | In original |

Dated 26/07/2014

Appellant

Through



**Muhammad Siddique
&**

**Naseer ud Din Shah
Advocates, High Court,
Peshawar.**

①

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR.

Appeal No. 1056 of 2014

1051
07/8/2014

Munir Khan Son of Tamash Khan
Junior Clerk Govt Girls Degree College Mathra
R/o Mathra Tehsil & District Peshawar.

..... Appellant

VERSUS

- 1) Director Higher Education Khyber Pakhtunkhwa,
KPK, Peshawar.
- 2) Deputy Director Establishment Khyber
Pakhtunkhwa Peshawar.
- 3) Principal Govt Girls Degree College Mathra.
- 4) Principal Govt Girls Degree College Chaghar
Matti.
- 5) Asfandyar Son of Shah Nawaz, Junior Clerk Govt
Girls Degree College Mathra
R/o Mathra Tehsil & District Peshawar.

..... Respondents

of Service Tribunal Act 1974

APPEAL UNDER SECTION 4/ ACCORDING
TO THE DEPARTMENTAL APPEAL OF THE
APPELLANT, WHICH IS STILL PENDING
BEFORE THE RESPONDENT NO.1 AND
AFTER LAPSE OF STATUTORY PERIOD NO
ORDER / COMMUNICATION HAS BEEN
MADE ON THE SAME SO FAR.

Not submitted to
and filed.

19/8/14

①

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR.

Appeal No. 1056 of 2014

1051
07/8/2014

Munir Khan Son of Tamash Khan
Junior Clerk Govt Girls Degree College Mathra
R/o Mathra Tehsil & District Peshawar.

..... Appellant

VERSUS

- 1) Director Higher Education Khyber Pakhtunkhwa,
KPK, Peshawar.
- 2) Deputy Director Establishment Khyber
Pakhtunkhwa Peshawar.
- 3) Principal Govt Girls Degree College Mathra.
- 4) Principal Govt Girls Degree College Chaghar
Matti.
- 5) Asfandyar Son of Shah Nawaz, Junior Clerk Govt
Girls Degree College Mathra
R/o Mathra Tehsil & District Peshawar.

..... Respondents

of Service Tribunal Act 1974

APPEAL UNDER SECTION 4/ ACCORDING
TO THE DEPARTMENTAL APPEAL OF THE
APPELLANT, WHICH IS STILL PENDING
BEFORE THE RESPONDENT NO.1 AND
AFTER LAPSE OF STATUTORY PERIOD NO
ORDER / COMMUNICATION HAS BEEN
MADE ON THE SAME SO FAR.

Re-submitted to
and filed.

19/8/14

Prayer in Appeal:

On acceptance of this appeal the respondents may kindly be directed to make effective the Transfer / Adjustment order dated 23/04/2014 from Govt Degree Girls College Mathra to Govt Degree College Chaghar Matti, instead of immediate effect with all other service benefits. any other remedy /relief available in the circumstances of the case may also kindly be granted to the appellant.

Respectfully Sheweth:

The appellant submits as under:

- 1) That being the appellant is Junior Clerk at BPS – 11 was awarded to the appellant.
- 2) That vide notifications/order dated 23/04/2014 the appellant was transferred and adjusted against the said post but in violation of all laws, rules, policies and in disregard of the judgments of higher /superior Courts and Tribunals as well as of this Hon'ble Tribunal he was kept in his own pay and scale as Junior Clerk, the respondent No.5 adjusted on the post of appellant before completion of statutory period. (Copy of Notification/order dated 23/04/2014 is Annexure (A) (1)).
- 3) That later on vide notification/order dated 23/04/2014 the appellant was transferred from Govt Girls Degree College Mathra to Govt Girls College Chaghar Matti. (Copy of order dated 23/04/2014 is Annexure "B").
- 4) That feeling aggrieved by the above impugned notifications/order the appellant filed a departmental appeal before respondent No.1 which is still pending before him and after lapse of statutory period no order / communication has

(3)

been made on the same so far, hence this appeal on the following amongst other grounds:

Grounds:

- A) *That the act and omission of the respondent /department is illegal, unconstitutional, without jurisdiction, without lawful authority against facts and materials on the record therefore, need the interference of this Hon'ble Tribunal.*
- B) *That the act and omission of the department is not only factually incorrect and legally untenable but also is against the principles of natural justice.*
- C) *That the appellant was well qualified, fit and senior and thus was quit eligible for regular promotion at the time of first Notification / order dated 23/04/2014, when the post of BPS – 11 was available and the appellant was transferred from Govt Girls Degree College Mathra to Govt Girls College Chaghar Matti.*
- D) *That at the time of the impugned notification/order the long service period of the appellant has been ignored due to which the appellant has not only sustained loss to his seniority but has also been deprived of his legal right of pay of the transfer of appellant.*

(9)

- E) *That the appellant has performed duties against the post carrying BPS – 11 for along time efficiently honestly and without giving any chance of complaint to his superior which fact also goes in his favor and there is no law which permit the respondents to deprive him from the benefits attached to the said post and illegal transfer before completion of statutory period.*
- F) *That the appellant is /was a Government / Civil Servant and legal and constitutional guarantee is available to him to be dealt with in accordance with law he however, has not been treated as such.*
- G) *That the act and omission of the department is clear violation/disregard of the directions giving in the judgments in cases of Asfandiyar Son of Shah Nawaz. Therefore, the said act and omission of the department is not effective on the right of the appellant and the same has caused gross miscarriage of justice to the appellant.*
- H) *That the department is legally / constitutionally bound to follow the directions of law and justice.*
- I) *That the respondents have failed to apply their independent/administrative mind to the matter and therefore have reached to an erroneous*

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conclusion which is not sustainable in the eye of law.

It is, therefore, humbly prayed that on acceptance of this appeal the respondents may kindly be adjust on previous post at Govt Girls Degree College Mathra instead of Govt Girls Degree College Chaghar Matti instead of immediate effect with all other service benefits etc. any other remedy /relief available in the circumstances of the case may also kindly be granted to the appellant.

Dated 26/07/2014

Munir Khan

Appellant

Through

Muhammad Siddique

Muhammad Siddique

&

Naseer ud Din Shah

Advocates, High Court,

Peshawar.

Affidavit.

I, Munir Khan Son of Tamash Khan R/o Mathra Tehsil & District Peshawar, do hereby solemnly affirm and declare on oath that the contents of this appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.

Munir Khan

DEPONENT

6

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

Appeal No. _____ of 2014

Munir Khan

VERSUS

Director Higher Education and others

ADDRESSES OF THE PARTIES

Appellant

*Munir Khan Son of Tamash Khan Junior
Clerk Govt Girls Degree College Mathra R/o
Mathra Tehsil & District Peshawar.*

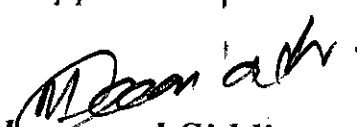
Respondents

- 1- *Director Higher Education Khyber
Pakhtunkhwa, KPK, Peshawar.*
- 2- *Deputy Director Establishment Khyber
Pakhtunkhwa Peshawar.*
- 3- *Principal Govt Girls Degree College
Mathra.*
- 4- *Principal Govt Girls Degree College
Chaghar Matti.*
- 5- *Asfandyar Son of Shah Nawaz Junior
Clerk Govt Girls College Mathra R/o
Mathra Tehsil & District Peshawar.*

Dated 26/07/2014

Appellant |

Through


**Muhammad Siddique
&
Naseer ud Din Shah
Advocates, High Court,
Peshawar.**

(10) (7)

**DIRECTORATE OF HIGHER EDUCATION
KHYBER PAKHTUNKHWA,
KHYBER ROAD PESHAWAR**

Phone # 091-9210242, 9211025/Fax # 921021

Dated Peshawar the 23/4 /2014

Annesme-A

TRANSFER/ ADJUSTMENT

Mr. Munir Khan Junior Clerk Govt; Girls Degree College, Mathra (Peshawar) is hereby transferred and adjusted in his own pay and scale against the vacant post of Junior Clerk at Govt; Girls Degree College, Chaghar Matti (Peshawar) in the interest of public service with immediate effect.

NOTE:-

- i. Charge report should be submitted to all concerned.
- ii. No T.A/ D.A is allowed.

Endst; No.

PH.P-53

DIRECTOR HIGHER EDUCATION

Copy of the above is forwarded to the:-

1. Accountant General Khyber Pakhtunkhwa, Peshawar.
2. Principal Govt; Girls Degree College, Mathra (Peshawar) with reference to her letter No. 1060 dated 18.04.2014.
3. Principal Govt; Girls Degree College, Chaghar Matti (Peshawar).
4. PA to Director Higher Education Khyber Pakhtunkhwa Peshawar.
5. Official concerned.

[Signature]
DY: DIRECTOR (ESTABLISHMENT)

RECEIVED BY EST. FILE COPY

Munir
19-8-14

8

Annexure - B

CA - 111
No - 392
Date - 21-4-
D.H.F

محکمہ صحت کراچی صحت محکمہ تعلیم کے تحت کونو کھواہ لیسٹ اور

درخواست گزار اور اطفال جاری رکھے غیر الفین کھیت جو پندرہ ماہوں
سے تھم کر ڈگری کالج آئے۔

صاحب سالی

سائل ہیں کہ وہ کون سا ہے۔

1۔ کہ از روئے آرڈر نمبر 17705-17859 مورخہ 13/9/2013 سائل کو

آرڈر گورنمنٹ ڈگری کالج کھیت سے فراغت ہوئی تھی لیکن اس وقت
14/9/2013 سے کالج میں کورس میں فراغت کی انجام دینی پر مامور ہے۔

2۔ کہ سائل محکمہ 16 اساتذہ سے حکم تعلیم میں ترقیات پر انجام دے رہا ہے۔

3۔ کہ از روئے درخواست کھیت سے متعلقہ فراغت کے انجام دینے کی حکمت سائل کو
تفصیلی کھیت جو پندرہ ماہ کالج میں پڑھا ہے سائل سے (جس کا نام جاری
رکھے گا) حقدار ہے۔

4۔ کہ سائل گورنمنٹ مائوڈے کالج میں کورس میں سائل کے ساتھ کورس میں ہے۔

5۔ کہ از روئے آرڈر نمبر 1814/2014 مورخہ 1060 اور نمبر 9448 مورخہ 23/4/2014

منسوخ کیلئے ڈائریکٹر صحت کراچی کو حکم جاری کیا گیا ہے۔

ماہانہ دہائی دسواں مورخہ 28/4/2016

ان راجد

محکمہ صحت کراچی صحت محکمہ تعلیم کے تحت کونو کھواہ لیسٹ اور

ATTESTED TO BE TRUE COPY

19-8-2014

9

حکومت حیدرآباد
Case No - 39
Date - 21-4-1954

دبیر صاحب
حکومت حیدرآباد
مقام امور خیرات و احکامات جاریہ
مقام امور خیرات و احکامات جاریہ
مقام امور خیرات و احکامات جاریہ

سائل بدین طریق ہے

۱۔ یہ کہ انٹرویو آرڈر نمبر 13/9/53، 17854-17785 سائل
میں ترقی تو ہوئی مگر ڈگری کالج محترم میں
جو نمبر 13/14/53 سے کالج
مذکورہ میں خالصتاً ہی انجام دیا گیا ہے
یہ کہ سائل نمبر 14 سے حکم تعلیم میں خیرات
انجام دیا گیا ہے
۲۔ یہ کہ انٹرویو نمبر 13/9/53 سے
انجام دیا گیا ہے سائل کی پہلی تصنیف
جو نمبر 13/14/53 سے صورت کے سبب سائل
مقام بدین طریق ہے
13/9/53

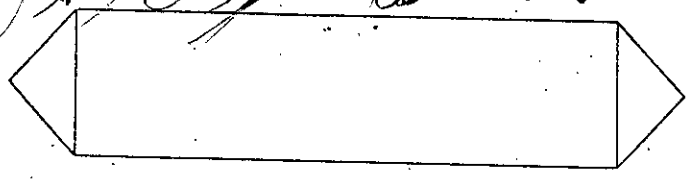
13/9/53

حکومت حیدرآباد
مقام امور خیرات و احکامات جاریہ

ATTESTED TO BE TRUE COPY

19-8-54

بعدالت ضام سے روٹ سے روٹ لٹامہ



صنبر خان

اسٹرائٹ

2 منجانب
بنام

مورخہ
مقدمہ
دعویٰ
جرم

مقام
دارالافتاء
انجمن کوشش لٹامہ

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی و کل کاروائی متعلقہ
آن مقام کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز
وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ پر حلف دینے جواب دہی اور اقبال دعویٰ اور
بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ عرضی دعویٰ اور درخواست ہر قسم کی تصدیق
زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی
اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا۔ از بصورت ضرورت
مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے
تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے
اور اس کا ساختہ پر داختم منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے
سبب سے وہ 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 لکھد یا کہ سندر ہے۔

Muhammad Ishaq
صنبر خان

Accepted
Bach
Bach

المرقوم 26 ماہ جولائی 2014

العبد گدگ العبد
مقام لٹامہ کے لئے منظور ہے۔

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

Appeal No. _____ of 2014

Munir Khan

VERSUS

Director Higher Education and others

APPLICATION FOR EARLY HEARING

Respectfully Sheweth:

1) That the above noted appeal is fixed for arguments before this Hon'ble Tribunal on 17/11/2014.

2) That the petitioner prays for early hearing on the following grounds:-

Grounds:

A) That the petitioner has a good prima facie case and is hopeful for his success.

B) That the cause of delay in deciding the above cited appeal is the very late filing of written statement by the respondent No.1 which had suffered the petitioner.

Case file be
reinstated

BE
for 26/09/14

745
29-8-14

C) That if the instant appeal is not fixed for early hearing then the petitioner will further suffer an irreparable loss.


It is, therefore, prayed that on acceptance of this application, the above titled appeal may be fixed for early hearing as soon as possible.

Dated 26/07/2014

Appellant

Through

**Muhammad Siddique
&
Naseer ud Din Shah
Advocates, High Court,
Peshawar.**



Affidavit

Verified on oath that all contents of the application for early hearing is true and correct and nothing wrong has been stated in the matter.

Deponent