

25th Oct., 2022

Counsel for the appellant present. Mr. Naseerud Din Shah, Assistant Advocate General alongwith Munawar Khan, ADEO for respondents No. 1 to 3 present.


*Respondent No 4
was put on notice*

Respondents have not submitted reply/comments.

Learned Assistant Advocate General sought adjournment.

Another

~~but~~ chance is given to the respondents. Fresh notice be issued to respondent No. 4 through registered post. To come up for reply/comments on 15.11.2022 before S.B.


(Fareeha Paul)
Member(E)

13.07.2022

Learned counsel for the appellant present. Mr. Kabirullah Khattak, Additional Advocate General alongwith Mr. Munawar Khan ADEO for the respondents present.

Reply/comments on behalf of respondents not submitted. Representative of the respondents seeks time to submit reply/comments. Adjourned. To come up for reply/comments on 14.09.2022 before S.B.



(MIAN MUHAMMAD)
MEMBER (EXECUTIVE)

14th September, 2022

Counsel for the appellant present. Mr. Naseerud Din Shah, Asstt. AG alongwith Munawar Khan, ADEO for the respondents present.

Learned AAG requested for further time to submit reply/comments. Last chance is given. To come up for written reply/comments on 25.10.2022 before S.B.

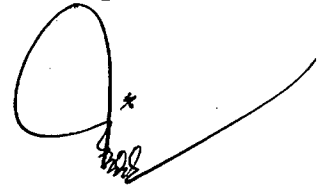


(Kalim Arshad Khan)
Chairman

18.10.2021

Clerk of learned counsel for the appellant present.

Former requests for adjournment due to general strike of the Bar. Adjourned. To come up for preliminary hearing before the S.B on 21.12.2021.



(MIAN MUHAMMAD)
MEMBER (E)

21.12.2021

Junior to counsel for appellant present.

Lawyers are on general strike, therefore, case is adjourned to 15.02.2022 for preliminary hearing before S.B.



(Rozina Rehman)
Member (J)

15.02.2022

Due to retirement of the Worthy Chairman the Tribunal is defunct, therefore, case is adjourned to 10.05.2022 for the same as before.



Reader

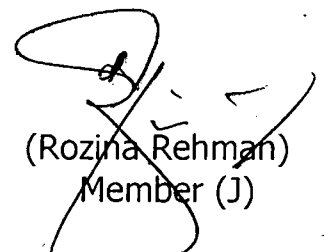
10.05.2022

Appellant present through counsel. Preliminary arguments heard. Record perused.

Points raised need consideration. Instant appeal is admitted for regular hearing subject to all legal objections with direction to appellant to deposit security and process fee within 10 days. Thereafter, notices be issued to respondents for reply/comments. To come up for written reply/comments on 13.07.2022 before S.B.

Rs-600/-
Appellant Deposited
Security & Process Fee

A. M. J. / 18/5/22



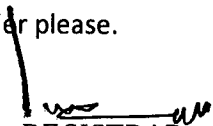

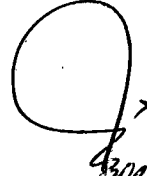
(Rozina Rehman)
Member (J)

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 2074 /2021


S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	19/07/2021	<p>The appeal of Mr. Jan Muhammad resubmitted today by Mr. Muhammad Amin Ayub 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.</p>
2-		<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>03/09/21</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
	03.09.2021	<p>Counsel for the appellant present.</p> <p>Learned counsel for the appellant requested for adjournment on the ground that he has not made preparation for arguments. Adjourned. To come up for preliminary hearing before the S.B on 18.10.2021.</p> <p style="text-align: right;"> (MIAN MUHAMMAD) MEMBER (E)</p>

The appeal of Mr. Jan Muhammad Chowkidar GGPS Mughal Baz District Khyber received today i.e. on 06.07.2021 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- The authority to whom the departmental appeal was made/preferred has not been arrayed a necessary party.
- 2- Annexure-G of the appeal is illegible which may be replaced by legible/better one.

No. 1165 /S.T.,

Dt. 07/07 /2021


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. M. Amin Ayub Adv. Pesh.

The objection may please be removed as in the light of 25th amendment and respondent No 2 is rightly arrayed as a party.


17/7/21

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 2074/2021

Jan Muhammad Appellant

Versus

The Govt. of KPK and others Respondents

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10.	Departmental Appeal	11.03.2021	I	26-27
11.	Wakalat Nama			

Through

Appellant

Muhammad Amin Ayub
Advocate, High Court

&

Muhammad Ghazanfar Ali
Advocate, High Court

4-B, Haroon Mansion
Khyber Bazar, Peshawar

Off: Tel: 091-2592458

Cell # 0313-9040434

Dated: 06/07/2021

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. _____/2021

Jan Muhammad

S/o Yara Jan,

Chowkidar, GGPS Mughal Baz,

District Khyber..... **Appellant**

VERSUS

1. **The Govt. of Khyber Pakhtunkhwa**
through Secretary,
Elementary & Secondary Education,
Civil Secretariat, Peshawar.
2. **The Director Education,**
Elementary & Secondary Education,
Khyber Pakhtunkhwa, Peshawar.
3. **The District Education Officer (Female),**
District Khyber
4. **The District Accounts Officer,**
District Khyber at Jamrud..... **Respondents**

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNALS ACT, 1974 WHEREBY DEPARTMENTAL APPEAL DATED 11.03.2021 FILED BY THE APPELLANT TO RESPONDENT NO.2 FOR RELEASING OF THE SALARIES FROM DECEMBER 2015 TILL AUGUST 2019 HAS NOT BEEN RESPONDED WITH IN THE STATUTORY PERIOD OF 90 DAYS.

PRAYER:

On acceptance of the instant appeal, the Respondents may kindly be directed to release the outstanding salaries of the appellant with effect from December, 2015 to August, 2019 with any other relief as deemed appropriate in the circumstances of case not specifically asked for, may also be granted to appellant.

Respectfully Sheweth,

Facts giving rere to the present appeal are as under:-

1. That the appellant got appointed as Class-IV employee on 08.02.2008 and was adjusted against the post of Chowkidar in Govt. Girls Primary School, Mughal Baz, Ekka Khel, District Khyber. It is adduced that from the very inception appellant has been discharging his duties to the entire satisfaction of his superiors.
2. That during the era of Talibanization i.e. 2009 to 2015 all Educational Institutions were either demolished or were non-functional which caused the ultimate damage to the learners and teachers in different aspects owing to subvert activities of the Tehreek-e-Taliban. Since the District Khyber was the most volatile area where all kinds of activities including Government Schools were closed, as is evident from the Press-Clipping dated 09.03.2021 (*Annex:-A*), albeit appellant continued performing his duties as is evident from the Affidavit (*Annex:-B*) which fact was also conceded by the concerned quarter vide Service Certificate (*Annex:-C*) and verified that the appellant had been performing his duties from the month of December 2015 till August 2019 but the salaries could not be paid owing to the cited circumstances. It would be significant to allege here that in the year 2015 the Government writ was maintained and all the institutions were re-opened.
3. That appellant was quite hopeful regarding releasing of his due salaries. As appellant was assured that his salaries would be released soon but the matter was kept pending without any legal justification, inspite of the fact that appellant had been performing his duties during that crucial period. It is advantageous to elaborate here that utter discrimination has been meted out towards the appellant by Respondent No.3 that even salaries were paid to those Government employees who did not perform their duties during that period which is clear depreciation of Article 25 & 27 of Constitution of Islamic Republic of Pakistan, 1973. Appellant time and again visited the concerned office for payment of his due/outstanding salaries but they turn the deaf ear where-after a series of written requests were also moved by the appellant but to no avail.
4. That appellant was constrained to invoke the jurisdiction of the Hon'ble Peshawar High Court in W.P No.6652/2018 which was put on hearing on 15.05.2019 and adjudicated (*Annex:-D*) in the following terms:-

“Waheedullah ADFO, Bara present in court candidly stated that petitioners are serving as regular employees of the respondents and they will be paid their salary. As such, this petition is allowed and respondents are directed to pay the monthly salary to the petitioners”.

After procuring the attested copy of the judgment *ibid*, the same was provided to the Respondent No.3, for implementation but in spite of the commitment made by the Representative at the bar, the salaries of the appellant could not be released which led to COC No.599/2019 which was decided on 20.08.2019 (*Annex:-E*) by virtue of office letter dated 05.07.2019 (*Annex:-F*) whereby the salary of the appellant was released, however, unpaid salaries were not paid to him, despite the same that appellant had been performing his duties which fact was categorically acceded to by the Respondents.

5. That it is Significant to expound here that later on an inquiry was conducted (*Annex:-G*) by the Inquiry Officer Mr. Muhammad Zahid, Vice Principal, Govt. High School Kohi Sher Haider, Bara, to probe into the matter of the outstanding salaries of the appellant who concluded the same on the following term:-

“Persons under Inquiry or serving in education department NMD (District Khyber). It is evident from their record that they have been rendering their service regularly in this department. The court verdict reveals the fact that the ADEO Bara Mr. Waheedullah has candidly stated that Petitioners (All of the employees under inquiry) are serving as regular employees of Respondents i.e. Education Department, District Khyber, and they will be paid their salaries but the court decision does not clearly mention about the back benefit i.e. arrears to be paid.

Recommendations :-

As the employees have been recognized as “Regular Employees” of the Education Department by District Education Officer, Khyber, therefore, the arrears of the period for which they did not get any salary may please be paid as per rule.

5. That thereafter appellant was hopeful that his salaries would be released as he was regularly performing his duties therefore, was entitled to be paid the arrears of salaries w.e.f. December 2015 till August 2019 would also be paid but to the utter bewilderment of the appellant the same was refused.

Eventually, appellant again knocked the door of the Hon'ble Peshawar High Court, Peshawar in COC No. 213/2020 for implementation of the judgment dated 15.05.2019. The Department was served upon Notices who appeared and resultantly the COC was disposed of on 16.06.2020 (*Annex:-H*) wherein appellant plea was considered to be genuine but appellant was directed to approach this Hon'ble Tribunal.


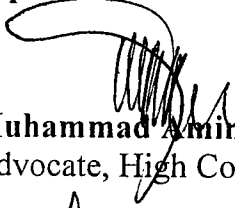

6. That thereafter appellant availed the remedy of Rule-3 of Appeal Rules, 1986 and preferred Departmental Appeal dated 11.03.2021 (*Annex:-I*) before Respondent No.2 for grant of arrears of salaries w.e.f. December, 2015 to August, 2019 but the same was not disposed of within the statutory period of 90 days, hence appellant being aggrieved of the acts and omissions of the Respondents/Department prefers this Service Appeal inter-alia on the following grounds:-

GROUND:

- A. **That** the appellant has not been treated fairly, justly as the District Education Officer, Khyber unlawfully refused his request for the payment/release of outstanding salary without any cogent reason because appellant performed his duties without any interruption, therefore, he had to be paid the salaries but he was unlawfully deprived of his lawful right of salary which is not sustainable in the eye of the law and is against natural justice.
- B. **That** it is a well settled principle of law that salary of an employee cannot be stopped even during the course of his suspension from service, despite the fact that appellant performed his duties with utmost devotion but still the salaries of appellant had illegally been stopped, which amounts to forced labour, therefore, Respondent No.3 has acted in violation of Article-11 of the Constitution of the Islamic Republic of Pakistan, 1973.
- C. **That** appellant has been serving the Department to the best of his capabilities with unblemished service record. Even the high-ups admired the performance of the appellant and throughout his service no complaint whatsoever has ever been lodged against him, thus the refusal of Respondents to pay his salaries is without any legal justifications is totally deviation from law, hence not sustainable in the eye of law.

- D. **That** the writ petition of the appellant was allowed on the commitment of the Respondents/Department wherein they stated at the bar that appellant is a regular employee of the Department and has been discharging his duties w.e.f. December 2015 till August 2019, which did not left any room to pay the due salaries of the appellant.
- E. **That** under the law an employee cannot be deprived from his salary which amounts to usurp bread from the mouth of a poor employee and his family. The foundation of the Constitution of Islamic Republic of Pakistan, 1973 is based upon the non-exploitation and equality of citizens, thus, appellant was highly exploited by not paying the due/outstanding salaries which is sheer violation of Article-11 of the Constitution. Moreover, the Department applied a different yard stick and paid salaries to other employees of Respondent No.3 while the appellant was singled out which is also against the principle of natural justice.
- F. That appellant would like to offer some other grounds during the course of arguments.

It is, therefore, humbly prayed that the instant appeal may graciously be accepted as prayed for above.


Appellant
 Through

Muhammad Amin Ayub,
 Advocate, High Court
 &

Muhammad Ghazanfar Ali,
 Advocate, High Court

Dated: 06 /07/2021

Affidavit

I, Jan Muhammad S/o Yara Jan, Chowkidar, GGPS Mughal Baz, District Khyber, 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 nothing has been concealed from this Hon'ble Tribunal.


Deponent

76 Part A

Tuesday

March 9, 2021

Rajab 24, 1442 A.H

18 pages

Price Rs. 25.00

NATIONAL 3

School at Durand Line reopens after 7 years closure

Ashrafuddin Pirzada

LANDIKOTAL: The last state-run school on the Durand Line in far-flung Loey Shalman area of Landikotal, which had been closed for security reasons, reopened on Monday after seven years, officials said.

A colourful ceremony was held at Gulab Killay School which was participated by a large number of villagers, parents, Education Department and Pakistan Army officials.

Assistant District Education Officer of Khyber, Misal Khan Shalmani, in his speech said that Government Primary School Gulab Killay was closed some seven years ago due to the security situation along the Durand Line.

The school was built a few yards from the fencing installed on border with Afghanistan inside Pakistan, restored in Loey Shalman border areas and the security forces had done fencing allocated in the current year's funding to the school.

He said the school had suffered damage due to its long closure. He said they would start construction work soon and construct extra rooms in the school. "Initially, both boys and girls can be enrolled in the school as there are no separate schools in the nearby locality", said ADEO Shalmani.

He requested the officials to release the allocated funds at the earliest so that they could start the reconstruction and renovation work.

Misal Khan said the security forces officials at the request of the Education Department had issued the clearance to reopen the school. He said sector commander north had ordered the reopening of the school.

Commandant Colonel Suhail Tanveer and Major Aamir said peace had been restored in Loey Shalman border areas and the security forces had done fencing to block the terrorists' movement.

THE NEWS INTERNATIONAL

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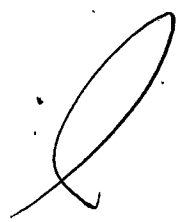
theNewspak

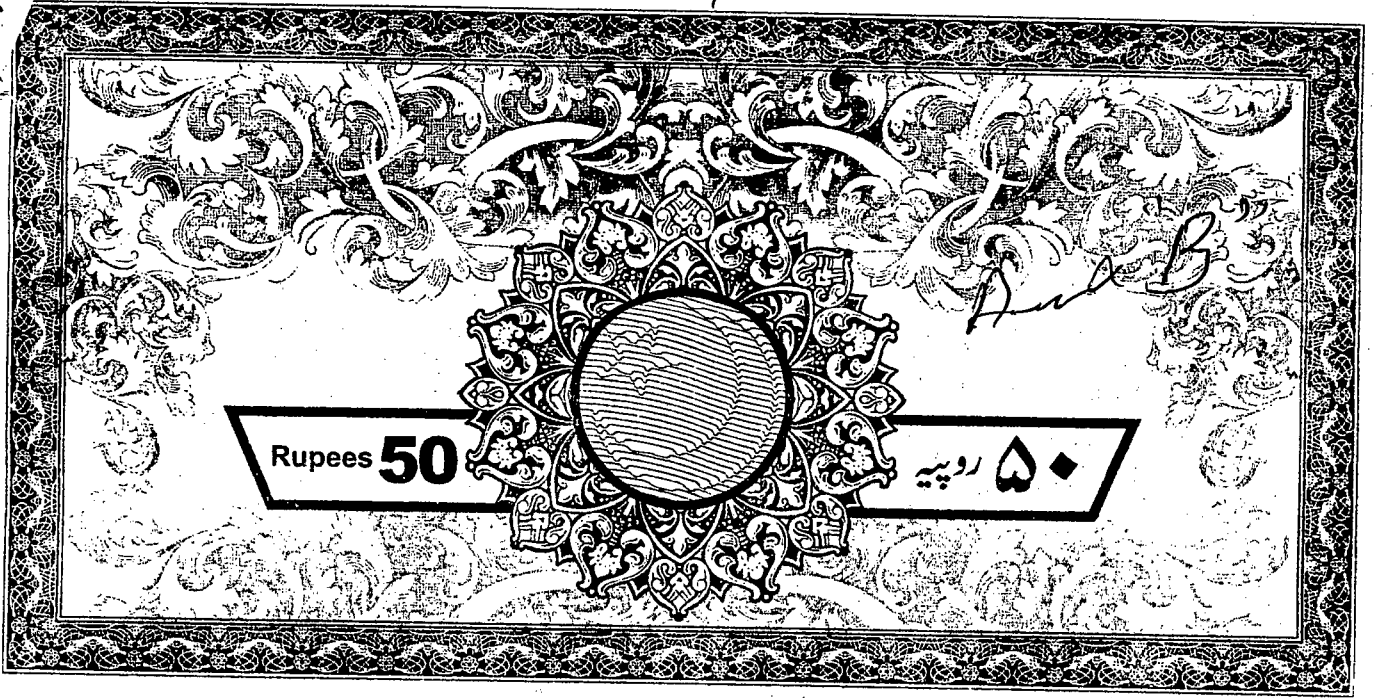
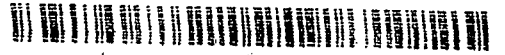
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JANG GROUP OF NEWSPAPERS





بیانِ حلف

میں جان محمد ولید باوان جو کنگرا ہوسٹل میں
 عقلی طور پر سکول میں اعلیٰ ترین سطح سے خدمات سر انجام دے رہا ہوں
 اور میری نخواستہ دسمبر 2019 سے لے کر آگست 2019 تک بند ہو
 اور اب ستمبر 2019 کو جاری کر دیا گیا ہے۔ تین ماہی 03
 نخواستہ دسمبر 2019 سے لے کر آگست 2019 تک کبھی جاری نہ ہو

جان محمد ولید

درخواست نمبر 11

جان محمد

21201-8674194-7

He is serving regularly

Q

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تقدیریں بیان
Amir

میں محنت پیدائش آف جی جی بی ایس مغل باز
بارہ اکاؤنٹ کٹر دی بی بی دیتے ہیں کہ جان محمد
جو لکھنؤ اور گل حیرتہ کالر درجہ بالا سکول میں

اعلیٰ طرز سے خدمات سر انجام دے رہے ہیں
میں خدمات کی بنیاد پر ان کے بند نخواستہ جاری
کیا جائے۔

عمری تقدیریں بیان کی بنیاد پر قانونی طور پر
ان کے نخواستہ جاری کرنے میں معاونت کی جائے
درجہ بالا ملازمین کی نخواستہ دسمبر 2012 سے بند کر دیں

District Khyber
G.P.O. Mughalbaz
Soh

BEFORE THE PESHAWAR HIGH COURT, PESHAWAR



W.P No. 6652 /2018

1. Gul Harina W/o Sher Mir Khan R/o Miran Talab Aka Khel Bara District Khyber presently at Caller of Govt Girls primary School Mughal Baz Eka Khel Bara District Khyber.
2. Jan Muhammad S/o ^{Ya}Jan R/o Mughal Baz Aka Khel Bara District Khyber, presently Chowkidar in Government Girls Primary School Mughal Baz Eka Khel Bara District Khyber.

.....Petitioners

VERSUS

1. Secretary Education for Government of Khyber Pakhtunkhwa Peshawar.
2. Additional Chief Secretary (FATA) Warsak Road Peshawar.
3. Director Education FATA Newly Merged District (NMD) Warsak Road Peshawar.
4. DEO District Khyber.

.....Respondents

WRIT PETITION UNDER ARTICLE 199
OF THE CONSTITUTION OF ISLAMIC
REPUBLIC OF PAKISTAN 1973 READ
WITH OTHER ENABLING PROVISIONS
OF LAWS APPLICABLE IN THE
MATTER, TO ISSUE APPROPRIATE
WRIT AGAINST THE RESPONDENTS TO
RELEASE THE MONTHLY PAYABLE
SALARIES OF BOTH THE PETITIONERS
OF PREVIOUS 37 MONTHS, LYING
REMAINED UNPAID TILL DECEMBER

ATTESTED
EXAMINER
Peshawar High Court

ATTESTED
EXAMINER
Peshawar High Court

9

10

Respectfully Sheweth:

Petitioner most humbly submits as below:

1. That the petitioners are serving as there above sited designations in the introduction of the writ petition, in Government Middle School Yara Jan Kalley Aka Khel Bara District Khyber, since their previous enough past initial appointment and till yet fulfilling their obligations with zeal and zest rather with all their abilities and capabilities, to the utmost satisfaction of their superiors.
2. That the department has fixed monthly salaries of both petitioners throughout of their initial appointment and successfully paid to him till December 2010, **BUT** after the arrival of the January 2011, the respondents are yet not paid a single penny in view of the monthly salaries both petitioners till date, **HOWEVER** petitioners are still fulfilling their jobs with their immense commitment. *(COPY OF PAY ROLL IS ANNEX AS ANNEXURE A)*
3. That petitioners time and again approached, month to month, to the respondents for redressal of their grievances but the respondents turned their deaf ears towards the lawful asking or claim of the petitioners, hence petitioners are suffering no adequate efficacious remedy, therefore their writ petition inter alia on the following grounds amongst others against the illegal, unlawful conduct of the respondents, to invoke constitutional jurisdiction of this Apex Court.

ATTESTED
EXAMINER
Peshawar High Court

ATTESTED
EXAMINER
Peshawar High Court

②

11

G R O U N D S:

- A. That the act of the respondents with regard to non payments of the payable salaries amount of approximately 96 months, lying remained unpaid since January 2011, are quit illegal, unlawful, unjust, unfair not warranted by any regulations ab-initio, not sustained in the eye of law hence liable to be strictly intervene.
- B. That the petitioners have been treated by the respondents against the law and they were also willfully be deprived from their legal rights of monthly salaries, protected under the equal protection of law as guaranteed by Article 4 and 25 of Constitution of Islamic Republic of Pakistan thus committed gross exploitation.
- C. That it is the set precedents of the Hon'ble Apex courts of Pakistan in such like matters that no one can be deprived from the relaxation and facilitation of the monthly salary particularly of the government reply, it has further suggested that since the whole family of any such like aggrieved is relying upon the monthly salary therefore for to quash the daily routine hardships, their right cannot be snatched on any ground.
- D. That any other ground will be taken at the time of argument with the kind permission of their Hon'ble Court.

ATTESTED

EXAMINER
Peshawar High Court

44

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It is therefore most humbly prayed that on acceptance of their writ petition the appropriate writ may graciously pleased be issued to the respondent to release the monthly salaries of both above petitioners i.e. 96 months, yet remained unpaid since January 2011.

Petitioners

Through

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Jahangir Khan Afridi
Advocate High Court
Peshawar

Date: 19-12-18

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EXAMINER
Peshawar High Court, Peshawar
Authorized Under Article 8.7 of
The Quinine-Shahadat Order 1984

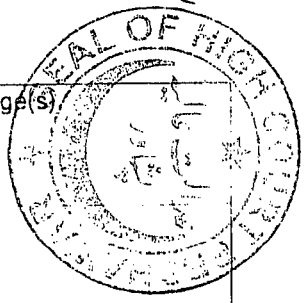
20 FEB 2019

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ATTESTED

EXAMINER
Peshawar High Court

FORM OF ORDER SHEET

-13- Am B
 (12)



Date of order or proceedings.	Order or other proceedings with signature (s) of Judge(s)
(1)	(2)
15.05.2019	<p><u>W.P.No.6652-P/2018</u></p> <p><u>Present:</u> MR. Jehangir Khan Afridi, Advocate for the petitioners.</p> <p>Mr. Rab Nawaz Khan, AAG for the respondents alongwith Waheed Ullah, ADEO, Bara.</p> <p>***</p> <p><u>IKRAMULLAH KHAN, J:-</u> Waheedullah ADEO, Bara present in court candidly stated that petitioners are serving as regular employees of the respondents and they will be paid their salary. As such, this petition is allowed and respondents are directed to pay the monthly salary to the petitioners. ✓</p> <p style="text-align: right;">JUDGE</p>

No.	26656
Date of Presentation of Application	19/5/2019
No of Pages	4
Copying fee	577
Total	577
Date of Preparation of Copy	20/5/2019
Date of Delivery of copy	20/5/2019
Received By	[Signature]

[Signature]
 JUDGE

CERTIFIED TO BE TRUE COPY

EXAMINER
 Peshawar High Court, Peshawar
 Authorised Under Article 117 of
 The Constitution of Pakistan

20 FEB 2019

-1408

1st Case
Rm & E

BEFORE THE PESHAWAR HIGH COURT, PESHAWAR

COC No. 599/601 of 2019

in

Writ Petition No. 6652-P/2018



- 1 Gul Harina W/o Sher Mir Khan R/o Miran Yalab Aka Khel Bara District Khyber presently at caller of govt girls primary School Muhgal Baz Aka Khel Bara District Khyber
- 2 Jan Muhammad S/o Yara Jan R/o Mughal Baz Aka Khel Bara District Khyber, Presently Chowkidar in Government Girls Primary School Mughal Baz Aka Khel Tehsil Bara Districts Khyber.

..... Petitioners

VERSUS

Muhammad Judoon Wazir, District Education Officer
(DEO) District Khyber

..... Respondents

PETITION UNDER ARTICLE 204 OF CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN, 1973 READ WITH SECTION 3 & 4 OF THE CONTEMPT ACT 2003, FOR INITIATING CONTEMPT OF COURT PROCEEDINGS, AGAINST THE RESPONDENT AND AWARDING EXEMPLARY PUNISHMENT, WHEREBY DESPITE OF THE ADMISSION MADE ON BEHALF OF THE REPRESENTATIVE OF THE WORTHY EDUCATION DEPARTMENT THE DEO BARA, WHEREBY HE ENSURED TO THIS HON'BLE COURT THAT THE MONTHLY SALARY OF THE PETITIONER WOULD BE PAID, BUT SINCE THE ORDER PASSED BY THIS HON'BLE COURT DATED 15.05.2019, ON THE CONFIRMATION OF THE RESPONDENTS, THE

[Signature]

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E
ATTESTED
EXAMINER
Peshawar High Court

② 157

PETITIONERS ARE STILL SUFFERING WITH THEIR UNRELEASED SALARIES.

Respectfully Sheweth: -

Petitioner most humbly submits as below:

1. That the titled Writ Petition was preferred on behalf of the petitioners against the illegal unlawful act of the respondents, whereby the monthly salaries since December 2015 till now, are not released to the petitioners.
2. That while the above titled case was taken up by this Hon'ble court on 15.05.2019, the representative of the worthy department of education i.e. Mr. Waheed Ullah ADEO Bara was duly present before this hon'ble court and stated at the bar, reproduced his statement herein with the further directions of this Hon'ble court:

" Waheedullah ADEO, Bara present in court candidly stated that petitioners are serving as regular employees of the respondents and they will be paid their salary. As such, this petition is allowed and respondents are directed to pay the monthly salary to the petitioners."

(Copy of order of this Hon'ble court dated 15.05.2019 is attached as annex A)

3. That despite of the above commitment of ADEO Bara before this Hon'ble court almost sufficient enough era of

ATTESTED
EXAMINER
Peshawar High Court

two and half month has been passed away but till now the petitioners are surviving with their legal rights of salaries. Hence this contempt of court petition.

- 4. That the act of the respondents is neglectful in nature, which amounts to warrant interference of this Hon'ble under the enactment & applicable codification Article 204 and section 3&4 of contempt of court Act, 2003 as well.
- 5. That since December 2015 till now, the consistent services of the petitioners have passed away but not a single penny has paid in reward of that service to the petitioners by the respondents till now, which is gross violation of the fundamental as well as natural rights of the petitioners.
- 6. That the act and attitude of the respondent against the above subsequent orders of this Hon'ble court, is speaking contempt of this Hon'ble court and need to be treated accordingly.

It is thus prayed that in the light of the above sketch, this Hon'ble Court may graciously be put into notice to respondents by initiating contempt proceedings against him directed to release the monthly payable salaries of the petitioners of since December 2015 till now.

Dated:- 08.08.2019

CERTIFIED TO BE TRUE COPY
Examined & Certified
Peshawar High Court, Peshawar
Authorised Under Article 87 of
the Qanun-e-Mahkamat Order 1973

23 AUG 2019

Petitioners

Jahangir Khan Afrifi
Advocate High Court,
Peshawar

17

BEFORE THE PESHAWAR HIGH COURT, PESHAWAR

COC No. _____ of 2019

in

Writ Petition No. 6652-P/2018

Gul Harina & another Petitioners

VERSUS

Muhammad Jadoon Khan Wazir, District Education
Officer (DEO) District Khyber

.....Respondents

AFFIDAVIT

I, Jan Muhammad S/o Yaqub Jan R/o Mughal Baza Eka Khel bara District Khyber, (petitioner No. 2) do hereby solemnly affirm and declare on oath that the contents of the accompanying Contempt of Court Petition are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.

Identified by:

DEPONENT

CNIC: 21201-8674194-7

Cell No. 0336-4221002

Jahangir Khan Afridi
Advocate, Peshawar

29/8/19

July
Yaz Jan

19 Jan Mughd
khyber
Jahangir

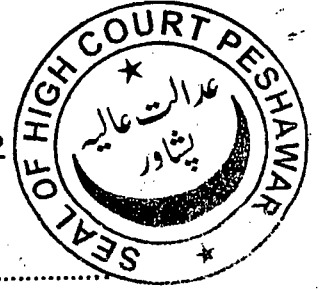
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Peshawar High Court, Peshawar
Authorised Under Article 87 of
the Qanun-e-Shahadat Order 1974

23 AUG 2019

JUDGMENT SHEET

IN THE PESHAWAR HIGH COURT, PESHAWAR.
JUDICIAL DEPARTMENT
COC No: 599-P of 2019 in W.P
No.6652-P/2018.
JUDGMENT



Date of hearing. 20.08.2019
Appellant(s)/Petitioner (s) By Mr. Jehangir Khan Afridi,
Advocate.....

Respondent (s) By: Mr. Muhammad Sohail Khan AAG.

MUHAMMAD NAEEM ANWAR, J:- The instant
COC No.599-P/2019 and COC No.601-P/2019
are the outcome of W.P No.6652-P/2018
decided on 15.05.2019, as such, both the
applications are being decided through this
single order.

2. Petitioners of COC No.599-P/2019 and
petitioners of COC No.601-P/2019 have sought
initiation of contempt of Court proceedings
against the respondent for his failure to
implement the order of this Court dated
15.05.2019.

3. At the very outset, the learned AAG
produced letter bearing No.8925 dated
05.07.2019 from the office of District Education
Officer Khyber Tribal District at Jamrud,
whereby the salaries of the petitioners of the

ATTESTED
EXAMINER
Peshawar High Court

aforementioned COCs have been released through the aforementioned order and the external inquiry was also ordered.

4. Mst Gul Harina wife of Sher Mir Khan and Jan Muhammad son of Yara Jan are the petitioners of COC No.599-P/2019, whereas Sar Mir Khan son of Rasool Jan and Muhammad Jan son of Yara Jan are the petitioners of COC No.601-P/2019.

5. We have gone through the order of this Court in W.P No.6652-P/2018 wherein on 15.05.2019 the said petition was allowed and the respondents were directed to pay the monthly salary to the petitioners.

6. Keeping in view the office order as produced by the learned AAG as the salaries of petitioners have already been released, therefore, both the COCs are dismissed accordingly.

Announced:
20.08.2019
(Ayub)

Ayub
JUDGE
Ayub
JUDGE

ll Hon'ble Mr. Justice Lal Jan Khattak.
Hon'ble Mr. Justice Muhammad Naeem Anwar.

P

CERTIFIED TO BE TRUE COPY
Examiner
Peshawar High Court, Peshawar
Authorized Under Article 87 of
the Constitution of Pakistan 1973
[Signature]
23 AUG 2019

The District Accounts Officer,
Khyber Tribal District at Jamrud.

20
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Subject:

PAY RELEASE IN R/O (04) EMPLOYEES /COURT CASE W.P NO. 6652-P/2018
& 6655-P/2018 DATED 15.05.2019

Memo:

Reference is made to the subject cited above in respect of the following official of Education Khyber to release Pay with immediate effect as per the judgement of Peshawar High Court Peshawar of the above mentioned subject and recommendation of ~~...~~ Inquiry Officer dated, 05/07/2019.

S.NO.	Name/Desig.	School	Personnal No.
1	Mohammad Jan Sweeper S/O Yara Jan	GMS Yara Jan Killi Bara	00411614
2	Sar Mir Khan N/Qasid S/O Rasool Jan	GMS Yara Jan Killi Bara	00411612
3	Gul Harina Caller W/O Sher Mir	GGPS Mughal Baz Killi Bara	00423582
4	Jan Muhammad S/O Yara Jan	GGPS Mughal Baz Killi Bara	00423569

Encl. No. _____

DISTRICT EDUCATION OFFICER
KHYBER TRIBAL DISTRICT AT JAMRUD
Dated _____ 2019

- Copy of the above is forwarded to the:
1. Registrar Peshawar High Court Peshawar w/r to subject cited above.
 2. Director Education NMTDs at Peshawar.
 3. Deputy Commissioner Khyber Tribal District at Peshawar.

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The District Education Officer Khyber,
At Jamrud

- 21

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Subject

Enquiry Report

Memo

Reference your office letter No.14298-97 dated 28-11-2019
This enquiry report is submitted for onward processing of the case please

BACKGROUND INFORMATIONS

The pay of the following employees of the education department District Khyber was stopped in FCR cases. Detail of the employees is given as under.

S. No	Name with Father Name	Design	School name	Personal No	Pay stopped w.e.f
1	Mohammad Jan S O Yara Jan	Sweeper	GMS Yara Jan	00411614	1.10.2011
2	Sai Meer Khan S O Rasool Jan	N/Qasid	GMS Yara Jan Bara	00411612	1.08.2011
3	Gul Hareena W O Sher Meer	Caller	GGPS Mughal Baz Bara	00423582	1.12.2015
4	Jan Mohammad S O Yara Jan	Chowkidar	GGPS Mughal Baz Bara	00423569	1.12.201

Now the salaries of the above mentioned employees have been released / opened as a result of the judgment of the Honorable Peshawar High Court in favor of the mentioned employees. Your good self has made necessary correspondence with district Account Office Khyber in this connection.

The mentioned employees are claiming the arrears of the period for which their salaries remained stopped (vide above given chart).

PROCEDURE FOLLOWED

The undersigned called all of the employees in person, interviewed them and took their written statements separately of each employee on Stamp paper of Rs. 50.00. The statements mention the period of the closure of their pay. The statements have been Countersigned by the Head Teachers (Vide F.1, F.2, F.3, F.4)

A brief visit to district Account Office Khyber at Jamrud was also made in this connection.

EVIDENCE COLLECTED

1. Judgment of the PHC deciding the case in favor of the employees, vide F.5.
2. Statement of the Head Teachers regarding the service of the employees, vide F.6
3. Pay Slips of the employees issued by District Account Office Khyber, vide F.7
4. Enquiry Report about the service verification and pay release of the employees by Ex ADEO Bara Mr. Sher Zaman as inquiry officer in the case.
5. Photocopy of CNIC of the employees.
6. Appointment orders (vide F-10 (a) to (d)).
7. Service Verification Certificate from concerned ADEOs (vide F-11 a, F-11 b)

FINDINGS

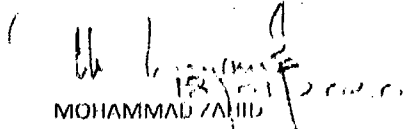
The persons under inquiry are serving in Education department NMD (district Khyber). It is evident from their record that they have been rendering their service regularly in this department. The court verdict reveals the fact that the ADEO Bara Mr. Waheedullah has conditly stated that Petitioners (All) of the employees under inquiry are serving as regular employees of Respondents i.e. Education department district Khyber, and they are entitled to their salary. But the court decision does not clearly mention about the back pay i.e. arrears.

Inquiry Officer
After your transfer to report following observations were made in the file
regularly.
The employees be paid their
arrears/ service and arrears
in accordance with the
court decision.
Accordingly it is suggested that
the court is to be

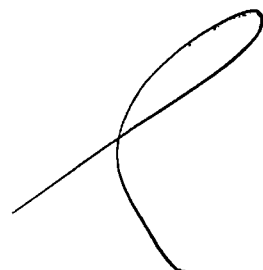
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RECOMMENDATIONS

As the employees have been recognized as "Regular Employees" of the Education department by District Education office Khyber, therefore, the arrears of the period for which they did not get any salary may please be paid as per rule;


MOHAMMAD ZAHID
(Inquiry officer)
VICE PRINCIPAL
GHS KOHI SHER HAIDER BARA

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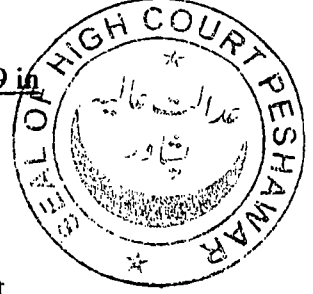
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Judgment Sheet
PESHAWAR HIGH COURT, PESHAWAR
JUDICIAL DEPARTMENT.

COC No. 213-P/2020 in COC No. 599-P/2019 in

W.P.No.6652-P/2018

Gul Harina and another
Versus
Muhammad Shoukat Khan, District
Education Officer (DEO) District Khyber.



Date of hearing 16.06.2020

Petitioners by: Mr. Jehangir Khan Afridi, advocate.

JUDGEMENT

IJAZ ANWAR. J:- The instant petition has been filed under Article 204 of the Constitution of Islamic Republic of Pakistan, 1973 read with Section 3/4 of the Contempt of Court Act for initiating Contempt proceedings against the respondents for non-compliance of order of this Court dated 20.08.2019 passed in COC No. 599-P/2019 in WP No. 6652-P/2018.

2. In essence, the grievance of petitioners is that despite order of this Court, dated 15.5.2018

ATTESTED

EXAMINER
Peshawar High Court

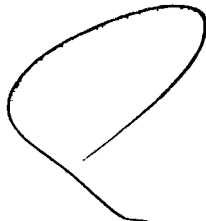
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passed in W.P No.6652-P/2018 followed by order dated 20.8.2019 in COC No. 599-P/2019, the respondent is not paying them their arrears of salaries.

3. Arguments heard and record perused.

4. Perusal of record reveals that this Court vide order dated 15.5.2019 while disposing of writ petition No. 6652-P/2018 allowed the writ petition with direction to respondent to pay monthly salaries to the petitioners. When the order of this court was not complied with, the petitioners have filed COC No. 599-P/2019 in this court which was dismissed when the learned AAG conveyed that the salary of petitioners has already been released vide order dated 20.8.2019. Learned counsel representing the petitioners was confronted with these facts and dismissal of the earlier contempt petition, he argued that the arrears of salaries are not paid to him.



ATTESTED

EXAMINER
Peshawar High Court

23

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5. Since this court has not given any direction for the arrears of salaries, as such, the order of this court stood complied with and there is no question of any violation of order of this Court. The petitioners have, if any grievance regarding arrears of salaries, they may approach the Services Tribunal in accordance with law. However, so far as this petition is concerned, the same is misconceived which stands dismissed.

[Signature]
 JUDGE
 JUDGE

Announced on;
 Dated. 16.06.2020

D.B. Hon'ble Mr. Justice Lal Jan Khattak & Hon'ble Mr. Justice Ijaz Anwar

[Signature]
 CERTIFIED TO BE TRUE
 20 JUN 2020

No. 38511
 Date of Presentation of Application 17-6-2020
 No of Pages 07 P
 Copying fee 28/-
 Total 28/-
 Date of Preparation of Copy 20/6/2020
 Date of Delivery of copy 20-6-2020
 Received By Subject

[Signature]

To,

The Director Education FATA,
Newly Merged District Khyber,
Warsak Road, Peshawar.

- 26 August 2021
Diary Number 1033
03
dated 11/08/2021

Subject: Departmental Representation for the grant of arrears of salaries w.e.f. December, 2015 to August, 2019.

Respected Sir,


With due respect I have the honour to submit this departmental representation for your kind consideration and favorable action on the following facts and grounds:

1. That the applicant got appointed as Class-IV employee on 08.02.2008 and was adjusted against the post of Chowkidar in the Govt. Girls Primary School, Mughal Baz, Ekka khel, District Khyber. It is adduced here that from the very inception applicant has been discharging his duties to the entire satisfaction of his superiors.
2. That during the era of Talibanization from i.e. 2009 to 2015 all the Educational Institutions were either demolished or non-functional which caused the ultimate damage to the learners and teachers in different aspects owing to subvert activities of the Tehreek-e-Taliban. Since the District Khyber was the most volatile area where all kinds of activities including Government Schools were closed, as is evident from the press clipping dated 09.03.2021, albeit applicant continued performing his duties but the salaries could not be paid owing to the cited circumstances. It would be significant to allege here that in the year 2015 the Government writ was maintained and all the institutions were re-opened.
3. That applicant was quite hopeful regarding releasing of his due salaries. As applicant was assured that his salaries would be released soon but the matter was kept pending without any legal justification, In spite of the fact that applicant had been performing his duties during that crucial period. It is advantageous to elaborate here that utter discrimination has been meted out towards the applicant by the District Education Officer, Khyber that even salaries were paid to those Government employees who did not perform their duties during that period which is clear depreciation of Article 25 & 27 of Constitution of Islamic Republic of Pakistan, 1973. Applicant time and again visited the office/ District Education Officer, Khyber for payment of his due/outstanding salaries but the turn the deaf ear where after a series of written requests were also moved by the applicant but to no avail.
4. That applicant was constrained to invoke the jurisdiction of the Hon'ble Peshawar High Court in WP No. 6652/2018 which was put on hearing on 15.05.2019 and adjudicated in the following terms:-

"Wahedullah ADFO, Bara present in court candidly stated that petitioners are serving as regular employees of the respondents and they will be paid their salary. As such, this petition is allowed and respondents are directed to pay the monthly salary to the petitioners".

After procuring the attested copy of the judgment ibid, the same was provided to the District Education Officer, Khyber for implementation but in spite of the commitment made by the Representative at the bar, the salaries of the applicant could not be released which led to COC No. 599/2019 which was decided on 20.08.2019 by virtue of office letter dated 05.07.2019 whereby the salary of the applicant was released, however, unpaid salaries were not paid to him, despite the same that applicant had been performing his duties which fact was categorically acceded to by the District Education Officer, Khyber.

5. That since the Representative of the District Education Officer, Khyber candidly conceded that applicant is regular employee of the Department and discharging his duties, therefore, applicant was assured that arrears of salaries w.e.f. December, 2015 to August, 2019 would also be paid but to the utter bewilderment of the applicant the same was refused. Eventually,



applicant again knocked the door of the Hon'ble Peshawar High Court, Peshawar in COC No. 213/2020 for implementation the judgment dated 15.05.2019. The Department was served upon Notices who appeared and resultantly the COC was disposed of on 16.06.2020 wherein applicant plea was considered to be genuine but applicant was directed to approach the Khyber Pakhtunkhwa Service Tribunal.

6. That now the applicant being aggrieved of the acts and omission of the Department prefers this departmental Representation inter-alia on the following grounds:-

Grounds:

A. That the applicant has not been treated fairly, justly as the District Education Officer, Khyber unlawfully refused his request for the outstanding salary without any cogent reason because applicant performed his duties without any interruption, therefore, he had to be paid the salaries but he was unlawfully being deprived of his lawful right of salary which is not sustainable in the eye of the law and against natural justice.

B. That it is a well settled legal principle of law that salary of an employee cannot be stopped even during the course of his suspension from service, despite the fact that applicant performed his duties with utmost devotion but still the salaries of applicant had illegally been stopped, which amounts to forced labour, therefore, District Education Officer, Khyber has violated Article-11 of the Constitution of the Islamic Republic of Pakistan, 1973.


C. That applicant has been serving the Department to the best of his capabilities with unblemished service record. Even the high-ups admired the performance of the applicant and throughout his service no complaint whatsoever has ever been lodged against him, thus the refusal to pay him salaries on the part of Department is without any legal justifications is totally deviation from the law, hence not sustainable in the eye of law.

D. That the writ petition of the applicant was allowed on the commitment of the Department wherein they stated at the bar that applicant is a regular employee of the Department and discharging duties, therefore, did not left any room to pay the due salaries of the applicant w.e.f December, 2015 to August, 2019.

E. That under the law an employee cannot be deprived from his salary which amounts to usurp bread from the mouth of poor employee and his family. The foundation of the Constitution of Islamic Republic of Pakistan, 1973 is based upon the non-exploitation and equality of citizens, thus, applicant was highly exploited by not paying the due/outstanding salaries which is sheer violation of Article-11 of the Constitution. Moreover, the Department made a different yard stick and paid salaries to other employees of the District Education Officer, Khyber while the applicant was singled out which is also against the principle of natural justice.

It is, therefore, humbly requested that on acceptance of this Departmental Representation, the arrears of salaries w.e.f December, 2015 to August, 2019 may kindly be paid to the appellant forthwith.

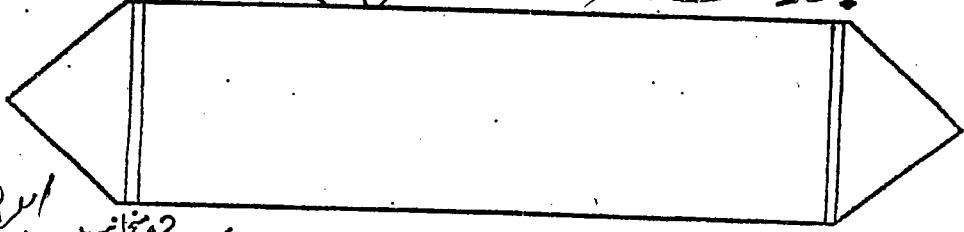
Yours faithfully,


Jan Muhammad S/o
Yara Jan (Chowkidar)
GGPS, Mughal Baz
District Khyber

Dated: 10/03/2021



بعدالت سرور سے منظور ہونے والی درخواست



اسرار
جناب
بنام
والمست

جان محمد

موزخہ
مقدمہ
دعویٰ
جرم

باعث تحریر آئینہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی اور جواب دہی دکن کارروائی متعلقہ اس کے
آن مقام کے لیے

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا۔ نیز
وکیل صاحب کو رضی نامہ کرنے و تقرر ثالثہ فیصلہ برحلاف دیئے جواب دہی اور اقبال دعویٰ اور
بصورت ڈگری کرنے اجراء اور وصولی چیک درو پیسہ ارضی 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 منسوخ
نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور
کے کل یا جزوی کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ لیا اپنے بجائے تقرر کا اختیار
ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ با اختیار حاصل ہوں گے اور اس کا ساختہ
پرواختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ ہر جانا التوائے مقدمہ کے سبب سے ہوگا۔
کوئی تاریخ پیشی مقام دورہ نہ ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی
مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سند ہے۔

المرقوم ۵۸
ماہ ۲۰۲۱

واہ الع
بمقام
کے لئے منظور ہے۔