

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.

Respondents have not submitted reply/comments.

Learned Assistant Advocate General sought adjournment.

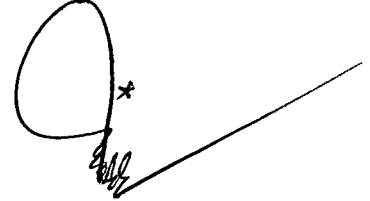
Another
~~last~~ chance is given to the respondents. Fresh notice be issued to respondent No. 4 through registered post. To come up for reply/comments on 15.11.2022 before S.B.


(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.

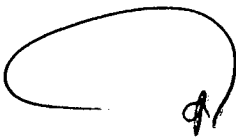
Former requests for adjournment due to general strike of the Bar. Adjourned. To come up for preliminary hearing before the S.B on 21.12.2021.


(MIAN MUHAMMAD)
MEMBER (E)

21.12.2021

Junior to counsel for appellant present.

File to come up alongwith connected Appeal No.7074/2021 on 15.02.2022 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.


(Rozina Rehman)
Member (J)

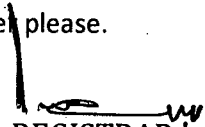


Rs-600/-
Appellant Deposited
Security & Process Fee

A. H. Jilani
18/5/22

FORM OF ORDER SHEET

Court of _____

Case No.- 7075 /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. Sar Mir Khan 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. Sar Mir Khan posted at GMS Yara Jan Kali Ekka Khel Bhara 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. 1169 /S.T.

Dt. 07/07 /2021


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. M. Amin Ayub Adv. Pesh.

That the objection may please
be removed as all areas of
PATA is merged with Kpk in the
light of 25th amendment so respondent
No. 2 is rightly arrayed as a party.


17/7/21

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 2075 /2021

Sar Mir Khan Appellant

Versus


The Govt. of KPK and others Respondents

INDEX

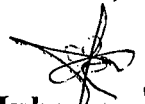
S.No.	Description of Documents	Date	Annexure	Pages
1.	Memo of Service Appeal with Affidavit			1-5
2.	Press-Clipping	09.03.2021	A	6
3.	Affidavit		B .	7
4.	Service Certificate		C .	8
5.	Judgment in W.P No.6655/2018	15.05.2019	D	9-10
6.	Order in COC No.476/2019	20.08.2019	E	11-18
7.	Letter	05.07.2019	F	19
8.	Inquiry Report	18.01.2020	G	20-21
9.	Order in COC No.212/2020	16.06.2020	H	22-24
10.	Departmental Appeal	11.03.2021	I .	25-26
11.	Wakalat Nama			

Appellant 

Through


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

Sar Mir khan

S/o Rasool Jan

R/o Aka Khel Miran Talab Samar Ghari,

District Khyber, Posted at Govt. Middle School Yara Jan Kali,

Ekka Khel bhara, 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 (Male),**
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 JANUARY 2011 TILL JULY 2019 HAS NOT BEEN RESPONDED WITHIN 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 January, 2011 to July, 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 rise to the present appeal are as under:-

1. That the appellant got appointed as Class-IV employee on 19.09.1998 and was adjusted against the post of Naib Qasid in the Govt. Middle School, Yara Jan Kaley, Ekka Khel, District Khyber. It is adduced here 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 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 (*Annex:-A*), albeit appellant continued performing his duties as is evident from the Affidavit (*Annex:-B*) which fact was conceded by the concerned Headmaster of the Govt. Middle school Yara Jan Kali, District Bara vide Service Certificate (*Annex:-C*) and verified that appellant had been performing his duties from the month of January, 2011 till July, 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, In spite 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 to the appellant by Respondent No.3 that salaries were paid to those Government employees who did not even 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 turned 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.6655/2018 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 of the Department at the bar, the salaries of the appellant could not be released which led to COC No. 476/2019 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 fact 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 office 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, he was assured that arrears of salaries w.e.f. January, 2011 to July, 2019 would also be paid but to the utter bewilderment of the appellant the same were refused. Eventually, appellant again knocked the door of the Hon'ble Peshawar High Court, Peshawar in COC No.212/2020 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 (*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. January, 2011 to July, 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:-

Grounds:

- A. **That** the appellant has not been treated fairly, justly as the Respondent No.3 unlawfully refused his request for the 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 salaries which is not sustainable in the eye of the law and 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 to pay him salaries on the part of Department is without any legal justifications and is totally deviation from the law, hence not sustainable in the eye of law.

- D. **That** the writ petition of the appelland was allowed on the commitment of the Respondents/Department wherein they stated at the bar that appelland is a regular employee of the Department and had been discharging duties w.e.f. January, 2011 to July, 2019, which did not left any room to pay the due salaries of the appelland.
- 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, appelland 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 the office of Respondent No.3 while the appelland was singled out which is also against the principle of natural justice.
- F. That appelland would like to offer some other grounds during the course of arguments.

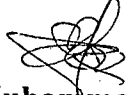
It is, therefore, humbly prayed that the instant appeal may graciously be accepted as prayed for above.


Appellant

Through


Muhammad Amin Ayub,
Advocate, High Court

&


Muhammad Ghazanfar Ali,
Advocate, High Court

Dated: 06/07/2021

Affidavit

I, Sar Mir khan S/o Rasool Jan. R/o Aka Khel Miran Talab Samar Ghari, District Khyber, Posted at Govt. Middle School Yara Jan Kali, Ekka Khel bhara, 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

Tuesday

March 9, 2021

Rajab 24, 1442 AH

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.

Misal Khan Shalmani said Rs.09 million had been 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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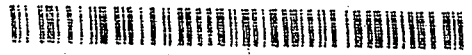
theNews Intl

Islamabad/Rawalpindi Edition

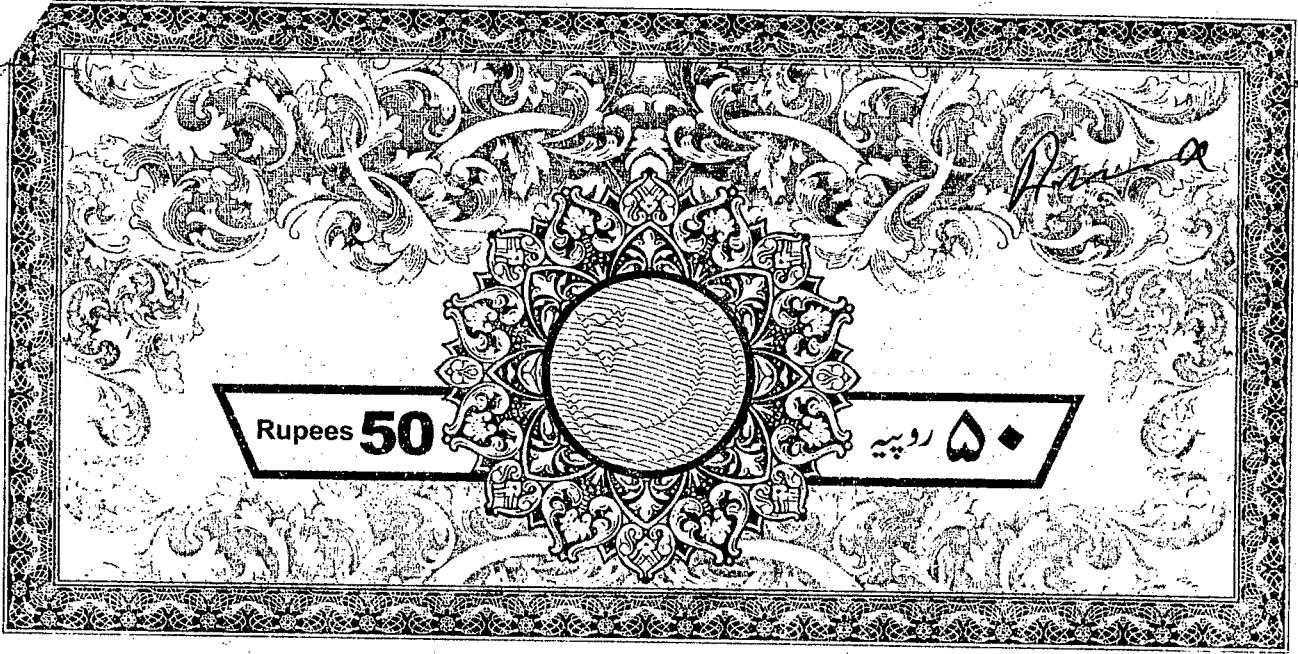
Also published from Lahore, Karachi, London and globally on the World Wide Web at www.thenews.com.pk

JANG GROUP OF NEWSPAPERS

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B



خلفہ بیان

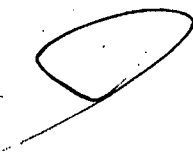
میں مسیحی سرپرست خان و ملکیت اسکول جان نائب قاضی
 کی ایم ایس میں ^{بارہ قاضی} اس کے لئے سے خدمات سرفراخ دیے گئے ہیں
 اور باقاعدگی سے ان خدمات سرفراخ دیے گئے ہیں
 میں خلفہ نہ بیان دیا گیا ہے کہ میری شہواہ
 جنوری 2011 سے لے کر جولائی 2019 تک بند رہی
 اور ان اگست 2019 سے جاری کر دیے گئے ہیں باقی ماہانہ
 شہواہ جنوری 2011 سے جولائی 2019 تک بند رہی ہے
 میرا بندہ شہواہ اس کے لئے دیا جائے
 نہ بیان حقیقت اور سچ ہے میری

دراخواست گزار خان
 سرپرست خان

ساضی قاضی نمبر 3-7224541-21201

The statement is on fact
 and The applicant is

HEAD MASTER
 Govt. Middle School
 Haji Yara Jan Killi
 Bara Distt. Khyber



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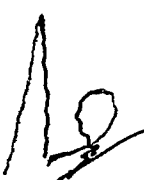
8 Amir C²¹

Service certificate

It is to certify that Mr Sar Mir
Khan N/O of EMS Yara Jan Bara
Aka Khel and Muhammad Jan Sweep
of EMS Yara Jan Bara Aka Khel have
been serving at their station
regularly and devotedly since their
appointment 1998.

Though their salaries have been
stopped since January, 2011 without
any reason.

They may be facilitated in
the connection of salaries
release with all benefits.


HEAD MASTER
Govt: Middle School
Haji Yara Jan Killi
Bara Distt: Khyber

c

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Amir A
D

BEFORE THE PESHAWAR HIGH COURT PESHAWAR



W.P No. 6655 /2018

1. Sar Mir Khan S/o Rasool Jan R/o Aka Khel Miran Talab Sama Chari District Khyber, presently (Baheshti) in Government Middle School Yara Jan Kalley Eka Khel Bara District Khyber.
 2. Muhammada Jan S/o Yara Jan (Sweeper) R/o Mughal Baz Eka 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 Khyber District Khyber.
-Respondents

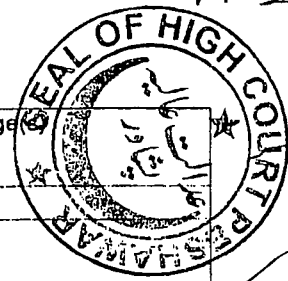
WRIT PETITION UNDER ARTICLE 199
OF THE CONSTITUTION OF ISLAMIC
REPUBLIC OF PAKISTAN 1973 READ
WITH OTHER ENABLING PROVISIONS
OF LAWS APPLICABLE IN THE
MATTER, TO ISSUE APPROPRIATE
WRIT AGAINST THE RESPONDENTS TO
RELEASE THE MONTHLY PAYABLE
SALARIES OF BOTH THE PETITIONERS
OF PREVIOUS 37 MONTHS, LYING
REMAINED UNPAID TILL DECEMBER
2015.

ATTESTED
EXAMINER
Peshawar High Court

ATTESTED
EXAMINER
Peshawar High Court

IN THE PESHAWAR HIGH COURT, PESHAWAR

FORM OF ORDER SHEET



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>Present: 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 style="text-align: center;">***</p> <p>IKRAMULLAH KHAN, J:- 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. 26686
 Date of Presentation of Application 17/02/2019
 No of Pages 5-2
 Copying fee 50
 Total
 Date of Preparation of Copy 17/02/2019
 Date of Delivery of copy 17/02/2019
 Received By 18/2/2019

JUDGE
 JUDGE
 CERTIFIED TO BE TRUE COPY
 EXAMINER
 Peshawar High Court, Peshawar
 Authorized Under Article 87 of
 The Constitution of Pakistan Order 1994
 20 FEB 2019

Shahid Ali, P.S. (D.B) (Hon'ble Mr. Justice Ikramullah Khan and Hon'ble Justice Musarrat Iqbal)

(Handwritten signature)

ATTESTED
 EXAMINER
 Peshawar High Court

D 11

Amir E

BEFORE THE PESHAWAR HIGH COURT, PESHAWAR

COC No. 476 of 2019

in

Writ Petition No. 6655-P/2018



- 1 Sar Mir Khan S/o Rasool Jan R/o Aka KHel Mirah Talab Sama Ghari District Khyber, Presently (Baheshti) in Government Middle School Yara Jan Kalley Aka Khel Bara District Khyber
- 2 Muhammada Jan S/o Yara Jan (Sweeper) R/o Mughal Baz Aka Khel bara District Khyber, Presently Chowkidar in Government Middle School yara Jan Kellay Bara District Khyber.

..... Petitioners

VERSUS

Muhammad Jaboon 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 RESPONDENTS AND AWARDED EXEMPLARY PUNISHMENT, WHEREBY DESPITE OF HIS ADMISSION MADE ON BEHALF OF THE REPRESENTATIVE OF THE WORTHY EDUCATION DEPARTMENT I.E. ADEO 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

(Handwritten mark)

ATTESTED
(Signature)
EXAMINER
 Peshawar High Court *E*

② 12

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 January 2011 till now, are not released to the petitioners.
2. That while the above titled case was taken up by this Hon'le 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 two and half month has been passed away but till now the

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ATTESTED
EXAMINER
Peshawar High Court

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 January 2011, 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 since January 2011 till now.

Dated:- 08.08.2019

Through:-

Petitioners

CERTIFIED TO BE TRUE COPY
Examination, Peshawar
Peshawar High Court, Peshawar
Authorized Under Article 57 of
The (Qanun-e-Shahadat) Order 1988

23 AUG 2019

Jahangir Khan Afrifi
Advocate High Court,
Peshawar

BEFORE THE PESHAWAR HIGH COURT, PESHAWAR

COC No. _____ of 2019

in

Writ Petition No. 665 P/2018

Sar Mir Khan & another Petitioners

VERSUS

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

.....Respondents

AFFIDAVIT

I, Sar Mir Khan S/o Rasool Jan R/o Aka KHEL Miran Talab
Sama Ghari District Khyber, 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:



Jahangir Khan Afridi
Advocate, Peshawar

DEPONENT

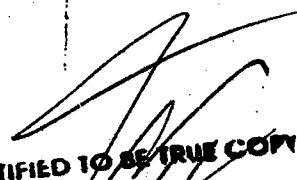
CNIC: 21201-7224541-3

Cell No. 0342-9293497

2979

July
Rasool Jan

19
Sar Mir Khan
Khyber
Jahangir Khan



23/7/19

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Exemplar, Peshawar
Peshawar High Court, Peshawar
Authorized Under Article 87 of
the Qanun-e-shahadat Order 1984

23 AUG 2019

15

BEFORE THE PESHAWAR HIGH COURT,
PESHAWAR

COC No. _____ of 2019

In

Writ Petition No. 6655-P/2018

Sar Mir Khan & another

..... Petitioners

VERSUS

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

..... Respondents

ADDRESSES OF PARTIES

PETITIONER:

- 1 Sar Mir Khan S/o Rasool Jan R/o Aka Khel Miran Talab Sama Ghari District Khyber, Presently (Baheshti) in Government Middle School Yara Jan Kalley Aka Khel Bara District Khyber
- 2 Muhammada Jan S/o Yara Jan (Sweeper) R/o Mughal Baz Aka Khel bara District Khyber, Presently Chowkidar in Government Middle School yara Jan Kellay Bara District Khyber.

RESPONDENTS:

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

Dated:- 08.08.2019

Petitioners

Through
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Examiner
Peshawar High Court, Peshawar
Authorized Under Article 87 of
the Qanun-e-Majlisat Order 1974

23 AUG 2019

Jahangir Khan Afrifi
Advocate High Court,
Peshawar

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT, PESHAWAR.
JUDICIAL DEPARTMENT



COC No: 601-P of 2019 in W.P
No.6655-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:- Vide detailed order in **COC No.599-P/2019** of **W.P No.6652-P/2018**, titled **Mst Gul Harina Vs. Muhammad Jadoon Wazir, District Education Officer District Khyber**, the instant COC is disposed of in terms mentioned therein.

Announced:
20.08.2019
(Ayub)

[Signature]
JUDGE

[Signature]
JUDGE

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

[Signature]

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Examiner
Peshawar High Court, Peshawar
Authorized Under Article 87 of
the Qanun-ul-Mahadad Order 1954
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

18

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)

JUDGE

JUDGE

for Mr. Justice Lal Jan Khattak.
for Mr. Justice Muhammad Naeem Anwar.

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Registrar
High Court, Peshawar
Under Article 87 of
the Constitution of Pakistan

23 AUG 2019

The District Accounts Officer,
Khyber Tribal District at Jamrud.

19

(58)
Dane F

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 ~~Director~~ 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

[Signature]
DISTRICT EDUCATION OFFICER
KHYBER TRIBAL DISTRICT AT JAMRUD
Dated _____ 2019

Encl. No.

- 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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R

Amir G

The District Education Officer Khyber,
At Jamrud

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	Sar 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. Inquiry 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. *Not appointment orders (vide F-10 cat'd).*
7. *Service Verification Certificate Form Annexure ADEOS Rule F-11 a, F-11 b.*

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 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 salary. But the court decision does not clearly mention about the back benefits i.e arrears, to be paid

Inquiry Officer, Jamrud.
After going through the report following observations are put on file for rectification:-

1. Service Book of the employees be provided.
2. Documents attached herein are investigated.
3. Statement of the ADEO concerned be obtained.
4. *Statement of the court is to be noted.*

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21

RECOMMENDATIONS

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

M. Zahid
MOHAMMAD ZAHID
(inquiry officer)
VICE PRINCIPAL
GHS KOHIL SHER HAIDER BARA

*... of the ...
... of the ...
... submitted for ...*

M. Zahid
27/01/2020

[Signature]

22

Anwar H

(b)

Judgment Sheet
PESHAWAR HIGH COURT, PESHAWAR
JUDICIAL DEPARTMENT.

COC No. 212-P/2020 in COC No. 601-P/2019

W.P.No.6655-P/2018

Sar Mir Khan 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. 601-P/2019 in WP No. 6655-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

ATTESTED
EXAMINER
Peshawar High Court

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② - 23

passed in W.P No. 6655-P/ 2018 followed by order dated 20.8.2019 in COC No. 601-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. 6655-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. 601-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~~

ATTESTED

EXAMINER
Peshawar High Court

24

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.

Lal Jan
JUDGE
Lal Jan
JUDGE

Announced on;
Dated. 16.06.2020

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

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EXAMINER
Peshawar High Court
20 JUN 2020

385/3
Date of Presentation of application 17-6-2020
No of Pages 07 p
Copying fee 20 p
Total
Date of Preparation of Copy 20-6-2020
Date of Delivery of copy 20-6-2020
Received by Sujjad

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EXAMINER
Peshawar High Court

To.

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

25
D. No. F
Diary Number - 1030
dated 11/03/2021

Subject: Departmental Representation for the grant of arrears of salaries w.e.f. January, 2011 to July, 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 19.09.1998 and was adjusted against the post of Naib Qasid in the Govt. Middle School, Yara Jan Kaley, 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 whereafter 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:-

"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 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 GOC 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. January, 2011 to July, 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 resultanty 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.

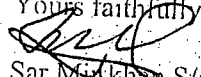
6. That now the applicant being aggrieved of the acts and omission of the Department prefers this departmental Representation inter-alia on the following grounds:-

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 application 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 January, 2011 to July, 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.

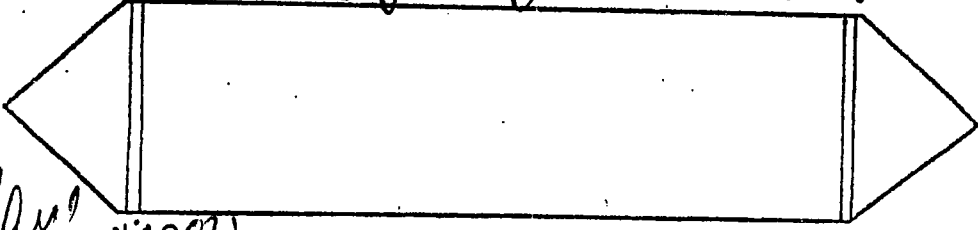
It is, therefore, humbly requested that on acceptance of this Departmental Representation, the arrears of salaries w.e.f January, 2011 to July, 2019 may kindly be paid to the appellatnt forthwith.

Dated: ____ .03.2021.

Yours faithfully

 Sar Mir Khan S/o
 Rasool Jan (Naib Qasid)
 GMS, Yara Jan Kalley Akakhel
 Bara District Khyber



بعد الت سرویسز ملوئل / 2021



2021 منجانب امدان
سرویسز ملوئل
بنام خواجہ

مورخہ
مقدمہ
دعویٰ
جرم

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی دکل کاروائی متعلقہ
آن مقام ~~مقام~~ کیلئے ~~مقام~~ کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی مکمل کاروائی کا کامل اختیار ہوگا۔ نیز
مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی مکمل کاروائی کا کامل اختیار ہوگا۔ نیز
دکیل صاحب کو راضی نامہ کرنے و تقریر ثالثہ فیصلہ برحلف دینے جواب دہی اور اقبال دعویٰ اور
بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارضعی 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 اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور
کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقریر کا اختیار
ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ بالا اختیارات حاصل ہوں گے اور اس کا ساختہ
پر داخلہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ ہر جانب التوائے مقدمہ کے سبب سے ہوگا۔
کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی
مذکورہ کریں۔ لہذا وکالت نامہ گھدیا کہ مندر ہے۔

المقام ۵۸
ماہ جولائی 2021

العبد _____ واہ العبد

کے لئے منظور ہے۔

بمقام

"B"

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
JUDICIAL COMPLEX (OLD), KHYBER ROAD,
PESHAWAR.

Jan Muhammad case

No.

Resd

SB

Appeal No. 7075 of 20 21

Soy Mir Khan

Appellant/Petitioner

Versus

Through Secy EGSE Govt of K.P. Peshawar

Respondent

Respondent No. (5)

Notice to:

D/O (Male) District Khyber

WHEREAS an appeal/petition under the provision of the Khyber Pakhtunkhwa Province Service Tribunal Act, 1974, has been presented/registered for consideration, in the above case by the petitioner in this Court and notice has been ordered to issue. You are hereby informed that the said appeal/petition is fixed for hearing before the Tribunal *on 13/07/2022 at 8.00 A.M. If you wish to urge anything against the appellant/petitioner you are at liberty to do so on the date fixed, or any other day to which the case may be postponed either in person or by authorised representative or by any Advocate, duly supported by your power of Attorney. You are, therefore, required to file in this Court at least seven days before the date of hearing 4 copies of written statement alongwith any other documents upon which you rely. Please also take notice that in default of your appearance on the date fixed and in the manner aforementioned, the appeal/petition will be heard and decided in your absence.

Notice of any alteration in the date fixed for hearing of this appeal/petition will be given to you by registered post. You should inform the Registrar of any change in your address. If you fail to furnish such address your address contained in this notice which the address given in the appeal/petition will be deemed to be your correct address, and further notice posted to this address by registered post will be deemed sufficient for the purpose of this appeal/petition.

Copy of appeal is attached. ~~Copy of appeal has already been sent to you vtdr this office~~ Notice No. dated.....

Given under my hand and the seal of this Court, at Peshawar this 13th

Day of June 20 22

(For Reply)

Registrar,
 Khyber Pakhtunkhwa Service Tribunal,
 Peshawar.

Note: 1. The hours of attendance in the court are the same that of the High Court except Sunday and Gazetted Holidays.
 2. Always quote Case No. While making any correspondence.