

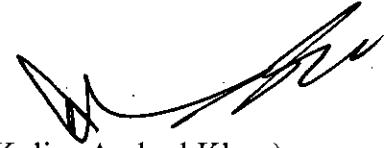
Execution Petition 239/20210

27th Oct 2022

1. Petitioner alongwith her counsel present. Mr. Kabirullah Khattak, Addl: AG alongwith Mr. Imran Shah, Sr. Subject Specialist for respondents present.

2. Respondents submitted copy of office order bearing Endst No. 2920-25 dated 25.02.2021, whereby in compliance of the judgment of the Tribunal, the grievance of the petitioner has been redressed. Since the order of the Tribunal has been complied with, therefore, the instant execution petition is filed. Consign.

3. *Pronounced in open court in D.I.Khan and given under my hand and seal of the Tribunal on this 27th day of Oct, 2022.*



(Kalim Arshad Khan)
Chairman
Camp Court D.I.Khan

30th September, 2022

Learned counsel for the petitioner present. Mr. Asif Masood
Ali Shah, Deputy District Attorney alongwith Mr. Imran Shah, Senior
Subject Specialist for respondents present.

Representative of the respondents has placed on file an order
dated 25.02.2021, which does not come in accordance with the terms of
the judgment, therefore, respondents are directed to modify the order
and dealt it in accordance with conformity of the judgment. Adjourned.
To come up for implementation report on 27.10.2022 before the S.B at
Camp Court D.I.Khan.

(Kalim Arshad Khan)
Chairman
Camp Court D.I.Khan



This shall replace the earlier order of the even No: and date.
**OFFICE OF THE DISTRICT EDUCATION OFFICER
(FEMALE) DERA ISMAIL KHAN**
Phone No. 0966-9280133

OFFICE ORDER.

In compliance with the Honourable Khyber Pakhtunkhwa Service Tribunal Judgment dated 08.12.2020, in Service Appeal No.1368 of 2017, titled as Nusrat Shaheen vs Government of KPK, Mrs. Nusrat Shaheen daughter of Umar Daraz, who was appointed as caller BPS-03, GGPS Chehkan, DIKhan, and was penalized with major penalty of Removal from Service vide this office order dated: 01.04.2015, which has been **SET ASIDE** by the Worthy Judgment, and ordered denovo inquiry, therefore, in light of the recommendations of the inquiry ibid, Nusrat Shaheen daughter of Umar Darzaz is hereby **reinstated in her service** with immediate effect and adjusted as under in the best interest of public service and the intervening period with effect from **01.04.2015 to date** is hereby **allowed as leave without pay** as directed by the worthy judgment ibid. Also the DDO concerned is ordered to **recover from her salaries** the amount of pay she obtained from the Government exchequer without performance of duty **with effect from 01.01.2009 to 31.03.2015**, in easy installments which may be decided by the concerned DDO, the SDEO (Female), DIKhan.

S.NO	NAME	FATHER NAME	POST	PLACE OF POSTING
1.	NUSRAT SHAHEEN	UMAR DARAZ	CALLER	GGPS CHEHKAN DIKHAN

Note:

1. Charge report shall be submitted to all concerned.
2. No back benefits shall be allowed.
3. All terms and conditions of the initial appointment shall remain intact.


DISTRICT EDUCATION OFFICER
(FEMALE) DERA ISMAIL KHAN

Endst: No 2920-25 /

Dated D.I.Khan the: 25/02/2021

Copy forwarded to the:

1. Registrar, Honourable Khyber Pakhtunkhwa Service Tribunal, Peshawar (as Compliance Report of the Judgment dated 08.12.2020, in Service Appeal No.1368 of 2017, titled as Nusrat Shaheen vs Government of KPK).
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3. District Accounts Officer, Dera Ismail Khan.
4. SDEO (Female) DIKhan..
5. Official Concerned.
6. PA to District Education Officer (Female) D.I.Khan.
7. Master File.


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Endst: No 2920-25 /

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DISTRICT EDUCATION OFFICER
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Endst: No 2920-25 /

Dated D.I.Khan the: 25/02/2021

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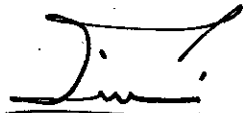
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DISTRICT EDUCATION OFFICER
(FEMALE) DERA ISMAIL KHAN

27.05.2022

Petitioner alongwith her counsel present. Mr. Farhaj Sikandar, District Attorney for the respondents present.

Learned counsel for the petitioner produced copy of office order dated 25.02.2021 and stated at the bar that as the judgment under execution has not been implemented by the respondents in letter and spirit, therefore, he wants to file objection petition regarding the same. To come up for objections on 27.07.2022 before the S.B at Camp Court D.I.Khan.

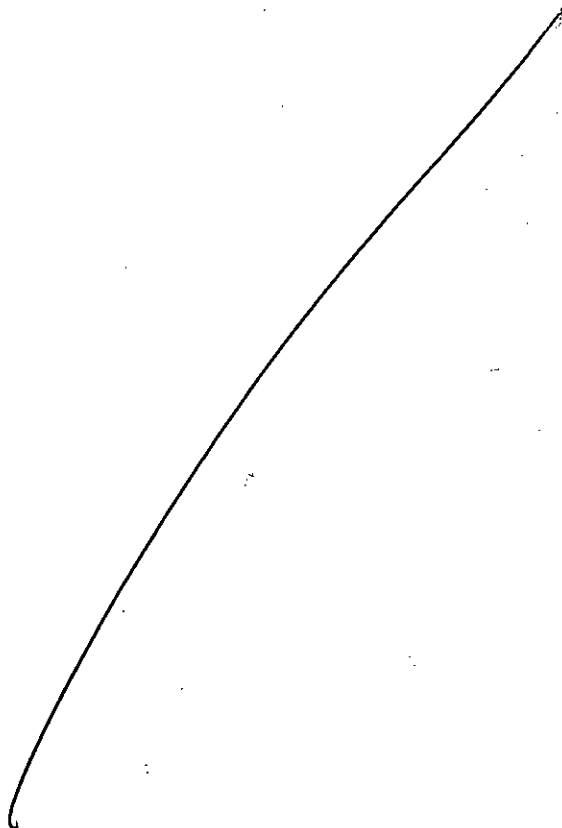

(Salah-Ud-Din)
Member (J)
Camp Court D.I.Khan

27/07/2022

Due to Summer Vacation

Came up 30/08/2022


Reader





**OFFICE OF THE DISTRICT EDUCATION OFFICER
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Phone No. 0966-9280133

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S.NO	NAME	FATHER NAME	POST	PLACE OF POSTING
1.	NUSRAT SHAHEEN	UMAR DARAZ	CALLER	GGPS CHEHKAN DIKHAN

Note:

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2. No back benefits shall be allowed.
3. All terms and conditions of the initial appointment shall remain intact.

**DISTRICT EDUCATION OFFICER
(FEMALE) DERA ISMAIL KHAN**

Endst: No 2920-257

Dated D.I.Khan the: 25/12/2021

Copy forwarded to the:

1. Registrar, Honourable Khyber Pakhtunkhwa Service Tribunal, Peshawar (as **Compliance Report** of the Judgment dated 08.12.2020, in Service Appeal No.1368 of 2017, titled as Nusrat Shaheen vs Government of KPK).
2. Director E&SE Khyber Pakhtunkhwa, Peshawar.
3. District Accounts Officer, Dera Ismail Khan.
4. SDEO (Female) DIKhan.
5. Official Concerned.
6. PA to District Education Officer (Female) D.I.Khan.
7. Master File.

Counter Signature

**District Education Officer
(Female) Dera Ismail Khan**

**DISTRICT EDUCATION OFFICER
(FEMALE) DERA ISMAIL KHAN**

11.01.2022

Learned counsel for the petitioner present. Mr. Kabirullah Khattak, Additional Advocate General for the respondents present.

Learned Additional Advocate General shall inform the respondents to produce implementation report and to come up for implementation report on 24.02.2022 before the S.B.



(Salah-Ud-Din)
Member (J)

24.02.2022

Due to retirement of the Worthy Chairman, the Tribunal is defunct, therefore, case is adjourned to 11.05.2022 for the same as before.



Reader.

11.05.2022

Petitioner in person present.

Muhammad Adeel Butt, learned Additional Advocate General for respondents present.



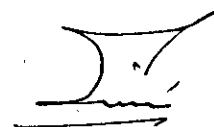
Implementation report was not submitted. Notice be issued to all the respondents for submission of implementation report on 27.05.2022 before S.B at Camp Court, D.I.Khan.



(Rozina Rehman)
Member (J)

Form- A
FORM OF ORDER SHEET

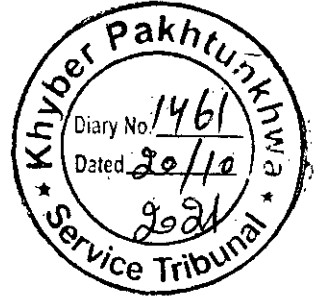
Court of _____
Execution Petition No. 239 /2021

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	20.10.2021	<p>The execution petition of Mr. Nusrat Shaheen submitted today by Uzma Syed Advocate may be entered in the relevant register and put up to the Court for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-		<p>This execution petition be put up before S. Bench on <u>19/11/21</u></p> <p style="text-align: right;"> CHAIRMAN</p>
	19.11.2021	<p>Learned counsel for the petitioner present. Notices be issued to the respondents for submission of implementation report on 11.01.2022 before the S.B.</p> <p style="text-align: right;"> (Salah-Ud-Din) Member (J)</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR.

Execution Petition No. 239 /2021

In Service Appeal 1368/2017



Nusrat Shaheen, D/o Umer Daraz R/o Ijaz Abad, Muriyali,
District Dera Ismail Khan

(APPELLANT)

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary Education Khyber Pakhtunkhwa , Peshawar.
2. Secretary Elementary and Secondary Education Government of Khyber Pakhtunkhwa , Peshawar.
3. Director Education & (Elementary & Secondary) Khyber Pakhtunkhwa, Peshawar.
4. District Education Officer (Female) Dera Ismail Khan.
5. Head Mistress, Government Girls Primary School Chaikhan, Dera Ismail Khan.
6. District Account Officer Dera Ismail Khan.
7. Deputy Commissioner Dera Ismail Khan.

(RESPONDENTS)

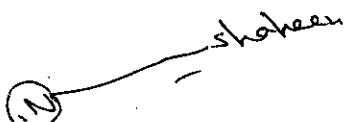
**EXECUTION PETITION FOR DIRECTING THE
RESPONDENTS TO IMPLEMENT THE JUDGMENT
DATED 08.12.2020 OF THIS HONORABLE TRIBUNAL
IN LETTER AND SPIRIT.**

RESPECTFULLY SHEWETH:

1. That the appellant filed an appeal bearing No.1368/2017 against the order dated 01.04.2015
2. That the said appeal was finally heard by the Honorable Tribunal on 08.12.2020 and the Honorable Tribunal was kind enough to accept the appeal and impugned order was set-aside. (Copy of judgment is attached as Annexure-A).
3. That in-action and not fulfilling formal requirements by the department after passing the judgment of this august Tribunal, is totally illegal amount to disobedience and Contempt of Court.


4. That the judgment is still in the field and has not been suspended or set aside by the Supreme Court of Pakistan, therefore, the respondents are legally bound to pass formal appropriate order.
5. That the petitioner has having no other remedy except to file this execution petition.

It is, therefore, most humbly prayed that the respondents may be directed to implement the judgment dated 08.12.2020 of this august Tribunal in letter and spirit. Any other remedy, which this august Tribunal deems fit and appropriate that, may also be awarded in favour of petitioner.


Petitioner

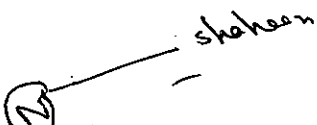
Nusrat Shaheen

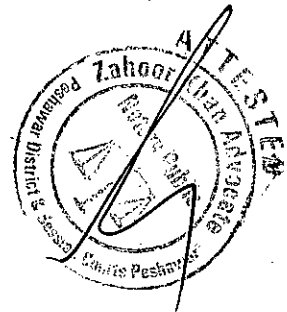
Through:


Uzma Syed
Advocate, High Court Peshawar

AFFIDAVIT:

It is affirmed and declared that the contents of the execution petition are true and correct to the best of my knowledge and belief and nothing has been concealed from Hon'able Tribunal.


Deponent



BEFORE THE SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA, PESHAWAR.

Service Appeal No. **1368** / 2017.



Nusrat Shaheen daughter of Umar Daraz resident of Ijaz Abad, Muriyali, District, Dera Ismail Khan.

**Khyber Pakhtunkhwa
Service Tribunal (Appellant)**

Versus

Diary No. **1365**

Date **29-11-2017**

1. Government of Khyber Pakhtunkhwa through Secretary Education, Khyber Pakhtunkhwa, Peshawar.
2. Secretary Elementary & Secondary Education Government of Khyber Pakhtunkhwa, Peshawar.
3. Director, Education (Elementary & Secondary), Khyber Pakhtunkhwa, Peshawar.
4. District Education Officer (Female), Dera Ismail Khan.
5. Head Mistress, Government Girls Primary School, Chaikan, Dera Ismail Khan.
6. District Accounts Officer, Dera Ismail Khan.
7. Deputy Commissioner, Dera Ismail Khan.

(Respondents)

APPEAL UNDER SECTION 4 OF KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974 AGAINST THE ORDER DATED 01.04.2015, PASSED BY DISTRICT EDUCATION OFFICER (FEMALE), DERA ISMAIL KHAN VIDE WHICH IT WAS HELD THAT THE APPELLANT HAD FAILED TO RESUME HER DUTIES WITHIN STIPULATED PERIOD AND THERE IS NO SANCTION POST OF CALLER IN THE ABOVE SAID SCHOOL AND AGAINST THE INACTION ON THE PART OF THE RESPONDENTS, WHEN THE HON'BLE HIGH COURT VIDE ORDER DATED 28.09.2017 DIRECTED THE RESPONDENTS TO DECIDE THE DEPARTMENTAL APPEAL/REPRESENTATION OF THE APPELLANT DATED 26.05.2015 WITHIN ONE MONTH.

Filed to-day

Registrar

29/11/17

Respectfully Sheweth,

BRIEF FACTS


1. That the brief facts of the case are that the appellant was appointed as Class-IV (Caller) in GGPS Chahkan, D.I.Khan vide letter Endorsement No.28136-40 dated 01.01.2009 issued by EDO (E & S), D.I.Khan. Copy of appointment letter is enclosed as Annexure A.

Re-submitted to-day and filed.

Registrar

11/12/17

ATTESTED


**EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar**

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.1368/2017

Date of Institution: 29.11.2017

Date of Decision: 08.12.2020



Nusrat Shaheen daughter of Umar Daraz resident of Ijaz Abad, Muryali, Dera Ismail Khan.

... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Secretary Education and Six others

... (Respondents)

Mr. Saleemullah Khan Ranazai
Advocate

... For Appellant

Mr. Muhammad Jan,
Deputy District Attorney

... For Respondents

Mrs. ROZINA REHMAN

...

MEMBER (J)

Mr. ATIQ UR REHMAN WAZIR


...

MEMBER (E)

JUDGMENT: -

Mr. ATIQ UR REHMAN WAZIR: - Brief facts of the case are that the appellant Mst. Nusrat Shaheen was initially appointed as Class-IV (Cailer) on 01-01-2009 in education department and posted in GGPS Chaahkan, D.I. Khan; that due to heavy floods in the year 2010, the subject school sustained damage and was shifted to another Middle school in the vicinity, but the appellant was not allowed to perform her duties in the new location, which was reported by the appellant to the high ups but to no avail. On 01-04-2015 District Education Officer (Female) issued the impugned order that the appellant failed to report for duty within

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

3 but to no avail, thereafter the appellant filed Writ Petition No. 520-D/2015 before Peshawar High Court, D.I. Khan Bench, which remained pending till 28-09-2017, when on the request of counsel for the appellant, the honorable Court was pleased to dispose of the writ petition by directing the respondents to decide the appeal/ representation of the appellant within a period of one month, but no action whatsoever was taken by the respondents, hence the instant appeal with prayers that respondents may be directed to act in accordance with law, rules and policy of the Government and to release the salaries of the appellant from February 2015 till date and onward and they may further be directed to give a place of posting to the appellant with further prayers that the office order dated 01-04-2015 of DEO (F) D.I. Khan may be declared as illegal.

2. Written reply/comments were submitted by respondents.

3. Arguments heard and record perused.

4. Learned counsel for the appellant contended that the impugned order was issued under the pretext that appointment order of the appellant is bogus and as a result, salaries of the appellant were stopped w.e.f February 2015 onwards. That neither the appellant was proceeded against nor any inquiry conducted to ascertain as to how the order was bogus, inspite of the fact that the appellant received salaries for five long years until January 2015. The learned counsel for the appellant also presented payroll of salaries for the year 2014. The learned counsel for the appellant contended that till date no formal removal/termination order regarding the appellant has been passed. That contention of the respondents that there is no sanction post of Caller in the subject school is baseless, as source-1 form of salary of the appellant was properly submitted by

ATTESTED

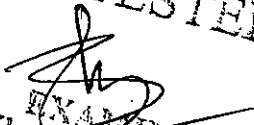

 Khyber Pakhtunkhwa
 Service Tribunal,
 Peshawar

Executive District Officer Elementary and Secondary Education D.I. Khan and personal number was issued to the appellant. The learned counsel for the appellant further contended that if a sanctioned post was not available, how and why the appellant was appointed, for which the appellant is not responsible, but the appointing authority.

5. The learned Deputy District Attorney as usual opposed the contention of the learned counsel for the appellant and explained that appointment order of the appellant is fake, forged and counterfeited, without sanctioned post, without recommendations of Departmental Selection Committee, and with a fake dispatch number. Learned Deputy District Attorney further contended that the appellant even with a fake appointment order did not resume charge of her post and usurped salaries from the government exchequer without performance of duties. The learned Deputy District Attorney further contended that the office did not know about her whereabouts before her salaries were stopped. The learned attorney contended that there was no need to proceed her as she was not a civil servant by virtue of a fake order. The learned Deputy District Attorney prayed that the instant appeal may be dismissed with costs.

6. We have heard learned counsel for the parties and perused the record. In order to resolve the mystery arising out of the conflicting claims of the appellant and the respondents, District Account Officer was summoned to Court to ascertain as to whether the payroll presented by the appellant were also fake or real. Representative of the Account Office stated at bar that account office has correctly processed the Source-1 form and issued personal number to Mst. Nusrat Shaheen, Caller, whose case was submitted by Deputy District Officer (F)


ATTESTED


EXAMINER
 Khyber Pakhtunkhwa
 Service Tribunal,
 Peshawar

Source-1 Form submitted by the department to account office. Representative of the Account Office further added that de-activation of salary in respect of the appellant was also submitted by the same office. Further added that account office process bills, source etc submitted by department concerned and not by individuals and it is presumed that Source-1 Form submitted by the department is based on genuine appointment order and if the appointment order is fake then that was responsibility of the department. He further explained that it was upon re-submission of Source-1 Form for de-activation of her salaries by the department, which resulted into stoppage of her salaries.

7. After listening to representative of the account office, it came to limelight that somehow the department concerned has submitted her case of salaries in respect of appellant to the account office and it was also confirmed that the appellant received salaries for five years, which also strengthen the claim of the appellant of her appointment against a sanctioned post. On the other hand, the appellant failed to provide her service book or attendance register of the school. It was also noted that once allotted personal number and her salary computerized, she started receiving salary through bank and not manually through education office, which strengthen the claim of the respondents regarding her absence from duty. Still another riddle as to how the respondents found without any inquiry and that too after five years that the appointment order of the appellant was fake and that there was no sanctioned post of Caller in the said school, knowing the fact that salary cannot be activated without a sanctioned post. These were the questions to which the respondents failed to furnish a satisfactory reply. Presumably if the appointment order was fake, the

ATTESTED


EXAMINER
 Khyber Pakhtunkhwa
 Service Tribunal,
 Peshawar


avoided all such mandatory steps and out rightly stopped her salary, thus allowed the real culprits to stay beyond the curtain, knowing the fact that the appellant has now developed a vested right over the post.

8. We are conscious to the fact that the appellant has now developed a vested right over the post to the effect that she has drawn salaries for five years against a sanctioned post. The respondents also handled the case carelessly by not reaching to a logical conclusion, hence left the appellant in a hanging position. In view of the situation, the impugned order dated 01-04-2015 is set aside with directions to the respondents to give the same place of posting to the appellant, against which she has drawn salaries for five years. If the respondents still believe that the appointment order is fake, they shall investigate the issue through an inquiry reaching to a logical conclusion to find out the real culprits who maneuvered to make it possible and thereafter the fate of the appellant be decided in light of the said inquiry. The respondents shall conclude the proceedings within ninety days after receipt of this judgment and if the proceedings were not concluded within specified time period, the appellant would be deemed to have been appointed genuinely and the intervening period w.e.f. 01-02-2015 till date would be treated as leave without pay. No orders as to costs. File be consigned to record room.

ANNOUNCED
08.12.2020


(ROZINA REHMAN)
MEMBER (J)

Certified to be true copy
ATMINDER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar


(ATIQU UR REHMAN WAZIR)
MEMBER (E)

بجرات

KP Service Tribunal, Peshawar

۲۰۲۱ء منجانب

حضرت شاہین بیگم

مورثہ

مقدمہ

دعویٰ

جزم

تعلیم

باعث تحریر آٹک

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی دکل کارروائی متعلقہ

آن مقام پشاور کیلئے عظمیٰ مسیّد دیو مکھ

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کمال اختیار ہوگا۔ نیز

وکیل صاحب کو راضی نامہ کرنے و تقریر ثالث و فیصلہ پر حلف دینے جو اب رہی اور اقبال دعویٰ اور

بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق

زر میں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یا پٹرفہ 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 کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے

تقرر کا اختیار ہوگا۔ اور صاحب شہر شدہ کو بھی وہی جملہ مذکورہ بالا اختیارات حاصل ہوں گے

اور اس کا ساختہ پر داخستہ منقولہ و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جائزہ التوا ہے مقدمہ کے

سب سے وہ ہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب اپنے

گے۔ کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھو یا کہ سندر ہے۔

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المرقوم

د گ و ا ہ الع

کے لئے منظور ہے۔

مقام پشاور

Shahen