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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUAL, PESHAWAR.

Appeal No. 271/2020

Date of Institution ... 08.01.2020

Date of Decision ... 14.07.2020

Asad Ullah S/o Yousaf Khan, Resident of Post Office Rustam, Tehsil & District Mardan.

... (Appellant).

<u>VERSUS</u>

District Education Officer (DEO) (M) Mardan and two others.

Present.

Mr. Muhammad Farooq Afridi, Advocate.

Mr. Kabirullah Khattak, Additional Advocate General

MR. MIAN MUHAMMAD,

... (Respondents)

_

For appellant

For respondents

MEMBER (Executive)

JUDGMENT

MIAN MUHAMMAD, MEMBER:-

1. Learned counsel for the appellant argued that the appellant was appointed as Class-IV i.e Naib Qasid (Chowkidar) in GHS Khair Abad, Mardan w.e.f 05.11.1987. His date of birth as per school leaving certificate and CNIC was recorded as 15.10.1965 whereas the date of birth of the appellant was recorded in his service book as 03.11.1959. The DDEO(M) addressed a letter to Principal GHS Khair Abad on 05.12.2019 rejecting thereby departmental appeal of the appellant on the ground being time barred, hence, the instant service appeal on 08.01.2020. The learned counsel for the appellant further argued and contended that the date of birth was erroneously and by mistake recorded in his service book as 03.11.1959 and as such on the basis of which he was retired from service on attaining the age of superannuation on 02.11.2019, though the appellant being illiterate did not know the entry of his date of birth in his service book. He therefore, requested that on the basis of his school leaving certificate, Manual NIC and CNIC the date of birth of the appellant being 15.10.1965 be considered for correction in official record and retirement notification may be suspended.

2. Learned counsel for the appellant heard and available record gone through.

3. The learned Additional Advocate General while relying on 2004 PLC (CS) 1162 and judgment of this Tribunal in service appeal No. 1377/2008 decided on 26.05.2009 argued that the present service appeal in hand is not maintainable being time barred.

4. Learned counsel for the appellant was confronted with a pertinent question that as to whether he was not in a possession of service book to have ascertained this anomaly in time and would have sought departmental remedy at appropriate time?, the learned counsel for the appellant replied that service book is not in the possession of the appellant and is being maintained by the Accountant General Office. However, his arguments were not tenable on the ground that service book is duly maintained by the department in the case of non-gazzeted officials but even then duplicate is maintained and is very much in the custody of appellant. Whereas in the case of gazzeted officers their service books are maintained by the Account/Accountant General Office. Moreover, correction in case of wrong entry in the date of birth is to be rectified within two years of entry into service. This is requirement under а GFR 116 well as as Instructions/circulars issued by the Provincial Government from time to time.

5. In view of the above, it can safely be concluded that though jurisdiction of this Tribunal in such cases is available to the aggrieved party i.e the appellant, yet on account of the question of maintainability of the service appeal is being time barred. The appeal in hand is, therefore, considered having no merit for the purpose of admission for regular hearing and is, accordingly dismissed in limine. File be consigned to the record room.

(MIAN MUHAMMAD) MEMBER(E)

ANNOUNCED 14.07.2020

16.03.2020

Appellant in person present and seeks adjournment as lawyers community is on strike on the call of Peshawar Bar Association. Adjourn. To come up for preliminary hearing on 31.03.2020 before S.B.

Member

31.03.2020

Due to public holiday on account of COVID-19, the case is adjourned to 23.06.2020 for the same. To come up for the same as before S.B.

23.06.2020

Counsel for the appellant present. Heard.

The case in hand is in respect of date of birth of the appellant. Let preadmission notice be issued to learned Additional Advocate General for 09.07.2020 before S.B

09.07.2020

Mr. Muhammad Riaz, Advocate on behalf of learned counsel for the appellant and Mr. Usman Ghani, District Attorney on pre-admission notice present.

Former states that learned senior counsel is engaged in various cases before the Honourable High Court today, therefore, requests for adjournment.

Adjourned to 14.07.2020 for preliminary hearing before S.B.



Member

Form- A

FORM OF ORDER SHEET

• Court of_

.No.	Date of order	Order or other proceedings with signature of judge
-	proceedings	• • •
1	2	3
1-	03/01/2020	. The appeal of Mr. Asadullah presented today by Mr. Muhammad
		Farooq Afridi Advocate may be entered in the Institution Register and put
*	· ·	up to the Worthy Chairman for proper order please.
1	 -	REGISTRAR 02/01/201
2-	10/01/20	This case is entrusted to S. Bench for preliminary hearing to be put up there on $\frac{10}{32}$
		Dui:
		CHAÌŘMAN
	• •	
	·	
•		
	19.02.2020	Learned counsel for the appellant present.
· .		The appellant has applied for correction of his date of
	<u>.</u>	birth in service book on the verge of his retirement.
	•	Learned counsel for the appellant seeks adjournment to
		prepare the brief. Adjourn. To come up for preliminary
		hearing on 16.03.2020 before S.B.
•	• •	
	. 、、、	Member
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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL KPK, PESHAWAR

Service Appeal No. <u>2-71</u> / 2020

Asad Ullah

..... <u>APPELLANT</u>

Versus

S #	DESCRIPTION OF DOCUMENTS	ANNEX	PAGES
1.	Service Appeal & Affidavit		01-03
2.	Addresses of the parties		04
3.	Application for Condonation of Delay	*	05-06
4.	Copies of the CNIC & Service Book	A & B	07-11
5.	Copies of the Appeal & Order dated 05- 12-2019	C & D	12-13
6.	Copy of the School leaving Certificate	E	14
7.	Wakalatnama		15

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Appellant

Through

Muhammad Karooq Afridi Advocate High Court Peshawar

03005838546

Dated: 07.01.2020

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL KPK, PESHAWAR

Service Appeal No. 271 / 2020

Asad Ullah S/o Yousaf Khan

Resident of Post Office Rustam, Tehsil & District Mardan

byber Pakhtukhiva ary No. 2-82

..... APPELLANT

Versus

1. District Education Officer (DEO) Male-Mardan

2. District Accounts Office Mardan

3. Principal Govt High School Khair Abad, Mardan

......<u>RESPONDENTS</u>

SECTION 4 OF THE APPEAL **UNDER KHYBER** PAKHTUNKHWA SERVICE **TRIBUNAL** ACT. 1974 AGAINST THE WRONGLY MENTIONED DATE OF BIRTH IN THE SERVICE BOOK OF THE APPELLANT BY THE RESPONDENTS AND SUBSEQUENTLY REGREETING THE DEPARTMENTAL APPEAL VIDE ORDER/LETTER NO.14459/PF DATED 05-12-2019.

dto-day 120

Respectfully Sheweth

- 1. That the appellant is serving as Naib Qasid (Chowkidar) in Govt High School Khair Abad, Mardan.
- 2. That the after joining service in the Govt High School Khair Abad Mardan, the respondents started maintaining the Service Book of the appellant.

- 3. That the respondents committed a mistake by wrongly incorporating the appellant date of birth of in the Service Book.
- 4. That the actual and accurate date of birth of the appellant is 15-10-1965 which has correctly been mentioned in the Computerized National Identity Card (CNIC) while the respondents have wrongly been written as 03-11-1959 in the Service Book of the appellant. (Copies of the CNIC & Service Book are attached as Annexures-A & B).
- 5. That the appellant filed a departmental representation to the respondents on 28-10-2019 for correcting the date of birth in the Service Book which was dismissed on 05-12-2019 vide order/letter No.14459/PF but conveyed the order to the appellant on 08-12-2019, hence, the instant appeal. (Copies of the Appeal & Order dated 05-12-2019 are attached as Annexure-C & D).
- 6. That the appellant has not been treated in accordance with the law and has been discriminated against.
- 7. That the presumption of truth is always attached to the Computerized National Identity Card (CNIC) issued from NADRA office, hence, the date of birth mentioned in the Service Book needs rectification.
- 8. That the correct date of birth of the appellant is 15-10-1965 which is evident from School leaving Certificate which has wrongly been written as 03-11-1959 in the Service Book of the appellant. (Copy of the School leaving Certificate is attached as Annexure-E).
- 9. That the dismissal of the departmental appeal/representation by respondents is illegal, without jurisdiction, without lawful authority, for ulterior motives and based on malafide.
- 10.That the appellant will suffer irreparable loss of the date of birth in the Service Book of the appellant could not be rectified.
- 11. That not correcting the date of birth in the Service Book of the appellant is against the canon of justice as well as natural justice.

- 12. That regretting the department representation of the appellant is arbitrary, against the canons of justice, equity and fair play, hence, liable to be set aside.
- 13. That it will be in the interest of justice to direct the respondents for correcting the date of birth in the Service Book of the appellant.

It is, therefore, respectfully prayed that on acceptance of this service appeal, the impugned order/letter No.14459/PF dated 05-12-2019 vide which the appellant departmental appeal/representation has been regretted may kindly be declared as illegal, without jurisdiction and without lawful authority, for ulterior motives and malafide. The respondents may be directed to rectify the date of birth in the Service Book of the appellant which is 15-10-1965 as per Computerized National Identity Card (CNIC).

It is also requested that appellant may kindly be allowed to put forward any other ground/document at the time of argument. Any other order deemed appropriate in the above mentioned circumstances may kindly be passed.

ا مرالعة

Through

Appellant

Muhammad F ooq Afridi Advocate High Court

It will

Deponent

Peshawar

Dated: 07.01.2020

<u>AFFIDAVIT</u>

I, Asad Ullah S/o Yousaf Khan R/o Post Office Rustam, Tehsil & District Mardan, do hereby solemnly affirm and declare on oath that the contents of the above mentioned <u>Service Appeal</u> are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable court.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL KPK, PESHAWAR

Service Appeal No. / 2020

Asad Ullah

..... <u>APPELLANT</u>

Versus

ADDRESSES OF THE PARTIES

APPELLANT:

Asad Ullah S/o Yousaf Khan

Resident of Post Office Rustam, Tehsil & District Mardan

<u>RESPONDENTS:</u>

- 1. District Education Officer (DEO) Male-Mardan
- 2. District Accounts Office Mardan
- 3. Principal Govt High School Khair Abad, Mardan

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL KPK, PESHAWAR

Service Appeal No. / 2020

Asad Ullah

..... <u>APPELLANT</u>

Versus

APPLICATION FOR CONDONATION OF DELAY

Respectfully Sheweth

- 1. That the instant application is being filed along with the main suit in which no date of hearing has yet been fixed.
- 2. That the integral part of the appeal may kindly be read as part of this application.
- 3. That the appellant filed departmental representation which was regretted on 05-12-2019 but the same order was conveyed to the appellant/applicant on 08-12-2019.
- 4. That the delay may kindly be condoned, if any may be, in the interest of justice.
- 5. That it is the settled principle of law that technicalities should not be a hindrance in the way of substantial justice.
- 6. That law favors adjudication on merit and abhors technicalities.

It is, therefore, respectfully prayed that on acceptance of this application, the delay may kindly be condoned, if any may be, in the interest of justice.

Applicant/Appellant

Through

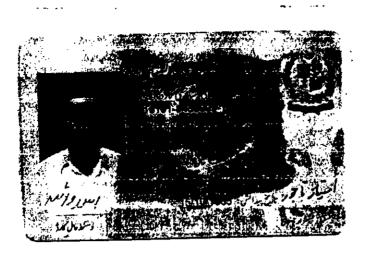
Muhamma oog[\]Afridi Advocate High Court Peshawar

Dated: 07.01.2020

<u>AFFIDAVIT</u>

I, Asad Ullah S/o Yousaf Khan R/o Post Office Rustam, Tehsil & District Mardan, do hereby solemnly affirm and declare on oath that the contents of the above mentioned <u>Application</u> are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honogable court.

Deponent



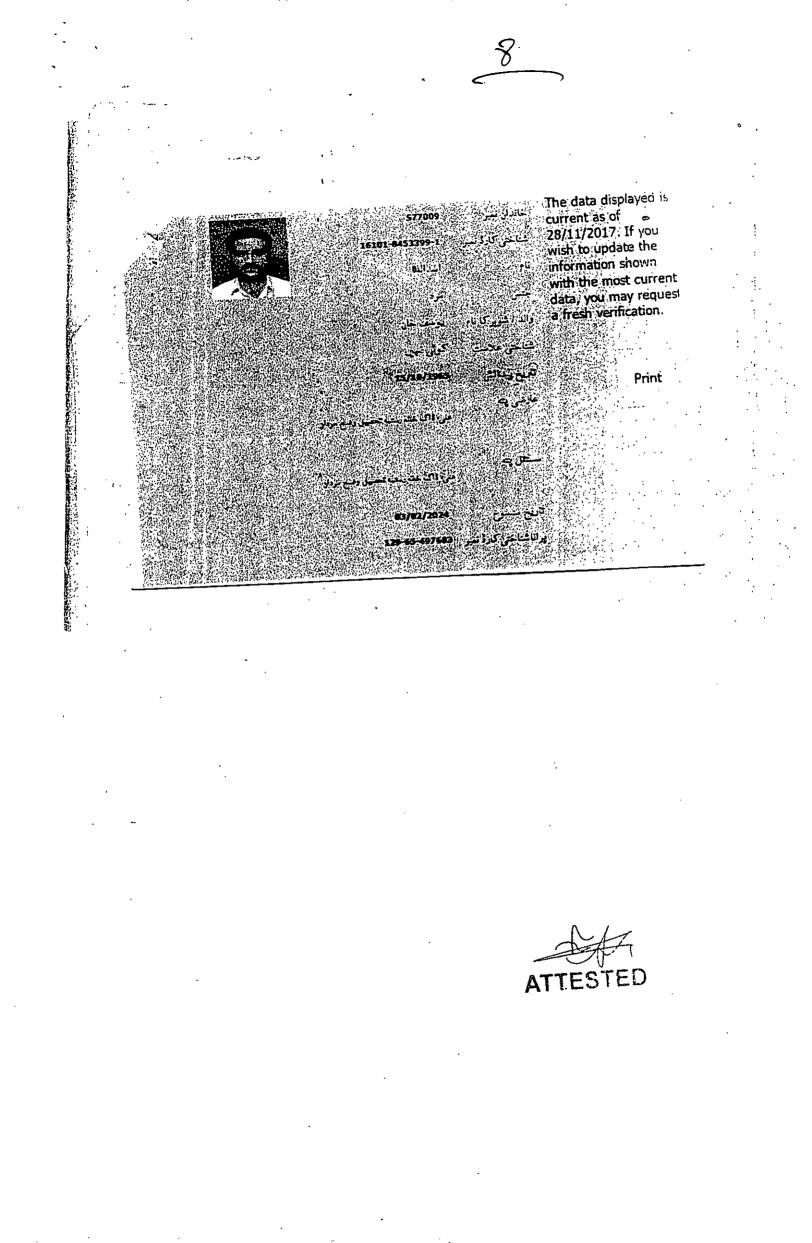
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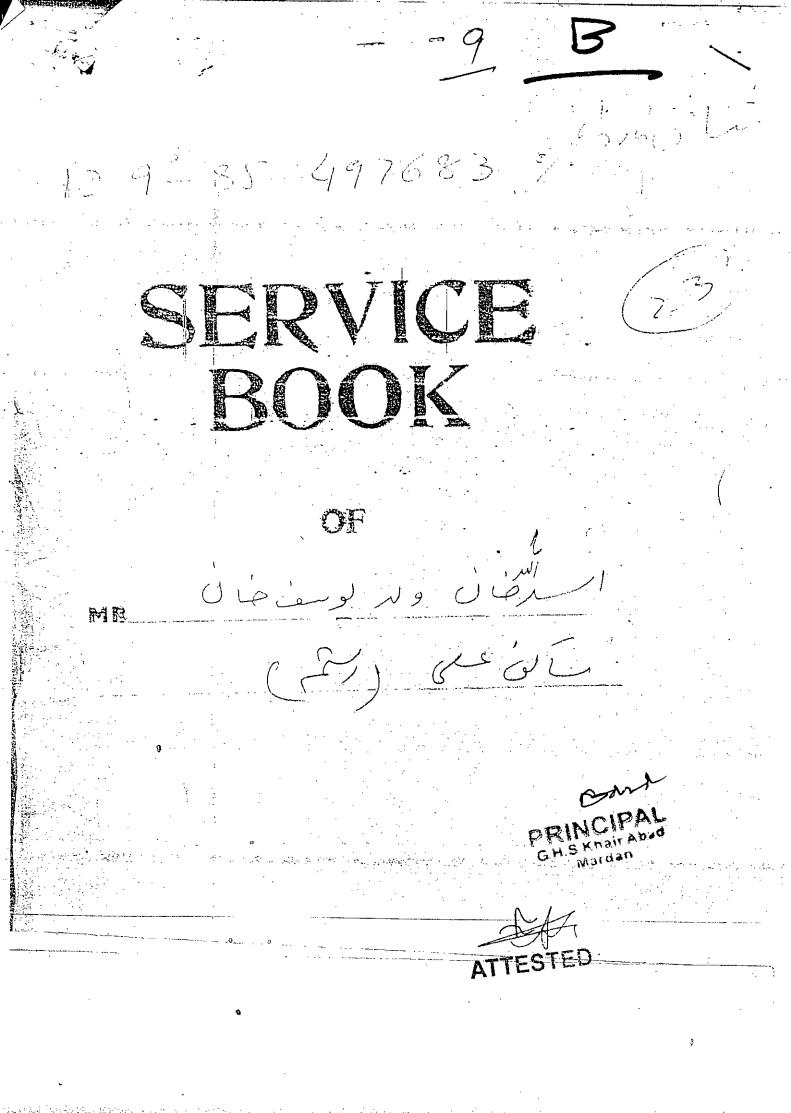
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,我就看到这些事情,你们都能能开始的意思,你们都是你的事情,你不能能能了,你们就是你,你们都是你是你的,你不是你?"他说道:"你你们还不是你,我要没是我,我们没有,

0 9-185-497683 5 SERVICE ROOK مر، ` 1 Lever D. 9 时限 (A)ON ATTESTED

AS A BULLAHKHAN 11 afghan Race Residence un lage Ali (Rustam) Tah & Disa: Mardam. Father's name and residence yours of Khan ٠Ļ٠ _**∅**⋧ - 11 - 5-9⁷ Third Hovember N. H. Jigly Ninc. Date of birth by Christian-craus 5. nearly as can be ascentained 5-6 6. Exact height by measurement 1 -Personal marks for indentification . Scar of Myll- Sulle mech. 7. . Left hand thumb and Finger impres-S. sion of (non-gazetted) officer Ring Finger . Little Finger Fore Finger Middle Eingera GH S ويعتب الالم Thumb. J) Signature of Government servant and the **O**. Signature and designation of the JÒ. · Head of the Officer or other Attesting ATTESTED Office: s. D.E. O. (M) · : · · MARDAN.

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من من من من من من من مردان المتحافين ورواست كالمقتل المحمد ر. ۱۹ ش ک باتی ب که میں 70% 11/198 مند ترکم تعلیم شن بعثیت چوند ارز اغض علی ایک میں میں میں میں میں میں میں میں ى رىڭى يىلىڭ ئىلۇل مەنبۇرىيەن 1965-15-15-14-يىكىن اس دىت مەيدىكى راپورت مىل 03/11/1959 كىلىغا ئىلىت يۇرىيىۋىرىي سىرىڭى يېرىڭ ئىلۇل مەنبۇرىيە مىلى 1965-10-15-14-يىلى ئەن دىلى دىت مەيدىكى راپورت مىل 03/11/1959 كىلىغا ئىلىت يۇ ے ماہ میں اللہ اپنا شدائی کا روز بکول رایکارڈ کے مطابق کرد یا ہے کنین ہے۔ اے ماہ میں تک میں تا حال 1959/11/1950 میں ہے۔ ير ب مان! آب ب ماجزا ندائتماس كى جاتى بيات كرمنا جان التقالي ب يتقالي ب ين الظرير من الرين كور كور كور ميلكان م منابق درج کرنے کے اخلامات صادر فرماویں۔ مین نوازش ، دلی ۔ ىرىلىكى ادرشانتى كاردك كألي منسب ، المراجع والمرد 26.10/2019 استاند (باشد تا جد) عور شبت المايسكول ميرة بإ• (م دان) NO 711 Datil: 18/10/2011. Frankickel to DEO(M) Mardon for further marcesony which Planse. CIPAL ATTECTED

ELEMENTAF	Y & SECONDARY EDUCATION DEPARTMENT; COVIT. OF KHYBER PAKHTUNKHWA	ŀ
	OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) MARDAN 20 0937-933151 , Edeomalemardan@gmail.	
No <u>1445</u>	/PF Asadullah N/Qasid GHS Khair Abad (Mardan) Dated of /2 /2019 The Principal, GHS Khair Abad Mardan	l
Subject:- Memo received fror	APPLICATION FOR CORRECTION IN DATE OF BIRTH. Reference application of Mr Asadullah N/Q of your school for the subject cited above, your school vide No.711 dated 28.10.2019 is hereby rejected being time barred and groun	d
less.	· · · · · · · · · · · · · · · · · · ·	-

So, the official concerned may be informed accordingly

Encal as above.

District Education Officer (Male) Mardan $\boldsymbol{\nabla}$

Marked to Mo, Asadullah N/Cp of this school. Count N/2012

ATTEST

Duplicat THE ZOH الكركمن يرت جا PEDU 54 33 Ц 49. منظ رمتده عزمنطورمتده لبرناك 18 كالمكن بوليس متعجيهما نمبر *تصبط* داخلر مسطح عسرتن كراحا تار illor _ في الما مديس من -20-6-80, برما ب مد من من وم و اللواحمين الأكروى بن اور أست فادير مندرهه بالايراب ، م فادج كوان كامباذت دى فى - يرجاعت الطبابي مومت بي بو ورسم امي كما امتحان بن يرْعتا بقاا م *ماگرا فاتر*س یں ب . درج مح مطاا فاحترى مقرمه يرجان יזצי کے اقتہ م مرکزی <u>ب</u>ن برا معنا بين جن بين طالب علم مسيسل بوا He was T ران طلبا کی صورت می جرمرم م اس کا اسمان د ŝ., محكم فاحقدنى مقرده يزماني بين لما فح تحا<u>بواسے ڈی ک</u>ی 19 19 . 3 سيسبق وددوكيا تحيا سم افتدام برهودي مال مدرس میں کمی جاتا ہے کہ مندرجہ ذیل اندراع کمی مدرسے جسٹروں اور سرمینکیوں سے مطابق جواس نے ان درمسوں سے طالب کے بی جہاں است مال مدرس میں کمی سے بیسلے تعلیم باق ہے جبی جار ۔ Committee Good داخل پوسف کی تا زیج العاديج تونيكي معال مدرسهين حاحرى كى روز الصحنة في حتي من حديث حاضر المجنين سال بكرته التصدير جريال مزرك عمثر مكول بي ا ورجبر بس [حاعت بي <u>ارچ</u> ين يرفين منبي إين فأنوان مدين المي الحج اثر ł ľ arris. ų ۳ ۴ 4 2 ميران 13-11-17 小门的 بمبكر فاملم قىم *مىكالوزپ .* كن سال عطائيوا سكالرشف كي مقدار كى ممال مكر اداكيات كحرن ديتاسب مت جوبها کم ودمد می ایج ب نوم :- الم طودير مديم جوش فري مرينيكين مح التحديث مددم من علي وم محملك الم محالة دم ول علية - بعورت ان طلباد مرين منهون مرك كول كا انتحان وبا يواك ما فانتج شكل كا دريخ مسركنا جليت -حسے منابسہے ۔ بنیک طامے نے موادی کیا ہی جے ضی چارج ہوگی ۔ مونیک سے مے درخوامت دی جائے توسنے سرشیک سے کے موازی کچ ہوچے وحول کے ما الجردمرهمود فيحتج برحات ادريته ED

IN THE HONORABLE SERVICE TRIBUNAL KPK PESHAWAR

ASAD ULLAH S/o YOUSAF KHAN

Versus

DISTRICT EDUCATION OFFICER etc.

I/We,

The above noted Appellant, do hereby appoint and constitute Muhammad Faroog Afridi, Advocate High Court Peshawar, to appear,

plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsels in the above noted matter, I / we also authorize the said Counsel to file appeal, revisions, review, application for restoration, compromise, withdraw, refer the matter for arbitration, and make any miscellaneous application in the matter or arising out of the matter and to withdraw and receive in my/our behalf all sums and amounts deposited on my/our account in the above noted matter.



W/w/ CLIENT

(APPELLANT)

(RESPONDENTS)

ACCEPTED M.**(FA**È **FRIDI** /ocate **High Court Peshawar** 0300-5838546, 0333-5401639

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIB Paki <u>KPK, PESHAWAR</u>

Part up to the court with rapped,

Service Appeal No.271/2020



19/02

.. APPELLANT

Asad Ullah

Versus

District Education Officer (DEO) etc...RESPONDENT De tried to a date after 10/1-12020

Application for fixation of Appeal

Respectfully Sheweth,

- 1. That the above mentioned Appeal is pending adjudication before tis Honorable Tribunal which is fixed for hearing on 10/02/2020.
 - 2. That the counsel for the appellant will not be available on the date fixed due to professional engagements in Karachi, hence, the date so fixed will adjourn without any result and the precious time of the Honorable Tribunal would waste.
 - 3. That it will be in the interest of justice to pass appropriate order in the above titled case.

It is, therefore, respectfully prayed that on acceptance of instant application, the date so fixed may either be accelerated or be fixed after 10 February 2020 in the interest of justice

Appellant Through Muhammad Farooq Afridi Advocate

ATTESTED

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

KPK, PESHAWAR

Service Appeal No.271/2020

Asad Ullah

- St. Albert - Albert Jack

..... <u>APPELLANT</u>

Versus

<u>AFFIDAVIT</u>

It is, hereby, solemnly affirm and declare on oath that the contents of the above mentioned <u>Application</u> are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable court.

DH

ATTESTED

5. That the balance of convenience also lies in favour of the applicant for grant of interim relief.

That if the interim relief is not granted in favour of the applicant and the respondents are not restrained from retiring the applicant/ appellant, thus, he would suffer irreparable loss.

7. That the facts and grounds of the accompanying appeal may kindly be read as an integral part of this application.

It is, therefore, respectfully prayed that on acceptance of this application, the application for grant of interim relief (as prayed for) may very graciously be allowed, till the final decision of the instant case.

Through

Applicant/ Appellant Muhammad Faroog Afridi Advocate, Peshawar

Date: 🚓 02.2020

<u>AFFIDAVIT:</u>

It is stated on oath that that the contents of **Application** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.

DEPONENT

- 5. That the balance of convenience also lies in favour of the applicant for grant of interim relief.
 - That if the interim relief is not granted in favour of the applicant and the respondents are not restrained from retiring the applicant/ appellant, thus, he would suffer irreparable loss.
- That the facts and grounds of the accompanying appeal may kindly be read as an integral part of this application.

It is, therefore, respectfully prayed that on acceptance of this application, the application for grant of interim relief (as prayed for) may very graciously be allowed, till the final decision of the instant case.

Through

Applicant/ Appellant Muhammad Faroog Afridi Advocate, Peshawar

28 Date: 🐲.02.2020

<u>AFFIDAVIT:</u>

It is stated on oath that that the contents of **Application** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.

DEPONENT

BEFORE THE SERVICES TRIBUNAL, KPK, PESHAWAR



In Rè Service Appeal No.<u>)7/</u>___ of 2020

Asadullah Khan..... Applicant/ Appellant

VERSUS

DEO (Male), Mardan and others......Respondents

Mary to he Cent cliques offins all

Application for grant of interim relief by restraining the respondents not to retire the applicant/ appellant during the pendency of the titled service appeal

Lespectfully Sheweth: Walk 1. That the titled service appeal is pending adjudication before this Hon'ble Tribunal and is fixed for 16.03.2020. Man and M

That the applicant has got a good prima facie case 4. in his favour and is sanguine about its success.