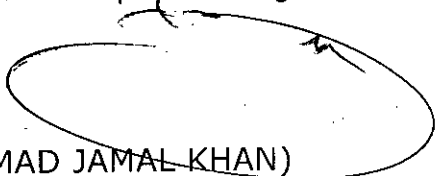


30.11.2020

Petitioner has not forth come at the moment i.e 11:50 A.M. Mr. Kabirullah Khattak, Additional Advocate General, for the respondents is present.

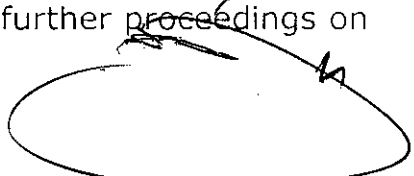
The operation of impugned judgment of this august Tribunal has been suspended by the Hon'ble apex court in CPLA vide order dated 19.11.2020 which is placed on file, in compliance thereof the process issued for execution stand recalled, therefore, file to come up for further proceedings on 25.01.2021 before S.B.


(MUHAMMAD JAMAL KHAN)
MEMBER (JUDICIAL)

25.01.2021

Miss. Rabia, Advocate, for appellant is present. Mr. Kabirullah Khattak, Additional Advocate General, for the respondents is also present.

Since the judgment of this Tribunal has been suspended by the Hon'ble Supreme Court of Pakistan in CPLA vide order dated 19.11.2020, therefore, file to come up for further proceedings on 24.03.2021 before S.B.


(MUHAMMAD JAMAL KHAN)
MEMBER (JUDICIAL)

24.03.2021

Nemo for appellant

Kabir Ullah Khattak learned Additional Advocate General for respondents present.

Since the judgment of this Tribunal has been suspended by the Hon'ble Supreme Court of Pakistan in CPLA vide order dated 19.11.2020, therefore, instant execution petition stands adjourned sine die. However, parties would be at liberty to seek its restoration after decision by the Apex Court.

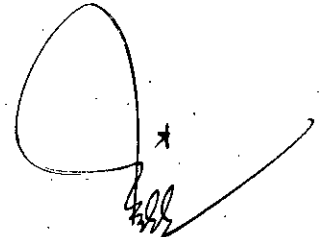

(Rozina Rehman)
Member (J)

13.07.2020

Counsel for the petitioner and Addl. AG for respondents present.

The matter was adjourned through Reader Note, therefore, the office shall issue notices to the respondents for submission of implementation report.

Adjourned to 01.09.2020 before S.B.



(Mian Muhammad)
Member(E)

01.09.2020

Appellant in person and Addl. AG for the respondents present.

Learned AAG seeks time to contact the respondents and furnish the implementation report. Adjourned to 05.10.2020 for submission of implementation report.



Chairman

05.10.2020

Counsel for the petitioner and Addl. AG alongwith Abdul Wahid, A.D (Litigation) for the respondents present.

The representative of respondents has provided copy of an application for early hearing of CPLA submitted to Apex Court on 23.09.2020.

It is a fact that the CPLA moved by the respondents has not yet been fixed. The respondents are, therefore, required to submit the implementation report on next date of hearing in case the judgment under implementation is not set aside or suspended by the Apex Court till then.

Adjourned to 30.11.2020 before S.B.


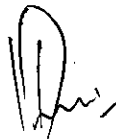




Chairman

Form- A
FORM OF ORDER SHEET

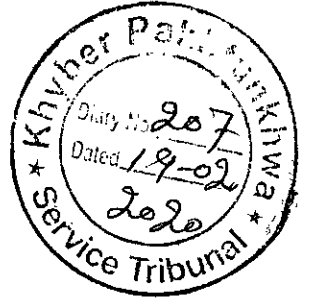
Court of _____

Execution Petition No. 56/2020

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	19.02.2020	<p>The execution petition of Mr. Noor-Ul-Amin submitted today by Naila Jan 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 <u>19/2/2020</u></p>
2-		<p>This execution petition be put up before S. Bench on <u>13/03/2020</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
	13.03.2020	<p>None present on behalf of the petitioner. Notices be issued to the respondents for implementation report for 16.04.2020 before S.B. Notice be also issued to petitioner/counsel for the petitioner for attendance for the date fixed.</p>
	16.04.2020	<p>Due to public holiday (MULHAMMAD QADIR HAN KUNDI) is adjourned to 13.07.2020 for the same. To come up for the same as before S.B.</p> <p style="text-align: right;"> MEMBER</p> <p style="text-align: right;"> Reader</p>

1

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA,
PESHAWAR.



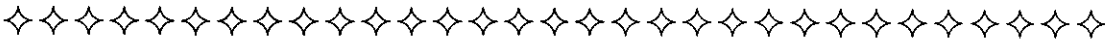
CM No:- 56 /2020

In
Service Appeal No:- 961/2018

Mr. Noor Ul Amin, Ex-PST, GPS, Khandaq Adezai Peshawar
..... Petitioner/Appellant

Versus

1. The Secretary (E&SE), Khyber Pakhtunkhwa Peshawar
2. The Director (E&SE), Khyber Pakhtunkhwa Peshawar
3. The District Education Officer (Male) Peshawar
..... Respondents



EXECUTION PETITION FOR
IMPLEMENTATION OF THE VIDE
ORDER/JUDGMENT DATED 21/11/2019
OF THIS HONOURABLE TRIBUNAL IN
APPEAL NO 961/2018.

Respectfully Sheweth:-

1. *That the above titled Service Appeal was pending before this Honourable Tribunal, which was disposed off vide judgment/order dated 21/11/2019. (Copy of judgment is attached as annexure "A").*
2. *That in the said judgment this Honourable Tribunal held that as such we partially accept the appeal, set aside the impugned order and convert the major penalty of removal from service into a major*

penalty of compulsory retirement with effect from the date of his absence i.e. January 2013. the absence period is treated as unauthorized absence. Parties are left to bear their own costs.

- 3. That this Honourable Tribunal issued copies of the said judgment to the respondents as well the petitioner/appellant submitted the same to the respondents within time, but the respondents did not comply with the directions of this Honourable Tribunal.
- 4. That the appellant/petitioner approached respondents department time and again for the implementation of judgment of this Hon'ble tribunal but fruitless, hence this application for implementation of judgment.

It is, therefore, most humbly prayed that on acceptance of this Execution Petition, the order/judgment dated 21/11/2019 may kindly be implemented.

Any other remedy which deem fit to this Hon'ble tribunal may kindly be granted to the appellant/petitioner.

Dated:- 18-Feb-2020

Through:-

Petitioner/Appellant

Naila Jan
Advocate, High court
Peshawar.

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

CM No:- _____/2020

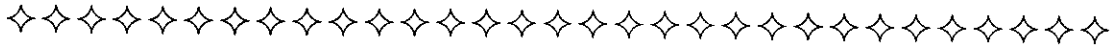
In

Service Appeal No:- 961/2018

Mr. Noor Ul Amin Petitioner/Appellant

Versus

The Secretary (E&SE), Khyber Pakhtunkhwa & others
..... Respondents



AFFIDAVIT

I, Noor Ul Amin Ex-PST, GPS, Khandaq Adezai, Peshawar, do hereby solemnly affirm and declare on oath that the contents of this accompanying Execution Petition are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honourable Court.

Identified by

Naila Jan
Advocate, High court
Peshawar.

DEPONENT
CNIC No:-

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

CPLA NO. _____/2020

A
M
C

Secretary Elementary & Secondary Education Department, Khyber
Pakhtunkhwa, Peshawar & Others

PETITIONERS

VERSUS

Mr. Noor-Ul-Amin

RESPONDENT

NOTICE

To

Mr. Noor-Ul-Amin, Ex-PST, GPS, Khandaq Adezai, Peshawar ✓

Please take notice Registered A/D post to the effect that I am filing
CPLA with stay application in the above titled case against the judgment of
the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar dated
21/11/2019 in Service Appeal No.961/2018 before the Supreme Court of
Pakistan in its Branch Registry at Peshawar.

AOR = 30000/-
ACC = 150000/-

(Mian Saadullah Jandoli)
Advocate-on-Record
Supreme Court of Pakistan
For Government/Petitioners

محبت عبا - D.E.O صاحب خردانہ پشاور

Compassion retirement notification فیصلہ سروس ٹریڈنگ
Ex-PST گورنمنٹ پرائمری سکول حدق سرکل
نورالآمین

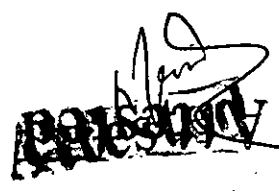
حنا - عالی!

گزارش خدمت ہے کہ بندہ آپ کے زیر سایہ محکمہ تعلیم PST یونٹ پر سال
2000 سے کام کر رہا تھا آپ صاحبان نے غیر حاضری کی وجہ سے ریموون کیا
اس کے خلاف بندہ نے سروس ٹریڈنگ KPK پشاور میں اپیل دائر کیا تھا
سروس ٹریڈنگ KPK پشاور نے بندہ کے حق میں 21/11/2019 کو جبری
ریٹائرمنٹ کا فیصلہ دیا ہے جو درخواست کے ساتھ منسلک ہے مہربانی فرما
فیصلہ کے مطابق بندہ کی جبری ریٹائرمنٹ کی Notification کے استحضات
جاری فرمائیں۔

عین نوار شہ سوگی

الخازن

آپ کا تاحدار نورالآمین سما لوقہ PST گورنمنٹ پرائمری سکول حدق ادلیہ
سرکل حسی ٹاون نور پشاور۔



BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

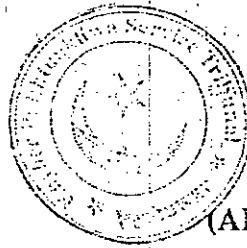
6

APPEAL NO. 961 /2018

1204

27-7-2018

Mr. Noor Ul Amin, Ex-PST,
GPS, Khandaq Adezai, Peshawar



(APPELLANT)

VERSUS

1. The Secretary (E&SE), Khyber Pakhtunkhwa, Peshawar.
2. The Director (E&SE), Khyber Pakhtunkhwa, Peshawar.
3. The District Education Officer (Male), Peshawar.

(RESPONDENTS)

APPEAL UNDER SECTION 4 OF THE KPK SERVICE TRIBUNALS ACT, 1974 AGAINST THE ORDER DATED 05.07.2018, WHEREBY THE DEPARTMENTAL APPEAL OF THE APPELLANT HAS BEEN REJECTED AGAINST THE ORDER DATED 03.01.2018 WHEREBY THE APPELLANT WAS REMOVED FROM SERVICE FOR NO GOOD GROUNDS.

Filed to-day
↓
Registrar
27/7/18

PRAYER:

Resubmitted to-day
and
↓
Registrar
27/8/18

THAT ON THE ACCEPTANCE OF THIS APPEAL, THE ORDERS DATED 05.07.2018 AND 03.01.2018 MAY BE SET ASIDE AND THE APPELLANT MAY BE REINSTATED INTO SERVICE WITH ALL BACK AND CONSEQUENTIAL BENEFITS. ANY OTHER REMEDY, WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT, MAY ALSO, BE AWARDED IN FAVOUR OF APPELLANT.

Attested

ATTESTED
Registrar
27/8/18

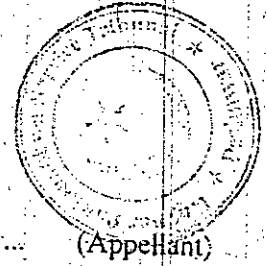
BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

SERVICE APPEAL NO. 961/2018

Date of institution.... 27.07.2018

Date of judgment ... 21.11.2019

Noor Ul Amin, Ex-PST
GPS, Khandaq Adezai, Peshawar.



(Appellant)

VERSUS

1. The Secretary (E&SE), Khyber Pakhtunkhwa, Peshawar.
2. The Director (E&SE), Khyber Pakhtunkhwa, Peshawar.
3. The District Education Officer (Male), Peshawar.

(Respondents)

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDER DATED 05.07.2018, WHEREBY THE DEPARTMENTAL APPEAL OF THE APPELLANT HAS BEEN REJECTED AGAINST THE ORDER DATED 03.01.2018 WHEREBY THE APPELLANT WAS REMOVED FROM SERVICE FOR NO GOOD GROUNDS.

Mr. Taimur Ali Khan, Advocate

For appellant.

Mr. Kabirullah Khattak, Additional Advocate General

For respondents.

Mr. MUHAMMAD AMIN KHAN KUNDI

MEMBER (JUDICIAL)

MR. MUSSAIN SHAH

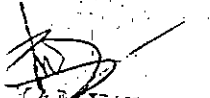
MEMBER (EXECUTIVE)

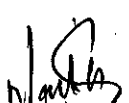
JUDGMENT

MUHAMMAD AMIN KHAN KUNDI, MEMBER: - Counsel for the appellant and Mr. Kabirullah Khattak, Additional Advocate General for the respondents present. Arguments heard and record perused.

2. Brief facts of the case as per present service appeal are that the appellant was serving in Education Department as Primary School Teacher. He was imposed major penalty of removal from service by the competent authority vide order dated 03.01.2018 on the allegation of willful absence from duty with effect from January 2013. The impugned order dated 03.01.2018 was received.

TESTED


For Peshawar
vice District
Peshawar


Attested

to the appellant on 07.03.2018 as alleged by the appellant in para-16 of the departmental appeal and thereafter, he filed departmental appeal on 09.03.2018 which was rejected on 05.07.2018 hence, the present service appeal on 27.07.2018.

3. Respondents were summoned who contested the appeal by filing written reply/comments.

4. Learned counsel for the appellant contended that the appellant was serving in Education Department as Primary School Teacher. It was further contended that he was appointed as Primary School Teacher in the year 2000 and has performed his duty with the entire satisfaction of his superiors and no complaint has been filed against him during the performance of his duty. It was further contended that the appellant applied for ex-Pakistan leave with effect from 02.12.2012 to 01.12.2014 which was duly sanctioned by the competent authority vide order dated 31.12.2012. It was further contended that the respondent-department has imposed major penalty of removal from service but neither he was properly summoned for associating him in departmental proceeding nor any charge sheet, statement of allegation was framed and served upon him nor proper inquiry was conducted nor any show-cause notice was issued to him. It was further contended that neither any absence notice was issued at his home address nor any advertisement of absence was published in any newspaper, therefore, the appellant was condemned unheard which has rendered the whole proceeding illegal and liable to be set-aside. It was further contended that the appellant was having more than 10 years service in his credit but the same was not considered by the competent authority while imposing the major penalty, therefore, prayed for acceptance of appeal.

5. On the other hand, learned Additional Advocate General for the respondents opposed the contention of learned counsel for the appellant and

M. Amin
6/07.11.2019

ATTESTED

[Signature]
M. AMIN
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar.

[Signature]
Attested

9

contended that the appellant was serving in Education Department. It was further contended that the appellant remained absent from duty for a long period with effect from January 2013 till the impugned order dated 03.01.2018. It was further contended that the appellant remained absent from duty without the permission of the competent authority. It was further contended that the appellant was proper issued a show-cause notice regarding his absence from duty to which the appellant duly submitted reply but the same was found unsatisfactory by the competent authority. It was further contended that a proper absence notice was also issued to the appellant at his home address and proper absence notice was also published in the daily newspaper "Mashriq" dated 04.12.2017 but the appellant did not attend the duty, therefore, the competent authority has rightly imposed major penalty of removal from service after fulfilling all the codal formalities and prayed for dismissal of appeal.

M. Amin
 21.11.2019

6. Perusal of the record reveals that the appellant was serving in Education Department as Primary School Teacher. He was appointed as Primary School Teacher in the year 2000. The appellant was imposed major penalty of removal from service but the respondent-department has not conducted a proper regular inquiry as neither charge sheet, statement of allegation was framed and served upon the appellant nor any regular inquiry was conducted against the appellant. Though the respondent-department has issued a show-cause notice but neither the respondent-department has dispensed the regular inquiry in the show-cause notice nor any reason for dispensing the regular inquiry has been mentioned in the show-cause notice. Moreover, the appellant was appointed as Primary School Teacher in the year 2000 and he was imposed major penalty of removal from service on the allegation of his absence from duty with effect from January 2013 meaning thereby, that he was having more than 10 years service in his credit with effect from his appointment till his absence, therefore, the impugned

TESTED

[Signature]
 Director
 Tribunal
 Jharkhand

[Signature]
 Attested

order of removal from service appear to be harsh. As such, we partially accept the appeal, set-aside the impugned order and convert the major penalty of removal from service into a major penalty of compulsory retirement with effect from the date of his absence i.e January 2013. The absence period is treated as unauthorized absence. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
21.11.2019

Muhammed Amin
(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

Hussain Shah
(HUSSAIN SHAH)
MEMBER

Certified to be true copy
[Signature]
MEMBER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date	2010
Name	<i>[Signature]</i>
City	<i>[Signature]</i>
Prof.	<i>[Signature]</i>
Address	<i>[Signature]</i>
Date	26-12-19
Date	26-12-19

[Signature]
Attested

Petitioner
2020ء منجانب
نورالمن بنام حکومت

مورخہ
مقدمہ
دعویٰ
جرم

Execution

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ

آن مقام لیسٹ اور کیلئے ناسر صاحب اہد و مستی اہم قانون
مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز
وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ پر خلف دیئے جواب دہی اور اقبال دعویٰ اور
بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق
زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی
اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا۔ از بصورت ضرورت
مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے
تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے
اور اس کا ساختہ پر داخستہ منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے
سبب سے وہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں
گے۔ کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سندر ہے۔

2020ء

ماہ فروری

الرقوم 18

نورالمن
(Petitioner)
H. J. J.

کے لئے منظور ہے۔

مقام
ریشا اور
Accepted & accepted
by of Rishaw
H. J. J.

D/C

07-23/09/2020
RZ

IN THE SUPREME COURT OF PAKISTAN
Appellate Jurisdiction

CMA. NO. _____/2020.

IN

CPLA NO. 43-P/2020

Govt. of Khyber Pakhtunkhwa, through Secretary (E&SE) Department,
Peshawar & others

—————PETITIONERS

VERSUS

Noor ul Amin

—————RESPONDENT

APPLICATION UNDER ORDER-XXXIII-RULE-VI
OF THE SUPREME COURT ORDERS & RULES
1980, FOR EARLY HEARING AND TRANSFER
OF CPLA NO. 43-P/2020, FROM REGISTRY
BRANCH OF PESHAWAR TO PRINCIPAL SEAT
AT ISLAMABAD.

RESPECTFULLY SEWETH:

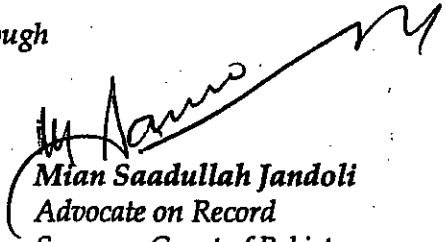
1. *That the petitioners have filed the above noted CPLA along-with stay application in the Registry Branch at Peshawar of this august Court.*
2. *That no date has yet been fixed in the case for hearing due to non-availability of the bench at the Registry Branch at Peshawar.*
3. *That the respondent has initiated implementation proceeding before the learned Khyber Pakhtunkhwa Service Tribunal Peshawar wherein notice has been issued to the petitioners for implementation and compliance report for 05-10-2020 (Copy of the order is attach).*

4. *That the learned Khyber Pakhtunkhwa Service Tribunal Peshawar is stressing for implementation of the impugned order in the CPLA mentioned above which is pending before this august Court at branch Registry at Peshawar.*
5. *That if the above mentioned CPLA is not fixed earlier for hearing the very purpose of the CPLA would be lost and the petitioners will face the execution proceeding of the Service Tribunal Peshawar.*
6. *That the facts and circumstances explain above an early date of hearing and transfer of case from Registry Branch at Peshawar to the Principal seat at Islamabad may please be order to save the petitioners from inconvenience.*
7. *That it is in the interest of justice and fair play if this august Court is pleased to fix the above mention CPLA as convenient to this August Court for hearing at Islamabad.*

It is, therefore, humbly prayed that the above mentioned CPLA along-with stay application may kindly be transfer from Peshawar Registry Branch to Principal seat at Islamabad for early hearing as convenient to this August Court.

Drawn & Filed by

Through


Mian Saadullah Jandoli
Advocate on Record
Supreme Court of Pakistan
For Government/Petitioners

99/20
17815

SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Gulzar Ahmed, CJ
Mr. Justice Munib Akhtar
Mr. Justice Yahya Afridi

CIVIL PETITION NO.43-P OF 2020

(Against the judgment dated 21.11.2019, passed by the Khyber Pakhtunkhwa Service Tribunal, Peshawar, in Service Appeal No.961 of 2018)

**Secretary, Elementary & Secondary
Education Department, Government of KPK,
Peshawar and others**

...Petitioner(s)

Versus

Noor-ul Amin

...Respondent(s)

For the Petitioner(s) : Mr. Zahid Yousaf Qureshi,
Additional Advocate General,
Khyber Pakhtunkhwa

Respondent(s) : N.R.

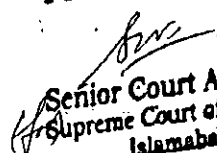
Date of Hearing : 19.11.2020

ORDER

GULZAR AHMED, CJ.- The learned Additional Advocate General, Khyber Pakhtunkhwa contends that the very service appeal filed by the respondent before the Khyber Pakhtunkhwa Service Tribunal, Peshawar (**the Tribunal**) was time-barred and further in view of the fact that the respondent has remained absent from January, 2003 till order of his removal from service dated 03.01.2018 i.e. for a period of more than four years and such absence being admitted on the record, the interference by the Tribunal in the penalty imposed upon the respondent was not justified, for that, the respondent could not be given premium of his unlawful act.

2. The submissions made by the learned Additional Advocate General, Khyber Pakhtunkhwa, require consideration. Leave to appeal is granted to consider, *inter alia*, the same. The appeal stage paper-

ATTESTED


Senior Court Associate
Supreme Court of Pakistan
Islamabad

books be prepared from the available record with liberty to the parties to file additional documents, if any, within a period of one month. As the matter relates to service, the Office is directed to fix the appeal expeditiously, preferably after three months.

CMA No.94-P of 2020:

3. In the meantime, the operation of the impugned judgment shall remain suspended.

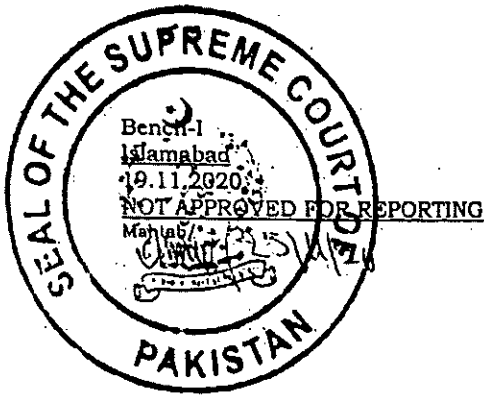
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Supreme Court of Pakistan
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