Form-A

FORM OF ORDER SHEET

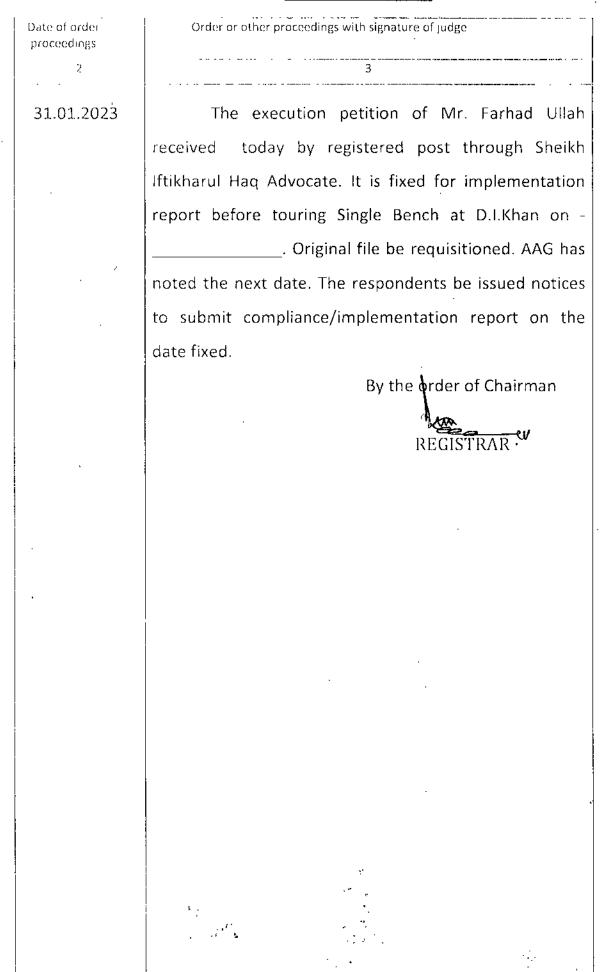
Court of_____

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Execution Petition No. 56/2023



BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL CAMP COURT DERA ISMAIL KHAN

Implementation Petition No. 56_____ or 2023

In Service Appeal No. 4761/2021 Decided on 28/10/2022

Farhad Ullah

Versus

Govt. of KPK etc

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Date: <u>28</u>/01/2023

Your Hymble Petitioner مسطرح التر

Farhad Ullah

Through Counsel

Shéikh Iftikhar ul Haq Advocate Supreme Court BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL CAMP COURT DERA ISMAIL KHAN

Implementation Petition No. <u>56</u> of 2023

In Service Appeal No. 4761/2021 Decided on 28/10/2022

> Farhad Ullah son of Mashal Khan caste Marwat r/o village Masha Mansoor Tehsil & District Lakki Marwat, Ex-Chowkidar GGCMS Masha Mansoor Lakki Marwat.

VERSUS

- 1. Government of KPK, Through Secretary Elementary & Secondary Education Peshawar.
- 2. The Director (E&S) Education Khyber Pakhtunkhwa Peshawar.
- 3. District Education Officer (Female) Lakki Marwat.

.....Respondents

... Petitioner

IMPLEMENTATION PETITION UNDER KHYBER PAKHUNKHWA SERVICE TRIBUNAL ACT 1974 READ WITH KPK SERVICE TRIBUNAL SERVICE TRIBUNAL RULES 1974 AS AMENDED FOR IMPLEMENTATION OF THE ORDER/JUDGMENT IN SERVICE APPEAL NO. 4761/2021 DECIDED ON 28/10/2022 BY THIS HONOURABLE TRIBUNAL.

Respectfully Sheweth:-

The Petitioner most respectfully submits as under:-

- 1. That the appellant was appointed as Chowkidar in GGCMS Masha Mansoor Lakki Marwat and on 10/04/2004.
- That the appellant was performing his duties to the entire satisfaction of his high-ups and never absented himself throughout his service career. In this respect attendance register of the school is very much clear.
- 3. That on 30/12/2020, the appellant was removed from service against which the appellant submitted departmental appeal which was not accepted and after that the service appeal No. 4761/2021 was preferred by the appellant before this Honourable Tribunal and the learned Tribunal was pleased to accept the service appeal by setting aside the impugned order vide judgment dated 28/10/2022. Copies of the appeal and judgment are annexed as <u>Annexure-A & B</u>.
- 4. That now the respondents are not implementing the order dated 28/10/2022, hence, the instant implementation petition is being filed before this Honourable Tribunal.

GROUNDS

- A. That the acts and omissions of the respondents authorities to not obeyed/implement the order of this honourable tribunal in its true letter and spirit are clear cut violation of law, statutes and constitution.
- B. That lame excuses on behalf of respondents/authorities are not maintainable and respondents are required to implement

the judgment of this honourable Tribunal in its true letter and spirit.

C. That the Counsel for the Petitioner may kindly be allowed to raise further legal grounds during the course of arguments.

It is therefore, humbly requested that the respondents be directed to fully implement the judgment/order of this honourable tribunal dated 28/10/2022.

Date: <u>28</u>/01/2023

Yours Humble Petitioner

با د الله

Farhad Ullah

Through Counsel.

Shéikh Iftikhar ul Haq Advocate Supreme Court

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL CAMP COURT DERA ISMAIL KHAN

Implementation Petition No. _____ of 2023

In Service Appeal No. 4761/2021 Decided on 28/10/2022

Farhad Ullah

Versus

Govt. of KPK etc

<u>AFFIDAVIT</u>

I, Farhad Ullah son of Mashal Khan caste Marwat r/o village. Masha Mansoor Tehsil & District Lakki Marwat, do hereby solemnly affirm and declare on oath that contents of above Petition are true & correct to the best of my knowledge and that nothing has been concealed from this Honourable Court.

Dated: 28 /01/2023

Identified by:

Sheikh Iftikhar ul Haq Advocate Supreme Court

يل واللم DEPONENT

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUN

PESHAWAR

Service Appeal No. 476/12021

Farhad Ullah son of Mashal Khan taste Marwat r/o village Masha Mansoor Tehsil & District Lakki Marwat, Ex-Chowkidar GGCMS Masha Mansoor Lakki Marwat. 03429363076

VERSUS

1. Government of KPK, Through Secretary Elementary & Secondary Education Peshawar.

 The Director (E&S) Education Khyber Pakhtunkhwa Peshawar.

3. District Education Officer (Female) Lakki Marwat.

...... (RESPONDENTS

ber Pak

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL ACT, 1974.

PRAYER

On acceptance of the instant appeal the impugned office order bearing No. 5050-56 dated 30/12/2020 iledio-day issued by the respondent#3 may kindly be set aside vide which by imposing the major penalty of removal from service the appellant was removed from services with immediate effect and also against the appellate order qua the departmental appeal wherein the respondent#2 remained silent/not taken any action by not deciding the departmental appeal of the appellant meaning thereby rejection of departmental appeal of the appellant within stipulated period and thus the service of the appeliant be restured, with all back benefits by setting aside the imp gned office orders mentioned above. TESTED

Respected Sir,

Appellant humbly submits as under;

- 1. That the appellant was appointed as Chowkidar in GGCMS Masha Mansoor Lakki Marwat and on **10/06/2007**. Copy of the appointment order is annexed as <u>Annexure-A</u>.
- 2. That the appellant was performing his duties to the entire satisfaction of his high-ups and never absented himself throughout his service career. In this respect attendance register of the school is very much clear. Copies of the attendance register are annexed as <u>Annexure-B</u>.
- 3. That in the month of November 2020, due to crucial and critical conditions of the COVID-19, the school was closed to some extents and conditions, in spite of this the appellant performed his duties and remained punctual and never absented himself as evident from the attendance register.
- 4. That the appellant was performing duties and on the instructions of political vendetta in spite of on duty, the appellant was marked absent on 18/12/2020 in his presence due to personal grudges and instructions of political vendetta because some of the family members of appellant are having/belonging with political rivals of the ruling party. Thus, the appellant was on duty on the eventful day, i.e. 18/12/2020. In spite of this, ironically, the respondent#3 issued the impugned office order No. 5050-56 dated 30/12/2020 vide which the service of the appellant was removed by imposing major penalty. Copy of the impugned order dated 30/12/2020 is annexed as <u>Annexure-C</u>.
- · 5. That appellant the feeling aggrieved, preferred a departmental appeal vide dairy No. 231 dated 06/01/2021 to the respondent#2 being appellate anthority, which was not accepted within stipulated period. It is also pertinent mention that later on 20/01/2021 the respondent#2 called the detailed report/comments from the respondent#3 vide letter 2842 dated No. 20/01/2021. Copies of the

departmental appeal and letter dated 20/01/2021 are annexed as Annexure-D & D/1

6. That appellant feeling aggrieved by the impugned order dated 30/12/2020, hence, the instant appeal on the following grounds.

<u>GROUNDS</u>

- a. That the impugned order is against law, fact and circumstance of the case, hence, is not tenable in the eye of law but liable to be set aside.
- b. That the impugned order has been passed with mala-fide and hasty manner as, no charge sheet, statement of allegations, opportunity of replication, hearing, first show cause notice, final show cause notice, in short no inquiry has been conducted whatsoever, thus the impugned order is against the principle of law, service rules, policy and is not in the commence of EASTA Code.
- c. That the appellant is punctual and was on duty and never remained absent from duty and the alleged proceeding is on the bases of political pressure and victimization.
- **d.** That this honourable Tribunal has got vast and ample powers to entertain the instant appeal.
- e. That counsel for the appellant may graciously be allowed to raise additional grounds at the time of arguments.

It is therefore humbly prayed that On acceptance of the instant appeal the impugned office order bearing No. 5050-56 dated 30/12/2020 issued by the respondent#3 may kindly be set aside vide the the by imposing the

major penalty of removal from service the appellant was removed from services with immediate effect and also against the appellate order qua the departmental appeal wherein the respondent#2 remained silent/not taken any action by not deciding the departmental appeal of the appellant meaning thereby rejection of departmental appeal of the appellant within stipulated period and thus the service of the appellant be restored with all back benefits by setting aside the impugned office orders mentioned above.

Dated <u>07</u>/02/2021

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Your humble appellant,

ن *بر البر* Farhad Ullah Through counsel:-

Sheikh Iftikhar ul Haq Advocate High Court District Bar Dera Ismail Khan

| <u>BEFORE THE KPK</u> | SERVICES TRIBUN | AL, PESH | AWAR |
|-----------------------|-----------------|----------|------|
| In Service Appeal No | /2021 | | |
| | | : | |

Farhad Ullah (**Appellant**)

Versus

Govt Of KPK, etc (<u>Respondents</u>)

AFFIDAVIT

I, Farhad Ullah, appellant herein, do hereby solemnly affirm on oath that all parawise contents of the accompanying appeal are true and correct to the best of my knowledge, belief and information; that nothing has been concealed or kept secret from this worthy. Tribunal, nor anything contained therein is based on exaggeration or distortion of facts.

Dated <u>7</u>/06/2021

Identified Deponent

VERIFICATION

Verified on oath at DIKhari, this 7 day of April 2021, that all contents of the above appeal are true and correct.

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Dated <u>67</u>/0**4**/2021

Appellant

ORDER 28th Oct, 2022

1. Learned counsel for the appellant present, Mr. Kabrullah Khattak, Addl: AG for respondents present.

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aer Pakh,

2. Vide our detailed order of today placed in Service Appeal No. 4760/2020 titled "Mst. Bilgees-vs-Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Peshawar and others" (copy placed in this file), this appeal is also allowed. Costs shall follow the events. Consign.

3. Pronounced in open court in D.I.Khan and given under our hands and seal of the Tribunal on this 28^{th} day of October, 2022.

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

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(Rozina Rehman)

Member (Judicial) Camp Court D.I.Khan

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Service Arys at Au, 27(4) 2021 (alled 'Mat Bilgers on Government of Kligher Pakhtunkiwa duraugh Sacreland MatSh141) Extrements and 'sociantary Education Peshawar and others 'and connected Appeal No. 47617(47). The Earland Under was Coveriment of Kligher Pakhtunkhwa duraugh Secretary Educations and Secretary and Secretary Education, 'solutions and others,' decided on 28,10 2022 by Devision Rench comprising Kalun Argived Shange Universe and Returns Relation Mather Judicial Kligher Pakhtunkhwa Service Tribunal, Camp Court Di Khange "Secretary Secretary Relation Relations of Kligher Pakhtunkhwa Service Tribunal, Camp Court Di Khange

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, <u>PESHAWAR CAMP COURT D.I.KHAN.</u>

BEFORE:

KALIM ARSHAD KHAN ... CHAIRMAN ROZINA REHMAN MEMBER (Judicial)

Service Appeal No.4760/2021

Mst. Bilgees daughter of Mashal Khan r/o Village Masha Mansoor Tehsil & District Lakki Marwat, Ex-Caller GGCMS Masha Mansoor Lakki Marwat.

(Appellant)

<u>Versus</u> .

- Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education, Peshawar.
 Director (E&SE), Education Department Khyber Pakhtunkhwa, Peshawar.
- 3. District Education Officer(F), Lakki Marwat.

(Respondents)

Present:

Kabirullah Khattak. Additional Advocate General......For respondents.

| Date of Institution | | 09.04.2021 |
|---------------------|---------|------------|
| Dates of Hearing | | |
| Date of Decision | •••;••• | 28.10.2022 |

Service Appeal No.4761/2021

Farhad Ullah son of Mashal Khan caste Marwat r/o Village Masha Mansoor Tehsil & District Lakki Marwat, Ex-Chowkidar GGCMS Masha Mansoor Lakki Marwat.

TESTED

.(Appellant)

| Secure Append We find that index is Secure and Connected Append No. 701/2017 Linemary and Reconders indication. Perhawar and connected Append No. 4701/2017 Fachal Filtabless Component of Knyber Pakinankhwa preach Secretary Elementary and Sector Education. Perhavantum staters i devided on 28 10 2022 by Created Bench comprising Kalun Arshad K Cherman and Recond Recond Member Indicid, Klober Pakinakhwa Service Tribunal, Camp Court D1K Versus Government of Khyber Pakhtunkhwa through Secretary Elementar Secondary Education, Peshawar. Director (E&SE), Education Department Peshawar. District Education Officer(F), Lakki Marwat. | (· | |
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| Secondary Education, Peshawar. Director (E&SE), Education Department Khyber Pakhiunki Peshawar. | | |
| Director (E&SE), Education Department Khyber Pakhiunkh Peshawar. | y & | |
| District Education Officer(F), Lakki Marwat, | wa | |
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| Present: | | |
| Fresent. | 1 | |
| Sheikh Iftikhar Ul Haq, | | |
| Advocate | | |
| | | |
| Kabirullah Khattak, | | |
| Additional Advocate General | For respondents. | |
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| Date of Institution | 1 | |
| Dates of Hearing | | |
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| APPEAL UNDER SECTION 4 OF THE KHYP | | |
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| PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974. | ił – | |

CONSOLIDATED JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: Through this single judgment this appeal and the connected Service Appeal No. 4761/2021 titled "Farhad Ullah-vs-Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education, Peshawar and others", are decided as both are against the same allegations.

2. These appeals are against order dated 30.12.2020, whereby the appellants were removed from service on the allegations that during

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Nervice append No.1900/2021 titled - Mat. Illigees self-tovernisent of Kliyber Pokhuakhwa through Secretary Thementary and Secondary Federation Peshawar, dist obe & and connected Appeal No. 4761/2021 filled "Embod J.Ban we Conservation of Einsbelt Pakhuakhwa Sicongh Secretary Llementary and Secondary Federation Peshawar, matothers, decided on 28-10-2022 by Dismon Bench comprising Kalun Arshad Khan." Chairmon, and Kozum Beiman, Manber, Jadiegol, Klayber Pakhuashisha Service Tribunal, Comp Court D.L.Khan

surprise visit of GGCMS Masha Mansoor by the DEO(F) accompanied by SDEO (F). Lakki Marwat, the school was found closed and the Caller was also found absent who was stated to be leaving in Peshawar as per report of SDEO (F) Lakki Marwat vide No. 857/SDEOF/LM dated 1311.2020. Against the impugned order the appellant filed appeals but awaiting ninety waiting period when no reply was received the appellant filed this appeal.

3. It is alleged in the appeal that the appellants were performing duties and in the month of November 2020, due to crucial and critical conditions of Covid-19 the school was closed but even then the appellants performed her duties and remained punctual; that on 18.12.2020, the appellants were present but were marked absent by the respondents because of personal grudges and on political grounds.

4. On receipt of the appeals and admission to full hearing, the respondents were summoned, who, on putting appearance, contested the appeals by filing written reply and while supporting the impugned order submitted that the appellants remained absent that is why they were proceeded against.

5. We have heard learned counsel for the appellants and learned Additional Advocate General for the respondents.

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Service Append So 1760-2021 othed "Mit Bilgees 200 Government of Kiryber Pakhtankhwa through Sepretary Elementary with Sepretary Underton, Feshawar, and others " and connected Append No. 426112021 affed "Farhad Unhili 2022 Government of Khyber" Pakhtapshires Egringh Societary Elementary and Secondary Elementary, Cohenvar and others " devided on 28-10-2022 by Edwision Bench comprising Kalim Jeshad Khan, "Chattaan and Fesna Elembor, Jackaded in 28-10-2022 by Edwision Bench comprising Kalim Jeshad Khan, "Chattaan and Fesna Elembor, Jackaded Klyber Pakhtorsking Service Tribunat, Camp Court D.J.Khan."

6. The learned counsel for the appellants reiterated the facts and grounds detailed in the memo and grounds of the appeals while the learned Additional Advocate General controverted the same by supporting the impugned order.

7. In case of absence of a civil servant from the duty, the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 provide a specific provision and procedure for proceeding against such a civil servant and that is Rule-9 of the above rules. Rule-9 is reproduced as under:-

> "Notwithstanding anything to the contrary contained in these rules, in case of willful absence from duty by a Government servant for seven of more days, a notice shall be issued by the competent authority through registered acknowledgement on his home address directing him to resume duty within fifteen days of issuance of the notice. If the same is received back as undelivered or no response is received from the absentee within stipulated time, a notice shall be published in at least two leading newspapers directing him to resume duty within fifteen days of the publication of that notice, failing which an ex-parte decision shall be taken against the absentee. On expiry of the stipulated period given in the notice, major penalty of removal from service may be imposed upon such Government servant.

8. The respondents were bound to follow the procedure prescribed and provided in Rule-9 of the rules ibid but it appears that they have not proceeded in accordance with the provisions of the above rules, therefore, the impugned action is not in accordance with the provisions of the above rules and, hence, not sustainable. While allowing these appeals we set

RESTED

Teles Milas Service Append Na 4700,2021 (aled 1 Mst. Bilgers on-Gavernment of Edyber Pakhankhwa through Secretary Elementary ond Secondary Education: Pesitovari and others, and connected Append No. 476179021 (aled Fach al. 1 Tale over concernment of Klasher Pakhametova (spagh Secretary Flementary and Secondary Education: Festive a and others, decided on 28 (0.2022) by Decemp Bench compressing Kalim Arshad Khan, Chatoman and downed want (such as the Secondary Flementary and Secondary Chatoman and downed wanter, shedread, Klasher Pakhawa have Seconder Fathand, Camp Camp Dischar,

aside the impugned order and direct that the appellants be reinstated in service. The respondents are at liberty to proceed against the appellants in accordance with the provision of the Rule-9 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 within a period of sixty days after the date of receipt of this judgment under intimation to the Registrar of this Tribunal. The respondents shall also intimate the date of receipt of the judgment to the Registrar office. Intervening period shall be treated as leave of the kind due. Copy of this judgment be placed in the connected file. Costs shall follow the event. Consign.

9. Pronounced in open Court at D.I.Khan and given under our hands and the seal of the Tribunal on this 28th day of October, 2022.

KALIM ARSHAD KHAN Chairman Camp court D.I.Khan

REHMAN (Judicial)

D.L.Mhan

Camp court

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OF PAKISTAN Iffik ar-Ul-Hao * ••• Advocal Jupreme Court 12201-0316740-9 المستعمل المالي الم Before the K.P.L. Serinc hitim مخانب shed illub yous Gut 1 m planatation Bettons. تنعيل دتوي ياجرم مقدر مندرجه الاحوان عمرا بن طرف واسطى ودرد وجواب وتكابرا في في الصفيه متدمه ما Shoith Whithar no or Ars-c كو حسب ذيل شرائط ير وكمل مقرر كيا ب كم عن جرى يرخود يا غدا بدرو رو برو عدالت ماضر بوتا رمون كا ادر بر وت يكوست جات مقدمه وكمك ماحب موصوف کو الملارم فدے کر عاصر عدالت کردن کا اگر بیٹی پر مظہر ماضر تد ہو ادر مقدمہ میرک خیر ماضری کی دور سے محک طور میرے نخلاف ہو مما تو ماحب , موموف من کے کمی طرح ذم دار ند ہوں مے نیز دیک ماخب موموف مدد نقام کجری کے علادہ یا چیرن کے ادتات سے سل یا تی م بار در تعطیل تکون کرنے کے ذمہ دار نہ ہوایا کے اور مقدمہ مدر بجہری کے علادہ اور جگہ ماحت ہونے یا بردو تعطیل یا بجاری کے اوتات کے آگے یا بیچے بیش بونے پر مظمر کوئی تقصان پنچ تو اس ... ومد داد یا اسک داسط می معادضه ... کدا کرنے یا محنت ند دالین کرنے کے مجلی مساحب موصوف ومد دار ند بول مے بھر كوكل ماخت ير داخت مناحب موصوف مثل مكرده ذات خود متقور وتول وكا ادر ماحب موصوف كو مرض دموى في جراب دمونى يا درخواست اجراء اسات فركرك نظر تال ابیل محمانی و برتم درخواست برتم سے بیان دسین اور پر تالن یا راین نامد و فیعلد برطن كرف اقبال دوى كا محى اعتبار بو كا اور بسورت مقرر بوغ تاريخ فين مقدمه مزكور ايرون ١٢. يجهرى مند ويردى مقدمه مركور فظر بان وتكرانى و برآ حكى مقدمه يا مسوى ذكرى يك طرف اودخواست تحكم اشامى يا قرق ا مردادی قل از قعله اجراع و مری محل ماحب موسوف کو بشرط استنال علیمده نفانهیروک کا اختیار بو کا او آمام ساخت مواخته ماحب موسوف مش کرده از خود منظور و تدل بو کا ادر بصورت مردرت ماحب موصوف کو بد می اختیار و که مقدمه مرکوره یا ای ب کرد از کا کاردال یا بعبورت درخراست نظر عالی ایل محرانی با دیگر معالمه و قدمه خدکون مک دور به وکل با بیر سر کو این بیجات نا این محرو کری ادر ایل مشیر تانون کو بحل بر امریک دای ادر ویے الترارات مامل اول مع يعيم ماحب موسوف كو ماصل اين اور اوران مقدم عمل جو يكم برجاند الوام بذب كاور ماحب موسوف كالحق او كالمر ماحب موصوف کو بودکا قیس بردی بیش سے پہلے ادا ند مرون کا فر ماحب سرموف کو بودا اختیار ہو کا کہ مقدم کی پردی ند مری ادر آلمی مورت می ایرا کول مطالبہ می متم کا حاجب موصوف کے برطاف میں ا البدادكالت ناساكن بإني تاكيسندرب صمون وكالت نامدى الإب أوراجيمي طرر يسمجوليا م اور منظور ب Affert Accepted sh. Afihu