27.11.2019

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

Learned counsel requests for withdrawal of instant appeal with the reservation of right of appellant to pursue his further legal remedy, if need be.

Disposed of as withdrawn. File be consigned to the record.

Chairman

ANNOUNCED 27.11.2019

04.11.2019

Counsel for the appellant present.

Learned counsel has provided copy of a list issued by District Accounts Officer, North Waziristan Tribal District on 01.11.2019 which contains the name of appellant.

Contends that the appellant has not been paid any amount towards monthly salary from the date of appointment/taking over charge. After protracted correspondence and disposal of Writ Petition by the Honourable Peshawar High Court, an office order was issued by Agency Surgeon North Waziristan Tribal District on 23.04.2019, whereby the appellant was declared entitled to receive the subject salary as no order of termination /discontinuation of his service was ever passed. The respondents, despite the office order, were not inclined to actualize the payment. On the other hand, an advertisement was floated in the newspaper on 03.10.2019 whereby various posts, including that of the appellant, was advertised for filling up through applications by candidates. It is also the argument of learned counsel that the advertised posts are not available for filling up as the appellant is holding incumbency against one of those.

In view of available record and arguments of learned counsel, instant appeal is admitted for regular hearing subject to all just exceptions. The appellant is directed to deposit of security and process fee within 10 days. Thereafter, notices be issued to the respondents for submission of written reply/comments on 27.11.2019 before the S.B.

Alongwith the appeal an application praying for suspension of advertisement dated 03.10.2019 has also been preferred. Notice of the application be also given to respondents for the date fixed. Till next date the process, with regard to the advertisement dated 03.10.2019, shall not be finalized.

Appellant typosited Security & Process Fee

Chairman¹

Form- A

FORM OF ORDER SHEET

Court of	
Case No	1256/ 2019

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	07/10/2019	The appeal of Syed Kamal Shah presented today by Mr. Noo Muhammad Khattak Advocate may be entered in the Institution Registe
7		and put up to the Worthy Chairman for proper order please. REGISTRAR
2-		This case is entrusted to S. Bench for preliminary hearing to be put up there on
	28.10.2019	Counsel for the appellant present.
		Learned counsel requests for time to provide the list of officials as noted in the office order dated 23.04.2019 issued by Agency Surgeon North Waziristan Tribal District. Adjourned to 30.10.2019 before S.B. Chairman
:		
	30.10.2019	Counsel for the appellant present.
	n	Learned counsel requests for further time to do the eedful as noted in the order dated 28.10.2019.
:		Adjourned to 04.11.2019 before S.B. Chairman
:		

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

APPEAL No. 1256 /2019

Gjed Kan al Malaria Supervisir VIS AHA Hospial Boya Math rogin lan Distr

HEALTH DEPTT:

INDEX

S.NO.	DOCUMENTS	ANNEXURE	PAGE	
1.	Memo of appeal		1 – 3	
2.	Stay application		4	
3.	Letter dated 17.01.2019	A	5	
4.	Letter dated 31.01.2019	В	6	
5.	Judgment dated 19.03.2019	C	7- 8	
6.	Appeal	D	9	
7.	Office order dated 23.04.2019	E	10	
8.	Pay bill	F	11	
9.	Observation	G	12	
10.	Reply of observation	Н	13	
11.	Departmental appeal	I	14	
12.	Advertisement	J	15	
13.	Vakalatnama		16	

APPELLANT

THROUGH:

NOOR MOHAMMAD KHATTAK, ADVOCATE

ROOM NO. 3, UPPER FLOOR, NEW ISLAMIA CLUB BUILDING, KHYBER BAZAR, PESHAWAR CITY 0345-9383141

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

APPEAL NO. 1256 /2019 Khyber Pakhtukhwa Service Tribunal

Sych Kamal Malaria Supervisor il out

Diary No. /36/

Morpelal Boya North wazim /an Distt.

Dated 7-10-2019

APPELLAN

VERSUS

- 1- The Director General Health Services Department, Khyber Pakhtunkhwa, Peshawar.
- 2- The District Health Officer, North Waziristan Tribal District.
- 3- The District Accounts Officer, North Waziristan Tribal District.

..... RESPONDENTS

APPEAL UNDER SECTION OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE INACTION OF THE RESPONDENTS BY NOT RELEASING THE MONTHLY SALARIES HAVING BEEN ALREADY APPROVED VIDE ORDER DATED 23-04-2019 COMMUNICATED TO THE APPELLANT ON 26-06-2019 AND AGAINST THE IMPUGNED ADVERTISEMENT DATED 3.10.2019 WHEREBY THE POST OF THE APPELLANT HAS BEEN RE-ADVERTISED AND AGAINST NO ACTION TAKEN ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS

PRAYER:

That on acceptance of this appeal the impugned rectordayadvertisement dated 3.10.2019 may very kindly be set aside and the respondents may be directed to implement the order dated 23.4.2019 by releasing the monthly salaries of the appellant w.e.f 1.9.2012 till date. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

R/SHEWETH: ON FACTS:

Brief facts giving rise to the present appeal are as under:-

- 1- That appellant is the employee of the respondent Department and had served the respondent department for quite considerable period efficiently and up to the entire satisfaction of his superiors.
- 2- That appellant while performing his duty with respondent no. 2 the monthly salaries of the appellant was stopped due to unknown reason against which the appellant filed departmental

æ	Appeal before the competent authority which was forwarded to respondent no. 2 for necessary action. The respondent no.2 after thorough scrutiny issued the letter dated 17-01-2019 whereby monthly salaries of the appellant were released. Copy of letter is attached as annexure
3-	That the same release order/letter dated 17-01-2019 was withdrawn without any cogent reason after 14 days vide office order dated 31-01-2019. Copy of the order dated 31.01.2019 is attached as annexure
4-	That the appellant feeling aggrieved from the action of respondent filed writ petition no. 1241-P/2019 which was disposed of in favour of the appellant and his colleagues vide judgment dated 19-03-2019. Copy of the judgment is attached as annexure
5-	That some of the colleagues of the appellant approached the appellate for the release of their monthly salaries the appellant. That on the said Departmental appeal the appellate issued directions to the respondent No.2 to release salaries forthwith. Copy of the appeal is attached as annexure
6-	That, in light of direction passed on appeal of the appellant respondent no. 1 issued released order dated 23-04-2019 which was communicated to the appellant on 27-06-2019 upon the order dated 23-04-2019 the bills for the monthly salaries which was outstanding was prepared. Copy of the order & Bill is attached as Annexure
7-	That the bills for monthly salaries were submitted before the respondent no.3 but instead of sanctioning the same the respondent no.3 returned the bills with observations vide letter dated 24-06-2019 which was properly resolved by the respondent no. 1 vide letter dated 24-06-2019 which is pending with respondent no. 2 till date. Copy letters are attached as annexure G&H.
8-	That in the meanwhile the post against which the appellant are working have been advertised by respondent no.2 inspite of knowing the fact the appellant are still working on the advertised post which is not vacant. Copy of the advertisement is attached as annexure.
9-	That appellant feeling aggrieved and having no other remedy filed the instant service appeal on the following grounds amongst the others.

GROUNDS:

- A- That the act of the respondent no 2 by not sanctioning the bills for monthly salaries of the appellant is against the law, facts, norms of natural justice and materials on the record.
- B- THAT the appellant has not been treated by the respondent Department in accordance with law and rules on the subject noted above and as such the respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973.
- C- That act of the respondent no.3 by not sanctioning the bills for monthly salaries of the appellant is violative of Law and Rules.
- D- That the respondents discriminated the appellant on the subject by not sanctioning the bills for monthly salaries of the appellant.
- E- That the respondents acted in arbitrary and malafide intentions by not sanctioning the bills for monthly salaries of the appellant.
- F- That act of the respondent no.2 by advertising the post of the appellant after having knowing the fact that the appellant is already working on the advertised post which is against the norms natural justice.
- G- That the respondents violated Article 38(e) of the Constitution of Pakistan, 1973 by not sanctioning the bills for monthly salaries of the appellant.
- H- That appellant seeks permission to advance other grounds and proofs at the time of hearing.

It is therefore, most humbly prayed that the appeal of the appellant may be accepted as prayed for.

Dated: 15.05.2019

APPELLANT

Synd Kamal

THROUGH:

NOOR MOHAMMAD KHATTAK ADVOCATE

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

APPEAL NO.	/ 2019

Syld Kamel Malaria Supervisor VS A +10 Hospilal Boya North wagintan Dio +)

HEALTH DEPTT:

APPLICATION SUSPENSION OF OPERATION ON THE IMPUGNED ADVERTISEMENT DATED 03-10-2019

Respectfully Sheweth:,

- 1. That the appellant has filed the above titled appeal before this Honourable Tribunal in which no date has so far been fixed.
- 2. That all the three ingredient required for the grant of stay order are in favour of the appellant.
- 3. That contents of the instant application for suspension of the operation on advertisement may very kindly be consider as part and parcel of the main appeal.

It is therefore, most humbly prayed that on acceptance of this instant application the operation on the impugned advertisement dated 03-10-2019 as the respondent no. 1 has already announced the interview date i.e. 17-10-2019 & 18-10-2019 and if the same is not suspended the very purpose of the instant appeal would become infractuous.

Appellant,

Through,

NOOR MOHAMMAD KHATTAK, Advocate High Court,

ocate/High Court, Peshawar

MERGED AREAS WARSAK ROAD PESHAWAR,

Phone#. 091-9210106 091-9210212

/DMS/FATA/Admn

Dated:

To

The District Surgeon. Tribal District, NW.

Subject:

APPEAL FOR RELEASE OF SALARIES

It is in reference to a letter of Government of Pakistan, National commission for Human Rights vide No.08/18/COMP/FATA/NHCR dated 26-12-2018 pertaining to release of outstanding salaries of the appellant Mr.Zalid Noor and others, , wherein the commission has vividly referred the order of Supreme Court of Pakistan in captioned case No.16986-G OF 2018 IN THE MATTER OF REG, NON PAYMENT OF SALARIES TO THE STATE EMPLOYEES, the commission further stated that salaries of other 43 persons have already been released by your office vide No.8506-09 dated 10-

It is further added that vide your letter No.938 dated 29-04-2016, No.19-10-2016,No.1715/C-2 dated 20-07-2016,6007/C-2 dated 19-12-2017 and No.6822-23/C-2 vacant position dated 02-01-2018, wherein you have categorically stated that the appellants have not been terminated from services, which has further endorsed by the Agency Accounts officer NW Agency vide his letter No.AAO/MRN/NWA/2018-19 3085 dated 17-09-2018 and intimated that no record of termination orders of the appellants is available at account office NW Agency.

It is pertinent to mention here that the Minister for Health Khyber Pakhtunkhwa has also been directed the undersigned to release the pay of the appellants i.e Mr. Zahid Noor and others, and zaheenullah and others if stopped without assigning any cogent

Consequent upon above you are hereby directed to give them the termination orders if they are terminated from services, and if not terminated then release their salaries from the date of stoppage without no further delay under intimation to this office in frame of General Financial Rules, as stoppage of pay without assigning cogent reason is illegal.

> Tribal Districts, Peshawai /01/2019

CC for information and necessary action to the:

1- Registrar Services Tribunal, Peshawar.

2- Coordinator, National Commission for Human Rights w/r to his letter quoted above.

3- PS to Minister Health, Khyber Pakhtunkhwa, Peshawar w/r orders dated 21-12-2018 on the application of appellants.

DCO Tribal District NW

'Medical Superintendent DHQ Hospital Miranshah request for same action please.

> Director Health Services Tribal Districts, Peshawan

AMORE



DIRECTORATE OF HEALTH SERVICES

MERGED AREAS WARSAK ROAD PESHAWAR. /DHS/FATA/Admn . Dated:-

OFFICE ORDER:

091-9210212

FAX#

The competent authority is pleased to withdraw the letter vide No.713-18/DHS/FATA/Admn dated 17-01-2018 pertaining to "Appeal for release of salaries "addressed to District Surgeon NW, in the interest of public Service-

Director Health Services No. 1/70-74 /DHS/FATA/Admn Da CC for information and necessary action to the: Tribal Districts, Peshawar

- 1- Registrar Services Tribunal, Peshawar.
- 2- Coordinator, National Commission for Human Rights w/r to his letter
- 3- PS to Minister Health, Khyber Pakhtunkhwa, Peshawar
- 4- DCO Tribal District, NW.
- 5- District Accounts officer, Tribal District, NW.

Tribal Districts, Peshawa

PESHAWAR HIGH COURT, PESHAWAR

	•		FORM OF ORDER SHEET
		Court of	QURTER
		Case No	
*	Serial No. of Order of Proceedings	Date of Order of Proceedings	Order or other Proceedings the Sign of Sudge.
•	1	2	3
		ORDER 19.03.2019	Writ Petition No.1241-P/2019
			Present: Mr. Muhammad Asif Yousafzai, Adv: for Zahid Noor etc., petitioners.

			SYED AFSAR SHAH, J Zahid Noor etc., th
		¥	petitioners, through the instant constitutional petition
			have asked for the issuance of an appropriate wr
	•		declaring that the order dated 31,01.2019 of th
			respondents, whereby, letter dated 17.01.2019 wit
			regard to direction for releasing their salaries, has bee
	9		withdrawn.
	ATTE	STED MINER COURT	2. We have gone through the available recor
	Patiawa		carefully and considered the submissions of th
Ar	(learned counsel for the petitioners.
AMEST			3. Since the appeal of petitioners, as per statemen
Hu	10		of the learned counsel for the petitioners and as i
Α	1 - [evident from the record is pending adjudication

evident from the record, is pending adjudication

before respondent No.1, therefore, we, at this stage, wouldn't like either to intervene or to touch / discuss merits of the case, lest it may prejudice the case of either party. However, we while disposing of this writ petition, direct the said authority to decide the appeal of petitioners one way or the other strictly in accordance with law through a speaking order within a fortnight positively, after receipt of this order by communicating the decision to them in a proper mode and manner. This writ petition is disposed of accordingly.

Announced. 19. 03. 2019

JUDGE

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20 MAR 2019

(Fayaz) (D.B. of Hon'ble Mr. Justice Sved Afsar Shah & Hon'ble Mr. Justice Abdul Shakoor)

Appeal for restoration of Subject: order at 57/1/0/9 with great suspect it is bosught into your King notice that dur salaries were stopped by the Ex. Agent Surgion without any logent reason. In this Connection the Minister Health office has been issued order to AHS CATA merged area gor relace & pay In light of winns les Direction the DHS pala was sound enough and issued belease order to Ageny surgrounders But suddenly the DHS fala with drawn his order on 31-1-019 without my logest reasion. In this regard navious reports of the A. Sergion has also been pulomilled that they were neither the DHS pala where in it is stand that they were neither terminaled nor reliased our salaries. There are 47 person slappe Therefore, it is Durbly agreed that the Ageny burgerow NWDU may wally be chreated to release which was stopped without any reason gor the larger interest of justice and also directed an DHS pate restoration order dt 30/1/019. The postiguear High court has abready been divided our case and divided the respondent to dieide il within fornight 15 days. Justanily. T. Your steduille DHO NOTE WARNINGSTAN Taked noor and others roperat the Kaheen ullah & others act and Anni A

OFFICE OF Phone & Fax				ION		DISTRIC email:age				
No	·*****	*****	*****	****	Miransl *****		Dated ******	***	<i> </i> ****	/2019. ******

OFFICE ORDER:-

In pursuance to the directives /approval of Secretary Health ,Khyber Pakhtunkhwa and DHS Merged Areas Peshawar pertaining to release of salaries of the staff of Merged Area North Waziristan and to avoid the volume of the litigation and to esteem the honorable courts and appellants regarding release of outstanding salaries of the enlisted employees from the date of stoppage, as it is evident from the rerecord of this office that their terminations have not been made which has further rectify by the Agency Accounts officer NW vide his letter No.383DAO/MRN/NWD dated 12-03-2019 wherein it has been vividly intimated that no record of termination orders of the appellants is available at account office NW District hence stoppage of salaries without assigning cogent reason is illegal and violation of General Financial Rules,

Consequent upon above the outstanding salaries of enlisted staff is hereby released from the date of stoppage in the interest of public service.

Agency Surgeon North Waziristan Tribal District

CC 1433-37 /PF/AS/Miranshah dated: 23/04/2019. Copy forwarded for information and necessary action to the:-

- 1. District Accounts officer merged Area NW with request to release the outstanding salaries of enlisted employees/
- 2. Ps to Secretary Health, Khyber Pakhtunkhwa Peshawar.
- 3. PA to DHS Merged Areas, Peshawar.
- 4. Medical Superintendent DHQ Hospital Miranshah with request to release the outstanding salaries of enlisted employees.

5. Official concerned.

Agotley Surgeon
North Waziristan Tribal District

Recined:

ATTESTED

F-11



Employee Master File Creation Form

FORM: PAY01

Office of the District Surgeon NWTD Miran shah

	Embiosee u
3. 3. 3. 3. 3. 3. 3. 3. 3. 3. 3. 3. 3. 3	Office of the
	DDO Code
	mw0031
Employe	e CNIC Number

(Cash Center)

DOB (DD/MM/YYYY) 1 15-4-1993

Designation Bi

M: SceperVISON

BPS Domicile

Date of entry into Govt service (DD/MM/YYYY)

21506-2883708-3

1-1-070

Employee Name

Syed Itamal

2 NWA

Father/Husband Name

AZIZ-W- Rchman.

Place of Posting

Agery sugin

PERMANENT ADDRESS

Distt NW Miran Shah

Religion

Nationality -Pakistani

ISLAM P

Pay and Allowances

		ances		<u>, </u>	
Wage type	Code no	Description	REG		TOTAL ADJ:
0001	A01151	PAY	19080		/92395
1000	A01202	HRA	1961	·	16755
1210	A01203	Con:Allow	2856	:	15376
1516	A01208	HPA	10000		10000
1947	A01217	МА	1500		20900
1528	A01233	UAA	1500		33500
1970	A0121X	AR 50% (2010)	0		26060
1948	A0121A		0		41454
2118	A0121M	AR 20% (2012)	0		2848
(2151	A0121T	AR 15% (2013)	367	. ,	2481
0000	A0121Z	AR 10% (2014)	0		17616
0000	0000	AR 10% (2015)	275		22083
000	0000	AR 10% (2016)	1434		49790
000	0000	AR 10% (2017)	1908	•	41196
000	0000	AR 10% (2018)	1908		20508
GRO	SS TOT	AL	38973		412962

DEDUCTIONS

CODE Discription Amount

3300 GF Pund

3710 B/Fund

3704 G/Insurance

D&R COMP

Total Deducation

<u>CERTIFICATES</u>

- 1 certified that the CNIC issued by NDRA has been verified and found correct,
- 2 Certifies that all the particular mentioned above are correct and the service Book atteched with the proforma is original and has been sined up-to date by the concerned Officer.
- 3 Certified that the employee mentioned above regular in attendance and has not been prodeeded abroad Rakistan.



District Surgeon NWTO Mitan shah

District Accounts Officer



To,

The District Surgeon, NWTD Miran Shah.

SUBJECT:- OBSERVATION.

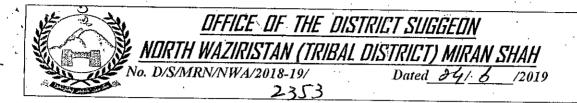
Memo,

Kindly refer to your case pertaining drawn salary from the post of charge nurse with fowling observation returned.

- 1. The salary may be drawn from the regular budget otherwise.
- 2. Post available from the date of stoppage till date.
- 3. Secy: Health KPK orders may be attested.

Therefore the above observation may kindly be removed and resubmitted at early date for further processes the case in the best interest of general public.

Agency Account officer



To,

The District Accounts Officer, NWTD Miran Shah.

SUBJECT:- OBSERVATION.

Memo,

Kindly refer to your letter No.AAO/MRN/NWA/2018-19/2982 dated 24/06/2019 on subject noted above and stated that the observations is hereby removed and resubmitted to your good office

- 1. The salary may be drawn from the regular budget.
- 2. Post available from the date of stoppage till date.
- 3. Secy: Health KPK orders is duly attested.

Therefore you are requested to process the case as early as possible to resolve the issue once for all please

District Surgeon NWTD Vinan Shah



درواس مزد: طای کری فام ال ی John NW Entre Du 3m3 مورد از مرارش کی جاتی ہے میں اس مل DHO ناعد olggine by the BPS-12 Jucingin Two Dito 9/7/2019 2/2019 2019 with July with 2 (2) on my (e/c) 303 cr (2) con 103 Com - 1 Shul Colone for the state of the colone of the co ا ما لى طلات سىروار 26 - 619 1154. Record 1/2/10/16 ATTESTED كبرتال

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."		18-10-19	30 تا 30 سال	منتن میٹرک سائنس میڈیکل فیکٹی (خیبر پخونو) سے	اليستهيزيال فيكندن	10
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		ا کی تصدیق شده نو ٹو	بزمير فيقليث اور ڈو ميسال	ا موگا۔ (4) درخواست کے ساتھ کمپیوٹرائز پڑتو می شاخی کارڈ، آ	(3) درخواست ساده کاغذیرویز	جائے گا۔
w fe				مرورى لا ما موگا_ (5) يملے سے موجوده مركارى المكارا بى در		
to				، دی جائے گی۔ (7) مجازا تعاد کی کوتمام پانسی ایک درخواست		
				ِ ہا کی حکومت کے مروجہ تو اعدو صوالط کے تحت عمل میں لا کی جائے۔ محر		
зе) پہلے ہے جع شدہ 	پر فور کیا جائے گا۔(10	۔ بصورت دیگر قریبا اضلاع کے امید دارول کی درخواستوں : • بیتہ جریب		
				בינו לא המל את המונים במונים לא המל	ں والوں کو جائے کہ وہ دویا رہا۔ سہ	. 1
\dashv		Corrupt	ion	4443.4/1.70/9	<u>کم</u>	بح
					خرال ا	طري ط
ļ;		INF(P)41	39/19	Mar Dignor Inglished	ر ميدلند التي	[والس

3/10/019.7/3/2.1~6/2)



English Start 7. باعت تحريرانك مقدمه مندرجه عنوان بالامین ایی طرف ہے واسطے بیروی وجواب دہی وکل کاروائی متعلقہ Total of We of the state of مقرر کرے اقرار کیاجا تا ہے۔ کہ صاحب موصوف کومقد مہ کی کل کاروائی کا کامل اختیار ہوگا۔ بیز وكيل صاحب كوراضي نامه كرنے وتقرر ثالث وفيصله برحلف ديئے جواب دہی اورا قبال دعویٰ اور بصورت ڈگری کرنے اجراء اور وصولی جیک وروپیارعرضی دعوی اور درخواست ہرشم کی تصدیق زُرایں پردستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیردی یاڈگری میکطرفہ یاائیل کی برامدگی اورمنسوخی نیز دائر کرنے اپل گرانی ونظر ٹانی و پیروی کرنے کا مختار ہوگا۔ از بصورت ضرورت مقدمه مذکور کے کل یا جزوی کاروائی کے اسطے اور وکیل یا مخار قانونی کوایے ہمراہ یا این بجائے تقر رکا اختیار ہوگا۔اورصاحب مقررشہ ہ کو بھی وہی جملہ مٰدکورہ بااختیارات حاصل ہوں گے اوراس کاساختہ پر داختہ منظور وقبول ہوگا دوران مقدمہ میں جوخر کیے ہرجانہ التوائے مقدمہ کے سبب سے وہوگا کوئی تاریخ پیشی مقام دورہ پر ہو یا حدے باہر ہوتو وکیل صاحب یا بند ہوں گے۔ کہ پیروی مذکور کریں ۔لہذا و کالت نا ساکھدیا کہ سندر ہے۔ Helphed 20 8 / 9 1/9 01 المرثوم کے لئے منظور ہے۔

عبدانان مستبیشنوی مار ب چیک منتکر کیانیاور تی نون 2220193