

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR

IMPLEMENTATION PETITION NO. _____ OF 2023

Ammar Ali

Versus

Director General Health Service etc


IMPLEMENTATION PETITION


INDEX

S.No	Particulars of the Documents	Annexure	Page
1)	Grounds of implementation petition with affidavits	--	1-3
2)	Copy of the judgment dated 12/03/2018	--	4-11
3)	Copy of reinstatement orders by DG Health along with arrival reports & application	--	12-
4)	Wakalatnama	--	

Petitioners

Dated: 18/02/2023


Ammar Ali and 2 Others
Through Counsel


Muhammad Waqar Alam
Advocate Supreme Court

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR

IMPLEMENTATION PETITION NO. _____ OF 2023

1. Ammar Ali son of Muhammad Saeed caste Chughtai r/o Basti
Ustrana South, Tehsil & District Dera Ismail Khan.

Khyber Pakhtunkhwa
Service Tribunal

2. Abdur Rasheed son of Imam Bakhsh Ward Orderly DHQ
Hospital, D.I. Khan

Case No. 3687
Dated 20/02/2023

3. Muhammad Ramzan son of Pervaiz Khan Ward Orderly DHQ
Hospital, D.I. Khan

(Petitioners)

Versus

**1. Secretary Health Department Civil Secretariat
Peshawar.**

**2. Director General Health Services Khyber Pakhtunkhwa
Peshawar**

**3. Director MTI District Headquarter Teaching Hospital
Dera Ismail Khan.**

(Respondents)

IMPLEMENTATION PETITION

That the petitioner hereby applies for execution of the Judgment
herein below as follows:

1	Suit No.	Service Appeal No. 746/2014
2	Name of Parties	Ammar Ali son of Muhammad Saeed caste Chughtai r/o Basti Ustrana South, Tehsil & District Dera Ismail Khan and 2 Others. <p style="text-align: right;">(PETITIONERS)</p> <p style="text-align: center;">VERSUS</p> <p>1. Secretary Health Department</p>

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		<p>Civil Secretariat Peshawar.</p> <p>2. Director General Health Services Khyber Pakhtunkhwa Peshawar</p> <p>3. Director MTI District Headquarter Teaching Hospital Dera Ismail Khan.</p> <p>..... (RESPONDENTS)</p>
2	Date of Judgment	12/03/2018
3	Whether any Appeal preferred from Department	Nil
4	Previously execution petition is filled or not	Yes but the same was dispose off to file instant implementation petition.
5	Relief granted in the judgment	The petitioners may be reinstated into service vide office order No. 1173-36/B dated 25/10/2022 by respondent#2 but the respondent#3 is reluctant to accept the arrival report dated 27/10/2022 of the petitioners by making lame excuse the he is not under the control of DG Health Services. Hence, the present implementation petition is being filed against the respondents.
6	Amount of Costs, if any	Nil
7	Against whom to be executed	Respondents
8	Mode in which the assistance of the court if required	By directing the respondents to accept arrival report of petitioners in accordance with law. It is pertinent to mention here that the respondent#3 has already accepted the arrival report of one Mr. Muhammad Shahid House Keeper BPS-09 in MTI DHQ DIKhan vide office order No. 8132-35 dated 12/06/2020, but unfortunately in the case of petitioners the respondent#3 is making lame excuses to implement the valid order of DG Health Services Peshawar by discriminating with petitioner.

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It is therefore, humbly prayed that the instant petition may kindly be accepted.

18 February, 2023

Petitioners

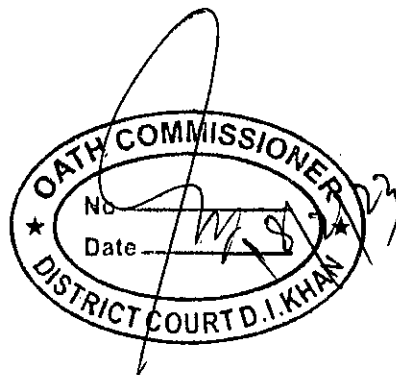
Ammar Ali
Ammar Ali and 2 others
Through Counsel

Muhammad Waqar Alam
Muhammad Waqar Alam
Advocate Supreme Court

Affidavit

I, **Ammar Ali**, the petitioner, do hereby solemnly affirm and declared on Oath that all the contents of the petition are true and correct to the best of my knowledge and belief and no other petition on the same subject matter was filed earlier.

Ammar Ali
Deponent



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Counsel for the appellant and Mr. Ziaullah, Deputy District Attorney alongwith Muhammad Jamshaid, CCT, for the respondents present. Arguments heard and record perused.

This appeal is accepted as per our detailed judgment of today in connected service appeal No. 743/2014 entitled "Muhammad Shahid-vs-Govt. of Khyber Pakhtunkhwa through Secretary Health Department and others". Parties are left to bear their own costs. File be consigned to the record room.

[Signature]
Jamshaid
Camp Court, D.I. Khan

Member

[Signature]

ANNOUNCED
12.03.2018

Certified to be true copy

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application 04/6/18
Number of Words 400
Copying Fee 42/-
Urgent 31/-
Total 52/-
Name of Copyist
Date of Completion of Copy 07/6/18
Date of Delivery of Copy 07/6/18

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- 6 -

3. The appellants were appointed on different posts on the same date i.e 04.0.2013. They were removed from service on 17.12.2013. against which they filed departmental appeals on 01.01.2014 which were rejected on 5.05.2014 thereafter, they filed service appeals on 28.05.2014.

ARGUMENTS

4. Learned counsel for the appellants argued that the appellants were removed from service after show cause notice only. That no proper procedure was followed under the disciplinary rules. That the reason for removal of the appellants shown in the show cause notice was appointments by the appointing authority without adopting the proper procedure for recruitment. That no detail was given that what procedure was not adopted. That the appellants duly replied to the show cause notice and thereafter the removal orders of the appellants were passed on 17.12.2013. that the appellant then filed, departmental appeals which were rejected by the departmental appellate authority without assigning any reasons. The learned counsel for the appellants further argued that by not giving the detail reasons in the original order as well as in the order of appellate authority, the appellants could not defend their case. He further argued if any illegality was committed by the appointing authority then it was he to be made culpable and not the appellants as per settled law on the subject. That the mentioning the order of the Worthy Peshawar High Court in the impugned order was misplaced as the Worthy Peshawar High Court had never observed that the appointments were made in violation of the rules.

5. On the other hand the learned Deputy District Attorney argued that appointment of one of the appellant namely Muhammad Shahid was against the rules as the rules did not provide for the post of House Keeper (Male). He further argued that the appointing authority one day before his retirement issued the appointments orders of the appellants in violation of the rules No Departmental Selection Committee was constituted and in this regard, the members of the D.S.C denied their signatures on the minutes of the meeting. That the appointments were made during the ban imposed by the government. That the show cause notice was issued to the appellant and that he was heard in person.

CONCLUSION

6. The show cause notice is silent about the detail of irregularities/illegality committed by the authority. The show cause notice only mentions of non-adoption of procedure in the recruitment in accordance with the provisions of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules. It has not been mentioned in the show cause notice that the appointing authority was not competent or the appellant lacked qualification or no advertisement was made it was also not mentioned in the said show cause notice that no D.S.C was constituted or the signatures of the members of the DSC were fake and bogus. The purpose of a show cause notice is always to afford sufficient opportunity to a civil servant to defend himself. But when a show cause notice is given generally without details. Then show cause notice loses its utility and the concerned civil servant shall be presumed to be prejudiced by not defending himself properly. The departmental appellate authority also rejected the appeal without assigning any reasons so as to enable this Tribunal to reach at any conclusion that how

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the appointment orders were against the rules. And whether the appellants were in any say instrumental in getting the said appointment letters. In their favour. The arguments of the learned DDA regarding fake and bogus signatures of the members of the D>S.C is not supported by any material. When this Tribunal put a query to the learned DDA that how did the department come to know about fake and bogus signatures of the members of DSC he replied that there is nothing on judicial record of the present appeal. However the department has mentioned fact if their written replies Enquiry committee was constituted nor any other occasion is highlighted by the department before whom or on which the said members of the committee have had the occasion of final of their signatures. Arid of equal importance is the fact that the appellants have not been given any chance to confront the denial of the members of the committee through due process. The factum of bar as argued by the learned DDA has also not been mentioned in the show cause notice or in the order of the departmental appellate authority. Imposing the bar and its legal outcome is left without discussion and would be discussed at the proper time. (At present this Tribunal is of the view that the departmental appellate authority should be given chance to take into consideration all these issues and observations and pass a detailed order with reasons within a period of 60 days of the receipt of the judgment, Falling which the present appeals shall be depend to have been accepted in the meantime the posts already advertised should not be filled by the department.) Parties are left to bear their own costs file be consigned to the record room.

MR. NIAZ MUHAMMAD KHAN

CHAIRMAN

Camp court D.I.Khan

MR. AHMAD HASSAN

MEMBER

Date of Presentation of Application: 21-03-2018

Number of Words: 1600

Copying For: 10.00

Urgent: 2.00

Total: 12.00

Name of Copy: _____

Attested
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To,

The Director General Health Services,
Khyber Pakhtunkhwa, Peshawar.

Subject: **ARRIVAL REPORT/JOINING OF DUTY AS JUNIOR CLERK (BPS-11).**

Respected Sir,


The applicant humbly submits as under;

That the service of applicant is reinstated by the orders of learned Khyber Pakhtunkhwa Service Tribunal vide order No. 1173-36 P dated 25/10/2022 by your good self and thereafter the applicant submitted his arrival report to Director MTI DHQ Hospital Dera Ismail Khan on 27/10/2022, but the same was not honoured till date, hence, the instant application for arrival/joining of duty is being made to your good self for further posting at any near station in District Dera Ismail Khan.

It is, therefore, requested to accept the arrival/joining report of the applicant with further prayer of posting in the nearer station in Dera Ismail Khan.

Dated 29/11/2022

Humble Applicant


Ammar Ali s/o Muhammad Saeed
Junior Clerk (BPS-11)
Dera Ismail Khan.
Cell#0321-9600340


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Note: Copies of reinstatement order along with arrival report dated 27/10/2022 are annexed herewith as ready reference.

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To,

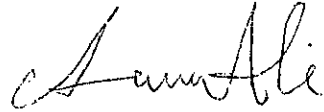
The Director
MTI, DHQ Hospital
Dera Ismail Khan

Subject: ARRIVAL REPORT

Memo:-

It is submitted that Mr. Ammar Ali s/o Muhammad Saeed Re:instated as Junior Clerk B.P.S 11 vide Director General Health and services K.P.K office Order No: 11731-36 Personnel Dated 25/10/2022. Therefore I join my duty today. Before noon. i.e 27/10/2022

Submitted please.



Ammar Ali s/o Muhammad Saeed
Junior Clerk MTI, DHQ Hospital
D.I.KHAN.

Dated 27/10/2022

Recvd
S. J/c

27/10/22

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- 5 -

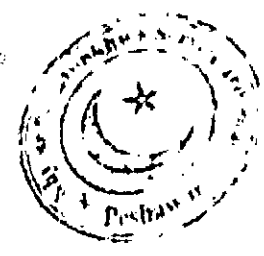
- 10 -

BEFORE THE SUPPLEMENTARY SERVICE TRIBUNAL

Service No. 144/2014

Date of Issuance 18.05.2014

Date of Revision 17.03.2014



Muhammad Shahid son of Sirajuddin, The Bahar, R O Bahar, District Swat, (Applicant), Darshan Road, Tehsil and District Dir Khan

Versus

1. Government of North West Frontier Province, Health Department, (Respondents), Civil Secretariat, Peshawar, F. P.

Mr. Shaukat Hayat Khan, Advocate

For Applicant

Mr. Ziauddin, Advocate

For Respondents

MR. NIAZ MUHAMMAD KHAN, MR. AHMAD HASSAN,

CHAIRMAN MEMBERS

JUDGMENT

NIAZ MUHAMMAD KHAN, CHAIRMAN

This judgment shall be in pursuance of connected service appeal No. 144/2014 Abdul Rezaq No. 144/2014 Muhammad Razaq and No. 146/2014 Amjad Ali in all the appeal concerned questions of law and fact are involved.

2. Arguments on the recorded counsel for the parties heard and recorded.

FACTS

The applicant wife appointed as Jilani post on the same date as ... were removed from service on 12/12/2013, dated white ...

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NIAZ MUHAMMAD KHAN

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CONCLUSION

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17-18-2018
10:30 AM
Clerk of Court

Staff Attorney Hester
A. Hester

Deputy Sheriff D.I. Khan
D. I. Khan

17-18-2018
Sgt. Nicholas K. Hart
Nicholas K. Hart

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A. Hester

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...to the ...
...be deemed to have been ...
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OFFICE ORDER

In the light of Health Department Govt: of Khyber Pakhtunkhwa letter No. SOH-VI/HD/Service Tribunal/8-89/2020-21 dated 18/05/2022 and in compliance of Khyber Pakhtunkhwa Service Tribunal camp court D.I. Khan, decision dated 12/03/2018 in service appeal No. 744/2014, 745/2014 & 746/2014, the termination order No. 6862 dated 17/12/2013, No.6871 dated 17/12/2013 and No. 6826 dated 17/12/2013 issued by the Medical Superintendent DHQ; Hospital D.I. Khan and DGHS KP office letter No. 4466-68/personnel dated 17/05/2018, are hereby cancelled ab-initio in respect of Mr. Ammar Ali S/O Muhammad Saad Junior Clerk, Mr. Abdur Rashid S/O Imam Bakhsh Ward Orderly and Mr. Muhammad Ramzan S/O Pervaz Khan Ward Orderly DHQ; Hospital D.I. Khan thereby, they are re-instated in accordance with the judgment to their original posts at DHQ; Hospital D.I. Khan.

Mr. Ammar Ali Junior Clerk, Mr. Abdur Rashid Ward Orderly and Mr. Muhammad Ramzan Ward Orderly are hereby directed to report at DHQ; Hospital D.I.Khan for duty in the best interest of public.

Sd/xxxxxxx

DIRECTOR GENERAL HEALTH SERVICES, K.P.K PESHAWAR.

Dated 25/10/2022

No. 11731-36 /Personnel

Copy forwarded to the:-

1. Hospital Director MTI DH: Hospital D.I. Khan.
2. Registrar Khyber Pakhtunkhwa Service Tribunal Camp Court D.I.Khan
3. Director Litigation DGHS Office Peshawar.
4. DAO D.I Khan.
5. PA to DHGS KP Peshawar.
6. Official concerned.

For information and necessary action.

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DIRECTOR GENERAL HEALTH SERVICES, K.P.K PESHAWAR.

561
27-10-22

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تعمیرات کے لیے ڈیزائننگ کے لیے (M.T.I) ڈسٹریکٹ پبلک ورکس ڈیپارٹمنٹ

کراچی

کراچی کے لیے ڈیزائننگ کے لیے ڈسٹریکٹ پبلک ورکس ڈیپارٹمنٹ

آڈیٹ نمبر: 35/10000-11791-25 میں درج ہے ڈیزائننگ کے لیے

لبنہ ایجنسی کے لیے ڈیزائننگ کے لیے ڈسٹریکٹ پبلک ورکس ڈیپارٹمنٹ (25-10000)

آڈیٹ نمبر: 35/10000-11791-25

المنار

27-10-22

ڈیزائننگ کے لیے ڈسٹریکٹ پبلک ورکس ڈیپارٹمنٹ

0346-565745

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Signature

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20/05/2020

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To

The Hospital Director
DHQ Teaching Hospital (MTI)
Dera Ismail Khan.

Subject: **ARRIVAL REPORT FOR DUTY ALREADY SUBMITTED ON
28.03.2020.**

Respected Sir,

Reference office letter No-1996-2001/ personal dated 22.03.2020 passed by the Directorate General Health Services KPK Peshawar. Copy enclosed.

That the Hospital Director, MTI, DHQ Teaching Hospital DIKhan raised an objection vide letter No-2892 dated 25.03.2020 that on order referred above has not been signed by the Director General Health Services nor showing that it has been signed "for" and similarly the office Stamp is not cleared.

That on the above situated the Director General Health Services KPK Peshawar vide letter No-2314-17/personal dated 17.05.2020 given directions to the Hospital Director MTI, DHQ Teaching Hospital DIKhan, clearly to accept the Arrival Report of Mr. Muhammad Shahid House Keeper who was appointed on 04.07.2013. Copy enclosed.

It is therefore requested that the Arrival Report submitted by me as House Keeper MTI, DHQ Teaching Hospital DIKhan submitted on 28.03.2020 vide dairy No-266 dated 31.03.2020 may kindly be considered my Arrival Report in the interest of justice and obliged.

Yours, obediently,

Dated: 20/05/2020,

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PD for. N/A

TESTED
Handwritten signature

Handwritten signature

Mr. Muhammad Shahid
House Keeper BPS-09
MTI, DHQ Teaching Hospital
Dera Ismail Khan.

Phone: 0966-9280201
Fax: 0966-9280446

OFFICE OF THE HOSPITAL DIRECTOR

MEDICAL TEACHING INSTITUTION, DHQ TEACHING HOSPITAL, DIKHAN

No. _____ /

Dated 12/6/2020

To

The Director General Health Services
Khyber Pakhtunkhwa
Peshawar

Subject: **OFFICE ORDER**

Memo:

Reference your Office Order No.1996-2001/Personnel/Mr.Shahid House Keeper dated 22.03.2020 & Letter No.2314-17/Personnel dated 17.05.2020.

Mr. Muhammad Shahid (s/o Sona Khan) reported arrival for duty as House Keeper BPS-09 in MTI DHQ Teaching Hospital DIKhan on the forenoon of 28.03.2020

HOSPITAL DIRECTOR
MTI DHQ TEACHING HOSPITAL
DIKHAN

No. 8132-35 /

Copy forwarded to the:-

1. Director Finance MTI DIKhan
2. Director Paramedics
3. Secretary BoG MTI DIKhan
4. Accounts Section HD Office DHQTH DIKhan
5. Muhammad Shahid House Keeper.

HOSPITAL DIRECTOR
MTI DHQ TEACHING HOSPITAL
DIKHAN

TESTED

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-18- -9-

DIRECTORATE GENERAL HEALTH SERVICES KHYBER PAKHTUNKHWA, PESHAWAR

All communication should be addressed to the Director General Health Services Peshawar not to any official by name.
DG Office Ph 091-9210269 Exchange 091-9210187 Fax 091-9210230 E-Mail: dghealthkpk2014@gmail.com.

NO. 2314-17 /Personnel
To

Date: 17/05/2020

The Hospital Director
MTI-DHQ Teaching Hospital DI Khan

Subject: OFFICE ORDER/ RE-INSTATEMENT ORDER IN RESPECT OF MR. MUHAMMAD SHAHID HOUSE KEEPER

Memo:

Reference to your letter No. 2892 dated 25.03.2020 on the subject noted above and to state that the Office Order No. 1996-2001/Personnel/Mr. Shahid House Keeper dated 22.03.2020 was issued with the approval of the under signed.

Moreover, Mr. Muhammd Shahid House Keeper was appointed on 04.07.2013 as a Civil Servant prior to promulgation of MTI Act 2015, but he was terminated without observing codal formalities. That's why Khyber Pakhtunkhwa Service Tribunal accepted his Service Appeal No. 743 of 2014 decided on 12.03.2018 and was pleased to remand the appeal to Director General Health Services Khyber Pakhtunkhwa in which the MS of DHQ Teaching Hospital, DI Khan was also properly impleaded as responded No.3 who availed the opportunity to defend the case, which was not further questioned before Supreme Court of Pakistan. That's why on acceptance of the Departmental Appeal on dated 02.01.2020 by the Health Department, Govt. of the Khyber Pakhtunkhwa, the termination orders in respect of Mr. Shahid House Keeper were cancelled ab-initio.

You are required in public interest to accept the arrival report of Mr. Muhammd Shahid House Keeper who was appointed on 04.07.2013, in compliance of Khyber Pakhtunkhwa judgment dated 12.03.2018 and Health Department Govt of Khyber Pakhtunkhwa decision communicated through No. SOH-III/8-89-2019(Muhammad Shahid) dated 02.01.2020.

ATTESTED
[Signature]


[Signature] 17/5/2020
DIRECTOR GENERAL HEALTH SERVICES
KHYBER PAKHTUNKHWA, PESHAWAR

[Signature]
17/5/20


C.C

1. PS to Secretary Health, Khyber Pakhtunkhwa
2. Mr. Muhammad Shahid House Keeper attached to MTI DHQ Teaching Hospital DI Khan.

وکالت نامہ

 **N.W.F.P. BAR COUNCIL**

MUHAMMAD WAQAR ALAMI
Advocate High Court
N.I.C. 12101-4283533-4
S.No 1291


Issuing Authority

Father's Name: MUHAMMAD IQUBAL ALAMI
Address: USTRANA BONTI NEAR
D.I KHAN
Office Tel: 0966-78878 Call 2
Court: Dist. L.C. 21-05-2009
Enrollment Dist. H.C. 03-10-2009
Place of Practice: D.I KHAN
D. of Enrol. 15-04-1988

The Khyber Pakhtunkhwa Service Tribunal

Parties منجانب

Aman Ali بنام D.G. Health

Implementation of Pension دعویٰ یا جرم

تفصیل دعویٰ یا جرم

باعث تحریر آنکہ

مقدمہ مندرجہ بالا عنوان میں اپنی طرف واسطے پیروی و جوابدہی برائے پیشی یا تصفیہ مقدمہ بمقام D.I Khan کیلئے

محمد وقار عالم ایڈووکیٹ ہائی کورٹ

کو حسب ذیل شرائط پر وکیل مقرر کیا ہے کہ ہر پیشی پر خود بذریعہ اختیار خاص رو برو عدالت حاضر ہوتا ہوں گا۔ اور ہر وقت بکارے جانے مقدمہ وکیل صاحب موصوف کو اطلاع دیکر حاضر عدالت کروں گا، اگر پیشی پر منظر حاضر نہ ہوں، اور مقدمہ میری غیر حاضری کی وجہ سے کسی طور پر میرے برخلاف ہو گیا، تو صاحب موصوف اسکے کسی طرح ذمہ دار نہ ہوں گے۔ نیز وکیل صاحب موصوف صدر مقام پکھری کے علاوہ کے اوقات سے پہلے یا جیسے یا بروز تعطیل پیروی کرنے کے ذمہ دار نہ ہوں گے۔ اور مقدمہ صدر پکھری کے علاوہ اور جگہ سماعت ہونے یا بروز تعطیل یا پکھری کے اوقات کے آگے جیسے پیش ہونے پر منظر کو کوئی نقصان پہنچے تو اس کے ذمہ دار یا اس کے واسطے کسی معاوضہ کے ادا کرنے یا بیان واپس کرنے کے بھی موصوف ذمہ دار نہ ہوں گے۔ مجھ کو کل ساختہ پر داخل صاحب موصوف مثل کردہ ذات خود منظور قبول ہوگا۔ اور صاحب موصوف کو مرضی دعویٰ یا جواب دعویٰ یا درخواست اجراءے ڈگری و نظر ثانی اپیل و نگرانی و ہر قسم درخواست پر دستخط و تصدیق کرنے کا بھی اختیار ہوگا۔ اور کسی حکم یا ڈگری کرانے اور ہر قسم کا برہنہ وصول کرنے اور رسید دینے اور داخل کرنے اور ہر قسم کے بیان دینے اور اس پر ثالثی یا راضی نامہ و فیصلہ پر حلف کرنے، اقبال دعویٰ کا بھی اختیار ہوگا، اور بصورت مقرر ہونے تاریخ پیشی مقدمہ مذکورہ میں دن از پکھری صدر پیروی مقدمہ مذکورہ نظر ثانی اپیل و نگرانی و برآمدگی مقدمہ یا منسوخی ڈگری یکطرف یا درخواست حکم اختتام یا ترقی یا گرفتاری مثل از فیصلہ اجراءے ڈگری بھی صاحب موصوف کو بشرط ادا سنگی علیحدہ و متانہ پیروی کا اختیار ہوگا اور تمام ساختہ پر داخل صاحب موصوف مثل کردہ ذات خود منظور قبول ہوگا۔ اور بصورت ضرورت صاحب موصوف کو یہ بھی اختیار ہوگا کہ مقدمہ مذکورہ یا اسکے کسی جزو کی کاروائی یا بصورت درخواست نظر ثانی اپیل یا نگرانی یا دیگر معاملہ مقدمہ مذکورہ کسی دوسرے وکیل یا برسر کو اپنے بجائے یا اپنے ہمراہ مقرر کریں، اور ایسے مشیر قانون کو بھی ہمراہ میں وہی اور ویسے اختیارات حاصل ہوں گے، جیسے صاحب موصوف کو حاصل ہیں، اور وہ ان مقدمہ میں جو کچھ ہر جائزہ التوا پڑے گا، وہ صاحب موصوف کا حق ہوگا۔ مگر صاحب موصوف کو پوری نسیب تاریخ پیشی سے پہلے ادا کروں گا۔ تو صاحب موصوف کو پورا اختیار ہوگا کہ کسی مقدمہ کی پیروی نہ کریں اور ایسی صورت میں میرا کوئی مطالبہ کسی قسم کا صاحب موصوف کے برخلاف نہیں ہوگا۔

لہذا وکالت نامہ لکھ دیا ہے۔ تاکہ سند رہے

مورخہ _____ ماہ _____ 20__

مضمون وکالت نامہ سن لیا ہے۔ اور اچھی طرح سمجھ لیا ہے اور منظور ہے۔

العبد
18-2-23

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