

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

#### Service Appeal No.139/2019

Date of Institution

... 29.01.2019

Date of Decision

... 22.02.2021

Sami Ullah Drawing Master Government Middle School Kot Tagga D.I.Khan.

(Appellant)

 $\left( \cdot \right)$ 

#### **VERSUS**

Government of Khyber Pakhtunkhwa through Secretary Education Peshawar and five others.

(Respondents)

Mohammad Anwar Awan,

Advocate

For appellant.

Noor Zaman Khan Khattak,

District Attorney

For respondents.

**ROZINA REHMAN** ATIQ-UR-REHMAN WAZIR

MEMBER (J)

MEMBER (E)

#### JUDGMENT



ROZINA REHMAN, MEMBER: Brief facts of the case are that appellant is a Drawing Master. Respondent No.3 issued order dated 27.09.2016 on the complaint of respondent No.5 regarding appellant's absence from duty. It came to the knowledge of appellant at the time of receiving salary for the month of November that an amount of Rs. 71681/- had been deducted from his salary in shape of installments @Rs.5000/- per month on the complaint of respondent No.5. The appellant was performing examination duty at Government Degree College Amma Khel Tank during the days of

alleged absence and that after getting letter from the Board of Intermediate & Secondary Education D.I.Khan, the appellant applied for his relieving which was accordingly granted and he performed his duties as Invigilator w.e.f 19.04.2016 to 10.05.2016. He requested the respondents for release of salary but to no avail, he, therefore, filed Writ Petition in august Peshawar High Court, Peshawar which was sent to this Tribunal by the august Court for adjudication in accordance with law.

- 2. Learned counsel for appellant argued that the action taken by the respondent No.3 is against law, facts and norms of justice. He argued that without conducting any inquiry and issuing show cause notice, recovery process of Rs.71681/- was issued without giving any opportunity to the appellant to explain his position and lastly, he submitted that respondent No.5 withdrew his complaint that it was based on misconception but respondent No.3 refused to withdraw the recovery order.
- 3. Conversely, learned District Attorney argued that the appellant remained willful absent from duty for 64 days and that he never submitted any application before the competent forum. He submitted that complaint was received against the appellant regarding his willful absence, therefore, directions were issued for deduction of salary of the period for which the appellant remained absent and lastly, he submitted that there was no need to conduct departmental inquiry or to issue show cause notice to the appellant because report submitted by the School Headmaster was based on facts, therefore, orders were issued for deduction of salary for the absence period.
- 4. Record shows that appellant was posted as D.M (Drawing Master) (BPS-15) at GMS Kot Tagga District D.I.Khan. He was reported absent from



his official duty by his Headmaster. Admittedly he remained absent from his official duty, the detail whereof is given below:

S. NO	Dates of absentee	Absent days
01.	01.06.2015 to 13.06.2015	12
02.	16.09.2015 to 30.09.2015	13
03.	12.11.2015 to 17.11.2015	04
04.	09.12.2015 to 12.12.2015	03
05.	12.04.2016 to 30.04.2016	19
06.	02.05.2016 to 11.05.2016	10
07.	01.09.2016 to 03.09.2016	03
	Total absent days	64 days

5. Now, as per available record, the present appellant was appointed as Assistant Superintendent in connection with H.S.S.C (A) Exam: 2016 of B.I.S.E D.I.Khan. In compliance with the Controller of Examinations B.I.S.E D.I.Khan letter No.48 dated 13.04.2016, the present appellant was relieved from his duty on 18.04.2016 (forenoon) and he was directed to report to the Superintendent Government Degree College Amma Khel, District Tank (Hall-A) Center No.41. As per duty slip, available on file, he performed his duty w.e.f 19<sup>th</sup> April 2016 to 10<sup>th</sup> May of 2016. This period which was stated by the respondents to be willful absence was justified by the appellant by producing relevant documents in shape of relieving chit, duty slip and offer letter for Invigilator, therefore, salary deducted by the respondents for this period is not justified and in this regard, letter dated

23/2/21

19.12.2016 addressed to the District Education Officer (Male) D.I.Khan by

the Headmaster GMS Kot Tagga is worth perusal wherein it was admitted

that the earlier letter No.130 regarding complaint against the appellant was

based on misconception. In response to the above mentioned letter,

explanation was also called upon by the District Education Officer (Male)

D.I.Khan from Headmaster GMS Kot Tagga which was directed to explain

double standard and factual position within 7 days but no document is

available on file which could show that this letter was properly replied by

the concerned Headmaster. From the above discussion, it is evident that

absence from 19.04.2016 to 10.05.2016 was justified as this period was

served on duty and nothing was brought in black & white which could show

that the appellant remained absent during this period. So far as the

remaining period of absence is concerned, that was not clarified by the

appellant. Neither any application nor any sanction of the competent

authority was shown by the appellant in order to justify his absence.

6. Keeping in view the above discussion, this appeal is partially accepted

and the salary deducted for the period from 19.04.2016 to 10.05.2016 stands

returned to the appellant. With no order as to costs. File be consigned to the

record room.

ANNOUNCED.

22.02.2021

(Attiq ur Rehman Wazir)

Member (E)

Camp Court, D.I.Khan

(Rozina Rehman)

Member (J) Camp Court, D.I.Khan 22.12.2020 Due to Pandemic of Covid-19, the case is adjourned to 22.02.2021 for the same.

*]* √ Reader

22.02.2021

Appellant present through counsel present.

Noor Zaman Khan Khattak learned District Attorney alongwith Muhammad Kamran Khan ADO (Litigation) for respondent present.

Arguments heard. Vide detailed judgment of today of this Tribunal placed on file, the appeal is partially accepted and the salary deducted for the period from 19.04.2016 to 10.05.2016 stands returned to the appellant. With no order as to costs. File be consigned to the record room.

Announced. 22.02.2021

(Atiq-ur-Rehman Wazir) Member (E)

Camp Court, D.I.Khan.

(Rozina Rehman) Member (J)

Camp Court, D.I.Khan.

Appellant is present in person. Mr. Muhammad Jan, Deputy District Attorney for respondents is present.

Since the Members of the High Court as well as of the District Bar Association D.I.Khan are observing strike today, therefore, the case is adjourned to 25.11.2020 for arguments before D.B at camp court D.I.Khan.

(Mian Muhammad)
Member(E)

(Muhammad Jamal Khan)
Member(J)
Camp Court D.I Khan

25.11.2020

Junior counsel for appellant present.

Muhammad Jan learned Deputy Attorney for respondents present.

Former made a request for adjournment as senior counsel is not available. Adjourned. To come up for arguments on 22.12.2020 before D.B at Camp Court, D.I.Khan.

(Atiq-ur-Rehman Wazir) ʻ

Member (E)

Camp Court, D.I Khan

(Rozina Rehman) Member (J)

Camp Court, D.I Khan

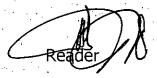
24/2/2020

Due to COVID-19 the case is adjourned. To come up for the same 20/4/2020 at Camp Court, D.I Khan



20/4/2020

Due to COVID-19 the case is adjourned. To come up for the same 21/9/2020 at Camp Court, D.I Khan



21.09.2020

Appellant present in person.

Mr. Usman Ghani learned District Attorney for respondents present.

Former requests for adjournment as his counsel is not available. Adjourned. To come up for arguments 27.10.2020 before D.B at Camp Court, D.I.Khan. Appellant is directed to produce Member Copy of the present case on the next date.

(Atiq ur Rehman Wazir) Member (E)

Camp Court, D.I.Khan

(Rozina Rehman) Member (J) Camp Court, D.I.Khan 25.11.2019

Appellant in person and Mr. Muhammad Kamran, ADO (Litigation) on behalf of respondents No. 1 to 5 alongwith Mr. Ziaullah, Deputy District Attorney present. Representative of respondents No. 1 to 5 requested for further adjournment to file written reply/comments. Neither written reply on behalf of respondent No. 6 submitted nor his representative present therefore, notice be issued to respondent No. 6 with the direction to direct the representative to attend the court and submit written reply/comments on the next date positively. Case to come up for written reply/comments on 27.01.2020 before S.B at Camp Court D.I.Khan.

(Muhammad Amin Khan Kundi)

Member

Camp Court D.I.Khan

27.01.2020

Appellant in person and Mr. Usman Ghani, District Attorney alongwith Mr. Muhammad Kamran, ADO (Litigation) for the respondents present. Representative of the department submitted written reply. The same is placed on record. Case to come up for rejoinder and arguments on 24.03.202.0 before D.B at Camp Court D.I.Khan.

(Muhammad Amin Khan Kundi) Member Camp Court D.I.Khan 4.09.2019

Appellant in person present. Written reply not submitted. M/S Kamran ADEO (for respondents No.1 to 5) and Rashid Superintendent (for respondent No.6) present and requested for time to furnish written reply/comments. Granted. To come up for written reply/comments on 23.10.2019 before S.B at Camp Court D.I.Khan.

Member Camp Court, D.I.Khan

Since tour to D.I.Khan has been cancelled .To come

for the same on 25/11/2019.

23/10/2019

24.04.2019

Appellant in person present and seeks adjournment as his counsel is not in attendance. Adjourn. To come up for preliminary hearing on 26.06.2019 before S.B at Camp Court, D.I.Khan.

Member Camp Court, D.I.Khan.

26.06.2019

Counsel for the appellant Sami Ullah present. Preliminary arguments heard. It was contended by learned counsel for the appellant that the appellant is serving as Drawing Master in Education Department. He was imposed penalty of deduction of salary amounting to Rs. 71684/- vide order dated 27.09.2016 on the allegation of absence from duty. The appellant filed departmental appeal on 08.12.2016 which was not responded within the statutory period therefore, the appellant filed writ petition on 23.12.2016 but the worthy High Court vide order dated 19.12.2018 disposed of the writ petition and sent the same to Khyber Pakhtunkhwa Service Tribunal for adjudication in accordance with law vide order dated 19.12,2018. It was further contended that the appellant did not remain absent rather the competent authority has directed him to perform duty of examination. It was further contended that the deduction of Rs. 5000/- was made from the salary of December than he came to know that the competent authority has passed the impugned order against him therefore, the appellant filed departmental appeal within time. It was further contended that the impugned order of deduction was passed against the appellant without any notice and personal hearing therefore, the impugned order is illegal and liable to set-aside.

Fe**9** 'c' ar

The contentions raised by the learned counsel for the appellant need consideration. The appeal is admitted for regular hearing subject to deposit security and process fee within 10 days, thereafter, notice be issued to the respondents for written reply/comments for 24.09.2019 before S.B at Camp Court D.I.Khan.

(Muhammad Amin Khan Kundi)

Member

Camp Court D I Khan

Camp Court D.I.Khan

# Form-A FORM OF ORDER SHEET

Court of	· · · · · · · · · · · · · · · · · · ·	
1		
Case No	139/2019	·

•	Case No	
S.No.	Date of order Proceedings	Order or other proceedings with signature of judge
1	ι 2	3
1	29/1/2019	The present appellant initially went in Writ Petition
_	. 6 .	before the Hon'ble Peshawar High Bench D.I.Khan and the
		Hon'ble High Court vide its order dated 19.12.2018 treated the
		Writ Petition into an appeal and sent the same to this Tribunal
		for decision in accordance with law. The same may be entered in
	•	the Institution Register and put up to the worthy Chairman for
		further order please.
-		REGISTRAR > 9 1 1
		This case is entrusted to touring S. Bench at D.I.Khan
		for preliminary hearing to be put up there on $27 - 2 - 2019$
		CHAIRMAN
27.02	2.2019	Counsel for the appellant present and requested
	a	djournment. Adjourned to 24.04.2019 for preliminary heari
	b	efore S.B at Camp Court D.I.Khan.
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		(Muhammad Amin Khan Kuno Member
	·	Camp Court D.I.Khan
		·



## The PESHAWAR HIGH COURT,

DERA ISMAIL KHAN BENCH

Ph No.0966-9280225 Fax No.0966-9280230 Email:phcdikhanbench@yahoo.com

No. <u>57/</u>/Judl:/AR

Dt: 28/1/2 January, 2019

Diary No.

Dated 29-1-

Khyber Pakhtukhwa Service Tribunal

From:

The Additional Registrar,

Peshawar High Court,

Dera Ismail Khan Bench.

To:

The Registrar Service Tribunal,

Khyber Pakhtunkhwa, Peshawar.

Subject:

WP No.958-D/2016

Samiullah Vs. Govt. of Khyber Pakhtunkhwa,

Memo:

In continuation of this Court letter No.106/Judl:/AR dated 05/01/2019 on the subject matter and to forward herewith original file in writ petition No.958-D/2016 alongwith its enclosures as per directions contained in para-4 of the Judgement. So for copy of Judgement dated 19.12.2018 is concerned, the same has already been sent to you under the cover of this Court letter referred to above.

Additional Registrar
Peshawar High Court,
Pera Ismail Khan Bench

#### Annexure:

· Writ Petition with annexures



## PESHAWAR HIGH COURT BENCH, DERA ISMAIL KHAN

The

Ph No.0966-9280225 Fax No.0966-9280230 Email:phcdikhanbench@yahoo.com

No. <u>/ø6</u>/Judl:/AR

Dt: 05/0/ /2018

Khyber Pakhtukhwa Service Tribunal

Diary No. 43

Dated 8-1-2019

From:

The Additional Registrar,

Peshawar High Court Bench,

Dera Ismail Khan.

To:

The Registrar Services Tribunal,

Khyber Pakhtunkhwa, Peshawar.

Subject:

WP No.958-D/2016

Samiullah Vs. Govt. of KPK etc

Memo:

I am directed to forward herewith a copy of Judgment dated 19.12.2018 passed by the Hon'ble Division Bench of this Court, in the above noted case for compliance of directions contained in Para-04 of aforesaid Judgment.

Additional Registrar

Reshawar High Court Bench, Dera Ismail Khan

#### Annexure

\* Copy of Judgment dated 19.12.2018

\* Copy of Writ Petition with annexures

#### JUDGEMENT SHEET IN THE PESHAWAR HIGH COURT, D.I.KHAN BENCH

(Judicial Department)

#### W.P No. 958-D/2016

Samiullah

Versus

Government of Khyber Pakhtunkhwa through Secretary Education and 05 others

For petitioner Muhammad Anwar Awan, Advocate

For respondents Mr. Adnan Ali, Asstt. Advocate General

Date of hearing 19.12.2018

#### **JUDGMENT**

SHAKEEL AHMAD, J.- Through the instant constitutional petition filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has sought the following relief:-

It is, therefore, humbly prayed that on acceptance of the instant petition, may kindly be declared the recovery order issued by the respondent No. 3 is illegal and void *ab initio* or any other remedy the court may deem fit in the interest of petitioner. It is further prayed that respondents may kindly be restrained from recovery of Rs. 5000/- per month form the pay of petitioner.

2. Admittedly, the petitioner is a civil servant and serving as Drawing Master in Government Middle School Kot Tagga, D.I.Khan, allegedly, he remained absent from duties for

EXAMINOR

Fesnawar High Court

D.I.Khan Bench

لبد

different dates and his absence period was treated as absence from duties, whereafter vide letter dated 29.9.2016, the District Education Officer (M), D.I.Khan is directed the Deputy District Education Officer (Male) D.I.Khan for deduction of salary of the period for which he remained absent from duties. Not contented with the same, the petitioner has filed the instant petition.

- 3. When we confronted with learned counsel for the petitioner with Article 212 of Constitution of Islamic Republic of Pakistan, 1973, which excludes jurisdiction of this Court to adjudicate upon the matters relating to the terms and conditions of a civil servant. On this, he stated that this case be sent to the Khyber Pakhtunkhwa Service Tribunal for adjudication in accordance with law.
- 4. In view of above, this petition is disposed of and the same be sent to the Khyber Pakhtunkhwa Service Tribunal for adjudication in accordance with law.

Announced Dt.19.12.2018 Hasnain/\*

JUDGE

/シルム JUDGE

(D.B)

Hon'ble Mr. Justice Ijaz Anwar Hon'ble Mr. Justice Shakeel Ahmad

ATTESTED

EXAMINOR snawar High Court D.I.Khan Bench

## IN THE PESHAWAR HIGH COURT BENCH DERA ISMAIL KHAN

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A. Slip showing the date of hearing has this day been delivered to the petitioner.

Reader to Addl: Registrar

Dated 24-12-2016

**COUNTER - SIGNED** 

Additional Registrar

Branch Registry, D.I.Khan.

C 13-3-217

28-04-2017

WP No 958/16 (M).

CM: Interim Relief: Fixed before Hon'ble court

(DB) on 02-05-2017. Notice be issued to all

Concerned.

Addl. Registhat

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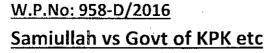
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Additions &

# PESHAWAR HIGH COURT DERA ISMAIL KHAN BENCH

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#### **ADDITIONAL REGISTRAR**



Dear Sir,

It is humbly submitted that the above noted case is stand fixed before Hon'ble Divisional Bench on 02.05.2017. Comments were called from respondents No.3 & 5, through this office letter No.692-93/Judl:/AR dated 25.03.2017, but the same have not been received as yet.

Submitted for order please.

Incharge Writ Branch.

Assistant Registrar

Sir,

May remain on cause list please.

Assistant Registration

ADDL REGISTRAR

Yes

ADDU REGISTRAN

#### W.P 958-D/16 SAMIULLAH VS KPK GOVT: ETC.

Respected Sir,

The above cited case is fixed before the Honourable Court D.B on 11.10.2017. Comments were called from respondents No. 3 & 5, but the same have not been furnished as yet, despite the fact is that reminder has already been served.

Submitted, please.

Incharge Writ Branch

Assistant Registrar

May remain in cause list, please.

Assistant Registrar

Additional Registrar

Additional/Registrar

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#### **AFFIDAVÍT**

mul: Anno Amon ( Adv: Dist: 0.7. Man,

do hereby solemnly affirms and declare on OATH that the contents of the same are true and correct to the best of my knowledge and belief and that nothing has been concealed from this honourable court.

Filed today

Abdi Registrar.

Dated: 7-11-2018

Deponent

House Ly

Name Muns Anwa Awar

so (Adu) R/O Disth, D.Z.K.

On the Identification of

On this 52 day of MSV 20 8.

Verified the contents of the above

affirmation before me on oath

No\_\_\_\_\_Dated \_\_\_\_\_\_D

additional Registers 2

Oath Commissioner

Peshawar High Court.

D.I.Khan Bench.

## THE PESHAWAR HIGH COURT, DERA ISMAIL KHAN BENGE

CHECK LIST

٠.٠	CHECK FIST		THE REAL PROPERTY.
ļ			-
. 1	Case Titlé	Yës	No
2	Case is duly signed		
3	The law under which the case preferred has been mentioned		
4	Approved file cover is used		
5	Affidavit is duly attested and		
6 .	Case and Annexure are properly paged and numbered according to index		
7	Copies of Annexure are legible and attested (If, not then batter copies duly attested have been annexed)		
8	Certified copies of all the requisite documents have been filed		
. 9	Certificate specifying that no case on similar grounds was earlier submitted in this court/filed.		
1.0	Case within time	V	
. 1.1.	The value for purpose of Court fee and jurisdiction has been mentioned in the relevant column		÷
1.2	Court fee in shape of Stamp Paper is affixed, (For Writ Rs. 500/-) For other requirement		·
1.3	Power of attorney is ion proper form		
1.4	Memo of Address filed		
15	List of Book mentioned in the Petition		
1.6	The requisite number of spare copies attached, (Writ Petition-3, Nos. Civil Appeal (SB-1, SB-2) Civil Revision (SB-1, SB-2)		
1.7	Case (Revision/ Appeal/ petition etc) is filed on the prescribed form		
1.8	Power of Attorney is attached by Jail Authority (For Jail Prisoners Only)		

It is certified that formalities/ documentation as required in column No.2,

to 18 ahove, have been fulfilled

## SCANE Didvoche

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Countersigned

Additional Registrar)

#### BEFORE PESHAWAR HIGH COURT BENCH AT D.I.KHAN.

Writ No.95.8. of 2016. Service Affeal No. 139/2019

SamI Ullah

VS

Government of K.P.K & others

Filest Borday 4235

#### **INDEX**

No	Particulars	Annexure	Pages
1	Writ	·	1-4
2	Copy of letter	A	5
3	Copy of pay roll system	В	6
4	Copy of letter	С	7-9
5	Copy of duty slip	D	10
6	Copy of application	. <b>E</b>	1/
7	Copy of letter	F	12-13
8	Court Fee	G	14-23
9	Vakalatnama	Н	24

Your Humble Petitioner

\_\_\_ Sami Ullah

Through Counsel

Dated: 23.12.2016

Mohammad Anwar Awan

Advocate Supreme Court.

#### BEFORE PESHAWAR HIGH COURT BENCH AT D.I.KHAN.

Writ No. 95.8-2016. Service Appeal No. 139/2019

Sami Ullah Drawing Master Government Middle School Kot Tagga D.I.Khan

Filed 10day 4235

#### **VERSUS**

- 1. Government of Khyber Pakhtunkhwa (KPK) through Secretary Education, Peshawar.
- 2. Director Elementary & Secondary Education Khyber Pukhtunkhwa, Peshawar.
- 3. District Education Officer (Male) Dera Ismail Khan.
  - 4. Deputy District Education Officer (Male) D.I.Khan.
- 🎢 5. Head Master Government Middle School Kot Tagga D.I.Khan.
  - 6. District Account Office D.I.Khan.

WRIT PETTION UNDER ARTICLE 199 OF THE CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN 1973,

Respectfully Sheweth:

The facts leading rise to present writ petition in brief are:-

1. That the petitioner is working as Drawing Master in Government Middle School Kot Tagga and performing his duty to the utmost satisfaction of respondents. That respondent No.3 on the complaint of respondent No-5 regarding petitioner absence from duty, issued order dated 27-09-2016 without conducting any inquiry, without issuing any show cause notice and taking any reply/ defense from the petitioner. Copy of letter is Annexure A.

That petitioner received the salary of month of November; it's come to his knowledge that on the complaint of respondent no.05, respondent no.03 issued above said letter and also deducted Rs.71681/- from the pay of petitioner in shape of installment of Rs.5000/- per month. Copy of pay roll system form is annexure B.

- 3. That during the days of above alleged absence from school; The petitioner was performing examination duty at Government Degree College Amma Khel District Tank. Copy of letter is annexure C.
- 4. That the petitioner after receiving letter from board of intermediate and Secondary Education, Dera Ismail Khan, applied for his relieving which was duly granted by respondent no.04. The petitioner performed his duties as invigilator at Government Degree College Amma Khel w.e.f 19.04.2016 to 10.05.2016. Copy of duty slip is annexure D.
- 5. That petitioner moved application to respondent no.03 & 05 regarding above said facts and gave detail regarding his absence due to which respondent no.05 issued another letter to respondent no.03 on 19.12.2016. Copies of application & letter are annexure E & F.
- 6. That feeling aggrieved and having no other alternative remedy the present petitioner approaches this august court inter alia on the following grounds:

#### **GROUNDS**;

- 1- That action taken by respondent No. 03 is against law, facts and norms of justice.
- 2- That the respondent no-03 without conducting any inquiry and issuing any

- show cause notice, issued recovery process of Rs.71681/- without giving any opportunity to the petitioner. The recovery order was issued against the law and rules so liable to be declared illegal and void-ab-initio.
- 3- That respondent no.05 vide letter dated: 19.12.2016 withdraw his compliant due to reason that it is based on misconception but respondent no.03 refused to withdraw the recovery order.

It is therefore, humbly prayed that on acceptance of the instant petition, may kindly be declared the recovery order issued by the respondent No-03 is illegal and void-ab-initio or any other remedy the court may deem fit in the interest of petitioner.

INTERIM RELIEF: - It is further prayed that may kindly restrained the respondent from recovery of Rs.5000/- per month from the pay of petitioner.

Your Sincerely

Sami Ullah

Dated: 23.12.2016

Mohammad Anwar Awan Advocate Supreme Court

#### **CERTIFICATE**;

Certified that petitioner in this honorable court has earlier filled no other write petition on the subject.

Petitioner

#### RFERANCE BOOKS

1- THE CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN

#### BEFORE PESHAWAR HIGH COURT BENCH AT D.I.KHAN.

Writ No.....of 2016.

Sami Ullah

VS

. Government of K.P.K & others

#### AFFIDAVIT

Sami Ullah S/O Abdullah Jan R/O Madina Colony, Do hereby solemnly affirms and declare on OATH That the contents of the same are true and correct to the best of my knowledge and belief and that nothing has been concealed from this honorable court.

Dated: 23.12.2016

On the Identification of

On this 24 Th day or Dec 2016

Verified the contents of the above

athemation before me on oath

No 3862 Dated 24/12/16

Oath Commissioner Peshawar High Court

D.I.Khan Bench

## IN THE PESHAWARPIGH COURTEDIKHAN BENCH

#### PARA WISE COMMENTS OPENING SHEET

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Date of Filing:	
District:	

Hiled was 4593.

Writ Petition No. 958-D/2016

Sami Ullah

Vs

Govt of KPK and etc

Respondent's Name	District Education Officer (M) DIKhan through Khalid Saeed Akbar
NA. L. 1. N.	Assistant District Education Officer Dera Ismail Khan
Mobile No.	0966-9280131, 0343-9033399
Address	District Education Office (M) DIKhan-
CNIC No.	12101-0899674-5
Email Address	emisdikhan@gmail.com

Counsel for Respondents (s)	Kamran Hayat Miankhail AAG Peshawar High Court Bench DIKhan
Mobile No.	0966-9280229
Address	AAG Office Peshawar High Court Bench DIKhan
CNIC No.	12101-0467249-7
Email Address _	Aagdik1982@gmail.com

Original Order/Action/Inaction Complained of:	
,	·
	· ·

Prayer:

In the view of above submission it is humbly prayed that the writ petition of petitioner may kindly be dismissed with cost.

Law/Rules/governing the original proceedings/action/luaction

Note: Any suggestion to improve the proforma will be appreciated.

#### BEFORE THE HONOURABLE PESHAWAR HIGH COURT DIKHAN BENCH

Writ Petition No. 958-D/16

Addl: Regis rar.

Sami Ullah

VS

Government of KPK

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03	Annexure A	Complaint of the HM GMS Kot Tagga	3-5
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05	Annexure C	School teachers attendance register photocopy of GMS Kot Tagga	10-19
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DISTRICT EDUCATION OFFICER (MALE) DERA ISMAIL KHAN

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### BEFORE THE HONOURABLE PESHAWAR HIGH COURT DIKHAN BENCH

Writ Petition No 958-D/16

Sami Ullah

VS

Government of KPK

#### **COMMENTS ON BEHALF OF RESPONDENT NO 3**

#### **Preliminary objections**

- 1 That the writ petition is not maintainable due to terms and conditions of civil servants.
- That the writ petition is not maintainable due to **Article 212** of Constitution of Islamic Republic of Pakistan.
- 3 That the petitioner remained willful absent 64 days from his official duty.
- 4 That the petitioners have got no cause of action.
- 5 That the petitioners have filed the instant petition on malafide motives.
- That the petitioners have not come to the Honourable court with clean hands.
- 7 That the instant writ petition is against prevailing laws and rules.
- That the writ petition is liable to be dismissed for his miss-joinder and non-joinder of necessary parties.
- 9 That the writ petition is bad in the eye of law in its present form.

Filed today

Objection on Facts

- 1. Para is correct to the extent that the petitioner is DM at GMS Kot Tagga DIKhan. Complaint was received against the absentee of the petitioner from the office of HM GMS Kot Tagga DIKhan. (Amexure A)
- 2. Para is correct to that the DEO(M) DIKhan has directed the Dy. DEO (M) DIKhan for the deduction of salary of period for which the petitioner remains absent. (Annexuse B)
- 3. The salary of the petitioner was deducted on the report of the HM GMS Kot Tagga.
- 4. Para is related to the report of HM GMS Kot Tagga DIKhan. The Head Master reported that the petitioner was absent from 12.04.2016 but the FA/FSc examination was started from 19.04.2016. It is clear that the petitioner was absent before the examination duty.
- 5. Incorrect / not admitted. The absentee of the petitioner was clear from the school teacher's attendance register. Therefore no need of the inquiry or show cause notice to the petitioner. (Annexure C).
- 6. According to law.

#### Objection on grounds

- i. Incorrect not admitted. The act of the respondent No. 3 was according to the law, facts and norms of justice.
- ii. This para is refuted. There is no need to conduct departmental inquiry or show cause notice to the petitioner because the report submitted by the school Head Master was based on facts. The DEO(M)DIKhan has order the recovery of the amount Rs. 71681/- for the period the petitioner remained willful absent.
- iii. An explanation letter was served to the Head Master in the light of letter No. 145 dated 19.12.2016. (Annexure D).
- iv. That the Council for respondents may be allowed to argue further grounds at the time of hearing.

In view of above submission it is humbly prayed that writ petition may kindly be dismissed with cost.

District Education Officer (M) Dera Ismail Khan Cortified that 7s per déroction of this Honoursble Court para wise Commants Were duly Votted.

Kaw

Additional Adversal General High Court KPK D.I. Khan Bench

#### BEFORE THE HONOURABLE PESHAWAR HIGH COURTDIKHAN BENCH

#### Writ Petition No 958-D/116

Sami Ullah

VS

Government of KPK

Filed Ind. 4591.

**Affidavit** 

I Mr. Khalid Saeed Akbar Assistant District Education Officer (M) D I Khan do solemnly affirm and declared on oath that contents of the written reply are correct to the best of my knowledge and nothing has been concealed from this Honourable Court.

Deponent

12101-0899674-5

Identified by

Additional Advocate General Khyber Pakhtunkhwa DIKhan.

Name Khalid Saxed Alebar.

BIO Digti: D. F. O. (W)

On the Identification of

(A.A. Canera

On this 25 day Set 2017.

Verified the contents of the above:

affirmation before me on oath

No 4140 Dated 25/69/17.

Additional Fegistrar Oath Commissioner Peshawar High Court D.I.Khan Bench

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Dated: 21/04/2016 Aurangzeb Khan SST GMS Kot Tagga (03467870280)

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## OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) DERA ISMAIL KHAN

Dated D.I.Khan the: 2919

To:

Dy. District Education Officer, (Male) D.I.Khan.

Subject:

COMPLAINT.

Memo:-

Reference compliant of Headmaster GMS Kot Tagga.

You are directed to recover the pay for absence period as reported by Headmaster and this period be treated as absence period and entry will be made in the service books of the following teachers:-

S.No.	Name	Period
1.	Sami ullah DM P.No.322298	1/6/2015 to 13/6/2105 16/9/2015 to 30/9/2105 12/11/2015 to 17/11/2015 9/12/2015 to 12/12/2015
2		12/4/2016 to 30/4/2106 2/5/2016 to 11/5/2016 1/9/2016 to 3/9/2016
2.	Faheem saeed PET P.No. 196173	5/5/2015 to 13/5/2015 10/12/2015 to 12/12/2015

Endst: No: /

/AE-II

Copy of the above is forwarded to the Headmaster GMS Kot Tagga D.I.Khan,

RICT EDUCATION OFFICER

D. 1. Khan. the office letter NO: 16059/A Subject: Keply of Kespected Six, Reference you letter no 16059/AE-II dated 25-08-2016. the photocopies of attendence register of teachers Samicellah (DM) and M. Fahim Saced (PE as a proof which clearly showing will? absence period a forementioned teacher. My only demand is that the above mentioned teachers should be regular. the Case is governded for further proceedings to D.EO/D.D.o as authority Motes (Both teachers are not NTS) Hurangzeb Khan, Dated: 05-09-2016 S.S.T GMS Kot Tagg period taked C.M.S Kot Tagga D.I.Khan

Ibsent period of Teachers ) samellah (DM) > June 2015 = 12 days (106 to 13 06) September 2015 = 40 days (16 09 till 30 09 5015)

November 2015 = 05 days (12 11 to 17/1/2015)

December 2015 = 04 days (9/15 to 12/15)

April 2016 = 16 days (12/4 till 30/6) May 2016 = 14 days (25 to 11 5 and 25 to September 2016 = 03 days 0/16 to 03/16) Total = 64 days Thim Saced SET, June 2015 = 08 days (05 75 to 13 5)

December 2015=03 days (10 75 to 12 15) Total = 11 days

Head Master G.M.S Kot Tagga D.I.Khan



# OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) DERA ISMAIL KHAN



	2		
No:	160)7	•	/ AF-I
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Dated D.I.Khan the: 25-8 /2015

To:

The Headmaster, GMS Kot Tagga.

Subject:

COMPLAINT.

Memo:-

Reference you're compliant.

You are directed to intimate the absent period in respect of the following teachers of your school and recommend disciplinary action against them the transfer is no punishment:

- 1. Sami uliah DM.
- 2. Muhammad Faheem Saeed PET.

DISTRICT ADUCATION OFFICER (MALE) DERA ISMAN KHAN

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# OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) DERA ISMAIL KHAN

No: <u>86</u> / AE-II

Dated D.I.Khan the: 04 - 0 /2016

Annexure D

To:

The Headmaster, . GMS Kot Tagga.

Subject:

**EXPLANATION.** 

Memo:-

Reference your letter No. 145 dated 19/12/2016.

You are reported that Mr. Sami ullah DM of your school remained willful absent from duty for 64 days on different dates vide your No. 130 dated 5/9/2016 on your report/compliant the recovery will be made from him vide this office No. 19003 dated 29/9/2016.

Now you are reported/requested to stop the recovery of Pay from him as the compliant is based on misconception and he performed the duty of F.A/F.Sc Examination Annual/2016 w.e.f. 19/4/2016 to 10/5/2016(22-days) what about other absent period.

You are directed to explain your double standard and factual position within 7-days positively. Otherwise strict disciplinary action will be taken against you.

DISTRICT EDUCATION OFFICER (MAKE) DERA ISMAIL KHAN

<u>HM</u> 03**46**7870230

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## BEFORE THE HONOURABLE PESHAWAR HIGH COURTDIKHAN BENCH

Writ Petition No 958-D/16

Sami Ullah

VS

Government of KPK

Filed today US931

**Authority** 

I District Education Officer (M) D I Khan do hereby authorized Mr. Khalid Saeed Akbar ADEO (M) D.I.Khan to attend Honourable Peshawar High Court DIKhan Bench on my behalf in connection with submission of para wise comments till the decision of the said writ petition/CM.

District Education Officer (M)

Dera Ismail Khan

# JUDGEMENT SHEET IN THE PESHAWAR HIGH COURT D.E.KHAN BENCH

(Judicial Department)

## W.P No. 958-D/2016

Samiullah

Versus

Government of Khyber Pakhtunkhwa through Secretary Education and 05 others

For petitioner <u>Muhammad Anwar Awan, Advocate</u>

For respondents Mr. Adnan Ali, Asstt. Advocate General

Date of hearing 19.12.2018

## **JUDGMENT**

SHAKEEL AHMAD, J.- Through the instant constitutional petition filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has sought the following relief:-

It is, therefore, humbly prayed that on acceptance of the instant petition, may kindly be declared the recovery order issued by the respondent No. 3 is illegal and void *ab initio* or any other remedy the court may deem fit in the interest of petitioner. It is further prayed that respondents may kindly be restrained from recovery of Rs. 5000/- per month form the pay of petitioner.

2. Admittedly, the petitioner is a civil servant and serving as Drawing Master in Government Middle School Kot Tagga, D.I.Khan, allegedly, he remained absent from duties for

EXAMINOR -10

EXAMINOR DILKNon

4.5

different dates and his absence period was treated as absence from duties, whereafter vide letter dated 29.9.2016, the District Education Officer (M), D.I.Khan is directed the Deputy District Education Officer (Male) D.I.Khan for deduction of salary of the period for which he remained absent from duties. Not contented with the same, the petitioner has filed the instant petition.

- 3. When we confronted with learned counsel for the petitioner with Article 212 of Constitution of Islamic Republic of Pakistan, 1973, which excludes jurisdiction of this Court to adjudicate upon the matters relating to the terms and conditions of a civil servant. On this, he stated that this case be sent to the Khyber Pakhtunkhwa Service Tribunal for adjudication in accordance with law.
- 4. In view of above, this petition is disposed of and the same be sent to the Khyber Pakhtunkhwa Service Tribunal for adjudication in accordance with law.

Announced Dt.19.12.2018 Hasnain/\*

JUDGE

المالية JUDGE

(D.B)

Hon'ble Mr. Justice Ijaz Anwar Hon'ble Mr. Justice Shakeel Ahmad Cortinor Court Francis Strange of Law.

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# FICE OF THE DISTRICT EDUCATION OFFICER (MALE) DERA ISMAIL KHAR

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To:

Dy. District Education Officer, (Male) D.I. Khan

Subject:

COMPLAINT.

Memo:-

Reference compliant of Headmaster GMS Kot Tagga.

You are directed to recover the pay for absence period as reported by Headmaster and this period be treated as absence period and entry will be made in the service books of the following teachers:-

S.No.	Name	Period
1.	Sami ullah DM	1/6/2015 to 13/6/2105
	P.No. 322298	16/9/2015 to 30/9/2105
	32	12/11/2015 to 17/11/2015
		9/12/2015 to 12/12/2015
		12/4/2016 to 30/4/2106
		2/5/2016 to 11/5/2016
<u> </u>		1/9/2016 to 3/9/2016
2.	Faheem saeed PET	5/5/2015 to 13/5/2015
	P.Wo. 196173	10/12/2015 to 12/12/2015

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DISTRICT EDUCATION CALLICE (MALE) DERA ISMAIN KHAN

Copy of the above is forwarded to the Headmaster GMS Kot Tagga D.I.Khan,

> SUM: DISTRICT EDUCATION OFFICER

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## Board of Intermediate and Secondary Education, Dera Ismail Khan

No. 48 /Exam(s)/BISE/DIK

Dated: 13-04-2016



## Offer Letter For

## **INVIGILATOR**

Higher Secondary School Certificate (Annual) Examination 2016, Commencing on 20-04-2016.

To

Sami ullah

DM

GMS Kot Tagga

CNO

Govt; Degree College AmmaKhel Tank (A-HALL)

### **TERMS AND CONDITIONS:**

- 1.Refusal.No refusal from performing the exam duty shall be accepted, otherwise a fine of Rs. 10,000/- (Ten Thousand Only) be imposed. Further, the performance of Exam duty is mandatory which is non-transferable and unchangeable.
- 2. Near Relative Regrets / refusals shall be entertained only if your near relative is appearing at your allocated Exam Centre.
- 3. Acceptance. Send your acceptance to Controller of Examinatioon or before 16-April-2016 Positively. Otherwise, duty shall be considered as cancelled. For any complaint / information please contact: 0966-730503

احتال دیری پہا ورقام اسائڈ درام ہے گذارش ہے کہ احتال شرق شہوئے سے کہد وقت کو احتیاں شرح اپنی حاضری منتی ہا کی ہا وروام اسائڈ درام ہے گذارش ہے کہ احتیاں شرح بیا کہ کہ دوقت کو ان شرح کی کا کے صوبت میں ان کہ استان کے دولاں کی استان کے دولاں کی کا محتیات کے دولاں کی استان کے دولاں کی کا محتیات کے دولاں کی کہ استان کی محتیات کے دولاں کی کا محتیات کی کہ دولاں کے کہ دولاں کے کہ دولاں کی کہ دولاں کے کہ دولان کی کہ دولان کے کہ دولان کے کہ دولان کی کہ دولان

For Info/query: 0966-730503 0333-995-4605

Email: webmaster@bisedik.edu.pk

<u>System Developed/Reported by: HidayatUllah Khan/BISEDIKhan.</u>

(Prof: IhsanUllah Khan)

Controller of Examinations

BOARD OF INTERMEDIATE AND SECONDARY EDUCATION, D.I.KHAN

Travelling Allowance Bill

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10-5-	dul 2016	Am Yw-	G.D.C Ammalkhel Tank Aftal eb 19-4- G.M.S Kat Tappa Note: Re	2016	1200 Pm	•	400 400 n not	400 400	200	Ra. 400	Ps	1 12 1 12	750 750 400	14 Rx. Ps. 1150 9000 400	1. I hereby certify that I have actually traveled by  Bus for which I have claimed TA.  2. Certified that I have actually attended the meeting on 19-4-20/6  3. Certified that Tonga charges of Rs. were actually paid by me (receipt attached)  4. Certified that I am class officer and I am entitled to draw class travelling allowance in my Department.  Signature Same What
GRAND TOTAL					- 7				寸			11150/-	Address 2.M.S. Kot lagger		
(Space fo	or Au	dit)			ō		Masi Ket To		Counter	<u></u>	strict Vale)	Dere	ation Office Ismail Kha	<b>/</b> ↓	Received Payment  Signature  Forty Paisa Revenue  Stamp to be affixed here if the amount exceeds Rs. 20/- and

## RELIEVING CHIT



Certified that Mr. Sami Ullah DM GMS Kot Tagga D.J.Khan has been appointed as in Assistant Superintendent in connection with H.S.S.C (A) Exam: 2016 of B.J.S.F. D.J.Khan.

In compliance with controller of Examination B.I.S.E D.I.Khan, letter No. 48 dated 13-04-2016, Mr. Sami Ullah DM GMS Kot Tagga D.I.Khan is hereby relieved from his duties anday on 18-04-2016 (F M) and he is directed to report to the Superintendent Govt. Degree College Amma Khel District Fank (A Hall) Centre No. 41.

Dy. District Edynation Officer
(Male) Dera Ismail Khan

# Duty Slip

D - 10)

diffied that Mr Jami Welah DM GMS Ket Takka experimed his duly in the FA/FSC Annual Exam experimed his duly in the FA/FSC Annual Exam all GMA Degree College Amathel Tank C. NO:41 April 1016 to 10th may 2016 with effect from 19th plant 2016 to his duty He was found devoted to his duty

oze: Renoversation not paid.

Superintendent

FA/FSC(A) Exam 2016

Govt Degree college

Minatche & Tenk C. North

عربان الے اس میں کے میں وکا تھے میں الم دی الم الی دلولی مولا دے رائے ہے۔ اس وقت منرہ کرنگانی مدال کو ان کو معلی دیم واقع سے دور حتراور دھوار کوزار موني وم سر مؤلف كا وي مرولت من سے۔ من فرو المراب ا منوف الفي ال العالى من كم مالالم المحانات كي بلافاتوس سروفامه د و کواک دفتر جو الله - المرا المام کو دلوی لرا معقده (19-4-200/6) (19-4-200/6) (19-4-200/6) (19-4-200/6) Releave in who ple ADO in Jojulia - 15) (is) in Egg (ic) iso) 190 سى بىرما مۇمان ئەخى سى داكر سىر سەخلاف دىداسى دى No Recovery of Pay Ly Es Evol & phicolocine 036 2016 NJ EN - 18 11 - 18 20 71681/-CM Willy Side in an Colling on soon W. CULT See E E E E LA VIL ME NI CHUY DE TOWN Julo 1 Lis in & Recovery of Pay Boin (10 po of pres 

F 12

Letter No. 145

Dated. 19-12-2016

From

The Headmaster G.M.S Kot Tagga District D.I.Khan.

To

The District Education Officer (Male) D.I.Khan.

SUBJECT: STOPPAGE RECOVERY OF PAY IN RESPECT OF MR SAMIULLAH DM.

Sir,

Kindly refer your office letter No. 19003 dated. 27-09-2016 your kind information that I Mr. Aurangzeb Headmaster Government Middle School Kot Tagga D.I.Khan solemnly affirm the fact that the letter No. 130 dated 5/09/2016 to your good-self regarding complaint of MR. SAMIULLAH DM is based on misconception.

Which my kindly withdrawn, He performed F.A / FSc Examination Annual 2016 duty w.e.f 19-04-2016 to 10-05-216. He is not absent from duty without approval from Authority.

The duty letter No. 48/ Exam / B.I.S.E / D.I.Khan relieving chits and duty letter is attached herewith.

Head Master G.M.S Kot Tagga D.I.Khan

HEADMASTER 19-12 2016
GOVERNMENT MIDDLE SCHOOL

KOT TAGGA D.I.KHAN

BOARD OF INTERMEDIATE & BEGREVELL ENGLISHED, BERA SHAFE REAR.

SUPERVISORY STAFF PROFORMA FOR SSCHESC (ANNUAL/SUPPLIMENTARY) EXAMINATION, 20 16\_\_ Phone # 0966-730500-503

Name of institution: G.M.S. Kot Tagga

District / Agency

 $\mathcal{D} \cdot \mathcal{G} \cdot \mathcal{K}$ 

	S/No.	Name / Father's Name	Designation	Length of Service	Comicile (Town/Village) etc.	Recommendation for appointment as	Details c	PORTANT Examination duties perfo	rnied 2
`	1	Samiullah: S/o Abdullah Jan	D·M 15	10,46018	D . 9 . K	Assistant- Suferintendent	magai na gan amagai na	7	
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•	3				<b>.</b>				tion on the second of the seco
-	4					<u>.</u>			
	5								

Incomplete proforma will not be accented considered.

1) Recommendation(s) will not be considered it informations in the column No. 7 are incompletelned given in detail.

10) Before forwarding the proforms, Read of hotifution is requested to make sure that all the informations given are correct.

10) ONLY RECOMMENDATIONS OF THE HEAD OF INSTITUTION WILL BE CONSIDERED.

11) In case of Middle Schoots, the proforms gust be countersigned by the EDEO/ADEO concerned.

Longth of Service for Superintendent and years, for Deputy Superintendent 7 years and for association tendent's years. However, under extra ordinary circlemstances limits maybe relaxed.

Controller of Examinations, B.I.S.E., D.I.Khan.

Phone No. 0965-730503 (0)

## VAKALATNAMA

## 29

## BEFORE THE PESHAWAR HIGH COURT BENCH D.I.KHAN.

Sami ullah

VERSUS

Govt of KPK

ТІТ	LE Wolf Parition	Westernar.		
I/WE	Sami ullah	xx 30/15/10		
the above named_	Patitioner	hereby appoint		

## MUHAMMAD ANWAR AWAN ADVOCATE SUPREME COURT, D.I.KHAN

in the above Captioned Case to all or any of the following Acts Deeds & Things.

- ✓ To Appear, Act & Plead for Me/Us in the above mentioned cases in this Court/Tribunal in which the same may be tried or heard or any other proceedings out of our connected therewith.
- ✓ To Sign, Verify, File OR Withdraw all Proceedings, Petitions, Appeals, Affidavits, Applications for Compromise OR Withdrawals OR for the Submission of Arbitration of the said case OR any other Documents may be Deemed Necessary OR Advisable by them by the Conduct, Prosecution OR Defense of the above case at all its stages.
- ✓ To Receive Payments, Issue Receipts for all moneys that may be OR Become Due & Payable to us during the course on Conclusion of the Proceedings.
- ✓ To do all other Acts & Things, Which may be Deemed Necessary OR Advisable during the course of Proceedings.

### AND HEREBY AGREE:

- > To Ratify Whatever Advocates may do the Proceedings.
- > Not to Hold the Advantages Responsibilities if the said case be proceed Ex-parte OR Dismissed in Default in Consequence of their Absence from the Court when it is called for Hearing.
- > That the Advocates shall be entitled to withdraw from the Prosecution of the said case if the Whole or any part of the Agreed Fee Remain Un-Paid.
- > That Advocates may be Permitted to argue any other point at the time of Arguments.

In Witness Whereof I/We have signed this Vakalatnama here under the Contents of which have been Read/Explained to Me/Us which is fully understood by Me/Us.

Dated: 24/12/16

Accepted By:

SIGNATURE OF EXECUTANT (S)

same ullah.

03459824119

MUHAMMAD ANWAR AWAN ADVOCATE SUPREME COURT

Phone Office: 0966-730828 Cell No: 03339962231

## PAKISTAN BAR COUNCIL

### MR. MOHAMMAD ANWAR

Advocate

Supreme Court of Pakistan (ASC)

Date of Issue: 19-04-2013 | Válid-Lipto: 31-12-2015

(Muhammad Arshed) Bodielary Pakistan Bar Connoll

(Buchan Meazzam Malik) Chairman Executiva Committee



Tel: Off 0092.966-730828 Res. 0092.966-744828 Cell:

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# PESHAWAR HIGH COURT BENCH, DERA ISMAIL KHAN

Ph No.0966-9280225 Fax No.0966-9280230 Email:phcdikhanbench@yahoo.com

No. <u>692–93</u> Judl:/AR

Dt: 25/03 /2017

From:

The Additional Registrar,

Peshawar High Court Bench,

Dera Ismail Khan.

To:

The District Education Officer (Male)

Dera Ismail Khan

2 The Head Master,

Government Middle School Kot Tagga,

Dera Ismail Khan

Subject:

WRIT PETITION NO. 958-D/16 with Interim Relief

Sami Ullah VS Govt of Khyber Pakhtunkhwa etc

The copy of Order dated 21.03.2017, passed by this Hon'ble Court, in the above noted case, is sent herewith, for information & compliance.

FOY

Peshawar High Court Bench, Dera Ismail Khan

### **ANNEXURES**

\* Copy of Writ Petition

\* Copy of Order dated 21.03.2017



# The PESHAWAR HIGH COURT BENCH, DERA ISMAIL KHAN

Ph No.0966-9280225 Fax No.0966-9280230 Email:phcdikhanbench@yahoo.com

No.1282-188 Judl:/AR
Dt: 10 -6 /2017

From:

The Additional Registrar,

Peshawar High Court Bench,

Dera Ismail Khan.

To:

The District Education Officer (Male)

Dera Ismail Khan

2

The Head Master,

Government Middle School Kot Tagga,

Dera Ismail Khan

Subject:

WRIT PETITION NO. 958-D/16

Sami Ullah VS Govt of Khyber Pakhtunkhwa etc

The copy of Order dated 02.05.2017, passed by this Hon'ble Court, in the above noted case, is sent herewith, for information & compliance.

Additional Registrar,

Peshawar High Court Bench,

Dera Ismail Khan

<u>ANNEXURE</u>

\* Copy of Order dated 02.05.2017



# The PESHAWAR HIGH COURT BENCH, DERA ISMAIL KHAN

Ph No.0966-9280225
Fax No.0966-9280230
Email:phcdikhanbench@yahoo.com

<u>REMINDER-II</u>

No 2 9 93 - 9 Judl:/AR

Dt: 18 / 2017

From:

The Additional Registrar,

Peshawar High Court Bench,

Dera Ismail Khan.

To:

The District Education Officer (Male)

Dera Ismail Khan

2 The

The Head Master,

Government Middle School Kot Tagga,

Dera Ismail Khan

Subject:

WRIT PETITION NO. 958-D/16

Sami Ullah VS Govt of Khyber Pakhtunkhwa etc

In continuation of this Court letter No. 692-93/Judl:/AR dated 25.03.2017, and subsequent letter No. 1787-88/Judl:/AR dated 10.05.2017 on the subject matter and to ask you to expedite the matter of comments within fortnight, as Ordered by Hon'ble Court. Copy of writ petition alongwith annexures have already been sent to you under the cover of this Court letter referred to above.

Additional Registrar, Pegyawar High Court Bench,

Derg-Ismail Khan

**ANNEXURE** 

\* Copy of Order dated 11.10.2017



## PESHAWAR HIGH COURT BENCH, DERA ISMAIL KHAN

The

Ph No.0966-9280225 Fax No.0966-9280230 Email:phcdikhanbench@yahoo.com

No. <u>/o6</u>/Judl:/AR

From:

The Additional Registrar,

Peshawar High Court Bench,

Dera Ismail Khan.

To:

The Registrar Services Tribunal,

Khyber Pakhtunkhwa, Peshawar.

Subject:

WP No.958-D/2016

Samiullah Vs. Govt. of KPK etc

Memo:

I am directed to forward herewith a copy of Judgment dated 19.12.2018 passed by the Hon'ble Division Bench of this Court, in the above noted case for compliance of directions contained in Para-04 of aforesaid Judgment.

Additional Registrar
Peshawar High Court Bench,
Dera Ismail Khan

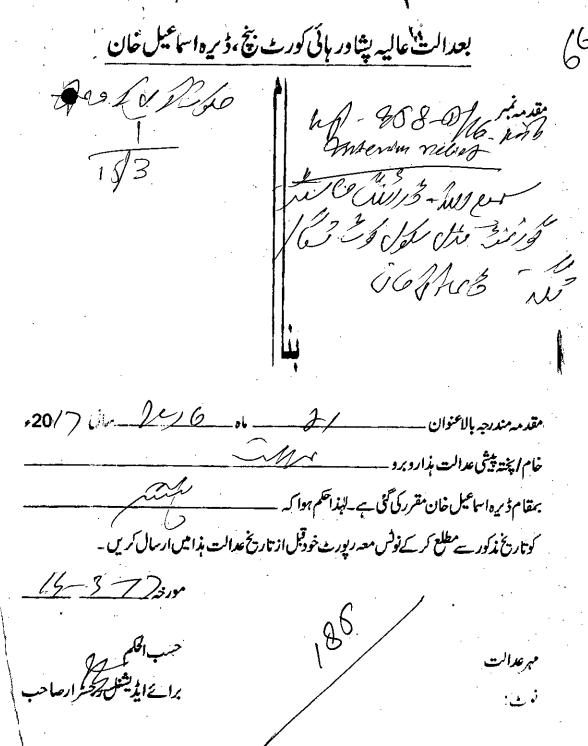
### **Annexure**

- \* Copy of Judgment dated 19.12.2018
- \* Copy of Writ Petition with annexures

Soylol

م بعدالت عاليه بيثاور بائى كورث نيخ، دُيره اساعيل خان م مقدمنبر كالمحمد المحمد CH2 Lung (w9/9/3 مقدمه مندرجه بالاعنوان \_\_\_\_ کار ماه ما را کار 20 م غام/ پخته پیشی عدالت مزار دبرو / مرکزی بمقام ڈریہ اساعیل خان مقرر کی گئی ہے۔ لہذا تھم ہوا کہ مصر مصر ہے۔ کوتاریخ ذکورے مطلع کر کے نوٹس معدر پورٹ خوقیل از تاریخ عدالت بذایس ارسال کریں۔ 14-77) 3190 607 C1B - WW. حسب الحكيم برائ ايديشنل رجيز ارصاحب مهرعدالت

Krydy/Ady المن المنظم (از) كمن الإراب المنظم ال



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### BEFORE THE HONOURABLE SERVICE TRIBUNAL KPK PESHAWAR Service Appeal No. 139/19

Sami Ullah

#### VS

#### Government of KPK

#### **COMMENTS ON BEHALF OF RESPONDENTS**

#### **Preliminary Objections**

- 1 That the appellant has got no cause of action / locus standi.
- 2 That the appellant has not come to Honourable Court with clean hands.
- That the appellant has filed the service appeal on malafide objectives.
- 4 That the instant appeal is against the prevailing law and rule.
- That the Honourable Tribunal has no jurisdiction to entertain such like appeal.
- 6 That the service appeal is not maintainable in its present form.
- 7 That the appeal is not in accordance with section 4 of the KPK Service Tribunal Act 1974.

#### **Objections on Facts**

- 1) That the appellant was posted as DM (Drying Master BS-15) at GMS Kot Tagga District DIKhan. The appellant was reported absent from his official duty by his Head Master (immediate boss).
- 2) That the appellant remained willful absent from his official duty, the detail is given below;

S No.	Dates of absentee	Absent days
01	01.06.2015 to 13.06.2015	12
02	16.09.2015 to 30.09.2015	13
03	12.11.2015 to 17.11.2015	04
04	09.12.2015 to 12.12.2015	03
05	12.04.2016 to 30.04.2016	19
06	02.05.2016 to 11.05.2016	10
07	01.09.2016 to 03.09.2016	03
	Total absent days	64 days

- 3) That the salary of the appellant was deducted on the report/complaint of Head Master GMS Kot Tagga DIKhan. It is further added that the HM (concern) has supported his complaint with the photocopy of the school teacher's attendance register. So for as the examination duty is concerned, he has performed the same without authorization or orders of the competent authority i-e DEO so the plea of appellant has no legal footings.
- 4) That the report/complaint of the Head Master was supported by annexure of school teacher's attendance register, hence there was no need of inquiry to deduct the salary of absent period from the appellant. The detail reply has been given in para No. 3.

- 5) As per para No. 3
- 6) That the appellant has not any justification regarding his absentees of 64 days. Therefore, respondent department has imposed the penalty of recovery of amount Rs. 71,681/- (Rs. 5000 per month) from the appellant. The appellant has spoiled the time of the innocent students of GMS Kot Tagga. The recovery imposed upon the appellant is legal in the eye of law. No discrimination has been made with the appellant.

#### **Objections on Grounds**

- 1. Incorrect / not admitted. The action of the respondent No. 3 was according to law, facts and norms of justices.
- 2. Incorrect / not admitted. Strongly denied. There is no need of inquiry because the appellant remained willful absent from his official duty as reported by the School Head Master. It is further added that the school teachers attendance register clearly reflect that the appellant remained absent from his official duty so there is no need of inquiry. Further an employee is entitled for pay of only those days in which he performed duties. As when there is work there is no pay.
- 3. Incorrect / not admitted. As per para 3 of facts. It is further added that the then Head Master GMS Kot Tagga may answer for the misconception of said matter.

#### Pray

Therefore it is requested to this Honourable Tribunal to dismiss the instant appeal of the appellant because appellant remained willful absent from his official duties and the recovery imposed upon the appellant is legal in eye of law.

Secretary

Elementary & Secondary Education Department Khyber Pakhtunkhwa Peshawar

Director

Elementary & Secondary Education Department Khyber Pakhtunkhwa Peshawar

District Education Officer

(M) DIKhan

Dy: District Education Officer

(M) DIKhan

Head Master GMS Kot Tagga DIKhan

## BEFORE THE HONOURABLE KPK SERVICE TRIBUNAL KPK PESHAWAR

Service Appeal No. 139/19

Sami Ullah

VS

**Government of KPK** 

#### **Affidavit**

I, Mr. Muhammad Kamran khan Assistant District Education Officer (M)

DIKhan do hereby solemnly affirm and declared on oath that the content of written reply of the above mentioned service appeal are correct to the best of my knowledge and nothing has been concealed from this Honorable Court.

### BEFORE THE HONOURABLE SERVICE TRIBUNAL **KPK PESHAWAR**

Service Appeal No. 139/19

Sami Ullah

VS

Government of KPK

#### **Authority**

I, District Education Officer (M) DIKhan hereby authorized Mr. Muhammad Kamran Khan ADEO to attend Honourable Service Tribunal KPK Peshawar on behalf of respondents in connection with submission of Para wise comments and till the decision of the service appeal.

t Education Off (M) DIKhan

## BEFORE THE HONOURABLE SERVICE TRIBUNAL KPK PESHAWAR

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Sami Ullah

**VS** 

**Government of KPK** 

#### **COMMENTS ON BEHALF OF RESPONDENTS**

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- 2 That the appellant has not come to Honourable Court with clean hands.
- 3 That the appellant has filed the service appeal on malafide objectives.
- 4 That the instant appeal is against the prevailing law and rule.
- That the instant appeal is illegal and against the facts and on grounds circumstances. That the appeal is not manufain blo in its present forms.
- That the Honourable Tribunal has no jurisdiction to entertain such like appeal.

That the service appeal is not maintainable in its present form.

8- That the opposition of the maintainable in its present form.

Objections on Facts

KP Sewie Friend Act 1974

- 1) That the appellant was posted as DM (Drying Master BS-15) at GMS Kot Tagga District DIKhan. The appellant was reported absent from his official duty by his Head Master (immediate boss).
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#### **Pray**

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#### Secretary **Elementary & Secondary Education Department** Khyber Pakhtunkhwa Peshawar

**Director Elementary & Secondary Education Department** Khyber Pakhtunkhwa Peshawar

(M) DIKhan

Dy: District Education Officer (M) DIKhan

**Head Master GMS Kot Tagga DIKhan** 

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Africanite.

25.11.19

### BEFORE THE HONOURABLE KPK SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 139/19

Sami Ullah

VS

**Government of KPK** 

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VS

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Muhammad Kamran Khan ADEO to attend Honourable Service Tribunal KPK

Peshawar on behalf of respondents in connection with submission of Para wise comments and till the decision of the service appeal.

District Education Officer (M) DIKhan

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4) That the report/complaint of the Head Master was supported by annexure of school teacher's attendance register, hence there was no need of inquiry to deduct the salary of absent period from the appellant. defail Roply has been gruen in para 3.

5) That the appellant was absent from 12.04.2016 to 30.04.2016 (19days). The appellant claimed that he was on official duty to the BISE DIKhan HSSC Examination w.e.f 19.04.2016 to 10.05.2016. The respondents department rejected the claim of the appellant. The/then Head Master GMS Kot Tagga is responsible for his office letter No. 130 dated 05.09.2016 and letter No. 145 dated 19.12.2016, it is further added that the deduction is based on the above referred letters of Head Master GMS Kot Tagga. If appellant was on examination duty then why HM (concern) has reported to the DEO(M)DIKhan regarding his absentee of appellant therefore the then Head Master may please be called for clarification of above referred letters.

6) That the appellant have not any justification regarding his absentees of 64 days. Therefore, respondent department has imposed the penalty of recovery of amount Rs. 71,681/- (Rs. 5000 per month) from the appellant. The appellant has spoiled the time of the innocent students of GMS Kot Tagga. The recovery imposed upon the appellant is legal in eye of law. No discrimination has been made with the appellant.

#### Objections on Grounds

- 1. Incorrect / not admitted. The action of the respondent No. 3 was according to law, facts and norms of justices.
- 2. Incorrect / not admitted. Strongly denied. There is no need of inquiry because the appellant remained willful absent from his official duty as reported by the School Head Master. It is further added that the school teachers attendance register clearly reflect that the appellant remained absent from his o

duty so there is no need of inquiry. Further an Employee is entitled for fay of only those clays in which he performed clubies entitled As when the there is week There is well there is well there is well there is well.

3. Incorrect / not admitted. That the respondent No. 3 DEO(M)DIKhan has directed the respondent No. 4 Dy;/DEO(M)DIKhan vide office letter No. 19003 dated 27.09.2016 for the recovery from appellant. The letter dated 19.12.2016 of respondent No. 5 was sent to the respondent No. 3 about 3 months later. Therefore respondent No. \$\forall \text{ is responsible for the said later, misconception and deduction for the appellant, it is further added that the then Head Master GMS Kot Tagga may personally call and he may answer for the misconception of said matter.

## BEFORE THE HONOURABLE SERVICE TRIBUNAL KPK PESHAWAR Service Appeal No. 139/19

Sami Ullah

#### VS

#### **Government of KPK**

#### **COMMENTS ON BEHALF OF RESPONDENTS**

#### **Preliminary Objections**

2

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- That the appellant has filed the service appeal on malafide objectives.
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07	01.09.2016 to 03.09.2016	03
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- 5) As per para No. 3
- 6) That the appellant has not any justification regarding his absentees of 64 days. Therefore, respondent department has imposed the penalty of recovery of amount Rs. 71,681/- (Rs. 5000 per month) from the appellant. The appellant has spoiled the time of the innocent students of GMS Kot Tagga. The recovery imposed upon the appellant is legal in the eye of law. No discrimination has been made with the appellant.

#### Objections on Grounds

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Secretary

Elementary & Secondary Education Department Khyber Pakhtunkhwa Peshawar

Director

Elementary & Secondary Education Department

Khyber Pakhtunkhwa Peshawar

District Education Officer

(M) DIKhan

Dy: District Education Officer

(M) DIKhan

# BEFORE THE HONOURABLE KPK SERVICE TRIBUNAL KPK PESHAWAR

Service Appeal No. 139/19

Sami Ullah

VS.

Government of KPK

#### **Affidavit**

I, Mr. Muhammad Kamran khan Assistant District Education Officer (M)

DIKhan do hereby solemnly affirm and declared on oath that the content
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best of my knowledge and nothing has been concealed from this
Honorable Court.

# BEFORE THE HONOURABLE SERVICE TRIBUNAL KPK PESHAWAR

Service Appeal No. 139/19

Sami Ullah

VS

Government of KPK

#### **Authority**

I, District Education Officer (M) DIKhan hereby authorized Mr. Muhammad Kamran Khan ADEO to attend Honourable Service Tribunal KPK Peshawar on behalf of respondents in connection with submission of Para wise comments and till the decision of the service appeal.

District Education Officer

(M) DÍKhan

## BEFORE THE HONOURABLE SERVICE TRIBUNAL KPK PESHAWAR

Service Appeal No. 139/19

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VS

Government of KPK

#### **COMMENTS ON BEHALF OF RESPONDENTS**

#### **Preliminary Objections**

- 1 That the appellant has got no cause of action / locus standi.
- 2 That the appellant has not come to Honourable Court with clean hands.
- That the appellant has filed the service appeal on malafide objectives.
- 4 That the instant appeal is against the prevailing law and rule.
- That the instant appeal is illegal and against the facts and on grounds circumstances. That the affeal is not manufain blo in its present forms.
- That the Honourable Tribunal has no jurisdiction to entertain such like appeal.

7 That the service appeal is not maintainable in its present form.

8 - That the office is not me in accordance with section 4 of the Objections on Facts

KP Service Tribus Act 1974

- That the appellant was posted as DM (Drying Master BS-15) at GMS Kot Tagga District DIKhan. The appellant was reported absent from his official duty by his Head Master (immediate boss).
- 2) That the appellant remained willful absent from his official duty, the detail is given below;

S No.	Dates of absentee	Absent days
01	01.06.2015 to 13.06.2015	12
02	16.09.2015 to 30.09.2015	13
03	12.11.2015 to 17.11.2015	.04
04	09.12.2015 to 12.12.2015	03
05	12.04.2016 to 30.04.2016	19
06	02.05.2016 to 11.05.2016	10
07 .	01.09.2016 to 03.09.2016	03
	Total absent days	64 days



3) That the salary of the appellant was deducted on the report/complaint of Head Master GMS Kot Tagga DIKhan. It is further added that the HM (concern) has supported his complaint with the photocopy of the school teacher's attendance register. so far as the Examinations duffis concument he has pufo The same without authorisation or order of competent Authority 1. e DE. O. so the place

4) That the report/complaint of the Head Master was supported by annexure of the of school teacher's attendance register, hence there was no need of inquiry to deduct the salary of absent period from the appellant. defact kiffy has been gruen in pain 3.

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5) That the appellant was absent from 12.04.2016 to 30.04.2016 (19days). The appellant claimed that he was on official duty to the BISE DIKhan HSSC Examination w.e.f 19.04.2016 to 10.05.2016. The respondents department rejected the claim of the appellant. The then Head Master GMS Kot Tagga is responsible for his office letter No. 130 dated 05.09.2016 and letter No. 145 dated 19.12.2016, it is further added that the deduction is based on the above referred letters of Mead Master GMS Kot Tagga. If appellant was on examination duty then why HM (concern) has reported to the DEO(M)DIKhan regarding his absentee of appellant therefore the then Head Master may please be called for clarification of above referred letters.

6) That the appellant have not any justification regarding his absentees of 64 days. Therefore, respondent department has imposed the penalty of recovery of amount Rs. 71,681/- (Rs. 5000 per month) from the appellant. The appellant has spoiled the time of the innocent students of GMS Kot Tagga. The recovery imposed upon the appellant is legal in eye of law. No discrimination has been made with the appellant.

#### Objections on Grounds

- 1. Incorrect / not admitted. The action of the respondent No. 3 was according to law, facts and norms of justices.
- 2. Incorrect / not admitted. Strongly denied. There is no need of inquiry because the appellant remained willful absent from his official duty as reported by the School Head Master. It is further added that the school teachers attendance register clearly reflect that the appellant remained absent from his official duty so there is no need of inquiry. Further an employee is end's led for Pay of my Those clays in which he performed duties when they There is well There is well there is

. Incorrect / not admitted, That the respondent No. 3 DEO(M)DIKhan has directed the respondent No. 4 Dy;/DEO(M)DIKhan vide office letter No. 19003 dated 27.09.2016 for the recovery from appellant. The letter dated 19.12.2016 of respondent No. 5 was sent/to the respondent No. 3 about 3 months later. Therefore respondent No. 3 is responsible for the said later, misconception and deduction for the appellant. it is further added that the then Head Master GMS Kot Tagga may personally call and he may answer for the misconception of said matter.

#### Pray

Therefore it is requested to this Honourable Tribunal to dismiss the instant appeal of the appellant because appellant remained willful absent from his official duties and the recovery imposed upon the appellant is legal in eye of

#### Secretary Elementary & Secondary Education Department Khyber Pakhtunkhwa Peshawar

Director Elementary & Secondary Education Department Khyber Pakhtunkhwa Peshawar

(M) DIKhan

Dy: District Education Officer (M) DIKhan

**Head Master GMS Kot Tagga DIKhan** 

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### BEFORE THE HONOURABLE KPK SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 139/19

Sami Ullah

VS

Government of KPK

#### **Affidavit**

I, Mr. Muhammad Kamran khan Assistant District Education Officer (M) DIKhan do hereby solemnly affirm and declared on oath that the content of written reply of the above mentioned service appeal are correct to the best of my knowledge and nothing has been concealed from this Honorable Court.

# BEFORE THE HONOURABLE SERVICE TRIBUNAL KPK PESHAWAR

Service Appeal No. 139/19

Sami Ullah

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Government of KPK

#### **Authority**

I, District Education Officer (M) DIKhan hereby authorized Mr. Muhammad Kamran Khan ADEO to attend Honourable Service Tribunal KPK Peshawar on behalf of respondents in connection with submission of Para wise comments and till the decision of the service appeal.

District Education Officer (M) DIKhan

#### KHYBER PAKHTUNKWA SERVICE TRIBUNAL, PESHAWAR

No. 485 /ST

Dated <u>64 / 63 / 2021</u>

To

The District Education Officer Male, Government of Khyber Pakhtunkhwa, D.I. Khan.

Subject: -

JUDGMENT IN APPEAL NO. 139/2019, MR. SAMI ULLAH.

I am directed to forward herewith a certified copy of Judgement dated 22.02.2021 passed by this Tribunal on the above subject for strict compliance.

Encl: As above

REGISTRAR KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR. Samiullah. Pf. 5. Annex. B. Pf.B. deeln Chin Pf7- Justification 19/1/16 th Pf12 mis con appeals: DDA Rebury Complete.

A/D