BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,

Appeal No. 1196/2019

Date of institution ... 26.09.2019

Date of decision 04.11.2019

Mst. Robeena Begum D/O Nazifur Rehman, PST at Government Girls Primary School, Bab-e-Qadeem, District Nowshera...

(Appellant)

Versus

Director, Elementary & Secondary Education, Khyber Pakhtunkhwa (Respondents) Peshawar and four others.

Present

Mr. Muhammad Arif Jan, Advocate

For appellant.

MR. HAMID FAROOQ DURRANI,

CHAIRMAN

JUDGMENT

HAMID FAROOQ DURRANI, CHAIRMAN:-

- The appellant is aggrieved of order dated 19.06.2018, passed by respondent No. 3, whereby she was posted/adjusted as PST at Government Girls Primary School, Bab-e-Qadeem with immediate effect. She is also aggrieved of order dated 19.08.2019, passed by District Education Officer (F) Nowshera. In the order the leave of appellant for 69 days has been considered against full pay, whereas 6129 days have been declared as E.O.Leave without pay.
- Arguments of learned counsel heard and available record gone through.
- 3. The appellant had earlier submitted Service Appeal No. 1298/2012 which was decided on 16.02.2018. Through the decision, this Tribunal had remitted the case of appellant to the appellate authority with the

direction to examine the case and decide her departmental appeal with speaking order. The order dated 19.06.2018 was issued by respondent No. 3 in compliance with the decision of this Tribunal.

In the departmental representation/appeal submitted on 15.07.2019, it was stated by the appellant that in the year 2001 she shifted to Sargodah due to family feud and returned back in the year 2010. She preferred an application for her adjustment/posting which was not considered and, on 19.06.2018, she was adjusted in pursuance to the decision of her appeal by this Tribunal.

- 4. It is a matter of record that during the long period of 17 years the appellant was not proceeded against departmentally and her service was not dispensed with. It is also an admitted fact that the appellant was not performing her duty from the year 2001 up till 19.06.2018. She was posted/adjusted at GGPS Bab-e-Qadeem and the period during which she stayed away from duty on account of personal reasons, was counted towards leave, both earned as well as extraordinary. The impugned order, also in view of admissions through the contents of departmental appeal, submitted by the appellant on 15.07.2019, are not exceptionable.
- 5. The appeal in hand is, therefore, found meritless for admission to regular hearing, hence is dismissed in limine.

File be consigned to the record.

(HAMID FAROOQ DURRANI)
Chairman

04.11.2019

Form- A

FORM OF ORDER SHEET

Court of	
Case No	1196/ 2019

	Case No	1196/ 2019
S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	26/09/2019	The appeal of Mst. Robeena Begum presented today by Mr. Muhammad Arif Jan Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.
		REGISTRAR
2-:	oiliolia.	This case is entrusted to S. Bench for preliminary hearing to be put up there on 641119
	· .	CHAIRMAN
1		

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

	/	•
Service Appeal No	1196	_/2019

Mst. Robeena BegumAppellant

VERSUS

Director, Elementary & Secondary Education & others ...Respondents

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4.	Copy of letter dated 19.06.2018	В	14
5.	Copy of departmental appeal and impugned order dated 19.08.2019	С	15-17
6.	Wakalatnama	3	18

Appellang)

Through

Muhammad Arif Jan Advocate High Court

Cell: 0333-2212213

Dated: 26.09.2019

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 1196 /2019

Service Tribunal
Diary No. 1309
Dated 26/9/2019

Mst. Robeena Begum D/o Nazif ur Rheman PST at Govt. Girls Primary School, Babi Qadeem, District Nowshera.

.....Appellant

VERSUS

- Director, Elementary & Secondary Education, Near Govt. Higher Secondary School, G.T Road, Peshawar.
- Secretary Elementary Secondary (E&SE),
 Govt. of Khyber Pakhtunkhwa, Civil Secretariat,
 Peshawar.
- 3. District Education Officer (Female) Nowshera.
- 4. District Accounts Officer, Nowshera.
- 5. Accountant General, Khyber Pakhtunkhwa, Peshawar.

Filedth day

Kegistrar

.....Respondents

SERVICE APPEAL U/S 4 OF SERVICE TRIBUNAL ACT, 1974 AGAINST IMPUGNED ORDER DATED 19.08.2019.

PRAYER

On acceptance of the instant appeal, the impugned order dated 19.08.2019 be set-aside and grant/ extended the back benefits in shape of arrears, salaries and all other



dues due to the appellant including her seniority, without any further delay, reason and justification.

Respectfully Sheweth:-

Appellant humbly submits as under

- 1) That initially the appellant filed a Service Appeal No.1298/2012 (brief mentioned therein), before this hon'ble Tribunal in respect of release of salaries alongwith adjustment against the post of PST, which was disposed-off vide order dated 16.02.2018. (Copy of memo of appeal and judgment dated 16.02.2018 are Annex "A")
- 2) That in compliance, the respondent No.3 vide his office order dated 19.06.2018, readjusted/ posted the appellant in **GGPS** Babi Qadeem with immediate effect. (Copy of letter dated 19.06.201**3** is Annex "B")
- That the appellant was deprived from her due 3) service benefits/ back benefits including seniority. thus applied through proper channel by filing a departmental appeal on 15.07.2019, which was processed and disposed-off vide impugned order dated 19.08.2019 and the same was communicated to the appellant on struggle on 28.08.2019. (Copy of departmental appeal and impugned order dated 19.08.2019 are Annex "C")
- 4) That being aggrieved of the impugned order, the appellant approaches this Hon'ble Tribunal on the following grounds:-

GROUNDS

- A. Because the impugned order dated 19.08.2019 passed by respondent No.1 is patently illegal, unlawful, without lawful authority, against the facts and circumstances of the case, hence liable to be set-aside and the respondents may kindly be directed to act in accordance with law and to release all the due outstanding back benefits to the appellant by proper calculating the same, without any further delay, reason and justification.
- B. Because the withholding of the due benefits accrued to the appellant since 2001, by which the appellant has not only been deprived from her monthly salaries, but even also deprived from other service benefits including her seniority etc.
- C. Because the respondent/ department is bound down under the law to abide the law, rules and regulations and not to victimize the appellant being lady, but in the present case, the impugned order is passed for nothing, but just to kept the appellant in circle.
- D. Because there is / was no any inquiry whatsoever been pending nor the absence from duty is hereby established on the part of appellant, thus the withholding of salaries and depriving the appellant from her due financial right is amounts of abuse of law.
- E. Because there is no termination order for the alleged period, thus the appellant regularly performed her duties from the year 2001 to 2018.

F. That any other ground, which has not specifically been mentioned may also be permitted to raise at the of hearing.

It is therefore, humbly prayed, on acceptance of the instant appeal, impugned order dated 19.08.2019 be set-aside and grant/ extended the back benefits in shape of arrears, salaries and all other dues due to the appellant including her seniority, without any further delay, reason and justification.

Any other relief which this hon'ble Tribunal deems appropriate in the circumstances of the case though not specifically asked for may kindly also be granted.

Dated: 26.09.2019

Appellant

Through

Muhammad Arif Jan Advocate High Court

AFFIDAVIT

I, do hereby affirm and declare on oath that the contents of the appeal are true and correct to the best of my knowledge and belief and nothing material has been concealed from this hon'ble Tribunal.

Deponent

(5)

<u>BEFORE THE KHYBER PAKHTUNKHWA SERVICE</u> <u>TRIBUNAL, PESHAWAR</u>

Service Appeal No	_/2019
Mst. Robeena Begum	Appellant
<u>VER</u>	<u>SUS</u>
Director, Elementary & Seco	ondary Education & others Respondents

ADDRESSES OF PARTIES

APPELLANT

Mst. Robeena Begum D/o Nazif ur Rheman PST at Govt. Girls Primary School, Babi Qadeem, District Nowshera.

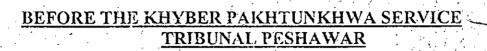
RESPONDENTS

- Director, Elementary & Secondary Education, Near Govt. Higher Secondary School, G.T Road, Peshawar.
- Secretary Elementary Secondary (E&SE),
 Govt. of Khyber Pakhtunkhwa, Civil Secretariat,
 Peshawar.
- 3. District Education Officer (Female) Nowshera.
- 4. District Accounts Officer, Nowshera.
- 5. Accountant General, Khyber Pakhtunkhwa, Peshawar.

Appellant

Through

Muhammad Arif Jan Advocate High Court



Service Appeal No 1298 /2012

MS Robeena Begum D/o Nazeef ur Rehman, PST Government Girls Primary School Shabara Nowshera. (Appellant)

VERSUS

Govt. of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Department KPK Peshawar & Others.

(Respondents)

Amex A

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6	Departmental appeal dated 30-07-	G	22-23
	2012		
7 .	Vakalatnama		

Through

IJAZ ANWAR

Appellant

Advocate Peshawar

ATTESTED

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SAJID AMIN

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No/298/2012

MS Robeena Begum D/o Nazeef ur Rehman, PST Government Girls Primary School Shabara Nowshera.

(Appellant)

VERSUS

- 1. Govt. of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Department KPK Peshawar.
- Director Elementary and Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.
- 3. Executive District Officer (Elementary & Secondary Education) District Pestawara Nowshexee

(Respondents)

Appeal under section 4 of the Khyber Paklitunkhwa Service Tribunal Act, 1974 against the non-granting of salary to the appellant w.e.f 15-07-2001 and non adjustment of the appellant, against which the departmental appeal dated 30.7.2012 was not responded despite the lapse of 90 days.

Prayed in Appeal:

On acceptance of this Appeal the respondents may please be directed to release the salary of the appellant w-e-f 15-7-2001 and she may be adjusted against the post of PST with all back benefits and arrears or any other remedy deemed proper may also be allowed.

ATTESTED



RESPECTFULLY SUBMITTED:

- 1. That the appellant was initially appointed as Primary School Teacher by the District Education Officer Nowshera vide order dated 16.04.1995. (Copy of the order dated is attached as Annexure A)
- 2. That the appellant after medical examination was found fit and thereafter she was handed over the charge of her Post and she started performing her duties. (Copy of the Medical Certificate and charge report and pay slips are attached as Annexure B, C & D)
- 3. That ever since her appointment the appellant performed her duties as assigned to her with zeal and devotions and there was no complaint whatsoever regarding her performance. (Copies of the attendance register are attached as Annexure D)
- 4. That while serving in the said capacity, the appellant due to family dispute had to shift to Sargodha alongwith her family she duly informed the department and also applied for 2 years earned leave (Copy of application is attached as Annexure E).
- 5. That it is pertinent to mention that the appellant was neither proceeded against nor she was ever served with any charge sheet / show cause notice or any absence notice was ever served upon her.
- 6. That thereafter when the situation normalized the appellant came back to join her duty, however she was not allowed to join. The department also illegally withheld the monthly salary of the appellant.
- 7. That the appellant throughout agitated the matter of grant of monthly salary and for her adjustment, however no positive response was given.



- 8. That as a last resort the appellant submitted her departmental appeal dated 30.7.2012. The departmental appeal was not replied despite the lapse of 90 days. (Copy of the departmental appeal is attached as Annexure F)
- 9. That the non-grant of salary and non adjustment of the appellant is illegal, unlawful, and discriminatory, in violation of rules inter alia on the following grounds.

Grounds of Appeal:

- A. That the Appellant has not been treated in accordance with law, she has been denied her right to life/livelihood, which is violation of article 4 read with article 9 of the constitution of Islamic Republic of Pakistan, 1973.
- B. That the order of appointment is issued by the competent authority, the appeilant has took over the charge of her post and started performing duties, thus valuable rights have been created in her favour the same cannot be snatched or with held. Hence the respondents are under obligation to release the salary to the appellant and her adjustment.
- C. That while withholding the pay of the appellant no right of hearing has been provided to her and thus virtually the appellant is condemned unheard.
- D. That appellant has never been proceeded against nor she was ever served with any charge sheet / show cause notice or any absence notice was ever served upon her. She was never terminated from service thus is entitled to the monthly salary w-e-f 15.07.2001 and her adjustment.
- E. That withholding of salary amount to punishment, albeit with out holding any enquiry or proceeding against the appellant the salary of the appellant is withheld which is unlawful.

 ATTESTED

F. That since the appellant has not been terminated from service and is performing his duties hence on no excuse her salary could be withheld or denied.

It is therefore prayed that on acceptance of this Appeal the respondents may please be directed to release the salary of the appellant w-c-f 15-7-2001 and she may be adjusted against the post of PST with all back benefits and arrears or any other remedy deemed proper may also be allowed.

Appellänt,

Through

IJAZ ÁNWAR Advocate Peshawar

&

SAJID AMIN Advocate Peshawar

Affidavit

I, do hereby solemn affirm and declare on oath that the contents of the above petition are true and correct and that nothing has been kept back or concealed from this Honourable Court.

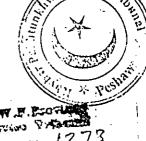
Deponent

ATTESTED



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1398/2012



Correct State 1273

MS Robecna Begum D/o Nazcef ur Rehman, PST Government Girls Primary School Shabara Nowshera.

(Appellant)

VERSUS

So IDG LA Joseph (1).
The condition of t

Govt. of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Department KPK Peshawar.

Director Elementary and Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.

Executive District Officer (Elementary & Secondary Education) District Now Ishezo.

(Respondents)

Prayed in Appeal:

Appeal under section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the non-granting of salary to the appellant w.e.f 15-07-2001 and non adjustment of the appellant, against which the departmental appeal dated 30.7.2012 was not responded despite the lapse of 90 days.

On acceptance of this Appeal the respondents may please be directed to release the salary of the appellant w-e-f 15-7-2001 and she may be adjusted against the post of PST with all back benefits and arrears or any other remedy deemed proper may also be allowed.

Ko-submitted to-day and filed.

Rogistrar 15/2/12

ATTESTED

Rhyc Charles and and a Pechawar

ATTESTED

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE T RIBUNAL PESHAWAR

Service Appeal No.1298/2012

Date of Institution ...

28.11.2012

Date of Decision

16.02.2018

Ms. Robeena Begum D/o Nazeef ur Rehman, PST Government Girls Primary School Shabara, Nowshera.



(Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Department Khyber Pakhtunkhwa Peshawar & 02 others.

(Respondents)

Mr. Yasir Saleem, Advocate

For appellant.

Mr. Riaz Paindakhel, Assistant Advocate General

For respondents.

MR. GUL ZEB KHAN

MR. MUHAMMAD HAMID MUGHAL

MEMBER MEMBER

EMANTINET Khyber Pakittankhwa Service Tributaal, Peshawar

JUDGMENT

GIII. ZEB KHAN, MEMBER. The aforesaid appeal dated 28.11.2012 has been lodged by Ms Robeena Begum hereinafter referred to as the appellant, under Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974, against non-payment of salary and non adjustment. The appellant preferred departmental appeal on 30.7.2012, which was not responded.

2. Learned counsel for the appellant argued that the appellant was initially appointed as PST by the District Education Officer Nowshera vide order dated 16.04.1995. That due to some family dispute the appellant shifted to Sargodha alongwith family and informed the department accordingly. That simultaneously the appellant also applied for 2 years earned leave. That on return for duty, the

ATTESTED S

7. 100

appellant has neither been adjusted for duty nor paid her monthly salary. That the appellant was neither proceeded against nor even served with any charge sheet / show cause notice. That neither any absence notice was ever served. That the appellant was never terminated from service, thus she is fully entitled for adjustment posting and payment of regular monthly salary.

- On the other hand learned Deputy District Attorney while opposing the present appeal stated that the appellant quit her service in the year 2003 and submitted departmental appeal on 30.07.2012 for her adjustment and starting of her monthly salary, hence the present appeal is devoid of any substance.
- We have heard arguments of the learned counsel for the appellant and the learned DDA for the respondents and have gone through the case file.
- Nothing is found on the record that the departmental appeal of the appellant 6. has been examined by the respondent department as on record there is no order of the appellate authority. In the present case the respondent department has also not filed comments. In the stated circumstances this Tribunal is of the considered view to remit the case of appellant to the appellate authority with the direction to examine the case of the appellant and to decide her appeal with speaking order within a period of three (03) months of the receipt of this judgment. The present appeal is disposed of accordingly. Parties are left to bear their own costs. File be consigned to the record room.

SP/ Crul Zeb Kloan, Meurden SP/M. Hamid Mughal ATTESTED Maides

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OFFICE OF THE DISTRICT EDUCATION OFFICER (FEMALE) NOWSHERA

(Office Phone#0923-9220105, Fax#0923-9220105) Email: <u>deof.nowshera@yahoo.com</u>

OFFICE ORDER:

In compliance of the Khyber Pakhtunkhwa Service Tribunal order dated 16/02/2018 passed in service appeal No. 1298/12 Titled as "Robina Begum VS Govt. of KPK and other" The representation/Appeal is acceted and appellant Mst. Robina Begum D/O Nazeefur Rehman Resident of Village Aurang Abad (Babi Qadeem) PO Taru Jabba District Nowsshera is hereby posted/adjusted as PST at GGPS, Babe Qadeem with immediate effect.

Note: 1. Charge report should be submitted to all concerned.

(NAGHMANA SARDAR)
DISTRICT EDUCATION OFFICER
(FEMALE) NOWSHERA

Ends; No. $\frac{3531-34}{\text{Copy forwarded for information and-necessary action to the:}}$

1. Director E/S Education Khyber Pakhtunkhwa Peshawar

2. Senior District Accounts Officer Nowshera

3. Sub Divisional Education Officer (Female) Pabbi

4. Official concerned.

DISTRICT EDUCATION OFFICER (FEMALE) NOWSHER

EXTESTED

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بخدمت جناب ڈائر یکٹرصاحب ایلمنٹری اینڈ سیکنڈری ایجو پشن خیبر پختونخواہ پشاور۔

(Financial Benefit + Seniority) Back Benefits ایل براک

جناب عالى!

گزارش کہ میں روبینہ بیگم مورخہ 16-04-19 کو PST کے پوسٹ پر بھرتی ہوگئی 2001 میں فائدانی وُشمنی کی وجہ سے گاؤں چھوڑ کر سر گودھا شفٹ ہوگئی 2010 میں واپس آگئی اور محکے کو درخواست برائے Adjustment/Posting دی 2012 میں سروس ٹربیونل میں اپیل فائل کی جس کی بناء پر مجھے Adjustment کو میر کا Adjustment ہوگئی میری غیر حاضری کے دوران نہ میری خلاف کوئی کا روائی ہوئی ہوئی انکوائری بلکہ میری سروس بحال رکھی گئی 2010 سے میں درخواستیں دے رہی ہوں لیکن میری نے نہ کوئی انکوائری بلکہ میری سروس بحال رکھی گئی 2010 سے میں درخواستیں دے رہی ہوں لیکن میری کوئی غلطی نہیں تھی۔

اسلئے آپ صاحبان سے استدعاہے کہ مجھے seniority اور Arrears سمیت سالانہ انگریمنٹ وغیرہ تمام back benefits اداکی جائے مہر بانی ہوگی۔

المرقوم: 2019-07-15

ATTESTED

العارض

روبینه بیگم PST جی جی پی ایس با بی قدیم سب ڈویٹرن پسی ضلع نوشهره۔

ID Card No. 17201-5088441-4

Phone No. 0333-9108680

Po the needful,

OFFICE OF THE

19-04 DISTRICT EDUCATION OFFICER (FEMALE)

NOWSHERA

(Office Phone#0923-9220105, Fax#0923-9220105)

No, 45/9 / Dated _____ /9 /7 /2019

To

The Director Elementary & Secondary Education Peshawar

Subject: Memo:

Appeal for Back Benefits(Financial + Seniority)

Reference your order marked on the application of Mst. Robina Begum, it is intimated that Mst. Robina Begum was appointed as PTC/PST in 1995. She continued service w.e.f: 1995 to 2001. In the year 2001 she left station and was willfully absent from her duty w.e.f: 2001 to 2010 without obtaining leave sanction.

During her absence, no disciplinary action was taken by the department. She applied for posting/adjustment in 2010. She filed service appeal for her re-adjustment in 2012 in the Khyber Pakhtunkhwa Service Tribunal vide S.A No. 1298/2012. The appeal was decided/converted in representation and department was directed to decide the case of Mst. Robina Begum. So the then DEO (F) Nowshera accepted the appeal and posted/adjusted her at GGPS, Babe Qadeem with immediate effect vide Order Ednst: No. 3531-34 Dated: 19-06-2018.

Now she has applied for grant of salary of absent period as well as seniority.

Report is submitted for further necessary action please.

District Education Officer (Female) Nowshera

DEO (F) Nowshera

DEO (F) Nowshera

29-7.00 H Decide the absence period as for the leave without pay either be converted to the large of l

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OFFICE OF THE DISTRICT EDUCATION OFFICER (FEMALE) NOWSHERA

GRANT OF LEAVE

Sanction is hereby accorded to the grant of Earned/E.O.Leave in respect of the following Teacher for the period noted against her name, as due admissible to her under the revised leave rules 1981

S#	NAME WITH DESIGNATION WITH SCHOOL	PERIOD	NATURE OF LEAVE
	Mst. Robina Begum PST GGPS.Babi Qadeem(NSR)	17/2001 to 7/9/2001 (69 days leave with full pay and 8/9/2001 to 19/6/2018 (6129 Days) E.O.Leave with out Pay	Earned /Extra ordinary Leave

1. Necessary entry to this effect should be made their service books accordingly.

(ATTIA SULTANA) DISTRCIT EDUCATION OFFICER

(FEMALE) NOWSHERA --/2019

Copy of the above is forwarded for information to the:-

- Director (E&SE) Khyber PukhtunKhwa Peshawar w/r no.Nil datet 27/7/2019
- 2. Senior District Accounts Officer Nowshera.
- 3. District Monitoring Officer.
- Sub Divisional Education Officer (Female) Pabbi
- ASDEO Circle Concerned. 5.
- Superintendent Establishment (Local Officer) 6
- 7. Officials Concerned.

DISTRCIT EDUCATION OFFICER

(FEMALE) NOWSHERA

WAKALATNAMA

IN The Honble. Servic Tribur	rand Kp Peghi.
Msf Robeona Begum VERSUS	(Petitioner) (Plaintiff) (Applicant) (Complainant) (Decree Holder)
D. E.S Zolhy	(Respondent) (Defendant) (Accused) (Judgment Debtor)
Case SANO-	2019
I/We, Mst. Robeendhey do hereby Muhammad Arif Jan Advocate High Coursel, act, compromise, withdraw or refer as my/our Counsel in the above noted man for their default and with the authority other Advocate/ Counsel at my/our matter.	art, Peshawar, to appear to arbitration to me/ us tter, without any liability to engage/ appoint any
grafia.	
Attested & Accepted	CLIENT/S
34 32	(Par
Muhammad Arif Jan Advocate, High Court, Peshawar. Office No. 6, 1st Floor Pabbi Medical Centre, G.T. Road Peshawar. Mobile: 0333-2212213	