

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 737/2019

Date of institution 17.05.2019

Fazle Subhan, Chowkidar, Government Primary School Bar Mula Said
District Bajaur.

VERSUS

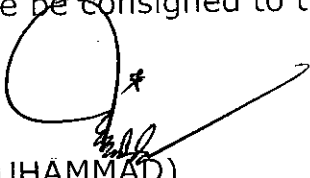
Government of Khyber Pakhtunkhwa through Secretary Elementary &
Secondary Education Department, Civil Secretariat, Peshawar and
others.

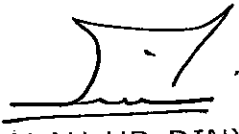
ORDER
26.05.2021

Appellant alongwith Mr. Kamran Khan Afridi, Advocate, present.
Mr. Kabirullah Khattak, Additional Advocate General for the
respondents present.

The appellant submitted an application for withdrawal and his
statement also recorded, wherein he stated that as his grievance has
been redressed, therefore, he wants to withdraw the instant appeal.
The appellant was identified by his counsel.

In view of the above, the appeal in hand stands dismissed as
withdrawn. File be consigned to the record room.


(MIAN MUHAMMAD)
MEMBER (EXECUTIVE)


(SALAH-UD-DIN)
MEMBER (JUDICIAL)

ANNOUNCED
26.05.2021

**Fazle Subhan S/O Syed Muhammad Jan R/O Mulla Syed Barky Post
Office Rakhgan Tehsil Salar Zai District Bajur Agency**

On oath:-

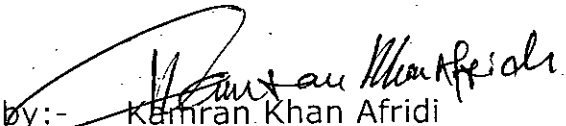
stated that I am appellant in Service Appeal bearing No. 737/2019 titled "Fazle Subhan Versus Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Department, Civil Secretariat, Peshawar and others". My grievance has been redressed, therefore, I want to withdraw the instant appeal, therefore, ~~that~~ the same may be dismissed as withdrawn. Withdrawal application is Ex-P-A while photocopy of my CNIC No. 21106-5440496-5 is ~~also~~ Ex-P-**B**.

RO& AC


26.05.2021



Fazle Subhan (Appellant)

Identified by:- 
Kamran Khan Afridi
(Counsel for the Appellant)

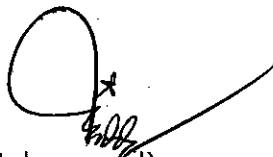
(MIAN MUHAMMAD)
MEMBER (EXECUTIVE)


(SALAH-UD-DIN)
MEMBER (JUDICIAL)

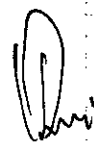
15.02.2021

Muhammad Zaman, brother of appellant and Syed Asif Masood, DDA for the respondents present.

Former states that learned counsel for the appellant is engaged today before courts at Judicial Complex Hayatabad, therefore, requests for adjournment. Adjourned to 25.05.2021 for hearing before the D.B.



(Mian Muhammad)
Member(E)

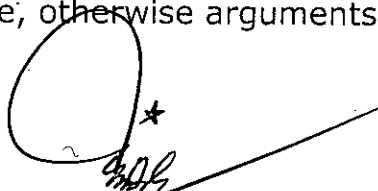


Chairman

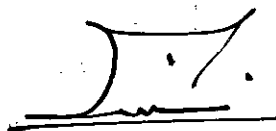
25.05.2021

Mr. Kamran Khan Afridi, for the appellant present. Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present.

Former submitted an application for adjournment on the ground that matter has been resolved/patched-up between the parties, however the appellant could not appear before the court today due to official duty, therefore, the appeal may be adjourned for a short date. Adjourned. To come up for compromise, otherwise arguments before D.B on 26.05.2021.



(MIAN MUHAMMAD)
MEMBER (EXECUTIVE)



(SALAH-UD-DIN)
MEMBER (JUDICIAL)

09.07.2020

Appellant with counsel present.

Mr. Kabir Ullah Khattak learned Additional Advocate General for the respondents present.

Nemo for the respondents.

Last chance had been given to the respondents but today none present. Another last chance is given because the date was adjourned on a Reader's note. Fresh notice be issued to respondents for written reply, for 09.09.2020 before S.B.



Member (J)

09.09.2020

Counsel for the appellant and Mr. Behramand ADEO for respondents No. 1, 2 and 3 alongwith Addl. AG for the respondents present.

Respondents have not furnished reply/comments despite last opportunity. The matter is, therefore, posted to D.B for arguments on 24.11.2020.

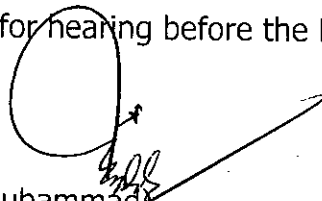


Chairman

24.11.2020

Brother of appellant and Zara Tajwar, DDA for the respondents present.

Former states that learned counsel for the appellant is engaged before the Honourable High Court today. Adjournment is, therefore, sought. Adjourned to 15.02.2021 for hearing before the D.B.



(Mian Muhammad)
Member



Chairman

29.01.2020 None present on behalf of appellant. Written reply not submitted. Fawad Afzal Assistant (representative of respondent No.2) absent. Respondents as well as absent representative of the respondent No.2 be put to notice for reply. Adjourn. To come up for written reply/comments on 05.03.2020 before S.B. Appellant be also put to notice for the date fixed.


Member

05.03.2020 Counsel for the appellant present. Addl. AG alongwith Javed Yousaf, ATO for respondents no. 4 present and requested for adjournment. Fresh notice be issued to respondents no. 1 to 3. To come up for written reply/comments on 14.04.2020 by way of last chance.


Member

14.04.2020 Due to public holiday on account of COVID-19, the case is adjourned to 09.07.2020 for the same. To come up for the same as before S.B.


Reader

05.09.2019

Counsel for the appellant present.

Contends that the appellant was put in confinement by the Security Forces on 22.09.2015. He was released by the order passed by Honourable High Court on 14.11.2018 and rejoined his duty. Despite, his monthly salary is not released by the respondents. It was further stated that no order of removal of appellant from service was ever passed by the respondents.

The appeal is admitted for regular hearing in view of available record and arguments of learned counsel subject to all just exceptions. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents. To come up for written reply/comments on 05.11.2019 before S.B.

Accepted
Security & Process Fee
2019

05.11.2019

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

Learned AAG seeks time to contact the respondents and furnish the reply/comments. Adjourned to 17.12.2019 on which date the requisite reply/comments shall positively be submitted.

Chairman

17.12.2019

Junior to counsel for the appellant, Addl. AG for respondents present.




Learned AAG seeks time to contact the respondents and furnish the requisite reply/comments. Adjourned to 29.01.2020 on which date reply/comments shall positively be submitted.

Chairman

Form- A
FORM OF ORDER SHEET

Court of _____

Case No.- _____ 737/2019 _____

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	17/06/2019	<p>The appeal of Mr. Fazle Subhan resubmitted today by Mr. Wali Khan Afridi Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR 17/6/19</p>
2-	24/08/19	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>12/07/19</u></p> <p style="text-align: right;"> CHAIRMAN</p>
	12.07.2019	<p>Clerk to counsel for the appellant present and seeks adjournment on the ground that learned counsel for the appellant is not available. Adjourn. To come up for preliminary hearing on 05.09.2019 before S.B.</p> <p style="text-align: right;"> Member</p>


This is an appeal filed by Mr. Fazle Subhan today on 17/05/2019 against nonpayment of monthly salary against which he preferred/made departmental appeal/ representation on 28.02.2019 the period of ninety days is not yet lapsed as per section 4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974, which is premature as laid down in an authority reported as 2005-SCMR-890.

As such the instant appeal is returned in original to the appellant/Counsel. The appellant would be at liberty to resubmit fresh appeal after maturity of cause of action and also removing the following deficiency.

- 1- Copy of appointment order is not attached with the appeal which may be placed on it.
- 2- Copy of impugned order is not attached with the appeal which may be placed on it.

No. 970 /ST,

Dt. 20-5- /2019


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

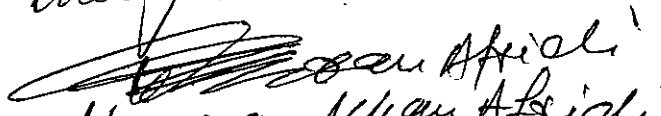
Mr. Wali Khan Afridi Adv. Pesh.

Respected Sir,

which objected no (1) is removed
and no (2) the appeal is with
in time

Appellant

through:


Wali Khan Afridi
Advocate

Dt: 17/6/2019

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

IN RE:
Service Appeal No. 737 / of 2019

Fazle Subhan, Chowkidar Appellant


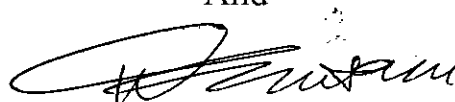
VERSUS

Government of Khyber Pakhtunkhwa
through Secretary (E&SE) Peshawar and others... ... Respondents

I N D E X

S.No	Description of documents	Annexures	Pages
1.	Service Appeal		1 - 4
2.	Affidavit		0 - 5
3.	Copy of appointment order dated 23.12.2000	'A'	0 - 6
4.	Copy of the order dated 14.11.2018 passed in Writ Petition No. 3804-P of 2018	'B'	7 - 17
5.	Copy of the applications of the appellant	'C'	18-19
6.	Vakalat Nama		20

Through: Appellant


(Wali Khan Afridi)
Advocate,
Supreme Court of Pakistan
Cell # 0300-5977695
And

(Kamran Khan Afridi)
Advocate High Court,
1-C, Haroon Mansion
Khyber Bazar Peshawar
Cell # 0300-5848545

Dated: 17.06.2019

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No. 737 / of 2019.

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 777

Dated 17-5-2019

Fazle Subhan, Chowkidar,
Government Primary School
Bar Mula Said District Bajaur...

... Appellant

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary Elementary and Secondary Education Department, Civil Secretariat, Peshawar.
2. Director, Elementary and Secondary Education Department, G.T. Road, Peshawar.
3. District Education Officer (Male) District Bajaur at Khar.
4. District Accounts Officer District Bajaur at Khar. ...

... Respondents

**APPEAL UNDER SECTION 4 OF KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT
1974 FOR ORDER AND DIRECTION TO THE
RESPONDENTS TO RELEASE THE MONTHLY
SALARY OF THE APPELLANT ALONGWITH
ARREARS WITH-HOLD FROM FEBRUARY
2016 TILL DATE.**

Respectfully Sheweth:

Brief facts giving rise to the instant Service Appeal are as under-

Filed to Day
Registrar
17/5/19

Re-submitted to-day
and filed.

Registrar
12/6/19

1. That the appellant was appointed as Chowkidar on 23.12.2000 in the respondent department and posted at Government Primary School Bar Mula Said District Bajaur. (Copy of Appointment order dated 23.12.2000 is attached as annexure 'A').
2. That since his appointment the appellant has performed his duties honestly, devotedly, punctually, to the best of his abilities and to the entire satisfaction of his superiors and has never given any chance of complaint.
3. That on 22.09.2015 the appellant, for no fault at his part, was arrested by the Law Enforcing Agencies and remained in their custody and for his release the appellant filed a Writ Petition bearing No. 3804-P of 2018 in the Honourable Peshawar High Court Peshawar, which was decided on 14.11.2018 and on the basis of which the appellant was released from their custody. (Copy of the order dated 14.11.2018 is attached as annexure 'B').
4. That after his release the appellant joined his duty and is regularly performing his duties in the respondent department, but it came to light that without any legal justification the monthly salary of the appellant was with-hold since February 2016 till date.
5. That thereafter the appellant submitted a Departmental Appeal to the respondent No.3 (the District Education Officer (Male) District Bajaur at Khar) and requested for his needful (to release the monthly salary of the appellant) but no heed was given to the request of the appellant. (Copy of the application of the appellant is attached as annexure 'C').

6. That the treatment of the respondent met to the appellant is against law, procedure, highly illegal and without lawful authority and is not tenable in the eye of law.
7. That with-holding the monthly salary of the appellant without any proper order is illegal rather it was verbal order which is not legally justified.
8. That salary of the appellant has been stopped which is whimsical and based on malafide intention and is for ulterior motive.
9. That the monthly salary of the appellant is stopped without holding any impartial Inquiry, Show Cause Notice, Final Show Cause Notice, Charge Sheet, Statement of Allegation, without giving him opportunity of being heard, therefore, the action whereby the monthly salary of the appellant was stopped, is liable to be set aside.
10. That the appellant was not treated in accordance with law rather discriminated which is against Article 4 and 25 (Fundamental Rights) of the Constitution of Islamic Republic of Pakistan 1973, therefore, liable to be struck down.
11. That the appellant craves permission of this Honourable Tribunal to advance any other grounds at the time of arguments and to submit any other documents in support of the instant Service Appeal.

It is, therefore, humbly prayed that on acceptance of this Service Appeal this Honourable Tribunal may be pleased to declare the impugned

action of the respondents as illegal, without lawful authority and of no legal effect and to pass an order and direct the respondents to release the monthly salary of the appellant with-hold from February 2016 alongwith arrears till date.

Any other relief though not specifically asked for to which the appellant is found entitled in the circumstances of the case may also be granted to the appellant.



Appellant

Through:

Wali Khan
(Wali Khan Afridi)
Advocate,
Supreme Court of Pakistan
Cell # 0300-5977695.

And

Kamran Khan
(Kamran Khan Afridi)
Advocate High Court,
1-C, Haroon Mansion
Khyber Bazar Peshawar
Cell # 0300-5848545

Dated: 7.06.2019

CERTIFICATE:

Certified that as per instructions of my client, no such Service Appeal on behalf of the appellant has earlier been filed in this Honourable Service Tribunal on the subject matter.

Wali Khan
Advocate

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

IN RE:
Service Appeal No. _____ / of 2019

Fazle Subhan, Chowkidar Appellant

VERSUS

Government of Khyber Pakhtunkhwa
through Secretary (E&SE) Peshawar and others... .. Respondents


AFFIDAVIT

I, Fazle Subhan son of Said Muhammad Jan, Chowkidar Government Primary School Bar Mula Said District Bajaur, do hereby solemnly affirm and declare that the contents of the accompanying **Service Appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honourable Tribunal.



Deponent

IDENTIFIED BY:


(Wali Khan Afridi)
Advocate, Peshawar.

Amma (A) (O)

OFFICE OF THE AGENCY EDUCATION OFFICER BAJAUR AGENCY AT KHAR.
APPOINTMENT.

Mr. Fazal Subhan S/o Said Mahmood Jan of Malasaid Bajaur is hereby appointed against vacant B/Chowkidar Post at Govt; Primary School Malasaid Bajaur Agency, in basic pay scale No; I Rs, 1245-35-1770 with usual allowances as admissible under the rules from the date of his taking over charge in the interest of public service vice Ahmad Jan Class-IV retired from service.

Terms/Conditions.

1. Charge reports should be submitted in duplicate to this office.
2. The appointment of the candidate is being made purely on temporary basis and is liable to termination at any time with out assigning any reason. In case he wishes resign his services the would give one month prior notice or to forfeit one month pay in lieu thereof.
3. No TA/DA is allowed.
4. He should not take over charge of the post if he is below 18 years or above 45 years of age.
5. He should produce his health and age certificate from Agency Surgeon Concd;
6. If he fails to report his arrival within fifteen days, his order will be considered as cancelled.

Agency Edu; Officer,
Bajaur Agency.

Endst; No; 6397-4034-Apptt; Dated Khar the 23/12 /2000.

Copy to the;-

01. Political Agent Bajaur w/r to his No; 10047/EC. Dated 23/12/2000.
02. Director of Education FATA, Peshawar.
03. Agency Accounts Officer Bajaur.
04. Agency Surgeon Bajaur.
05. AAEO(M) Concerned.
06. Accountant of the local Office.
07. Candidate Concerned.

Agency Edu; Officer,
Bajaur Agency.

Sarwar/*
23122k.

*Affixed
Dairman*

Amended (B)

(2)



IN THE PESHAWAR HIGH COURT PESHAWAR

Writ Petition No. 3504/1 of 2018

Fazle Subhan son of Said Muhammad Jan (Detenu)
resident of Bar Mola Said Raghgan Pashat
Tehsil Salarzai District Bajaur (The then Bajaur Agency)
through Muhammad Zaman (Special Attorney) son of
Said Muhammad Jan (real brother of Detenu)... Petitioner

VERSUS

1. The State, through
Advocate General Khyber Pakhtunkhwa,
Peshawar.
2. Assistant Commissioner Khar
District Bajaur (The Then Assistant
Political Agent Khar Bajaur Agency).
3. Commandant Bajaur Scouts/F.C.I.U
Through Inspector General Frontier Corps,
Qilla Balahisar Peshawar... Respondents

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

Waseem Afzal
ATTESTED

Respectfully Sheweth:

Brief facts giving rise to the instant writ petition are as under:-

1. That as per available record the detenu/petitioner was arrested and interrogated by the security agencies on suspicious of his involvement in Anti-State activities under the provision of Action in Aid of Civil Power Regulation 2011 and ultimately handed over to respondent No.2 Assistant Commissioner Khar District Bajaur (the then Assistant Political Agent Khar Bajaur Agency) with the recommendation to award punishment of 14 years Rigorous Imprisonment to the petitioner being involved in Anti-State activities.

wp3804 2018 Fazle subhan vs state full 15 page

ATTESTED
EXAMINER
Peshawar High Court

28 NOV 2018

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2. That the trial Court i.e. Assistant Commissioner Khar District Bajaur (the then Assistant Political Agent Khar Bajaur Agency), complying with the recommendation of the security agencies passed an order dated 10.11.2017 convicted and sentenced the detenu/petitioner to undergo 14 years Rigorous Imprisonment.
3. That thereafter the detenu/petitioner filed an appeal before the Commissioner F.C.R Malakand Division at Saidu Sharif, Swat which was partially allowed by setting aside the order and judgment of the trial Court dated 10.11.2017, remanded case back to the trial Court with the direction to refer the case to the proper council of elders, frame issues and direct the council of elders to re-examine the record thoroughly and proceed with the case as per Section 11 and 40-A of the FCR (amended 2011). **"However, the accused/ petitioner will remain in jail till the final decision of the case"** vide his order dated 15.03.2018, impugned herein. (Copy of the impugned order and judgment dated 15.03.2018 of the Appellate Court i.e. Commissioner F.C.R Malakand Division is attached as annexure 'A').
4. That aggrieved with the said impugned orders and judgments of both the lower Courts and having no other adequate and efficacious remedy available to the detenu/petitioner but to invoke the constitutional jurisdiction of this Honourable Court for the redressal of his grievances (to acquit him) on the following grounds amongst the others:-

GROUND:

- a. That the impugned orders and judgments of both the lower Courts are against law, facts and evidence brought on record.
- b. That the learned trial Court i.e. Assistant Commissioner Khar District Bajaur (the then Assistant Political Agent Khar Bajaur

Attested
ATTESTED

ATTES
EXAMIN
Peshawar H

28 NOV



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Agency) has not proceeded with the case in accordance with law prevailing in the area at that time i.e. FCR 1901, thus violated the mandatory provision of law.

- c. That the order and judgment of the Appellate Court i.e. Commissioner FCR Malakand Division is not in accordance with law because the Appellate Court remanded case back and ordered to proceed with law i.e.. (FCR) which is not in existence, thus the order and judgment is without lawful authority, therefore, liable to be struck down.
- d. That the learned Appellate Court i.e. commissioner FCR Malakand Division remanded case back to the trial Court vide his impugned order dated 15.03.2018 and also passed an order for keeping the petitioner in custody till the final decision of the case, thus the Appellate Court has illegally directed the lower Court to proceed with the law (FCR) which is not in existence anymore, therefore, the impugned order and judgment of the learned Appellate Court is without jurisdiction, without lawful authority, void abinitio and is liable to be set aside.
- e. That under Article 10-A of the Constitution of Islamic Republic of Pakistan 1973, every citizen shall be entitled to a fair trial and due process, while in case of the detenu/petitioner no fair trial has ever been conducted, hence on this score too the orders and judgments, impugned herein, are against the letter and spirit

Qantun Akhbar
ATTESTED

ATTESTED
EXAMINER
Peshawar High Court

28 NOV 2018

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of the constitution, therefore, both the judgments and orders are not sustainable in the eye of law, rather to be struck down.

- f. That the petitioner has not been treated in accordance with law rather discriminated against which is in violation of Article 4 and 25 of the Constitution.
- g. That the order and judgment of the Appellate Court, impugned herein, is also in utter violation of law and natural justice on the ground that how much long the detenu/petitioner will remain in custody as there is no law exist at all and the Provincial Government is yet to legislate.
- h. That nothing has been brought on record which support the prosecution version that the detenu/petitioner was involved in any Anti-State activities rather the detenu/petitioner has been condemned unheard which is against the principle of natural justice.
- i. That the detenu/petitioner craves permission of this Honourable Court to advance any other ground/argument in support of the instant writ petition at the time of arguments.

[Handwritten Signature]
ATTESTED

It is, therefore, humbly prayed that on acceptance of this writ petition this Honourable Court may be pleased to set aside the impugned orders and judgments of both the lower Courts i.e. Assistant Commissioner Khar District Bajaur (the then Assistant Political Agent Khar Bajaur Agency) dated 10.11.2017 and that of the Appellate Court i.e. Commissioner F.C.R. Malakand Division at Saidu Sharif, Swat dated 15.03.2018, being illegal, without jurisdiction, without lawful authority, void abinitio and ineffective upon the rights of the detenu/petitioner and the detenu/petitioner may please be acquitted from the charges levelled against him and he be set at liberty.

[Handwritten Signature]
ATTESTED

Any other relief though not specifically asked for to which the petitioner is found entitled in the circumstances of the case may also be granted to the detenu/petitioner.

PRAYER FOR INTERIM RELIEF:

It is further prayed that as an Interim Relief the detenu/petitioner may please be enlarged on bail subject to the final result of the instant writ petition.

Through: Petitioner
Wali Khan
(Wali Khan Afridi)
Advocate,
Supreme Court of Pakistan
Cell # 0300-5977695,

Kamran Afridi
(Kamran Khan Afridi)
Advocate High Court,
1-C, Haroon Mansion
Khyber Bazar Peshawar
Cell # 0300-5848545

And

Hassan
(Hassan Nisar)
Advocate
High Court, Peshawar
Cell # 0314-9214909

Dated: 17.07.2018

CERTIFICATE:

Certified that as per instructions of my client, no such Writ Petition on behalf of the detenu/petitioner has earlier been filed in this Honourable Court on the subject matter.

Wali Khan
Advocate

BOOKS OF LAW:

1. Constitution of Islamic Republic of Pakistan, 1973.
2. Action in Aid of Civil Power Regulation 2011.
3. Frontier Crimes Regulation, 1901.
4. Case law according to need.

Wali Khan
ATTESTED

ATTESTED
EXAMINER
Peshawar High Court

28 NOV 2018

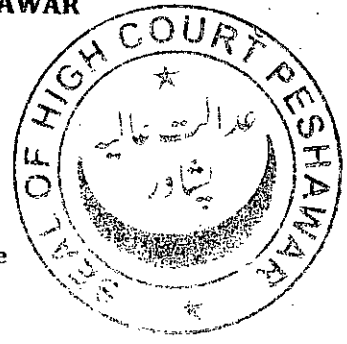


12

**JUDGMENT SHEET
PESHAWAR HIGH COURT, PESHAWAR
JUDICIAL DEPARTMENT**

WP No. 3804-P/2018

**Fazle Subhan
Vs
The State through the Advocate
General KPK and others.**



Date of hearing 14.11.2018

Petitioner (by) Wali Khan Afridi Advocate

Respondent (by) Reeb Nawaz Wali Khan Afridi A.G.

JUDGMENT

MUSARRAT HILALI, J.- Same order as in connected

WP No. 3760-P/2018 titled "Rizwan Ullah Vs. The

State through the Advocate General KPK and others".

JUDGE

Wali Khan Afridi
ATTESTED

**Announced
14.11.2018**

**(DB) Hon'ble Mr. Justice Ikramullah Khan
Hon'ble Justice Musarrat Hilali**

Noor Shah, PS

JUDGE

CERTIFIED TO BE TRUE COPY

**EXAMINER
Peshawar High Court, Peshawar
Authorised Under Article 8.7 of
The Qanun-e-Shahadat Order 1984**

28 NOV 2018

~~ATTESTED~~
~~EXAMINER~~
~~Peshawar High Court~~
~~28/11/2018~~

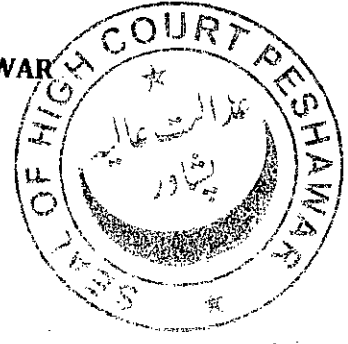


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**JUDGMENT SHEET
PESHAWAR HIGH COURT, PESHAWAR
JUDICIAL DEPARTMENT**

WP No. 3804-P/2018

**Fazle Subhan
Vs
The State through the Advocate
General KPK and others.**



Date of hearing 14.11.2018

Petitioner (by) Wali Khan Afridi Advocate

Respondent (by) Reeb Nawaz Khan Addl. D.G.

JUDGMENT

MUSARRAT HILALI, J.- Same order as in connected
WP No. 3760-P/2018 titled "Rizwan Ullah Vs. The
State through the Advocate General KPK and others".

JUDGE

Musarrat Hilali
ATTESTED

**Announced
14.11.2018**

JUDGE

**(DB) Hon'ble Mr. Justice Ikramullah Khan
Hon'ble Justice Musarrat Hilali**

Noor Shah, PS

CERTIFIED TO BE TRUE COPY

**EXAMINER
Peshawar High Court, Peshawar
Authorised Under Article 8.7 of
the Constitution Order 1980**

28 NOV 2018



14

**JUDGMENT SHEET
PESHAWAR HIGH COURT, PESHAWAR
JUDICIAL DEPARTMENT**

WP No. 3760-P/2018

**Rizwan Ullah
Vs
The State through the Advocate
General KPK and others.**



Date of hearing 14.11.2018

Petitioner (by) Abdul Wali Khan Afridi Advocate

Respondent (by) Qasim Nawaz Khan Addl: CG

JUDGMENT

MUSARRAT HILALI, J.- Through this single judgment, we propose to decide WP No. 3804-P/2018 (Fazle Subhan .Vs. The State through the Advocate General, KPK and others), as both the petitions have common questions of law and facts, involved therein.

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2. Petitioners in both the petitions have sought similar prayer for setting aside the impugned orders of both the lower Courts i.e. Assistant Commissioner Khar,

Abdul Wali Khan Afridi
ATTESTED

ATTESTED
EXAMINER
Peshawar High Court

28 NOV 2018

District Bajaur and that of Commissioner FCR,
Malakand Division at Saidu Sharif Swat.

3. Heard. In the instant case, the petitioners were arrested by security agencies and on completion of interrogation, they were handed over to the Political Administration with the recommendations that accused, Rizwan Ullah, be awarded punishment of 14 years rigorous imprisonment and the accused, Fazle Subhan, be awarded 21 years rigorous imprisonment. On appeal, the Commissioner, FCR set aside the order dated 13.10.2017 of APA, Khar, Bajaur Agency (passed in case of accused Rizwanullah) and that of order dated 13.01.2018 (passed in case of accused Fazle Subhan) and remanded back both the cases to APA/ADM Khar, Bajaur Agency for referring the same to a proper council of elders, who shall reexamine and decide the cases of accused as per Section 11 and Section 40A FCR after framing proper issues.

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ATTESTED
EXAMINER
Peshawar High Court
29 NOV 2018

4. Article 247 of the Constitution of Islamic Republic of Pakistan, 1973 barred the application of Provincial and Federal laws to the tribal areas has been abolished from the Constitution through Act No. XXXVII of 2018. The FCR was replaced by FATA Interim Governance Regulations, 2018 and a procedure for the trial was provided under the said Regulation, however, the same has also been set aside by the apex Court. Currently regular Courts have since not been functioning in the erstwhile tribal areas and it is not certain as to how much time the government would require to establish regular Courts in that area, therefore, in such a situation, the accused-petitioners cannot be kept behind the bars for an unlimited period. Thus, petitioners are admitted to bail till the establishment of regular Courts, provided each one of them furnishes bail bonds in the sum of Rs. 500000/- (Rupees Five Lacs only) with two sureties each in the like amount to the satisfaction of

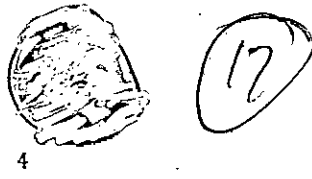
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Waseem Afzal
ATTESTED

ATTESTED

28/07/2018

28/07/2018



learned Sessions Judge, Peshawar. The sureties shall be reliable and men of means.

JUDGE

Announced
14.11.2018

JUDGE

No. 1605
Date of Presentation of 28.11.18
No. of Pages 11
Copying Fee
Urgent Fee
Date of Preparation of Copy 28.11.18
Date of Delivery of 28.11.18
Received By [Signature]

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EXAMINER
Peshawar High Court, Peshawar
Authorized Under Article 87 of
The Qanun-e-Shahadat Order 1988

28 NOV 2018

SP

(DB) Hon'ble Mr. Justice Ikramullah Khan
Hon'ble Justice Musarrat Hilali

Noor Shah, PS

[Signature]
ATTESTED

خدمت جناب اعلیٰ محکمہ اعلیٰ تعلیم، حکومت پاکستان، اسلام آباد

دو خواستہ دارے آزادی تنخواہ

مدرسہ گذشتہ میں کم عمریہ طالبہ اسمی فضلہ بیگم کو گورنمنٹ پرائمری سکول بہاولپور تحصیل سالارزئی، جوڑ اعلیٰ میں سکول جو کراچی سے جیل میں ہے۔

یہ لکھتے حکام نے تنخواہ بند کر دی ہے۔ اس لئے چھوٹے چھوٹے معصوم بچے ہیں

یوں وہ مان اب ہیں تنخواہیں بغیر اور کوئی آمدن کا ذریعہ نہیں ہے

لہذا اب صاحبانہم اپنی کہنے تنخواہ آزاد کرانے کا قلم صادر فرماویں

محمد نواز حسین مولیٰ

جناب کا خدمت گزار حاجی مولانا محمد نواز حسین تحصیل سالارزئی

School teaching staff

If the application is based on fact write about this?

جناب عالی: مذکورہ درخواست صرافت پر مبنی ہے جن پر ان ڈیوٹی کر رہے ہیں۔

افسر سٹاف پ. س. آئی. بہاولپور

ATHE

Discard

Mr. Zia holder day night duty in the school

T.T. 9 P.S. 11/12/17

BEFORE THE LEARNED KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

In Re C.M No. _____ / 2021

In S.A No. 373/2019

Fazale Subhan VERSUS EDO (M), Bajaur etc

Adjournment
APPLICATION FOR EARLY HEARING

P.O.F.
J.I.
25/05/21
Respectfully Sheweth,

1. That the captioned case is pending adjudication before this Hon'ble Court and is fixed for 25-05-2021.
2. That in the instant appeal appellant is busy in their official duty and cannot appear before this Hon'ble Tribunal.
3. That as the matter has been patched-up/ resolved between the parties, therefore the appellant requested for early fixation their appeal before This Hon'ble Tribunal.

It is; therefore, most humbly prayed that on acceptance of the instant application, the captioned case may very graciously be fixed for tomorrow for their personal attendance.

Dated: 25/05/2021

Petitioner/Appellant

Through

Kamran Khan Afridi
Kamran Khan Afridi
Advocate High Court
Peshawar

حضرت صاحب مدرسہ اسلامیہ کراچی
جناب عالی! درخواست ہے کہ

(19)

گورنمنٹ کالج کراچی میں داخلہ لے کر
بھرتی ہو کر ڈیڑھ سال سے پہلے
کے لیے جمع کیا گیا ہے۔

دیکر آزاد کر دیا۔ اب یہ آزاد ہو کر
کراچی میں داخلہ لے کر
کے لیے جمع کیا گیا ہے۔
عبدالرشید

Acct: Full m/a
He is verified on 28/02/09

Add. DC (B) 28/2/09

Presented to Addl Deputy Commissioner
for the verification of subject cited above.

District Education Officer
Bajaur

ADDC

Parale Rahim 88
7/3/09
ATTESTED

قیمت 50 روپے	4224	PBA PESHAWAR BAR ASSOCIATION		
ایڈووکیٹ: <u>Kamran Khan Afridi</u>		پشاور بار ایسوسی ایشن، خیبر پختونخواہ		
بار کونسل ایسوسی ایشن نمبر: <u>09-2403</u>		رابطہ نمبر: <u>0300-5848545</u>		

بعدالت جناب: سروس ٹریڈنگ کمپنی

مخاتب: <u>Applicant/Petitioner</u>	دعویٰ: <u>اپیل</u>
فصل سلمان وار سپریم کورٹ جان بنام ضلع باجوڑ تعلیم	علت نمبر: <u>237/2019</u>
	مورخہ:
	جرم:
	تھانہ:

بامث تحریر آگہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کاروائی متعلقہ

آن مقام لسٹور کیلئے ولی خان آفریدی کا عمران خان کو وکیل مقرر اور دکٹر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کمال اختیار ہوگا، نیز وکیل صاحب کو حسن ناصر راضی نامہ کرنے و تقرر ثالث و فیصلہ بر حلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی، نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا اور صاحب مقرر شدہ کو وہی جملہ مذکورہ با اختیارات حاصل ہوں گے اور اس کا ساختہ پر داختم منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ سند رہے

المرقوم: 16/6/2019

العبد گواہ شد العبد

مقام لسٹور کے لیے منظور ہے۔

نوٹ: اس وکالت نامہ کی فونو کاپی ناقابل قبول ہوگی۔

Attested
&
Accepted
Kamran Khan Afridi

Kamran Khan Afridi
Advocate High Court Peshawar
Mob: 0300-5848545

فصل سلمان وار سپریم کورٹ جان ضلع باجوڑ


CINIC 21106-6440496-5

BEFORE THE LEARNED KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR

In re:
SA No. 737/2019

Fazle SubhanVs.....EDO (M), Bajaur etc

**APPLICATION FOR WITHDRAWAL OF
TITLED APPEAL WITH PERMISSION TO
FILE FRESH ONE IF NEEDED**

EX-P.A

26/05/21

Respectfully Sheweth;

1. That the above titled appeal is pending adjudication before this hon'ble Tribunal and is fixed for today i.e. 25.05.2021.
2. That as the matter has been patched-up between the parties, therefore, appellant is now no more interested in further prosecution of the case, hence wants to withdrawal his appeal.

It is, therefore, prayed that on acceptance of this application, the appellant be allowed to withdraw his appeal with permission to file fresh one if needed.



Appellant

Through


Kamran Khan Aindi

Advocate, Peshawar

AFFIDAVIT

I, Fazle Subhan S/o Said Muhammad Jan R/o Mola Said, District Bajaur (Appellant), do hereby affirm and declare on oath that the contents of the accompanying **Application** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.



DEPONENT

