

Date of hearing 12/04/2023, place of hearing
Service Appeal No. 08/2022 Peshawar

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,

PESHAWAR

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 4755

Hayat Ullah S/O Momin Khan, R/O Gulicho, Paito Dara, District Dir Lower

Dated 6/4/2023

.....Appellant

Versus

1. The Secretary Elementary and Secondary Education, Khyber Pakhtunkhwa,
Peshawar and OthersRespondents

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,

PESHAWAR

Hayat Ullah S/O Momin Khan, R/O Gulicho, Paito Dara, District Dir Lower

.....Appellant

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Para wise comments on behalf of the respondents No.1, 2 and 3.

Respectfully Sheweth:-

Preliminary objections:

1. That the appellant is not an "aggrieved" person within the meaning of Article 212 of the Constitution of the Islamic Republic of Pakistan 1973.
2. That the appellant has got no cause of action/locus standi.
3. That the appellant has not come to this Hon'ble court with clean hands.
4. That the appellant is estopped by his own conduct.
5. That the instant service appeal suffers from laches, hence not maintainable in the present form.

On facts:

1. No comments. This para pertains to the appellant.
2. No comments. This para also pertains to the appellant.
3. Incorrect. The appellant is a habitual absentee. It is worth mentioning here that prior to the instant removal from service, the appellant had previously been removed from service twice on the charges of poor performance and absence from duty. **(Copy of the orders whereby the Appellant was previously removed from Service are attached as Annexure A)**
4. Incorrect. The appellant had never performed his duties regularly. He runs his private business in Timergara. The appellant puts his signature in attendance register in the morning and then leaves the school without prior permission for the sole purpose of running his private business. A perusal of the answers in response to the questionnaires served by the Respondent No.03 upon the PSHT and Staff of the GPS, Gulicho Paito Dara, would strengthen the aforementioned allegations against the Appellant. **(Copy of the**

questionnaires served by the Respondent No.03 upon the PSHT and Staff of GPS, Gulicho Paito Dara, Dir Lower are attached as Annexure B and C)

5. It is correct to the extent that the appellant was removed from service on the grounds of poor performance and continuous absence from duty and was reinstated in service by the Hon'ble Service Tribunal, Khyber Pakhtunkhwa. However, it is noteworthy that after the said reinstatement, the appellant was, again, found absent from his duty and was thus removed from service, after following the due procedure, vide impugned order dated 16-08-2021 by the respondent No.03. The point raised by the Appellant that the School Management locked the attendance register in the cupboard and was not allowing the appellant to mark his attendance was duly addressed by the Respondent No.03 in response to the application of the appellant. **(Copy of the impugned order dated 16-08-2021 by the respondent No.03, whereby the Appellant was removed from his service is attached as Annexure D, while copy of the Application dated 10-6-2021 submitted by the Appellant to the Respondent No.03 and its compliance letter by the Respondent No.03 dated 17-6-2021 are attached as Annexure E and F)**
6. No comments. Para No. 06 pertains to record.
7. The appellant has no locus standi/cause of action to challenge the order dated 16-08-2021, of the Respondent No.03, before this Hon'ble Court inter alia the following grounds:

Grounds

- A. Incorrect. The impugned order dated 16-08-2021 is in accordance with the Constitution of the Islamic Republic of Pakistan 1973. The respondent, by issuing the said order, has not violated any law of the land. Moreover, the aforementioned order was issued by the Respondent No.03 keeping in view the performance of the Appellant.
- B. Incorrect. The impugned order dated 16-08-2021, issued by the respondent No.03, doesn't breach any of the fundamental right of the Appellant. As mentioned earlier, the said order is in accordance with the provisions of the Constitution of the Islamic Republic of Pakistan 1973.
- C. Incorrect. The appellant is treated in accordance with the rules and regulations by the Respondents. Thus, there is no violation of Article 4 and 25 of the Constitution on behalf of the Respondents.
- D. Incorrect. The judgement stated by the Appellant is not applicable to his case. Thus the impugned order is valid and is not liable to be dismissed.
- E. Incorrect. The Respondent No.03 issued show cause notice to the Appellant in light of the Inquiry Report submitted by the Sub-Divisional Education Officer (SDEO), Timergara. The said show cause notice was issued on 22-06-2021 by the Respondent No.03 and the Appellant was required to submit its reply within 05 days, however, no convincing reply

was submitted by him. (Copy of the Show cause notice and the inquiry report conducted by the SDEO Male Timergara are attached as Annexure G)

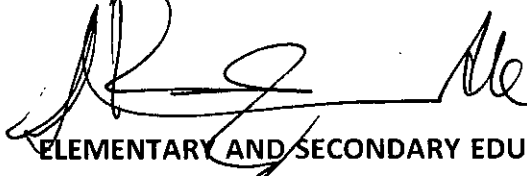
F. Incorrect. The Appellant was removed from service after conducting a proper inquiry. He was removed by the respondent No.03 after following the due procedure, mandatory before imposing the major penalty. Thus no principle of natural justice has been violated by the Respondent No.03 in the instant case.

G. Incorrect. The Respondent No.03 proceeded against the Appellant after conducting a fair and impartial inquiry. There is nothing on record which could show malafide or ill-intentions of the Respondent No.03 towards the Appellant.

H. The Respondents seek permission to raise additional grounds at the time of arguments.

It is therefore most humbly prayed that on acceptance of the above submissions, the instant Service Appeal may very graciously be dismissed in favor of the answering respondents with cost.

SECRETARY


ELEMENTARY AND SECONDARY EDUCATION,
KHYBER PAKHTUNKHWA

RESPONDENT NO. 01

DIRECTOR,


ELEMENTARY AND SECONDARY EDUCATION
KHYBER PAKHTUNKHWA

RESPONDENT NO. 02

DISTRICT EDUCATION OFFICER (MALE)

DIR LOWER



RESPONDENT NO.03

AUTHORITY LETTER

Mr. Muhammad Shahab School Leader (Litigation Officer) is hereby authorized to submit the comments/reply in the Service Appeal No. 08/2022.

Title: Hayat Ullah Vs. The Secretary Elementary and Secondary Education, KPK and Others

Amri

DISTRICT EDUCATION OFFICER

MALE DIR LOWER

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,

PESHAWAR

Hayat Ullah S/O Momin Khan, R/O Gulicho, Paito Dara, District Dir Lower

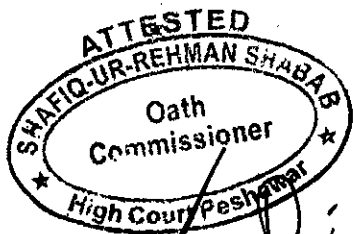
.....Appellant

Versus

1. The Secretary Elementary and Secondary Education, Khyber Pakhtunkhwa,
Peshawar and OthersRespondents

AFFIDAVIT

I, Muhammad Shahab, School Leader (Litigation Officer) Dir Lower, do hereby solemnly affirm and state on oath that the whole contents of this reply are true and correct to the best of my knowledge and belief and nothing has been concealed from this August Court.



Shahab
07/03/23

Shahab
DEPONENT

MUHAMMAD SHAHAB,
SCHOOL LEADER (LITIGATION OFFICER)

Handwritten notes: s/c, 10/11/15, 10/12/15, 10/13/15

Signature of District Education Officer (State) Dir Lower

- 1. The Deputy Commissioner Dir Lower
- 2. The District Monitoring Officer Dir Lower
- 3. The District Accounts Officer Dir Lower
- 4. The SPIO (State) Timergara
- 5. The accused chowkidar concerned.

Copy of the above is forwarded to: Dated Timergara the 10/10/2015

Post No. 0257-61

(Mohammad Ibrahim) District Education Officer (State) Dir Lower

As necessary copy to this effect should be made in his service book accordingly. Attention already taken regarding recovery of one month pay vide this office No. 2220 dated 27/07/2015 hereby withdrawn.

When a complaint regarding the absence of Mr. Muhammad Chowkidar (S) was received in the office frequently, even the day is on 22/07/2015 at 11:00 AM, the door of the room for students was closed and the school was closed. The school was closed for one day and again directed to normal way but in vain. Moreover, when a copy of the complaint was received upon the accused chowkidar side this office was not received in the office on 22/07/2015 but no considerable reply received.

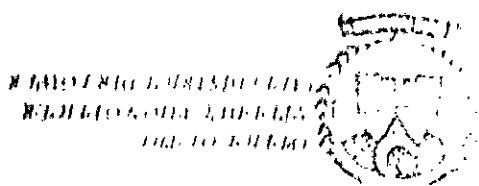
And when the accused chowkidar again reported as absent by the ASPI (S) in the office on 22/07/2015 and as District Monitoring Officer Dir Lower side this office was not received in the office on 22/07/2015.

This act leads towards negligent conduct and dereliction which is liable to be dealt against under Section 201.

Mr. Mohammad Ibrahim District Education Officer (S) (the monitoring committee) is hereby directed to employ Mr. Muhammad (S) Chowkidar (S) (the lower middle) in the school under the section 4 (b) of the above mentioned rules with immediate effect.

COPIES TO:

1. For the file



101 0947-9250083



OFFICE OF THE
DISTRICT EDUCATION OFFICER
(MALE) DIR LOWER
(09.45 9250081-82)

NOTIFICATION

Whereas one Mr. Hayatullah Chowkidar GPS Gulicho Paito Dara Tehsil Timergara Distt; Dir lower was proceeded against under the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline rules 2011, and removed from service vice this office 8257-61 dated 10/8/2015 due to his poor performance and absence from duty.

2. And whereas he filed an appeal to the Director (E&SE) KPK Peshawar for re-instatement into service, on which the worthy Director has asked comments and report vide his office letter No, 9177 dated 30/10/2015. The appellant also presented affidavit on stamp paper that in future he will be performed the duty with zeal and regularly according to Govt; Rules and regulations. This office submitted comments to the Director (E&SE) alongwith a copy of affidavit vide this office No, 3616 dated 27/2/2016. After that the worthy Director constituted an inquiry in the mater. After proper inquiry the appellate authority re-instated him into service, and this office also adjust him on his original post vide this office No, 12853-56 dated 11/8/2016, with the condition that he will be more careful in future, and the SDEO(M) Timergara also directed to kept the official under strict surveillance in future.

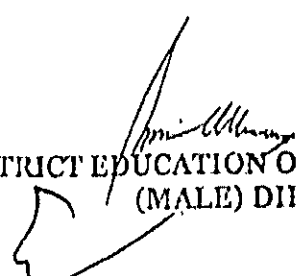
3. And whereas after re-instatement/adjustment the chowkidar again reported by the school teachers/ SDEO circle/SDEO(M) Timergara for non performing the duty, and proposed for taking disciplinary proceedings against the said chowkidar, for which this office has served a show cause notice vide this office No, 1773- dated 19/12/2016. He filed his reply which was perused and found unjustified. And whereas inquiries conducted on different dates through Salahud-Din Principal GHS Malakand, Bakht Zada ASDEO circle and Zafar Khan SDEO Timergara, wherein the accused chowkidar declared/reported his poor performance and absence from duty.

Now, therefore, in exercise of the powers conferred by the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules 2011 under Rule 4 (b) (iv), the Competent Authority is pleased to impose upon the above named chowkidar major penalty of "removal from service" from the date of his absence. Necessary entry to this effect should be made in his Service Book accordingly.

(MUIHAMMAD IBRAHIM)
DISTRICT EDUCATION OFFICER
(MALE) DIR LOWER

Ends: No. 229-32 /Dated Timergara the 13/6/2017

- Forwarded to the:-
1. Director (E&SE) KPK Peshawar.
 2. District Accounts Officer Dir lower.
 3. SDEO(M) Timergara.
 4. The accused Chowkidar.


DISTRICT EDUCATION OFFICER
(MALE) DIR LOWER

سوالنامہ
پندرہ ستمبر ۱۹۶۵ء

(۴)

(۵)

آج آپ کو یاد آتا ہے

جواب بحسب اللہ

(۱) آج کو کھشت پندرہ ستمبر صد اس سکول ویب آئی ہیں

جواب ۰۱-۶-۲۰۱۸

(۲) آج سے پہلے کئی سکول کا جو بیدار تھا اللہ تھا، جواب ہاں

جواب بالکل عام ہیں

(۳) اس سے پہلے وہ سکول ڈھلے ڈھلے رہا تھا یا نہیں

جواب اسکا عام نہیں

(۴) اللہ تعالیٰ کو حاضر جان کر حیات اللہ سکول کو بتا ہے

جواب صحیح ہو کر آتا ہے علامتوں سے کچھ غائب ہو جاتا ہے

(۵) کیا یہ درست ہے کہ وہ صحیح ہو کر سکول آکر جانوری سے رجسٹر

ہیں دستخط کرتے کچھ پتھر گرہ اپنے دونوں کو چلا جاتا ہے

جواب جی ہاں یہ درست ہے

(۶) کیا یہ درست ہے کہ حیات اللہ جو بیدار سکول کا بائبل خیال

ہوا۔ ہاں جی ہاں

نہیں دیکھتا اور نہ ہی سکول کا چھٹائی کرتا ہے

جواب ہم خود سکول کے صفحہ کرتے ہیں

(۷) آج حیات اللہ جو بیدار سکول نہیں آتا تو پھر آج سکول

کو کیسے منبہال سکتے ہیں۔ جواب ہم جلدی سٹان ایسی ہر آج کے وقت

یہ سب کہہ کرتے ہیں

(۸) کیا آج حیات اللہ کو ڈھلے ڈھلے بتائے

جواب جی ہاں۔ سب وہ سکول نہیں آتا

(۹) آج حیات اللہ جو بیدار سکول نہیں آتا تو آج High up

اسا جواب درست صفحہ پر ہے

الطباع دی ہے یا نہیں اور انکو اس پر کوف ایکشن

لنا ہے یا نہیں۔ اسکا جواب دو صفحہ پر ہے

(7) عبید اللہ P.S.H.T. -

2018-6-01 (12)

(13) ہاں . پیسے بھی صحتاً اللہ جو کبھی دے گا۔

(14) پیسے کا علم نہیں ہے۔

(15) سکول آتا ہے مگر سکول کھولنے اور دستخط کرنے

کے بعد سکول ٹائمز سے پیسے چلا جاتا ہے۔

(16) ہاں یہ بات بھی درست ہے کہ صحتاً اللہ سکول کھولے گا کہ دوران

سکول کا خیال نہیں رکھتا اور صفحہ بھرتا رہتا ہے۔

کو کمر میں پانچ لہجنا۔ سب کام ہم خود کرتے ہیں۔

(8) سب کچھ سہیلوں کے حدود سے خود کرتے ہیں۔

(18) ہاں میں نے High ups کو اطلاع دی ہے

مگر کوئی ایکشن نہیں لیا گیا۔

A. M. M.
6.6.2021

(۱۴۲)

سوالنامہ برائے سائنس ۱۹۵۳

دن آج بچہ سائنس صبا اللہ چوکیدار کے ڈیوٹی کے بارے میں پوچھ رہا ہے۔
جانتے ہیں تو لکھ دیں۔
صبا اللہ چوکیدار نے سائنس کی تعلیم حاصل کی ہے۔
پہلے وہ سائنس کی تعلیم حاصل کرتی تھی۔

(۲) کیا صبا اللہ چوکیدار سکول آتا ہے اور کس نام سے؟
جواب: ہاں نہیں۔

(۳) کیا صبا اللہ چوکیدار سکول ڈیوٹی یا ٹیچنگ سے آتا ہے یا لکچر؟
جواب: ہاں نہیں۔

(۴) کیا صبا اللہ چوکیدار ڈیوٹی کے وقت سکول سے ہوتا ہے یا ٹیچنگ کے وقت سکول سے؟
جواب: وہ ٹیچنگ کے وقت سکول سے آتا ہے۔

(۵) سکول کے صفائی کون کرتا ہے؟
جواب: اساتذہ کرام خود ہی سکول کی صفائی کرتے ہیں۔

(۶) کیا صبا اللہ چوکیدار ڈیوٹی میں مخلص ہے یا نہیں؟
جواب: ہاں نہیں۔

(۷) کیا صبا اللہ چوکیدار صبح سویرے ڈیوٹی سے آتا ہے؟
جواب: ہاں نہیں۔

PST
شہد حیات طاہر

محمد عمران القادر علی خان PST

تھانک یو جانتا ہے۔
جواب: وہ سوکھ سکول آتا ہے۔

08-16-2021

نام سے پہلے سائنس کی تعلیم حاصل کی ہے۔
پہلے وہ سائنس کی تعلیم حاصل کرتی تھی۔



OFFICE OF THE
DISTRICT EDUCATION OFFICER (MALE)
DIR LOWER AT TIMERGARA.

il: deomaledirlower@gmail.com Tell: 0945-9250081-82

NOTIFICATION

1. WHEREAS, You Mr. Hayat Ullah were appointed as chawkidar at GPS Gulicho on 8/12/2006.
2. AND WHEREAS, Due to various complaints regarding your absence from duty and poor performance, you were proceeded and removed from service on 10/08/2015.
3. AND WHEREAS, You were r-instated in service by Directorate vide Endst. No. 2042-46/F.No.171/A-20 dated 21/07/2016.
4. AND WHEREASE, You were again repoted absent from duty and proceeded against the Khyber Pakhtunkhwa Government Servant (Effeciency and Disciplanry rules 2011 and removed from service on 13/06/2017.
5. AND WHEREAS, You were re-instated in service by the Honrable Service Tribunal Peshawar on 8/5/2019.
6. AND WHEREAS, You were time and again repoted absent from duty by Head Teacher/ASDEO/ SDEO and DCMAs.
7. AND WHEREAS, reportedly you are busy in your personal busniss and can not spare time for school duty.
8. AND WHEREAS, No covienceable reply was submitted by you.
9. AND WHEREAS, An inquiry was conducted against you through SDEO Timergara on 28/05/2021. Inquiry officer suggested for further proceeding under E&D rules.
10. AND WHEREAS, in District Steering Committee meeting (DSC) under the chairemanship of Deputy commissioner Dir lower on 29/06/2021, your dis-intrest and poor performance was discussed. The chair directed DEO (M) to remove the said official after completion of removal process.
11. AND WHEREAS, SDEO Timergara was directed to report present status of the official concerned.
12. AND WHEREAS, SDEO concerned vide his office No.956 dated 9/8/2021 submitted a detailed report regarding your habitual absenteeism and mentioned that you are putting signature in morning before school opening and than leave for your shop/ busniss at Timergara bazar.


Now, therefore, in exercise of powers conferred upon me under the section 4(B) of the Government servant (Efficiency and Discipline) rules 2011, I Mr. Meftah Uddin DEO (M) Dir lower the competent Authority is pleased to impose upon you Mr. Hayat Ullah Chawkidar GPS Gulicho Dir Lower the major penalty of "Removal From Service" from the date of absence from duty.

(MEFTAH UDDIN)
District Education Officer
(M) Lower Dir.

Endst;No. 5095-99 / Dated. 16 / 8 / 2021

Copy of the above is forwarded to:-

1. The Director (E&SE) Khyber Pakhtukhwa Peshawar.
2. The Deputy commissioner Dir Lower.
3. THE District Monitoting Officer Dir Lower.
4. The SDEO (M) Timergara.
5. The official concerned.


District Education Officer
(M) Lower Dir.

11/1/2021
H. H. H.

Handwritten text in Urdu script, likely a header or title.

Main body of handwritten text in Urdu script, consisting of several lines.

Handwritten text in Urdu script, possibly a signature or a specific note.

Handwritten text in English: "His student in ... and also ..."



Annexure 'F' (13)

Dated Tlmergara the

The PSHT,
GPS Gulicho Palto.

SUBJECT: APPLICATION IN R/O MR. HAYAT ULLAH CHOWKIDAR IN YOUR SCHOOL

MUMD:

Enclosed please find herewith an application from Mr. Hayat Ullah Chowkidar of your school, who has alleged that he is ready to perform his duty in his school but you are not providing the attendance register for attendance entry to him

State actual position under oath about the following points.

1. Why are you not providing him teacher attendance register?
2. If as per your statement he is only signing in register and not performing his duty regularly, punctually and as per job description, since how long is this practice going on? Report with duly documented proofs along with your order books as per School Rules.
3. If he refuses to sign order book, statement with witness may be provided.
4. Furthermore, have you solved the questionnaire the chowkidar or not.





SHOW CAUSE NOTICE

1. I Meftah Uddin District Education Officer (Male) Dir lower as a competent authority, under the Khyber Pakhtunkhwa Govt; servants (Efficiency & Discipline) rules, 2011, do here by serve you Mr. Hayat ullah Chawkidar GPS Gulicho.
2. In the light of inquiry report submitted by SDEO (M) Timergara on 21/06/2021 the following charges has been proved against you.

CHARGE SHEET

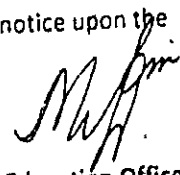
- (a)-You are not interested in your official duty.
- (b)- You are putting signature of 1st time and then leave the school without permission and run your shop at Timergara.
- (c)- School/office record reflects your irresponsible behavior towards your duty due to which you were removed two times from service.
3. Being a Government employee you have committed negligence in your official duty.
4. I am satisfied that you committed the above acts/ omission specified in the section 3 of the said rules.
5. As a result thereof, I being a competent authority have tentatively decided to impose upon you penalty under the E & D/ conduct rules.
6. If no reply to this notice is received within 5 days its delivery in the normal course of circumstances it shall be presumed, that you have not defense to put in, in that case, ex party decision will be taken against you under the E&D rules

(MEFTAH UDDIN)
District Education Officer
(Male) District Dir lower.

Endst:No. 4017-19 Dated Timergara the 22/06/2021.

Copy forwarded to:

1. The Deputy Commissioner Dir Lower.
2. The District Monitoring Officer Dir Lower.
3. The SDEO (M) Timergara with the direction to serve the show cause notice upon the chawkidar concerned with intimation to this office.


District Education Officer
(Male) District Dir lower

ADDO (S&A) PT
21/6/21

The District Education Officer(M)
Dir Lower at Timergara

Subject:- INQUIRY REPORT AGAINST MR. HAYATULLAH CHOWKIDAR GPS
GULICHO PAITO DARA

Memo:-
Reference your letter No. 2859 dated 6/5/2020 at S.No. 11
I Mr: Mohammad Islam SDEO(Male) Timergara visited GPS Gulicho Sub-
Division Timergara on 28/05/2021 at 8:00 AM 8/6/2021 and at 9:AM on 14/6/2021 to conduct
an inquiry report against Mr: Hayatullah Chowkidar GPS Gulicho Paito Dara and Tried convey
serve attendance Notice on the said Chowkidar but invain due to absence. I had handed over to
PSHT Concerned.

Procedure/date collection

(i) For date collection

I served a questionnaire for Mr: Hayatullah Chowkidar GPS Gulicho Paito as
well as for school head Teacher (PSHT) Mr. Ubaidullah and staff members Mohammad Amran
SPST, Sher Hayat PST, Ali Jan PST and Miraj Khan SPST signed joint questionnaire and then
I also inquired Mr. Hayatullah chowkidar regarding the complaint / absentisum in duty through
IMU Report against him Mr. Hayatullah chowkidar refused to receive the questionnaire on
8/6/2021.

He refused to answer the questionnaire after two days, he has not supplied the
documents questionnaire attached are (i) PSHT statement /Q (ii) Staff statement /Questionnaire
(iii) Teacher attendance register-pages From march 2021 to June 2021.

Finding (1) Record personal reflected

The PSHT Statement at Point No.6 is very clear that the chowkidar concerned is
not perform the duties regularly but runs his ~~business~~ shop at timergara during the school
hours. *Glass and Plywood*

Reflecting Habitual absentisem irresponsible rude behaviors attitude violating service discipline
under rules conduct rules 1987

Analysis of statement reflects allegation is true.

Service record reflects the said chowkidar has been removed from service on
10/8/2015 vide DEO(M) Dir Lower Endst No. 8257-61 Dated 10/8/2015 and then Re-instate on
21/7/2016

Director E&SE KP Pesahwar No.2042-46 dated 21/7/2016

The said chowkidar has been dismissal from service on 13/6/2017 vide DEO(M)
Dir Lower No.7829-32 dated 13/6/2017.

Then dismissal order with drawn by the service tribunal KPK Peshawar appeal No.1411/2017
dated 6/5/2019 and the absentisem period w.e.f 13/6/2017 to 6/5/2019 (693) days treated is leave
without pay.

Recommendation: Service discipline demand the said chowkidar may be proceeded under conduct
rules 1987 with E&D rules 2011 in the best of public interest service and service discipline.

Sub-Divisional Education Officer(M)
Timergara Dir Lower