

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Mr. Allah Jan Service Appeal No. 7277/2021..... (Appellant)

Khyber Pakhtunkhwa
Service Tribunal

VERSUS

Diary No. 5751

Government of Khyber Pakhtunkhwa through Chief Secretary & others Dated 11/6/2023

INDEX

S. No	Description of documents	Page #
1	Affidavit	01
2	Reply / Comments	2-4
3	Annexure-A	5
5	Annexure-B	6
6	Annexure-C	7
7	Annexure-D	8
8	Annexure-E	9
9	Annexure-F	10
10	Annexure-G	11-12
11	Annexure-H	13
12	Annexure-I	14-15

13

Authority Letter

16

19/6/2023

D. I. Khan

[Signature]

DEPONENT

CNIC No. 17101-0377128-9

Cell No. 0346-9148582

BEFORE THE HONORABLE SERVICES TRIBUNAL PESHAWAR

Service Appeal No. 7277 / 2021

Mr. Allah Jan..... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Chief Secretary & others

AFFIDAVIT

I, Nabi Gul, Superintendent (BPS-17) Directorate of Social Welfare, Special Education & Women Empowerment Khyber Pakhtunkhwa Peshawar do hereby solemnly affirm and declare on oath that the contents of the reply on behalf of the respondents are true and correct to the best of my knowledge and belief that nothing has been concealed from this Honorable Court.

DEPONENT

Nabi Gul

Nabi Gul

Superintendent (BPS-17)

Directorate of Social Welfare, Special Education &
Women Empowerment Khyber Pakhtunkhwa
Peshawar

CNIC # 17101-0377128-9

Identified by:



1 JUN 2021

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, CAMP COURT
D.I.KHAN**

Service appeal No. 7277/ 2021

Mr. Allah Jan son of Sahib Jan Resident of Thoya Fazel, Indus Colony, Tehsil and District Dera Ismail Khan.....**Appellant**

VERSUS

1. Government of Khyber Pakhtunkhwa, through Chief Secretary Social Welfare, KPK, Peshawar.
2. Director, Social Welfare, Special Education and Women Empowerment, Peshawar.
3. Assistant Director Establishment, Social Welfare & Special Education Khyber Pakhtunkhwa, Peshawar.
4. District Officer, Social Welfare Department D.I.Khan.....**Respondents**

PARA-WISE COMMENTS BY RESPONDENTS NO. 1 TO 4

Respectfully Sheweth,

Preliminary Objections:

1. The appellant has got no cause of action to file instant appeal.
2. The appeal is not maintainable in its present form.
3. The appeal is based on malafide intentions.
4. The appellant has no locus standi to file appeal.
5. The appeal in hand is badly time barred.
6. The appellant has not come to Honorable Tribunal with clean hands.
7. The appellant has concealed the material facts from this Honorable Tribunal, hence liable to be dismissed.
8. The appeal is liable to be dismissed for non-joinder/misjoinder necessary parties.
9. The appeal is against the prevailing law & rules.

FACTS

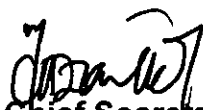
1. Correct to the extent that the appellant was serving as Naib Qasid and stood retired from service on 20.12.2020.
2. Incorrect, hence denied. The appellant moved his application for pre-mature retirement w.e.f 20.12.2020 (A.N) with sanction for Leave Encashment of 365 days in lieu of LPR vide Respondent No. 2 (**Copy of District Officer, Social Welfare Department DIKhan letter dated 07.12.2020, application of the petitioner is at Annex-A & B**). Keeping in view the request of the appellant, the respondent department issued retirement order dated 22.02.2021 keeping in view his 36 years, 06 days qualifying service (**Annex-C**).

- 3
3. Incorrect, hence denied. The appellant has not moved any application for grant of pension benefits. However the appellant submitted an application dated 28.04.2021 vide District Officer, Social Welfare Department DIKhan letter dated 05.05.2021 received in the Directorate of Social Welfare Khyber Pakhtunkhwa vide Diary No. 2768 dated 17.05.2021 (**Annex-D & E**) with the request that the he (the appellant) was in dire need of money for domestic / family expenses, for which the appellant moved an application for retirement. As the respondent department has not paid pension benefits etc and the financial problems have now been solved from other sources, therefore his retirement order may be cancelled as 06 years are still remaining for retirement on superannuation i.e. 60 years. In this respect it is stated that an identical case of (**Mr. Didar Ahmad, Auto Instructor (BPS-14)**), was moved to the Finance Department Government of Khyber Pakhtunkhwa for obtaining ruling. In response the Finance Department vide letter dated 14.10.2016 intimated that "if a Government Servant withdraw his application for premature retirement or modifies that date of retirement, before its acceptance by the competent authority, the application of the date of retirement shall be deemed to have been withdraw or modified, as the case may be" (**copy of retirement order dated 01.07.2016, application dated 08.08.2016 for withdrawal of retirement order, letter dated 25.08.2016 obtaining ruling from Finance Department and advice of Finance Department vide letter dated 14.10.2016 are at (Annex-F, G, H & I)**). Therefore, keeping in view the above factual position, his request was not brought under consideration. **It is further to inform this Honorable Tribunal that after his retirement date i.e. 20.12.2020, the appellant has never attended his place of posting for duty from where he was stood retired.**
 4. In reply to Para-4, it is stated that factual position has been explained in the preceding paras.
 5. Incorrect, hence denied. The appellant has no cause of action to file the instant service appeal.

GROUNDS

1. Incorrect, hence denied. The respondents are law abiding civil servants and have not violated any rights of the appellant.
2. Incorrect, hence denied. The respondents issued retirement order keeping in view the request of the appellant. As far as retirement / pension benefits are concerned, till date the appellant has not submitted the relevant documents that are required for grant of pension etc.
3. Incorrect, hence denied. Factual position has been explained in the preceding paras.
4. Incorrect, hence denied. Factual position has been explained in the preceding paras.
5. The respondents may also be allowed to raise additional grounds at the time of arguments.

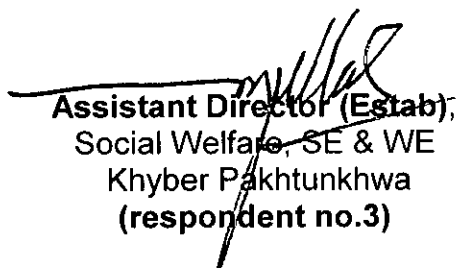
In view of the above clarifications/explanations, it is therefore humbly prayed that the instant appeal may graciously be dismissed having no weight and being based on malafide intention as the appellants have concealed the facts of the case to misguide this Honorable Tribunal.



**Chief Secretary To
Govt. of Khyber Pakhtunkhwa
(Respondent No. 1)**



**Director
Social Welfare, Special Education &
Women Empowerment
(Respondent No. 2)**



**Assistant Director (Estab),
Social Welfare, SE & WE
Khyber Pakhtunkhwa
(respondent no.3)**



**District Officer
Social Welfare, DIKhan
(Respondent No. 4)**

Annex - A

S

32



OFFICE OF THE DISTRICT OFFICER
SOCIAL WELFARE, SPL: EDU: & W.E DEPARTMENT
NEAR DEGREE COLLEGE NO. 1 FOR BOYS CHAH SYED MUNAWAR SHAH ROAD, D.I.KHAN.

No.DO/SWD/DIK/2020/ 779 Dated, DIKhan the 07/12/2020


To

The Director,
Social Welfare, SE & WED
Peshawar Khyber Pakhtunkhwa.


Subject: - **REQUEST FOR PENSION SANCTION ORDER ALONG WITH SANCTION OF LEAVE ENCASHMENT OF 365 DAYS**

Kindly refer to the above noted subject please find enclosed here with a self-explanatory application submitted by Mr. Allah Jan Naib Qasid of the office of the under signed who has been want to get Premature Retirement on 20-12-2020. His date of birth is 01.01.1966 & date of entry in to service is 26-12-1984.

Now your kind self is requested to kindly issue retirement order and also sanction order for Leave Encashment of 365 days as well.


SAHIBZADA MUHAMMAD NAEEM
DISTRICT OFFICER
SOCIAL WELFARE, S.E & W.E.D
DERA ISMAIL KHAN

District Officer
Social Welfare Deptt
D.I.Khan


Asstt. Director (Litigation)
Social Welfare, SE and WE,
Khyber Pakhtunkhwa.

19/20

52663.
8/12/2020

AD(E)


Annex-B

6

The District Social Welfare Officer
DIKhan

Through: Proper Channel.

Subject: REQUEST FOR PERMISSION TO PROCEED ON PREMATURE
RETIREMENT OF AND SANCTION ON LEAVE ENCASHMENT FOR
(365) DAYS.

R/ Sir,

With due respect & humble submission it is brought into your kind notice that my date of birth is 01-01-1966, and thus I am due for proceeding on Premature Retirement on 20-12-2020(AN).

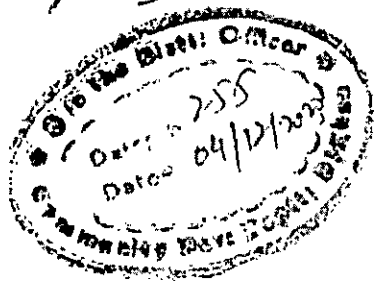
It is, therefore, requested that, I may kindly be permitted to proceed on Premature Retirement w.e.f 20-12-2020(AN). & necessary sanction for leave Encashment for (365) days may be accorded please.

Date: 03/12/2020

Yours Obediently,

(Handwritten signature)

(Allah Jan)
Naib Qasid (BPS-04)
District Social Welfare
Officer DIKhan



(Handwritten signature)
District Officer
Social Welfare Dept
DIKhan

(Handwritten signature)
Asstt. Director (Litigation)
Social Welfare, SE and WE,
Khyber Pakhtunkhwa.

Annex-c

(7)

38



Government of Khyber Pakhtunkhwa
Directorate of Social Welfare, Special Education
& Women Empowerment Jamrud Road.

Dated Peshawar the 22/02/2021

ORDER

No.E-19/20/DSW/ 7239-42 Consequent upon completion of 36 years, 06 days Qualifying Service, Mr. Allah Jan, Naib Qasid (BPS-03) District Officer Social Welfare Dera Ismail Khan, is likely to be retired from service w.e.f 20-12-2020.

- Sanction is also accorded to the grant of leave encashment equal to 365 days salary in lieu of LPR.

--Sd--


DIRECTOR
Social Welfare SE & WE,
Khyber Pakhtunkhwa.

Copy forwarded to:

- The District Accounts Officer DI Khan.
- The District Officer Social Welfare DI Khan w/r to his letter No. DO/SWD/DIK/2020/779 dated 07-12-2020 a/w Original Service Book.
- PA to Director Social Welfare, SE & WE Peshawar.
- Official concerned.


ASSISTANT DIRECTOR
Establishment-II

a/c


Asstt. Director (Litigation)
Social Welfare, SE and WE,
Khyber Pakhtunkhwa.



Annex-D

8

39

OFFICE OF THE DISTRICT OFFICER
SOCIAL WELFARE, SPL: EDU: & W.E DEPARTMENT
NEAR DEGREE COLLEGE NO. 1 FOR BOYS CHAH SYED MUNA WAR SHAH ROAD, D.I.KHAN.

No.DO/SWD/DIK/2021/ 1211 Dated, DIKhan the 05/05/2021

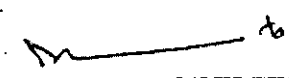
To

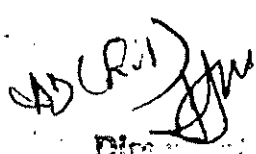
The Director,
Social Welfare, Spl: Edu: & W.E.D
Peshawar Khyber Pakhtunkhwa.


Subject:

APPLICATION FOR RE-APPOINTMENT

Kindly refer to the above noted subject & to enclose here with a self-explanatory application received from Mr. Allah Jan Ex-Naib Qasid of this office, who has been retired from his service vide your good office order No. E-19/20/DSW/7239-42 dated 22-02-2021. (copy attached)
Your kind self is requested for further necessary action, please.


DISTRICT OFFICER
SOCIAL WELFARE, S.E & W.E.D
DERA ISMAIL KHAN


Dir
Date: 27/6/21
Date: 17/5/21


Asstt: Director (Litigation)
Social Welfare, SE and WE,
Knyber Pakhtunkhwa.

19/20

بخدمت جناب ڈائریکٹر صاحب سوشل ویلفیئر SE&WE خیبر پختونخوا ایشیاور بڈریج ڈسٹرکٹ آفیسر سوشل ویلفیئر ڈیرہ اسماعیل خان

عنوان۔ ”درخواست برآمد بحال کئے جانے پر ملازمت بحیثیت نائب قاصد (BPS-03)۔“

جناب عالی! سائل حسب ذیل عرض رساں ہے۔

(1) مودبانہ گزارش ہے کہ سائل کو گھریلو ذاتی ضروریات کے باعث رقم کی شدید ضرورت تھی۔ جس کے باعث سائل نے قبل از وقت ریٹائرمنٹ اختیار کرنے اور پینشن کی رقم کو مذکورہ ذاتی ضروریات میں صرف کرنے کے لئے ریٹائرڈ از ملازمت کئے جانے کی درخواست گزاری ہے۔

(2) یہ کہ سائل کی درخواست منظور کر کے سائل کو ملازمت سے تو تاریخ 20-12-2020 سے ریٹائرڈ کر دیا گیا ہے۔ مگر سائل کو تاحال تک پینشن کی رقم ادا نہیں کی گئی ہے۔ جب کہ سائل کی ضرورت دیگر ذرائع سے پوری ہو چکی ہے۔

(3) یہ کہ تاحال تک سائل کی عمر ملازمت 6 سال بقایا ہے۔ اس لئے سائل کا ریٹائرمنٹ آرڈر منسوخ کیا جا کر سائل کو ملازمت پر بحال کیا جانا مطلوب ہے۔

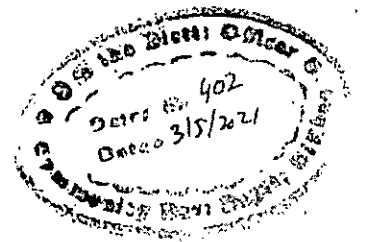
لہذا

استدعا ہے کہ بمظوری درخواست ہذا سائل کو بر ملازمت نائب قاصد (BPS-03) بحال کیا جائے۔
آپ کی عین نوازش ہوگی۔

نقطہ مورخہ: 28-04-2021

Forwarded in
Original Director
SWD
5-5-2021

اللہ جان ولد صاحب جان سکھتھو یا فاضل اٹس کالونی ڈیرہ اسماعیل خان
شناختی کارڈ نمبر 3-12101-9724404-8 موبائل نمبر 03469733400



اللہ جان سکھتھو
28/4/2021



091-9224253

Government of Khyber Pakhtunkhwa
Directorate of Social Welfare, Special Education and
Women Empowerment Jamrud Road Peshawar.

Dated Peshawar the 01/17/2016

ORDER

No. E-16/146/DSW/ 2156-60. Mr. Didar Ahmad, Instructor (BPS-14), District Office, Social Welfare, Buner is proceeding on retiring pension w.e.f 01.09.2016 and likely to complete 26 years, 01 month and 15 days of qualifying service.

Sanction is also accorded to the grant of 96 days leave encashment in lieu of LPR.

Sd/---
Director
Social Welfare, Special Education and
Women Empowerment, Khyber
Pakhtunkhwa.

Copy forwarded for information and necessary action:

- 1- District Accounts Officer Buner.
- 2- The District Officer, Social Welfare Buner along with original service book and check list for pension papers submission.
- 3- Deputy Director MIS Social Welfare Peshawar.
- 4- Official Concerned.
- 5- PA to DSW.

[Signature]
30/08/2016
Assistant Director
(Establishment)

[Signature]
Asstt. Director (Establishment)
Social Welfare, S
Khyber Pakhtunkhwa.

بخدمت جناب ڈائریکٹر صاحب محکمہ سوشل ویلفیئر خیبر پختونخوا

بوساطت:- جناب ڈسٹرکٹ آفیسر محکمہ سوشل ویلفیئر ضلع بونیر

جناب عالی!

مودبانہ گزارش ہے کہ کجوالہ سرکار خط نمبر 78-377 مورخہ 22-06-2016 ڈسٹرکٹ آفس

سوشل ویلفیئر ضلع بونیر سے میرے ریٹائرمنٹ کے لئے سوشل ویلفیئر ڈائریکٹریٹ بھیجی گئی تھی۔ جس پر آپ صاحبان نے کجوالہ آرڈر نمبر 60-2156/DSW-16/146 مورخہ 01-07-2016 ریٹائرمنٹ کی منظوری دی تھی۔

جناب عالی! میں دو بچیوں کی شادیاں اور گھر کی تعمیر کے وجہ سے زیادہ قرضدار ہو چکا تھا جس کے لئے میں اپنا فنڈ پنشن حاصل کرنے کے لئے ریٹائرمنٹ لینا چاہتا تھا۔ اب مجھے اپنے والدہ صاحبہ نے اپنی حصے کی زمین دیکر میرا مسئلہ حل کر دیا۔

اس لئے میں ابھی اپنا نوکری جاری رکھنا چاہتا ہوں۔ لہذا استدعا ہے کہ اگر آپ صاحبان مہربانی کر کے میری ریٹائرمنٹ

آرڈر واپس کرنے کی احکامات صادر فرمائیں تو بندہ تاحیات دعا گو رہے گا۔ فقط

عزیز میرا: حضرت حسین علی
سکون نمبر 2: عبداللہ جتوئی

عریضہ

آپ کا رتبا بعد از
دیدار احمد

آڈوائسنگ محکمہ سوشل ویلفیئر ضلع بونیر

مورخہ: 08/08/2016

D/A: Put up on file for onward submission to the competent authority on priority basis pl.

10/8/16
District Officer
Social Welfare Department
Bunior

Asstt. Director (Litigation)
Social Welfare, SE and WE,
Khyber Pakhtunkhwa.

Annex G



OFFICE OF THE DISTRICT OFFICER,
SOCIAL WELFARE, SPECIAL EDUCATION &
WOMEN EMPOWERMENT DEPARTMENT AT DAGGAR
DISTRICT BUNER.
Off: Ph: No. 0939-510811

No. DO/SWB/PF 432-34
Dated: 12 / 08 / 2016.

[Handwritten signature]
26/8

The Director,
Social Welfare, SE & WE Deptt:
Khyber Pakhtunkhwa at Peshawar.

[Handwritten signature]

Subject: APPLICATION FOR RETIREMENT IN RESPECT OF MR. DIDAR AHMAD AUTO INSTRUCTOR BPS-14.

Memo:

Reference to your good office order endorsed vide No. E-16/146/DSW/2156-60 dated 01/07/2016 regarding the above cited subject and to enclose herewith application of the official concerned forwarded in original to your good office for favour of necessary consideration and kind approval please.

[Handwritten signature]

District Officer
Social Welfare Department
Buner

No. _____

Copy forwarded to the:

1. PS to Deputy Commissioner, Buner for favour of information please.
2. Deputy Director (MIS), SW, SE & WE Department Khyber Pakhtunkhwa Peshawar in reference of above for favour of information please.

16/146

Directorate of
Social Welfare
No. 16/146
Date: 12-8-16

[Handwritten signature]

District Office
Social Welfare Department
District Buner

[Handwritten signature]

Ass'tt. Director (Litigation)
Social Welfare, SE and WE.
Khyber Pakhtunkhwa.

Annex - H

13

1/2



091-9224253

Government of Khyber Pakhtunkhwa
Directorate of Social Welfare, Special Education and
Women Empowerment Opp: Islamia College
Jamrud Road, Peshawar

No.E-16/146/DSW/ 3596-97
Dated Peshawar the 25-8-2016

To

The Section Officer, II
Social Welfare, SE & SE,
Khyber Pakhtunkhwa.

Subject: APPLICATION FOR RETIREMENT IN RESPECT OF MR. DIDAR AHMED AUTO INSTRUCTOR BPS-14

The undersigned is directed to refer application of Mr. Didar Ahmed. Auto Instructor (BPS-14) Office of the District Officer, Social Welfare Buner for withdrawal of his retirement order issued on 01.07.2016 on retiring pension after completion of 26 years qualifying service w.e.f 01.09.2016 (copy of application attached).

2. In terms of provision contained in Essential Services (Maintain) Act, 1952, a government servant other than a government servant against whom a departmental proceeding is pending has the right to retire from service after completion of 25 years service. Such a government servant shall, at least 3 months before the date on which he intends to retire, be required to submit a written intimation to the authority competent to fill the appointment by him at the time of submitting that intimation, once submitted shall be final and shall not be allowed to be modified or withdrawn. However, before formal acceptance of the request he may, if so desired withdraw his application for pre-mature retirement".

3. Mr. Didar Ahmed, Auto Instructor furnished a copy of the Finance Division, Government of Pakistan regarding relaxation in case of government servant during LPR can withdraw option for voluntary retirement during the period before the due date. The Directorate of Social Welfare is of the opinion that the enclosed Office Memorandum dated 06.10.2015 issued by the Finance Division is not relevant in case of his pre-mature retirement as he opted for encashment of 96 days leave encashment and the retirement order is already issued (copy attached).

4. The administrative department is requested to obtain ruling in the case from Finance Department, Govt of Khyber Pakhtunkhwa for the satisfaction of the applicant to avoid any inconvenience and litigation in future.

o/c Muhammad Rauf
(Muhammad Rauf)
Assistant Director (Estab)

Copy forwarded to:

1- PA to DSW.

o/c Muhammad Rauf
Assistant Director (Estab)

Asstt. Director (Litigation)
Social Welfare, SE and WE,
Khyber Pakhtunkhwa.

Annex-I 14



GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGULATION WING)

NO.FD(SOSR-II)4-36/2015-16
Dated Peshawar the 14/10/2016

To

Secy: ZU, SW, SE & WE Deptt

Diary No. 5181

Dated 18-10-16

The Secretary to Govt: of Khyber Pakhtunkhwa,
Zakat & Ushar Department.

Subject:- APPLICATION FOR RETIREMENT IN RESPECT OF MR. DEDAR AHMED AUTO INSTRUCTOR BPS-14

Dear Sir,

I am directed to refer to your letter No,SO-II(SWD)2-3/2015/PC/5204-05, dated 09/02/2016 on the subject noted above and to state that in this regard, Finance Department circular dated 01.10.1981, clearly speaks as "if a Government Servant withdraw his application for pre-mature retirement or modifies that date of retirement, before its acceptance by the competent authority , the application of the date of retirement shall be deemed to have been withdraw or modified, as the case may be". (Copy enclosed).

Therefore the instant case may be examined/decided as per our circular letter dated 01.10.1981.

Yours faithfully,

SoC

IMR

(MOAZZAM KHAN)
SECTION OFFICER (SR.II)

13.10.16

Scd
D.No

15
14/10/2016

KAB

D:Letter-II

A.S S.W
17-10-16

Asstt. Director (Litigation)
Social Welfare, SE and WE,
Khyber Pakhtunkhwa.

975



GOVERNMENT OF KHYBER PAKHTUNKHWA
ZAKAT, USHR, SOCIAL WELFARE, SPECIAL EDUCATION
& WOMEN EMPOWERMENT DEPARTMENT

No. SO-II (SWD)2-3/Staff Official/2016/PC
Dated: Peshawar the 21st October, 2016

To,

The Director,
Social Welfare, Special Education & Women Empowerment

Subject: - APPLICATION FOR RETIREMENT IN RESPECT OF MR. DEDAR
AHMAD AUTO INSTRUCTIONS BPS-14

I am directed to refer to your letter No. E-16/146/DSW/3596-97, dated the 25th August 2016 on the subject noted above and to state that ruling/views of Finance Department were sought in the subject matter and they have accordingly furnished their views/ruling which are sent herewith for further necessary action at your end please.

Section Officer-II

Endst: of Even No. & Date:-

Copy for information is forwarded to:

1. PS to Secretary, Zakat, Ushr, Social Welfare, Special Education & Women Empowerment Department, Khyber Pakhtunkhwa.

Section Officer-II

Asstt. Director (Litigation)
Social Welfare, SE and WE,
Khyber Pakhtunkhwa.

Directorate of
Social Welfare K.P.K.
No: 20493-
Date: 26-10-16



GOVERNMENT OF KHYBER PAKHTUNKHWA
DIRECTORATE OF SOCIAL WELFARE, SPECIAL EDUCATION
& WOMEN EMPOWERMENT, OPPOSITE ISLAMIA COLLEGE
JAMRUD ROAD, PESHAWAR.

No. DSW/Lit/2-57/ 773
Dated the Peshawar 25/ 05/2023

AUTHORITY LETTER

Mr. Nabi Gul, Superintendent (BPS-17) Directorate of Social Welfare, Peshawar is hereby authorized to attend the Honorable Service Tribunal Peshawar on behalf of Director Social Welfare Special Education & Women Empowerment Department, Peshawar in Service Appeal No. 7277/2021 titled "Allah Jan vs Govt. of Khyber Pakhtunkhwa" on each and every date of hearing and update this Directorate time to time from the court proceedings.

DIRECTOR
Social Welfare, Special Education &
Women Empowerment
Khyber Pakhtunkhwa
(Respondent No. 2)