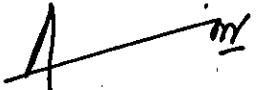


Form- A

FORM OF ORDER SHEET

Court of \_\_\_\_\_

Implementation Petition No. 329/2023

S No.	Date of order proceedings	Order or other proceedings with signature of judge
1	24.05.2023	<p>The execution petition of Mr. Azhar Bilal Niazi submitted today by Mr. Junaid Anwar Khan Advocate. It is fixed for implementation report before touring Single Bench at A.Abad on _____. Original file be requisitioned. AAG has noted the next date.</p> <p>By the order of Chairman  REGISTRAR</p>

BEFORE THE HONOURABLE KHYBER  
PAKHTUNKHWA SERVICE TRIBUNAL,  
PESHAWAR

E.P. No. 329 of 2023

IN

Service Appeal No.1430 of 2019

Azhar Bilal Niazi .....PETITIONER

VERSUS

Government of Khyber Pakhtunkhwa through  
Secretary, Elementary and Secondary  
Education, Peshawar etc. ...RESPONDENTS.

EXECUTION PETITION

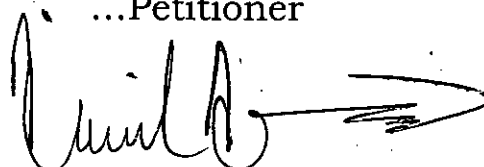
INDEX

S#	Particulars of documents	Annexure	Pages
1	Memo of Execution petition alongwith order.	.....	1- 6
2	Correct addresses of the parties.	.....	7
3	Attested copy of judgment of this Honourable Court.	"A"	8 - 14
4	Copy of application.	"B"	15
5	Wakalat Nama.	.....	16

Dated 20.05.2023

Azhar Bilal Niazi  
...Petitioner

Through



**JUNAID ANWAR KHAN,**  
Advocate Supreme Court,  
Of Pakistan.

MANSEHRA

BEFORE THE HONOURABLE KHYBER  
PAKHTUNKHWA SERVICE TRIBUNAL,  
PESHAWAR

Khyber Pakhtunkhwa  
Service Tribunal

Diary No.

5547

Date

24/5/2023

E.P. No. 329 of 2023

IN

Service Appeal No.1430 of 2019

Azhar Bilal Niazi son of Ghulam Mustafa Niazi  
resident of Mohallah Nogari, Mansehra, Ex-  
PST Government Primary School Makarha  
Bala, Tehsil and District Mansehra  
.....PETITIONER

VERSUS

1. Government of Khyber Pakhtunkhwa through  
Secretary, Elementary and Secondary  
Education, Peshawar.
2. Director, Elementary and Secondary Education,  
Peshawar.
3. District Education Officer (Male), Elementary  
and Secondary Education, Mansehra.  
.....RESPONDENTS.

**PETITION SEEKING EXECUTION OF  
THE JUDGMENT/ORDER DATED  
24.02.2023 PASSED BY THIS HONOURABLE  
COURT IN THE TITLED SERVICE  
APPEAL DIRECTING RESPONDENTS TO  
ALLOW THE PETITIONER TO JOIN HIS  
SERVICE BY POSTING HIM ON THE  
RELEVANT POST.**

**PRAYER: -**

On acceptance of the instant petition, the judgment dated 24.02.2023 passed by this Honourable Tribunal may please be executed and the respondents may graciously be ordered to implement the judgment/ order dated 24.02.2023 passed by this Honourable Tribunal in its true letter and spirit and also directions be issued to the respondents to adjust/post the petitioner against the impugned post or any other relief as this Honourable Tribunal deems fit and appropriate in the circumstances of the case, may also be issued/ passed.

Respectfully Sheweth!

1. That, petitioner filed the above-mentioned Service Appeal before this Honourable Tribunal challenging the order regarding seizing the service of the petitioner and the said service appeal was listed before this Honourable Tribunal on 24.02.2023 and this Honourable Tribunal while accepting the service appeal, directed the respondents to allow the petitioner to join his service by posting him on the relevant post.

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*(Attested copy of the judgment dated 24.02.2023 is annexed as annexure "A").*

2. That, the judgment passed was officially conveyed to the respondents and petitioner also handed over attested copy of the judgment and also submitted an application to the respondents for its execution and also for posting him as per the judgment/ order of this Honourable Tribunal.

*(Copy of application is annexed as annexure "B").*

3. That, the said application of the petitioner is lying with the respondents till date but despite lapse of considerable time, the respondents have not acted upon the judgment/order of this Honourable Tribunal.
4. That, this Honourable Tribunal has clearly directed respondents to allow the petitioner for posting against the impugned post but after the lapse of considerable time, respondents have badly failed to implement the said judgment/ direction in its true letter and spirit.
5. That, due to non-implementation as well as non-acting upon the judgment/ order

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of this Honourable Tribunal, the petitioner having no other remedy except to file the instant application for execution of the judgment/order dated 24.02.2023 passed by this Honourable Tribunal, inter alia, on the following grounds: -

### GROUNDS

- i. That, in view of the direction given by this Honourable Court, respondents were under constitutional and legal obligation to obey/implement the judgment in its true letter and spirit because this Honourable Court had passed the judgment in favour of the petitioner and ordered the respondents to allow the petitioner to join his service by posting him on the relevant post but by not considering the petitioner, respondents made himself liable to be proceeded under the law.
- ii. That, the petitioner duly submitted application for implementation of the judgment/order of this Honourable Tribunal but the said application has also not been taken into consideration by the respondents nor any legal, lawful or legitimate reasons have been given by the respondents in this regard hence the judgment of this Honourable Tribunal has not been acted upon by this Honourable Tribunal hence the instant application is being filed.
- iii. That, respondents was left with no other legal option except to implement the judgment

passed by the Honourable Tribunal but he has badly failed to comply with the judgment so passed.

- iv. That, as clear cut judgment has been passed by this Honourable Tribunal to allow the petitioner to join his service by posting him on the relevant post and there was no legal bar in posting the petitioner against the impugned post but despite that fact, non-posting the petitioner against the impugned post by the respondents does not appeal to a prudent mind.
- v. That, as per law as well as the constitution, the respondents is bound under the law regarding the judgments of the apex court but the respondents have considered himself above the law while refusing to implement the judgment/order of this Honourable Tribunal.
- vi. That, once an order has been passed and once the court of law has ordered any department to do anything in specific manner then the concerned department cannot refused to act upon the order of the court.
- vii. That, the judgment of this Honourable Tribunal is liable to be executed and there is no legal bar in execution of the same as the respondents are reluctant to obey the judgment of this Honourable Tribunal and this is the reason that the respondents have not allowed nor posted the petitioner at any post despite clear cut judgment of this Honourable Tribunal.

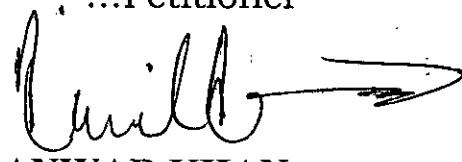
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.....PRAYER .....

**It is, therefore, most humbly prayed** that on acceptance of the instant petition, the judgment dated 24.02.2023 passed by this Honourable Tribunal may please be executed and the respondents may graciously be ordered to implement the judgment/ order dated 24.02.2023 passed by this Honourable Tribunal in its true letter and spirit and also directions be issued to the respondents to adjust/post the petitioner against the impugned post or any other relief as this Honourable Tribunal deems fit and appropriate in the circumstances of the case, may also be issued/ passed.

**Dated 20.05.2023**

Azhar Bilal Niazi  
...Petitioner

Through 

**JUNAID ANWAR KHAN,**  
Advocate Supreme Court,  
Of Pakistan.

**AFFIDAVIT.**

I, Azhar Bilal Niazi son of Ghulam Mustafa Niazi resident of Mohallah Nogari, Mansehra, Ex-PST Government Primary School Makarha Bala, Tehsil and District Mansehra, Petitioner, do hereby solemnly affirm and declare on oath that the contents of the foregoing petition for contempt of court are true and correct and nothing has been concealed from this Honourable Court.

**Dated 20.05.2023**



Azhar Bilal Niazi  
**(DEPONENT)**



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**BEFORE THE HONOURABLE KHYBER  
PAKHTUNKHWA SERVICE TRIBUNAL,  
PESHAWAR**

E.P. No. \_\_\_\_\_ of 2023  
IN

Service Appeal No.1430 of 2019

Azhar Bilal Niazi .....PETITIONER

**VERSUS**

Government of Khyber Pakhtunkhwa through  
Secretary, Elementary and Secondary  
Education, Peshawar etc. ...RESPONDENTS.

**EXECUTION PETITION**

**CORRECT ADDRESSES OF THE PARTIES**

**PETITIONER**

Azhar Bilal Niazi son of Ghulam Mustafa Niazi  
resident of Mohallah Nogari, Mansehra, Ex-PST  
Government Primary School Makarha Bala, Tehsil and  
District Mansehra.

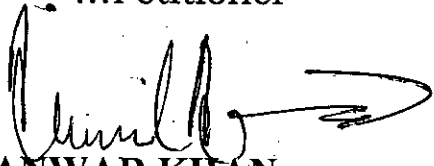
**RESPONDENTS**

1. Government of Khyber Pakhtunkhwa through  
Secretary, Elementary and Secondary Education,  
Peshawar.
2. Director, Elementary and Secondary Education,  
Peshawar.
3. District Education Officer (Male), Elementary and  
Secondary Education, Mansehra.

**Dated 20.05.2023**

  
Azhar Bilal Niazi  
...Petitioner

Through

  
**JUNAID ANWAR KHAN,**  
Advocate Supreme Court,  
Of Pakistan.

Annex 1  
"A"



BEFORE THE HONOURABLE KHYBER  
PAKHTUNKHWA SERVICE TRIBUNAL,  
PESHAWAR

SCANNED  
KPST  
Peshawar

Service Appeal No. 1430 of 2019

Azhar Bilal Niazi son of Ghulam Mustafa Niazi  
resident of Mohallah Nogazi, Mansehra, Ex-  
PST Government Primary School Makarha  
Bala, Tehsil and District Mansehra .....Appellant

Khyber Pakhtunkhwa  
Service Tribunal

VERSUS

Diary No. 1112

Dated 31/7/2019

1. Government of Khyber Pakhtunkhwa through  
Secretary Elementary and Secondary Education,  
Peshawar.
2. Director, Elementary and Secondary Education,  
Peshawar.
3. District Education Officer (Male), Elementary  
and Secondary Education, Mansehra  
..... Respondents.

SERVICE APPEAL UNDER SECTION 4  
OF KHYBER PAKHTUNKHWA SERVICE  
TRIBUNAL ACT, 1974 AGAINST THE  
IMPUGNED NOTIFICATION/ORDER  
BEARING NO. 11660-64 DATED 12.07.2019  
WHEREBY SERVICES OF THE  
APPELLANT WERE CEASED WITH  
EFFECT FROM 28.03.2009 WHILE  
UPHOLDING THE ORDER NO.2543-50  
DATED 27.10.2011. THE APPELLANT  
FILED SERVICE APPEAL NO.297/2012  
BEFORE THIS HONOURABLE TRIBUNAL  
WHICH WAS DECIDED ON 29.06.2012

Filed to-day  
Registrar  
31/7/19

Not submitted to -day  
and filed.

Registrar  
28/10/19

ATTESTED  
EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

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**BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR**  
**AT CAMP COURT ABBOTTABAD.**

Service Appeal No. 1430/2019.

Date of Institution ... 31.07.2019

Date of Decision ... 24.02.2023



Azhar Bilal Niazi S/O Ghulam Mustafa Niazi. R/O Mohallah Nogazi, Mansehra, Ex-PST Government Primary School Makarha Bala, Tehsil and District Mansehra.

... (Appellant)

**VERSUS**

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

... (Respondents)

-----  
MR. MUHAMMAD ARSHAD KHAN TANOLI,  
Advocate

---

For appellant.

MR. MUHAMMAD ADEEL BUTT,  
Additional Advocate General

---

For respondents.

MR. KALIM ARSHAD KHAN  
MR. SALAH-UD-DIN

---

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CHAIRMAN  
MEMBER (JUDICIAL)

**JUDGMENT:**

**SALAH-UD-DIN, MEMBER:-** Precisely stated the facts surrounding the instant service appeal are that the appellant was appointed as PST on 13.11.1994. He remained absent from duty with effect from 28.03.2009 till 23.08.2011 and was entitled for five years leave without pay, while he availed six years and nine months leave. He was called on for personal hearing on 23.08.2011 by the then Executive District Officer Elementary & Secondary Education

**ATTESTED**  
  
CHAIRMAN  
Khyber Pakhtunkhwa  
Services Tribunal  
Peshawar

Mansehra and vide order dated 27.10.2011, the services of the appellant were notified as ceased with effect from 28.03.2009. The said order was challenged by the appellant through departmental appeal, which was not responded within the statutory period, constraining the appellant to file Service Appeal No. 297/2012 before this Tribunal. The afore-mentioned service appeal of the appellant was accepted by this Tribunal vide judgment dated 29.06.2018 and the respondents were directed to conduct fresh full-fledged inquiry in the matter and also give opportunity of hearing to the appellant. The competent Authority conducted fresh inquiry in the matter and vide impugned order dated 12.07.2019, the competent Authority has held that the appellant cannot be reinstated in service. The appellant challenged the same by way of filing departmental appeal, however the same was not responded, hence the instant service appeal.

2. On admission of the appeal for full hearing, notices were issued to the respondents to submit their reply/comments, however they failed to submit the same, therefore, their right of submission of reply/comments was struck off vide order dated 19.07.2022 and the appeal in hand was fixed for arguments.

3. Learned counsel for the appellant addressed his arguments supporting the grounds agitated by the appellant in his service appeal. On the other hand, learned Additional Advocate General for the respondents controverted the arguments of learned counsel for

ATTESTED

EXAMINED  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar


the appellant and contended that the impugned order has been passed in accordance with relevant rules.

4. Arguments have already been heard and record perused.

5. A perusal of the record would show that vide Notification dated 27.10.2011, issued by the then Executive District Officer Elementary & Secondary Education Mansehra, the services of the appellant were notified as ceased with effect from 28.03.2009 on the ground that the appellant had remained absent with effect from 28.03.2009 till 23.08.2011. The afore-mentioned Notification dated 27.10.2011 was previously challenged by the appellant through filing of Service Appeal No. 297/2012 before this Tribunal; which was accepted vide judgment dated 29.06.2018, whereby the Notification dated 27.10.2011 was set-aside and respondents were directed to conduct fresh full-fledged inquiry in the matter. The relevant para-06 and 07 of the judgment dated 29.06.2018 are reproduced as below:-

*"6. The service of the appellant has been ceased w.e.f 28.03.2009 whereas order has been passed on 27.10.2011 and so this very order itself is defective in the eyes of law. Apart from this, this Tribunal did not find any inquiry, charge sheet or show-cause notice given by the respondents to the appellant but even then imposed major penalty of ceasing his service and in this way, the respondents committed serious blunder by not following the legal procedure prescribed under the law.*


*7. The crux of the above discussion is that after taking into consideration the above-mentioned factual and legal position of the case, this Tribunal reached the conclusion*

ATTESTED  
  
 EXAMINED  
 Khyber Pakhtunkhwa  
 Service Tribunal  
 Peshawar

*that it is a fit case to be interfered by this Tribunal under its appellate jurisdiction. As such, on acceptance of the appeal, the impugned order dated 27.10.2011 stands set-aside and the respondents are directed to conduct fresh full-fledged inquiry and also give opportunity of hearing to the appellant. With the above observations, the appeal stands disposed off. Parties are left to bear their own costs. File be consigned to the record room."*

6. We have carefully gone through the available record to ascertain as to whether the fresh inquiry in the matter had been conducted in accordance with the directions issued by this Tribunal in its judgment dated 29.06.2018 or not. Available on the record is copy of letter dated 10.09.2018, whereby a committee comprising of Mr. Luqman Sahib Principal GHSS No. 1 Mansehra, Mr. Muhammad Nazir Principal GHSS Pairan Mansehra and Mr. Muhammad Aslam Vice-Principal GHSS Parhenna Mansehra was constituted to dig out the facts. The afore-mentioned inquiry committee carried out proceedings and submitted its report to the District Education Officer (Male) Mansehra vide letter dated 20.03.2019. The available record would show that on receipt of the inquiry report, the District Education Officer (Male) Mansehra issued show-cause notice to the appellant on 06.05.2019. In view of the judgment dated 29.06.2018, passed by this Tribunal, the competent Authority was required to have issued charge sheet as well as statement of allegations to the appellant and to have conducted a regular inquiry in the matter. It is, however astonishing that in its show-cause notice issued to the appellant on

ATTESTED

  
 MEMBER  
 Member (Technical)  
 Service Tribunal  
 District Mansehra

06.05.2019, the competent Authority has dispensed with conducting of formal inquiry in the matter and passed impugned Notification dated 12.07.2019, whereby the competent Authority has held that the appellant cannot be reinstated. The previous order dated 27.10.2011 passed by the competent Authority regarding ceasing of services of the appellant with effect from 28.03.2019 has already been set-aside by this Tribunal in the previous round of litigation, while in the fresh inquiry proceedings, the appellant has not been provided any penalty prescribed in the relevant rules.

7. The allegations as leveled against the appellant were that he had remained absent with effect from 02.12.2008 to 12.10.2011 and had joined SRSP as Social Organizer without obtaining any NOC from the competent Authority. The respondents were required to have proceeded against the appellant in accordance with the relevant rules by complying the directions issued by this Tribunal in its judgment dated 29.06.2018. However, while going through the record, we have observed that the competent Authority did not bother to comply the directions issued by this Tribunal in its previous judgment dated 29.06.2018. The allegations against the appellant were serious in nature but the competent Authority conducted the fresh proceedings against the appellant in a whimsical manner and no legal sanctity could be attached to the same.

8. In view of the above discussion, the instant appeal is accepted and respondents are directed to allow the appellant to join his service by posting him on the relevant post. The absence period with effect

ATTESTED

EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

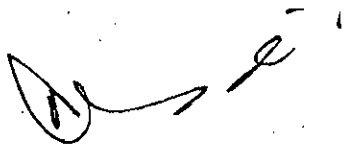
14  
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from 02.12.2008 as well as the intervening period shall be treated as  
leave without pay. Parties are left to bear their own costs. File be  
consigned to the record room.


ANNOUNCED  
24.02.2023



(SALAH-UD-DIN)  
MEMBER (JUDICIAL)  
CAMP COURT ABBOTTABAD



(KALIM ARSHAD KHAN)  
CHAIRMAN  
CAMP COURT ABBOTTABAD

*Certified to be true copy*  
  
**EXAMINER**  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

Date of Presentation of Application 06-04-23  
Number of Words Pages 6  
Copying Fee 30/-  
Urgent 5/-  
Total 35/-  
Name of \_\_\_\_\_  
Date of Completion of Copy 06-4-23  
Date of Delivery of Copy 06-4-23



خدمت جناب ڈسٹرکٹ ایجوکیشن آفیسر (مردانہ) ضلع مانسہرہ

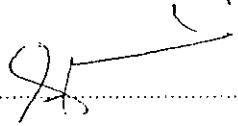
عنوان: درخواست برائے تعیناتی اپوسٹنگ سائل بمطابق حکم سروس ٹریبونل محرزہ 24.02.2023۔

جناب عالی! درخواست ذیل پیش ہے۔

(۱) یہ کہ سائل قبل ازیں محکمہ تعلیم میں بطور PST مورخہ 13.11.1994 کو تعینات ہوا اور بعد ازاں سائل کو بروئے حکم مورخہ 27.10.2011 ملازمت سے برخاست کیا گیا جو مذکورہ حکم کے خلاف سائل نے باقاعدہ سروس اپیل نمبری 1430 سال 2019ء در برو عدالت سروس ٹریبونل خیبر پختونخواہ دائر کی اور مذکورہ اپیل بروئے حکم مصدرہ 24.02.2023 منظور ہو کر سائل کو ملازمت پر بحال کیا جا کر آپ جناب کو ہدایت ہوئی کہ سائل کو اس کی متعلقہ پوسٹ پر چارج حوالہ کرتے ہوئے ملازمت میں شمولیت کی اجازت دی جائے۔ (مصدرہ نقل حکم لف ہے)۔

(۲) یہ کہ چونکہ عدالت مجاز کی جانب سے سائل کی ملازمت بحال ہو چکی ہے بدین وجہ سائل کو متعلقہ پوسٹ کا چارج حسب ضابطہ حوالہ کیا جانا ضروری اور قرین انصاف ہے۔ لہذا استدعا ہے کہ بمظور در خواست ہذا سائل کو اس کی متعلقہ پوسٹ کا چارج حسب ضابطہ حوالہ کئے جانے کا حکم صادر فرمایا جائے۔

المرقوم 08.04.2023



اظہر بلال نیازی ولد غلام مصطفیٰ نیازی ساکن محلہ نوگزی تحصیل ضلع مانسہرہ سابقہ PST گورنمنٹ پرائمری سکول کٹرہا بالا تحصیل ضلع مانسہرہ سائل

موبائل نمبر 0336-9005132

وزیر سیکرٹری  
36  
12/4/2023

وزیر سیکرٹری  
46  
15/4/23

Received  
08/04/2023

2082  
12/4/2023

# وکالت نامہ

بعدالت جناب  
 اظہر بلال نیازی  
 مکلف فیہ: قزوین و غیرہ  
 در قوسیت اجراء دگری  
 منجانب پٹنٹر  
 باعث تحریر آنگہ

مندرجہ بالا عنوان میں اپنی طرف سے پیروی و جوابدہی بہ مقام بہادر

عہدہ الزمان ایڈووکیٹ سپریم کورٹ آف پاکستان  
 0343 9102020

بدین شرط وکیل مقرر کیا ہے کہ میں ہر پیشی پر خود یا بذریعہ مختیار خاص رو برو عدالت حاضر ہوں گا۔ اور بوقت پکارے جانے وکیل صاحب موصوف کو اطلاع دے کر حاضر کروں گا۔ اگر کسی پیشی پر منظر حاضر نہ ہوں اور غیر حاضری کی وجہ سے کسی طور پر مقدمہ میرے خلاف ہو گیا تو صاحب موصوف اس کے کسی طرح ذمہ دار نہ ہوں گے۔ نیز وکیل صاحب موصوف صدر مقام پٹنٹر کے علاوہ کسی اور جگہ یا پٹنٹر کے مقررہ اوقات سے پہلے یا بروز تعطیل پیروی کرنے کے مجاز نہ ہوں گے۔ اگر مقدمہ مقام پٹنٹر کے کسی اور جگہ سماعت دینے پر یا بروز پٹنٹر کے اوقات کے آگے یا پیچھے ہونے پر منظر کو کوئی نسیان پہنچے تو ذمہ دار یا اس کے واسطے کسی معاوضہ ادا کرنے، مختیار نامہ واپس کرنے کے بھی صاحب موصوف ذمہ دار نہ ہوں گے۔ مجھے کل سائنس پر داخستہ صاحب مثل کردہ ذات خود منظور و قبول ہوگا۔ اور صاحب موصوف کو عرضی دعویٰ اور درخواست اجراءے ڈگری و نظر ثانی ایبل گرائی دائر کرنے، نیز ہر قسم کی درخواست پر دستخط تصدیق کرنے کا بھی اختیار ہوگا اور کسی حکم یا ڈگری کے اجراء کرنے اور ہر قسم کارروپی وصول کرنے اور رسید دینے اور داخل کرانے کا ہر قسم بیان دینے اور سپرد تاشی و رضی نامہ و فیصلہ بر خلاف کرنے و اقبال دعویٰ کا اختیار ہوگا اور بصورت ایبل و برآمدگی مقدمہ یا منسوخی ڈگری یا یکطرفہ درخواست حکم انتہائی یا ڈگری قبل از فیصلہ اجراءے ڈگری بھی صاحب موصوف کو بشرط ادا سنگل علیحدہ پیروی مختیار نامہ کرنے کا مجاز ہوگا اور بصورت ضرورت ایبل اور ایبل کے واسطے کسی دوسرے وکیل یا ایئر سٹروکوبجائے اپنے ہمراہ مقرر کریں اور ایسے مشیر قانونی کو بھی اس امر میں وہی اختیارات حاصل ہوں گے جیسے صاحب موصوف کو پوری فیس تاریخ پیشی سے پہلے ادا نہ کروں گا تو صاحب موصوف کو پورا اختیار ہوگا کہ مقدمہ کی پیروی نہ کریں اور ایسی حالت میں میرا مطالبہ صاحب موصوف کے برخلاف نہیں ہوگا۔ لہذا مختیار نامہ لکھ دیا ہے حکم سند ہے۔

المرقوم 20 مئی 2023

اظہر بلال نیازی ولد علی محمد مصطفیٰ نیازی  
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