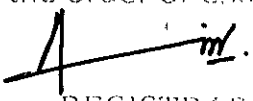


Form- A

FORM OF ORDER SHEET

Court of _____

Implementation Petition No. 381/2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1.	14.06.2023	<p>The execution petition of Mst. Gulnaz Bibi submitted today by Mr. Muhammad Aslam Tanoli Advocate. It is fixed for implementation report before touring Single Bench at A.Abad on _____</p> <p>Original file be requisitioned. AAG has noted the next date.</p> <p>By the order of Chairman  REGISTRAR</p>

BEFORE HONOURABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Execution Petition No.....381/2023.....

Gulnaz Bibi Associate Professor BS-19 Government Girls Degree
College Ghazi District Haripur.(Petitioner)

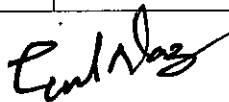
VERSUS

1. Chief Secretary to Government of KPK Peshawar.
2. Secretary Higher Education KPK Peshawar.
3. Director Higher Education KPK Peshawar.
4. Director Higher Education Archives & Library Department KPK Peshawar.
5. Secretary Establishment KPK Peshawar.
6. Secretary Finance KPK Peshawar.

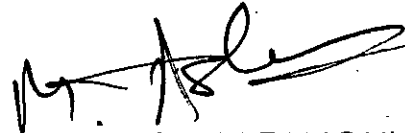
EXECUTION PETITION IN SERVICE APPEAL NO. 1177/2020

INDEX

S/No.	Description of documents.	Annexure	Page No.
1.	Execution Petition		01-03
2.	Decision dated 16-11-2022	"A"	04-11
3.	Application dated 10-04-2023	"B"	12
4.	Notice.	"C"	13
5.	Wakalatnama		


PETITIONER

THROUGH


(MUHAMMAD ASLAM TANOLI)
ADVOCATE HIGH COURT
AT PESHAWAR

Dated: 13-06-2023

(1)

BEFORE HONOURABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Execution Petition No. 381/2023

Gulnaz Bibi Associate Professor BS-19 Government Girls Degree College Ghazi District Haripur.(Petitioner)

VERSUS

1. Chief Secretary to Government of KPK Peshawar.
2. Secretary Higher Education KPK Peshawar.
3. Director Higher Education KPK Peshawar.
4. Director Higher Education Archives & Library Department KPK Peshawar.
5. Secretary Establishment KPK Peshawar.
6. Secretary Finance KPK Peshawar.

**Khyber Pakhtunkhwa
Service Tribunal**

Diary No. 5981

Dated 14/6/2023

(Respondents)

EXECUTION PETITION IN SERVICE APPEAL NO. 1177/2020 DECIDED ON 16-11-2022 BY THIS HONOURABLE SERVICE TRIBUNAL.

PRAYER: ON ACCEPTANCE OF INSTANT EXECUTION PETITION THE RECONDENTS MAY GRACIOUSLY BE DIRECTED TO IMPLEMENT THE JUDGMENT/DECISION DATED 16-11-2022 OF THIS HONOURABLE SERVICE TRIBUNAL PROVISIONALLY/CONDITIONALLY SUBJECT TO OUTCOME OF CPLA BEING FILED BY THE RESPONDENTS.

Respectfully Sheweth:

1. That petitioner/appellant filed subject titled service appeal No.1177/2020 before this Honorable Service Tribunal against the order of Respondents whereby petitioner/appellant was deferred from promotion and ignored study leave abroad and her departmental appeal was rejected by the appellate authority.
2. That this Honorable Tribunal on acceptance of subject service appeal issued judgment/decision dated 16-11-2022 that "In view of the above discussion, the appeal in hand is allowed and it is directed that the appellant shall be considered to have been promoted to the post of Associate Professor BPS-19 from the date of her first consideration or when her junior(S) was/were promoted on regular basis and the period with effect from 01-03-2013 to 31-03-2017 shall be treated as study leave on half average pay. (Copy of judgment/decision dated 16-11-2022 is attached as Annexure-"A").

3. That on receipt of attested copy of the judgment/decision dated 16-11-2022 of this Honorable Tribunal, the appellant/petitioner vide application dated 10-04-2023 requested for implementation of the very judgment. **(Copy of application dated 10-04-2023 is attached as annex-"B")**.
4. That respondents instead of implementing the judgment/decision dated 16-11-2022 of this Honorable Tribunal issued a Notice dated nil that CPLA against the judgment/decision of Honorable KPK Service Tribunal was being filed by respondents before the Supreme Court of Pakistan. **(Copy of the Notice is attached as Annex-"C")**.
5. That despite petitioner's incessant approaches to respondents, she has not been granted promotion from due dated as well as study leave. Petitioner/Appellant is facing her seniority and financial distresses due to the reason.
6. That there is no stay order from the Apex Supreme Court of Pakistan against the judgment/decision dated 16-11-2022 of this Honorable Tribunal and in such a condition respondents are legally bound to implement the said judgment/decision in its true letter and spirit. Hence this Execution Petition on the following:

GROUNDS

- A) That as this Honorable Service Tribunal in its judgment/decision dated 16-11-2022 has decided that "In view of the above discussion, the appeal in hand is allowed and it is directed that the appellant shall be considered to have been promoted to the post of Associate Professor BPS-19 from the date of his first consideration or when her junior(S) was/sere promoted on regular basis and the period with effect from 01-03-2013 to 31-03-2017 shall be treated as study leave on half average pay.
- B) That there is no stay order from the Apex Supreme Court of Pakistan against the Judgment/decision dated 16-11-2022 of this

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Honorable Tribunal and the same is in field. Respondents are legally bound to comply with the said judgment/decision.

- C) That departmental authorities/respondents are reluctant to pay any heed to the judgment/decision dated 16-11-2022 of this Honorable Tribunal hence instant execution petition.
- D) That petitioner is facing her seniority and financial distresses due to non-implementation of judgment/ decision of this Honorable Tribunal.
- E) That instant Execution Petition is well within time and this Honorable Tribunal has got ever jurisdiction to entertain and adjudicate upon the same.

PRAYER:

It is, therefore, humbly prayed that this Honorable Tribunal may graciously be pleased to accept this Execution Petition and issue necessary orders/directions to the respondents for implementation of the judgment/decision dated 16-11-2022 of this Honorable Tribunal in its true letter and spirit.

THROUGH

Gulnaz
PETITIONER
M. Aslam
(MUHAMMAD ASLAM TANOLI)
ADVOCATE HIGH COURT
AT PESHAWAR

Dated: 03-06-2023

AFFIDAVIT

I, Gulnaz Bibi petitioner do hereby undertake/solemnly affirm that the contents of foregoing petition are true and correct to the best of my knowledge and belief and nothing has been concealed or suppressed from this Honorable Tribunal.

Dated: 03-06-2023



Gulnaz
DEPONENT

4

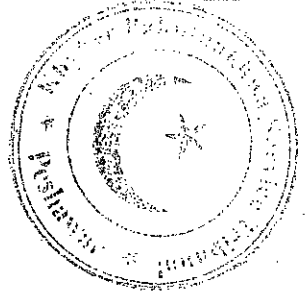
Amir A

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

Service Appeal No. 1177/2020.

Date of Institution ... 06.02.2020

Date of Decision... 16.11.2022



Ms. Gulnaz Bibi, Associate Professor (BS-19) Government Girls Degree
College Ghazi District Haripur.

... (Appellant)

VERSUS

Chief Secretary to Government of Khyber Pakhtunkhwa Civil Secretariat
Peshawar and 05 others.

... (Respondents)

MR. MOHAMMAD ASLAM TANOLI,
Advocate

--- For appellant.

MR. MUHAMMAD ADEEL BUTT,
Additional Advocate General

--- For respondents.

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

--- CHAIRMAN
--- MEMBER (JUDICIAL)

JUDGMENT:

SALAH-UD-DIN, MEMBER:- Through the instant service appeal, the
appellant has invoked jurisdiction of this Tribunal with the prayer
copied as below:-

*On acceptance of the instant service appeal both
orders dated 14.05.2019 and 18.07.2017 to the extent
of appellant may graciously be modified & set-aside to
the extent of appellant and she may graciously be
granted promotion in BS-19 with effect from
18.03.2014 instead of 14.05.2019 as Associate
Professor and study leave on full pay be granted from
01.03.2013 to 31.03.2017 instead of (EOL) leave*

KHYBER PAKHTUNKHWA SERVICES TRIBUNAL
PESHAWAR

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without pay with all consequential service back benefits on rendition of account."

2. Briefly stated the averments as raised by the appellant in her appeal are that she was appointed as Lecturer (BPS-17) vide appointment order dated 27.07.2002 and is having a meritorious service record at her credit; that the appellant was posted as Assistant Professor Chemistry in Government Girls Degree College Sarai Saleh Haripur, when Government of Khyber Pakhtunkhwa offered Ph.D Scholarship for Government Colleges Teachers, Khyber Pakhtunkhwa; that the appellant applied for Ph.D Scholarship in Chemistry through proper channel and upon recommendations of scrutiny, evaluation and selection committee, the competent Authority approved nomination of the appellant for award of overseas Ph.D Scholarship; that the appellant applied for admission in South Korea through proper channel, which was granted and she then applied for NOC, which was also granted vide order dated 05.03.2013 and a proper bond in this respect was obtained by the department from the appellant; that the appellant had submitted a proper application for study leave with pay, specifying due dates of leaving the country and joining study abroad by 04.03.2013 as the classes had already commenced on 28.02.2013; that the appellant returned back from South Korea in March 2017 and was initially adjusted temporarily and there-after she was permanently posted at Government Post Graduate College Haripur; that during her stay for studies abroad, the meeting of Provincial Selection Board for promotion of Female Assistant Professors (BS-18) to the post of Associate Professors (BS-19) of College Cadre was held in the month of March

2014 but the appellant was deferred on the ground that she was abroad for Ph.D degree and that her ex-Pakistan study leave case was under process; that as the appellant was abroad for higher studies, therefore, in view of amendment made in promotion policy 2009 vide Notification dated 07.03.2014, she was entitled to have been promoted being eligible for promotion as Associate Professor in the year 2014 but she was illegally ignored; that the appellant was having excellent record in the year 2017 and 2018 but she was deferred by Provincial Selection Board in its meetings held on 03.05.2018 and 17.09.2018 on the pretext that she was having a weak service record; that the appellant was promoted as Associate Professor vide Notification dated 14.05.2019 but with immediate effect and vide order dated 18.07.2017, she was granted extra-ordinary leave without pay instead of study leave on full pay, constraining her to file departmental appeal, which was not responded within the statutory period, hence the instant service appeal.

3. Respondents contested the appeal by way of submitting para-wise comments, wherein they refuted the assertions as raised by the appellant in her appeal.

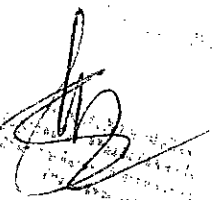
4. Learned counsel for the appellant has addressed his arguments supporting the grounds agitated by the appellant in her service appeal. On the other hand, learned Additional Advocate General has controverted the arguments of learned counsel for the appellant and has supported the comments submitted by the respondents.

5. A perusal of the record would show that the appellant had applied for the concerned Ph.D Scholarship through proper channel and

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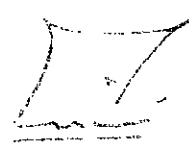
her nomination for award of the Scholarship was approved upon recommendations of scrutiny, evaluation and selection committee, which was communicated to the appellant vide letter dated 24.01.2012. The appellant then submitted an application for issuance of NOC through proper channel and the same was issued to her on 05.03.2013. The appellant had submitted an application to the concerned Principal for study leave with effect from 01.03.2013 to 28.02.2017 on the prescribed proforma, which was not processed timely without any plausible reason and remained undecided till arrival back of the appellant from abroad after successful completion of Ph.D Degree. A fact findings inquiry in this respect was also conducted and the inquiry report submitted by the inquiry officer is available on the record, wherein he has categorically mentioned that the appellant had applied for study leave on prescribed proforma and that the Principal could not satisfy the inquiry officer for not forwarding/processing the leave application. The inquiry officer has not given any findings in the inquiry report that the appellant was not entitled to study leave sought by her. Moreover, without waiting for the outcome of the inquiry proceedings, impugned Notification dated 18.07.2017 was issued by Secretary to Government of Khyber Pakhtunkhwa Higher Education Department, whereby ex-post facto sanction of grant of extra-ordinary leave without pay with effect from 01.03.2013 to 31.05.2017 was accorded in favour of the appellant. The aforementioned Notification dated 18.07.2017 was produced before the inquiry officer during the inquiry proceedings and the findings of the inquiry report are almost in line with the impugned notification. It is an admitted fact that the appellant had completed her Ph.D successfully and

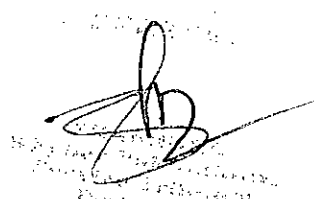


(8)

has returned back timely for joining her duty in the Department. In these circumstances, the respondents were required to have granted her study leave with effect from 01.03.2013 to 31.03.2017 on half average pay.

6. When the appellant was abroad in connection with her study, certain posts of Associate Professors (BS-19) became vacant, hence PSB for filling of the same was convened on 27.12.2013 in which certain senior as well as junior colleagues of the appellant were also promoted on acting charge basis, however the appellant was not considered for promotion with the observations that her study leave case from 01.03.2013 to 28.02.2017 was under process and that she had left the department without approval of her leave. According to the available record, the next meeting of the PSB for promotion to the post of Associate Professor (BS-19) was held on 30.06.2014 in which the name of the appellant was placed before the PSB for promotion, however the same was deferred with the observations that the board in its meeting held on 27.12.2013 had not considered her promotion as her study leave case from 01.03.2013 to 28.02.2017 was under process and that she had left the department without approval of her leave. Certain senior as well as junior colleagues of the appellant were promoted to the post of Associate Professor (BPS-19) on regular basis. The appellant at the time of meeting of PSB on 30.06.2014 was abroad in connection with her study. In view of sub-clause (dd) added by SOR-VI/E&AD/1-16/2011 dated 07.03.2014 through amendment in clause-IV of the Khyber Pakhtunkhwa Civil Servants Promotion Policy, 2009, the promotion of the appellant was due at the time of PSB held on 30.06.2014. The



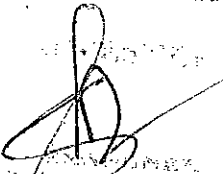


relevant sub-clause (dd) of clause-IV of the Promotion Policy, 2009 is reproduced as below:-

"If a civil servant is nominated by the Provincial Government for higher studies or training abroad and his turn for promotion arrives in his parent department or cadre in Pakistan, he should be considered for promotion alongwith other officers, and if he is approved for promotion in accordance with the relevant rules, he should be appointed formally (not actually) to the post in the higher grade. This could enable him to occupy on his return to Pakistan the position which he would have occupied had he not gone abroad on training. No financial benefits of the next below rule should be allowed to him in respect of his promotion. He should be allowed to count seniority and increment from the date of such promotion, but the actual pay of the higher post should be given to him only when he resumes the duties of higher post on his return from training."

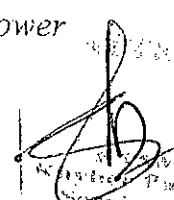
7. Admittedly, promotion of the appellant was deferred and she was not superseded. A deferment case came up before the honourable Peshawar High Court reported as 2018 PLC (CS) N 126 titled *"Aurangzeb Khan versus Government of Khyber Pakhtunkhwa through Chief Secretary and two others"* and the honourable Court was pleased to have found as under:

"According to the law of the land, deferment is neither a punishment nor a final order, as and when the reasons for deferment cease to exist the officer is promoted from the date, when his juniors were promoted and to be considered for promotion, it's the job of Service Tribunal under section 4 of the Tribunal Act, 1974.


 Director
 Government of Punjab
 Punjab Secretariat
 Lahore

The Government of Khyber Pakhtunkhwa introduced promotion policy, 2009 and under the policy clause-v deferment of promotion reads as under:--

- (a) Promotion of a civil servant will be deferred, in addition to reasons given in para-IV, if:-
- (i) His inter-se-seniority is disputed / sub judice.
 - (ii) Disciplinary or departmental proceedings are pending against him.
 - (iii) The PER dossier is incomplete or any other document/ information document/information required by the PSC/DPC for determining his suitability for promotion is not available for reasons beyond his control.
- (b) The civil servant whose promotion has been deferred will be considered for promotion as soon as the reasons for deferment cases to exist. The cases falling under any of the above three categories do not warrant proforma promotion but the civil servant will be considered for promotion after determining his correct seniority over the erstwhile juniors.
- (c) If an officer is otherwise eligible for promotion but has been inadvertently omitted from consideration in the original reference due to clerical error or plain negligence and is superseded, he should be considered for promotion as soon as the mistake, is noticed.
- (d) If and when officer, after his seniority has been correctly determined or after he has been exonerated of the charge or his PER dossier is complete, or his inadvertent omission for promotion comes to notice, is considered by the Provincial Selection Board/Departmental Promotion Committee and is declared fit for promotion to the next higher basic scales he shall be deemed to have been cleared for promotion along with the offices junior to him who were considered in the earlier meeting of the Provincial Selection Board/ Departmental Promotion Committee. Such an officer, on his promotion will be allowed seniority in accordance with proviso of subsection (4) of section 8 of the Khyber Pakhtunkhwa Civil Servants Act, 1973, whereby officers selected for promotion to a higher post in one batch on their promotion to the higher post are allowed to retain their inter-se-seniority in the lower post. In case, however, the date of continuous appointment of two or more officers in the lower


 Director
 Provincial Selection Board
 Khyber Pakhtunkhwa
 Peshawar

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post-grade is the same and there is no specific rule whereby their inter-se-seniority in the lower grade can be determined, the officer older in age shall be treated senior."

8. In view of the above discussion, the appeal in hand is allowed and it is directed that the appellant shall be considered to have been promoted to the post of Associate Professor (BPS-19) from the date of her first consideration or when her junior (s) was/were promoted on regular basis and the period with effect from 01.03.2013 to 31.03.2017 shall be treated as study leave on half average pay. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
16.11.2022

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

KALIM ARSHAD KHAN
CHAIRMAN
CAMP COURT ABBOTTABAD

Date of Presentation of Application: 20-02-2023
Number of pages: 8
Copying Fee: 40/-
Vigant: -
Text: 40/-
Date of Court: 04-04-2023
Date of Court: 04-04-2023

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Amna B

The Director,
Higher Education Department, K.P.K.,
Peshawar.

Subject: A request to act upon the decision and orders of KPK Service Tribunal Court and grant the Study Leave and Promotion from the due dates.

Dear Sir,

With due respect, it is to state that I pursued many appeals in the office of the directorate and secretariat about the injustice I faced for grant of my study leave and continuous promotion deferments since 2014 to 2019. For your kind reminding, I qualified Ph.D foreign scholarship and abide by all rules and regulation till the moment I returned and rejoined Higher education department. Then I appealed and got accepted my service appeal against my Extraordinary Leave notification and Promotion deferments from BS-18 to BS-19 in the service Tribunal Court of K.P.K, who has ordered to set aside both of notifications issued on 14.05.2019 & 18.07.2017 and grant of promotion from Bs-18 to BS-19(to the post of Associate Professor) from 18-03-2014 with all back benefits. The said court also ordered to grant me due Study leave from 01. 03.2013 to 31.03.2017 with all back benefits and due pay instead of EOL.

You are therefore. humbly requested to grant me, my due study leave and promotion please.

I will really be grateful for your consideration after a long span of despair.

Looking forward your kind response.

N:B. A copy of the Service Tribunal Court of KPK order is attached please.

Sincerely,

Dr. Gulnaz Bibi

Dr. Gulnaz Bibi
10/04/2023

Associate Professor in Chemistry
ZA, GPGC Ghazi.
Dated: April 10, 2023

Copy to:
Chief secretary, KPK, Civil Secretariat Peshawar.

*Approved
Gulnaz Bibi*

AD Lit
Directorate of Higher Education
Khyber Pakhtunkhwa
RECEIVED ON
10 APR 2023
3061 - 181
Diary # Page #

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Amir-e

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

CPLA No. _____/2023

Chief Secretary to Government of Khyber Pakhtunkhwa,
Peshawar & others

_____ **PETITIONERS**

VERSUS

Ms. Gulnaz Bibi

_____ **RESPONDENT**

NOTICE

To

Advocate-on-Record
Supreme Court of Pakistan
Govt. of Khyber Pakhtunkhwa
Peshawar

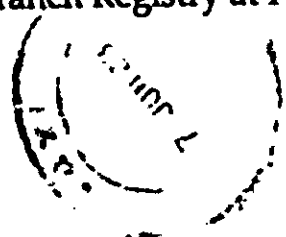
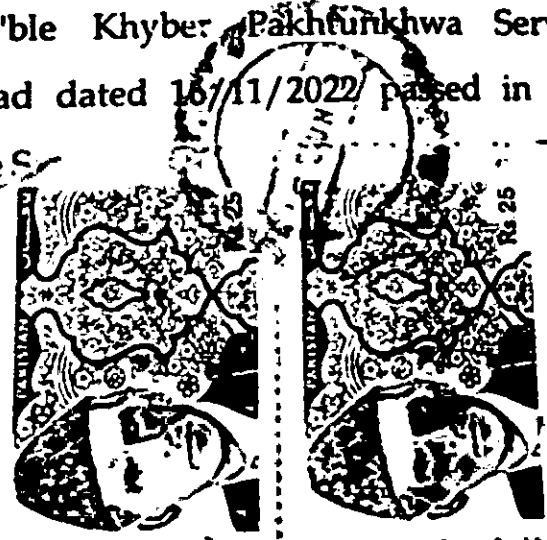


Ms. Gulnaz Bibi Associate Professor BS-19 Government Girls
Degree College Ghazi District Haripur

10/11/2022 10:55 AM

Please take notice Registered A/D post to the effect that I am filing
CPLA with stay application in the above titled case against the judgment of
the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Camp Court
Abbottabad dated 16/11/2022/ passed in Service Appeal No.1177/2020
before the S. _____ Branch Registry at Peshawar.

Dated this



(Moinud-Din Humayun)
Advocate-on-Record
Supreme Court of Pakistan
For Govt. /Petitioners

Handwritten signature of Moinud-Din Humayun

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

CPLA No. 2023

Chief Secretary to Government of Khyber Pakhtunkhwa
Peshawar & others
-----PETITIONERS

VERSUS

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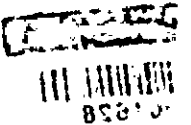
Ms. Gulnaz Bibi

-----RESPONDENT

NOTICE

To

Ms. Gulnaz Bibi Associate Professor BS-19 Government Girls
Degree College Ghazi District Haripur



Please take notice registered A/D post to the effect that I am filing
CPLA with stay application in the above titled case against the judgment of
the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Camp Court
Abbottabad dated 18/11/2023, passed in Service Appeal No.177/2020
before the Branch Registry at Peshawar.

Dated this



For Govt. Petitioners
Supreme Court of Pakistan
Advocate-on-Record
(Moinud-Din Hameed)

بعدالت



2 منجانب

14-06-2023

مورثہ

طہارہ بی بی نام
KPK PPS
9/11/15

Execution Petition

مقدمہ

دعویٰ

جرم

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ
آن مقام پشاور ایبٹ آباد کیلئے حاکم تہذیبی اور عدلیہ
مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز
وکیل صاحب کو راضی نامہ کرنے کی تقریر ثالث و فیصلہ پر حلف دیئے جواب دہی اور اقبال دعویٰ اور
بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق
ذرائع پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی
اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا محتاج ہوگا۔ از بصورت ضرورت
مقدمہ مذکور 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 بھی وہی جملہ مذکور با اختیارات حاصل ہوں گے
اور اس کا ساختہ پر داخنتہ منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ ہوں گے
سب سے وہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔
کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سند ہے۔

20ء

المرقوم 14-06-2023 ماہ

واہ العبد

Acceptance
M. Aslam

Qul Nas
(علیٰ بی بی)
سینئر

مقام