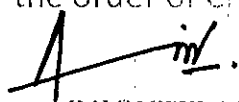


Form- A

FORM OF ORDER SHEET

Court of _____

Implementation Petition No. 392/2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	20.06.2023	<p>The execution petition of Mr. Zaheer Ahmad submitted today by Sardar Muhammad Irshad 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>

**BEOFRE KPK SERVICE TRIBUNAL
PESHAWAR**

Execution Petition No. 342 /2023

Zaheer Ahmad S/o Shamraiz, R/o Mohallah Thanda Pani,
Village & P.O Biran Gali, Tehsil and District Abbottabad,
Ex-Cleaner (C&W) Division Abbottabad

...Petitioner

V/S

1. Secretary (C &W) through Government of KPK Peshawar
2. Deputy Director (C &W) Department Abbottabad
3. Executive Engineer (C &W) Division Abbottabad
4. Sub Divisional Officer, Building-II (C &W) Abbottabad
5. District Accounts Officer Abbottabad

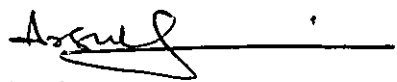
...Respondents

INDEX

S.No	Description of Documents	Annexure	Page
1	Execution petition with affidavit	-	1-3
2	Copy of order date 22/02/2019	A	4
3	Copy of petitioner's appeal	B	5-12
4	Copy of judgment dated 20/09/2022	C	13-16
3	Vakalatnama	-	17

Zaheer
Petitioner

Through:-


(Sardar Muhammad Irshad)
Advocate High Court
1A Gulistan Colony College
Road Abbottabad
Cell: +92343-3326000
Email: Sardarmuhammadirshad7@gmail.com

①

**BEOFRE KPK SERVICE TRIBUNAL
PESHAWAR**

Execution Petition No. 392 /2023

Zaheer Ahmad S/o Shamraiz, R/o Mohallah Thanda Pani,
Village & P.O Biran Gali, Tehsil and District Abbottabad,
Ex-Cleaner (C&W) Division Abbottabad

**Khyber Pakhtukhwa
Service Tribunal**

Diary No. 6103 Petitioner

V/S Dated 20/6/2023

1. Secretary (C &W) through Government of KPK Peshawar
2. Deputy Director (C &W) Department Abbottabad
3. Executive Engineer (C &W) Division Abbottabad
4. Sub Divisional Officer, Building-II (C &W) Abbottabad
5. District Accounts Officer Abbottabad

....Respondents

**EXECUTION PETITION FOR EXECUTION/IMPLEMENTATION
OF ORDER CONTAINED IN JUDGMENT DATED 20/09/2022
PASSED BY THIS HONOURABLE TRIBUNAL IN SERVICE
APPEAL NO 1084 OF 2019.**

Respectfully Sheweth:-

The petitioner submits as under:-

1. That the petitioner was removed from service vide order dated 22/02/2019 of respondent No 3. Copy of the said order is annexure-"A".
2. That the petitioner filed appeal No 1084/2019 before this Honourable Tribunal for setting-a-side above order and for his reinstatement in service. Copy of aforesaid appeal is annexure-"B".
3. That this Honourable Tribunal has been pleased to accept the appeal and direct petitioner's reinstatement in service with direction to respondents to conduct denovo inquiry vide judgment dated 20/09/2022 in service appeal No 1084/2019. Copy of the judgment is annexure-"C".

2

4. That the petitioner repeatedly approach respondents for his reinstatement for the purpose of denovo inquiry but no action in the matter was taken which compelled the petitioner to approach this Honourable Tribunal for execution /implementation of order contained in Para-7 of the judgment dated 20/09/2022. For facility of reference above order is reproduced as under:-

“In view of the above, the instant appeal is partially accepted and the appellant stands reinstated in service for the purpose of denove inquiry, to be completed within 90 days of the receipt of copy of this judgment, in view of discussion in the preceding paras. Needles to mention that the appellant be given proper opportunity of defence. Parties are left to bear their own costs. Consign”

It is, therefore, prayed that respondent No.3 be directed to implement the order of this Honourable Tribunal by petitioner's reinstatement for the purpose of denovo inquiry.

Any other relief which this Honorable Tribunal deems fit in the circumstances of the case may graciously be awarded.

Zahoor
Petitioner

Through:-

Sardar

(Sardar Muhammad Irshad)

Advocate High Court

1A Gulistan Colony College

Road Abbottabad

Cell: +92343-3326000

Email: Sardarmuhammadirshad7@gmail.com

3

**BEOFRE KPK SERVICE TRIBUNAL
PESHAWAR**

Execution Petition No. _____/2023

Zaheer Ahmad S/o Shamraiz, R/o Mohallah Thanda Pani, Village
& P.O Biran Gali, Tehsil and District Abbottabad,
Ex-Cleaner (C&W) Division Abbottabad

....Petitioner

V/S

1. Secretary (C &W) through Government of KPK Peshawar
2. Deputy Director (C &W) Department Abbottabad
3. Executive Engineer (C &W) Division Abbottabad
4. Sub Divisional Officer, Building-II (C &W) Abbottabad
5. District Accounts Officer Abbottabad

....Respondents

AFFIDAVIT

I, Zaheer Ahmad, petitioner do hereby solemnly affirm and declare that the contents of the accompanying execution petition are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Tribunal.

Zaheer
Deponent

VERIFICATION

Verified on Oath at Abbottabad on day of 20th of June 2023 that the contents of above affidavit are true and correct to the best of my knowledge and belief.

Zaheer
Deponent



11/08/15
R.A.

4

A



OFFICE OF THE
EXECUTIVE ENGINEER
C&W DIVISION ABBOTTABAD.

Ref: 376/158E Dated 27-2-019

OFFICE ORDER

Mr. Zaheer Ahmad S/O Muhammad Shamraz R/O Mohallah Thanda Pani Village & PO Beringali Tehsil & District Abbottabad posted as Cleaner in C&W Division Abbottabad issued a notice for his absence from duty through registered acknowledgement on his home address vide this office letter No. 1584/163-E dated 26/02/2015 but after lapse of 15 days of the issuance of notice, the official did not respond. Then a notice was published in the leading newspapers in which the official was directed to resume his duty within 15 days of the publication of the notice in the newspaper, but after lapse of 15 days of the notice published in the Daily AAJ newspaper on 29/08/2015, the official still failed to resume his duty.

Since, Mr. Zaheer Ahmad S/O Muhammad Shamraz R/O Mohallah Thanda Pani Village & P.O Beringali Tehsil & District Abbottabad is hereby removed from service under Para-9 of Government of Khyber Pakhtunkhwa servants (E&D) Rules 2011 in the best interest of Government.

EXECUTIVE ENGINEER

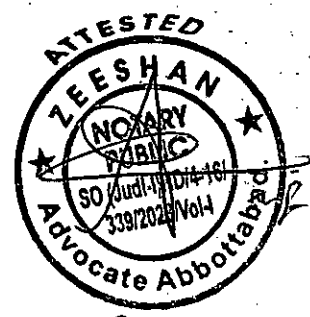
Copy to the;

- i. Superintending Engineer C&W Circle Abbottabad for information please.
- ii. District Account Officer Abbottabad for information and necessary action please.
- iii. Sub Divisional Officer (Building-II) C&W Division Abbottabad for information and necessary action.
- iv. Divisional Account Officer (Local) for information and necessary action.
- v. Head Clerk C&W Division Abbottabad for information and necessary action.
- vi. Mr. Zaheer Ahmad S/O Muhammad Shamraz R/O Mohallah Thanda Pani Village & P.O Beringali Tehsil & District Abbottabad

Attested

Amul

EXECUTIVE ENGINEER



19-06-23

#13

5

B

103

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

Appeal No. _____/2019

Zaheer Ahmad son of Shamraz, resident of Mohallah Thanda Pani, Village & P.O Beran Gali, Tehsil & District Abbottabad, Ex-Cleaner (C&D) Division, Abbottabad.

...APPELLANT

VERSUS

1. Secretary (S&W) through Govt. of Khyber Pakhtunkhwa, Peshawar.
2. Deputy Director (S&W) Department, Abbottabad.
3. Executive Engineer (C&W) Division, Abbottabad.
4. Sub Division Officer, Building-II (C&W), Abbottabad.
5. District Accounts Officer, Abbottabad.

...RESPONDENTS

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974, SOLICITING SET-ASIDE DISMISSAL ORDER NO.376/158-E DATED 22/02/2019 PASSED BY THE RESPONDENT NO.3 ON THE BASIS OF FAKE AND FABRICATED ABSENT PERIOD 05/02/2015 TO 07/04/2016 in lieu of leave WHEREBY VIOLATING SECTION 9 (E & ND) RULES, 2011, ORDER DATED 22/02/2019, REINSTATED PETITIONER ALONGWITH BACK BENEFITS.

Attested
Amul →



19-06-23

PRAYER: ON ACCEPTANCE OF INSTANT APPEAL THE IMPUGNED ORDER DATED 22/02/2019 MAY KINDLY BE SET-ASIDE AND ABSENT PERIOD MAY KINDLY BE TREATED AS MEDICAL LEAVE WITH PAY AND WITHOUT PAY RESPECTIVELY AND PETITIONER MAY KINDLY BE REINSTATED ALONGWITH ALL BACK BENEFITS THROUGHOUT OF PETITIONER FROM DUE DATE MAY KINDLY BE ISSUED SALARY/ ARREAR AND ANY OTHER RELIEF WHICH THIS HONOURABLE TRIBUNAL DEEMS FIT AND PROPER UNDER THE GIVING CIRCUMSTANCES OF THE CASE MAY PLEASE BE GRANTED TO THE APPELLANT.

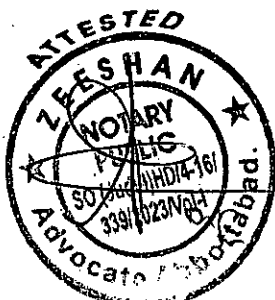
Respectfully Sheweth;-

May it please your lordship the brief fact of the instant appeal are as under:-

1. That petitioner was serving as class-II/ Cleaner since 31/072006 to up till now in the department of respondent No.3. Copy of appointment order No.1496 dated 31/07/2016 and service book of the appellant are attached as Annexure "A" & "B".

Attested

Amul

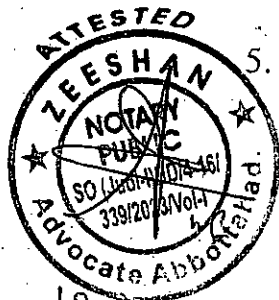


19-06-23

2. That in Feb, 2015 appellant fell ill, on the advice of Medical Officer, through MLC appellant filed an application for medical leave on 05/02/2015 to 06/03/2015 after the completion of said period appellant moved another application on 06/03/2015 to 06/04/2015. When petitioner not feel well thereafter another application submitted by the appellant on 07/04/2015 to 07/04/2016 without pay on the medical ground. Copy of the applications and medical record are attached as Annexure "C" to "G".
3. That respondents verbally told the petitioner that your application on respect of medical leave have been sanctioned by the department.
4. That after the expiry of leave absent period appellant assumed his duty but respondent No.3 did not assumed his attendance. Appellant severally visit the office of the respondent No.3 but respondent No.3 did not allow to appellant for attendance.

Attested

[Signature]

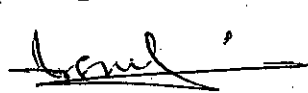


19-06-23

That on 26/02/2015 vide letter No.1584/163-E respondent No.3 give absence notice to the

appellant and thereafter another absent notice was issued to appellant on 08/03/2015 vide letter No.3107-163-E and on 27/08/2015 give show cause notice absent from duty by the respondents. Appellant give reply of the show cause notice alongwith complete medical record to the respondent No.3, while ill condition was in the knowledge of respondent No.3, respondent No.3 malafidely give advertisement in daily Aaj. Copy of the notices and advertisement are annexed as Annexure "H" to "K".


6. That the respondents willfully victimize the petitioner/ appellant and treated absent period in lieu of medical leave, and thereafter initiated proceeding ex-party without giving opportunity of personal hearing and violation of under Section 9 of (E & ND) Rule 2011, in consequences upon respondents issue termination order against the petitioner vide order No.376/158-E dated 22/02/2019 which was received appellant on 04/03/2019. Copy of order No.376/158-E dated 22/02/2019 is annexed herewith as Annexure "L".

Attested




19-06-23

7. That respondents without any suspension order stopped appellant's salary from 29/08/2015, illegally, while appellant resumed his duty after the good health, in this respect appellant submitted various applications for releasing his salary/ arrears but respondents did not give any consideration with due course of law.
8. That if appellant absent from duty on 26/02/2015 and give advertisement in "daily Aaj" on 29/08/2015 after lapse of 4 years terminated appellant on 22/02/2019 why respondent had not proceed against the appellant within 4 years there are no excuse and reason in respect of void order of termination on the part of respondents.
9. That on the request of appellant, respondent did not provide single document/ record to appellant even then appellant file application under Right to Information Act 2015 on 11/03/2019 but respondent No.3 did not respond to appellant, thereafter the appellant filed a compliant before the proper forum against the respondents. Copies of application, complaint, notices and register receipts are attached as Annexure "M" to "Q".

Attested





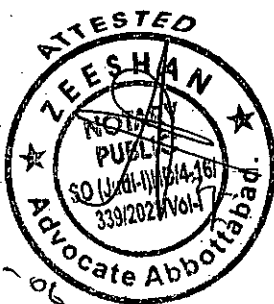
19-06-22

10. That being aggrieved from the order of respondents, appellant filed a departmental appeal on 22/03/2019 but the respondent did not decide departmental appeal with the specified time, so that after laps of that period, impugned order dated 22/02/2019 passed by the respondent No. 3 presumed to the final order and thereafter under section 4 KPK Service Tribunal Act, service appeal is maintainable. Copy of appeal is attached as Annexure "R".
11. That appellant have no other remedy except present appeal before this Honourable Tribunal, inter-alia on the following grounds:-

GROUND:-

- a. That the impugned order dated 22/02/2019 against the law and facts hence, liable to be set-aside.
- b. That no inquiry proceedings are carried out by the inquiry officer in accordance with law and justice and rules but all the proceedings are done in the absence of the appellant and the impugned order is passed by respondent No.3 to cover his own

Attested




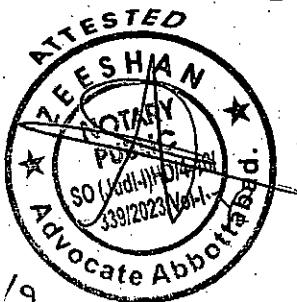
19-06-22

malafide action as well as the faults of his own office officials in utter disregard of the law on the subject, thus the impugned order is unsustainable in the eye of law and are liable to be set-aside.

- c. That the respondent No.3 willfully show absent period rather than medical leave with pay and without pay and thus committed high inefficiency and lack of interest in his official duties (as matter of right, therefore, legal action should be taken against the said respondent under the relevant law and void order may kindly be set-aside and appellant may kindly be reinstated alongwith all back benefit.
- d. That the respondent No.3 before passing the impugned order did not afforded an opportunity even did not consider the record which is already been given to the respondents. Thus the impugned order being violation of law as well as the natural justice is liable to be set-aside and appellant is entitled to the re-instated on service alongwith all back benefit alongwith salary.

Attested

[Signature]



19-06-23

- e. That during the entire period of service no complaint of any kind against the appellant having sole supporter of his family, therefore, the impugned order may kindly be set-aside alongwith back benefits.

It is, therefore, humbly prayed that on acceptance of instant appeal the impugned order dated 22/02/2019 may kindly be set-aside and period of absent may kindly be treated as medical leave with pay and appellant may kindly be reinstated alongwith all back benefits and salary/ arrear of appellant throughout from the due date may kindly be issued and any other relief which this Honourable Tribunal may deems fit and proper under the giving circumstances of the case may please be granted to the appellant.

...APPELLANT

Through

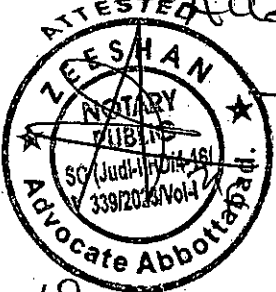
Dated: 22/07/2019

(MUHAMMAD LIAQAT)
Advocate High Court, Abbottabad

VERIFICATION:-

Verified on oath that the contents of forgoing appeal are true and correct to the best of my knowledge and belief and nothing has been concealed therein from this Honourable Court.

Zohoor
...APPELLANT



19-06-23

13

94 C

C

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR
CAMP COURT ABBOTTABAD



Service Appeal No. 1084/2019

BEFORE: MRS. ROZINA REHMAN ... MEMBER (J)
MISS. FAREEHA PAUL ... MEMBER(E)

Zaheer Ahmad S/o Shamraiz, R/o Mohallah Thanda Pani, Village & P.O
Beran Gali, Tehsil & District Abbottabad, Ex-Cleaner (C&W) Division
Abbottabad.

.... (Appellant)

Versus

1. Secretary (C&W) through Govt. of Khyber Pakhtunkhwa Peshawar.
2. Deputy Director (C&W) Department Abbottabad.
3. Executive Engineer (C&W) Division Abbottabad.
4. Sub Division Officer, Building-II (C&W) Abbottabad.
5. District Accounts Officer Abbottabad.

.... (Respondents)

Mr. Muhammad Liaqat
Advocate

For appellant

Mr. Muhammad Jan
District Attorney

For respondents

Date of Institution.....23.09.2019
Date of Hearing.....20.09.2022
Date of Decision.....20.09.2022

JUDGEMENT

FAREEHA PAUL MEMBER (E): The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974 against the impugned order dated 22.02.2019 passed by respondent No. 3 (Executive Engineer (C&W) Division, Abbottabad) whereby the appellant was removed from service on the ground of absence from duty.

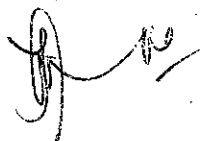
ATTESTED
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

2. Brief facts of the case, as per memorandum of appeal, are that the appellant was serving as class-II/Cleaner since 31.07.2006 in the office of Respondent No. 3 Executive Engineer C&W Division, Abbottabad. In February 2015 the appellant fell ill and filed application for medical leave from 05.02.2015 to 06.03.2015. After completion of the said period he moved another application for leave from 06.03.2015 to 06.04.2015. When he was not feeling well, he submitted another application for leave from 07.04.2015 to 07.04.2016 without pay on medical ground. After expiry of the leave period he assumed his duty but Respondent No. 3 did not allow him to attend the office. He visited the office many times but was not allowed attendance in the office. On 26.02.2015 Respondent No. 3 gave absence notice to the appellant after which another absence notice was issued on 08.03.2015. On 27.08.2015 a show cause notice was issued by the respondent. Appellant gave reply to that notice alongwith complete medical record but instead of that, respondent No. 3 issued advertisement in daily Aaj and initiated ex-parte proceedings without giving any opportunity of personal hearing to the appellant. Subsequently order dated 22.02.2019 was passed through which he was removed from service. The order was received by the appellant on 04.03.2019. The respondents, without any suspension order, stopped salary of the appellant w.e.f 29.08.2015. The appellant requested to provide documents/record to him but his request was not honoured. Feeling aggrieved he filed departmental appeal on 22.03.2019 which was not decided in the specific time; hence the service appeal.

3. Respondents were put on notice who submitted written replies/ comments on the appeal. We have heard the learned counsel for the appellant as well as the learned District Attorney and perused the case file with connected documents in detail.

The learned counsel for the appellant presented the details of the case and contested that neither any inquiry were carried out nor he was given an opportunity of defending himself and was removed from service without fulfilling legal

ATTESTED
 EXAMINER
 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar



provisions of E&D Rules. He further added that the appellant was not afforded any opportunity of personal hearing by the competent authority.

5. The learned District Attorney on the other hand argued that the appellant had not submitted any application asking for leave on medical grounds. The three applications provided by the appellant in his appeal were not submitted to the competent authority. Moreover, revised medical rules provide for medical certificate from government hospital with the application and the same was not provided by the appellant. He further contended that last salary was drawn by the appellant in 2015 after which he was absent from duty. He emphasized that it was a case of willful absence from duty and hence liable to be dismissed.

6. Perusal of the record available before us transpires that the appellant absented himself from official duty with effect from February 2015 as is evident from a notice of absence issued on 26.02.2015, through which he was directed to ensure his presence in the office of Building Sub-Division No-II and explain reasons of absence within 15 days. It is assumed that he did not join duty and another notice dated 08.03.2015 was issued with the same directions. After that, a show cause notice issued in Daily Aaj dated 28.08.2015 is available on the file, with the direction to resume his duty within 15 days but after lapse of that period he failed to do so and hence action was taken against him and he was removed from service under Para-9 of E&D Rules 2011 vide order dated 22.02.2019. As stated by the learned District Attorney the appellant drew his last salary in 2015. It was further noted that his absence notice was issued in daily Aaj on 29.08.2015, whereas final order was issued in the year 2019 after lapse of three and a half year. The point before us now is that what took so long in taking action and deciding the case between 2015 and 2019? When confronted, the District Attorney was unable to respond. This Tribunal is therefore, not in a position to ascertain whether the appellant resumed his duty and came and attended the office from 2015 to 2019 or

ATTESTED

EXAMINER
 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar

[Handwritten signature]

not? What action was taken by the department after issuance of show cause notice in the newspaper on 29.08.2015? What prevented the department in taking action against him after issuing show cause notice?

7. In view of the above, the instant appeal is partially accepted and the appellant stands reinstated in service for the purpose of denovo inquiry, to be completed within 90 days of the receipt of copy of this judgment, in view of discussion in the preceding paras. Needless to mention that the appellant be given proper opportunity of defence. Parties are left to bear their own costs. Consign.

8. Pronounced in open court in Abbotabad and given under our hands and seal of the Tribunal on this 20th day of September, 2022.



[Signature]
(ROZINA REHMAN)
Member (J)
(Camp Court, A/Abad)

Date of Presentation of Application 23/11/2022
Number of Words 1620
Copying Fee 18/-
Urgent _____
Total 18/-
Name of Copyist _____
Date of Completion of Copy 30/11/2022
Date of Delivery of Copy 30/11/2022

[Signature]
(FARBEHA PAUL)
Member (E)
(Camp Court, A/Abad)

Certified to be true copy
[Signature]
EX-DIRECTOR
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

کورٹ فیس

وکالت نامہ

بعدالت KPK سرحدی ٹریبیونل اسلام آباد
 عنوان: ٹیپس احمد بنام سکریٹری سٹو وغیرہ
 منجانب: Sardar Muhammad Jochal Peshawar
 نوعیت مقدمہ:

باعث تحریر آنکہ

مقدمہ مندرجہ میں اپنی طرف سے واسطے پیروی و جواب دہی کل کاروائی متعلقہ آل مقام
 ایسٹ آباد سرحدی ٹریبیونل اسلام آباد
 کو وکیل مقرر کر کے اقرار کرتا ہوں کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا نیز وکیل
 صاحب موصوف کو کرنے راضی نامہ و تقرر ثالث و فیصلہ برحلف و دینے اقبال دعویٰ اور بصورت دیگر ڈگری
 کرانے اجراء وصولی چیک روپیہ و عرضی دعویٰ کی تصدیق اور اس پر دستخط کرنے کا اختیار ہوگا اور بصورت
 ضرورت مقدمہ مذکور کی کل یا کسی جزوی کاروائی کے لئے کسی اور وکیل یا مختار صاحب قانونی کو اپنے ہمراہ اپنی
 بجائے تقرر کا اختیار بھی ہوگا اور صاحب مقرر شدہ کو بھی وہی اور ویسے ہی اختیارات ہوں گے اور اس کا
 ساختہ پرداختہ مجھ کو منظور و قبول ہوگا۔ دوران مقدمہ جو خرچہ و ہر جانہ التوائے مقدمہ کے سبب ہوگا اس کے
 مستحق وکیل صاحب ہوں گے۔ نیز بقایا رقم وصول کرنے کا بھی اختیار ہوگا۔ اگر کوئی پیشی مقام دورہ پر ہو یا
 حد سے باہر ہو تو وکیل صاحب موصوف پابند ہوں گے کہ پیروی مقدمہ مذکورہ کریں اور اگر مختار مقرر کردہ میں
 کوئی جزو بقایا ہو تو وکیل صاحب موصوف مقدمہ کی پیروی کے پابند نہ ہوں گے۔ نیز درخواست بمراد
 استجارت نالش بصیغہ مفلسی کے دائر کرنے اور اس کی پیروی کا بھی صاحب موصوف کو اختیار ہوگا۔
 لہذا وکالت نامہ تحریر کیا تاکہ سند رہے۔

المرقوم: محمد سعید احمد ۱۹/۰۶/۰۶

بمقام: ایسٹ آباد