

Form- A

FORM OF ORDER SHEET

Court of _____

Implementation Petition No. 574/2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	10.08.2023	<p>The implementation petition of Mst. Hassan Basri submitted today by Mr. Saadullah Khan Marwat Advocate. It is fixed for implementation report before Single Bench at Peshawar on _____. Original file be requisitioned. AAG has noted the next date.</p> <p>By the order of Chairman</p> <p>REGISTRAR</p>

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

CHECK LIST

Case Title: Mst. Hussain Basi v/s Education Deptt.

S#	CONTENTS	YES	NO
1	This Appeal has been presented by: <u>Saeedullah Khan Memon</u>	✓	
2	Whether Counsel/Appellant/Respondent/Deponent have signed the requisite documents?	✓	
3	Whether appeal is within time?	✓	
4	Whether the enactment under which the appeal is filed mentioned?	✓	
5	Whether the enactment under which the appeal is filed is correct?	✓	
6	Whether affidavit is appended?	✓	
7	Whether affidavit is duly attested by competent Oath Commissioner?	✓	
8	Whether appeal/annexures are properly paged?	✓	
9	Whether certificate regarding filing any earlier appeal on the subject, furnished?	x	✓
10	Whether annexures are legible?	✓	
11	Whether annexures are attested?	✓	
12	Whether copies of annexures are readable/clear?	✓	
13	Whether copy of appeal is delivered to AG/DAG?	✓	
14	Whether Power of Attorney of the Counsel engaged is attested and signed by petitioner/appellant/respondents?	✓	
15	Whether numbers of referred cases given are correct?	✓	
16	Whether appeal contains cutting/overwriting?	x	✓
17	Whether list of books has been provided at the end of the appeal?	✓	
18	Whether case relate to this court?	✓	
19	Whether requisite number of spare copies attached?	✓	
20	Whether complete spare copy is filed in separate file cover?	✓	
21	Whether addresses of parties given are complete?	✓	
22	Whether index filed?	✓	
23	Whether index is correct?	✓	
24	Whether Security and Process Fee deposited? On _____	✓	
25	Whether in view of Khyber Pakhtunkhwa Service Tribunal Rules 1974 Rule 11, notice along with copy of appeal and annexures has been sent to respondents? On _____	✓	
26	Whether copies of comments/reply/rejoinder submitted? On _____	✓	
27	Whether copies of comments/reply/rejoinder provided to opposite party? On _____	✓	

It is certified that formalities/documentation as required in the above table have been fulfilled.

Name: Saeedullah Khan Memon

Signature: [Signature]

Dated: 12/8/22

BEFORE THE KPK SERVICE TRIBUNAL, PESHAWAR

Execution Petition No. 574/23

Misc Pett: No. _____ /2023

IN

S.A. No. 232 / 2023

Mst. Hussan Basri

versus


Director & Others

I N D E X

S.#	Description of Documents	Annex	Page
1.	Memo of Misc Petition		1-3
2.	Copy of Appeal dated 10-01-2022	"A"	4-10
3.	Copy of Judgment dated 27-07-2023	"B"	11
4.	Compliance letter dated 04-08-2023	"C"	12
5.	Letter dated 07-07-2023	"D"	13
6.	Wakalatnama		14

Applicant

Through



(Saadullah Khan Marwat)
Advocate

21-A Nasir Mension,
Shoba Bazar, Peshawar.

Ph: 0300-5872676

Dated: 10-08-2023

BEFORE THE KPK SERVICE TRIBUNAL, PESHAWAR*Execution petition no- 579/23*

Misc Pett: No. _____ /2023

IN

S.A. No. 232 / 2022

Khyber Pakhtukhwa
Service TribunalDiary No. 6973Dated 16/08/23

Mst. Hussan Basri

W/O Syed Asghar Ali Shah,

Senior Instructor, Physical Education,

GGHSS, Landi Arbab, Peshawar Appellant

Versus

1. Director, Elementary and
Secondary Education, KP,
Peshawar.
2. Secretary, Government of
KP, Elementary & Secondary
Education Department,
Peshawar. Respondents

**APPLICATION FOR IMPLEMENTATION OF THE
JUDGMENT DATED 27-07-2023 OF THE HON'BLE
TRIBUNAL, PESHAWAR:**

Respectfully Sheweth:

1. That on 10-01-2022, applicant filed Service Appeal before this hon'ble Tribunal for correction of seniority position. (Copy as annex "A")
2. That the said appeal came up for hearing on 27-07-2023 and then the hon'ble Tribunal was pleased to hold that:-

"The appeal be disposed of with direction to the official respondents to incorporate the date of promotion of the appellant from B-16 to B-17 as 13-11-2007 in the impugned seniority list. The learned AAG when confronted with the situation submitted that the department ought to have mentioned the correct date of promotion in the Notification. The appeal is thus disposed of in the above terms. Costs to follow the event". (Copy as annex "B")

3. That on 04-08-2023, applicant as well as Registrar of the hon'ble Service Tribunal remitted the judgment to respondents for compliance but so far no favorable action was taken there and then and the judgment of the hon'ble Tribunal was put in a waste box, while on the other hand, the department is going to promote to the post / grade B-19 of the junior incumbents. (Copies as annex "C" & "D")
4. That the respondents are not complying with the judgment of the hon'ble Tribunal in letter and spirit and flouts the same with disregard, so are liable to be proceeded against the Contempt of Court Law for punishment.

It is, therefore, most humbly requested that the judgment dated 27-07-2023 of the hon'ble Tribunal be complied with hence forthwith and no further promotion be made till the issuance of fresh seniority list by placing applicant at her proper place.

OR

In the alternate, respondents be proceeded for contempt of court and they be punished in accordance with Law.


Applicant

Through


Saadullah Khan Marwat


Arbab Saif-ul-Kamal


Amjad Nawaz
Advocates

Dated: 10-08-2023

INTERIM RELIEF

By keeping in view the aforesaid facts and circumstances of the case, the operation of letter dated 07-07-2023 be suspended till the issuance of fresh seniority list as well as implementation of the judgment.


ADVOCATE

AFFIDAVIT

I, Mst. Hussan Basri W/O S. Asghar Ali Shah, (Applicant), do hereby solemnly affirm and declare that contents of **Implementation Petition** are true and correct to the best of my knowledge and belief.




DEPONENT

CERTIFICATE:

As per instructions of my client, no such like Implementation Petition has earlier been filed by the appellant before this Hon'ble Tribunal.


ADVOCATE

A 4

BEFORE KPK SERVICE TRIBUNAL PESHAWAR

S.A No. 237/2022

Khyber Pakhtunkhwa
Service Tribunal

Mst. Hussan Basri W/O S. Asghar Ali Shah,
Senior Instructor, Physical Education,
GGHSS, Landi Arbab Peshawar

Diary No. 27
Dated 10-1-2022

Appellant

VERSUS

1. Director, Elementary and Secondary Education, KP, Peshawar.
2. Secretary, Government of KP, Elementary & Secondary Education Department, Peshawar.
3. Mst. Misbah Seema, Senior Instructor, Physical Education, Govt. Girls Higher Secondary School Munawar Shah No. 06. D. I. Khan. (S. No. 09)
4. Mst. Rahila Bano, Senior Instructor, Physical Education, GGHSS, No. 05 Qasaban D. I. Khan. (S. No. 10)
5. Mst. Abida Parveen, Senior Instructor, Physical Education, GGHSS, Malikpura, Abotabad. (S. No. 13)
6. Mst. Robina Shaheen, Senior Instructor, Physical Education, GGHSS, Sikandar Khel Bala Bannu. (S. No. 14)
7. Mst. Parveen Akhtar, Senior Instructor, Physical Education, Govt. Girls Higher

Filed on day
10/1/2022
Registrar

ATTESTED

REGISTRAR
Khyber Pakhtunkhwa
Service Tribunal

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- 8. Mst. Sughra Afandi, Senior Instructor,
Physical Education, GGHSS, Rustam
Khel Mardan. (S. No. 18)
- 9. Mst. Yahya Beglum, Senior Instructor,
Physical Education, GGHSS Pir Pial
Nowshara. (S. No. 19)
- 10. Mst. Mufeeda Beglum, Senior Instructor,
Physical Education, GGHSS, Shehbaz
Ghara, Mardan. (S. No. 22)
- 11. Mst. Samina Akhtar, Senior Instructor,
Physical Education, GGHSS, Comprehensive
Peshawar City. (S. No. 23)
- 12. Mst. Ghazala Naeem, Senior Instructor,
Physical Education, GGHSS, Behzad
Chakarkot Kohat. (S. No. 27)
- 13. Mst. Sujhat Begum, Senior Instructor,
Physical Education, GGHSS, Takhtbhai
Mardan. (S. No. 28)
- 14. Mst. Basreet Afzal, Senior Instructor,
Physical Education, GGHSS, Hathlan
Mardan (S. No. 29)
- 15. Mst. Salma Gul, Senior Instructor,
Physical Education, GGHSS, Sherazi
No. 08 D. I. Khan. (S. No. 34)
- 16. Mst. Tasleem Kausar, Senior Instructor,
Physical Education GGHSS, Skhakot
Malakand (S. No. 35)
- 17. Mst. Maryum Rasool, Senior Instructor,
Physical Education GGHSS, Kalabut
Township-II Haripur (S. No. 39)
- 18. Mst. Shaheen Ali, Senior Instructor,

GGHSS, Chaman
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- 19. Mst. Mussarj Iqbal, Senior Instructor,
Physical Education GGHSS,
Esak Chuntra Karak (S. No. 41)
- 20. Mst. Sarda Bibi, Senior Instructor,
Physical Education, GGHSS, No. 01
Karak. (S. No. 42)
- 21. Mst. Sadia Hazrat, Senior Instructor,
Physical Education, GGHSS, Kopar
Malakand (S. No. 45)
- 22. Mst. Shahida Beglum, Senior Instructor,
Physical Education, GGHSS, Esak Chuntra,
Karak (S. No. 46) Respondents


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APPEAL U/S 4 OF SERVICE TRIBUNAL ACT, 1974
AGAINST FINAL SENIORITY LIST OF SENIOR
INSTRUCTORS | PHYSICAL EDUCATION
ELEMENTARY AND SECONDARY EDUCATION
DEPARTMENT KP PESHAWAR DATED 02-03-2021
OF R. NO. 01 WHEREBY JUNIOR TO APPELLANT
WERE SHOWN SENIOR WITHOUT ANY REASON
AND JUSTIFICATION:

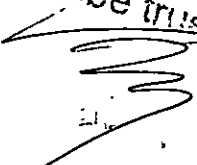
☞<=>☞<=>☞<=>☞<=>☞

Respectfully Sheweth:

1. That on 26-06-1997, appellant was appointed as Physical Education Teacher (Female) (PET) on the recommendation of Departmental Selection Committee with some terms and conditions contained therein and her name was figured at S. No. 28 of the order ibid. (Copy as annex "A")

ATTESTED:


That on. 06-05-2006, appellant was awarded degree of Master of Science obtained from Gomal University, D. I. Khan. (Copy as annex

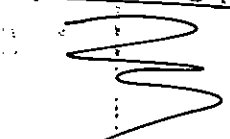
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3. That on 12-12-2006 on the recommendation of Departmental Promotion Committee, appellant was promoted to the post of Director Physical Education B-16 on regular basis and her name was figured at S. No. 24. (Copy as annex "C")
4. That on 13-11-2007, Secretary Education, Govt. of KP, Schools and Literacy Department Issued Notification accorded up-gradation to the post of Librarians and Director Physical Education from B-16 to B-17 regular of the existing incumbents who hold Master Degree in the relevant subject. Her existing seniority position will remain intact. Here it would be not out of place to mention that appellant was awarded degree of M. Sc on 06-05-2006 with B-17. (Copy as annex "D")
5. That on 31-03-2009, Director Education Issued Final Seniority List wherein name of appellant was placed at S. No. 70. (Copy as annex "E")
6. That prior to the aforesaid exercise, up-gradation, promotion, seniority list, etc, no proper rules were in field, yet on 16-05-2009, for the first time service structure was given to the employees of the department.
7. That on 01-01-2017, subsequent seniority list was circulated wherein appellant name was figured at S. No. 58. This seniority list was also not prepared properly and per the mandate of law. Seniors were not assigned proper place in seniority list. (Copy as annex "F")
8. That on 10-02-2017 representation was submitted to the authority for correction of the aforesaid seniority list but in vain. (Copy as annex "G")
9. That on 23-05-2018, the competent authority Issued Notification for promotion of 60 female Instructors Physical Education B-17 to the post of Senior Instructor Physical Education B-18 in the department. The name of appellant was figured at S. No. 54. (Copy as annex "H")

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- 10. That on 31-12-2018, Tentative Seniority List of B-18 female Senior Instructor Physical Education was circulated wherein the name of appellant was figured at S. No. 55. Being senior, proper place was not assigned to her. (Copy as annex "I")
- 11. That on 02-03-2021, Final Seniority List of Senior Instructors Physical Education B-18 (F) with covering letter dated 26-10-2021 was circulated wherein the name of appellant was placed at S. No. 48 instead of proper place. The said List was shown as draft seniority list and the department is going to make promotion over this list. (Copy as annex "J")
- 12. That on receipt of the said seniority list, appellant submitted representation on 29-10-2021 before the authority which met dead response till date. (Copy as annex "K")

Hence, this appeal, Inter alia on the following grounds:-

GROUNDS

- a. That appellant was initially appointed on 26-11-1997 as PET and was promoted to the post of DPE on 12-12-2006. She was further promoted to the Senior Instructor B-18 on 23-05-2018. Similarly, contesting respondents was initially appointed on 15-11-1984 and promoted to the post of DPE on 18-02-2003 B-16, while she was awarded B-17 on 14-10-2013 and B-18 on 18-04-2019. Same is the position of other respondents but instead contesting respondents were shown senior to appellant for no legal reason.
- b. That on 06-05-2006, result of appellant was declared by admitting her two degree of Master of Science and thereafter on 13-11-2007, she was upgraded to B-17 from B-16 on regular basis and was then entitled to seniority.

As against contesting respondents admitted to the degree of M. Sc and upgraded to the post of B-17 on regular basis.



That as and when seniority list was issued by the respondents, the

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- d. That every seniority list as per the judgments of the apex court gives fresh cause of action to an aggrieved person to assail the same for her vested right.
- e. That as and when appellant filed representation for correction of the seniority list of B-18, Deputy Director (F & A) Elementary & Secondary Education KP, Peshawar forwarded the same to R. No. 02 on 06-12-2021 to look into the matter and to promote seniors amongst all the eligible candidates to B-19, meaning thereby that the former seniority lists were not prepared as per the mandate of law and seniority rules.
- f. That in preparing the seniority lists, seniority rules were not taken into task and juniors were placed seniors only and only on the pretext that the seniority positions of all candidates would remain intact. With due respect it is not the law to destroy legal right of a servant, but seniority shall follow seniority rules and not Notification dated 13-11-2007.
- g. That the impugned seniority list dated 02-03-2021 is not based on law and seniority rules but is based on favoritism, discrimination and malafide by placing seniors, juniors and their future rights were infringed for no legal reason and justification.
- h. That in numerous letters, respondents showed reservation over the seniority lists, meaning thereby that the same were not based on legal footing.
- i. That though the seniority lists were circulated time and again by the respondents but no merit position was assigned to the contesting respondents viz-a-viz appellant.
- j. That for the first time service structure was given in the year 2009 to the employees of the department and if such is the position, then the former exercise was of no avail to contesting respondents but was a futile exercise. All such actions were not based on law but were based on favoritism, discrimination and malafide.

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It is, therefore, most humbly prayed that on acceptance of appeal, the impugned seniority list dated 02-03-2021 of R. No. 01 be set aside by placing appellant senior to contesting respondents, etc, with such other relief as may be deemed proper and just the circumstances of the case.

Appellant

Through

Saadullah Khan Marwat

Arbab Salful Kamal

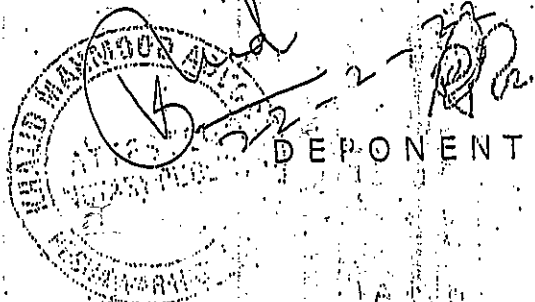
Amjad Nawaz

Advocates

Dated: 10-01-2022

AFFIDAVIT

I, Hussan Basri W/O S. Asghar Ali Shah, Senior Instructor, Physical Education, GGHSS Wadpaga, Peshawar (Appellant), do hereby solemnly affirm and declare that contents of Service Appeal are true and correct to the best of my knowledge and belief.

 DEPONENT

CERTIFICATE:

As per instructions of my client, no such like Service Appeal has earlier been filed by the appellant before this Hon'ble Tribunal.

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ADVOCATE

Khuzdar District
Service Tribunal

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Service Appeal No. 232/2022
Titled "Hussan Basri-vs-Director Elementary and Secondary Education, Khyber
Pakhtunkhwa, Peshawar and others".

ORDER

27th July, 2023

KALIM ARSHAD KHAN, CHAIRMAN, Learned counsel for the
appellant present. Mr. Fazal Shah Mohmand, Additional Advocate General
for official respondents present.

02. At the very outset learned counsel for the appellant produced copy of
notification dated 29.04.2014 and contended that vide this notification the
promotion of the appellant and others, mentioned in the notification from
the post of Director Physical Education (DPE) (BPS-16 to BPS-17) on
regular basis was given effect from 13.11.2007 instead of 19.05.2009.
Learned counsel for the appellant submitted that in the impugned seniority
list of 02.03.2021 the date of promotion of the appellant was still written as
19.05.2009 instead of 13.11.2007 and submitted that the appeal might be
disposed of with the direction to the official respondents to incorporate the
date of promotion of the appellant from BPS-16 to BPS-17 as 13.11.2007 in
the impugned seniority list. The learned Additional Advocate General when
confronted with the situation submitted that the department ought to have
mentioned the correct date of promotion in the notification. The appeal is
thus disposed of in the above terms. Costs to follow the event. Consign.

03. Pronounced in open court in Peshawar and given under our
hands and seal of the Tribunal on this 27th day of July, 2023.

(Fareeha Pual)
Member (Executive)

(Kalim Arshad Khan)
Chairman

Certified to be true copy
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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Date of Presentation of Application 02/08/03
Number of Words 17
Copying Fee 5/50
Urgent 15/1
Total 15/1
Name of Copyist Shahmukh J. M.
Date of Completion 02/08/03
Date of Delivery of Copy 02/08/03

C

12

To

1. Director, Elementary and Secondary Education, KP, Peshawar.
2. Secretary, Government of KP, Elementary and Secondary Education Department, Peshawar.

Subject: - COMPLIANCE OF ORDER DATED 27-07-2023 OF THE HON'BLE SERVICE TRIBUNAL, PASSED IN SERVICE APPEAL NO. 231/2022 IN LETTER AND SPIRIT.

Respected Sir,

Please comply with the order dated 27-07-2023 of the Hon'ble Service Tribunal, KP, Peshawar passed in the said Service Appeal in letter and spirit and obliged. (Certified copy attached)

More so, the seniority list of B-17 and B-18 be corrected and appellant date of promotion be made with effect from 13-11-2007 and appellant be placed at her proper place in both the seniority lists.

Furthermore the ongoing process of promotion be stopped till the correction of seniority list of B-18 in accordance with judgment of the hon'ble Tribunal and thereafter promotions be made from amongst the eligible incumbents.

Humble Appellant

H. Basri
Hussan Basri
W/O S. Asghar Ali Shah.

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Secretary ESS Edu. Deptt.
Distt No.

4772
4-8-23



GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT

No. SO (PSB) ED/1-25/2022/PSB
Dated Peshawar, the July 07, 2023

To

All Administrative Secretaries
to the Govt. of Khyber Pakhtunkhwa.

Subject: STREAMLINING OF PROVINCIAL SELECTION BOARD (PSB)
MEETINGS.

Dear Sir,

I am directed to refer to this Department letter of even No. dated 23.12.2021 on the subject and to say that the PSB meeting is expected to be held in 1st week of August 2023. The working papers (complete in all respects) for promotion to be placed before the PSB meeting may be furnished well before the cut off date which is fixed as 21.07.2023. Most importantly, working papers of the officers who are at the verge of retirement and falling in the promotion zone must be forwarded on priority basis.

2. I am further directed to say that no working paper will be accepted/received after the above mentioned cut off date and that the Administrative Department will be responsible for any delay in submission of working papers and the resultant deprivation of any officer from promotion/consideration.

Yours faithfully,

[Signature]
SECTION OFFICER (PSB) 7/7/23

ENDST/EVEN NO. & DATE.

copy is forwarded to

1. All Section Officers in Regulation Wing of Establishment Department.
2. PS to Secretary Establishment, Govt. Khyber Pakhtunkhwa
3. PS to Special Secretary Regulation Establishment Department.
4. PAs to Additional Secretaries (Reg-I, & II), Establishment Department.
5. PAs to Deputy Secretaries (Reg-I, II & III), Establishment Department.

[Signature]
SECTION OFFICER (PSB)

Attested
[Signature]

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to be true copy
[Signature]

بعد الت چاپ سرسٹریٹ ٹریڈ پورٹل صورتیہ سندھ لیسٹاؤر

منجانب ایڈوائس

سجاد حسن بصری بنام محمد کرم علی و خیرہ

دعوی اپیل

باسمہ تعالیٰ

© ————— ©

مقررہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ ان مقام پشاور کیلئے اسٹاکس خان سرورتنے ایڈووکیٹ ہائی کورٹ کو وکیل مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا نیز وکیل صاحب کو کرنے باہمی نامہ و اقرار ثالثہ و فیصلہ بر خلاف دینے جواب دہی اور اقبال دعویٰ اور لہجہ و لگاری کرنے اجراء اور وصولی چیک و در پیہ اور مرضی دعویٰ اور درخواست ہر قسم کی تعلیق اور اس پر دستخط کرنے کا اختیار ہوگا نیز لہجہ و لگاری عدم پیروی یا لگاری یک طرفہ یا اپیل کی برآمدگی اور ترمیمی نیز دائر کرنے اپیل نگران و نظر ثانی و پیروی کرنے کا اختیار ہوگا اور لہجہ و لگاری ضروری مقدمہ بنا کر کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مشاور قانونی کو اپنے ہمراہ یا اپنی بجائے تفریحا اختیار ہوگا اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ بالا اختیارات حاصل ہوں گے اور اس کا سامنے پروا نہ منقولہ قبول ہوگا اور دوران مقدمہ میں جو شرحہ و ترجمانہ التوا مقدمہ کے سبب سے ہوگا اس کے مستحق وکیل صاحب موصوف ہوں گے نیز بقایا دفعہ چہ کی وصولی کرنے کا بھی اختیار ہوگا اگر کوئی تادم بخ پیشی مقام فرورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکور کریں۔

لہذا دکالت نامہ رکھ دیا کہ سند ہے۔

10-08-23 المرقوم

التعبید التعبید التعبید

11
 درباب سیف اتمال
 ایڈووکیٹ

محمد کرم علی
 سٹریٹ ٹریڈ پورٹل
 ایڈووکیٹ

Handwritten signature

محمد کرم علی
 ایڈووکیٹ