



17th April, 2023 1. Appellant in person present. Mr. Muhammad Jan,
District Attorney for the respondents present.

2. Appellant seeks adjournment. Last chance is given to
the appellant. To come up for arguments on 14.06.2023
before D.B. P.P given to the parties.



(Fareeha Paul)
Member (E)


(Kalim Arshad Khan)
Chairman

Adnan Shah, P.A

14th June, 2023 01. Counsel for the appellant and Mr. Muhammad Jan, District
Attorney for the respondents present.

02. Learned counsel for the appellant requested for adjournment
for further preparation of arguments. Granted but as last chance.
To come up for arguments on 02.10.2023 before the D.B. Parcha
Peshi given to the parties.


(Fareeha Paul)
Member (E)


(Kalim Arshad Khan)
Chairman

Fazle Subhan P.S


SCANNED
KF3T
Peshawar

SCANNED
KF3T
Peshawar

21.09.2022

Learned counsel for the appellant present. Mr. Hussain Ali, ADEO (Litigation) alongwith Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present.

Reply/comments on behalf of respondents submitted, copy of which handed over to learned counsel for the appellant. Adjourned. To come up for rejoinder, if any, as well as arguments on 02.12.2022 before the D.B.


(Salah-Ud-Din)
Member (J)

2-12-22

*Deleted from the list to
come up on the next date*

20-2-23



Reader.

20.02.2023

Appellant present in person. Naseer Ud Din Shah, Learned Assistant Advocate General for the respondents present.

Mrs. Rozina Rehman, Learned Member (Judicial) is on leave, therefore, case is adjourned to 17.04.2023 for arguments before D.B.

SCANNED
KPST
Peshawar


(Muhammad Akbar Khan)
Member (E)

24.02.2022

Due to retirement of the Worthy Chairman, the Tribunal is defunct, therefore, case is adjourned to 12.05.2022 for the same as before.


Reader

12.05.2022

Counsel for appellant present.

Security and process fee has not been deposited by the appellant. Learned counsel for appellant is directed to deposit the same by today, where-after, notices be issued to respondents for reply/comments. To come up for written reply/comments on 19.07.2022 before S.B.

Rs-500/-
Appellant Deposited
Security & Process Fee

A. J. Hashmi
12/5/22



(Rozina Rehman)
Member (J)

SCANNED
KPST
Peshawar

19.07.2022

Learned counsel for the appellant present. Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present.

Reply/comments on behalf of respondents not submitted. Learned Additional Advocate General seeks time to contact the respondents for submission of reply/comments. Adjourned. To come up for reply/comments on 21.09.2022 before S.B.



(Mian Muhammad)
Member (E)

16.12.2021

Counsel for the appellant present. Preliminary arguments heard.

The appellant has approached the Service Tribunal through the service appeal submitted on 13.10.2021 under Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974. Learned counsel for the appellant started his arguments stating that the appellant is aggrieved of the impugned order dated 20.01.2021 whereby he was awarded the major penalty of "compulsory retirement from service". He submitted departmental appeal on 08.02.2021 upon which appellate order was passed vide notification dated 07.10.2021 and departmental appeal was rejected. It was further contended that the order passed by the competent authority as well as appellate authority are void ab-initio and null and void because no enquiry in the prescribed manner has ever been conducted and the appellant was not provided with the opportunity of personal hearing. Hence, the proceedings were not conducted as per law and ends of justice have not been met before major penalty was imposed.

The appeal is admitted to regular hearing subject to all just legal objections including limitation. The appellant is directed to deposit security and process fee within 10 days. Thereafter notices be issued to respondents for submission of reply/comments. To come up for reply/comments on 24.02.2022 before S.B.

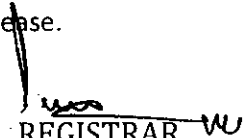


(Mian Muhammad)
Member(E)

Form- A

FORM OF ORDER SHEET

Court of _____

Case No. - 7586 /2021

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	13/10/2021	<p>The appeal of Mr. Misbah ud Din presented today by Mr. Sayed Aziz Ud Din Kakakhel Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR W</p> <p>This case is entrusted to S. Bench at Peshawar for preliminary hearing to be put up there on <u>16/12/21</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
2-		

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No. _____/2021

Misbah Ud Din appellant

Versus

Govt. of KPK & others Respondent

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6.	Copy of Medical Leave Application dated 14-01-2021 along with Medical Prescription with better copy	C & D	13-15
7.	Copy of Compulsory Retirement Order dated 20-01-2021	E	16
8.	Copy of Departmental Appeal dated 19-02-2021	F	17-18
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DATED: 13-10-2021

Appellant
Through

SAYED AZIZ UD DIN KAKAKHEL (NOWSHERA)

Advocate High Court

Mobile# 0314-9664440

BEFORE THE HON'BLE SERVICE TRIBUNAL PESHAWAR

S.A No. _____/2021

Mr. Misbah Ud Din (Naib Qasid) S/o Farid Ud Din R/o Moh: Kaji Khel, Village
P/o Ziarat kaka Sahib Tehsil & District Nowshera.....Appellant

VERSUS

1. Govt. of KPK through Sectary (E&S) Education Civil Secretariat Peshawar
2. Director (E&S) Education KPK, Elementary & Secondary School Directorate G.T Road Peshawar
3. District Education Officer (Malc), G.T Road Nowshera Saddar, District Nowshera.....Respondents

APPEAL U/S -4 OF THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL ACT 1974 AGAINST THE ORDER DATED 20-01-2021 WHEREBY THE APPELLANT HAS BEEN AWARDED MAJOR PUNISHMENT OF COMPULSORY RETIREMENT AND THEREAFTER THE APPELLANT PREFERRED DEPARTMENTAL APPEAL NO. 1626 DATED 19-02-2021 AGAINST THE ORDER DATED 20-01-2021 WHICH HAS ALSO BEEN REJECTED ON 07-10-2021 WITHOUT ANY COGENT REASON.

PRAYED:

ON ACCEPTANCE OF THIS APPEAL BOTH THE IMPUGNED ORDERS DATED 20-01-2021 & 07-10-2021 MAY PLEASE BE SET ASIDE AND THE APPELLANT MAY PLEASE BE REINSTATED IN SERVICE ALONG WITH ALL BACK BENEFITS. ANY OTHER RELIEF WHICH THIS AUGUST TRIBUNAL DEEMS FIT THAT MAY ALSO BE AWARDED TRIBUNAL IN FAVOUR APPELLANT.

RESPECTFULLY SHEWETH:

1. That on 21-09-2006 Appellant has been appointed as Naib Qasid at Govt. Middle School Bahadar Khel, Nowshera.
2. That the Appellant performed his duty regularly and with full devotion and no complaint whatsoever has been made against the appellant.
3. That while posted at GMS Bahadar Khel, Nowshera the Appellant was verbally ordered to perform his duty at the office of respondent No.3 Department w.c.f Jan 2020 without assigning any reason.

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4. That on 20-11-2020 the Respondent No. 3 issued Show Cause Notice against Appellant which has been served upon him on 01-12-2020 and then he respectfully submitted his reply on 04-12-2020.

(Copy of Show Cause Notice Dated 20-11-2020 and reply Dated 04-12-2020 are attached as Annexure A&B Respectively along with better copies)

5. That on 14-01-2021 the Appellant fell ill and three days "Bed Rest" were advised by Medical Officer, thus, the Appellant submitted his application to Respondent No.3 for grant of Medical Leave which was accepted accordingly.

(Copy of Application dated 14-01-2021 & Medical Prescription are attached as Annexure C&D Respectively along with Better Copy)

6. That on 20-01-2021 the Respondent No.3 issued a Notification of Compulsory Retirement of Appellant without any legal justification and opportunity of being heard.

(Copy of Compulsory Retirement Order Dated 20-01-2021 is attached as Annexure E)

7. That thereafter on 19-02-2021 the Appellant being feel aggrieved preferred Departmental Appeal to Respondent No.2.

(Copy of Appeal Dated 19-02-2021 as attached as Annexure F)

8. That during Departmental Appeal the Respondent No.2 ordered for inquiry and appointed an Inquiry Officer, thus, the Inquiry Officer during Inquiry recorded the statement of Appellant and conducted thoroughly Inquiry and then submitted his report with the recommendation of "Re-instate" of Appellant.

(Copy of Statement of Appellant & Report of Inquiry Officer are attached as Annexure G&H)

9. That thereafter on 07-10-2021 the Respondent No.2 without has gone through the record of the Appeal of the Appellant and issued non-sponding Order and rejected the Appeal of Appellant without any solid finding and substance, hence feeling aggrieved, the Appellant prefer the instant Service Appeal against the orders dated 20-01-2021 and 07-10-2021 before this Honorable Service Tribunal on the following grounds inter alia: *(copy attached as*

Annex I.)

3

GROUNDS:

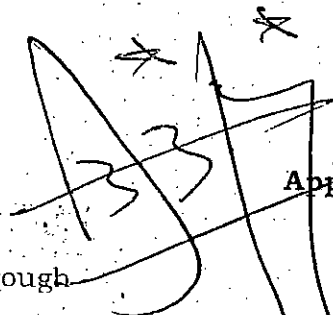
- A. That the impugned orders dated 20-01-2021 and 07-10-2021 are null and void abinitio because they have been passed without fulfilling codal formalities.
- B. That no charge sheet has been served or communicated to the Appellant in this respect the Appellant relied upon a judgment reported on 2009 SCMR Page: 615.
- C. That no regular inquiry has been conducted by the Respondent Department and no charge of personal hearing has been provided to the Appellant in this respect the Appellant relied upon the judgment dated 2008 SCMR Page: 1369.
- D. That no final show cause notice has been issued and communicated to the Appellant by Respondent Department before imposing the major penalty in this respect the Appellant relied upon a judgment reported on 2009 PLC (CS) 176 and no notice of absence has been issued by the Respondent Department.
- E. It is a well settled maxim no one can be condemned unheard because it is against the natural justice of law in this respect the Appellant relied upon a judgment reported on 2008 SCMR Page: 678.
- F. That neither the reply of Appellant on Show Cause Notice has been considered nor any opportunity of cross examination has been provided to the Appellant.
- G. That the punishment has been given by the Respondent Department is harsh one.
- H. That the Appellant performed his duties regularly and with full devotion and even in the Pandemic of first phase i.e covid-19 initial days in Pakistan, when specifically when all type of activities were restricted in the Country by the Govt but even then the Appellant regularly attended and performed his duty in the office of Respondent No.3 on time while daily traveling from his far away village and covered almost more than 14 Km through "walk", but the Respondents ignored all these facts and circumstance of the duty of the Appellant and award illegally harsh punishment.

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- I. That any other ground not raised here may graciously be allowed to be raised at the time of arguments on the instant service appeal.

It is therefore, most humbly prayed that on acceptance of this Appeal both the impugned orders dated 20-01-2021 & 07-10-2021 may please be set aside and the appellant may please be re-instated in service with all back benefits.

Any other relief, not specifically asked for may also graciously be extended in favour of the Appellant in the circumstances of the case.



Appellant

Through

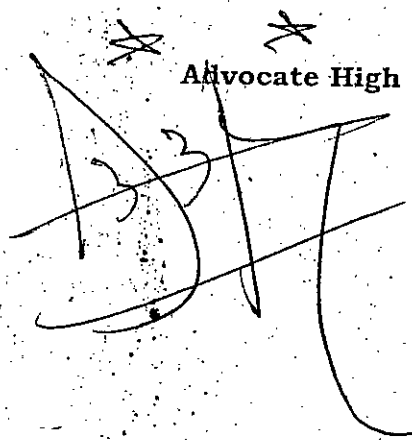
SYED AZIZ UD DIN KAKA KHEL (Nowshera)

Advocate High Court

Dated: 13-10-2021

CERTIFICATE:

As per information furnish by my client, no such like appeal for the same subject matter has earlier been filed before this hon'ble Tribunal or any form.



Advocate High Court

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BEFORE THE HON'BLE SERVICE TRIBUNAL PESHAWAR

S.A No. _____/2021

Misbah Ud Din Appellant

VERSUS

Govt. of KPK & Others Respondents.

AFFIDAVIT

I, Mr. Misbah Ud Din (Naib Qasid) S/o Farid Ud Din R/o Moh: Kaji Khel, Village P/o Ziarat kaka Sahib Tehsil & District Nowshera, do hereby solemnly affirm and declare that all the contents of the Instant Appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.

DEPONENT

Misbah
Qasid

Identify by:



SYED AZIZ UD DIN KAKA KHEL
Advocate High Court.



2

BEFORE THE HON'BLE SERVICE TRIBUNAL PESHAWAR

S.A No. _____/2021

Misbah Ud Din Appellant

VERSUS

Govt. of KPK & Others Respondents

ADDRESSES OF PARTIES

PETITIONER

Misbah Ud Din (Naib Qasid) S/o Farid Ud Din R/o Moh: Kaji Khel, Village P/o Ziarat kaka Sahib Tehsil & District Nowshera

RESPONDENTS

1. Govt. of KPK through Sectary (E&S) Education Civil Secretariat Peshawar
2. Director (E&S) Education KPK, Elementary & Secondary School Directorate G.T Road Peshawar
3. District Education Officer (Male), G.T Road Nowshera Saddar, District Nowshera

Appellant

Through

SYED AZIZ UD-BIN KAKA KHEL (Nowshera)

Advocate High Court

Dated: 13-10-2021

7

BEFORE THE HON'BLE SERVICE TRIBUNAL PESHAWAR

S.A No. _____/2021

Misbah Ud Din Appellant

VERSUS

Govt. of KPK & Others Respondents

APPLICATION FOR CONDONATION OF DELAY (IF ANY)

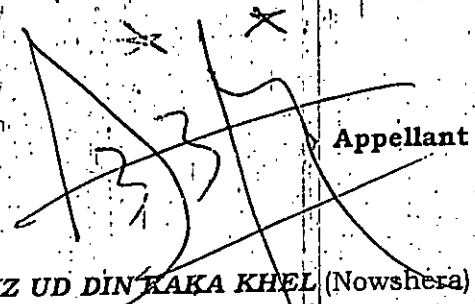
RESPECTFULLY SHEWETH:

Petitioner Submits as under:

1. That the above mentioned Appeal has been filed before this Hon'ble Tribunal where in no date of hearing has been fixed yet.
2. That the Department Appeal of the Appellant has been rejected on 07-10-2021 which has been communicated to the Appellant later on, hence filed the instant Service Appeal.
3. That the impugned orders are void orders and no limitation run against the void orders.
4. That the final order was communicated to the Appellant after rejection of Department Appeal by the Respondent No.2.
5. That the impugned orders, dated 20-01-2021 and 07-10-2021 are void orders because they have been passed without fulfilling the codal formalities.
6. That there are number of precedents of the Supreme Court of Pakistan which provides that the cases shall be decided on merits rather than technicalities.

It is, therefore, requested that the limitation period (if any) may please be condone in the best interest of justice.

Through



Appellant

SYED AZIZ UD DIN KAKA KHEL (Nowshera)
Advocate High Court.

Dated: 13-10-2021

8

BEFORE THE HON'BLE SERVICE TRIBUNAL PESHAWAR

S.A No. _____/2021

Misbah Ud DinAppellant

VERSUS

Govt. of KPK & OthersRespondents

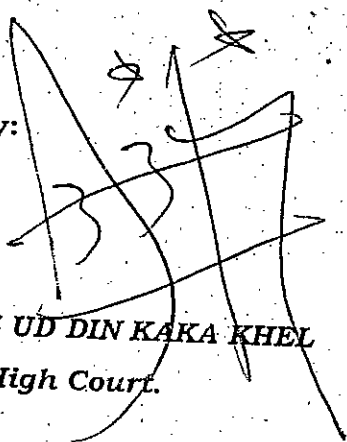
AFFIDAVIT

I, Mr. Misbah Ud Din (Naib Qasid) S/o Farid Ud Din R/o Moh: Kaji Khel, Village P/o Ziarat kaka Sahib Tehsil & District Nowshera, do hereby solemnly affirm and declare that all the contents of the Instant Appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.

DEPONENT

Misbah
Qasid

Identify by:



SYED AZIZ UD DIN KAKA KHEL
Advocate High Court.



13-10-21

OFFICE OF THE DISTRICT EDUCATION OFFICER (M) NOWSHERA
(Phone: 0923-9720228 Fax: 0923-202288)

SHOW CAUSE NOTICE

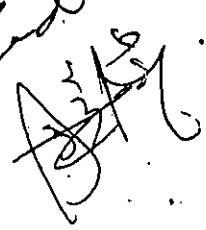
Mr. Sajjad Akhtar Iqbal, District Education Officer (Male) Nowshera, under the Shyber
 Misbah Ud Din Class-IV GMS Bahadar Khel Nowshera.
 That consequent upon the report submitted by the inquiry officer conducted against you
 regarding your absenteeism by (Mr. Gul Nawab Shah Principal GHSuzar Behsud)
 and other concerned papers including your defense before the inquiry committee, the material on record
 is as follows:
 I am satisfied that you have committed the following acts/omissions specified in rule 3 of the
 said rules:
 A. That you are absent from duty w.e.f 14-03-2020 till date.
 B. That a notice was served upon you vide this office Order No. 5511-14 dated 07-10-2020
 but despite the notice you failed to report for your duty.
 3. As a result therefore, I, as competent authority, have tentatively decided to impose upon you
 the major penalty of Removal from service under rule 4(a) (b) (iii) of the said rules.
 4. It is also recommended by the enquiry officer/Enquiry committee payment made to you in this
 regard from the date of absenteeism (14-03-2020) till date will be recovered through District
 Revenue Officer and will be deposited into Govt treasury.
 5. You are, therefore, required to show cause as to why the aforesaid penalty should not be
 imposed upon you and also intimate whether you desire to be heard in person.
 6. If no reply to this notice is received within seven days or not more than fifteen days of its
 delivery, it shall be presumed that you have no defense to put in and in that case an ex-par tee action
 shall be taken against you.


(Sajjad Akhtar Iqbal)
 Competent Authority / District Education Officer
 (Male) Nowshera

Endstt: No. 7712-15 /DEO (M) NSR/EA-S/File Show Case/Misbah Ud Din Class-IV/ Dated Nowshera the 20/11/2020

Copy of the above is forwarded for information to the:-

1. Director, Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
2. Senior District Accounts Officer Nowshera
3. Deputy DEO (M) Nowshera with the remarks to stop the pay of the official immediately
4. Mr. Misbah Ud Din GMS Bahadar Khel NSR.

Attest



 District Education Officer
 (Male) Nowshera

(10)

BETTER COPY

OFFICE OF THE
DISTRICT EDUCATION OFFICER (MALE)
NOWSHERA.

(Office Phone#0923-9220228, Fax#0923-9220228)

SHOW CAUSE NOTICE.

I, Mr. Sajjad Akhtar Iqbal District Education Officer (MALE), Nowshera, under the Khyber Pakhtunkhwa Government Servants Efficiently & Disciplinary Rules 2011, do hereby serve you, Mr. Misbah-Ud-Din Class-IV GMS Bahadar Khel Nowshera.

1. The Consequent upon the report submitted by the inquiry officer conducted against you regarding your Absenteeism by (Mr. Gul Nawab Shah Principal GHS DAG Behsud).
2. Ongoing through the findings of the inquiry officer/inquiry committee, the material on record and other connected papers including your defense before the inquiry officer.

I am satisfied that you have committed the following acts/omissions specified in rule 3 of the said rules:

- A. That you are absent from duty w.e.f 14-03-2020 till date.
- B. That a notice was served upon you Vide: this office Endstt No: 5511-14 date: 07-10-2020

But despite the notice you failed to report for your duty.

3. As a Result Therefore, I, as competent authority, have tentatively decided to impose upon you the major Penalty of Removal from Service under rule 4(l) (b) of the said rules.
4. It is also recommended by the enquiry officer/Enquiry committee payment made to you in this regard from the date of Absenteeism (14-03-2020) till date will be recovered through District Revenue Officer and will be deposited into Govt treasury.
5. You are, therefore, required to show cause as to why the aforesaid penalty should not be imposed upon you and also intimate whether you desire to be heard in person.
6. If no reply to this notice is received within seven days or not more than fifteen days of its delivery, it shall be presumed that you have no defense to put in and in that case an Ex-Parte action shall be taken against you.

(Sajjad Akhtar Iqbal)

Competent Authority/District Education Officer
(Male) Nowshera

Endstt: No.7712-15 /DEO (MALE) NSR/EA-5/File. Show Case/Misbah Ud Din Class-IV/Dated Nowshera the 20/11/2020 Copy of the above is forwarded for information to the:-

1. Director, Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
2. Senior District Accounts Officer Nowshera
3. Deputy DEO (M) Nowshera with the remarks to stop the pay of the Official immediately.
4. Mr. Misbah Ud Din GMS Bahadar Khel NSR.

District Education Officer
(MALE) Nowshera

پورٹ چٹاب ڈسٹرکٹ ایجوکیشن آفیسر صاحب (فرواڈہ) نوشہرہ

بچہ آپ

جناب عالی!

گزارش کی جاتی ہے کہ مجھے مورخہ یکم دسمبر 2020 کو شوکار نوٹس جاری کیا گیا۔ میں عرضہ 14 سال سے محکمہ تعلیم میں بطور کلاس فور خدمات سرانجام دے رہا ہوں۔ میرا والد اسی محکمہ میں 22 سال بطور سکول ٹیچر خدمات سرانجام دینے کے بعد بوجہ مہلک بیماری وفات پائے۔ حالانکہ تانوں کے مطابق مجھے Deceased Sons کوڈ کے تحت کسی اچھے پوسٹ پر بھرتی کرنا چاہئے تھا مگر مجھے کلاس فور بھرتی کیا گیا۔ اور اس وقت سے لیکر آج تک باقاعدہ اپنی ڈیوٹی سرانجام دے رہا ہوں۔ مجھے انگریزی کا کوئی علم نہ ہے اور آگاہ کیا گیا ہے۔ میں جب گورنمنٹ مڈل سکول بہادر خیل میں ڈیوٹی سرانجام دے رہا تھا تو جنوری 2020 میں مجھے ذہنی طور پر بدانت کی جی ٹی کہ آپ کے دفتر میں باقاعدہ خدمات سرانجام دوں۔ تو میں اس وقت سے لیکر آج تک باقاعدہ طور پر آپ کے دفتر میں خدمات سرانجام دے رہا ہوں۔ یہاں تک کہ کرونا وائرس کے پیریزڈ میں جب ٹرائیڈیٹ مکمل طور پر بند تھا تو میں اسے گاؤں زیارت کا صاحب سے 10 کلومیٹر پیدل سفر کر کے دفتر میں اپنی حاضری لگتی بناتا رہا ہوں۔ عرضہ 04 ماہ سے میری محنتوں کے نتیجے میں بے جا طور پر بند کر رکھی ہے۔ اور میں اس کے باوجود 70 ہزار روپے سے زائد خرچہ لیکر اپنی زندگی گزارنے کے ساتھ ساتھ اپنی ڈیوٹی سرانجام دے رہا ہوں۔

جناب عالی! مجھے کسی انگریزی آفیسر نے نہ سنا ہے اور نہ آگاہ کیا گیا ہے۔ میرے خلاف بے جا طور پر الزامات کے تحت کارروائی ہو رہی ہے۔

لہذا مہربانی فرما کر شوکار نوٹس خارج فرما دیا جائے۔ التعمیر: 04-12-2020

مصباح الدین

Najib Gosid S.M.S Bahaduri Khel Nowshera

مصباح الدین

Attested
[Signature]

Received

[Signature]

04/12/20
Asst. Insp. DEO (M)
Nowshera

BETTER COPY

بخدمت جناب ڈسٹرکٹ ایجوکیشن آفیسر صاحب (مردانہ) نوشہرہ

جواب

جناب عالی!

گزارش کی جاتی ہے کہ مجھے مورخہ یکم دسمبر 2020 کو شوکار نوٹس جاری کیا گیا۔ میں عرصہ 14 سال سے محکمہ تعلیم میں بطور کلاس فور خدمات سر انجام دے رہا ہوں۔ میرا والد اسی محکمہ میں 22 سال بطور سکول ٹیچر خدمات سر انجام دینے کے بعد بوجہ مہلک بیماری وفات پائے۔ حالانکہ قانون کے مطابق مجھے Deceased Sons کوٹہ کے تحت کسی اچھے پوسٹ پر بھرتی کرنا چاہئے تھا مگر مجھے کلاس فور بھرتی کیا گیا۔ اور اس وقت سے لیکر آج تک باقاعدہ اپنی ڈیوٹی سر انجام دے رہا ہوں۔ مجھے انکواری کا کوئی علم نہ ہے اور آگاہ کیا گیا ہے۔ میں جب گورنمنٹ مڈل سکول بہادر خیل میں ڈیوٹی سر انجام دے رہا تھا تو جنوری 2020 میں مجھے زبانی طور پر ہدایت کی گئی کہ آپ کے دفتر میں باقاعدہ خدمات سر انجام دوں۔ تو میں اس وقت سے لیکر آج تک باقاعدہ طور پر آپ کے دفتر میں خدمات سر انجام دے رہا ہوں۔ یہاں تک کہ کرونا وائرس کے پیریڈ میں جب ٹرانسپورٹ مکمل طور پر بند تھا تو میں اپنے گاؤں زیارت کا صاحب سے 10 کلو میٹر پیدل سفر کر کے دفتر میں اپنی حاضری یقینی بناتا رہا ہوں۔ عرصہ 04 ماہ سے میری تنخواہ محکمہ نے بے جا طور پر بند کر رکھی ہے۔ اور میں اس کے باوجود -/70 ہزار روپے سے زائد قرضہ لیکر اپنی زندگی گزارنے کے ساتھ ساتھ اپنی ڈیوٹی سر انجام دے رہا ہوں۔

جناب عالی! مجھے کسی انکواری آفیسر نے نہ سنا ہے اور نہ آگاہ کیا ہے۔ میرے خلاف بے جا طور پر الزامات کے تحت کارروائی ہو رہی ہے۔

لہذا مہربانی فرما کر شوکار نوٹس خارج فرمایا جائے۔

الم رقوم: 04-12-2020

عرض

Attested
2020
12/04

مصباح الدین

نائب قاصد GMS بہادر خیل نوشہرہ

گندھت میں ڈسٹریکٹ ایجوکیشن آفیسر (پبلک سکول) کے لئے
Medical Leave

مقامی ا در خواست گزار حسب ذیل عرض کرتا ہے

یہ ا در خواست گزار اس قلم میں عرصہ 14 سال
مقرر کیا گیا ہے (تاکت نامہ) ملازم ہے اور سابقہ
مقرر یہ ہے کہ اس کے لئے تمام شرائط جمع ہیں

یہ ا در خواست گزار سخت بیمار ہو چکا ہے اور
زماورہ ملازمی کے لئے ڈی ہسپتال کے قیام کے لئے
نے تین دن تک آرام بیمار خانہ میں بھیج دیا گیا
ہے آئے سے تمام ہے۔ (نقل اصل ا در خواست شدہ اس وقت)

لکھنے میں یہاں فرما کر ا در خواست گزار کو عین دن
تاکت نامہ پبلک سکول ملازم نامہ فراوانی

مقامی ا در خواست گزار
14/1/1961

مستحق العون و مرید امین (م)

مقامی ا در خواست گزار کے لئے تمام شرائط جمع ہیں

Attest
[Signature]

14/1/1961

۱۶

بخدمت جناب ڈسٹرک ایجوکیشن آفیسر (میل) ضلع نوشہرہ

درخواست برائے Medical Leave

جناب عالی! درخواست گزار حسب ذیل عرض کرتا ہے

1- یہ کہ درخواست گزار اس محکمہ میں عرصہ 14 سال سے بطور کلاس فور (نائب قاصد) ملازم ہے اور باقاعدہ طور پر اپنے فرائض سرانجام دے رہا ہے

2- یہ کہ درخواست گزار سخت بیمار ہو چکا ہے۔ اور زیارت کاکا صاحب کیلنگری ڈی ہسپتال کے مجاز ڈاکٹر صاحب نے تین دن تک آرام صادر فرمائے ہوئے ہے جسکی وجہ سے آنے سے قاصر ہے (نقل اصل درخواست ہذا کے ساتھ لف ہے)

لہذا مہربانی فرما کر درخواست گزار کو تین دن تک Medical Leave صادر فرمائی جائے

المرقوم: 14/01/2021

العرض

مصباح الدین ولد فرید الدین (مرحوم) کلاس فور

سکنہ کاکا صاحب ضلع نوشہرہ

6161

14/01/2020

Attested
3
[Signature]

15

Amra N 13

No. 76

Rs. 10/-

OUT-PATIENTS DEPARTMENT

NAME

Misbahuddin

YEARLY NO.

DATE

14 JAN 2021

DISEASE

FACE VALUE RIPEES 10/-

HO

Depression

Age 42y

Rest for 3
days

Imam

Incharge
Category B Hospital
Zisat Naka Sahib

Attested

[Handwritten signature]



OFFICE OF THE
DISTRICT EDUCATION OFFICER (MALE)
NOWSHERA
(Office Phone#0923-9220228, Fax#0923-9220228)

16

Amma E

NOTIFICATION.

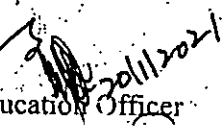
- 1 Whereas, Mr Misbah ud din Naib Qasid GMS Bahadar Khel Nowshera was proceeded under the Khyber Pakhtun Khwa (Efficiency & Disciplinary) rules, 2011 on the charges of willful absenteeism from his duty.
- 2 And whereas, Mr. Gul Nawab Shah Principal GHS Dag Behsud is appointed as enquiry officer Vide this office Notification No. 4428-34 dated: 18-11-2019.
- 3 And whereas, the enquiry officer having examine the charges evidence on record submitted report to the undersigned.
- 4 And whereas, a show cause notice served upon Mr Misbahud Din Naib Qasid GMS Bahadar Khel Nowshera Vide this office Endstt. No: 7712-15 dated: 20-11-2020.
- 5 And whereas, the authority having considered the charges, evidence on the record as per report of enquiry Officer and giving the opportunity to perform duty in the main office of DEO(M), but failed, as of the opinion that the charges leveled against him have been proved.
- 6 Now, therefore, in exercises of the powers conferred by the Khyber Pakhtunkhwa Govt Servants (Efficiency & Disciplinary) rules 2011, Section 4 (B) (iii), the competent authority is pleased to impose the major penalty of Compulsory Retirement upon Mr Misbah ud Din Naib Qasid office of the DEO (M) Nowshera.

(Sajjad Akhtar Iqbal)
District Education Officer (M)
Nowshera

Endstt. No. 10202-205 /DEO (M)/Estab. Branch/ Removal from Service Dated: 20/10/2021

Copy of the above is forwarded for information to the:-

1. Deputy District Education Officer Local Office.
2. Principal /Head Master concerned School Nowshera.
3. Official concerned
4. Office file


District Education Officer

(17)

Annex Fⁿ

خدمت جناب ڈائریکٹر ایجوکیشن KPK پشاور

1626
19-2-21

اپیل بر خلاف آرڈر ڈسٹریکٹ ایجوکیشن

19-2-21

آفیسر مردانہ نو شہرہ زیر نمبر:

10202-205/DEO(M)/ESTAB BRANCH/REMOVAL FROM

SERVICE Dated 20-01-2021,

جناب عالی!

گزارش کی جاتی ہے کہ میں FA تک کو ایفانڈ ہوں اور گورنمنٹ ہڈل سکول بہادر خیل نوشہرہ میں بطور نائب قاصد اپنے خدمات سرانجام دے رہا تھا۔ مورخہ یکم دسمبر 2020 کو شوکار لٹس جاری کیا گیا۔ میں عرصہ 14 سال سے محکمہ تعلیم میں بطور کلاس فور خدمات سرانجام دے رہا تھا۔ میرا والد اسی محکمہ میں 22 سال بطور سکول ٹیچر خدمات سرانجام دینے کے بعد بوجہ مہلک بیماری وفات پائے۔ حالانکہ قانون کے مطابق مجھے Deceased Sons کوٹہ کے تحت کسی اچھے پوسٹ پر بھرتی کرنا چاہئے تھا مگر مجھے کلاس فور بھرتی کیا گیا۔ اور اس وقت سے لیکر مورخہ 20-01-2021 تک باقاعدہ اپنی ڈیوٹی سرانجام دے رہا تھا۔ مجھے انکوائری کا کوئی علم نہ ہے اور آگاہ کیا گیا۔ میں جب گورنمنٹ ہڈل سکول بہادر خیل میں ڈیوٹی سرانجام دے رہا تھا تو جنوری 2020 میں مجھے ذہنی طور پر ہدایت کی گئی کہ آپ کے دفتر میں باقاعدہ خدمات سرانجام دوں۔ تو میں اس وقت سے لیکر مورخہ 20-01-2021 تک باقاعدہ طور پر EDO (Male) نوشہرہ کے دفتر خدمات سرانجام دے رہا تھا۔ یہاں تک کہ کرونا وائرس کے پیرڈ میں جب ٹرانسپورٹ مکمل طور پر بند تھا تو میں اپنے گاؤں زیارت کا پکا صاحب سے 10 کلومیٹر پیدل سفر کر کے دفتر میں اپنی حاضری یقینی بناتا رہا۔ عرصہ 04 ماہ سے میری تنخواہ EDO (Male) نوشہرہ نے بے جا طور پر بند کر رکھی۔ اور میں اس کے باوجود 701 ہزار روپے سے زائد قرضہ لیکر اپنی زندگی گزارنے کے ساتھ ساتھ اپنی ڈیوٹی سرانجام دے رہا تھا۔

اسی طرح جب مورخہ 01-12-2020 کو مجھے غیر قانونی طور پر شوکار نوٹس جاری کیا گیا تو میں مندرجہ بالا وجوہات کے ساتھ جواب دیا۔ جسکو EDO (Male) نوشہرہ نے نظر انداز کر دیا۔ اور بعد میں میری تنخواہ کھول دی جبکہ حیرانگی طور پر مجھے مورخہ 20-01-2021 کو بلا جواز EDO (Male) صاحب نے میری Compulsory ریٹائرمنٹ کے آرڈرز جاری کیے۔ حالانکہ اسی دوران میری میڈیکل Leave بھی EDO صاحب نے منظور فرمائی تھی جبکہ اپنے آرڈر میں میری غیر حاضری کا بہانہ بتلایا حالانکہ اپنے آرڈر میں کسی بھی تاریخ کا ذکر نہیں کیا کہ کس تاریخ سے کس تاریخ تک میں عداً قسداً غیر حاضر رہا۔ میری شوکار نوٹس سے پہلے غیر قانونی انکوائری کا جواز پیش کیا گیا جس سے مجھے مکمل طور پر لاعلم رکھا گیا۔ مجھے کسی انکوائری آفیسر نے نہ سنا ہے اور نہ آگاہ کیا اور نہ کوئی موقع دیا کہ میں اپنا دفاع کر سکوں بلکہ ہر لحاظ سے لاعلم رکھا جو کہ مکمل طور پر غیر قانونی، غیر اخلاقی اور غیر آئینی اقدام ہے۔ یہاں تک میں دفتر میں اپنی ڈیوٹی سرانجام

Attested
21

دے رہا تھا جس کو مکمل طور پر نظر انداز کر رہے تھے۔ میں ایک غریب بندہ ہوں۔ میرے ساتھ زیادتی ہو رہی ہے۔

(تقولات لف ہے)

لہذا آپ صاحبان کی خدمت میں عاجزانہ گزارش کی جاتی ہے آرڈرڈ سٹرکٹ انجکشن آفیسر مردانہ نوشہرہ زیر نمبر:

10202-205/DEO(M)/ESTAB: BRANCH/REMOVAL FROM SERVICE:

Dated 20-01-2021, کو خارج فرما کر مجھے اپنے سکول گورنمنٹ مڈل سکول بہادر خیل نوشہرہ میں اپنی ذیوقی پر

تعمیاتی کے احکامات صادر فرمائے جائے۔

Dated: 08-02-2021

مصباح الدین ولد فرید الدین (مردم)

Naib Qasid GMS Bahadar Khel Nowshera

ساکن محلہ کاجی خیل، زیارت، کاکا صاحب، تحصیل نوشہرہ۔

رابطہ نمبر: 0301-5577550

مصباح الدین

Attested

گورنمنٹ جنرل ایڈمنسٹریشن

جناب عالی! میں نے تعلیم میں سچے سچے نائٹ ٹائم کام کیا ہے۔ گورنمنٹ جنرل ایڈمنسٹریشن میں
 آزاد خیالی کا جواڑی ہے۔ کہ میں نے گورنمنٹ میں کام کیا ہے اور باقاعدگی سے اس
 بہادر خیالی کے لیے اور مراعات 1000 روپے اور 2000 روپے کو میرا تبادلہ کیا ہے۔
 ڈیڑھ سال کا عازم کو اس ڈیڑھ سال کے دوران اور 2000 روپے کا عیب کا عیب
 شدہ سکول سے گورنمنٹ کے سکول ریمانڈ کا کام ہے۔ جن میں ہم اپنے عیب کا عیب
 نے اپنے گورنمنٹ کے سکول ریمانڈ کا کام ہے۔ ان کے بعد میں ایچ. ایچ. ڈی کے پاس
 روانہ کیا ہے تاکہ اس کے ساتھ ساتھ اس کے ساتھ ساتھ اس کے ساتھ ساتھ
 پاس آ کر اس کو آگاہ کیا ہے۔ اس کے بعد میں ایچ. ایچ. ڈی کے پاس
 سکول تبادلہ میں اپنا ڈیڑھ سال کا کام ہے۔ اس کے بعد میں ایچ. ایچ. ڈی کے پاس
 آرڈر پر ایچ. ایچ. ڈی کے پاس کیا۔ اور گورنمنٹ کے پاس اس کے ساتھ ساتھ
 باقاعدگی سے اس کے ساتھ ساتھ اس کے ساتھ ساتھ اس کے ساتھ ساتھ
 اپنے کاموں کے ساتھ ساتھ اس کے ساتھ ساتھ اس کے ساتھ ساتھ اس کے ساتھ ساتھ
 اپنی فوج کو ساتھ ساتھ اس کے ساتھ ساتھ اس کے ساتھ ساتھ اس کے ساتھ ساتھ
 جنوری 2021 تک ایچ. ایچ. ڈی کے پاس کیا۔ اس کے ساتھ ساتھ اس کے ساتھ ساتھ
 کسی وجہ سے جنوری 2021 میں مجھے ہجرت کرنا پڑی۔ میں سرکاری بندہ ہوں اور اس کے ساتھ ساتھ
 رہا ہے۔ میں اور اہلکاروں سے ڈیڑھ سال کے کاموں۔ ان سے گذارش اور احساس ہے کہ
 نوکری میں بحال کیا جائے۔

مہتاب الدین

13/8/2021

مہتاب الدین نائٹ ٹائم کام
 گورنمنٹ جنرل ایڈمنسٹریشن
 17201-5339593-1

مہتاب الدین
 13/8/2021

(25)

BETTER COPY

بخدمت جناب اینٹو آفیسر

جناب عالی!

گزارش کی جاتی ہے کہ میں محکمہ تعلیم میں بحیثیت نائب قاصد بمورخہ 21-09-2006
مڈل سکول بہادر خیل بھرتی ہوا اور مورخہ 2006-10-03 اپنے عہدے کا چارج لیا اور باقاعدگی سے
اپنی ڈیوٹی کا آغاز کر کے اپنی ڈیوٹی کرتا رہا۔ اور مورخہ 2009-05-08 کو میرا تبادلہ بہادر خیل مڈل
سکول سے گورنمنٹ ہائی سکول زیارت کا صاحب ہوا۔ جب میں یہاں پر ہائی سکول زیارت کا صاحب
والوں نے کہا کہ ہمارے ساتھ آپ کیلئے سیٹ خالی نہیں ہے۔ اس کے بعد میں اپنی EDO کے پاس واپس
آکر اس کو آگاہ کیا۔ اس کے بعد EDO صاحب نے زبانی طور پر حکم دیا کہ آپ اپنے متعلقہ سکول بہادر
خیل میں اپنی ڈیوٹی جاری رکھے۔ اس کے بعد سال دسمبر 2019 کو بجگم EDO کے زبانی آرڈر پر مجھے
EDO آفس میں تعینات کیا۔ اور پھر وہاں EDO آفس نوشہرہ میں باقاعدہ اپنی ڈیوٹی سرانجام دیتا رہا
یہاں تک کہ کرونا میں جب گاڑیاں بند تھی تو میں اپنے گاؤں زیارت کا صاحب سے پیدل EDO آفس
میں اپنی ڈیوٹی کیلئے باقاعدہ آتا تھا۔ یعنی چودہ کلو میٹر پیدل سفر گزار کر EDO آفس نوشہرہ پہنچتا تھا۔ اور
اپنی ڈیوٹی باقاعدہ جنوری 2021 تک EDO آفس میں کرتا رہا۔ مکمل تفصیل آپیل میں بھی درج کی ہے۔
بغیر کسی وجہ کے جنوری 2021 میں مجھے جبری ریٹائر کیا۔ میں غریب بندہ ہوں اور اپنی ڈیوٹی سرانجام دیتا
رہا ہوں اور ایمانداری سے ڈیوٹی کرتا ہوں۔ آپ سے گزارش اور التماس ہے کہ مجھے نوکری پر بحال کیا
جائے۔

آپ کا تعبدار

مصباح الدین نائب قاصد

گورنمنٹ مڈل سکول بہادر خیل نوشہرہ

17201-5339543-1

13-08-2021

(21)

Annex H

enquiry report in r/o Mr.Misbah Ud Din Ex-Naib Qasid GMS Bahadur Khel
Nowshetra.

AUTHORITY.

The Director Elementary & Secondary Education has been pleased to nominate the U/Signed as enquiry officer regarding the Re-Instatement appeal of Mr.Misbah ud Din Ex-Naib Qasid GMS Bahadur Khel Nowshetra Vide Notification NO.9335-38 dated 19-5-2021 & 564-67/A.20/C-IV/appeal/Nowshetra/Misbah ud Din dated 17-08-2021

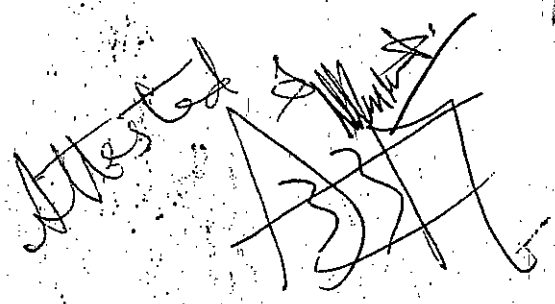
Subject: Appeal for Re-instatement by Mr.Misbah ud Din Ex- Naib Qasid GMS Bahadur Khel
Nowshetra

Proceedings:

In the light of above mentioned Notification, the U/S visited office Of DEO (M) Nowshetra on 29-7-2021 and 13-08-2021, checked the available record thoroughly.

Brief History of the Case:

1. The accused Mr.Misbah ud Din was appointed on 21-09-2006 as Naib Qasid at GMS Bahadur khel Manki Sharif Nowshetra Vide Endstt NO. 1838-43 dated 21-09-2006
2. He performed his duty in GMS Bahadar Khel till 10-04-2009.
3. He was transferred to GHSS Ziarat Kaka Sahib as Chowkidar by EDO vide Endstt No, 2163-64 dated 11-04-2009 (Annex-A).
4. He was relieved by the Head Master GMS Bahadur Khel on 11-04-2009. (Annex-B)
5. He was refused by the Principal GHSS Ziarat Kaka Sahib Nowshetra as there was no vacant post of Class-IV (Annex-C)
6. As per statement of the accused that he was directed by the then DEO at that time for forming his duty at his own station GMS Bhadar Khel. (Annex-C 1)
7. His duty place was un known and was regularly drawing pay.
8. An absence notice was issued to the accused by the DEO vide letter No:5514 dated 09-10-2020. (Annex-D)
9. A show cause notice was issued to the accused by the DEO NSR vide Endst:No.9912-15 dated 20-11-2020. (Annex-E).
10. Due to noncompliance of the show cause notice a major penalty of COMPULSORY RETIREMENT was imposed upon the accused vide:10202-05 dated 20-1-2021. (Annex-F)
11. An appeal was submitted by the accused to the Director E& SE for Re-instatement. (Annex-G)

Attested


22

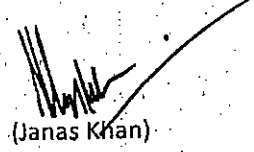
Findings:

1. The appellant was appointed as Naib Qasid against the newly created post at GMS Bahadur Khel Vide EDO Nowshehra endstt: NO. 1838-43 dated 21-09-2006.
- 3- He was transferred to GHSS Ziarat Kaka Sahib Nowshehra vide endstt: No. 1503-06 dated 23-02-2009 but there was no vacant post at GHSS Ziarat Kaka Sahib.
4. He was neither adjusted in any school nor his order was cancelled.
5. As per verbal statement he was performing duty at GMS Bahadar Khel and then he was directed by the DEO for duty at DEO office.
6. In this connection Mr. Majid Ex-accountant of DEO office provided his attendance in the DEO office for two months (March & June 2020) while from 20th august, 2020 he remained absent. (Annex-H)
7. Absent report and show cause were also issued, but due to non complains a Major penalty Compulsory Retirement was imposed upon him dated 20-1-2021.
- 8- The appellant being aggrieved with the said penalty, submitted Departmental appeal to the Director E&SE Khyber Pakhtunkhwa for Re-instatement dated 08-02-2021

RECOMMENDATIONS:

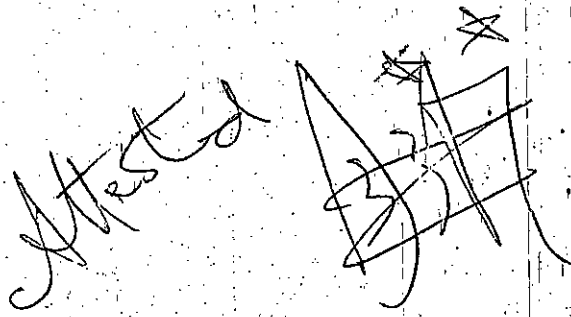
He may be re-instated and the major penalty may be set aside with the following conditions:

- (I). The pay drawn during the absent period may be recovered from the appellant and be deposited in the Govt: treasury.
- (II). His absent period may be treated as leave with out pay.
- (III). He will submit an affidavit on stamp paper to the effect that he will not repeat the same practice in future and will follow the rules regulations framed by the Govt: from time to time.
- (IV). The competent authority may affix the said affidavit in his service book.
- (V). His services may be placed at the disposal of any efficient Principal at District Nowshehra.



(Janas Khan)
(Enquiry Officer)

Principal, GHS Deh Bahadur Peshawar.





DIRECTORATE OF ELEMENTARY & SECONDARY EDUCATION
KHYBER PAKHTUNKHWA PESHAWAR.

Phone: 091-9225344

Email: ddadm.ee@gmail.com

Annex I

23

NOTIFICATION

1. WHEREAS, Mr. Misbah Ud Din Naib Qasid GMS Bahdar Khel Nowshera was removed from service by DEO (Male) Nowshera vide his Endst No.10202-205 dated 20/01/2021 on charge of willful absence from duty.
 2. AND WHEREAS, the said aggrieved Ex Naib Qasid GMS Bahdar Khel Nowshera filed a departmental appeal dated 08/02/2021 to the Director E&SE Khyber Pakhtunkhwa Peshawar (appellate Authority) for redressal of his grievances/reinstatement in service.
 3. AND WHEREAS, the appellate authority in pursuance of Section 17 read with sub rule (1) & (2) of the E&D Rules 2011 called for the record of the case and comments from the DEO (Male) Nowshera vide this office letter No 4646 dated 04/03/2021 for consideration of the appeal.
 4. AND WHEREAS, the DEO Concerned provided the requisite record/comments, accordingly vide his letter No 13953 dated 22/04/2021 merely describing the reason/circumstances under which the appellant had removed from service.
 5. AND WHEREAS, to know the factual position the Director E&SE (Appellate Authority) ordered an inquiry in the matter by appointing Mr. Janas Khan Principal BS-19 GHS Deh Bahadur Peshawar as Inquiry Officer vide Notification No. 9238-38 dated 19/04/2021.
 6. AND WHEREAS, the concerned enquiry officer accordingly submitted enquiry report vide this office Dairy No. 50/Misbah/NSR dated 14/05/2021 wherein the inquiry officer pointed out/suggest that he may be re-instated and the major penalty may be set a side with the following condition.
 - a. The pay drawn during the absent period may be recovered from the appellant and be deposited in the Govt Treasury.
 - b. His absent period may be treated as leave without pay.
 - c. His service may be placed at the disposal of any efficient Principal at District Nowshera.
- NOW, THEREFORE, the Director E&SE Khyber Pakhtunkhwa Peshawar, the Appellate Authority, under section-17(i) read with rules 2(a) of E&D Rules-2011 has decided to reject the appeal lodged by Mr. Misbah Ud Din Naib Qasid GMS Bahdar Khel Nowshera.

DIRECTOR
Elementary & Secondary Education
Khyber Pakhtunkhwa, Peshawar

Endst: No. 7012-16 /F.No. /A-20/C-IV/Appeal/NSR/Misbah

Dated Peshawar the 7 / 10 /2021.

Copy of the above is forwarded for information and n/action to the:-

- 1- District Education Officer (Male) Nowshera w/r to his letter No. cited above.
- 2- District Account Officer Kohistan Upper.
- 3- Principal/HM Concerned.
- 4- Appellant concerned.
- 5- PA to the Director E&SE Khyber Pakhtunkhwa Peshawar.

[Signature]
Deputy Director (F&A)
Directorate E& Secondary Education
Khyber Pakhtunkhwa, Peshawar

6/10/2021

(24)

WAKALAT NAMA

IN THE COURT OF Hon'ble Service Tribunal, Peshawar

Civil / Criminal / Constitutional Case _____ date _____
Appeal / Revision / Trial / Petition

Musbeh Ud Din Sp. Pind Petitioner / Plaintiff / Appellant ✓
Uddin R/o Kaka Sahib Complainant / Decree holder / Objector
Nowshera

VERSUS

Govt of KPK through Secretary Respondent / Accused / Defender ✓
Education and others Judgment Debtor

Case: Service Appeal of 4 of Service Tribunal Act 1974

I/We Appellant Mr Musbeh Ud Din

The above noted Service Appeal do, hereby appoint and constitute **Mr. SYED AZIZ UD DIN KAKA KHEL** Advocate High Court, District Courts Nowshera, as counsel in subject proceedings and authorized him to appear, plead, act Compromise, withdraw or refer to arbitration for me/us as my/ our Advocate in the above-mentioned matter, without any liability for his default and with the authority to engage/appoint any other Advocate/Counsel at my/our behalf to receive all sums and accounts payable or deposited on my/our account in the above noted matter.

Accepted & Attested

Client

MR. SYED AZIZ UD DIN KAKA KHEL

Advocate High Court

Dated: 9/10/2021

OFFICE: Apex Law Chamber
District Courts Nowshera, KPK, Pakistan.
Contact: 0092-314-9664440
Whatsapp: 0092-3219744881
Email: apex_law_chamber@yahoo.com

Clerk: Asif Khan (Cell: 0346-5100672)

cnr = 17201-8273468-3

24

WAKALAT NAMA

IN THE COURT OF Hon'ble Service Tribunal, Peshawar

Civil / Criminal / Constitutional Case _____ date _____
Appeal / Revision / Trial / Petition

Musbah Ud Din s/o Farid Petitioner / Plaintiff / Appellant ✓
Uddin R/o Kaka Sahib Complainant / Decree holder / Objector
Nowshera

VERSUS

Govt of KPK through Secretary Respondent / Accused / Defender ✓
Education and others / Judgment Debtor

Case: Service Appeal s/o 4 of Service Tribunal Act 1974

I/We Appellant Mr Musbah Ud Din

The above noted Service Appeal do, hereby appoint and constitute **Mr. SYED AZIZ UD DIN KAKA KHEL** Advocate High Court, District Courts Nowshera, as counsel in subject proceedings and authorized him to appear, plead, act Compromise, withdraw or refer to arbitration for me/us as my/ our Advocate in the above-mentioned matter, without any liability for his default and with the authority to engage/appoint any other Advocate/Counsel at my/our behalf to receive all sums and accounts payable or deposited on my/our account in the above noted matter.

Accepted & Attested

Client

MR. SYED AZIZ UD DIN KAKA KHEL
Advocate High Court

Dated: 9/10/2021

OFFICE: Apex Law Chamber
District Courts Nowshera, KPK, Pakistan.
Contact: 0092-314-9664440
Whatsapp: 0092-3219744881
Email: apex law chamber@yahoo.com

Clerk: Asif Khan (Cell: 0346-5100672)

cnrc = 17201-8293468-3

BEFORE THE KHYBER PAKHTUNKHAWA SERVICE

TRIBUNAL PESHAWAR

Service Appeal NO. 7586/2021

Misbah ud den

VS

Secretary E&SE & Others

INDEX

S.No	Documents	Annexure	Page No
1.	Para wise Comments	_____	01-04
2.	Affidavit	_____	05
3	Enquiry report	'A'	06-8
4	Absentee notice	'B'	09
5	Show cause notice	'C'	10

Deponent

BEFORE THE KHYBER PAKHTUNKHAWA SERVICE

TRIBUNAL PESHAWAR

Service Appeal NO. 7586/2021

Misbah ud den

VS

Secretary E&SE & Others

Joint Para wise Comments On Behalf Of Respondents:

Respectfully Sheweth:

Respondents humbly submit as under.

Preliminary objections:

- 1) The appellant Service record and conduct was not satisfactory.
- 2) That the appellant has no cause of action/locus standi to file the instant appeal.
- 3) That the appellant is estopped by his own conduct to file the instant appeal.
- 4) That the appellant is mentally not fit to effectively perform his duties
- 5) That the instant appeal is not maintainable in its present form.
- 6) That the appellant is concealing material facts from this Hon,ble court

REPLY ON FACTS:-

- 1) Para -01 is correct.
- 2) Para -02 pertains to record.
- 3) Para -03 is incorrect, appellant was initially appointed as C-IV at GMS Bahadr Khel on dated 21-09-2006. Then dated 11-04-2009 he was transferred from the said school

to GHSS Ziarat Kaka Sahib so he got relieved from GMS Bahadar Khel but was not given charge there at GHSS Ziarat Kaka Sahib due to non availability of any vacant seat, upon reporting so the then DEO orally directed him to perform his duties at office of the DEO(M) Nowshera but he got disappeared while receiving salaries regularly. Later on when he was traced in 2019-20 an enquiry was conducted against him in which various penalties were suggested against him, however the department showed leniency by granting an opportunity to the appellant for mending his ways so orally directed him to perform his duties there at office of the DEO (M), Nowshera but after two months he once again disappeared from his duty w.e.f 14-03-2020 till the date of his compulsory retirement i.e. 20-01-2021. In this regard absentee notice and show cause notice was served but not responded hence compulsory retired.

(Copies of the enquiry report, absentee notice and show cause notice are attached as annexure 'A', 'B' & 'C')

- 4) Para-04 is incorrect, as no reply to show cause was submitted by appellant.
 - 5) Para-05 is incorrect hence denied.
 - 6) Para-06 is incorrect as proper opportunity of personal hearing and defence was provided to appellant but he failed to avail it.
 - 7) Para 07 is incorrect.
 - 8) Para 08 is correct with the explanation that as per findings of the enquiry committee competent authority may enhance recommended penalties so he agreed with the penalty of compulsory retirement issued by DEO male Nowshera. Thus rejected his appeal.
-

9) Incorrect appellant was proved guilty for absence in the enquiry report, in their findings so their recommended penalty may be varied by competent authority thus retained the penalty imposed by DEO male Nowshera and duly rejected the appeal.


REPLY ON GROUNDS:

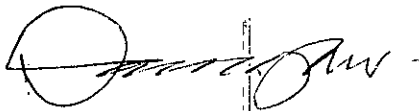
- A) Ground -A is incorrect. As both the orders are passed according to law and rules.
- B) Ground -B is incorrect, as appellant has been given absentee notice, show cause and enquiry has been conducted.
- C) Ground -C is incorrect, as proper chance of personal hearing and self defense was provided to appellant but he failed to avail it.
- D) Ground -D is incorrect, as explained above.
- E) Ground -E is incorrect, as explained above.
- F) Ground -F is incorrect, as explained above.
- G) Ground -G is incorrect, appellant has been treated according to law and rules.
- H) Ground -H is incorrect, appellant was not regular at his duty as he disappeared from his duty since 2009 till 2020. Later on when he was traced in 2019-20 and orally ordered to perform his duty at the office of the DEO male Nowshera just after two months duty he once again disappeared from his duty w.e.f 14-03-2020 till the date of his compulsory retirement i.e. 20-01-2021.

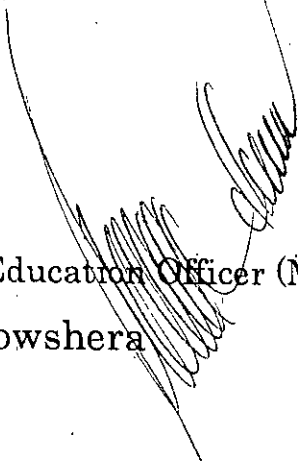
D Respondents may also be permitted to raise other grounds during the arguments.

It is therefore most humbly prayed that the instant appeal being meritless may kindly be dismissed.

RESPONDANTS;


1. The Secretary E&SE,
KPK, Peshawar


2. The Director E&SE,
KPK, Peshawar


3. The District Education Officer (M)
Nowshera

5

BEFORE THE KHYBER PAKHTUNKHAWA SERVICE

TRIBUNAL PESHAWAR

Service Appeal NO. 7586/2021

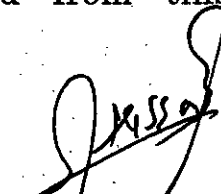
Misbah ud den

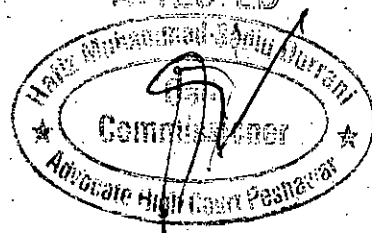
VS

Secretary E&SE & Others

AFFIDAVITE

I, Ali Hassan Qureshi Litigation Officer, office of The District Education Officer (M) Nowshera, do solemnly affirm and declare on oath that the contents of Par wise comments on behalf of respondents are true and correct to the best of my knowledge and nothing has been concealed from this Honourable Tribunal.


Deponent

21 SEP 2022
ATTESTED

Commissioner
Advocate High Court Peshawar

Annex-A

6

Enquiry Report

Name of the accused: Mr. Misbah-ud-Din (Naib Qasid)
School: GMS Bahadar Khel
Charges: Drawing salary from NR-6079 middle school since 2009 without performing duty

Reference to your office order Endstt: No. 4428-34/DEO(M) NSR/B&AO/Enquiry/Dated NSR 18-11-2019, the undersigned has been nominated as Enquiry officer to probe the case of Mr. Misbah-ud-Din's absence from duty since 2009.

Brief History/Background:

The accused Mr. Misbah-ud-Din was appointed on 21-9-2006 as Naib Qasid at Govt. Middle School Bahadar khel, Manki Sharif vide Endstt: No 1838-43 dated 21-9-2006. He took charge on 3-10-2006 and performed his duty in GMS Bahadar Khel till 11-4-2009 (F.N). He was transferred from GPS No.2 Bahadar Khel to GHSS Ziarat Ka Ka Sahib as Chowkidar by Executive District Officer (E&SE) Nowshera on the desire/recommendation of Minister for education Government of N.W.F.P. vide Endstt: No 1503-06/EDO (E&SE) NSR/transfer of C-IV/ dated 23-2-2009 (Annex-A).

In the above office order the name of school erroneously written as GPS No.2 Bahadar Khel instead of GMS Bahadar Khel, hence subsequently a corrigendum with correct name of school (GMS) Bahadar Khel was issued vide Endstt: No 2163-64 dated 11-4-2009 (Annex-B). He was relieved of his duty by the Head Master GMS Bahadar Khel Nowshera on 11-4-2009 (A.N) (Annex-C). When he reached GHSS Ziarat Kaka sahib for charge assumption. He was informed that there is no vacant post of class-IV at GHSS Ziarat Kaka sahib (Annex-D).

Proceeding:

In order to probe and find out facts about the case, I visited GMS Bahadar Khel and met with Head Master Wali-ul-Haq. He showed me the relevant record and provided photocopies of Misbah-ul-Haq's transfer order and relieving report. Then I came to Ziarat Kaka sahib and met with Misbah-ul-Haq in his village.

I thoroughly interviewed him and served to him a questionnaire (Annex- E). I also got a written statement from him (Annex-F). (Attached with enquiry report)

The following are the findings in the light of his replies and school record.

Findings:

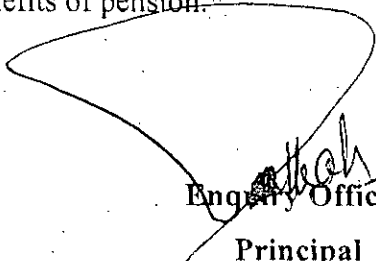
- 1) He was appointed as Naib Qasid against the newly created post at GMS Bahadar Khel on the recommendation of DSC for School & Literacy Department by the Executive District officer (S&L) Nowshera vide Endstt: No. 1838-43 dated 21-9-2006.
- 2) He took charge on 3-10-2006 as Naib Qasaid at GMS Bahadar Khel.
- 3) He was transferred from GPS No.2 Bahadar Khel to GHSS ZKK vide Endstt: No. 1503-06 dated 23-2-2009 with incorrect name of GPS No.2 instead of GMS Bahadar Khel, hence subsequently a corrigendum with correct name of school i.e. GMS Bahadar Khel was issued by EDO (E&SE) vide Endstt: No. 2163-64 dated 11-4-2009.
- 4) The accused Misbah-ul-Haq handed over another transfer order issued by DCO Nowshera latter on, vide No. 07/EA/DCO NSR 2505-8 dated 8-5-2009 in which Mr. Asim-ud-Din Mali of GHS Nowshera Kalan was transferred to GMS Bahadar Khel and Misbah-ud-Din N/Q as Chowkidar to GHSS ZKK Nowshera. (Annex-G)
- 5) The accused Misbah-ud-Din was not given charge, as there was no vacant post of class-IV at GHSS Ziarat Kaka sahib.
- 6) Misbah-ud-Din reported to the then EDO (E&SE) NSR Mr. Hasanat Gul. The EDO told him to work in EDO (E&SE) office till his adjustment but the accused insisted on a new transfer order and remained absent from duty.
- 7) The accused Misbah-ud-Din N/Q has been drawing his salary regularly from NR-6079 middle schools since 11-4-2009 without performing his duty anywhere.
- 8) According to his uncle he is suffering from mental illness and he regularly takes medicines for his illness.

(8)

Recommendations:

On the basis of above findings, the following recommendations are suggested.

1. The charge of willfully absence from duty has proved. Therefore, the salary of the accused be stopped immediately forthwith, till his new adjustment as his earlier transfer order issued in 2009 neither cancelled nor implemented due the non-availability of vacant post at GHSS Ziarat Kaka Sahib Nowshera.
2. He has remained absent willfully from duty w.e.f 11-04-2009 and has received all his salaries regularly, therefore the undue amount paid to him be recovered in installments. As he is guilty of habitually absenting himself from duty without prior approval from the high ups and is also mentally unsound, he may please be compulsory retired with all back benefits of pension.


Enquiry Officer 17/11/2020

Principal

Syed Gul Nawab Shah

GSAAHS Dagbehsud NSR

Principal

Govt. Shaheed All Abbas

High School, Dag Behsur

Nowshera

Annex - 'B'



OFFICE OF THE DISTRICT EDUCATION
OFFICER(MALE) NOWSHERA
(Office Phone#0923-9220228, Fax#0923-9220228)

No. 5511/DEO (M) NSR/EA-S/ Absent Report Dated Nowshera the 07/10/20

To

Mr. Misbah-ud-Din Naib Qasid
GMS Bahadar Khel NSR.

Subject:

ABSENTEE NOTICE.

Memo:

You Mr. Misbah -ud-Din Naib Qasid GMS Bahadar Khel NSR is absent from official duty without any permission and information.

Keeping in view of the above facts, you are hereby directed to be present within a week for official duties as well as in the office of the undersigned for personal hearing, if you failed necessary action will be initiated against you under E & D rules 2011.

DISTRICT EDUCATION OFFICER
(M) NOWSHERA

Endst: No. 5514 /DEO (M) NSR/EA-S/Absent-

Dated Nowshera the 07/10/2020.

Copy forwarded for information to the:-

1. Director E & SE KPK, Peshawar.
2. Dy: District Education Officer (M) Nowshera.
3. Headmaster School Concerned.
4. Office Copy.

DISTRICT EDUCATION OFFICER
(M) NOWSHERA



Annex - 10
OFFICE OF THE
DISTRICT EDUCATION OFFICER (MALE)
NOWSHERA.

(Office Phone#0923-9220228, Fax#0923-9220228)

SHOW CAUSE NOTICE.

I, Mr. Sajjad Akhtar Iqbal District Education Officer (Male), Nowshera, under the Khyber Pakhtunkhwa Government Servants Efficiently & Disciplinary Rules 2011, do hereby serve you, Mr. Misbah-Ud-Din Class-IV GMS Bahadar Khel Nowshera.

1. That consequent upon the report submitted by the inquiry officer conducted against you regarding your Absenteeism by (Mr. Gul Nawab Shah Principal GHS Dag Behsud).

2. Ongoing through the findings of the inquiry officer/inquiry committee, the material on record and other connected papers including your defense before the inquiry officer.

I am satisfied that you have committed the following acts/omissions specified in rule 3 of the said rules:

A. That you are absent from duty w.e.f 14-03-2020 till date.

B. That a notice was served upon you Vide: this office Endstt No: 5511-14 dated: 07-10-2020 but despite the notice you failed to report for your duty.

3 As a result therefore, I, as competent authority, have tentatively decided to impose upon you the major penalty of **Removal from service** under rule 4(1) (b) (iii) of the said rules.

4. It is also recommended by the enquiry officer/Enquiry committee payment made to you in this regard from the date of absenteeism (14-03-2020) till date will be recovered through District Revenue Officer and will be deposited into Govt treasury.

5. You are, therefore, required to show cause as to why the aforesaid penalty should not be imposed upon you and also intimate whether you desire to be heard in person.

6 If no reply to this notice is received within seven days or not more than fifteen days of its delivery, it shall be presumed that you have no defense to put in and in that case an ex-par tee action shall be taken against you.

(Sajjad Akhtar Iqbal)
Competent Authority / District Education Officer
(Male) Nowshera

Endstt: No. 7712-15 /DEO (M) NSR/EA-S/File. Show Case/Misbah Ud Din Class-IV/ Dated Nowshera the 20/11/2020

Copy of the above is forwarded for information to the: -

1. Director, Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
2. Senior District Accounts Officer Nowshera
3. Deputy DEO (M) Nowshera with the remarks to stop the pay of the official immediately
4. Mr. Misbah Ud Din GMS Bahadar Khel NSR.

District Education Officer
(Male) Nowshera

19/11/2020

OFFICE OF THE
DIRECTOR EDUCATION (MADRAS)
CHENNAI

CHENNAI-600 002



SHOW CAUSE NOTICE

1. Mr. S. S. Srinivasan (Principal, Government Boys' High School, Madurai) under the Mysore
Act, 1956 (Government Boys' High School, Madurai) has been appointed as a
Member of the Class-IV (A) Cadre of Teachers in the Government Service.

2. The report submitted by the inspecting officer conducted against you
regarding your absence from duty on 14-03-2020 (15-03-2020) has been received.

3. On going through the findings of the inspecting officer, the material on record
and other connected papers including your statement before the inspecting officer
I am satisfied that you have committed the following delinquencies specified in rule 3 of the
said rules.

A. That you are absent from duty on 14-03-2020 till date.
B. That a notice was served upon you under the Mysore Act No. 2217-14 dated: 07-10-2020
not despite the notice you failed to report for your duty.
C. As a result thereof, I as competent authority, have tentatively decided to impose upon you
the major penalty of removal from service under rule 4(1) (b) (ii) of the said rules.
D. It is also recommended by the enquiry officer that committee payment made to you in this
regard from the date of absence (14-03-2020) till date will be recovered through District
Revenue Officer and will be debited into Govt treasury.

4. You are, therefore, required to show cause as to why the aforesaid penalty should not be
imposed upon you and the nature whether you desire to be heard in person.

5. If no reply to this notice is received within seven days or not more than fifteen days of its
delivery, it shall be presumed that you have no objection to put in and in that case an order of action
shall be taken against you.

(Sd/-) S. S. Srinivasan
Competent Authority / District Education Officer
(MADRAS)

- Copy of the above is forwarded for information to:-
1. Director, Elementary & Secondary Education, Kanyakumari, Palakkad, Ponnani
 2. Senior District Education Officer, Madurai
 3. Deputy DDO (M) Madurai with the request to stop the pay of the official immediately.
 4. Mr. Srinivasan, the District Officer, Madurai.

(Sd/-) S. S. Srinivasan
District Education Officer
(MADRAS)