

S.No. Of Order or proceedings	Date of Order or proceedings	Order or other proceedings with signature of Judge or Magistrate and that of parties or counsel where necessary.
	3.6.2015	<p style="text-align: center;"><u>KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,</u> <u>CAMP COURT SWAT</u></p> <p style="text-align: center;">APPEAL NO. 490/2014</p> <p>(Muhammad Ilyas-vs-Secretary Labour Department, Government of KPK, Peshawar and one other).</p> <p style="text-align: center;"><u>JUDGMENT</u></p> <p style="text-align: center;"><u>MUHAMMAD AZIM KHAN AFRIDI, CHAIRMAN:</u></p> <p>Appellant with counsel and Mr. Tariq Khan, Deputy Director alongwith Mr. Anwar-ul-Haq, Govt. Pleader for respondents present.</p> <p>Appellant Muhammad Ilyas has preferred the instant appeal under section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against order dated 20.12.2013 passed by respondent No. 2 i.e Director Labour, KPK, Peshawar, whereby the services of the appellant were dispensed with, with immediate effect, as the appointment order was statedly illegal and void ab-initio.</p> <p>Brief facts of the case of the appellant are that the appellant was appointed as Chowkidar (BPS-1) vide appointment order dated 7.11.2013. That after resuming duties he was transferred from the office of Inspector (W&amp;M) Malakand to the Inspector (W&amp;M) Dir with immediate effect where-after he resumed duties on 19.12.2013 as evident from the arrival report placed on record. It was on 20.12.2013 that the impugned order of termination was passed by respondent No. 2 regarding which the appellant preferred department appeal which was not responded.</p>

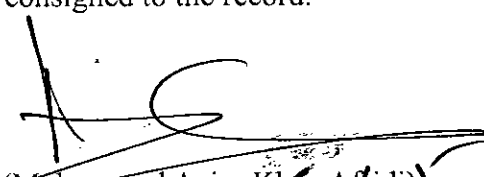
03.06.15

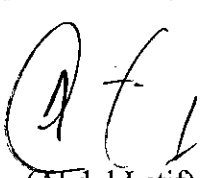
We have heard arguments of learned counsel for the parties and perused the record.

It is not disputed before us that the appointment order of the appellant was passed by the competent authority. It is also not disputed that on the strength of the said order of appointment appellant has resumed his duties and, even after transfer, he resumed his duty at the new station. It is also not disputed that the impugned order of termination of services of the appellant was passed without any notice to the appellant. Since the appellant was appointed by the competent authority and in pursuance of the order of the competent authority he has resumed duties and as such the impugned order would not sustain as no opportunity of hearing was afforded to the appellant which is a prerequisite in such a situation.

For the above mentioned reasons, we accept the instant appeal and while setting aside the impugned order dated 20.12.2013 reinstate the appellant in service and would further direct that before passing any final order regarding the terms and conditions of service of the appellant, he shall be afforded the opportunity of hearing in the prescribed manners. The appeal is accepted in the above manners, with no order as to costs. File be consigned to the record.

ANNOUNCED  
3.6.2015

  
(Muhammad Azim Khan Affidi)  
03 Chairman

  
(Abdul Latif)  
Member

to)

8. 2.2.2015

Appellant in person and Mr. Tariq Khan,

Deputy Director (Labour) for respondents alongwith

Mr. Muhammad Zubair, Sr.GP present. Rejoinder

submitted. To come up for final hearing/arguments

before D.B at camp court Swat on 8.4.2015.

Chairman  
Camp Court Swat

9 8.4.2015

Appellant with counsel and Mr. Tariq, Deputy Director Labour

alongwith Mr. Muhammad Farooq Ahmad, Addl: G.P for respondents

present. Arguments could not be heard due to non-availability of D.B. To

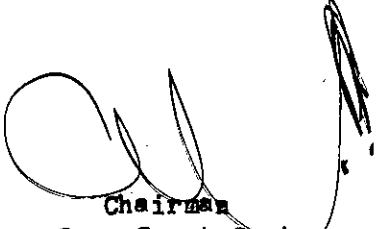
come up for final hearing before D.B on 3.6.2015 at Camp Court Swat.

Chairman  
Camp Court Swat

13.10.2014

Counsel for the appellant (Mr. Imdadullah, Advocate)

and Mr. Tariq, Deputy Director (Labour) on behalf of respondents with Mr. Muhammad Zubair, Sr. G.P present. Written reply/written statement received on behalf of the respondent copy whereof is handed over to the learned counsel for the appellant for rejoinder at camp court Swat on 06.11.2014.

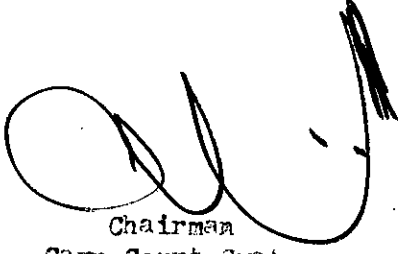
  
Chairman  
Camp Court Swat

7

6.11.2014

Appellant with counsel (Mr. Imdadullah, Advocate)

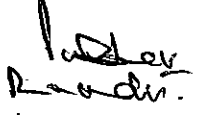
and Mr. Tariq, Deputy Director on behalf of respondents with Mr. Muhammad Zubair, Sr. G.P present. Rejoinder has not been received, and request for further time made on behalf of the appellant. Another chance is given for rejoinder at camp court Swat on 01.12.2014.

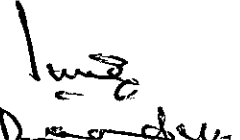
  
Chairman  
Camp Court Swat

1-12-14

counsel for the appellant & counsel Tariq Deputy Director with G.P for respondents present. The Tribunal is incomplete. To come up for rejoinder at camp court Swat on 5-1-15.

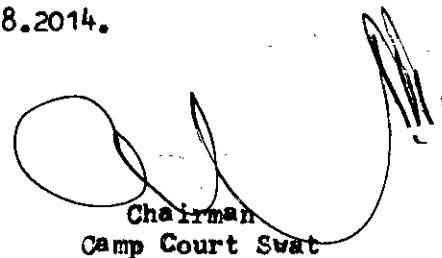
5-1-15

  
Reader.  
counsel for the appellant, & G.P. for respondents present. The Tribunal is incomplete. To come up for rejoinder at camp court Swat on 02-02-2015.

  
Reader.

Appellant Deposited  
Security & Process Fee  
Rs. 1600/- Bank  
Receipt is Attached with File.

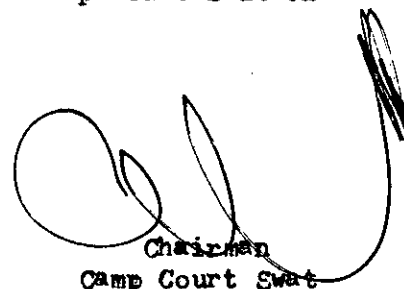
consideration. Admit. Process fee & security within 10 days.  
There-after, notices be issued to the respondents for written  
reply/comments at camp court Swat on 4.8.2014.



Chairman  
Camp Court Swat

4.8.2014

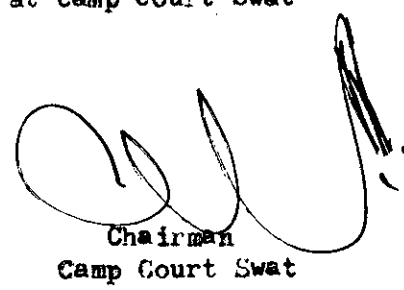
Appellant with counsel (Mr. Imdadullah, Advocate)  
and Mr. Muhammad Zubair, Sr. GP for the respondents present.  
Written reply has not been received, and request for further  
time made on behalf of the respondents. Another chance is  
given for written reply/comments at camp court Swat on  
01.9.2014.



Chairman  
Camp Court Swat

01.9.2014 Clerk of counsel for the appellant and Mr. Tariq,  
Deputy Director Labour on behalf of respondents with  
Mr. Muhammad Zubair, Sr. GP present. Written reply has not  
been received on behalf of the respondents. A last chance  
is given for written reply/comments at camp court Swat  
on 13.10.2014.

01.9.2014 Clerk of counsel for the appellant and Mr. Tariq,  
Deputy Director Labour on behalf of respondents with  
Mr. Muhammad Zubair, Sr. GP present. Written reply has not  
been received on behalf of the respondents. A last chance  
is given for written reply/comments at camp court Swat  
on 13.10.2014.




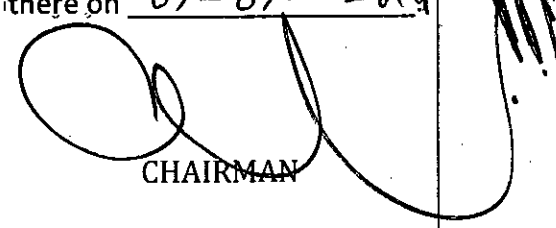
Chairman  
Camp Court Swat

Form- A

FORM OF ORDER SHEET

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

Case No. 490/2014

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	08/04/2014	<p>The appeal of Mr. Muhammad Ilyas presented today by Mr. Aziz-ur-Rehman Advocate may be entered in the Institution register and put up to the Worthy Chairman for preliminary hearing.</p> <p style="text-align: right;"> REGISTRAR</p>
2.	18-4-2014	<p>This case is entrusted to Touring Bench Swat for preliminary hearing to be put up there on <u>07-07-2014</u></p> <p style="text-align: right;"> CHAIRMAN</p>
3.	7.7.2014	<p>Appellant with counsel present and heard. The learned counsel for the appellant argued that having been lawfully and validly appointed as Chowkidar by the Director Labour, KPK vide order dated 7.11.2013, the services of the appellant were dispensed with vide order dated 20.12.2013 after the appellant had been transferred vide order dated 9.12.2013 and he had submitted arrival report on 19.12.2013. The learned counsel maintained that neither the appellant was served with a notice/show cause notice prior to the impugned order dated 20.12.2013 nor the illegality in the appointment order has been disclosed in the impugned order. The appellant preferred departmental appeal on 6.01.2014 and when received no response within the statutory period, he lodged this appeal on 8.4.2014. The points raised at the Bar need</p>

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

Service Appeal No. 490 of 2014

Muhammad Ilyas S/o Sherin R/o Adenzai, District Dir Lower ... Appellant

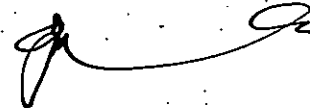
VERSUS

The Secretary Labour Department Government of Khyber Pakhtunkhwa,  
Peshawar and Others ... Respondents

**INDEX**

S. #	Description of documents	Annexure	Pages
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4	Appointment order	B	12
5	Transfer order	C	13
6	Arrival report	D	14
7	Copy of the impugned order	E	15
8	Copy of the appeal	F	16
9	Vakalat Nama	....	17

Appellant  
Through Counsel



AZIZ-UR-RAHMAN  
ADVOCATE SWAT  
Office: Khan Plaza, Gulshan Chowk,  
Mingora, District Swat  
Cell No. 0300-9070671

①

BEFORE THE KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL, PESHAWAR

---

Service Appeal No. 490 of 2014

Muhammad Ilyas S/o Sherin R/o Adenzai, District Dir  
Lower.

...Appellant  
508  
08/4/2014

VERSUS

1. The Secretary Labour Department Government of Khyber Pakhtunkhwa, Peshawar.
2. The Director Labour Khyber Pakhtunkhwa, Peshawar.

...Respondents

*Appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the order of the respondent No. 2 bearing Endst. No. DL/Admn/2/4/3809-15 dated 20-12-2013, whereby the service of the appellant was dispensed with against the law, rules and facts, hence liable to be set aside. The appellant preferred departmental appeal to the respondent No. 1 against the order impugned which is still lying pending despite the lapse of Statutory period.*

*[Signature]*  
8/4/14

Prayer:

*That on acceptance of this appeal the order impugned may very kindly be set aside being against the law, rules and facts and the appellant reinstated into service with all back benefits.*

---



Respectfully Sheweth:

2

Facts:

- i. That the appellant is a bona fide resident of the Malakand Agency and has done Bachelors from Malakand University. Copies of the domicile along with educational record are enclosed as Annexure "A".
- ii. That the appellant was appointed as Chowkidar (BPS-01) by the respondent No. 2 vide order Endst: No. DL/Admn/2/4/3256-60 dated 07-11-2013 in accordance with the law and after fulfilling all the codal formalities. Copy of the appointment order is enclosed as Annexure "B".
- iii. That the appellant was subsequently transferred from the office of the Inspector (W&M) Malakand to Inspector (W&M) Dir by the respondent No. 2 vide order Endst: No. DL/Admn/2/37/3640-45 dated 09-12-2013. Copy of the order is enclosed as Annexure "C".
- iv. That the appellant took over the charge at the said office on 19-12-2013, after the order was communicated to him. Copy of the arrival report is enclosed as Annexure "D".
- v. That the appellant was performing his duties regularly and to the satisfaction of the

authorities without any complaints, whatsoever.

- vi. That the appellant was all of sudden communicated the impugned order by the respondent No. 2 whereby his services were dispensed with against the law and rules. Copy of the order impugned is enclosed as Annexure "E".
- vii. That appellant feeling aggrieved preferred a departmental appeal to the respondent No. 1 which is still ling pending despite the lapse of statutory period of time, hence this appeal on the following grounds. Copy of the appeal is enclosed as Annexure "F".

Grounds:

- a. That the appellant has not been treated in accordance with the law and rules on the subject.
- b. That no inquiry has ever been conducted and the appellant is being condemned as unheard, which is against the norms of justice as well as the law on contemplating the subject.
- c. That the appellant is well qualified and sound person and was duly appointed in accordance with the law and rules.
- d. That the authorities have used their official powers in a very abstract, colorful and chaotic manner,

which is never permitted by the law emanating from the constitution.

e. That the appellant has never done any act of commission or omission which may constitute any offence under any law.

f. That the appellant has remained unemployed till date.

It is, therefore, very respectfully prayed that on acceptance of this appeal the order impugned may very kindly be set aside violative of the law and rules and the appellant reinstated into service with all back benefits.

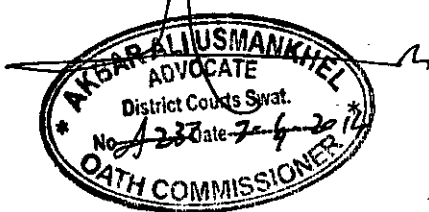
Any other relief deemed appropriate in the circumstances may also very kindly be granted.

Appellant  
*Ilyas*  
Muhammad Ilyas  
Through Counsels,  
*ajm*  
Aziz-ur-Rahman  
*Imdad*  
Imdad Ullah  
Advocates Swat

Affidavit:

It is stated on Oath that all the contents of this appeal are true and correct to the best of my knowledge and belief and nothing has either been kept concealed or misstated before this Honourable Tribunal.

**ATTESTED**



Deponent  
*Ilyas*  
Muhammad Ilyas

BEFORE THE KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. \_\_\_\_\_ of 2014

Muhammad Ilyas S/o Sherin R/o Adenzai, District Dir  
Lower.

...Appellant

VERSUS

The Secretary Labour Department Government of  
Khyber Pakhtunkhwa, Peshawar and others.

...Respondents

ADDRESSES OF THE PARTIES

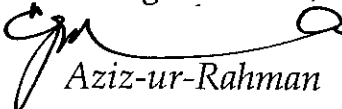
Appellant:

Muhammad Ilyas S/o Sherin R/o Adenzai, District Dir  
Lower.

Respondents:

1. The Secretary Labour Department Government of  
Khyber Pakhtunkhwa, Peshawar.
2. The Director Labour Khyber Pakhtunkhwa,  
Peshawar.

Appellant

Through Counsel,  
  
Aziz-ur-Rahman

Advocate Swat

# DOMICILE CERTIFICATE

N.W.F.P.

6

*Signature*

Declaration

No. 10164 date 8-8-2007

Muhammad Ilyas

declare that I was born of parents

who are permanently Domiciled in North West Frontier Province by birth, having settled in it.

I belong to village/Mohallah Badwan Darbar Tehsil Adenzai

District Dir Lower having been born in it.

M Ilyas  
Signature of applicant

Pursuance to the declaration filed above by Muhammad Ilyas

Son/Daughter/ Wife of Sherin it is hereby certified that the

said Mr/Mrs/Miss Muhammad Ilyas is born of parents who are

permanent residents of N.W.F.P. District Dir Lower belonging to it by birth / settled in it I have satisfied myself

from my personal knowledge/verification overleaf that the above declaration is true.

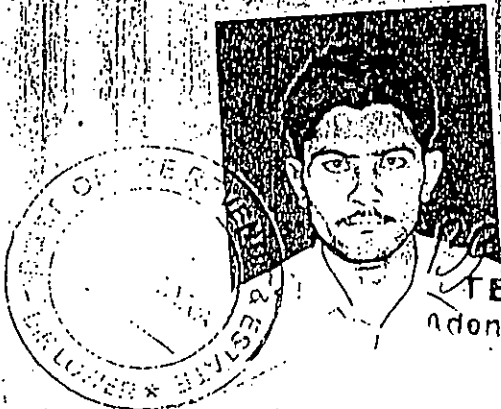
This 8th day of Aug 2007

*Signature*

INSPECTOR  
Weights & Measures  
Malakand.

Deputy District Officer  
Revenue & Estates  
Dir Lower

Countersigned



*Signature*  
TE ISILDAR  
Adonai at Chakdara  
Distt Dir (L)

Collector / District Officer  
Revenue & Estates  
District Dir Lower  
Dir Lower.

ATTESTED  
*Signature*  
Advocate

# تصدیق

تصدیق کی جاتی ہے کہ کسی اسماء محمد الیاس ولد اہنت ازبہ سکول I ماڈرن میں زیر تعلیم رہ چکا ہے۔ جسکا جسکی داخلہ نمبر 1901 اور تاریخ پیدائش ہے۔ ہندوستان زرریں سکول انکبائی 1988ء - 15

دستخط رہیل اہیڈ ماسٹر  
 (Signature)

(1) یہ کہ کسی اسماء محمد الیاس ولد اہنت ازبہ سکول I ماڈرن دربار قوم ناصان ذیلی شاخ امان سکول کا ایک اصلی پیدائشی ہے جو کہ میرے حلقہ نیابت میں واقع ہے۔

(2) یہ کہ کسی اسماء مذکورہ نے قبل ازیں کوئی ڈومیسائل سرٹیفکیٹ حاصل نہیں کیا۔  
 (3) یہ کہ فارم ہذا پر چہاں تصویر درخواست کنندہ کی ہے جو کہ میری تصدیق کردہ ہے۔  
 (4) یہ کہ سائل اسماء ڈومیسائل سرٹیفکیٹ کا ہقدار ہے جس کو پیری ذاتی ذمہ داری پر ڈومیسائل سرٹیفکیٹ دیا جائے۔

تصدیق کنندہ نمبر 1- نام محمد عزیز خان ولدیت سکونت لاہور	شاخ کارڈ نمبر 7- 9816-095-302	مہر
تصدیق کنندہ نمبر 2- نام محمد رضا ولدیت سکونت لاہور	شاخ کارڈ نمبر 9- 0881936-0502	مہر

Muhammad Zai  
 Genral Councilor  
 UIC Badwan Dii (L)  
 ناڈوان یونین  
**ZAHOR KHAN**  
 Member C. Councilor  
 Union Council Badwan

دستخط  
 Adonzai at Chakdara  
 نام  
 عہدہ

تصدیق متعلقہ تحصیلدار

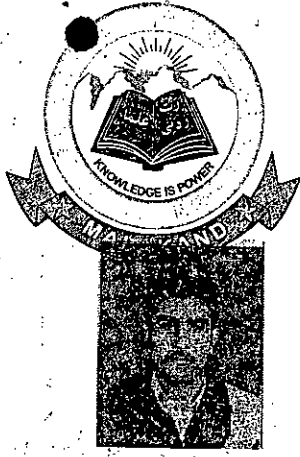
مہر

نمبر 1758 تاریخ 7/5/2007

نوٹ:- 1۔ ڈومیسائل فارم پر تصویر گند سے چہاں کجائے۔  
 2۔ فارم میں انگریزی سٹو کے کوائف انگریزی میں تائپ کئے جائیں۔  
 3۔ فرلڈ شدہ اور بٹے ہوئے فارم قابل قبول نہیں ہوئے۔  
 4۔ اگر وہ فارم جو کہ فارم میں دستیاب ہیں کے علاوہ کوئی اور بائو لو کالی فارم قابل قبول نہیں ہوگا۔  
 (ذمہ دار تحصیلدار)

TESTED

Rs: 5.00



(7)

**BOARD OF INTERMEDIATE AND SECONDARY EDUCATION  
MALAKAND (CHAKDARA) KHYBER PAKHTUNKHWA PAKISTAN**

**DETAILED MARKS & PROVISIONAL CERTIFICATE**

S.No.MB 030776

INTERMEDIATE (SUPPLEMENTARY) EXAMINATION, 2010

Roll No: 2257

Group: Humanities

Mohammad Ilyas Son of Sherin

appeared as Private Candidate of District Dir (Lower)

has secured the marks shown against each subject in the Higher Secondary School Certificate

Examination held in the month of October The Examination was taken in parts.

Subjects	Marks	Marks Obtained					Marks in Words
		Part-I		Part-II		Total	
		Theory	Pract	Theory	Pract		
English	200	43	--	38	--	81	Eighty-One
Urdu	200	57	--	66	--	123	One Hundred Twenty-Three
Islamic Education	50	25	--	--	--	25	Twenty-Five
Pakistan Studies	50	--	--	18	--	18	Eighteen
Islamic History	200	46	--	36	--	82	Eighty-Two
Islamic Studies	200	54	--	47	--	101	One Hundred One
Archaeology	200	45	--	30	--	75	Seventy-Five
Total : 1100				Marks :		505-D	Five Hundred Five Only
				Remarks :			

Prepared By : Fayyaz (DPS)

Checked By : Yasir/Tariq (KPO)

Note: Errors / Omissions excepted. Any mistake in Name etc must be intimated within 30 days after receiving the above certificate.

Computer Cell BISE, Malakand.

Date: 28.12.2010, 10:59 AM

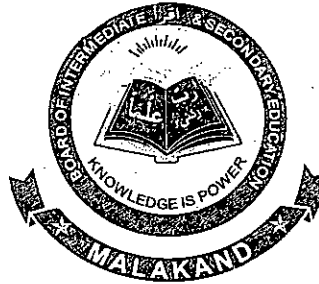
Controller of Examinations  
B.I.S.E, Malakand.

**ATTESTED**

S.No. 61011

(8)

ID-1110720192709



# BOARD OF INTERMEDIATE & SECONDARY EDUCATION MALAKAND

## CHAKDARA N.W.F.P PAKISTAN

### SECONDARY SCHOOL CERTIFICATE EXAMINATION

### DETAILED MARKS & PROVISIONAL CERTIFICATE

Session: 2007 (Annual)

Roll No: 57727Group: ScienceMohammad Ilyas Son of Sherinof GOVT: HIGH SCHOOL BADWAN

has secured the marks shown against each subject in the Secondary School Certificate Examination held in the month of April as Regular candidate.

Subject Name	Marks		MARKS OBTAINED				
	TH/A	PR/B	Theory / Paper-A	Practical / Paper-B	Total	In Words	
1. English	75	75	27	25	52	Fifty-Two	
2. Urdu	75	75	46	50	96	Ninety-Six	
3. Pakistan Studies	75		34		34	Thirty-Four	
4. Islamic Education	75		47		47	Forty-Seven	
5. Physics	85	15	43	13	56	Fifty-Six	
6. Chemistry	85	15	26	13	39	Thirty-Nine	
7. Biology	85	15	28	14	42	Forty-Two	
8. Mathematics	75	75	25	25	50	Fifty Only	
<b>Total = 900</b>					<b>Marks</b>	<b>416-D</b>	<b>Four Hundred Sixteen Only</b>
					<b>Remarks</b>	<b>** Passed with Grace Marks **</b>	

Date of Birth (In Figures) 15 February, 1988(In Words) Fifteenth, February, One Thousand Nine Hundred Eighty-EightChecked By [Signature]

Note: Errors/Omissions excepted. Any mistake in

D.O.B &amp; Name etc must be intimated within

30 days after receiving the above certificate.

Computer Cell BISE, Malakand

02.08.2007, 10:50 AM

**Controller of Examinations**  
BISE, Malakand

**ATTESTED**

[Signature]  
**Advocate**



بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

# GOVT. HIGH SCHOOL BADWAN DISTT. DIR (L)

## CHARACTER CERTIFICATE

Certified that Mr. Mohammad Ilyas

Son of Mr. Sherin of Village Badwan

Tehsil Adenzai District Dir Lower has remained a

regular student of this school w.e.f 12-04-2005 To 16-04-2007.

*His conduct during his stay at school was Good.*

No. 1-9/Sc-09

Dated 05/08/2009.

Prepared by Mohammad zafar J/C.

*Principal/Head Master*  
*5/8/09*  
**G.H.S Badwan**  
**Dir (L)**

Checked by Sikandar Khan CT

**ATTESTED**

*[Signature]*  
**Advocate**



# University of Malakand Pakistan

10

## DETAILED MARKS CERTIFICATE

Serial No. 015988

Name: MOHAMMAD ILYAS  
Father's Name: SHERIN  
Registration No. 2010730344  
College/District: Private Candidate District Dir Lower  
Address: Vill.Badwan Darbar.Teh.Adenzai.Dir Lower

### Bachelor of Arts

Examination	Roll No.	Held Date	Result Date
B.A PART-I ANNUAL EXAMINATION 2013	33212	Jun-Jul, 2013	09-Sep-2013
B.A PART-II SUPPLEMENTARY EXAMINATION 2012	8366	Nov, 2012	31-Dec-2012

Subject Name	Maximum Marks	Obtained in Part-I	Obtained in Part-II	Obtained Total
ISLAMIC STUDIES(E)	150	55	52	107
URDU	150	25	24	49
ENGLISH(C)	150	24	29	53
ISLAMİYAT (C)	60	25		25
PAK. STUDY	40		13	13
	550	129	118	247

Result Status: Passed 2nd Division



The examination was taken *in Parts*

Errors and Omissions are subject to subsequent rectification.

Issuance Date: 19-Nov-2013

Prepared by: Amjad Shahzad

Checked by:

Controller of Examinations  
University of Malakand

ATTESTED  
  
Advocate

11

S: No. 24978  
Roll No. 57727

BOARD OF INTERMEDIATE & SECONDARY EDUCATION MALAKAND  
MALAKAND

**Secondary School Certificate Examination**

Board of Intermediate & Secondary Education, Malakand at Chakdara, North West Frontier Province, Pakistan

Enrol No: 1110720192709      Session-2007 ( Annual )      Group Science

This is to certify that MOHAMMAD ILYAS  
Son of SHERIN  
and a student of GOVT: HIGH SCHOOL BADWAN

He has passed the Secondary School Certificate Examination of the Board of Intermediate and Secondary Education, Malakand held in March 2007 as a Regular Candidate. He obtained 416 Marks out of 900 and has been placed in Grade D Representing Fair.

The candidate passed in the following subjects:

1. English	2. Urdu	3. Pakistan Studies	4. Islamic Education	5. Physics
6. Chemistry	7. Biology	8. Mathematics		

Date of birth according to admission form is Fifteenth February Nineteen Eighty-Eight (15-Feb-88)

*[Signature]*  
**INSPECTOR**

Issue Date: 01 NOV 2008

**ATTESTED**  
*[Signature]*  
**Secretary**

*[Signature]*  
**Supdt.**

**Weights & measures, This certificate is issued without alteration or erasure.**

**Malakand.**



DIRECTORATE OF LABOUR  
GOVT. OF KHYBER PAKHTUNKHWA  
3<sup>rd</sup> Floor FC Trust Building Peshawar

Annexure

B

12

ORDER

Mr. Mohammad Ilyas S/O Sherin resident of Badawan Darbar Tehsil Adenzai District Lower Dir is hereby appointed purely on temporary basis in this Directorate as Chowkidar (BPS-01) (Rs.4800-150-9300) against the vacant post for District Malakand and posted in the office of the Inspector (Weights & Measures) Malakand on the following terms and conditions:-

1. He is medically fit and will produce medical fitness certificate from Medical Superintendent, Dist: H/Q Hospital, Batkhela.
2. He will be given minimum pay of the post in the Basic Pay Scale No. 01 (4800-150-9300) per month with any other allowances which may be sanctioned by the provincial Government from time to time.
3. He will be entitled to receive such amount contributed by him towards the Contributory Provident Fund along with the contribution made by the Government to his account in the said Fund, in the prescribed manner, in lieu of pension and gratuity in accordance with Government of Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2005 vide Notification dated 23.07.2005.
4. His services will be liable to termination if his work during this period is not found satisfactory in such of event. he will be given two months notice of termination from service or two months pay in lieu thereof. In case he wishes to resign two months notice should be necessary or in lieu thereof two months pay shall be forfeited.
5. He will be liable to serve anywhere in Khyber Pakhtunkhwa.
6. His appointment will be cleared by the DSC in due course of time.
7. He will join duty at his own expenses.

Sd/-  
Director, Labour  
Khyber Pakhtunkhwa.

Endst:No.DL/Admn/2/4/ 3256-61

Dated 7.11.13

Copy of the above is forwarded to:-

1. The District Accounts Officer, Malakand.
2. The Deputy Controller Weights & Measures H/qtr office Peshawar.
3. The Accounts Officer, H/qtr office Peshawar.
4. The Inspector (W&M) Malakand.
5. Mr. Mohammad Ilyas S/o Sherin resident of Badawan Darbar Tehsil Adenzai District Lower Dir.
6. Personal file of the official concerned.

ATTESTED

Advocate

(Hidayat Ullah Khan)  
Deputy Director (Admn)  
Khyber Pakhtunkhwa, Peshawar



**DIRECTORATE OF LABOUR**  
**KHYBER PAKHTUNKHWA**  
**PESHAWAR.**  
3<sup>rd</sup> floor F.C Trust Building Peshawar Cantt

Annexure.....

C

13

**ORDER**

Mr. Muhammad Ilyas s/o Sherin Chowkidar Office of the Inspector (W&M) Malakand is hereby transferred to the Office of the Inspector (W&M) Dir, with immediate effect in the public interest.

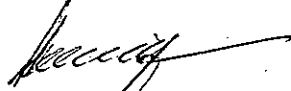
-Sd-  
Director Labour  
Khyber Pakhtunkhwa  
Peshawar

Endst: No.DL/Admn/2/37/ 3640-45

Dated: 09/ 12/ 2013

Copy of the above is forwarded for information to:-

1. The District Accounts Officers Malakand and Dir.
2. The Accounts Officer Hqtr, Peshawar.
3. The Inspector (W&M), Malakand and Dir.
4. Mr. Muhammad Ilyas Chowkidar, office of the Inspector (W&M) Malakand.

  
(Hidayat Ullah Khan)  
Deputy Director Labour (Admn)  
Khyber Pakhtunkhwa Peshawar

ATTESTED

  
Advocate

To

Annexure-----

D

14

The Inspector Weights and Measures,  
Dist Lower at Timergaya.

Subject:- Arrival Report

Dear Sir,

In compliance with the Director Labour,  
Khyber Pakhtun Khwa, Peshawar Office Order  
Endst: No. DL/Admin/2/37/640-45, dated 09-12-2013,  
I beg to submit my arrival report for duty  
today on 19-12-2013 (FN) and obliged

Dated 19-12-2013

Yours Faithfully,

*Ilyas*

Muhammad Ilyas  
Chowkidar.

Received  
19-12-2013

TESTED  
*[Signature]*  
Advocate



Annexure "E"

15

**DIRECTORATE OF LABOUR  
GOVERNMENT OF KHYBER PAKHTUNKHAWA  
PESHAWAR**

**ORDER**

On perusal of the relevant record, the appointment of Mr. Ilyas Khan Chowkidar office of the Inspector (Weights and Measures) Malakand has been found illegal, ab initio void and against the prescribed rules. Therefore, his service is hereby dispensed with immediate effect.

Sd/-

Director Labour  
Khyber Pakhtunkhwa, Peshawar

Endst. No DL/Admn/2/4/ 3809-15

Dated 20/11/2013

Copy of the above is forwarded to :-

1. The District Accounts Officer Malakand & Dir.
2. The Deputy Controller (W&M) Hqtr Office Peshawar.
3. The Accounts Officer Hqtr Office Peshawar.
4. The Inspector (W&M) Malakand & Dir.
5. Mr. Ilyas Khan Chowkidar Office of the Inspector (W&M) Malakand

(Hidayat Ullah Khan)

Deputy Director Labour (Admn) Peshawar.  
Hqtrs Office, Peshawar

ATTESTED

Advocate

Annexure

"F"

16

To

The Secretary Labour Department

Khyber Pakhtunkhwa, Peshawar.

Subject: Departmental appeal against the order Endst:No.DL/Admn/2/4/3809-15 dated 20-12-2013, whereby the service of the appellant was terminated against the law and rules and is liable to set aside.

Respected Sir,

The appellant submits as under:

That the appellant was duly appointed by the Director Labour, Khyber Pakhtunkhwa, vide order Endst:No. DL/Admn/2/4/3256-61 dated 7-11-2013 in accordance with the law and was regularly performing his duty without any objections, whatsoever, from the authorities.

That the appellant was transferred vide order Endst:No.DL/Admn/2/37/3640-45 dated 09-12-2013 to the office of the Inspector (WFM) Dir, where he reported his arrival on 19-12-2013.

That the appellant service was terminated without fulfilling all the legal formalities hence is not maintainable and liable to be set aside.

It is, therefore, very prayed that on acceptance of this appeal the order impugned may very kindly be set aside and the appellant reinstated into service with all back benefits.

Dated 6/01/2014

Appellant

*Muhammad Ilyas*

Muhammad Ilyas

ATTESTED

*[Signature]*



بعدالت

17

کورت فیس قیمت ایک روپیہ

مورخہ 05 اپریل ۲۰۱۰ء منجانب رسیدارند  
مقدمہ محمد اسد مسیحی بنام حکومت  
دعویٰ  
جرم

### باعث تحریر آنکے

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کارروائی متعلقہ آن مقام یکمید کورٹ سندھ ریکسٹریٹ / جسٹس ارشد رحمان ماہ ۱۰ / ۱۰ / ۲۰۰۹ مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل احتیاط ہوگا۔ نیز وکیل صاحب کوراضی نامہ و تقرر ثالث و فیصلہ پر حلف دینے جواب دی اور اقبال دعویٰ اور درخواست ہر قسم کی تصدیق زرا اور اس پر دستخط کرنے کا اختیار ہوگا۔ نیز بصورت عدم پیروی یا ڈگری ایک طرف یا اپیل کی برآمد ہوگی اور منسوخ مذکور کے نسل یا جزوی کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنی ہمراہ یا اپنی بجائے تقرر کا اختیار ہوگا۔ اور صاحب مقررہ شدہ کو بھی جملہ مذکورہ بالا اختیارات حاصل ہونگے اور اس کا ساختہ برواختہ منظور و قبول ہوگا۔ اور دوران مقدمہ میں جو خرچہ و ہرجانہ التوا ایے مقدمہ کے سبب سے ہوگا اسکے مستحق وکیل صاحب ہونگے۔ نیز بقایا و خرچہ کی وصولی کرتے وقت کا بھی اختیار ہوگا اگر کوئی تاریخ پیشی مقام دورہ ہر ہو یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہونگے کی پیروی مقدمہ مذکور لہذا وکالت نامہ لکھ دیا کہ سند رہے

المرقوم ۲۰ / ۰۸ / ۲۰۱۰

واہ شہادہ العبد

attested and  
signed by

کے لئے منظور ہے

محمد اسد مسیحی  
بمقام

محمد اسد مسیحی

attested

OFFICE OF THE  
SENIOR GOVERNMENT PLEADER SWAT

No. 16 dated 18.08.2014

To,

The Secretary to Govt. of Khyber Pakhtun khwa,  
Labour Department, Peshawar.

Subject: SERVICE APPEAL FILED BY MR. MUHAMMAD ILYAS VERSUS GOVT. OF KHYBER  
PAKHTUNKHWA

Dear Sir,

The subject appeal is pending in the Hon'ble Khyber Pakhtunkhwa Services Tribunal  
Camp Court Swat. 01.09.2014 is fixed for reply on behalf of the department.

You are, therefore, requested to kindly ensure submission of the subject reply in the  
tribunal please

Thanks.

Senior Government Pleader

Swat

Copy forwarded to Registrar, Khyber Pakhtunkhwa Service Tribunal camp court Swat for favour of  
information please.

  
Senior Government Pleader

51

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
PESHAWAR.

Service Appeal No: 490 / 2014

Muhammad Ilyas S/O Sherin R/O Adinzai, District Dir Lower.

Versus

1. The secretary Labour Department Government of Khyber Pakhtunkhwa, Peshawar.
2. The Director Labour Khyber Pakhtunkhwa, Peshawar.

**WRITTEN STATEMENT ON BEHALF OF RESPONDENTS No. 1 & 2**

Respectfully Sheweth,

Written Statement, on behalf of Respondents No. 1 & 2, is as under:

**Preliminary Objections:**

- A. That the Appellant has got no cause of action.
- B. That Appellant has got no locus-standi to institute the present Service Appeal.
- C. That, the Appeal of the Appellant is not maintainable in its present form.
- D. That, this Honourable Tribunal has got no jurisdiction to entertain the present Appeal.
- E. That, the Appellant has been estopped by his own conduct to file the instant Appeal.
- F. That, the Appeal of the Appellant is bad for non-joinder and mis-joinder of parties.
- G. That, Appellant has not come to the Court with clean hands and has suppressed material facts from this Honourable Tribunal.

- H. That, Appeal of the Appellant is time barred.
- I. That, even otherwise Appellant was under probation and employer / Government has a right to terminate any incumbent during the probationary period where his services or process etc found to be not in accordance with law.

**REPLY TO THE FACTS:**

- i.) Pertains to record.
- ii.) In response to Para ii of the Appeal it is submitted that Appellant was appointed by the Competent Authority but the post against which he was appointed, relates to Malakand, while the Appellant belongs to District Dir. On surfacing the irregularity, the services of the Appellant were dispensed with by the Competent Authority according to law and the rules. It is important to mention here that being Probationer the Competent Authority is competent to dispense with the services of the Appellant.
- iii.) Correct to the extent of Transfer of the Appellant.
- iv.) As per Para iii above.
- v.) No Comments.
- vi.) Correct to the extent of termination of employment of the Appellant however the termination order has been issued after thorough perusal of record of the Appellant wherein certain illegalities were found and as per section 21 of the General Clauses Act, 1897, the Competent Authority dispensed with his services, immediately, copy of the Domicile Certificate is already attached by the Appellant.
- vii.) Correct that Appellant has filed the Departmental Appeal.

**REPLY TO THE GROUNDS:**

- A. Incorrect: On surfacing the illegalities committed qua the process of Appointment, the services of the Appellant were dispensed with.
- B. Incorrect: the process of Appointment of the Appellant was thoroughly examined by the Competent Authority as per law and found void ab-initio, against the prescribed procedure and rules on the subject.

- C. Not correct.
- D. As per above.
- E. No Comments.
- F. No Comments.

It is, therefore, requested that Appeal be dismissed with cost.



Secretary to 21x114  
Government of Khyber Pakhtunkhwa  
Labour Department (Respondent No.1)

Vetted.



Senior Government Pleader  
Swat at Guikada.



Director Labour,  
Khyber Pakhtunkhwa Peshawar.  
(Respondent No.2)

**BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,**  
**PESHAWAR.**

Service Appeal No: 490 / 2014

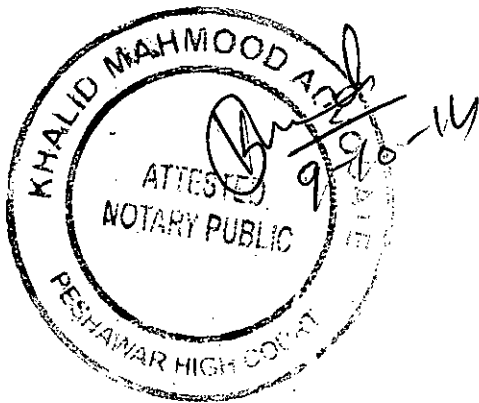
**Muhammad Ilyas**


**Versus**

**Government of Khyber Pakhtunkhwa etc**

**AFFIDAVIT**

I, TARIQ, Deputy Director, Labour  
do hereby on oath affirm and declare that the contents of the Reply /  
Written Statement are true and correct to the best of my knowledge  
and belief and nothing has been kept secret from this Honourable  
Tribunal.



  
Deponent

BEFORE THE KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 490 of 2014

Muhammad Ilyas.

...Appellant

VERSUS

The Secretary Labour Department Government of Khyber  
Pakhtunkhwa and Other.

...Respondents

REJOINDER BY THE APPELLANT

Respectfully Sheweth:

Preliminary Objections:

That all the preliminary objections are incorrect, vague, evasive and based on misstatements, hence denied. The appellant has got a prima facie case and has approached this Honourable Tribunal with in time with clean hands.

On Facts:

- i.) Para i of the comments being admission, needs no comments.
- ii.) Para ii of the comments of the comments is misconstrued and incorrect. The appellant was appointed in accordance with the law and was performing his duties to the satisfaction of the authorities. The irregularity pointed to is on the part of the department and cannot be attributed

02.02.15

to the applicant by any means. Furthermore it is clear from the reply that no inquiry has been conducted before the imposition of major penalty, which is mandatory even in case of contract employee what to say of probationer. Hence the para is denied.

- iii.) Para iii of the comments being admission, hence no comments.
- iv.) Para iv of the comments as drafted is incorrect and misconstrued. The department has made the appellant a scape goat for its own lapse. Hence the para is denied.
- v.) Para v of the comments being admission needs no comments.

On Grounds:

- A. Ground A of the comments as drafted is misconstrued and is admission of the fact that mandatory provisions of law have been done away with. Moreover the appellant cannot be made to suffer for the lapse of the department. Hence the para is denied.
- B. Ground B of the comments as drafted is incorrect. The comments clearly shows the lapse on the part of the department itself. Furthermore in light of the dicta of the August Supreme Court inquiry is mandatory in every case, irrespective of the nature of the job, which in present case is never done. Hence the para is denied.



C. Ground C of the comments is vague and evasive and amounts to admission, hence no comments.

D. Grounds D to F of the comments also needs no comments, being admission.

It is, therefore, very respectfully prayed that on acceptance of this rejoinder the appeal may very kindly be decided as prayed for originally.

Appellant

*Ilyas*

Muhammad Ilyas

Through Counsels,

*az*  
Aziz-ur-Rahman

*Imdad*  
Imdad Ullah

Advocates Swat

Affidavit:

It is stated on Oath that all the contents of this rejoinder are true and correct to the best of my knowledge and belief.

Deponent

*Ilyas*

Muhammad Ilyas

**ATTESTED**

*Sajid Ali*

OATH COMMISSIONER  
District Courts Swat

No-25-1-12-2013

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

No. 913 /ST

Dated 10 / 6 / 2015

To

The Director,  
Labour KPK Peshawar.

Subject: - Appeal No. 490/2014 Muhammad Ilyas Vs Secretary Labour KPK Peshawar and Others.

I am directed to forward herewith a certified copy of Judgement dated 3.6.2015 passed by this Tribunal on subject appeal for strict compliance.

Encl: As above

*o/c*  
REGISTRAR  
KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL  
PESHAWAR.