BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No. 1509/2023

Mr.Haroon Rasheed, Ex-Junior Clerk (BPS-11) GHS Shikoli, Dir Lower. (Appellant)

Versus

1. Director, Elementary and secondary Education Khyber Pakhtunkhwa Peshawar.

2. District Education Officer (M) Dir Lower.

3. District Accounts Officer Dir Lower.

(Respondents)

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District Edu le

District Dir Lower Respondent No.1

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR, wher Profestiterkhyse

Service Appeal No. 1509/2023

Diary No. <u>\$442</u> Dated <u>20-10-202</u>3

Mr.Haroon Rasheed, Ex-Junior Clerk (BPS-11) GHS Shikoli, Dir Lower. (Appellant)

Versus

1. Director, Elementary and secondary Education Khyber Pakhtunkhwa Peshawar.

2. District Education Officer (M) Dir Lower.

3. District Accounts Officer Dir Lower.

(Respondents)

JOINT PARA WISE REPLY ON BEHALF OF RESPONDENT No. 1 &2.

Respectfully sheweth: -

PRELIMNARY OBJECTIONS

1. That the Appellant are not the "aggrieved" person with the meaning of Article 212 of the Constitution of the Islamic Republic of Pakistan 1973.

2. That the Appellant have got no cause of action /locus standi to file this Service Appeal because the Appellant did not come on merit.

3. That the Appellant have not come to this Honorable court with clean hands rather than the instant appeal is mainly based on malafide intentions just to put pressure on the respondent department for illegal conversion of leave.

4. That the Appellant are estopped by his own conduct.

6. That the instant Service Appeal suffers from laches, hence not maintainable in the present form.

7. That the appeal in hand is barred by the relevant provision of Law/Rules/Policy in Field.

8. That as per order sheet dated 08-03-2023 in Execution Petition No.364/2022, the appellant was satisfied upon the execution of the service appeal No.1226/2010, vide amended office order No.1355-57, dated 02-03-2023, in which the absence period of the appellant was calculated/corrected as 120 days on full pay, 940 days on half pay, while 3630 days on leave without pay as per order/directions of this Honorable Tribunal.

9. That prayer of the appellant for conversion of 5 years as leave on pay with all back benefits is illegal and against the leave rules, as the appellant did not served the department in the interviewing period, thus not entitled for any payments.

ON FACTS.

1. Para -1 of the facts pertains to the appellant service record, however the appellant appointment order as well as transfer orders were fake in this regard a proper inquiry was also conducted on the basis of which he was removed from service in the year 2004, after completing all codal formalities.

(Copy of the inquiry report is attached as "A")

2. Para -2 of the facts is correct and further stated that on the directions of this Honorable Tribunals the appellant was reinstated into service and the absence period of the appellant was converted as leave of kind due.

(Copy of the judgment in S.A 1226/2010 dated 06/02/2017 is attached as "B").

- **3.** Para-03 of the facts is incorrect, and further stated that as per directions of this Honorable Tribunal, the absence period of the appellant was converted into leave of kind due vide office order No.7745-49 dated 11-09-2021, the appellant aggrieved from the office order ibid, filed an execution application bearing No.364/2023, and in compliance the absence period of the appellant was again converted /calculated as per law vide amended office order 1355-57, dated 02-03-2023, in which:
 - i) 120 days were converted into full pay.
 - ii) 940 days were converted into half pay.
 - iii) 3630 days were converted into without pay.

The amended office order 1355-57, dated 02-03-2023, was submitted before this Honorable Tribunal on the date fixed i.e.08-03-2023, in Execution Petition No.364/2022. And the appellant being satisfied from the office order dated 02-03-2023, the execution petition was consigned. Operative part of the order sheet dated 08-03-2023 is as under

"Representative of the respondents provided a copy of amended office order 1355-57, dated 02-03-2023, vide which the period of the absence of the petitioner has been calculated /corrected. Placed on file and copy whereof provided to the petitioner who is satisfied with the same. Order/ judgment dated 06-02-2017 of the Tribunal stands implemented and instant petition is consigned". Thus the amended office order 1355-57, dated 02-03-2023, has been issued as per direction of this Honorable Tribunal, hence claim of the appellant is denied . (Copy of the Judgment in Execution Petition No.364/20222 dated 08-03-2023 is attached as "C" Copy of the office order dated 11-09-2021 is attached as "D", Copy of the amended office order dated 02-03-2023 is attached as "E").

4. Para-04 of the facts as presented by the appellant is incorrect, miss leading, and further stated that, the grievances of the appellant has been redressed as per law as well as he has been retired on attaining the age of superannuation vide office order dated 21-12-2021. However, if the appellant is again aggrieved then he may file a representation before the appellate authority, if not decided within stipulated time, then he may approach to this Honorable Tribunal. (Copy of the retirement order of appellant dated 21-12-2021 is attached as "F")

<u>GROUNDS</u>

- A) In correct, hence denied. The respondent always follows rules and policies in letter and spirit, whereas the office order dated 02-03-2023 has been issued as per law.
- **B)** Incorrect, hence denied. The appellants have been treated as per law and rules.
- C) Incorrect, details have been submitted in the facts above.
- **D)** Incorrect, details have been submitted in the facts above.
- **<u>E</u>**) Legal, however the respondents also seek permission for additional grounds

during arguments.

It is, therefore, humbly prayed that on acceptance of the above submission, the instant Service Appeal may very graciously be dismissed in favor of the

answering respondents with cost.

Director.

Elementary and secondary education Peshawar Khyber Pakhtunkhwa Peshawar Respondent No. 1

District Education Officer

District Dir Lower Respondent No. 2

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No. 1509/2023

Mr.Haroon Rasheed, Ex-Junior Clerk (BPS-11) GHS Shikoli, Dir Lower. (Appellant)

Versus

2. Director, Elementary and secondary Education Khyber Pakhtunkhwa Peshawar.

2. District Education Officer (M) Dir Lower.

3. District Accounts Officer Dir Lower.

(Respondents)

<u>Affidavit</u>

I, Muhammad Shahab (Litigation Officer) O/O the DEO (M) Dir Lower do hereby solemnly affirm and state on oath that the whole contents of this reply are true and correct to the best of my knowledge and belief and nothing has been concealed from this August court.

It is further stated on oath that in this occupient appeal, the answering respondents have neither been placed ex-parte nor their defense has been Deponent **Muhammad Shahab** ATTESTEN TR-REHMAN Oath Commissioner stouck - off. Court Yeshav 20/10/23.

AUTHORITY LETTER

Mr. Muhammad Shahab (Litigation Officer) O/O the DEO (M) Dir Lower is

hereby authorized to submit the comments /reply in the

Service Appeal No.1509 /2023.

Title: Haroon Rasheed v/s Director E&SE Peshawar and others on behalf of the undersigned.

Director, Elementary and secondary education Peshawar Khyber Pakhtunkhwa Peshawar Respondent No. 1

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District Education Of

Strict Education Officer Mai District Dir Lower Respondent No. 2

INOUIRY REPORT:

In compliance with the EDO (E&SE) Dir Lower (Being the competent authority) No.524 dated 14/07/2009 the inquiry committee comprising Mr. Mohammad Nagin Khan DO (M) Chairman, MR. Aflab Alam Khan DO (F) member and Mr. Ali Haider ADO member.

The committee called on the accused persons on 24/07/2009 as per decision of the August Tribunal. Full opportunity were given to the accused vide statement of allegations, questionnaires and oral session.

The following persons were given full opportunities for their defense in response to the statement of allegations, questionnaires and oral discussion. They were also given the chance to provide supporting documents and also to present their council if any.

| S# | Name | Designation | Station |
|----|----------------|-------------|----------------|
| 1 | Wakil Khan | CT | GHS Chinar Kot |
| 2 | Said Mehmood | CT | GMS Dhall |
| 3 | Khalilullah | JC | GHSS Khall |
| 4 | Sahib Zada | JC | GHS Damtal |
| 5 | Haronur Rashid | JC | GHS Shekawlai |

Through questionnaires and oral session on 24-07-2009, all of them were asked to provide in their support, photocopy of their appointment order, LPC,s and service books but they failed totally to provide the required documents on the date given to them on their owon will i.e 29-07-2009, and till now they could not provided the same.

During question answer session on 29-07-2009 they said that so many others official of the Education Department are also involved in such like guilty business, but only the poor are suffering.

The committee also perused in detail the other three inquires conducted through Mr. Attaullah Khan Ex Director, Hafiz Mohammad Ibrahim EX EDO (Now Principal GHSS Samarbagh) and Haji Gul Jamal Head Master GHS Banda Talash.

The brief summery is as:-

WAKIL KHAN CT: Appointment order dated 01/06/1996 (Not provided by Mr. Wakil Khan when asked) has already been disowned by Mr. Mazrob Salam EX Divisional Director vide the inquiry conducted by Mr. Gul Jamal. Service Book is also disowned by the Head Master GHS Ashreat Chitral. The DAO Chitral has not issued the LPC which he provided is bogus and disowned by DAO Chitral.

Later on he showed himself transfer to District Shangla which was also

proved incorrect and disowned by the issuing authority. He is still under trail in the August

Court of special Judge. SAEED MEHMOOD CT: His appointment order No. 1507-17 dated 01/06/1996 is disowned by the Divisional Director Swat. Head Master GHS Warejon Chitral has totally rejected his plea that he served in GHS Warijon.

t:Education Officer M) (E&SE) Dir Lowei



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Neither he served there, not the HM has prepared his service book the DAO Chitral has disowned the LPC. His transfer order from GHS Warijon to GHSS Samarbagh is also fake and bogus as the directorate has already disowned such orders.

MR. KHALILULLAH JCU: The body of the letter responding to statement of allegation stimulates that in such type of deceiving games, he is not only involved, but there seem some big fish, which needs to be inquired. However, his appointment order No.1503-9 dated 01/06/1996 is totally bogus, disowned by District Officer Kohistan Ghulam Illani.

Similarly his transfer order to GCMHS Timergara has been disowned by the provincial directorate. The DAO Kohistan has also rejected his LPC and declared it fake and bogus.

SAHIB ZADA JC: His appointment order at Water Management Department at Chitral is not verified. Similarly DAO Shangla, and EDO Shangla had requested the EDO Dir Lower for recovery from him vides No. 143-145 dated 17/01/2004 and declared his appointment fake and bogus. He is still under trail in the court of special judge anti corruption.

The section officer surplus pool has categorically termed the same as fake and bogus self made and illegal.

HARONUR RASHID JC: Being the resident of Swat Matta was shown appointed at District Kohistan which was disowned by the DAO and EDO Kohistan. His transfer from Kohistan to Dir by the Provincial Directorate vide No. 7233-43 dated 29/10/2001 is disowned and declared fake and bogus.

FINDING AND CONCLUSION: The committee comes to the conclusion that all the 5 accused have shown bogus appointment orders, fake transfer order, fake LPCs and fake service books. They have drawn Govt. money illegally. They have concealed the fact from the August Tribunal. They are still under trail in the Court of Special Judge Anti Corruption. The alleged charges against the accused are proved one by one i.e

- 1. They have got Govt: Service in Education department through fake & bogus order, which are disowned by the issuing authorities.
- 2. They all provided bogus & fake transfer orders from one district to another.
- 3. They provided bogus LPC to the DAO Dir Lower.
- 4. They have received Govt: Money in the shape of salaries etc through fraud.
- 5. Their cases are still in Court of Special Judge Anti Corruption NWFP Peshawar/Swat.

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RECOMMENDATIONS:

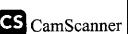
- 1. All of them may be treated under the removal of service ordinance (special Power 2000-01).
- 2. The DDO's may be directed to expedite their cases in the anti corruption Department, so that to make the recovery from them.
- 3. The person involved in such game, other than the accused, if any may be highlighted through a full-fledged inquiry on provincial basis.

Mr. Mohammad Nagin Khan DO (M) Chairman.

MR. Aftab Alam Khan DO (F) member

Mr. Ali Haider ADO member._

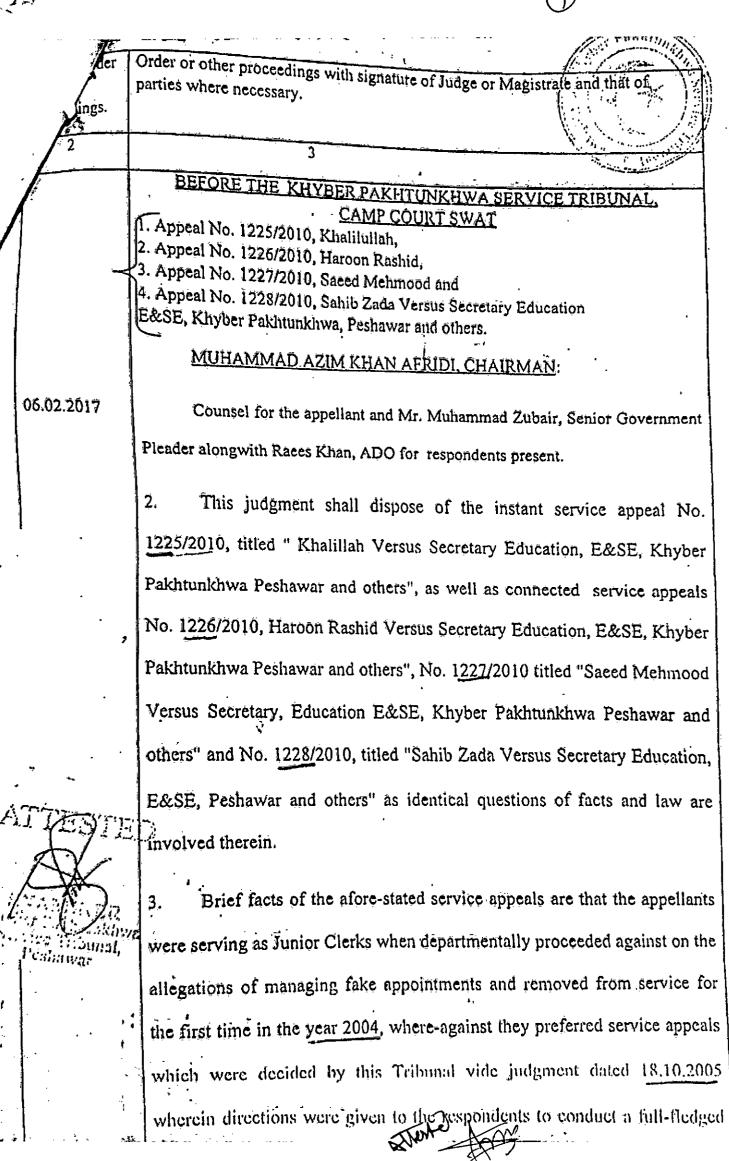
Attest officen Fd/ M) (E&SE) Dir



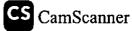
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MIN(E&SE) Dir Lower



as the enquiry conducted was in questionnaire form. It was also observed by this Tribunal that in order to ascertain genuineness or otherwise of appointments of the appellants, it shall be inter-alia probed as to who were the other officials involved in the scam of bogus appointments. The said judgment was finally implemented vide orders dated 13.02.2008 and services of the appellants were terminated where-against service appeals were preferred which were decided vide judgment dated 29.12.2008 wherein this Tribunal again observed that neither charge sheet was framed nor statement of allegations issued and as such mandatory provisions of law were violated. It was further observed that the respondent department has not conducted enquiry in accordance with the directions given in the judgment of this Tribunal. The respondents were therefore directed to reinstate the appellants in service by treating intervening period as leave of the kind due. The respondent department was placed at liberty to conduct fresh enquiry subject to fulfillment of all legal requirements. There-after the respondent department again conducted the enquiry and the appellants were removed from service vide impugned order dated 30.10.2009. whereagainst their departmental appeals dated 16.11.2009 were rejected on 26.01.2010 communicated to the appellants on 31.01.2010 and hence the instant service appeals on 02.03.2010.

4. Learned counsel for the appellants argued that despite repeated directions the respondent department has failed to conduct the enquiry in the prescribed manner. That the directions of the Tribunal were repeatedly ignored and that the enquiry was again conducted in questionnaire form. That no chance of personal hearing was extended to the appellants and that no final show cause notices were ever issued to them. That the provisions

Peshawar



of section S(1)(c) of Removal from Service (Special Powers) Ordinance 2000 were frustrated, as neither any evidence was recorded nor opportunity of cross-examination ever extended to the appellants.

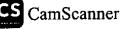
Senior Government Pleader has argued that the Leamed Ŝ. appointment orders of the appellants were fake as the same were not issued by the competent authority. He further admitted that the enquiry was conducted in the questionnaire form and that neither final show cause notices were issued nor opportunity of personal hearing were extended to appellants. He also admitted that witnesses were neither examined nor cross-examined and that the other officials involved in the scam were not sorted out nor the said aspect of the case was probed. He also admitted that regarding fake appointments registered against the a criminal case appellants was finally decided by the Hon'ble Peshawar High Court, Peshawar, Mingora Bench (Dar-ul-Qaza) Swat wherein the appellants were acquitted of the charges and salary recovered from their persons was returned to the appellants.

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

F. KARTINES Viber Pallonnesh Schvice Tribunel, Preshawar 7. The appellants are facing enquiry since 2004. This Tribunal had earlier directed conducting denovo enquiry against the appellants and against the officials involved in scam strictly in accordance with law but the directions of this Tribunal were ignored by the competent authority. Even the enquiry placed before us would suggest that the same was conducted in undesirable manners giving no attention to the directions of this Tribunal. No steps were taken for digging out the real culprits involved in the alleged

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scam. We are constrained to observe that such conduct of the competent authority and enquiry officer shall be taken note of by the relevant authority. Since the respondents have failed to adhere to the directions of the court and conduct the enquiry in the mode and manner prescribed by rules despite repeated opportunities as such we see no reason to issue further directions for yet another enquiry and would, therefore, order reinstatement of appellants in service by treating the period of their absence as leave of the kind due. Parties are left to bear their own costs. File be consigned to the record room. Sal M. Azin Khom Als Mali Amiculed Charman -Oanplonestsion + 06.02.2017 Service 14 in and and 211-Amiad Hass Alar le materia Propositiating of the strange 15-2-2-22253 Nerriser of Waldshares Copying Ferminan / 2. Urgent. Yoshing and the second - Name of Certification Date of Class states Onte of Deficiency since a grant lester Officery



BER PAKHTUNKHWA SERVICH BEFORE THE KH SHAWAR ·3/. A

EXECUTION PETITION No. 364

EXECUTION PETITION NO. 68/2017

Service Appeal No. 1226/2010

Haroon Rasheed, Junior Clerk, GHS Shikoli District Dir Lower. PETITIONER

VERSUS

1- Secretary (E & SE) KPK, Peshawar

Director Education Officer, KPK, Peshawar

The Deputy Commissioner Dir Lower 3- .

District Education Officer (Male), Dir Lower.

......RESPONDENTS

IMPLEMENTATION PETITION FOR DIRECTING THE RESPONDENTS TO IMPLEMENT/OBE JUDGMENT OF THIS HON'ABLE TRIBUNA 06.02.2017 IN LETTER AND SPIRIT.

R/SHEWETH:

2-.

That the petitioner filed service appeal bearing No. 1226/2020 before this august Service Tribunal for reinstatement into service with all back benefits.

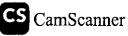
That the appeal of the petitioner was heard and the said appeal decided on 06-02-2017 and the petitioner/appellant was reinstated into service. Copy of the judgment dated 06-02-2017 is attached as

....... annexure...

That after obtaining copy of the judgment dated 06-02-2017 the petitioner/appellant submitted the judgment mention above for its implementation to the Department rified to be time concerned but the respondent Department are not willing to obey the Ibid judgment in letter and spirit, hence filed Execution petition No. 68/2017 for the implementation of the above mentioned judgment.

Copy of the implementation petition is attached as Annexure Ottested

> taEducation Officer M) (EESE) D - Lower



Learned counsel for the petitioner present. Mr. Muhamma Jan, District Attorney alongwith Mr. Muhammad Shahab, Schor Leader for the respondents present.

Learned counsel for the petitioner pointed out that the calculation made in office order dated 29.02.2021 was not clear. Mr. Muhammad Shahab, School Leader on behalf of the respondents says that he would concern the record and submit proper report with proper calculation of the leave account of the petitioner on 08.03.2023 before S.B at camp court Swat. P.P given to the parties.

> (Kalim Arshad Khan) Chairman

08th Mar. 2023

Pctitioner in person present. Mr. Uzair Azam Khan, Additional Advocate General alongwith Mr. Muhammad Shahab, School Leader for the respondents present.

Representative of the respondents provided a copy of amended office order No. 1355-57, dated 02.03.2023 vide (which the period of absence of the petitioner has been calculated/corrected. Placed on file and copy whereof provided to the petitioner who is satisfied with the same. Order/judgment dated 06.02.2017 of the Tribunal stands implemented and instant petition is consigned.

Pronounced in open Court at Camp Court, Swat and given under my hand and the seal of the Tribunal on this 8thday of March, 2023.

Certifica to be ture con Kird MER

cha Paul Member(E) (Camp Court, Swat)





OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) DIR LOWER AT TIMERGARA. Mail: deomaledirlower@gmail.com. Tell: 0945-9250081-82

Office Order.

In compliance of the verdict of August Services Tribunal Khyber Pakhtunkhwa vide order sheet dated 03/08/2021 in Execution Petition No. 68/2017 service appeal No.1226/2010. Addition in this office order No. 108-11 dated 4/01/2019 is made as,

"The absence! period of the appellant according to the leave account form, if Earned leave found on his credit is hereby converted into leave with pay and the remaining absent period may be treated as leave kind due as per court decision".

District Education Officer (M) Lower Dir

Endst; No 7745-49,

at 11/9/21

Copy of the above is forwarded to:-1. The Registrar Khyber Pakhtoonkhwa Services Tribunal Peshawar.

- The Registrar Rhyber Fakincent
 The principal GHSS Tazagram.
- The District Accounts Officer Lower Dir.
- 4. The Appellant.

-51-

District Education Officer (M) Lower Dir

Atested Education Officer





OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) DIR LOWER AT TIMERGARÀ. E- Mail: deomaledirlower@gmail.com. Tell: 0945-9250081-82

AMENDED OFFICE ORDER

In compliance of the verdict of August Services Tribunal Khyber Pakhunkhwa Peshawar vide order sheet dated 03/08/2021 in Execution petition 68/2017 S. Appeal No.1226/2010 titled Haroon Urashid, E.P No. 1226/2010 addition in this office order No. 108-11 dated 4/1/2019 and 8331-35 dated 29/9/2021, is made as .

"The absence period of the appellants according to the leave account from, if Earned leave found on his credit is hereby converted into into leave with pay and the remaining absent period may be converted into leave kind due as per court decision".

(Total absent period w.e.f 01/04/2004 to 06/02/2017 = (4690) days. = (120) days. ON Full pay

- 1. W.c.f01/04/2004 to 29/07/2004
- 2. W.e.f 30/07/2004 to 24/02/2007
- 3. W.e.f 25/02/2007 to 06/02/2017

= (3630) days. Without pay. days. = 4690

= (940) days. ON Half Pay

Total days

Note:- Necessary entry to this effect should be made in his service book and leave account form accordingly.

1355-5

Dated

NO. Copy forwarded to: 1)-The Registrar High Court Khyber Pakhtunkhwa Peshawar. 2)-The Distt. Accounts Officer Dir Lower. 3)-The Appellant.

Istt: Education Officen M) (E23E) Dir Lower

District Educat ANDIr lower. fic ist

District Education per Officer (Mil Dikilower.

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OFFICE OF THE DISTTEDUCATION OFFICE (M) DIR LOWER AT TIMERGARA.

OFFICE ORDER.

Sanction is hereby accorded to the grant of Superannuation pension of Mr Haroon Rashid S/O Azad Bakht Ex(Junior Clerk) BPS- No 11, Govt: High School Tazagram Distt: Dir Lower w.e. from, 03/04/2020 (A/N) with all Pension benefits as due and admissible to him under the rules.

The Blance of leave is "Nil" and the Encashment of LPR is Nil.

Necessary entry to this effect should be made in his Service Book accordingly.

(MUHAMMAD UZAIR) DISTT:EDUCATION OFFICER (MALE) DIR LOWER.

10937-29 /Dated Timergara the. 21 / 12/2021 Endst:No

Copy of the above is forwarded to:-

- I. The DistI: Accounts Officer Dir Lower.
- 2. The Head Master GHS Tazagram.
- 3. The Junior clerk concerned.

DISTT:EDUCATION OFFICE (MALE) DIR LOWER. (