


FORM OF ORDER SHEET

Court of _____

Appeal No. _____ - **2338/2023**

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	14/11/2023	<p>The appeal of Mr. Shahid Khan presented today by Mr. Javed Iqbal Gulbella Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on _____ Parcha Peshai is given to the counsel for the appellant.</p> <p>By the order of Chairman  REGISTRAR</p>

BEFORE THE HON'BLE KHYBER PAKHTUNKHWA
SERVICES TRIBUNAL PESHAWAR

Service Appeal No. 2338 /2023

Shahid Khan

Versus

Govt of KPK & Others

I N D E X

S NO.	DESCRIPTION OF DOCUMENTS	ANNEXURE	PAGE
1.	Grounds Of the Appeal		1-4
2.	Affidavit		5
3.	Addresses Of Parties		6
4.	Copy of Leave Notification No. SO (College-II) HED/13-5/2013 dated:28/03/2017	"A"	7
5.	Copies of Application for extension of leave & official documents	"B, B-I to B- V"	8-15
6.	<i>Copy of Arrival report</i>	"C"	16
7.	Copies of charge sheet, statement of allegation & show cause notice	"D to D-II"	17-19
8.	<i>Copy of impugned order No. SO(C- 11)/HED/12-1/2022/Shahid/458891</i> dated.10/07/2023	"E"	20
9.	Copy of Departmental appeal	"F"	21-23
10.	Wakalat Nama		24

Dated: 13-11-2023


Appellant

Through

Javed Iqbal Gulbela
Advocate Supreme Court,
Pakistan.

**BEFORE THE HON'BLE KHYBER PAKHTUNKHWA
SERVICES TRIBUNAL PESHAWAR**

Service Appeal No. 2338 /2023

Shahid Khan Ex-Lecturer Islamiat (BPS-17) S/o Qazi Fazal-E-Rahim R/o Sulman Khel, Qaziabad, Kajori Bara, District Khyber.

..... *Appellant*

VERSUS

1. *Government of Khyber Pakhtunkhwa* through Chief Secretary at Civil Secretariat, Khyber Pakhtunkhwa, Peshawar.
2. *Chief Secretary Khyber Pakhtunkhwa at Civil Secretariat, Peshawar.*
3. *Secretary Higher Education, Archives & Libraries Department* at Civil Secretariat, Khyber Pakhtunkhwa, Peshawar.
4. *Secretary Establishment Department, at Civil Secretariat, Khyber Pakhtunkhwa, Peshawar.*
5. *Director Higher Education, Khyber Pakhtunkhwa, Peshawar.*

.....*Respondents*

Appeal u/s 4 of the Khyber Pakhtunkhwa Services Tribunal Act -1974 against the impugned Notification No. SO(C-II)/HED/12-1/2022/Shahid/4588-91 dated 10-07-2023 of the Office of Secretary Higher Education Department Khyber Pakhtunkhwa; whereby the Appellant has been illegally removed from his Service and Departmental Appeal dated: 03-08-2023 of the Appellant has not been decided inspite of laps of statutory period, Hence the instant Service Appeal.

Respectfully Sheweth,

1. That the Appellant is a naturally born bona-fide citizen of Islamic Republic of Pakistan and hails from a respectable family.
2. That after going through the mandatorily required selection process, the appellant got inducted into service as lecturer in Islamiat (BPS-17) years back.
3. That after getting onto the rolls of this prestigious department the Appellant remained the most professional and pragmatic fellow on the fleet of HED.

- 2
4. That in order to pursue Higher Education, the Appellant applied for and got admitted in Ph.D class/course in Malaysia. As for achieving the purpose of his noble cause, the Appellant applied for ex-Pakistan leave from 01/04/2017 to 01/04/2021(4 years) which was granted to the Appellant and thus by availing the same, the Appellant left for Malaysia in connection with his study leave for acquiring his Ph.D vide Notification No: SO (College-II) HED/13-5/2013 dated:28/03/2017. **(Copy of Leave Notification No. SO (College-II) HED/13-5/2013 dated:28/03/2017 is annexed as annexure "A")**
 5. That the Appellant started courses for Ph.D, but as the whole world was envisaged a global pandemic in the shape of Covid-19, which not only took the lives of many millions people across the world, but had virtually halted the very life and its activities of every living human beings across the world, wherever he was and whatever the status of any human, but none could escape the attack and its tremendous impact on humans. That this pandemic caused much distress, havoc and devastation in every body life. It destroyed the business, professional services and above all it caused much havoc in the lives of student's weather, it was a school going child or university student or a scholar Research. The same is the case of the Appellant who had gone Malaysia for study of his Ph.D courses, that he was hit by pandemic and its repercussion. That because of the aforementioned pandemic of Covid-19, the study of the Appellant was disturbed upto a great extent and the normal tenure for Ph.D was prognosticatedly prolonged from 4 to 5 years, where in the Appellant had no fault or rather could not control the happening of the eventuality, that was formidable been envisaged by the Appellant.
 6. That the Appellant in order to validate his leave, the Appellant moved an application for sanctioning of his Ex-post facto Ex-Pakistan leave of 1 year from 02/04/2021 to 19/06/2023.**(Copies of Application for extension of leave & official documents are annexed as annexure "B, B-I to B-V")**
 7. That as the Appellant could not complete his Ph.D in 4 years, so in order to complete his Ph.D the Appellant remained over there for coming one year and got completed his Ph.D, where after the Appellant come back to Pakistan and submitted his arrival report on 20/06/2022. **(Copy of Arrival report is Annexed as Annexure "C")**
 8. That the respondent illegally and unlawfully issued charge sheet, statement of allegation and show cause notice is utter violation of law, Rule and Regulation. **(Copies of charge sheet, statement of allegation & show cause notice are annexed as annexure "D to D-II")**
 9. That even otherwise when the Ph.D of the Appellant got completed, the Appellant rushed back to homeland and even submitted arrival report instantly, so at no juncture neither the Appellant remained lethargic, nor

there is any malicious or malafide exists on part of the Appellant, nor his absence was due to any dubious reasons or without any reasons but even then was condemned and on the one hand his application Ex-post facto sanction for Ex-Pakistan leave was turn down, but as well as the removed from service without any justification vide impugned Notification No. SO(C-11)/HED/12-1/2022/Shahid/458891 dated.10/07/2023 of the office Higher Education Department. (Copy of impugned order No. SO(C-11)/HED/12-1/2022/Shahid/458891 dated.10/07/2023 is annexed as annexure "E")

10. That the appellant submitted a departmental appeal on 03/08/2023 against the impugned order. Despite of laps of statutory period the respondents shelved the appeal of the appellant. (Copy of Departmental appeal is annexed as annexure "F")
11. That feeling aggrieved from the above mentioned episode, the grievances that come to existence, having no other remedy available and forum to be addressed at, the petitioner approached this Hon'ble Tribunal for recognition and enforcement of his due rights upon the following grounds inter alia:-

GROUND:

- A. That inspite being a genuine case and inspite of stark fact that the delay in Ph.D course was due to Covid-19 which was certainly beyond the control of the Appellant, was condemned for no wrong done.
- B. That even otherwise Ex-post facto sanction in such like scenario is provided under the law and thus no one can be condemned or victimized if cogent reason is provided.
- C. That no mandatory instrument as followed and adopted by competent authority before imposing the major penalty and thus the very impugned order of removal from service is wrong and illegal.
- D. That no proper inquiry was carried and conducted in the case of Appellant, nor Appellant was extended any fair chance of defense and thus was condemned unheard.
- E. That no proper charge sheet, statement of allegation or show cause notice was ever served on the Appellant and thus impugned removal order is void and liable to be set aside.
- F. That even no final show cause notice was issued to the appellant, therefore the impugned Notification of removal from service is liable to be set aside.

4
G. That from angle the removal of service order is wrong, illegal and liable to be set aside.

H. That from every angle the Appellant is liable to be re-instated into service with all back benefits.

I. That any other ground not raised here may graciously be allowed at the time of arguments.


It is therefore most humbly prayed on acceptance of the instant service appeal, the impugned Notification, No. SO(C-11)/HED/12-1/2022/Shahid/4588-91 dated 10/07/2023 of the office of Secretary Higher Education Department Khyber Pakhtunkhwa may kindly be set aside and by doing so the appellant be reinstated into service with all back benefits.


Any other relief, which this August Tribunal deems fit and appropriate, may also be awarded in the favor of the Appellant.

Dated: 13-11-2023


Appellant

Through


Javed Iqbal Gulbela
Advocate Supreme Court,
Pakistan.


Saghir Iqbal Gulbela
Advocate High Court,
Peshawar.

That as per information of my client, no such service appeal has been moved by the Appellant, prior to this ones.


ADVOCATE.

5

BEFORE THE HON'BLE KHYBER PAKHTUNKHWA
SERVICES TRIBUNAL PESHAWAR

Service Appeal No. _____/2023

Shahid Khan

Versus

GOVT OF KP & Others

AFFIDAVIT

I, **Shahid Khan S/o Qazi Fazal-e-Rahim R/o Sulman Khel, Qaziabad, Kajori, Bara, District Khyber,** do hereby solemnly affirm declare on oath that all contents of Service Appeal are true and correct to the best of my knowledge and belief and nothing wrong has been stated by me in the matter.


DEPONENT

CNIC: 21201-3327073-1

Cell: 0332-5574477

Identified by:

Javed Iqbal Gulbela

Advocate Supreme Court

Of Pakistan




13/11/23.

6

BEFORE THE HON'BLE KHYBER PAKHTUNKHWA
SERVICES TRIBUNAL PESHAWAR

Service Appeal No. _____/2023

Shahid Khan

Versus

Govt of KPK & Others

ADDRESSES OF THE PARTIES

ADDRESSES OF THE APPELLANTS:

*Shahid Khan Ex-Lecturer Islamiyat (BPS-17), S/o Qazi Fazal-E-Rahim
R/o Sulman Khel Qaziabad, Kajori Baza, District Khyber*

ADDRESSES OF THE RESPONDENTS:

1. *Government of Khyber Pakhtunkhwa through Chief Secretary at Civil Secretariat, Khyber Pakhtunkhwa, Peshawar.*
2. *Chief Secretary Khyber Pakhtunkhwa at Civil Secretariat, Peshawar.*
3. *Secretary Higher Education, Archives & Libraries Department at Civil Secretariat, Khyber Pakhtunkhwa, Peshawar.*
4. *Secretary Establishment Department, at Civil Secretariat, Khyber Pakhtunkhwa, Peshawar.*
5. *Director Higher Education, Khyber Pakhtunkhwa, Peshawar.*

Dated: 13-11-2023

[Signature]
Appellant

Through

Javed Iqbal Gulbela
Advocate Supreme Court,
Pakistan.



7
105

(B)

Annexure - A

GOVT. OF KHYBER PAKHTUNKHWA
HIGHER EDUCATION, ARCHIVES &
LIBRARIES DEPARTMENT

Dated Peshawar the 28.03.2017

NOTIFICATION

NO. SO(COLLEGES-II)HED/13-5/2013/ In consultation with Finance Department Khyber Pakhtunkhwa, the Competent Authority is pleased to grant Study Leave for a period of 1461 days, w.e.f. 01.04.2017 to 01.04.2021 (on half average pay) in respect of Mr. Shahid Khan, Lecturer in Islamiyat, (BS-17), Govt. Superior Science College Peshawar, for pursuing Ph.D studies at University of Sains Malaysia, under the provision of FR-84 read with Appendix 9-1 (A) of FR & SR Vol-I&II subject to the condition that internal/local arrangement will be made by this department and no contract employee will be appointed during the entire leave period of the applicant concerned.

On expiry of leave the officer is likely to return to the same post and station.

SECRETARY TO GOVT OF
KHYBER PAKHTUNKHWA
HIGHER EDUCATION DEPARTMENT

ENDST: NO. SO(FR)/FD/5-13/2013 (c)/3354

Dated: 08-03-2017

- District Accounts Officer Peshawar for information and further necessary action.

Section Officer (FR)
Govt. of Khyber Pakhtunkhwa
Finance Department

ENDST: No. SO(C-II)HED/13-4/2016/

dated:28-03-2017

Copy to the:

1. Director Higher Education, Khyber Pakhtunkhwa, Peshawar.
2. Principal Govt Superior Science College Peshawar.
3. Section Officer (FR), Govt. of Khyber Pakhtunkhwa, Finance Department, Peshawar w/r to his letter ENDST: NO. SO(FR)/FD/5-13/2013 (c)/3354 dated : 08-03-2017.
4. Deputy Director (IT), HEMIS Cell, Higher Education Department.
5. District Accounts Officer, Peshawar.
6. Lecturer Concerned.
7. PS to Secretary, Higher Education Department, Khyber Pakhtunkhwa.

(RAHMANI GUL)
SECTION OFFICER (COLLEGES-II)

JAVED IQBAL
Advocate
Supreme Court of Pakistan
(ASC # 5317)

Better Copy -

APPENDIX-02

To
The Director
Higher Education
Peshawar, Pakistan

Subject: Extension for Study Leave

Dear Sir,

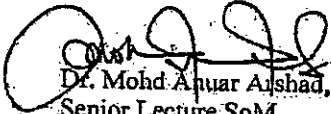
I am writing to bring to your attention about Mr. Shahid Khan (lecturer of Islamic education of your department) Employee No.00343718 is on study leave at USM Malaysia. He is doing research work under my supervision.

His research work has been gone very smoothly but from the last year his research work has affected because of Covid 19. However, now his research work started so possibly that will be scheduled early next year. For this purpose, he need study leave for coming year to complete his research work.

I hope you will empathize with his situation, understand the genuineness of reason and grant him one-year study leave extension. Please feel free to contact me. I am available on my email around the clock.


Thanking you in anticipation.

Yours sincerely,


Dr. Mohd Anuar Arshad,
Senior Lecture SoM
Universiti Sains Malaysia
anuar_arshad@usm.my

DR. MOHD ANUAR ARSHAD
SENIOR LECTURER
SCHOOL OF MANAGEMENT
UNIVERSITI SAINS MALAYSIA




Shahid Khan
Lecture HED
Peshawar, Pakistan.
Qazishahidkhan6@gmail.com

JAVED IQBAL QULBELA
Advocate
Supreme Court of Pakistan
(ASC # 5317)

Annexure B/I

~~APPENDIX-03~~



**DIRECTORATE OF HIGHER EDUCATION
KHYBER PAKHTUNKHWA
Rano Garhi, Peshawar**

E-mail:- dhekpkpesh@gmail.com, Facebook.com/dhekppeshawar, Twitter.com/dhekppeshawar
Tel # 091-2650025 / 2650024

To

Mr. Shahid Khan
Lecturer in Islamiyat,
Govt. Superior Science College, Peshawar
(Presently on Study Leave to University of Sains,
Malaysia).

SUBJECT EXTENSION IN STUDY LEAVE
Memo:

I am directed to refer to the subject cited above and to state to provide leave admissibility report for the extension period duly authenticated by District Accounts Officer, concerned to proceed further into the matter.

Endst: No: 5894

[Signature]
ADMINISTRATIVE OFFICER

Copy of the above is forwarded to the Principal, Govt. Superior Science College, Peshawar for similar necessary action.

[Signature]
ADMINISTRATIVE OFFICER

JAVED IQBAL GILRELA
Advocate
Supreme Court of Pakistan
(ASC # 5317)

10

(8)

Annexure B/II

The Director Higher Education,
Khyber Pakhtunkhwa, Peshawar.

Subject: APPLICATION FOR EX- PAKISTAN LEAVE WITHOUT PAY

Sir,

It is stated that I have availed study leave for Ph.D w.e.f. 01.04.2017 to 01.04.2021. My Ph.D course is not yet completed. I required one year leave further for the completion.

You are therefore, requested to grant me one year leave without pay w.e.f. 02.04.2021 to 01.04.2022. I shall be very indebted to you for your kindness.

Yours truly,



Shahid Khan
Lecturer in Islamiyat
GSSC, Peshawar.

Date: 03/08/2021

JAVED IQBAL GILBELA
Advocate
Supreme Court of Pakistan
(ASC # 5317)



OFFICE OF THE PRINCIPAL
GOVT. SUPERIOR SCIENCE COLLEGE
PESHAWAR

Phone No. 091-2563067 / E-mail- gscc.pesh@yahoo.com



Annexure B/II

No. 729 /

Date: 04/08 /2021

To

The Director Higher Education
Khyber Pakhtunkhwa Peshawar

Subject: APPLICATION FOR EX-PAKISTAN LEAVE WITHOUT PAY

Memo:

Enclosed please find herewith a self-explanatory application in r/o Mr. Shahid Khan Lecturer (BPS-17) of this college for Ex-Pakistan leave without pay w.e.f 02.04.2021 to 01.04.2022 for further necessary action.

Mujahid Suri
PRINCIPAL

JAVED IQBAL QULBELA
Advocate
Supreme Court of Pakistan
(ASC # 5317)



**DIRECTORATE OF HIGHER EDUCATION
KHYBER PAKHTUNKHWA**

Rano Garhi, Peshawar

Tel # 091-2650025 / 9330496

E-mail:- dhekpesh@gmail.com Facebook.com/dhekpeshawar Twitter.com/dhekpeshawar

No. 18388 / CA-1/ Estt Branch/A-12/ Shahid Khan/ Islam

Dated Peshawar the 3, 9 /2021

To

The Principal
Govt; Superior Science College, Peshawar.

SUBJECT APPLICATION FOR EX-PAKISTAN LEAVE WITHOUT PAY.
Respected Sir, السلام عليكم

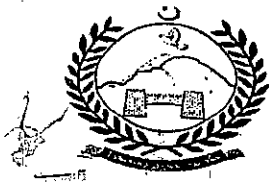
I am directed to refer to your letter No. 729 dated 04.08.2021 on the subject cited above and to state that this matter vide letter No. 2096 dated 26.04.2021 (Copy enclosed) asked you to furnish the requisite information in the captioned case but instead, you have again forwarded an incomplete case without meticulous examination which is beyond comprehension.

It is, therefore once again requested to furnish leave admissibility report alongwith leave account proforma duly authenticated by the District Accounts Officer concerned without further delay in order to proceed further into the matter, please.

Mah...g
ASSISTANT DIRECTOR (ESTT:)

*Duplicate
M.A.
7/9*

*D.No 831
07/09/21*



**DIRECTORATE OF HIGHER EDUCATION
KHYBER PAKHTUNKHWA**

Rano Garhi, Peshawar

Tel # 091-2650025 / 9330496

e-mail:- dhekpkesh@gmail.com Facebook.com/dhekpkeshwar Twitter.com/dhekpkeshwar

No. 26/46 / CA-II/ Estt./Shahid Khan/Islamiyat

Dated Peshawar the 4 / 4 / 2021

To

The Principal
Govt; Superior Science College,
Peshawar.

**REMINDER-I
MOST IMMEDIATE**

Subject: APPLICATION FOR EX-PAKISTAN LEAVE WITHOUT PAY.

Respected Sir, السلام عليكم

I am directed to refer to this office letter No. 18999 dated 03.09.2021 on the subject cited above and to state that the requisite information/documents are still awaited from your end which may be furnished to this office, please.

Shahid Khan
ASSISTANT DIRECTOR (ESTT:)

*Shahid Khan
Director*

07/11/2021

JAVED IQBAL GHORBELA
Advocate
Supreme Court of Pakistan
(ASC-5317)

16

Ann - "B" / IV

The Director Higher Education,
Khyber Pakhtunkhwa, Peshawar.


Subject: EX-POST FACTO EX-PAKISTAN STUDY LEAVE WITH PAY / WITHOUT PAY

It is submitted that I am a lecturer in Islamiyat at GSSC Peshawar and had availed an Ex-Pakistan study leave to Malaysia in order to qualify my Ph.D in my discipline w.e.f. 01/04/2017 to 01/04/2021. My Ph.D could not be accomplished within the planned time period because of the extraordinary global circumstances of Covid-19.

I came back and submitted my arrival report on 20/06/2022 at the same college. Your good office is, therefore, requested that Ex-Post facto Ex-Pakistan study leave with pay /without pay may kindly be awarded to me w.e.f 02.04.2021 to 19.06.2022. My Ph.D Degree is attached.

I shall be highly thankful to you for this act of kindness.

Yours truly,


Shahid Khan
Lecturer in Islamiyat,
GSSC, Peshawar.
Date.23.06.2022

JAVED IQBAL QURESHA
Associate
Supreme Court of Pakistan
(ASC# 5317)



DIRECTORATE OF HIGHER EDUCATION

KHYBER PAKHTUNKHWA

Rano Garhi, Peshawar

Tel # 091-2650025 / 9330496

E-mail: - dhekpesh@gmail.com Facebook.com/dhekpeshawar Twitter.com/dhekpeshawar

No. _____ /CA-II/Estt: Branch/Shahid Khan/Islamiyat. Dated Peshawar the 4/7/2022

To

The Secretary
Govt; of Khyber Pakhtunkhwa
Higher Education Department, Peshawar.

Subject: **EX-POST FACTO APPLICATION FOR EX-PAKISTAN STUDY LEAVE WITH PAY / WITHOUT PAY.**

Memo:

I am directed to enclose herewith a self-contained application in respect of Mr. Shahid Khan, Lecturer in Islamiyat, received from Principal, Govt; Superior Science College, Peshawar on the subject cited above and to state that this office sent a letter No. 2205 dated 19.05.2022 (copy enclosed) for Ex-parte action against the lecturer concerned due to his absence from duties since 02.04.2021. Now, the lecturer has submitted his arrival report to Principal, Govt; Superior Science College, Peshawar on 20.06.2022, after completing his Ph.D from University of Sains, Malaysia giving the reason that his Ph.D couldn't be completed within the planned time period because of the extraordinary global circumstances of Covid-19 pandemic and requested that ex-post facto sanction may be accorded to the grant of Ex-Pakistan Study Leave with pay / without pay to him.

Sequel in view, it is requested that the case may be considered as per rules, please.

DY: DIRECTOR (ESTABLISHMENT)

Endst; No. 3044

Copy of the above is forwarded to Principal, Govt; Superior Science College, Peshawar with reference to his letter No. 1762 dated 29.06.2022.

DY: DIRECTOR (ESTABLISHMENT)

JAVED IQBAL GULBEELA
Advocate
Supreme Court of Pakistan
(ASC # 5317)

13

(16)

Annexure - C

~~APPENDIX (09)~~

To,

The Principal,
Govt. Science Superior College Peshawar,
Peshawar

Subject: ARRIVAL / TAKING OVER CHARGE

Respected Sir,

It is stated that I have availed study leave for Ph.D w.e.f 01.04.2017 to 01.04.2021. My Ph D course was not completed at time because of Covid-19. After that I sent application for Ex-Pakistan leave without pay but the leave is still not sanctioned. Now I completed my Ph.D Degree and I want to take charge.

Obediently Yours'



Dr. Shahid Khan
Lecturer in Islarniyat
GSSC Peshawar
Date, 20.06.2022

JAVED IQBAL GILPHELA
Advocate
Supreme Court of Pakistan
(ASC # 5317)

17

Amended - D

CHARGE SHEET

1. Dr. Shahzad Khan Bangash, Chief Secretary, Khyber Pakhtunkhwa, as Competent Authority, hereby charge you, Mr. Shahid Khan, Lecturer in Islamiyat, Govt. Superior Science College, Peshawar as follows:

That you, while posted as Lecturer in Islamiyat (B-17), at Govt. Superior Science College, Peshawar committed the following irregularities:-

- i. That you were granted Study Leave for 1461 days on half average pay w.e.f 01.04.2017 to 01.04.2021 for pursuing Ph.D studies at University of Sains, Malaysia and upon expiry of leave, you didn't report for duty.
- ii. That you also applied for Ex-Pakistan leave without pay w.e.f 02.04.2021 to 01.04.2022, which was received to Directorate of Higher Education on 03.08.2021, without requisite documents required for extension in leave.
- iii. That this failure led to remaining absent from your duty for more than a year thereby wasting precious time of the students.

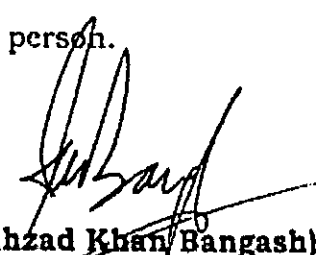
2. By reason of the above, you appear to be guilty of misconduct under rule 03 of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011 and have rendered yourself liable to all or any of the penalties specified in rule 4 of the rules ibid.

3. You are, therefore, required to submit your written defence within 7 days of the receipt of this Charge Sheet to the inquiry officer/ inquiry committee, as the case may be.

4. Your written defence, if any, should reach the inquiry officer/ inquiry committee within the specified period, failing which it shall be presumed that you have no defence to put in and in that case ex-parte action shall be taken against you.

5. Intimate whether you desire to be heard in person.

6. A statement of allegations is enclosed.


(Dr. Shahzad Khan Bangash)
Chief Secretary,
Khyber Pakhtunkhwa

JAVED IQBAL GILGELI
Advocate
Supreme Court of Pakistan
(ASC # 5317)

18

Annexure - 0/I

DISCIPLINARY ACTION

1. Dr. Shahzad Khan Bangash, Chief Secretary, Khyber Pakhtunkhwa, as Competent Authority, am of the opinion that Mr. Shahid Khan, Lecturer in Islamiyat, Govt. Superior Science College, Peshawar has rendered himself liable to be proceeded against, as he committed the following acts/ omissions, within the meaning of rule 03 of the Khyber Pakhtunkhwa Govt. Servants (Efficiency and Discipline) Rules, 2011.

STATEMENT OF ALLEGATIONS

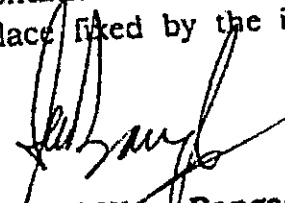
- i. That he was granted Study Leave for 1461 days on half average pay w.e.f 01.04.2017 to 01.04.2021 for pursuing Ph.D studies at University of Malaya, Malaysia and upon expiry of leave, he didn't report for duty.
- ii. That he applied for Ex-Pakistan leave without pay w.e.f 02.04.2021 to 01.04.2022, which was received to Directorate of Higher Education on 03.08.2021, without requisite documents required for extension in leave.
- iii. That this failure led to remaining absent from his duty for more than a year thereby wasting precious time of the students.

2. For the purpose of inquiry against the said accused with reference to the above allegations, an inquiry officer/inquiry committee, consisting of the following, is constituted under rule 10(1)(a) of the ibid rules.

- i. Mr. Najeebullah D.S.
- ii. Environment Deptt.

3. The inquiry officer/inquiry committee shall, in accordance with the provisions of the ibid rules, provide reasonable opportunity of hearing to the accused, record its findings and make, within sixty days of the receipt of this order, recommendations as to punishment or other appropriate action against the accused.

4. The accused and a well conversant representative of the department shall join the proceedings on the date, time and place fixed by the inquiry officer/inquiry committee.


(Dr. Shahzad Khan Bangash)
Chief Secretary,
Khyber Pakhtunkhwa

AWED IQBAL SULTANA
Advocate
Supreme Court of Pakistan
(ASC # 9217)

19

Amended - D/II

SHOW CAUSE NOTICE

I, Dr. Shahzad Khan Bangash, Chief Secretary Khyber Pakhtunkhwa, as Competent Authority, under the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011, do hereby serve you, Mr. Shahid Khan, Lecturer in Islamiyat (BS-17), Govt. Superior Science College, Peshawar as follows:

1. (i) that consequent upon the completion of inquiry conducted against you by the inquiry officer Mr. Najeed Ullah, Deputy Secretary Environment Department for which you were given opportunity of hearing vide communication No.DS-III/FE&WD/Misc-Inquiry dated 31-10-2022.
- (ii) on going through the findings and recommendations of the Inquiry Officer, the material on record and other connected papers including your defence before the Inquiry Officer.

I am satisfied that you have committed the following acts/omissions specified in rule-3 of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011:-

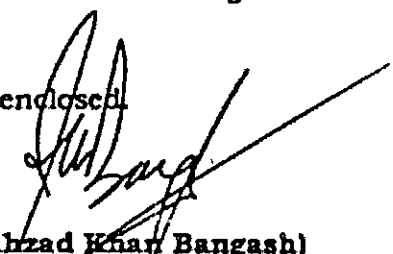
- (a) misconduct;
- (b) habitually absenting yourself from duty without prior approval of leave;

2. As a result thereof, I, as Competent Authority, have tentatively decided to impose upon you the penalty of Removal from Service under rule-4 of the said rules.

3. 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.

4. If no reply to this notice is received within ten days or not more than fourteen days of its delivery, it shall be presumed that you have no defence to put in and in that case an ex-parte action shall be taken against you.

5. A copy of the findings of the inquiry officer is enclosed.


(Dr. Shahzad Khan Bangash)
Chief Secretary,
Khyber Pakhtunkhwa

JAVED IQBAL GULBELA
Advocate
Supreme Court of Pakistan
(ASC # 5317)

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Annexure - "E"

Amir



**GOVT. OF KHYBER PAKHTUNKHWA
HIGHER EDUCATION, ARCHIVES &
LIBRARIES DEPARTMENT**

Dated Peshawar the 10th July, 2023

NOTIFICATION

No. SO(C-II)/HED/12-1/2022/Shahid

14588-91

WHEREAS

Mr. Shahid Khan, Lecturer in Islamiyat (BS-17), Government Superior Science College, Peshawar was proceeded against under the Khyber Pakhtunkhwa Govt. Servants (Efficiency & Discipline) Rules, 2011.

2. **AND WHEREAS** the Chief Secretary, Khyber Pakhtunkhwa being competent authority served the accused officer with Show Cause Notice, tentatively proposing imposition of major penalty of "removal from service" on him.

3. **AND WHEREAS** the Competent Authority, upon receipt of the reply to show cause notice submitted by the accused officer, under Rule-15 of the Rules ibid, appointed Mr. Tariq Salam Marwat (PAS BS-19), Additional Secretary (Staff), Chief Secretary Office to afford him opportunity of personal hearing on his behalf.

4. **AND WHEREAS** the Hearing Officer after having examined the charges, evidence on record and explanation of the accused officer has recommended confirmation of the major penalty "Removal from service".

5. **NOW THEREFORE**, the Chief Secretary, Khyber Pakhtunkhwa being competent authority after having considered the charges, evidence on record, the explanation of the accused officer and in exercise of powers under Rule 14(5) of the Khyber Pakhtunkhwa Govt. Servants (Efficiency & Discipline) Rules, 2011 is pleased to confirm major penalty of "Removal from service" upon Mr. Shahid Khan, Lecturer in Islamiyat (BS-17), Government Superior Science College, Peshawar.

-Sd-

SECRETARY

HIGHER EDUCATION DEPARTMENT

ENDST: NO. & DATE EVEN.

Copy forwarded to the:-

1. Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. Director Higher Education, Khyber Pakhtunkhwa, Peshawar.
3. Director-IT, HEMIS Cell, Higher Education Department, Peshawar.
4. Principal, Government Superior Science College, Peshawar.
5. Mr. Shahid Khan, Lecturer in Islamiyat (BS-17), Government Superior Science College, Peshawar.
6. PS to Secretary Higher Education Department.
7. Master File.

JAVED IQBAL GILRELA
Advocate
Supreme Court of Pakistan
(ASC # 5317)

(ABDUL WALI KHAN)
SECTION OFFICER (COLLEGES-II)

Handwritten notes and dates: 21/08/2023

To,

D.No: 634

(21)

Handwritten signature
03/02/2023

The Worthy Chief Minister
Khyber Pakhtunkhwa, Peshawar.

Annexure - F

Subject: Departmental Appeal against the Impugned Notification No. SO(C-11)/HED/12-1/2022/Shahid/458891 dated.10/07/2023 of the Office of Secretary Higher Education Department Khyber Pakhtunkhwa whereby the Appellant has been removed from Service.

Mode: Through proper channel.

Respected Sir,

With utmost obeisance & respect, the Undersigned very humbly submits as under: -

1. That the Appellant is a naturally born bona-fide citizen of Islamic Republic of Pakistan & hails from a respectable family.
2. That after going through the mandatorily required selection process, the Appellant got inducted into service as Lecturer in Islamiyat (BPS-17) years back.
3. That after getting onto the rolls of this prestigious department the Appellant remained the most professional and pragmatic fellow on the fleet of HED.
4. That in order to pursue Higher Education, the Appellant applied for and got admitted in Ph.D class/course in Malaysia. As for achieving the purpose of his noble cause, the Appellant applied for ex-Pakistan leave from 01/04/2017 to 01/04/2021(4 years).(Copy of Application is annexed as annexure "A")
5. That in pursuance to the application for the ex-Pakistan leave the same was granted to the Appellant and thus by availing the same, the Appellant left for Malaysia in connection with his study leave for acquiring his Ph.D.
6. That the Appellant started courses for Ph.D, but as the whole world was envisaged a global pandemic in the shape of Covid-19, which not only took the lives of many millions people across the world, but had virtually halted the very life and its activities of every living human beings across the world, wherever he was and whatever the status of any human, but none could escape the attack and its tremendous impact on humans.
7. That this pandemic caused much distress, havoc and devastation in every body life. It destroyed the business, professional services and above all it caused much havoc in the lives of student's weather, it was a school going child or university student or a scholar Research. The same is the case of

JAVED IQBAL GILRELA
Advocate
Supreme Court of Pakistan
(ASC # 53171)

the Appellant who had gone Malaysia for study of his Ph.d courses, that he was hit by pandemic and its repercussion.

8. That because of the aforementioned pandemic of Covid-19, the study of the Appellant was disturbed upto a great extent and the normal tenure for Ph.D was prognosticatedly prolonged from 4 to 5 years, where in the Appellant had no fault or rather could not control the happening of the eventuality, that was formidable been envisaged by the Appellant.
9. That as the Appellant could not complete his Ph.d in 4 years, so in order to complete his Ph.D the Appellant remained over there for coming one year and got completed his Ph.D, where after the Appellant come back to Pakistan and submitted his arrival report on 20/05/2022.
10. That the Appellant in order to validate his leave, the Appellant moved an application for sanctioning of his Ex-post facto Ex-Pakistan leave of 1 year from 02/04/2021 to 19/06/2023. (Copy of Application is annexed as annexure "B")
11. That inspite being a genuine case and inspite of stark fact that the delay in Ph.D course was due to Covid-19 which was certainly beyond the control of the Appellant, was condemned for no wrong done.
12. That even otherwise Ex-post facto sanction in such like scenario is provided under the law and thus no one can be condemned or victimized if cogent reason is provided.
13. That even otherwise when the Ph.D of the Appellant got completed, the Appellant rushed back to homeland and even submitted arrival report instantly, so at no juncture neither the Appellant remained lethargic, nor there is any malicious or malafide exists on part of the Appellant, nor his absence was due to any dubious reasons or without any reasons but even then was condemned and on the one hand his application Ex-post facto sanction for Ex-Pakistan leave was turn down, but as well as the removed from service without any justification vide impugned Notification No. SO(C-11)/HED/12-1/2022/Shahid/458891 dated.10/07/2023 of the office Higher Education Department. (Copy of impugned order No. SO(C-11)/HED/12-1/2022/Shahid/458891 dated.10/07/2023 is annexed as annexure "C")
14. That no mandatory instrument as followed and adopted by competent authority before imposing the major penalty and thus the very impugned order of removal from service is wrong and illegal.
15. That no proper inquiry was carried and conducted in the case of Appellant, nor Appellant was extended any fair chance of defense and thus was condemned unheard.

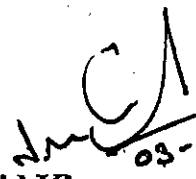
(23)

16. That no charge sheet, statement of allegation or even final showcause notice was ever served on the Appellant and thus impugned removal order is void and liable to be set aside.

17. That from angle the removal of service order is wrong, illegal and liable to be set aside.

It is therefore most humbly prayed on acceptance of the instant departmental appeal, the impugned Notification No. SO(C-11)/HED/12-1/2022/Shahid/458891 dated.10/07/2023 of the office Higher Education Department may kindly be set aside and by doing so the appellant be reinstated into service with all back benefits.

Dated: 3rd August 2023

Appellant 
03-08-2023
Mr. Shahid Khan
Lecturer Islamiyat (BPS-17)

JAVED IQBAL GILBELA
Advocate
Supreme Court of Pakistan
(ASC # 5317)

وکالت نامہ

عدالت: Kp Service Tribunal Peshawar

مستبرضان نام حکومت و غیرہ

منجانب ایپلنٹ دعویٰ درمیں ایپل

تاریخ 13-11-2023

باعث تحریر آنکہ مقدمہ مندرجہ بالا عنوان اپنی طرف سے واسطے پیروی و جوابدہی

بقام کسٹاوری کیلے جاویدا قبال گل بیلہ ایڈووکیٹ سپریم کورٹ آف پاکستان

کو پدیں شرط وکیل مقرر کیا ہے۔ کہ میں ہر پیشی کا کوڈ یا بزرگیہ مختار خاص رو برو عدالت حاضر ہوتا رہوں گا۔ اور بوقت پکارے جانے مقدمہ وکیل صاحب موصوف کو اطلاع دے کر حاضر دالت کرونگا، اگر پیشی پر من مظہر حاضر نہ ہوا اور مقدمہ میری غیر حاضری کی وجہ سے کسی طور پر میرے برخلاف ہو گیا تو صاحب موصوف اس کے کسی طرح ذمہ دار نہ ہونگے۔ نیز وکیل صاحب موصوف صدر مقام پکھری کی کسی اور جگہ یا پکھری کے مقررہ اوقات سے پہلے یا پیچھے یا بروز تعطیل پیروی کرنے کے ذمہ دار نہ ہونگے۔ اگر مقدمہ علاوہ صدر مقام پکھری کے کسی اور جگہ سماعت ہونے یا بروز تعطیل یا پکھری کے اوقات کے آگے پیچھے پیش ہونے پر من مظہر کو کوئی نقصان پہنچے تو اس کے ذمہ دار یا اس کے واسطے کسی معاوضہ کے ادا کرنے یا مختار نہ واپس کرنے کے بھی صاحب موصوف ذمہ دار نہ ہونگے۔ مجھے کوکل پر داخنتہ صاحب موصوف مثل کردہ ذات خود منظور و قبول ہوگا۔ اور صاحب کو عرضی دعویٰ و جواب دعویٰ اور درخواست جرائے ڈگری و نظر ثانی اپیل و نگرانی ہر قسم کی درخواست پر دستخط و تصدیق کرنے کا بھی اختیار ہوگا اور کسی حکم یا ڈگری کے اجراء کرانے اور ہر قسم کے روپیہ وصول کرنے اور رسید دینے اور داخل کرنے اور ہر قسم کے بیان دینے اور سپروٹاشی و راضی نامہ فیصلہ پر خلاف کرنے اقبال دعویٰ دینے کا بھی اختیار ہوگا۔ اور بصورت اپیل و برآمدگی مقدمہ یا منسوفی ڈگری یکطرفہ درخواست حکم اتناعی یا قرتی یا گرفتاری قبل از اجراء ڈگری بھی موصوف کو بشرط ادا ایگی علیحدہ مختار نہ پیروی کا اختیار ہوگا۔ اور بصورت ضرورت صاحب موصوف کو بھی اختیار ہوگا یا مقدمہ مذکورہ یا اس کے کسی جزوی کاروائی کے واسطے یا بصورت اپیل، اپیل کے واسطے دوسرے وکیل یا بیرسٹر کو بجائے اپنے یا اپنے ہمراہ مقرر کریں اور ایسے مشیر قانون کے ہر امر دہی اور ویسے ہی اختیارات حاصل ہونگے جیسے کے صاحب موصوف کو حاصل ہیں۔ اور دوران مقدمہ میں جو کچھ ہر جانہ التواء پڑے گا۔ اور صاحب موصوف کا حق ہوگا۔ اگر وکیل صاحب موصوف کو پوری فیس تاریخ پیشی سے پہلے ادا نہ کرونگا تو صاحب موصوف کو پورا اختیار ہوگا کہ مقدمہ کی پیروی نہ کریں اور ایسی صورت میں میرا کوئی مطالبہ کسی قسم کا صاحب موصوف کے برخلاف نہیں ہوگا۔ لہذا مختار نامہ لکھ دیا کہ سند ہے۔

مورخہ 13-11-2023 مضمون مختار نامہ سن لیا ہے اور اچھی طرح سمجھ لیا ہے اور منظور ہے۔

Accepted by

BC 11-1742
CNIC 17301-1502481-3
Cell No. 0312-9125055

(مستبرضان)
10-11-2023