# FORM OF ORDER SHEET
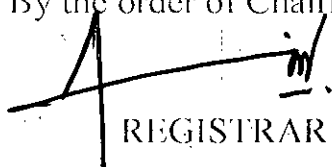
Court of _____

## Appeal No.      2550/2023

| S.No. | Date of order proceedings | Order or other proceedings with signature of judge. |
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| 1 | 2 | 3 |
| 1. | 11/12/2023 | The appeal of Mr. Mehran ud Din presented today by Mr. Kabir Ullah Khattak Advocate. It is fixed for preliminary hearing before touring Single Bench at Swat on |

By the order of Chairman

REGISTRAR

# BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Appeal No. 2350 of 2023

Mehran Ud Din Sweeper GMS Kandaro Barthrus
District Bajaur.

......... **Appellant**

## VERSUS

1. Secretary to Government Elementary and Secondary Education Khyber Pakhtunkhwa Peshawar.

2. The Director Elementary and Secondary Education Khyber Pakhtunkhwa Peshawar.

3. District Education Officer (Male) District Bajaur.

........... **Respondents**

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Appellant

Through

Dated 8/12/23

**Kabir Ullah Khattak**
**Advocate, High Court, Peshawar**

# BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Appeal No. _2550_ of 2023

Mehran Ud Din Sweeper GMS Kandaro Barthrus
District Bajaur.

......... **Appellant**

## VERSUS

1. Secretary to Government · ·Elementary and Secondary Education Khyber Pakhtunkhwa Peshawar.

2. The Director Elementary and Secondary Education Khyber Pakhtunkhwa Peshawar.

3. District Education Officer (Male) District Bajaur.

.......... **Respondents**

**APPEAL UNDER SECTION 4 OF THE KPK SERVICE TRIBUNAL ACT, 1974, AGAINST THE IMPUGNED ORDER DATED 27/05/2023 WHEREBY MAJOR PENALTY OF REMOVAL FROM SERVICE WAS IMPOSED TO THE APPELLANT WHICH HAS BEEN COMMUNICATED TO THE APPELLANT ON 24.08.2023 AGAINST WHICH THE APPELLANT FILED DEPARTMENTAL APPEAL ON 28-08-2023 WHICH WAS NOT DECIDED WITHIN THE STATUTORY PERIOD OF NINENTY DAYS.**

## Prayer:

By acceptance of this appeal the impugned order dated 27.05.2023 may kindly be set aside and the appellant may kindly be reinstated on his service along with all back benefits.

Any other remedy which this august tribunal deems fit that may also be onward granted in favor of appellant.

**Respectfully Sheweth:**

**FACTS**

The appellant respectfully submits as under:

1) That the appellant has been appointed is a vacant post of Naib Qasid at Government Middle School Kandaro Barthus District Bajaur in BPS-3 on 30.04.2021. (Copy of appointment order is attached as Annexure-A).

2) That in compliance of the office order dated 30.04.2021 the appellant submitted his arrival report on 30.04.2021 at Government Middle School Kandaro Barthus District Bajaur and continue his due to regularly and functional at the said school.

3) That after appointment the appellant performed his duty regularly with full devotion and hard work and no complaint whatsoever has been made against the appellant.

4) That while performing his official duty with respondent Department the respondent No. 3 issued a show cause notice against the appellant which has been properly replied by the appellant and denied all the allegation level against the

appellant by stated that the appellant was regular performed his duty since the date of appointment and so concerned the second allegation the appellant was M. Phil regular student at the year of 2020, at the year 2020 all the Universities are closed due to Covid-19 that's why online classes has been constituted and all the classes were online basis but the appellant was not kept reply of show cause notice. (Copy of Show Cause Notice and attendance register are attached as Annexure-B & C).

5) That due to the alleged allegation mentioned in the show cause notice the impugned order dated 27.05.2023 has been passed against the appellant whereby the appellant has been removed from service but the said impugned order has been communicated to the appellant on 24.08.2023. (Copy of impugned order dated 27.05.2023 is attached as Annexure-D).

6) That the appellant submitted Departmental Appeal on 28.08.2023 against the impugned order dated 27.05.2023 which was not decided within the statutory period of ninety days. (Copy of Departmental Appeal is attached as Annexure-E).

7) That feeling aggrieved the appellant submitted the instant Service Appeal before this Hon' able Tribunal inter alia on the following grounds.

## GROUNDS

A). That the impugned orders dated 27/05/2023 is void ab initio orders because it has been passed without fulfilling the codal formalities.

B). That no regular inquiry has been conducted by the respondent Department and no chance of personal hearing has been provided to the appellant in this respect the appellant relied upon the Judgment dated 2008 Page SCMR 1369.

C). That it well settled principal of law no one can be condemn unheard because it is against the natural justice of law and this respect the appellant relied upon the Judgment reported on 2008 SCMR Page 678.

D). That no statement of witness has been recorded and no opportunity of cross examination has been provided to the appellant.

E) That there is no prove and evidence regarding the alleged allegations mention in the impugned order dated 27.05.2023.

F). That the penalty awarded to the appellant is harsh one.

G). Any other grounds will be raised at the time of arguments with prior permission of this Hon'able Tribunal.
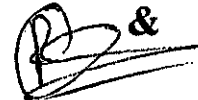
It is therefore most humbly prayed on acceptance of this appeal the impugned order dated 27.05.2023 may kindly be set aside and the appellant may kindly be reinstated on his service along with all back benefits.

Any other remedy which this august tribunal deems fit that may also onward granted in favor of appellant.

Appellant

Through

**Kabir Ullah Khattak**

**&**

**Roeeda Khan**
**Advocates, High Court, Peshawar**

# BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Appeal No. _____ of 2023

Mehran Ud Din Sweeper GMS Kandaro Barthrus District Bajaur.

......... **Appellant**

## VERSUS

1. Secretary to Government Elementary and Secondary Education Khyber Pakhtunkhwa Peshawar.

2. The Director Elementary and Secondary Education Khyber Pakhtunkhwa Peshawar.

3. District Education Officer (Male) District Bajaur.

........... **Respondents**

## AFFIDAVIT

I, Mehran Ud Din Sweeper GMS Kandaro Barthrus District Bajaur do hereby solemnly affirm and declare on oath that the content of the above application are true and correct to the best of my knowledge and belief and nothing has been kept secret and concealed from this Hon'ble Tribunal.

DEPONENT

## BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Appeal No. _____ of 2023

Mehran Ud Din Sweeper GMS Kandaro Barthrus
District Bajaur.

......... **Appellant**

### VERSUS

1. Secretary to Government Elementary and Secondary Education Khyber Pakhtunkhwa Peshawar.

2. The Director Elementary and Secondary Education Khyber Pakhtunkhwa Peshawar.

3. District Education Officer (Male) District Bajaur.

........... **Respondents**

### ADDRESSES OF THE PARTIES

**Appellant**

Mehran Ud Din Sweeper GMS Kandaro Barthrus
District Bajaur.

**Respondents**

1. Secretary to Government Elementary and Secondary Education Khyber Pakhtunkhwa Peshawar.
2. The Director Elementary and Secondary Education Khyber Pakhtunkhwa Peshawar.
3. District Education Officer (Male) District Bajaur.

**Appellant**

Through

**Kabir Ullah Khattak**
**&**
**Roeena Khan**
**Advocates, High Court, Peshawar**

Appeal No. _____ of 2023

Mehran Ud Din Sweeper GMS Kandaro Barthrus
District Bajaur.

......... **Appellant**

## VERSUS

1. Secretary to Government Elementary and Secondary Education Khyber Pakhtunkhwa Peshawar.

2. The Director Elementary and Secondary Education Khyber Pakhtunkhwa Peshawar.

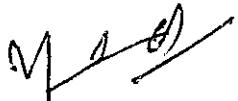3. District Education Officer (Male) District Bajaur.

........... **Respondents**

## APPLICATION FOR CONDONATION OF DELAY IN FILING OF APPEAL IF ANY.

Respectfully Sheweth:

1) That the applicant file an appeal in this Hon'ble Court, which is fixed for today in which no date is fixed for hearing so for

2) That the impugned removal order dated 27.05.2023 has been communicated to the appellant on 24.08.2023.

3) That the impugned order is come under the definition of void order because it has been passed with cut fulfilling the codal formalities.

4) That there are number of precedence of the Supreme Court of Pakistan. That the cases shall be decided on merits neither then on technicalities.

5) That there are many Judgment of the superior court that if the respondent has no case on merit the limitation has not becomes a hardle in way of justice. '

6) That there are so many judgments of the Superior court as well as specific provision in service law that limitation has been counted from the date of knowledge/communication.

It is, therefore, humbly prayed that on acceptance of this application the delay if any in filing of appeal may kindly be condone.

Appellant

Through

**Kabir Ullah Khattak**
**&**

**Roeeda Khan**
**Advocates, High Court, Peshawar**

# APPOINTMENT ORDER OF SWEEPER

Consequent upon the recommendations of departmental selection con Mr. Mehran Uddin S/O Khan Zeb District Bajaur is hereby appointed agair vacant post of Sweeper purely on merit at GMS Kandaro Barthrus Bajaur ir B (9610-390-21310) with usual *allowances* as admissible under the rules from th of taking over charge in the interest of public services.

## TERMS AND CONDITIONS:

1. He will be on probation period for one year extendable for another one year.
2. His service can be terminated at any stage in case his performance is un satisfactory during probation period.
3. His services are liable to termination at any stage without assigning any reason.
4. He will entitled to get all the benefits as admissible under the rules.
5. Charge report should be submitted to all concerned through ADEO.
6. Health and age certificate should be produced to this office obtained from District Hea Officer Bajaur.
7. Posting / adjustment on the advertised/available vacancies is the discretionary powers the appointing authority and no one has the right to claim for adjustment at a speci. School.
8. He will follow such rules and regulation as may issue from time to time by th government.
9. Errors and omission will be accepted for further rectification within the specified period
10. Appointee already serving as regular / contract employees shall tender resignation fro their previous service before joining the present post.
11. He may not be handed over charge of the post if below 18 years or above 40 years age.
12. If he failed to report her arrival within 15 days, their appointment order will r automatically considered as cancelled.
13. Any order issued against the existing rules/policy/merit should be cancelled without ar prior notice.
14. Appointment on any disputed post shall be cancelled or process as per rules under th required circumstances.

(Shireen Zada)
**District Education Officer**
**Bajaur**

Endst: No. 14712-16
Copy forwarded to: -

1. Director Elementary & Secondary Education Khyber Pakhtunkhwa NMD Peshawar.
2. District Accounts Officer Bajaur.
3. DMO (EMA) Bajaur.
4. Head Master GMS Kandaro Barthrus
5. Officials concerned.

Dated 30 / 4 /2021

**District Education Officer**
**Bajaur**

"B" (11)

# District Education Office
# Bajaur at Khar

## SHOW CAUSE NOTICE

1. Being competent authority I District Education Officer male Bajaur, under the Khyber Pakhtunkhwa Government Civil Servant (Efficiency and Discipline Rules, 2011, do hereby serve you, Mr. Mehran ud Din Sweeper GMS Kandaro Barthrus District Bajaur as follows:

   (i)    While you have been posted as Sweeper at GMS Kandaro Barthrus District Bajaur.
   (ii)   As per report of Assistant District Education Officer Secondary you have been found absent from your duties since the date of appointment.
   (iii)  It has also been reported with proofs that you have been admitted as regular student in the University of Sargodha Punjab.
   (iv)   The inquiry committee has recommended your removal from service under rule 4 (b) sub rule-iii, Report of the inquiry committee is attached.

2. By reason of the above, you are guilty of acts of omissions and blunders under section (b&d) of rules 3 of the said rules and have rendered yourself liable to all or any of the penalties specified in rule 4 of the rules ibid.

3. As a result thereof, I have tentatively decided to impose upon you major penalty of removal from service under rule 4 (b) (iii) of the said rule.

4. If no reply to this notice is received within Seven (07) days or not more than fifteen (15) days of its delivery, it shall be presumed that you have no defense to put in and in that case an ex-parte action shall be taken against you.

5. You are, thereof, 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.

District Education Officer
Bajaur

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# G.M.S. Kandaro رجسٹر حاضری مدرسین

## بابت ماہ ......... 2023

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رئیس المدرسہ

رجسٹر حاضری بذریعہ مدرسین ـــــ G.M... Kaidaro

بابت ماہ ــــ مئی ٢٠٢٣ ـــ

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رجسٹر حاضری مدرسین ـــــــــ

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بابت ماہ ـــــــ ستمبر ۲۰۲۲ء

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رجسٹر حاضری ماہ درسین ... کا ... ۱۸
بابت ماہ ... ۷۰۲۲

عصمت الرحمٰن | میرا الرحمٰن
N-Q | Sweeper

| اُجرت | روانگی | دستخط | آمد | دستخط | روانگی | دستخط | آمد | دستخط | روانگی | دستخط | آمد | دستخط | روانگی | دستخط | آمد | دستخط | روانگی | نمبر شمار |
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| | | | | | | | P | 1.30 | P | 7.30 | | P | 1.30 | | P | 7.30 | | 14 |
| | | | | | | | P | 1.30 | P | 7.30 | | P | 1.30 | | P | 7.30 | | 15 |
| | | | | | | | P | 1.30 | P | 7.30 | | P | 1.30 | | P | 7.30 | | 16 |
| | | | | | | | P | 1.30 | P | 7.30 | | P | 1.30 | | P | | | 17 |
| | | | | | | | | | | | | | | | | | | 18 |
| | | | | | | | P | 1.30 | P | 7.30 | | P | 1.30 | | P | 7.30 | | 19 |
| | | | | | | | P | 1.30 | P | 7.30 | | P | 1.30 | | P | 7.30 | | 20 |
| | | | | | | | P | 1.30 | P | 7.00 | | P | 1.30 | | P | 7.30 | | 21 |
| | | | | | | | P | 1.30 | P | 7.30 | | P | 1.30 | | P | 7.35 | | 22 |
| | | | | | | | P | 1.30 | P | 7.30 | | P | 1.30 | | P | 7.30 | | 23 |
| | | | | | | | P | 1.30 | P | 7.30 | | P | 1.30 | | P | 7.30 | | 24 |
| | | | | | | | | | | | | | | | | | | 25 |
| | | | | | | | P | 1.30 | P | 7.30 | | P | 1.30 | | P | 7.30 | | 26 |
| | | | | | | | P | 1.30 | P | 7.30 | | P | 1.30 | | P | 7.30 | | 27 |
| | | | | | | | P | 1.30 | P | 7.30 | | P | 1.30 | | P | 7.30 | | 28 |
| | | | | | | | | | | | | | | | | | | 29 |
| | | | | | | | P | 1.30 | P | 7.30 | | P | 1.30 | | P | 7.30 | | 30 |
| | | | | | | | P | 1.30 | P | ? | | | | | | | | 31 |

(۱۹۱)

| | | | Sweeper | | |
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رجسٹر حاضری مدت رسین جی ۔ ایم ۔ ایل ۔ کریں ہر وہ

بابت ماہ نومبر

| نام عبد العزیز | | | | عمران الدین | | | | پنسلہ | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| رخ | آمد | دستخط | روانگی | دستخط | آمد | دستخط | روانگی | دستخط | آمد | دستخط | روانگی | دستخط | آمد | دستخط | روانگی | دستخط |
| 1 | 8:30 | P | 2:20 | P | 8:30 | P | 2:20 | P | | | | |
| 2 | // | P | // | P | // | P | 2:20 | P | | | | |
| 3 | // | P | // | P | // | P | // | P | | | | |
| 4 | // | P | // | P | // | P | // | P | | | | |
| 5 | // | P | 12:00 | P | // | P | 12:00 | P | | | | |
| 6 | // | P | 2:20 | P | // | P | 2:20 | P | | | | |
| 7 | | | | | | | | | | | | |
| 8 | // | P | // | P | // | P | // | P | | | | |
| 9 | // | P | // | P | // | P | // | P | | | | |
| 10 | // | P | // | P | // | P | // | P | | | | |
| 11 | // | P | // | P | // | P | // | P | | | | |
| 12 | // | P | // | P | // | P | // | P | | | | |
| 13 | // | P | 12:00 | P | // | P | 12:00 | P | | | | |
| 14 | | | | | | | | | | | | |
| 15 | // | P | 2:20 | P | // | P | 2:20 | P | | | | |
| 16 | // | P | // | P | // | P | // | P | | | | |
| 17 | // | P | // | P | // | P | // | P | | | | |
| 18 | // | P | // | P | // | P | // | P | | | | |
| 19 | // | P | 12:00 | P | // | P | 12:00 | P | | | | |
| 20 | // | P | 2:20 | P | // | P | 2:20 | P | | | | |
| 21 | | | | | | | | | | | | |
| 22 | // | P | // | P | // | P | // | P | | | | |
| 23 | // | P | // | P | // | P | // | P | | | | |
| 24 | // | P | // | P | // | P | // | P | | | | |
| 25 | // | P | // | P | // | P | // | P | | | | |
| 26 | // | P | 12:00 | P | 4:00 | P | 12:00 | P | | | | |
| 27 | // | P | 2:20 | P | // | P | 2:20 | P | | | | |
| 28 | | | | | | | | | | | | |
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| رخصت | حال | سابقہ | میزان | حال | سابقہ | میزان | حال | سابقہ | میزان | حال | سابقہ | میزان | حال | سابقہ | حال |
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| اتفاقیہ | | | | | | | | | | | | | | | |
| استحقاقی | | | | | | | | | | | | | | | |
| بیماری | | | | | | | | | | | | | | | |
| میزان | | | | | | | | | | | | | | | |

دستخط ہیڈ ماسٹر

## OFFICE ORDER

WHEREAS Mr. Mehran ud Din Sweeper GMS Kandaro Barthrus was proceeded against under the Khyber Pakhtunkhwa Govt. Servants (Efficiency & Discipline) Rules, 2011 for the charges mentioned in the charge sheet and statement of allegations.

2. AND WHEREAS Abdul Bar Principal GHS Loi Sam (BS-18), Saidur Rahman Head Master GHS Lara Banda (BS-17) and Muhammad Nazir ADEO Secondary (BS-16) were nominated as inquiry Committee to conduct formal inquiry under the ibid Rules, against Mr. Imad ud Din Naib Qasid for the charges leveled against him.

3. AND WHEREAS the Inquiry Committee after having examined the charges, evidence on record and explanation of the accused, has submitted the report.

4. AND WHEREAS the Competent Authority (District Education Officer) after having considered the charges and evidence on record, inquiry report, explanation of the accused in response to the show cause notice and personal hearing granted to him by Inquiry Committee on behalf of the District Education Officer competent authority on 15-04-2023 is of the view that charges against the accused have been proved.

5. NOW, THEREFORE, In exercise of the power conferred under E&D Rules, 2011 sub rule 4 section b (iii) of the ibid Rules, the Competent Authority (DEO), is pleased to impose major penalty of **"Removal form Service"** upon Mr. Imad Ud Din Naib Qasid GMS Kandaro Barthrus District Bajaur with immediate effect.

**District Education Officer (M)**
**Bajaur**

Endst: No. __1744 - 5/__  Dated __27/5/__2023
Copy forwarded to:

1. Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.
2. Deputy Commissioner Bajaur.
3. District Accounts Officer Bajaur.
4. DMO (EMA) Bajaur.
5. Mr. Mehran ud Din Sweeper GMS Kandaro Barthrus.

**District Education Officer (M)**

To,

The Director Elementary & Secondary
Education Khyber Pakhtunkhwa
Peshawar.

Subject: **DEPARTMENTAL APPEAL AGAINST THE ORDER DATED 27.05.2023 ENDST NO.17452-56 PASSED BY THE DISTRICT EDUCATION OFFICER (MALE) DISTRICT BAJAUR**

Respected Sir,

The appellant submits as under.

1. That the appellant was appointed is a vacant post of Sweeper at Govt. Middle School Kandaro Barthus Bajaur on 30.04.2021.(Copy of appointment order dated 30.04.2021 is attached).

2. That in compliance of office order dated 30.04.2021 the appellant submitted his arrival report on 30.04.2021 at Govt. Middle School Kandaro Barthus Bajaur and continued duty regularly and punctual at the said school.

3. That while performing his official duty with respondent department that the District Education Officer (Male) Bajaur issued a show cause notice on 07.04.2023 against the appellant;-

    (i)    As per the said show cause notice according to the report of Assistant Director Education Officer Secondary you have been found an absent from your duties since the date of appointment.

    (ii)    It has also been reported with proofs that you have been admitted a regular student in Hazara University instead of Sargodha Punjab.

In response of the said allegations that the appellant has already been submitted reply of show cause notice and denied all the allegation leveled against the appellant by stated that I was regularly perform my duties since the date of my appointment and so concerned the 2nd allegation that you have a regular student University of Hazara University instead of Sargodha Punjab in response of which it is stated that I was BS Software Engineering regular

student at the year of 2019 so the allegation against me is wrong, baseless because in the said period all the universities are closed due to covid-19 that's why online classes has been constituted and all the classes are online basis. **(Copy of attendance registered and reply of show cause notice are attached).**

4. That due to the reason mentioned above the impugned order has been passed on 27.05.2023 against the appellant whereby the appellant has been removed from service but the said impugned order has been communicated to the appellant on 24.08.2023. **(Copy of impugned order is attached).**

5. That the impugned order may be liable for setting a side on the following grounds.

Grounds:-

A. That the impugned removal order is come under the definition of void and illegal order because it has been passed without fulfilling the codal formalities.

B. That no charge sheet no statement of allegation has been issued or served to the appellant.

C. That no opportunity of personal hearing and defence has been provided to the appellant and so concerned the alleged allegation of absentia against the appellant, the appellant has never been absent from lawful duty which has already been clarified in the above para.
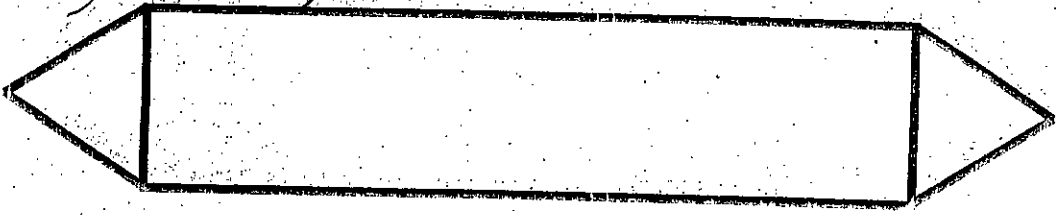
It is therefore, most humbly prayed that on acceptance of this instant departmental appeal the impugned removal office order dated 27.05.2023 may very kindly be set aside and the appellant may kindly be reinstated on his service along with all back benefit.

Dated: 28.08.2023

Appellant

**MEHRAN UD DIN**
Sweeper GMS
KandaroBarthrus
District Bajaur

بعدالت جناب سول جج طاہرخاں



مورخہ ............ 2ء منجانب احمد علی خاں

مقدمہ میرواہ الدین بنام الٰہی بخش

دعویٰ ............................

جرم ............................

## باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ

آن مقام شاہد ................ کیلئے کورٹ اسٹمپ لوہندے محرر

مقرر کر کے اقرار کیا جاتا ہے ۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا ۔ نیز

وکیل صاحب کو راضی نامہ کرنے یا تقرر ثالث و فیصلہ پر حلف دیئے جواب دہی اور اقبال دعویٰ اور

بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ از عرضی دعویٰ اور درخواست ہر قسم کی تصدیق

زرائیں پر دستخط کرانے کا اختیار ہوگا ۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی

اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا محتاج ہوگا ۔ از بصورت ضرورت

مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے

تقرر کا اختیار ہوگا ۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکور با اختیارات حاصل ہوں گے

اور اس کا ساختہ پر داختہ منظور وقبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ ہوں گے

سبب سے وہوگا ۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے

کہ پیروی مذکور کریں ۔ لہذا وکالت نامہ لکھدیا کہ سند رہے ۔

المرقوم 8 ماہ دسمبر 20ء

العبد گواہ العبد