

①

BEFORE THE SERVICE TRIBUNAL
KHYBERPAKHTUNKHWA, CAMP COURT SWAT

Misc:Application No _____/2023

In

Service Appeal No.339/2018

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 9847

Dated 12-12-2023

Rashida Mehnaz

.....Appellant

V E R S U S

Govt of KP and others

.....Respondents

**IN THE MATTER OF SERVICE APPEAL FILED FOR CORRECTION OF DATE OF
BIRTH OF THE APPELLANT.**

**APPLICATION FOR AMENDMENT IN
PRAYER OF IBID APPEAL ON BEHALF OF
THE APPELLANT FOR MENTIONING
ACTUAL DATE OF BIRTH AS 10-08-1988
WHICH HAS BEEN INCORRECTLY /
ADVERTANTLY MENTIONED IN THE
PRAYER AND GROUNDS OF APPEAL AS 02-
03-1988. AS PER ORDER DATED 06:12:2023.**

Respectfully Sheweth:

The appellant humbly submit as under;

1. That the above title noted service appeal is pending before this respected tribunal for adjudication and is fixed for today, i.e 04/1/2024
2. That the above service appeal has been preferred by the appellant against the dismissal order of the departmental appeal dated 14-02-2018, whereby the appellant's request for correction of date of birth in her service book has been dismissed.
3. That the appellant counsel inadvertently mentioned correct date of birth of the appellant as 02-03-1988 in the prayer of appeal instead of 10-08-1988. The later and actual date of birth of the appellant is evident from DAKHIL KHARAJ register issued by the Incharge

BEFORE THE SERVICE TRIBUNAL
KHYBERPAKHTUNKHWA CAMP COURT SVAT

Misc:Application No _____/2018

In

Service Appeal No.330/2018

Rashida Mehtab

Appellant.....

V E R S U S

Govt of KP and others

Respondents.....

IN THE MATTER OF SERVICE APPEAL FILED FOR CORRECTION OF DATE OF BIRTH OF THE APPELLANT

APPLICATION FOR AMENDMENT IN PRAYER OF THIS APPEAL ON BEHALF OF THE APPELLANT FOR MENTIONING ACTUAL DATE OF BIRTH AS 10-08-1988 WHICH HAS BEEN INCORRECTLY ADVERTENTLY MENTIONED IN THE PRAYER AND GROUNDS OF APPEAL AS 02-03-1988.

Respectfully Sheweth:

The appellant humbly submit as under;

1. That the above title noted service appeal is pending before this respected tribunal for adjudication and is fixed for today, i.e. 02/03/2018.
2. That the above service appeal has been protested by the appellant against the dismissal order of the departmental appeal dated 14-03-2018, whereby the appellant's request for correction of date of birth in her service book has been dismissed.
3. That the appellant counsel inadvertently mentioned correct date of birth of the appellant as 02-03-1988 in the prayer of appeal instead of 10-08-1988. The latter and actual date of birth of the appellant is evident from DAKHIL KHARU register issued by the Incharge

(2)

teacher government girls primary school booni goal
Chitral upper. (Attested copy attached)

4. That the appellant humbly request to this Hon'ble Tribunal to amend the prayer of the instant service appeal and to read/consider as follow:

PRAYER IN APPEAL :

It is, therefore, humbly prayed that on acceptance of this appeal, the respondents may please be directed to correct the date of birth of the appellant as 10-08-1988 instead of 10-08-1985 in her service record

OR

Any other relief which is suitable may also be granted.

Appellant/Applicant

Through

Saif Ullah Mongol
Advocate, High court

Saif Ullah Mongol
Advocate High Court &
Federal Shariat Court of Pakistan

Date: 05.12.2023

AFFIDAVIT

It is do hereby solemnly affirm and declare that the contents of the accompanying Application are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.

DEPONENT

CNIC: 15202-1574526-0


Oath Commissioner
ZARIN KHAN
Advocate High Court

teacher government girls primary school doomi goal
Chital upper. (Attested copy attached)

4. That the appellant humbly request to this Hon'ble
Tribunal to amend the prayer of the instant service
appeal and to read/consider as follow:

PRAYER IN APPEAL:

It is, therefore, humbly prayed that on
acceptance of this appeal, the respondents may
please be directed to correct the date of birth of
the appellant as 10-08-1988 instead of 10-08-
1982 in her service record

OR

Any other relief which is suitable may also be
granted.

Appellant/Applicant
Through
Sair Ullah Mongol
Advocate, High court

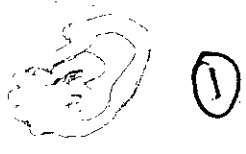
Date: 02.12.2023

AFFIDAVIT

It is do hereby solemnly affirm and declare that the
contents of the accompanying Application are true and correct
to the best of my knowledge and belief and nothing has been
concealed from this Hon'ble Tribunal.

DEPONENT
CNIC: 15202-1574526-0

[Handwritten signatures and stamps]



**IN THE COURT OF JAMIL FAQIR
CIVIL JUDGE/ALAQA QAZI
UPPER CHITRAL**

Suit No. : 179/1 (Neem)
Date of Institution : 21.06.2022
Date of Decision : 22.08.2022

Haji Akbar S/O Mas Khan R/O Booni Gole, Tehsil Mastuj, District Upper Chitral.....(Plaintiff)

VERSUS

- (1) Chairman, Board of Intermediate & Secondary Education, Peshawar (BISEP).
- (2) Board of Intermediate & Secondary Education Peshawar.
- (3) Principle Government High School for Boys Booni.
- (4) Director NADRA District Chitral.
- (5) Assistant Director NADRA District Chitral Upper.
- (6) Government of Pakistan through Secretary Interior, Islamabad.....(Defendants)

SUIT FOR DECLARATION ETC

JUDGMENT:

Brief facts of the case are that Haji Akbar herein after called as plaintiff seeks decree for declaration, permanent and mandatory injunction against Chairman board and 5 others herein after called as defendants to the effect that, his actual and correct date of birth is 14.12.1989 which is incorrectly recorded as 11.11.1986 which is rectifiable. Defendant were repeatedly asked to rectify the said entry but they refused, hence the suit in hand.

Handwritten signature and date 22.08.2022

Attested
Incharge Record Room
District Courts Upper Chitral
02-08-2023

(2)

Defendants were summoned, amongst them, defendants No. 1, 2, 5 appeared, contested the suit and submitted the written statement.

Out of the divergent pleading the following issues were framed.

ISSUES

1. *Whether plaintiff has got a cause of action to file the instant suit? OPP*
2. *Whether plaintiff is estopped to sue? OPD*
3. *Whether the suit is within time? OPP*
4. *Whether this Court has got jurisdiction to try the present suit? OPD*
5. *Whether correct date of birth of plaintiff is "11.12.1989", which is incorrectly recorded as "11.11.1986" in the certificates & record of defendants? OPP*
6. *Whether defendant himself filled in the form for SSC examination wherein he recorded his date of birth as 11.11.1986? OPD Relief.*

The parties were invited to produce their pro and contract evidence. Plaintiff Haji Akbar appeared before the court and recorded his statement as PW-1. Rehmat Aleem recorded his statement as PW-2. Musa Ali Khan recorded his statement as PW-3, thereafter plaintiff closed his evidence. The case was fixed for evidence of the defendants on 19.07.2022 and a number of opportunities were provided to the defendants to produce their evidence but they failed to produce the evidence. The matter in issue is disposed-off through issue wise findings as bellow:

ISSUES NO 5 & 6:

Both these issues are core issues of the suit therefore, they are taken for joint discussion. Onus to prove the issue No. 5 is on the plaintiff and that of issue No. 6 is on the defendants. Plaintiff claims that

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his correct date of birth is 11.12.1989 which is incorrectly recorded by the defendants in their records, certificates and CNIC as 11.11.1986. On the other hand, contesting defendants claim that they have issued certificate and CNIC as per educational record of the plaintiff which is correct.

Record reveals that Ex.PW1/9 is the CNIC of the real sister of the plaintiff wherein her date of birth is recorded as 02.02.1987. It is admitted that between the date of birth of two real siblings a minimum gap of one year must exist. As per record of the defendants the gap between the date of birth of the plaintiff and her real sister Shaheena Bibi is less than 3 months which is impossible and unnatural. This discussion leads to the conclusion the date of birth of the plaintiff recorded by the defendants in their record, certificates and CNIC issued to the plaintiff is incorrect. It is also worth mentioning that the evidence lead by the plaintiff has remained un-rebutted during cross examination. It is settled that the facts asserted in the examination in chief would be considered as correct if remained un-rebutted during cross examination. In this respect reliance is place on PLD 2002 Peshawar 21 and 2016 YLR 302.

In view of the above issue No. 5 is answered in affirmative whereas the issue No. 6 is answered in negative.

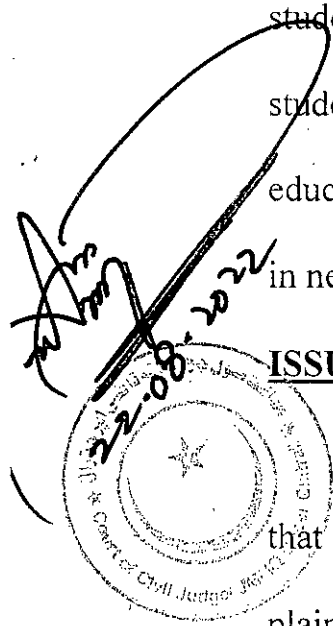
Attested
Incharge Record Room
District Court Upper Chitral
02-09-2023



u


ISSUE NO 02.

Onus to prove the issue is on the defendants. Defendants claim that the plaintiff is estopped to sue. The defendants have raised the issue on the ground that the plaintiff by himself recorded his application form for SSC examination wherein he recorded his date of birth as 11.11.1986. Admittedly, at the time of application for SSC examination the plaintiff was a minor and as a matter of common observation the Headmaster/Principle of the school/institution normally fill in the forms of all the students as per record of the school and submit the same to the board of intermediate and secondary education. It is also pertinent to mention that the plaintiff belongs to a far-flung area of the province wherein most of the parents are illiterate. The parents normally do not record the date of birth of their children and the head teacher of the primary school on the basis of hypothesis record the date of birth of the students at the time of initial admission. In case date of birth of the student is recorded as incorrect the same error is carried out in his entire educational career. In view of the above discussion the issue is answered in negative.



ISSUE NO 3.

Onus to prove the issue is on the defendants. Defendants claim that the suit is barred by time. Record reveals that the CNIC of the plaintiff was issued on 04.04.2018. The plaintiff in his plaint and affidavit claims that the defendants were asked to record correct entry of

Attested 
 Incharge Record Room
 District Courts Upper Chitral
 02-09-2023

his date of birth in their record, certificate and CNIC but they denied, hence the present suit. The said portion of the evidence is not rebutted. The suit is for declaration of right etc filed on 19.04.2021. Article 120 of the Limitation Act 1908 provides a limitation of 6 years for filing such suits after denial of the defendants.

In view of the above discussion the issue is answered in affirmative.

ISSUE NO 4:

Onus to prove this issue is on the defendants. Defendants have question the jurisdiction of the suit. The suit of the plaintiff is in respect of declaration of legal right under Section 42 of the Specific Relief Act 1877. Section 9 of the Code of Civil Procedure 1908, provides that a civil court has jurisdiction to entertain such suits. The issue is therefore, answered in negative.

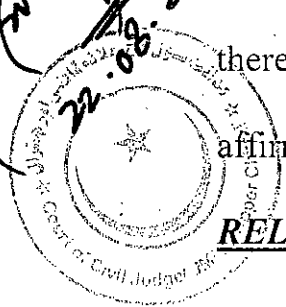
Issue No. 01:

Onus to prove the issue is on the plaintiff. Sequel to foregoing discussion, it is proved that the defendants refused to rectify date of birth of the plaintiff in their record, certificates and CNIC of the plaintiff, therefore, plaintiff has got cause of action. The issue is answered in affirmative.

RELIEF:

In the light of above discussion, the plaintiff has established his case through oral and documentary evidence whereas the defendants

Attested
Incharge Record Room
District Courts Upper District
02-07-2023





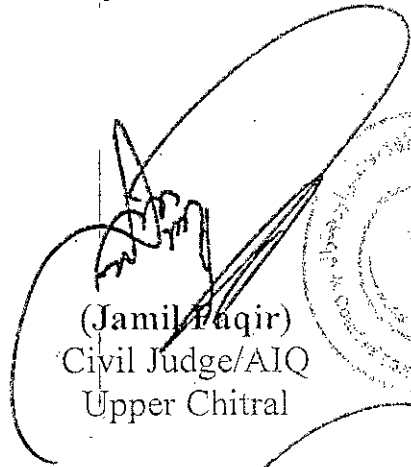
6


have failed to contest. Preponderance of evidence and probability is towards the plaintiff, therefore, the suit in hand is decreed as per prayer and accordingly date of birth of the plaintiff is declared as "11.12.1989" with direction to the defendants to rectify the said entry in their record and to issue certificates and CNIC to the plaintiff with correct date of birth. This decree is effective to the extent of correction of date of birth of the plaintiff in the record of defendants, certificates and CNIC of the plaintiff only. As the erroneous entry is not proved to have been recorded on the basis of any mala-fide etc, therefore, the plaintiff has to bear his own costs.

After proper compilation, case file be consigned to the record room.

ANNOUNCED:

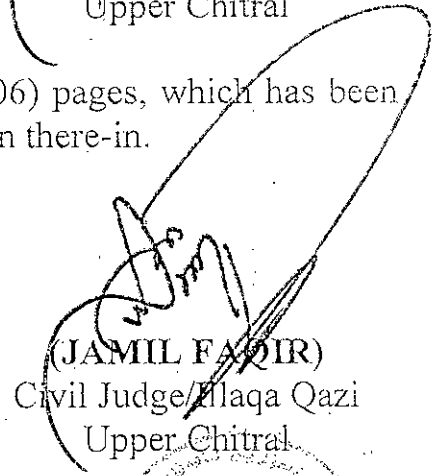
24.08.2022



 (Jamil Faqir)
 Civil Judge/AIQ
 Upper Chitral



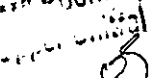


CERTIFICATE

Certified that, the judgment consists of Six (06) pages, which has been signed by me after making necessary correction there-in.


 (JAMIL FAQIR)
 Civil Judge/Haqa Qazi
 Upper Chitral



Attested 
 Incharge P- 
 District: 
 02-09-2023



DECREE SHEET
IN THE COURT OF JAMIL FAQIR, CIVIL JUDGE, UPPER CHITRAL.

Suit No. : 179/1 (Neem)
Date of Institution : 21.06.2022
Date of Decision : 22.08.2022

Haji Akbar S/O Mas Khan R/O Booni Gole, Tehsil Mastuj, District Upper Chitral.....(Plaintiff)

VERSUS

- (1) Chairman, Board of Intermediate & Secondary Education, Peshawar (BISEP).
- (2) Board of Intermediate & Secondary Education Peshawar.
- (3) Principle Government High School for Boys Booni.
- (4) Director NADRA District Chitral.
- (5) Assistant Director NADRA District Chitral Upper.
- (6) Government of Pakistan through Secretary Interior, Islamabad. (Defendants)

SUIT FOR DECLARATION ETC

Brief facts of the case are that Haji Akbar herein after called as plaintiff seeks decree for declaration, permanent and mandatory injunction against Chairman board and 5 others herein after called as defendants to the effect that, his actual and correct date of birth is 11.12.1989 which is incorrectly recorded as 11.11.1986 which is rectifiable. Defendant were repeatedly asked to rectify the said entry but they refused, hence the suit in hand.

This suit coming on this 24th day of November, 2021 for final disposal vide detailed Judgment of 06 pages separately written and placed on file, it is ordered and decreed that the plaintiff has established his case through oral and documentary evidence whereas the defendants have failed to contest. Preponderance of evidence and probability is towards the plaintiff, therefore, the suit in hand is decreed as per prayer and accordingly date of birth of the plaintiff is declared as "11.12.1989" with direction to the defendants to rectify the said entry in their record and to issue certificates and CNIC to the plaintiff with correct date of birth. This decree is effective to the extent of correction of date of birth of the plaintiff in the record of defendants, certificates and CNIC of the plaintiff only. As the erroneous entry is not proved to have been recorded on the basis of any mala-fide etc, therefore, the plaintiff has to bear his own costs. After proper compilation, case file be consigned to the record room.

ANNOUNCED:

22.08.2022

Attested
Incharge Record Room
District Courts Upper Chitral
02-07-023

(JAMIL FAQIR)
Civil Judge/IQ,
Upper Chitral

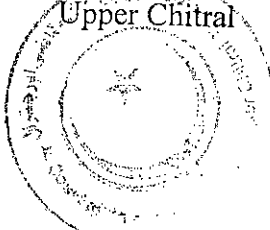
COST OF PARTIES

S.NO	PLAINTIFF	Rs	p.	DEFENDANTS	Rs.	p.
1	Stamp for plaint			Stamp for plaint		
2	Do. for power			Do. for power		
3	Do. for exhibits			Do. for exhibits		
4	Pleader's fee on Rs.			Pleader's fee on Rs.		
5	Subsistence for witnesses			Subsistence for witnesses		
6	Commissioner's fee			Commissioner's fee		
7	Service of Process			Service of Process		
8	Others			Others		
	TOTAL COST			TOTAL COST		

Today on 22.08.2022, the said order is issued under the court seal and my signature.

Court Seal

(Handwritten Signature)
(JAMIL FAQIR)
 Civil Judge/IQ,
 Upper Chitral



Court Fee Stamp

- 1. Sr. No of Application
- 2. Date of Presentation of Application
- 3. Date of commencement
- 4. Date of Preparation
- 5. No. of Words
- 6. Court Fees
- 7. Urgent Fees
- 8. Name of Applicant
- Date of Delivery
- Court Examiner

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(3)

IN THE COURT OF JAMIL FAQIR
CIVIL JUDGE/ALLAQA QAZI
BOONI UPPER CHITRAL

Civil Misc; Application No...97/06 of the year 2021

Chairman Board VS Haji Akbar and others”

SUIT FOR DECLARATION AND PERMANENT INJUNCTION

Application for setting aside Ex-parte Decree.

Order....01
21-06-2022

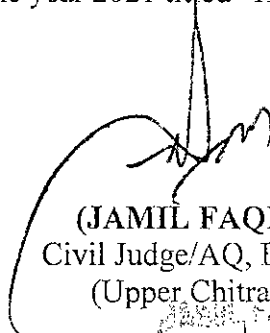
The application in hand is restored vide order No.10 dated 21-06-2022 in restoration application No. 101/06 of 2021. Parties present. Arguments over application regarding setting aside ex-parte decree passed in Civil Suit bearing No-173/01 of 2021 titled as “Haji Akbar Vs Chairman Board and others” ex-parte decreed on 07-07-2021 heard and available record gone through.

Learned counsel for the petitioner contended that application titled “Haji Akbar Vs Chairman Board and others” was ex-parte decreed on 07-07-2021. The absence of the petitioner was not intentional. Therefore, the application may kindly be accepted.

It is settled that law favors administration of justice on merits rather than technicalities. Without hearing the petitioner will be equivalent to condemning him unheard. Let the petitioner be provided with a fair opportunity of hearing. The application, therefore, accepted and the above referred ex-parte decree stands set aside. The civil suit No.173/1 mentioned above stands restored with its old number Neem. No order as to costs.

This file be consigned to the record room, however a copy of this order be placed on case file No-173/1 of the year 2021 titled “Haji Akbar Vs Chairman Board and others.

Announced
21-06-2021


(JAMIL FAQIR)
Civil Judge/AQ, Booni
(Upper Chitral)

JAMIL FAQIR
Civil Judge/AQ, Booni
(Upper Chitral)

Attested
Incharge
District Court
Room
Chitral

02-09-2023

Roll No 3781

Serial No. 496321

Board of Intermediate and Secondary Education
Provincial
Higher Education Pakistan

REVISED



Secondary School Certificate Examination

SESSION 2004-SUPPLEMENTARY

(SCIENCE GROUP)

Certified that Haji Akbar Son/Daughter of Mas Khan
Resident of District Chitral

has qualified for award of Secondary School Certificate in the Examination held in October, 2004
as a Private student and obtained 472 marks out of 850 and has been placed in Grade C

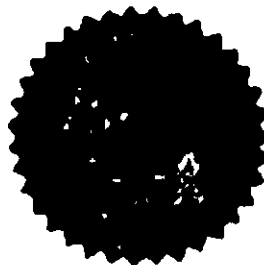
Representing Good The Candidate passed in the following subjects

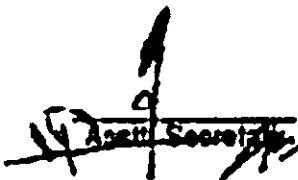
- | | |
|--------------------|--------------------|
| 1 English | 2 Urdu |
| 3 Islamiyat (comp) | 4 Pakistan Studies |
| 5 Mathematics | 6 Physics |
| 7 Chemistry | 8 Biology |

His/her date of birth according to Admission form is December 11, 1989

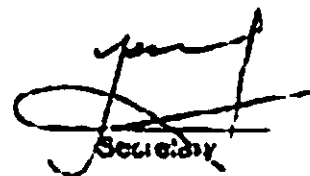
In Words (Eleventh December One Thousand Nine Hundred Eighty-Nine)

issued in Lieu of OC # 280972 (Supply 2004)




Secretary

Printed Date & Time November 11, 2004 3:37:08 PM


Secretary

This certificate is issued without effect unless it is signed

1983

1983

Board of Intermediate and Secondary Education Faisalabad



REVISED

Secondary School Certificate Examination

SESSION 2004-SUPPLEMENTARY

(SCIENCE GROUP)

Registration No.	Roll No.	Matriculation No.	Matriculation Year

The student has secured the following marks in the examination held on
 20th October 2004

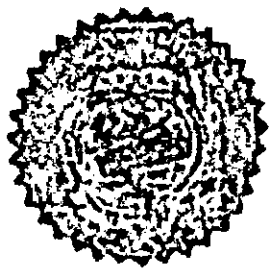
English	80
Urdu	75
Mathematics	70
Physics	65
Chemistry	60
Biology	55
Health Education	50
Practical	45
Total	480

Result: **Good**

The Candidate has secured the following marks in the examination held on
 20th October 2004

English	80
Urdu	75
Mathematics	70
Physics	65
Chemistry	60
Biology	55
Health Education	50
Practical	45
Total	480

Issued in Form of OC 8 280873 (Group 2004)



[Signature]
Secretary

[Signature]
Secretary

PRINTED AND PUBLISHED BY THE BOARD OF INTERMEDIATE AND SECONDARY EDUCATION, FAISALABAD



10

G.No. PB 1261235

BOARD OF INTERMEDIATE & SECONDARY EDUCATION
PESHAWAR
KHYBER PAKHTUNKHWA, PAKISTAN

DETAILED MARKS CERTIFICATE

REVISED

Secondary School Certificate Examination
Session 2001 (Supply)

Name: Haji Akbar Roll No 3963

Father's Name: Mus Khan Date of Birth 11-12-89

Subject	Marks	MARKS OBTAINED			
		Theo/P-A	Prac/P-B	Total	In Words
1. English	150	-	-	75	Seventy-Five
2. Urdu	150	-	-	97	Ninety-Seven
3. Islamiyat (Comp)	75	59	-	59	Fifty-Nine
4. Pakistan Studies	75	30	-	30	Thirty Only
5. New Rizvi	100	40	-	40	Forty Only
6. Physics	100	63	18	81	Eighty-One
7. Chemistry	100	29	16	45	Forty-Five
8. Biology	100	31	14	45	Forty-Five

Total 850

472-C Four Hundred Seventy-Two Only



Remarks

Checked By: _____

Date: 07-12-2022

Controller of Examinations

Note: Error / Omission are excepted

DEPARTMENT OF EDUCATION
HAWAII
DEPARTMENT OF EDUCATION



OF TAILED MARKS CERTIFICATE

Department of Education
 Department of Education

REVISED

Date of Exam: _____
 Date of Issue: _____

Item	Points	Grade		
		A	B	C
1. English	100	20	10	5
2. Math	100	20	10	5
3. Reading	100	20	10	5
4. Science	100	20	10	5
5. Social Studies	100	20	10	5
6. Art	100	20	10	5
7. Music	100	20	10	5
8. Physical Education	100	20	10	5
Total	800	160	80	25

Total Score: _____
 Grade: _____



Controller of Examinations

Date: 05-15-2023
 Noted/Checked by: _____

رجسٹر داخل خانیج

رقم پانڈاٹ	بہ نام	تاریخ پیدائش	طالب علم نام	نمبر	تاریخ داخلہ
بازو	رحمت زار	پانچ جنوری 1986 سو جی سی	لیا دروین	9	1-6-1995
جیانی	رعق خان	پندرہ اگست 1984 سو جی سی	رحیمہ لیا	10	1-6-1995
جیانی	صاحب محمد خان	پندرہ اگست 1986 سو جی سی	لیا سمیون	11	1-6-1995
بازو	عسکری علی خان	دو جولائی 1986 سو جی سی	گلستان لیا	12	1-6-1995
بازو	سش خان	دس اگست 1988 انجین سو جی سی	رشیدہ مناس	13	1-6-1995
مستورقہ	علیہ انور	سیات اکتوبر 1986 انجین سو جی سی	ستارہ انور	14	1-6-1995
زرد	زار محمد	تیرہ دسمبر 1986 انجین سو جی سی	شہناز بیبا	15	1-6-1995
جیانی	میاض خان	پندرہ جنوری 1987 انجین سو جی سی	نایبہ شہاب	16	1-6-1995

نوٹ: اگر کوئی داخلہ لیا گیا ہے تو اسے اپنی اپنی ذمہ داری ہے کہ وہ اپنی اپنی تاریخ پیدائش کے مطابق درج کرے۔

Attached

واقع

سکول

کمیٹی	تاریخ	پیداوار	کیڑا	دبہ	اس عملت کا حصہ	سکوت	بوی
سر شفیقہ بیگم	15-4-1991				چیلہم		بوی
سر شفیقہ بیگم	11-4-91				چیلہم		بوی
سر شفیقہ بیگم	14-4-95				سوم		بوی
					سوم		بوی
سر شفیقہ بیگم	14-6-98				سوم		بوی
سر شفیقہ بیگم	2-6-1998				سوم		بوی
سر شفیقہ بیگم	4-4-99				سوم		بوی
سر شفیقہ بیگم	14-4-98				سوم		بوی

Red

Incharge Teacher
Girls Primary School
Local Goal (Chitral)

Attested