

21.08.2019


Nemo for the appellant Mr. Kabirullah Khattak learned Additional Advocate General alongwith Mr. Sajid ASI for the respondents present and submitted written reply/comments. Adjourned. To come up rejoinder/arguments on 04.09.2019 before D.B.


(Hussain Shah)
Member

04.09.2019

Learned counsel for the appellant present. Mr. Zia Ullah learned Deputy District Attorney for the respondents present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 17.10.2019 before D.B.


(Hussain Shah)
Member

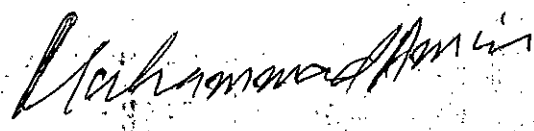

(M. Amin Khan Kundi)
Member

17.10.2019


Appellant absent. Learned counsel for the appellant is also absent. Mr. Riaz Ahmad Paindakheil, Assistant AG for the respondents present. Case called several time but none appeared on behalf of the appellant nor the appellant was present in person. Consequently, the present service appeal is hereby dismissed in default. File be consigned to the record room

ANNOUNCED
17.10.2019


(AHMAD HASSAN)
MEMBER


(M. AMIN KHAN KUNDI)
MEMBER

24.06.2019 Appellant alongwith his counsel and Addl. AG for respondents present. Written reply/comments not submitted. Notices be issued to the respondents for submission of written reply/comments. Case to come up for written reply/comments on 12.07.2019 before S.B.


(Ahmad Hassan)
Member

12.07.2019 Counsel for the appellant and Addl. AG alongwith Sajid Superintendent for the respondents present and requested for adjournment. Last opportunity granted. To come up for written reply/comments on 31.07.2019 before S.B.


Member

31.07.2019 Appellant with counsel and Mr. Usman Ghani, District Attorney alongwith Mr. Sajid, ADO for respondents present.

The representative of the respondents has provided a copy of office order dated 31.05.2019, whereby the appellant has been transferred to GGPS, Ghari Doulat Zai. He requests for further time to submit the reply/comments. Learned District Attorney has assailed the appeal on the ground of its maintainability as well as jurisdiction of this Tribunal. In that regard learned-counsel for the appellant requires time to meet the objections. The matter is, therefore, adjourned to 21.08.2019 before S.B.


Chairman

26.03.2019

Appellant present. Learned counsel for the appellant present.
Preliminary arguments heard.

The appellant (Chowkidar) has filed the present service appeal u/s 4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974 for his transfer from GPS No.1 Mohib Banda Mardan to GPS No.2 Shehbaz Garhi Mardan.

Points urged need consideration. The appeal is admitted for regular hearing subject to all legal objections. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for written reply/comments. To come up for written reply/comments on 10.04.2019 before S.B


Member

10.04.2019

Counsel for the appellant present and submitted an application for extension of time to deposit the requisite security and process fee. It is noted in the application that the needful could ^{not} be done due to inadvertence. Application is allowed. The appellant shall deposit the requisite charges within 3 days, thereafter, notices be issued to the respondents for submission of written reply/comments.

Appellant Deposited
Security & Process Fee

Adjourned to 28.05.2019 before S.B


Chairman

28.05.2019

Appellant alongwith counsel and Addl. AG present. None is present as representative on behalf of the respondents.

The respondents shall be issued fresh notices for submission of written reply/comments on 24.06.2019 before S.B.

The appeal is accompanied ^{by} a prayer for grant of interim relief. Notice of the same shall also be given to the respondents for the date fixed.

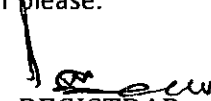
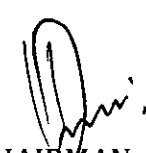
Chairman 

Form- A

FORM OF ORDER SHEET

Court of _____

Case No. 360/2019

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	12/03/2019	<p>The appeal of Mr. Sohail Dad presented today by Mr. Nasir Iqbal Yousafzai Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR 12/3/19</p> <p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>26/03/19</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
2-	14/03/19	

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

Appeal No. 360/2019

Sohail dad.

Versus

Secretary Education etc.

INDEX

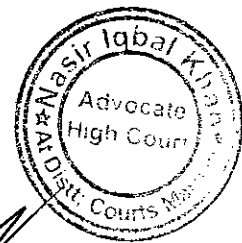
S.No	Description of documents	Annexure	Page
1.	Memo of appeal with affidavits.		1 to 6
2.	Copy of Appointment order.	"A"	7
3.	Copy of application	"B"	8-9
4.	Copy of FIR and its Better copy	"C" – "C 1"	10-11
5.	Copy of Judgment of PHC	"D"	12-20
6.	Wakalatnaama.		21

Appellant

Through

Nasir Iqbal Yousafzai,

Advocate High Court at Mardan.



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Appeal No. 360/2019

Sohail Dad s/o Awal Dad r/o Mohallah Jamal Khel Shahbaz Garhi Mardan..... (Appellant)

Khyber Pakhtunkhwa Service Tribunal

Versus

Diary No. 332

Dated 12/3/2019

- 1) Secretary elementary and secondary Education, Government of KPK, Peshawar.
- 2) District Education Officer (Male), Mardan.
- 3) Director Elementary and Secondary Education Khyber Pakhtunkhwa, Peshawar
- 4) Principal Government Primary School No 1, Mohib Banda, Mardan, KPK

..... (Respondents)

Appeal under section 4 of Khyber Pakhtunkhwa Service Tribunal Act 1974, whereby appellant filed departmental appeal for transfer of appellant to Government Primary School No 2 Shahbaz Garhi Mardan on daily diary No 6616 of 28/11/2018 but still not responded hence the instant appeal.

Filed to day

Registrar

Respectfully Sheweth;

12/3/19

- 1) That the appellant is Chowkidar in Government Primary School No 1 Mohib Banda Mardan while resides in Mohallah Jamal Khel Shahbaz Garhi Mardan at a distance of at least 10 Kms from GPS No 1 Mohib Banda Mardan.(copy of appointment order is annexed as annexure A)
- 2) That the appellant owing to one of the old but horrible enmity in the locality where the GPS No 1 Mohib Banda is situated, applied to respondent No 2 vide written application for transfer of the

appellant from GPS No 1 Mohib Banda to GPS No 2 Shahbaz Garhi Mardan where one post of Chowkidar is vacant.(copy of the application and FIR are annexed here as annexure B and C).

- 3) That prior to the written application (Annexure-B), the appellant time and again requested that the vacant post of Chowkidar at GPS No.2 Shehbaz Garhi Mardan may be filled by deserving and due transfer of the petitioner from GPS No. 1 Mohib Banda, Mardan to the vacant post and in this regard the petitioner many times visited to the office of respondent No. 2 where the petitioner found political war between the workers of PK-51 and PK-50 where the schools under discussion are situated, as political workers of both the constituencies are struggling for vacancies which under pressure act of the respondents is unduly and unjustifiably affecting the due and justified transfer of the petitioner from GPS No.1 Mohib Banda Mardan to GPS No. 2 Shahbaz Garhi Mardan and has thereby compelled the petitioner to institute the writ petition No. 5580 /2018 on the following grounds amongst many others.
- (i) That the transfer of the appellant neither affects any person nor is prejudicial toward the creation of vacancy or vacancies of Chowkidar as in both situations one post is vacant in the jurisdictional district of respondent No. 2, therefore, acceptance of the instant appeal may at all aspects be in the interest of justice.
 - (ii) That blood feud enmity of the appellant in the locality of his present service station may be a genuine and justified ground for the transfer of the petitioner from his present place of service to GPS No. 2 Shahbaz Garhi Mardan.
 - (iii) That the genuine right of the appellant may not be played with at the hands of political workers whose pressure has restrained the respondent No.2 from transfer of the appellant so that

vacancy of Chowkidar at PK-50 may not result in the creation of vacancy of the like cadre in the territorial jurisdiction of PK-51 in spite of the fact that both the constituencies belong to the jurisdiction of respondent No. 2.

- (iv) That service in the safe environment is the inalienable right of the petitioner and therefore, the respondents may owing to security threat to the petitioner, transfer the petitioner from GPS No. 1 Mohib Banda Mardan to GPS No. 2 Shahbaz Garhi Mardan.
- (v) That reluctance of respondents in the transfer of the petitioner is just the result of political influence; otherwise there exist no abnormality for the respondents in the transfer of the petitioner.
- (vi) That acceptance of the instant petition neither effects the administration of respondents nor right or rights of any individual serving or not serving in the department of the respondents; therefore, in situation like this acceptance of the instant writ petition being hindered by no legal or factual impediment may graciously be accepted.

The August Peshawar High Court Peshawar passed its worthy order dated 20/11/2018 which suggest the instant petition before this honorable court, the relevant portion of which worthy and sympathetic order is reproduce herein as ready perusal.(Attested copies are annexed as annexure D)

“In view of peculiar circumstances of the case we deem it appropriate to send the petitioner matter to respondent No 2 for his sympathetic consideration regarding the prayer which he made in the instant petition”

- 4) That in compliance of the above mentioned order of August High Court, the appellant applicant filed an application to respondent No

2 who took no action thereon hence the instant appeal is filed on the basis of above mentioned already agitated grounds.

Prayer:

It is, therefore, most humbly prayed for that on the acceptance of the instant appeal, the respondents may be directed to issue transfer order of the appellant from GPS No 1 Mohib Banda Mardan to GPS No 2 Shahbaz Garhi Mardan being in the interest of justice and safe and secure discharge of duty on the part of petitioner being necessary for fair and vigilant discharge of duty. Any other relief that this honorable deems fit may also be kindly granted.

Submitted by


Sohail Dad

(Appellant)



Through

Nasir Iqbal Yousafzai

Advocate High Court Mardan



List of books:


- A) Constitution of Islamic Republic Of Pakistan, 1973
- B) Manual of Service Laws.
- C) Any other law book.

CERTIFICATE

Certified as per instruction of my client, that no such appeal is filed prior to the instant one.

Counsel for the appellant

Dated 12/3/08





BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Sohail Dad
(Appellant)

Versus

Secretary Education etc
(Respondents)

Appeal under section 4 of Khyber Pakhtunkhwa Service Tribunal Act 1974, whereby appellant filed departmental appeal for transfer of appellant to Government Primary School No 2 Shahbaz Garhi Mardan on daily diary No 6616 of 28/11/2018 but still not responded hence the instant appeal.

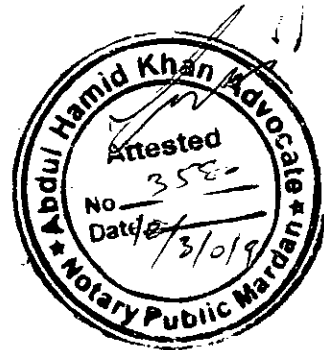
AFFIDAVIT

Whatever, I, the appellant, stated in the accompanied appeal are true and correct to the best of my knowledge and beliefs and nothing is kept concealed from this honorable court. No such appeal is filed prior to the instant one.

Deponent

.....
[Signature]

Dated: 12/3/18



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

Sohail Dad
(Appellant)

Versus

Secretary Education etc.
(Respondents)

Interim Relief

That as the appellant has got strong prima facie case and there exist immense possibility of its success and the valuable rights of the appellant may be effected If the vacant post at GPS No 2 Shahbaz Garhi Mardan is filled with otherwise than by transfer of the appellant which may thereby cause irreparable loss to the appellant; therefore an interim order directing the respondents to restrain from filling of the vacant post otherwise than by transfer of the appellant till the final disposal of the instant appeal.

Submitted by

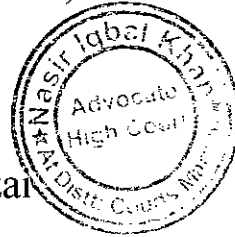

Sohail Dad

(Appellant)

Through


Nasir Iqbal Yousafzai

Advocate High Court Mardan.



12/3/18



OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) MARDAN

Notification

Consequent upon the approval given by the Departmental selection committee in the meeting held on 08-01-2015, the following candidates are hereby appointed in BPS-01 ((Rs=4800-150-9300) per months plus usual allowances in the schools noted against each against the Vacant C-IV Open/ Retired son quota posts with the terms and conditions given below with immediate effect in the interest of public service.

S.No	Name/Father Name	Address	School where appointed	PK	Remarks
1	Sohail Dad S/O Awal Dad	Shahbaz Garhi	GPS No.2 Mohib Banda	25	A.V.Chowkdar Post
2	Tariq Said S/O Khan Said	Shahbaz Garhi	GPS No.2 Kandar	25	A.V.Chowkdar Post
3	Rizwan ullah S/O Abdullah	Mardoor Abad	GPS Khurshid Abad	28	A.V.Chowkdar Post
4	Hakeem ullah S/O Jamil	Khor Banda	GHS Toru	24	A.V.Behshti Post
5	Azmat Ali S/O Khan Bahadar	Mayar	GHS Mayar	25	A.V.Behshti Post
6	Naveed Ahmad S/O Siraj Muhammad	Mardan	GHS Ghallar Dher	24	A.V.Behshti Post
7	Sajid Ali S/O Gul Said	Karwan Road Mardan	GHS No.1 Bicket Gunj	24	A.V.Behshti Post
8	Akhtar Hussain S/O Sakhi Gul		GMS Surakh Dheri (NSR)	24	A.V.Behshti Post

Terms & Conditions

- 1 Their Services will be considered regular but without pension & Gratuity in terms of Section-19 of the Khyber Pakhtunkhwa Civil Servant Act, 1973 as amended vide Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2005
- 2 They should join their posts within 15 days of the issuance of this Notification. In case of failure to join the post within 15 days of the issuance of this notification, Their appointment will expire automatically and no subsequent appeal etc shall be entertained.
- 3 They will be on probation for a period of One year extendable for another one year.
- 4 They will be governed by such rules and regulations as may be issued from time to time by the Govt.
- 5 Charge report should be submitted to all concerned.
- 6 DDO concerned would furnish a certificate to the effect that the candidate has joined the post or otherwise after 15 days of the issue of their posting order.
- 7 The age limit for the above posts is 18-40 years.
- 8 They will produce Health and Age Certificate from the M/S of D.H.O Mardan.
- 9 Their pay will be released after the verification of their documents by the concerned DDO.
- 10 Their services can be terminated at any time in case of their performance is found unsatisfactory. In case of misconduct they will be proceeded under the rules framed from time to time.
- 11 Their services are liable to termination on one month prior notice from either side. In case of resignation without notice, one month pay/allowances shall be forfeited to Government
- 12 No TA/DA will be allowed to the appointee for joining his duty.

(HANIF ULLAH)
DISTRICT EDUCATION OFFICER
(MALE) MARDAN

Enclst. No. 659-91 Dated 27-1 2015

Copy forwarded to:

- 1 PS to Minister Education Khyber Pakhtoonkwa, Peshawar
- 2 PS to Secretary E & S Education Khyber Pakhtoonkwa, Peshawar
- 3 Director E & S Education Khyber Pakhtoonkwa, Peshawar.
- 4 Dy. District Education Officer (M) local Office Mardan
- 5 SDEO(M) Primary Mardan & Takht Bhal
- 6 Principal/H.M. GHS Ghala Dher, GHS Mayar, GHS Toru, GMS Surkh Dheri
- 7 DAO Mardan
- 8 Official concerned

(Signature)
DISTRICT EDUCATION OFFICER
(MALE) MARDAN

"Shaukat"



خدمت جناب ڈسٹرکٹ ایجوکیشن آفیسر (مردانہ) مردان

درخواست بمراد تبادلہ سائیل بحوالہ فیصلہ عدالت عالیہ

پشاور ہائی کورٹ W.P No. 5581-P
2018

جناب عالی! درخواست سائیل صحت زیل مراد ہے

1۔ یہ کہ سائیل بہ عہدہ چوکیدار مورخہ 28/11/2018 سے گورنمنٹ پرائمری سکول صاحب بانڈوہ میں ڈیوٹی سدا انجام دیتا چلا آ رہا ہے۔

2۔ یہ کہ چونکہ سائیل شہباز گڑھی لوئس کونسل کی رہائشی ہے اور مذکورہ بالا سکول سے سائیل کے گھر کی فاصلہ بہت زیادہ ہے اور سائیل کو مذکورہ سکول کی نگرانی میں بہت مشکلات درپیش ہے۔

3۔ یہ کہ سائیل کے خاندان میں دشمنی کا سامنا ہے اور اس ضمن میں FIR وغیرہ بھی درج ہو چکے ہیں جو کہ سائیل نے جوگہ تعلیم کو بذریعہ درخواست ہی گزارا ہے

4۔ یہ کہ سائیل نے بذریعہ جوگہ درخواست یہ بھی اپنے مسائل کو حالات و واقعات کو مدنظر رکھتے ہوئے سائیل کے رہائشی علاقے میں واقع سکول گورنمنٹ پرائمری سکول شہباز گڑھی لوئس کونسل میں بھی یہی ڈیوٹی سدا کر کے والا چوکیدار رہا کرتا ہے اور اب تک مذکورہ بالا سکول میں Post خالی پڑا ہے جس سائیل کو تعینات کر دینے کے لیے درخواست گزار کی بھی بلکہ نسبت و لال کر کے ہمارے لیے آفیسری ہوئے۔

5۔ یہ کہ سائیل نے پشاور ہائی کورٹ میں اپنی تینالی کے سلسلے میں writ petition کیا جو کہ سائیل کا بنیادی آئینی حق ہے

6۔ یہ کہ پشاور ہائی کورٹ نے سائیل کے تمام حالات و واقعات درج بالا کو مدنظر رکھتے ہوئے سائیل کو Desired پوسٹ چوکیدار گورنمنٹ پرائمری سکول شہباز گڑھی لوئس میں تعینات کا حکم ہمارے فرما ہے (فیصلہ عدالت پشاور ہائی کورٹ لف درخواست سائیل ہے)

Handwritten signature and official stamp of the District Education Officer, Mardan.

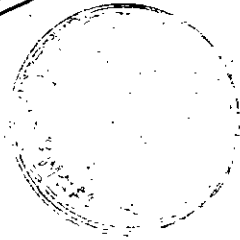
کہذا استغناء سے طلبہ کی منظوری درخواست سائیکل کے لئے منجملہ عدالت
 لیتا اور وہ سائیکل کو اپنے رہائشی سکول گورنمنٹ پرائمری
 سکول نمبر 2 میں لائسنس / ٹرانسفر صورتوں سے گورنمنٹ پرائمری
 سکول نمبر 1 میں منتقل کرنے سے گورنمنٹ پرائمری سکول نمبر 2 میں
 کیا جائے۔ نیز دیگر داد رسی جو عمر بن عبدالغفور قانونی ہے جو
 منجملہ فرماتے جارے۔

28/11/2018

سہیل داد ولد اول داد سائن عملہ طالب فضل
 شہباز گڑھی تحصیل و ضلع امرتسر (سائیکل)

کے

مستعملہ



ابتدائی اطلاعی رپورٹ

ابتدائی اطلاع نسبت جرم قابل دست اندازی پولیس رپورٹ شدہ زبردفعہ ۵۴ ضابطہ فوجداری

ضلع مردان

تھانہ شہباز گڑھی

تاریخ 28/06/2018 وقت 21:40

علت نمبر 388

۱	تاریخ رپورٹ 28/06/2018 وقت 22:45	چاکیڈگی پرچہ 28/06/2018 وقت 23:10 بجہ
۲	نام و سکونت اطلاع دہندہ، مستفیث	مرقظی ولد محمد شاہ بمعمر 22/23 سال قوم افغان ساکن بالا گڑھی
۳	مختصر کیفیت جرم (معد دفعہ حال اگر کچھ لیا گیا ہو)	ppc-302/114/34
۴	جائے وقوعہ فاصلہ تھانہ سے اور سمت	بالا گڑھی بازار نزد جیم داد منڈی
۵	نام سکونت ملزم	۱۔ رحیم داد ولد اول داد ساکن جمال خیل شہباز گڑھ ۲۔ اکمل ۳۔ عالم پیران محمد آیاز ساکنان بالا گڑھی
۶	کارروائی جو تفتیش کے متعلق کی گئی اگر اطلاع درج کرنے میں توقف ہوا ہو تو وجہ بیان کرو	برسیدگی مراسلہ مقدمہ درج رجسٹر کیا جاتا ہے
۷	تھانہ سے روانگی کی تاریخ و وقت	بطور سپیشل رپورٹ

ابتدائی اطلاع نیچے درج کرو

اس وقت ایک تحریری مراسلہ منجانب الطاف IHC بدست کنسٹبل فیاض 1194 موصول ہو کر ذیل ہے۔ بخدمت آفیسر انچارج پولیس اسٹیشن شہباز گڑھی حسب اطلاع ہسپتال بالا گڑھی آیا، ہسپتال میں مرقظی ولد محمد شاہ بمعمر 22/23 سال قوم افغان ساکن بالا گڑھی نے لعش آزاں برادر خود مسمی مصطفیٰ مقتول پیش کر کے مرقظی یوں رپورٹ کرتا ہے کہ میں معہ چچا ام ایران شاہ ولد میر احمد شاہ، اختر حسین ولد عبد الحمید ساکنان بالا گڑھی بغرض جرمہ منڈی آزاں رحیم داد واقع بالا گڑھی میں موجود تھے کہ محمد ذیشان کی قتل شدہ بحوالہ مقدمہ علت نمبر 364 مورخہ 21/06/2018 جرم PPC-302 تھانہ شہباز گڑھ میں تسلی کر رہے تھے کہ ذیشان کے قتل میں ہمارا کوئی دخل مداخلت نہیں ہے جو کہ باتوں باتوں میں مسمی رحیم داد ولد اول داد ساکن جمال خیل شہباز گڑھی نے مسیان اکمل، عالم پیران محمد آیاز ساکنان بالا گڑھی کو حکم دیا کہ مصطفیٰ کو مار ڈالو جو ہر دو ملزمان اکمل، عالم نے اپنے اپنے پستول سے مصطفیٰ پر یہ ارادہ قتل فائرنگ کی جن کی فائرنگ سے مصطفیٰ لگ کر موقع پر جاں بحق ہوا۔ وقوعہ ہذا میرے علاوہ چچا ام ولد میر احمد شاہ، اختر حسین ولد عبد الحمید ساکنان بالا گڑھی کے چشم دید ہیں، وجہ عناد ذیشان کی قتل ہے۔ میں برادر ام مصطفیٰ کی قتل کے برخلاف ملزمان متذکرہ بالا دعویٰ ہوں العبد مستحظ انگریزی، اختر حسین ولد عبد الحمید بمعمر 35/36 سال بالا گڑھی نے رپورٹ الا کی تائیدی العبد مستحظ اردو۔ کارروائی پولیس حسب گفتہ سائل رپورٹ درج بالا ہو کر پڑھ کر سنایا سمجھایا گیا، زیر رپورٹ خود مستحظ انگریزی ثبت کیا، تائیدی کنندہ نے تائیدی مستحظ اردو ثبت کی جسکی میں تصدیق کرتا ہوں، حالات واقعات سے صورت جرم بالا کا پائی جا کر مقتول کا نقشہ ضرر فرد صورتحال برطابق زخات تیار کر کے بغرض پوسٹ مارٹم رپورٹ ورائے ڈاکٹری زیر حفاظت کنسٹبل نوید 2757 حوالہ آن ڈیوٹی ڈاکٹر صاحب کیا جاتا ہے۔ مراسلہ بغرض قائمی مقدمہ بدست کنسٹبل فیاض 1194 ارسال تھانہ ہے۔ آفیسران بالا کو بطور سپیشل رپورٹ اطلاع دی جاتی ہے۔ نقول FIR معہ مراسلہ بغرض تفتیش حوالہ شعبہ تفتیش کیا جاوے۔ مستحظ انگریزی، الطاف خان IHC تھانہ SBG مورخہ 28/06/2018 کارروائی تھانہ پس آمدہ مراسلہ حرف بحرف درج بالا ہو کر پرچہ جرم فوق مرتب ہو کر نقول FIR معہ مراسلہ ہر اد تفتیش حوالہ انچارج شعبہ تفتیش کئے جاتے ہیں۔

SHO صاحب علاوہ گشت پر نے ان کو اور آفیسران بالا کو بطور سپیشل رپورٹ اطلاع دی جاتی ہے پرچہ گزارش ہے

خدمت صبا - DEO صاحب سردان (میل)

درخواست صحیح نمائے گا اور نظر ثانی
نہت حکم نمبر 13/5/14 میل روٹ
مطالعہ میز آنے سے قبل وہ GPS No
تیار نہ ہوئے بجائے GPS آرڈر ڈولٹریٹ
مرا تفریق ہے

صبا درخواست صبا ذیل رکھتا ہے۔

1) یہ کہ سائل No 15/15/15 میل روٹ مختص ملاسن 4 (میل روٹ)
28/11/15 سے لگاتار ہے

2) یہ کہ سائل گاڑوں خود منہ دشمنی حل رہی ہے اور ایسے مختص
بار دیگر یہ علاقہ میں آئے جانے سے سائل و مشکلات کا
Security خدمت کا سامنا ہے تو سائل نے ایسی ٹرانسپیرنٹ
کا رپورٹیں اور سے ایسے سائل میں باہر اور سائل کے لیے
سائل نے ایسے سے Service Tribunal KP میں جمع / دار
جو کہ زیر جو تفریق کے عدالتی سائل میں سے ہیں
مرا سائل کو سائل کے سائل کے خدمات کو سائل کے
سائل کے سائل کے سائل کے سائل کے سائل کے
سائل کے سائل کے سائل کے سائل کے سائل کے
جو سائل کے سائل کے سائل کے سائل کے سائل کے

(تقریرت مطالعہ دستاویزات)

3) یہ کہ سائل کے سائل کے سائل کے سائل کے سائل کے
سائل کے سائل کے سائل کے سائل کے سائل کے
سائل کے سائل کے سائل کے سائل کے سائل کے
سائل کے سائل کے سائل کے سائل کے سائل کے
سائل کے سائل کے سائل کے سائل کے سائل کے

4) یہ کہ سائل کے سائل کے سائل کے سائل کے سائل کے
سائل کے سائل کے سائل کے سائل کے سائل کے
سائل کے سائل کے سائل کے سائل کے سائل کے
سائل کے سائل کے سائل کے سائل کے سائل کے
سائل کے سائل کے سائل کے سائل کے سائل کے

سائل کے سائل کے سائل کے سائل کے سائل کے
سائل کے سائل کے سائل کے سائل کے سائل کے

D



BEFORE AUGUST PESHAWAR HIGH COURT PESHAWAR

W.P No: 5581 P of 2018

Sohail Dad s/o Awal Dad r/o Mohallah Jamal Khel Shahbaz Garhi Mardan..... (Petitioner)

Versus

- 1) Secretary Department of Education, Government of KPK, Peshawar.
- 2) District Education Officer (Male), Mardan.
- 3) District Education Officer Primary, Mardan.
- 4) Principal Government Primary School No 1, Mohib Banda, Mardan, KPK..... (Respondents)

Subject: Writ petition under article 199 of Constitution of Islamic Republic of Pakistan, 1973 to the effect that the respondent may be directed to issue transfer order of the petitioner to the vacant post of Chowkidar in Government Primary School No 2 Shahbaz Garhi Mardan being in the interest of justice and in favor of better discharge of public duty.

ATTESTED
EXAMINED
Peshawar High Court
08 FEB 2019

Respectfully sheweth;

- 1) That the petitioner is Chowkidar in Government Primary School No 1 Mohib Banda Mardan while resides in Mohallah Jamal Khel Shahbaz Garhi Mardan at a distance of at least 10 Kms from GPS No 1 Mohib Banda Mardan.

FILED TODAY
Deputy Registrar
13 NOV 2018

That the petitioner owing to one of the old but horrible enmity in the locality where the GPS No 1 Mohib Banda is situated, applied to respondent No 2 vide written application for transfer of the petitioner from GPS No 1 Mohib Banda to GPS No 2 Shahbaz

Garhi Mardan where one post of Chowkidar is vacant.(copy of the application is annexed here as annexure A).

3) That prior to the written application (Annexure-A), the petitioner time and again requested that the vacant post of Chowkidar at GPS No.2 Shehbaz Garhi Mardan may be filled by deserving and due transfer of the petitioner from GPS No. 1 Mohib Banda, Mardan to the vacant post and in this regard the petitioner many times visited to the office of respondent No. 2 where the petitioner found political war between the workers of PK-51 and PK-50 where the schools under discussion are situated, as political workers of both the constituencies are struggling for vacancies which under pressure act of the respondents is unduly and unjustifiably affecting the due and justified transfer of the petitioner from GPS No.1 Mohib Banda Mardan to GPS No. 2 Shahbaz Garhi Mardan and has thereby compelled the petitioner to institute the instant writ petition on the following grounds amongst many others.

- (i) That the transfer of the petitioner neither affects any person nor is prejudicial toward the creation of vacancy or vacancies of Chowkidar as in both situations one post is vacant in the jurisdictional district of respondent No. 2, therefore, acceptance of the instant petition may at all aspects be in the interest of justice. *(NOCs of the Principals of both School are Annexure A)*
- (ii) That blood feud enmity of the petitioner in the locality of his present service station may be a genuine and justified ground for the transfer of the petitioner from his present place of service to GPS No. 2 Shehbaz Garhi Mardan.
- (iii) That the genuine right of the petitioner may not be played with at the hands of political workers whose pressure has restrained the respondent No.2 from transfer of the petitioner so that vacancy of Chowkidar at PK-50 may not result in the creation of vacancy of the like cadre in the territorial jurisdiction of PK-

ATTESTED
EXAMINER
Peshawar High Court
08 FEB 2019

FILED TODAY
Deputy Registrar
13 NOV 2018

51 in spite of the fact that both the constituencies belong to the jurisdiction of respondent No. 2.

- (iv) That service in the safe environment is the inalienable right of the petitioner and therefore, the respondents may owing to security threat to the petitioner, transfer the petitioner from GPS No. 1 Mohib Banda Mardan to GPS No. 2 Shehbaz Garhi Mardan.(Copy of FIR is annexure-B).
- (v) That reluctance of respondents in the transfer of the petitioner is just the result of political influence; otherwise there exist no abnormality for the respondents in the transfer of the petitioner.
- (vi) That acceptance of the instant writ petition neither effects the administration of respondents nor right or rights of any individual serving or not serving in the department of the respondents; therefore, in situation like this acceptance of the instant writ petition being hindered by no legal or factual impediment may graciously be accepted.
- (vii) That petitioner may agitate any other ground or grounds during the arguments on the instant writ petition.

Interim Relief

That as the petitioner has got strong prima facie case and there exist immense possibility of its success and the valuable rights of the petitioner may be effected If the vacant post at GPS No 2 Shahbaz Garhi Mardan is filled with otherwise than by transfer of the petitioner which may thereby cause irreparable loss to the petitioner; therefore an interim order directing the respondents to restrain from filling of the vacant post otherwise than by transfer of the petitioner till the final disposal of the instant writ petition.

FILED TODAY
Deputy Registrar
13 NOV 2018

ATTESTED
EXAMINER
Regional Writ Court
08 FEB 2019

Prayer:

It is, therefore, most humbly prayed for that on the acceptance of the instant writ petition, the respondents may be directed to issue transfer order of the petitioner from GPS No 1 Mohib Banda Mardan to GPS No 2 Shahbaz Garhi Mardan being in the interest of justice and safe and secure discharge of duty on the part of petitioner being necessary for fair and vigilant discharge of duty. Any other relief that this honorable deems fit may also be kindly granted.

Submitted by

Sohail Dad
Sohail Dad

(Petitioner)

[Signature]
Through
Nasir Iqbal Yousafzai
Advocate High Court
Distt. Council Mardan

Advocate High Court Mardan.

List of books:

- A) Constitution of Islamic Republic Of Pakistan, 1973
- B) Manual of Service Laws.
- C) Any other law book.

ATTESTED
EXAMINER
Peshawar High Court
08 FEB 2019

CERTIFICATE

Certified as per instruction of my client, that no such petition is filed prior to the instant one.

Counsel for the petitioner

FILED TODAY
Deputy Registrar
13 NOV 2018

Dated *12/11/18*

[Signature]
Nasir Iqbal Yousafzai
Advocate High Court
Distt. Council Mardan

Before the Peshawar High Court Peshawar

W.P No. 5581 P /2018

Sohail Dad

.....Petitioner

V/s

Secretary Education etc

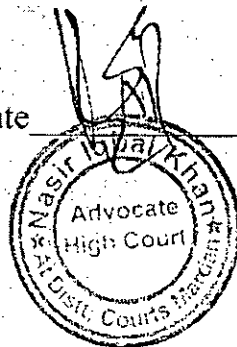
.....Respondents

Writ Petition

AFFIDAVIT

I, Certificate as per instructions of my client that the instant writ petition is the first on on the subjection grounds. It is further stated that being the writ petition against the respondents, the isntnat W.P may please be fixed before the Hon'able D.B (Double Bench) of this August Court.

Advocate



FILED TODAY
Deputy Registrar
13 NOV 2018

ATTESTED
EXAMINER
Peshawar High Court
08 FEB 2019

Before the Peshawar High Court Peshawar

W.P No. 5581 P /2018

Sohail Dad
.....Petitioner

V/s

Secretary Education etcRespondents

Writ Petition

AFFIDAVIT

I, Sohail Dad son of Awal Dad R/o Shehbaz Garhi Tehsil & District Mardan do hereby solemnly affirm and declare that all the contents of the Writ Petition are true and correct to the best of my knowledge and belief and nothing has been concealed in this regard.

Sohail Dad

Deponent Sohail Dad

CNIC-16101-1190991-5

0345-9353755

Identified by
Nasir Iqbal
Nasir Iqbal Yousafzai Advocate
High Court



FILED TODAY
Deputy Registrar
13 NOV 2018

No. 11582
Certified that the above deponent has taken on solemn affirmation before me on
day of Nov 13 2018
s/o Awal Dad Mardan
who was identified by Nasir Iqbal
Who is personally
<i>Nasir Iqbal</i> 13/11/18
Oath Commissioner Peshawar High Court, Peshawar

ACCEPTED
08 FEB 2019

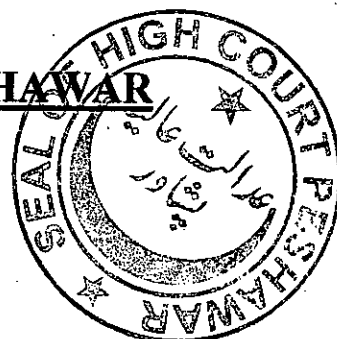
Nasir Iqbal Verified

PESHAWAR HIGH COURT, PESHAWAR

JUDICIAL DEPARTMENT

JUDGMENT SHEET

Writ Petition No.5581-P/2018



Date of hearing:20.11.2018.....

Petitioner(s) (Sohail Dad) by Mr. Nasir Iqbal
Yousafzai, Advocate.

Respondent(s) (Elementary & Secretary
Education Department and 03
others) By Nemo.

ABDUL SHAKOOR, J: Petitioner Sohail

Dad, through the instant writ petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, seeks issuance of appropriate writ in the terms that the respondents be directed for his transfer to the vacant post of "Chowkidar" in Government Primary School No.2, Shehbaz Garhi, Mardan.

2. Brief facts of the case are that the petitioner is presently working as "Chowkidar" in Government Primary School No.1, Muhib Banda, Mardan. He, owing to enmity in the locality where he is working, applied to respondent No.2 through a written application for his transfer to Government Primary School

AP

ATTENDED
BY
Peshawar High Court
08 FEB 2019

No.2, Shehbaz Garhi, Mardan against the vacant post but respondent No.2 did not entertain the same, therefore, he has invoked the extraordinary jurisdiction of this Court through this petition.

3. We have heard the learned counsel for the petitioner in motion and record perused with his valuable assistance.

4. Admittedly, the petitioner is a civil/government servant and being so, he is seeking direction of this Court to the respondent No.2 for his transfer to the aforesaid school only on the ground of having enmity in the locality. We may mention here that transfer of a civil/government servant falls within the terms and conditions of service as envisaged under the North West Frontier Province (now Khyber Pakhtunkhwa) Civil Servants Act, 1973. This Court, in view of the bar contained in Article 212 of the Constitution of Pakistan, cannot assume the jurisdiction relating to the matters of terms and

②



ATTES
EXAM
Peshawar
08 F

conditions of the civil/government servants. Furthermore, the respondent No.2 is the authority to determine the suitability of his subordinate(s) for posting or otherwise. In such like situation, this Court is having no jurisdiction under the law to direct the respondent No.2 to transfer the petitioner to the aforesaid school.

5. In view of the peculiar circumstances of the case, we deem it appropriate to send the petitioner's matter to the respondent No.2 for his sympathetic consideration regarding the prayer which he made in the instant petition.

6. With these observations, the instant writ petition is disposed of.

Announced
Dt.20.11.2018
Muhammad Ullah.S (Sr.St)


CHIEF JUSTICE

JUDGE

5528
Presentation of Application 09-1-8/119
Fees
Preparation of Copy RS 36/-
Delivery of Copy 8/3/19
By

(DB) Hon'ble Mr. Justice Waqar Ahmad Seth, C.J and Hon'ble Mr. Justice Abdul Shakoor

CERTIFIED TO BE TRUE COPY
Examination Peshawar
Authorized under Article 87 of
the Qanun-e-shahada Order 1974
08 FEB 2019

مورخہ 7 مارچ 2018ء منجانب: سائل کیلئے
مقدمہ بعنوان سائل دار بنام سید علی الحسن و دیگر

مقدمہ نمبر _____ رجوعہ

نوعیت مقدمہ Petition for transfer of Petitioner

مقدمہ علت نمبر _____ مورخہ

جرم _____ تھانہ _____



باعث تحریر آنکہ



مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی مکمل کارروائی متعلقہ

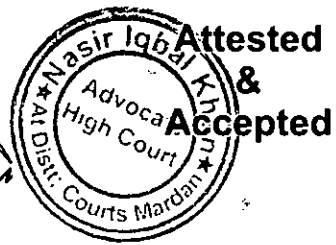
آن مقام سائل کیلئے ناصر امین لوسفر کو وکیل مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کمال اختیار ہوگا، نیز وکیل مقررہ کو راضی نامہ کرنے و تقریر کی ثالث و فیصلہ برحلف دینے عرضی دعویٰ، جواب دعویٰ، اقبال دعویٰ، جواب الجواب، عذر داری، درخواست زبردفعہ (2) 12 ض د، درخواست برآمدگی و سرسبزی مقدمہ، درخواست برآمد منسوخی کارروائی و ڈگری یکطرفہ دائر کرنے جواب، جواب الجواب وغیرہ درخواست کارروائی اجراء دائر کرنے و وصولی چیک و رقم اور درخواست ازہر قسم کی تصدیق زراس پر دستخط وغیرہ کرنے کا اختیار ہوگا۔ اپیل، اپیل دراپیل، نگرانی، نظر ثانی، رٹ و عذر داری وغیرہ دائر کرنے کا بھی اختیار ہوگا۔ اور بصورت ضرورت مذکورہ کے عمل یا جزوی کارروائی کے واسطے وکیل یا مختار قانونی کو اپنی ہمراہ یا اپنی بجائے تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی جملہ مذکورہ بالا اختیارات حاصل ہونگے اور اس کا ساختہ برداختہ منظور و قبول ہوگا اور دوران مقدمہ میں جو خرچہ دہر جانہ التوائے مقدمہ کے سبب سے ہوگا اس کے حق وکیل صاحب ہونگے۔ نیز بقایا و خرچہ کی وصولی کا بھی اختیار ہوگا۔ اگر کوئی تاریخ پیشی پر وکیل موصوف مقام دورہ پر ہونا چاہے باہر ہو یا بیمار ہو یا کوئی ضروری کام ہو۔ تو وکیل صاحب پابند نہ ہونگے کہ پیروی مقدمہ مذکورہ کریں لہذا وکالت نامہ لکھ دیا تاکہ سند رہے۔

District Bar Association

المقوم: 7/3/18
مقام: سائل

نوٹ: اس وکالت نامہ کو نوکالی ناجائز قبول ہوگی۔

Advocate I.D: BC -12 - 3492
Bar Council: _____
Bar Association: Mardan
Contact #: 0314 556608



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No: 360/2019

Sohail Dad S/O Awal Dad R/O Mohallah Jamal Khel Shabaz Ghari District Mardan.
..... Petitioner

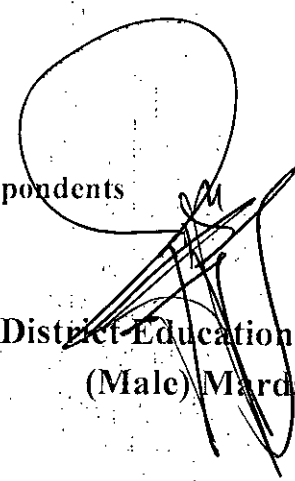
Versus

The Secretary Elementary & Secondary Education KPK Peshawar & Others
..... Respondents

INDEX

S.NO	DESCRIPTION OF DOCUMENTS	ANNEXURE	PAGES	
1.	Para wise comments along with affidavit		01	04
2	Copy of Transfer Oder	A	05	--

Respondents


District Education Officer
(Male) Mardan

Dated: _____

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR**

Service Appeal No: 360/2019

Sohail Dad S/O Awal Dad R/O Mohallah Jamal Khel Shabaz Ghari District Mardan.
(Appellant)

Versus

The Secretary Elementary & Secondary Education KPK Peshawar & Others
(Respondents)

Para Wise Comments on Behalf of Respondents No 1 to 4

Respectfully Sheweth,

PRELIMINARY OBJECTIONS:

1. That the appellant has got no cause of action as well as locus standi to file the instant appeal.
2. That the instant appeal is incompetent in its present form, hence liable to be dismissed.
3. That the instant appeal is badly time barred.
4. That the instant appeal is **not maintainable**, hence the appeal is liable to be dismissed.
5. That the appellant has not come to this Honorable Tribunal with clean hands.
6. That the appellant is estopped by his own conduct.
7. That the instant appeal is against the prevailing law and rules.
8. That the appellant is **transferred** from GPS Mohib Banda Mardan to GGPS Ghari Daulat zai Mardan vide No 6107/G dated 31-05-2019.

(Copy of transfer Order is as Annexure A)

9. The service of the appellant is required in the present school, due to the interest of public service, because there is only one post of chokidar. If the appellant is further transfer from the said school, the school will become suffer and the respondents have no substitute in the present time.

FACTS:

1. Para No 1 Pertains to record, hence need no comments.
2. Para No 2 is incorrect baseless against facts as the appellant is not charged in the mentioned FIR, and further more the blood feud enmity of the appellant is not in the locality where the GPS Mohib Banda as well as his present service station while the blood feud enmity of the appellant is in the locality of Bala Ghari which is adjacent to the Shabaz Ghari where the GPS No 2 Shabaz Ghari is situated and it is not a justified ground for the transfer of the appellant, hence denied
3. Para No 3 is incorrect, baseless and against facts, as there is no political war between the workers of PK 51 and PK 50 and the act of the respondent No 2 is not under pressure, while the act of the respondent No 2 is according to law.

However detail reply of the grounds are as under

GROUND:

- I. Para I is incorrect baseless against fact & law as the respondent No 2 acted being the competent authority acted in accordance with the law, the transfer of the appellant affects his present School, because there are a large number of students in the said school, there is one chokidar for Security and the respondents have no substitute in the present time, hence denied.
- II. Para II is incorrect baseless against facts as the appellant is not charged in the mentioned FIR, and further more the blood feud enmity of the appellant is not in the locality of his present service station. the blood feud enmity of the appellant is in locality of Bala Ghari which is adjacent to the Shabaz Ghari where the GPS No 2 Shabaz Ghari is situated and it is not a justified ground for the transfer of the appellant, hence denied
- III. Para III is incorrect baseless against facts as the respondent No.2 acted being the competent authority acted in accordance with the law, hence denied.
- IV. Para IV is incorrect, baseless, against facts, as the appellant is transferred from GPS Mohib Banda Mardan to GGPS Ghari Daulat zai Mardan vide No 6107/G dated 31-05-2019, and further more the appellant wants to transfer that locality where the enemy of the appellant resides, hence denied.

V. Para V is incorrect baseless against facts as the respondent No 2 acted being the competent authority acted in accordance with the law, and the appellant just to take benefits from his enmity, and wants to transfer his home station, hence denied.

VI. Para VI incorrect baseless against facts as the acceptance of the instant appeal effects the student of the locality of Ghari Daulat zai School. If the appellant is transferred from the said school, there is no Substitute of another chokidar, and also effects on the locality of Shah Baz Ghari, hence denied.

That the respondent seeks permission to raise additional grounds at the time of arguments.

It is therefore humbly prayed that in the light of above facts, the service appeal may please be dismissed with cost.

Respondents No 1, 3 & 4 on
behalf of
Respondent No 2


District Education Officer
(Male) Mardan

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No: 360/2019

Sohail Dad S/O Awal Dad R/O Mohallah Jamal Khel Shabaz Ghari District Mardan.

(Appellant)

Versus

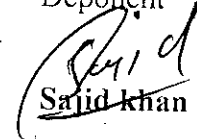
The Secretary Elementary & Secondary Education KPK Peshawar & Others

(Respondents)

AFFIDAVIT

I, Mr Sajid khan Legal Advisor Education Department Mardan do hereby solemnly affirm and declare that the contents of Para Wise Comments submitted by Respondents No 1 to 4 are true to the best of my knowledge and belief and nothing has been concealed from this Honorable Court.

Deponent


Sajid Khan

16101-6005318-5

OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) MARDAN DAN.

OFFICE ORDER.

Consequent upon the complaint received from the DEO (F) Mardan vide Letter No.3988 Dated 06.05.2019.

The adjustment of the following Chowkidars are hereby ordered on their own pay and grade to the school noted against each with immediate effect

S.No.	Name & Designation	From	To	Remarks.
1.	Mr. Taimoor Khan Chowkidar	GGPS Garhi Daulat Zai	GPS No-1 Mohib Banda	VSNo-2
2.	Mr. Sohail Dad Chowkidar	GPS No-1 Mohib Banda	GGPS Garhi Daulat Zai	VSNo-1

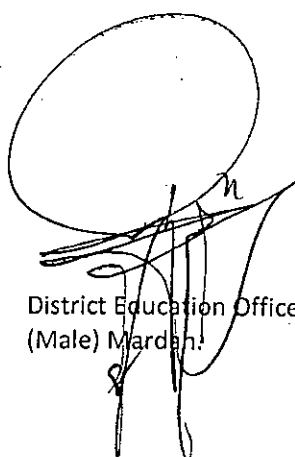
Note:- NO TA/DA is allowed.
Charge reports should be submitted to all concerned.

(ZULFIQAR-UL-MULK)
District Education Officer
(Male) Mardan.

Endst:No. 6107/167 /Class-iv Transfer file /Dated Mardan the 31-5- /2019

Copy of the above is forwarded for information & n/action to the:-

1. District Education-Officer (F) Mardan w/r to her No cited above.
2. SDEO(M) Mardan
3. Head Teacher GPS No-1Mohib Banda
4. Head Mistress GGPS Garhi Daulat Zai
5. D.A.O. Mardan.
6. Official concerned.
7. Gen: file.


District Education Officer
(Male) Mardan.

OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) MARDAN DAN.

OFFICE ORDER.

Consequent upon the complaint received from the DEO (F) Mardan vide Letter No.3988
Dated 06.05.2019.

The adjustment of the following Chowkidars are hereby ordered on their own pay and grade to the school noted against each with immediate effect

S.No.	Name & Designation	From	To	Remarks.
1.	Mr. Taimoor Khan Chowkidar	GGPS Garhi Daulat Zai	GPS No-1 Mohib Banda	VSNo-2
2.	Mr. Sohail Dad Chowkidar	GPS No-1 Mohib Banda	GGPS Garhi Daulat Zai	VSNo-1

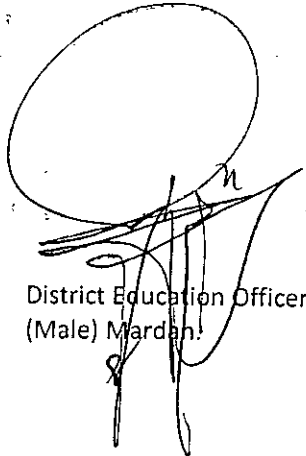
Note:- NO TA/DA is allowed.
Charge reports should be submitted to all concerned.

(ZULFIQAR-UL-MULK)
District Education Officer
(Male) Mardan.

Endst:No. 6107/167 /Class-iv Transfer file /Dated Mardan the 31-5 /2019

Copy of the above is forwarded for information & n/action to the:-

1. District Education Officer (F) Mardan w/r to her No.cited above.
2. SDEO(M) Mardan
3. Head Teacher GPS No-1Mohib Banda
4. Head Mistress GGPS Garhi Daulat Zai
5. D.A.O. Mardan.
6. Official concerned.
7. Gen: file.


District Education Officer
(Male) Mardan.