

(1)

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,
PESHAWAR

In Amended Service Appeal No. _____ /2024 in Appeal No. 2586/2023

Dr. Asim Saeed, (BPS 18) Teaching Cadre Education Department D.I.Khan

.....**APPELLANT**

VERSUS

Government of Khyber Pakhtunkhwa through Chief Secretary KPK,
Peshawar and others

.....**RESPONDENTS**

PARA-WISE COMMENTS ON BEHALF OF RESPONDENT NO.04

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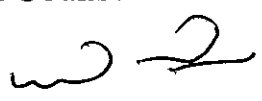
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Dated: 16.01.2024

Private Respondent No.4


Muhammad Noor Sultan

Through Counsel


Khalid Mahmood Advocate

High Court DIKhan

0336-4330001

*Received through
Comit.*

(2)

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,
PESHAWAR

In Amended Service Appeal No. _____/2024

Dr. Asim Saeed, (BPS 18) Teaching Cadre Education Department D.I.Khan

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PARA-WISE COMMENTS ON BEHALF OF RESPONDENT NO.04

**Khyber Pakhtunkhwa
Service Tribunal**

Respectfully Sheweth,

Diary No. 10733

Respondent No.04 through counsel humbly submits as under.

Dated 23-1-2024

PRELIMINARY OBJECTION

- i. That appellant previously filed service appeal No.2586/2023, in which he impugned office order No.SO(MC)E&SED/2-3/2022/Promotion/MC/Asim Saeed/DDEO(M) dated 27.09.2023 before Service Tribunal and also filed departmental appeal against above Notification dated 27.09.2023, which is prerequisite for filing of appeal before Service Tribunal, under Section 4(a) of Service Tribunal Act-1974, which is also reproduced as under:-

Section-4(a) No appeal shall lie to a Tribunal unless the aggrieved civil servant has preferred an appeal or application for review or representation to such departmental authority and a period of ninety days has elapsed from date on which such appeal, application or representation was preferred.

- ii. That amended appeal in which Notification No. SO(MC)E&SED/4-18/2023/PT/SDEOS dated 01.12.2023, is challenged, there is no any appeal, application or representation was preferred before departmental authority, which is prerequisite for filing of service appeal before Service Tribunal under Section-4(a) of the Service Tribunal Act-1974:-
- iii. That Notification dated 01.12.2023 did not contain name of appellant then how could he be aggrieved of the same.
- iv. There are no provision in Service Tribunal Act for filing of amendment appeal, without preferred the departmental appeal. Therefore, instant amended appeal without law. Hence, to be dismissed.

- v. That appellant was transferred vide Notification No.SO(MC)E&SED/2-3/2022/Promotion/MC/Asim Saeed/DDEO(M) Dated 27.09.2023, in response to Notification dated 27.09.2023, Appellant has also relieved from the post of Deputy DEO (Male) on 28.09.2023 (**Annexure-A**) and he is in strength of GHSS Ramak (**Annexure-B**), and Appellant challenged the above notification dated 27.09.2023 before the Honorable Service Tribunal on 14.12.2023 which was become infructuous because Competent Authority has issued another Notification No.SO(MC)E&SED/4-16/2023/PT/SDEOs dated 01.12.2023 (**Annexure-C**) which was not challenged before this Honorable Tribunal by Appellant and Respondent has also taken-over the charge of the post as Deputy District Education Officer (Male) DIKhan on 02.12.2023, in response of Notification dated 01.12.2023 (**Annexure-D**). Furthermore, Appellant has concealed the notification dated 01.12.2023, because his service appeal was filed on 14.12.2023 after 14 days of the said notification dated 01.12.2023. Therefore, this service appeal is liable to be dismissed being in fractious.
- vi. That the appellant has not come to this Honorable Tribunal with clean hands.
- vii. That the appellant is not an aggrieved person nor has any LOCUS standi to file the present appeal.
- viii. That the appellant has concealed material facts from this Honorable Tribunal.
- ix. That the present appeal is against the prevailing law and rules.
- x. That present appeal is liable to be dismissed being devoid of any merits.

ON FACTS

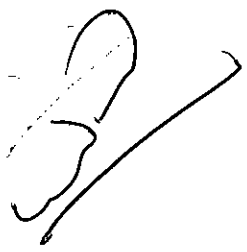
1. That correct to the extent that appellant is a teaching cadre officer and posting of teaching cadre on management cadre post is violation of the judgements of this Honorable Tribunal as well as judgements of Honorable High Court.
2. Incorrect. That the posting of appellant being teaching cadre on management cadre post was also violation of the judgements of this Honorable Tribunal as well as judgements of Honorable High Court.
3. Incorrect, being teaching cadre, appellant was removed from the post of management cadre i.e Deputy DEO and a management cadre officer was given additional charge vide Notification dated 27.09.2023 for exigency of service, and afterward, proper posting of management cadre officer was

issued vide Notification dated 01.12.2023, which was not challenged by appellant.

- 4. Incorrect, being teaching cadre officer, appellant was not eligible for the post of management cadre. Therefore, his request was rejected.
- 5. Incorrect, that the impugned order No.SO(MC)E&SED/4-18/2023/PT/SDEOS dated 01.12.2023 was issued much after the notification dated 27.09.2023 i.e more than 02 months. Furthermore, notification dated 01.12.2023 did not contain name of appellant then how could he be aggrieved of the same.
- 6. Being teaching cadre, he is not aggrieved person for not posting on the post of management cadre.

GROUNDS

- 1. Incorrect, that the impugned order No.SO(MC)E&SED/4-18/2023/PT/SDEOS dated 01.12.2023 was issued much after the notification dated 27.09.2023 i.e more than 02 months. Furthermore, notification dated 01.12.2023 did not contain name of appellant then how could he be aggrieved of the same.
- 2. That incorrect, the impugned transferred order is according to law and in view of the dictum of judgements of this Honorable Tribunal as well as Judgements of Honorable High Court.
- 3. Correct to the extent that appellant is belong to teaching cadre. Therefore, he was posted to teaching side according to in view of the dictum of the judgement dated 18.11.2009, in writ petition No.2937/2009 and department letter No.SO(E-I)E&AD/9-88/2019, dated 08.02.2019 (**Annexure-E&F**).
- 4. Incorrect, appellant is teaching cadre officer.
- 5. That appellant was belong to teaching cadre, therefore, he was previously posted on the post of DDEO on stopgap arrangement.
- 6. Incorrect, appellant was belong to teaching cadre.
- 7. Incorrect, appellant was belong to teaching cadre.
- 8. That appellant was belong to teaching cadre, therefore, he was previously posted on the post of DDEO on stopgap arrangement.
- 9. Incorrect, appellant was belong to teaching cadre.



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10. That the appellant was removed from the post, in view of the dictum of judgements of this Honorable Tribunal as well as judgements of Honorable High Court.
11. That order dated 01.12.2023 is a fresh notification which cannot be challenged through Service Appeal No.2586/2023.
12. That the impugned notification dated 01.12.2023 cannot be challenged before Service Tribunal before filing departmental appeal. Therefore, no need to add other grounds.

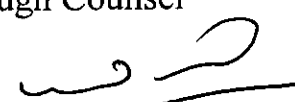
It is therefore, humbly requested that in light of the above Para wise reply, the instant amended appeal may please be dismissed with special costs in view of dictum laid down by Honorable Islamabad High Court in reported judgement PLJ-2023 Islamabad 212.

Dated: 16.01.2024

Private Respondent No.4


Muhammad Noor Sultan

Through Counsel


Khalid Mahmood Advocate

High Court DIKhan

0336-4330001

(6)

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,
PESHAWAR

In Amended Service Appeal No. _____/2024

Dr. Asim Saeed, (BPS 18) Teaching Cadre Education Department D.I.Khan

.....**APPELLANT**

VERSUS

Government of Khyber Pakhtunkhwa through Chief Secretary KPK,
Peshawar and others

.....**RESPONDENTS**

PARA-WISE COMMENTS ON BEHALF OF RESPONDENT NO.04


AFFIDAVIT

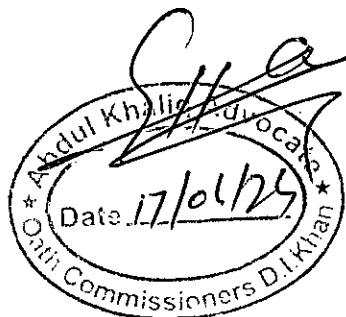
I, Muhammad Noor Sultan, Deputy DEO, Respondent No.04 do hereby solemnly affirm and declare on oath that the para-wise contents of the instant comments are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honourable Tribunal.


Deponent

Identified by Counsel

12103-1489991-7


Khalid Mahmood Advocate
High Court DIKhan
0336-4330001






OFFICE OF THE DISTRICT EDUCATION OFFICER
(MALE) DERA ISMAIL KHAN


Email. emisdikhan@gmail.com
Tel 0966-9280128/9280131


Ames (A)
(7)

RELIEVING CHITT

In Compliance vide Secretary to the Govt of Khyber Pakhtunkhwa, Elementary and Secondary Education Department Notification No.SO(MC)E&SED/2-3/2022/Promotion /MC/Asim Saeed/DDEO(M), dated 27-09-2023, Mr. Asim Saeed(TC BS 18) Dy D.E.O(M) DIKhan is hereby relieved from his duties today on 28-09-2023, and his directed to report to the Principal GHSS.Ramak(DIKhan), for his further duties against his new assignment


DISTRICT EDUCATION OFFICER
(MALE) DERA ISMAIL KHAN

ATTESTED

KHALID MEHMOOD
Advocate High Court
Stationed at D.I.Khan

ATTESTED

KHALID MEHMOOD
Advocate High Court
Stationed at D.I.Khan



**OFFICE OF THE DISTRICT EDUCATION OFFICER
(MALE) DERA ISMAIL KHAN**

Tell: 09669280128- 09669280131
Email: emisdikhan@yahoo.com

Amal (B)
9

No. 21692

Dated DIKhan the: 18/11/2023

To

The Director,
DCTE, Abbottabad.

Subject: NOMINATION FOR THE TRAINING OF SARAIKI TEXT BOOKS
COMPILATION.

Memo:

The following staff is hereby nominated for the training of Saraiki Text Books compilation.

1. Asim Saeed Principal (BS-18) GHSS Rammak DIKhan.
2. Ramzan SST GMS Thoya Fazal DIKhan.
3. Nazakat Hussain CT GHS No.3 Paharpur DIKhan.

ATTESTED

[Signature]
KHALID MEHMOOD
Advocate High Court
Stationed at D.I.Khan

[Signature]
**DISTRICT EDUCATION OFFICER
(MALE) DIKHAN**

ATTESTED

[Signature]
KHALID MEHMOOD
Advocate High Court
Stationed at D.I.Khan



GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY AND SECONDARY EDUCATION DEPARTMENT
 Block-"A" Opposite MPA's Hostel, Civil Secretariat Peshawar
 Phone No. (011) 2210626

Amr (C)
 9

Date: 1st December 2023

NOTIFICATION

NO. SG/MS/EDM-18/2023/PT/3050 The following posting/transfer of SDEOs are hereby ordered with immediate effect, in the best public interest

S#	Name	From	To	Remarks
1	Mr. Noor Sultan MC BS-17	SDEO (M) D.I.Khan	Deputy DEO (M) D.I.Khan in OPS	AVP ✓
2	Muhammad Humayun MC BS-17	SDEO (M) SD Darazanda DIK	SDEO (M) D.I.Khan	V.S.No 1
3	Muhammad Rashid TC BS-17	Head Master (BS-17) GHS Sikandar Sout DIK	SDEO (M) SD Darazanda DIK	V.S.No 2

SECRETARY TO GOVT. OF KHYBER PAKHTUNKHWA
E&SE DEPARTMENT

End of copy No. & date:

Copy forwarded for information to the:

1. Accountant General, Khyber Pakhtunkhwa, Peshawar
2. Director, E&SE Khyber Pakhtunkhwa, Peshawar.
3. Director EMIS, E&SE Department with the request to upload the same on the official website of the department.
4. District Education Officers (Male) D.I.Khan.
5. District Accounts Officer D.I.Khan.
6. PS to Secretary, E&SE Department, Khyber Pakhtunkhwa

ATTESTED

[Signature]

KHALID MEHMOOD
 Advocate High Court
 Stationed at D.I.Khan

114
 (IMRAN ZAMAN)
 SECTION OFFICER (Management Cadre)
 12.12.2023

ATTESTED

[Signature]

KHALID MEHMOOD
 Advocate High Court
 Stationed at D.I.Khan

Amr (10)

CERTIFICATE OF TRANSFAR OF CHARGE

(1) Certified that we have on the forenoon/afternoon of this day 01-12-2023 respectively made over & received charge as Deputy District Education Officer (Male) DIKhan in the office of the District Education Office (Male) DIKhan vide Notification No. SO (MC)E&SED/4-16/2023/PT/MC/SDEOs. Dated 1st December, 2023.

(2) Particulars cash important secret and confidential documents handed over are noted on the reverse.

Signature of relived Already Occupied

Government Servant _____

Designation Deputy District Education Officer (Male) DIKhan

Station: DIKhan

Signature of relieving Mr. Muhammad Noor Sultan

Government Servant Mr. Muhammad Noor Sultan
Designation Deputy District Education Officer (Male) DIKhan

Dated : 01-12-2023

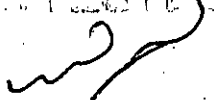
OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) DIKHAN

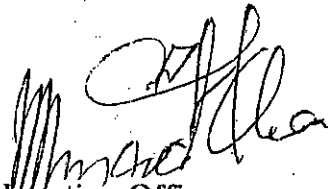
Endst: No. 22668-70

Dated DIKhan the 02/12/2023

Copy of the above is forwarded to:

- 1. Director, E&SE Department Khyber Pakhtunkhwa, Peshawar.
- 2. PS to Secretary to E&SED Department, Khyber Pakhtunkhwa.
- 3. District Accounts Officer DIKhan.

ATTESTED



District Education Officer
(Male) DIKhan

KHALID MEHMOOD
Advocate High Court
Stationed at D.I.Khan

ATTESTED


KHALID MEHMOOD
Advocate High Court
Stationed at D.I.Khan

Amr (E) (U)
123

PESHAWAR HIGH COURT, PESHAWAR.

FORM OF ORDER SHEET

Court of

Case No.of.....

Serial No. of Order or Proceedings	Date of Order or Proceedings.	Order or other Proceedings with Signature of Judge or Magistrate and that of parties or counsel where necessary.
1	2	3
	18-11-2009	<p><u>W.P No.2937/2009 with I.R.</u></p> <p><u>Present:</u> Mr. Muhammad Amin Khattak Lachi, Advocate, for the petitioners.</p> <p>****</p> <p><u>DOST MUHAMMAD KHAN, J:-</u> As the Provincial Government has taken a firm decisions that all those teachers belonging to teaching cadre shall be posted in the Education Institution to teach the students according to their qualifications while those belonging to administrative cadre shall only hold the posts relating to administration. Therefore, the petitioners must deliver according to the policy of the Government and because they are highly qualified teachers, it is not befitting to hold administrative posts, because they are getting benefits, but the students are suffering thus, they shall go to their respective places, where they are required to do the job. The plea of the learned counsel for the petitioners that similarly placed Teachers/ Professors/Lecturers belonging to Colleges have been retained on administrative posts.</p>

TESTED
[Signature]
KHALID MEHMOOD
Advocate High Court
Stationed at D.I.Khan

ATTESTED
[Signature]
KHALID MEHMOOD
Advocate High Court
Stationed at D.I.Khan

12
[Signature]

2. If such statement is correct then, it is clearly in violation of the policy laid down by the Provincial Government, therefore, copy of this order be sent to the Secretary Higher Education, Government of NWFP, and the learned Advocate General and it is directed that the policy so laid down must be implemented in full and no pick and choose policy shall be adopted in the matter.

Petition disposed of.

Announced.
Dated.18.11.2009.

~~Signature~~
JUDGE

[Signature]
JUDGE

[Signature]
JUDGE

By order of the Hon'ble High Court, Peshawar
Authorized Under Article 87 of
the Constitution of Pakistan

14 JUN 2022

ATTESTED

[Signature]
KHALID MEHMOOD
Advocate High Court
Stationed at D.I.Khan

ATTESTED

[Signature]
KHALID MEHMOOD
Advocate High Court
Stationed at D.I.Khan

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20-11-09



Aneg (P) (13)

**GOVERNMENT OF
KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT**

NO. SO (E-1)/E&AD/0-88/2019
Dated Peshawar, the February 8, 2019

To

- 1) The Secretary to Government of Khyber Pakhtunkhwa, Higher Education Department
- 2) The Secretary to Government of Khyber Pakhtunkhwa, E&SE Department.
- 3) The Secretary to Government of Khyber Pakhtunkhwa, Industries Department.

SUBJECT: - REQUISITIONING OF SERVICES.

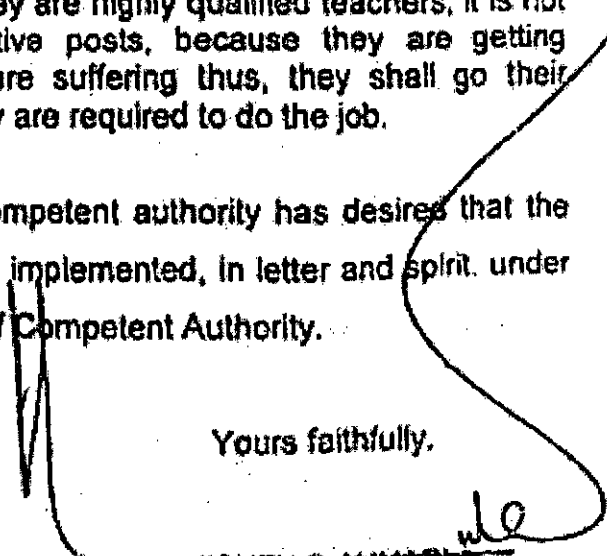
Dear Sir,


I am directed to refer to the subject cited above and to say that the competent authority has observed that certain Teaching cadre officers are posted out of their cadre since long. Moreover, some teachers/professors are seeking requisitions from different Departments for posting against managerial or administrative posts, hindering deliverance of quality based education to the students. Consequently, competent authority has desired to invite your attention towards the following judgment of Peshawar High Court Peshawar (in WP No. 2937/2009) (Copy enclosed):-

"As the Provincial Government has taken a firm decisions that all those teachers belonging to teaching cadre shall be posted in the Education institution to teach the students according to their qualifications while those belonging to administrative cadre shall only hold the posts relating to administration. Therefore, the petitioners must deliver according to the policy of the Government and because they are highly qualified teachers, it is not befitting to hold administrative posts, because they are getting benefits, but the students are suffering thus, they shall go their respective places, where they are required to do the job.

2. In view of the above, the competent authority has desired that the above mentioned judgment of the PHC be implemented, in letter and spirit. under intimation to this Department, for perusal of Competent Authority.

Yours faithfully,


(GHULAM AHMAD)
SECTION OFFICER (Estt. I)


GHAULI MEMMOON
Advocate High Court
Peshawar



ADVOCATE

KHALID MEHMOOD

Advocate
No-19-8415

Date of Issue: Octobr .20
Valid upto: Octol 1023



Secretary
KP Bar Council

وکالت

کورٹ فیس

بعدالت جناب حسین محمود خواجہ سروس ٹریڈنگ کمپنی
 منجانب ریسالٹس ٹریڈنگ کمپنی
 کورٹس عالم سعید نام گورنمنٹ لاء ڈپارٹمنٹ
 Amend + Appeal
 دعویٰ یا جرم
 تفصیل دعویٰ یا جرم

باعث تحریر آنکھ

مقدمہ مندرجہ بالا عنوان میں اپنی طرف واسطے پوری وجوہی برائے ٹوشی یا تصفیہ مقدمہ مقام
 دیہ
 دیہ

کو حسب ذیل شرائط پر وکیل مقرر کیا ہے، کہ ٹوشی پر خود بذریعہ اختیار خاص رو برو دعوات حاضر ہونا ہوں گا۔ اور ہر وقت پکارے جانے مقدمہ وکیل صاحب
 موصوف کو اطلاع دیکر حاضر دعوات کروں گا، اگر ٹوشی پر منظم حاضر نہ ہوں۔ اور مقدمہ سرری غیر حاضر کی وجہ سے کسی طور پر میرے برخلاف ہو گیا۔ تو صاحب موصوف
 اسکے کسی طرح ذمہ دار نہ ہوں گے، نیز وکیل صاحب موصوف مقدمہ مقام بکھری کے علاوہ کسی جگہ یا بکھری کے اوقات سے پہلے یا پیچھے یا بعد از حتمیل یوری کرنے کے
 ذمہ دار نہ ہوں گے۔ نیز وکیل صاحب موصوف مقدمہ مقام بکھری کے علاوہ کسی جگہ یا بکھری کے اوقات سے پہلے یا پیچھے یا بعد از حتمیل یوری کرنے کے ذمہ دار نہ
 ہوں گے۔ اور مقدمہ مقدمہ بکھری کے علاوہ اور جگہ سماعت ہونے یا بعد از حتمیل یا بکھری کے اوقات کے آگے پیچھے ہونے پر منظم کو کوئی ضمانت پینے تو اس کے ذمہ
 دار ہوں گے واسطے کسی معاوضہ کے انا کرنے یا عائد نہیں کرنے کے بھی موصوف ذمہ دار نہ ہوں گے۔ مجھ کو کمال سائنٹ پر داخل صاحب موصوف عمل کر وہ
 ذات خود حضور و قبول ہوگا۔ اور صاحب موصوف کو مرضی دعویٰ یا جواب دعویٰ اور درخواست اجراءے ڈگری نظر ثانی اپنی اہل علم و اجازت پر دخل و تصدیق کرنے کا
 بھی اختیار ہوگا۔ اور کسی قسم یا ڈگری کرنے اور ہر قسم کا رویہ وصول کرنے اور سیدہ دینے اور داخل کرنے اور ہر قسم کے بیان دینے اور اس پر ٹوشی یا رضی نامہ دینے پر
 حلف کرنے، اقبال دعویٰ کا بھی اختیار ہوگا۔ اور صورت مقرر ہونے تاریخ ٹوشی مقدمہ مذکورہ دونوں از بکھری صدر یوری مقدمہ مذکورہ نظر ثانی واپس دیکھنی اور اسکی
 مقدمہ یا منٹوئی ڈگری یا طرف یا درخواست غم انتہائی یا ترقی یا کر لاری ٹل از فیصلہ اجراءے ڈگری بھی صاحب موصوف کو بشرط امانت علیٰ منہ یوری کا اختیار ہوگا
 اور تمام سائنٹ پر داخل صاحب موصوف عمل کر وہ ذات خود حضور و قبول ہوگا۔ اور صورت ضرورت صاحب موصوف کو یہ بھی اختیار ہوگا کہ مقدمہ مذکورہ واسطے کسی جزو
 کی کارروائی یا صورت درخواست نظر ثانی اپنی اہل علم یا دیگر معاملہ مقدمہ مذکورہ کسی دوسرے وکیل یا ہر شخص کو اپنے بجائے یا اپنے ہمراہ مقرر کریں۔ اور ایسے شریعہ قانون کو
 بھی پر امر میں وہی اور دینے اقیامت حاصل ہوں گے، چھ صاحب موصوف کو حاصل ہیں، اور دوران مقدمہ میں بخیر و برکت ہر جائزہ خواہ پانچ، وہ صاحب
 موصوف کا حق ہوگا۔ مگر صاحب موصوف کو پوری ٹوشی تاریخ ٹوشی سے پہلے امانت کروں گا۔ تو صاحب موصوف کو پورا اختیار ہوگا کہ وہ مقدمہ کی یوری نہ کریں اور اسکی
 صورت میں ہر کوئی مطالبہ کسی قسم کا صاحب موصوف کے برخلاف نہیں ہوگا۔

لہذا وکالت نامہ لکھ دیا ہے تاکہ سند ہے

سورہ 16 مارچ 1 2024

مضمون وکالت نامہ سن لیا ہے۔ اور اچھی طرح سمجھ لیا ہے اور منظور ہے۔

العبد العبد العبد

Accepted
دک

محمد نور سلطان ریسالٹس ٹریڈنگ کمپنی
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