BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRÌBUNAL PESHAWAR

Appeal No. 919/2019

Date of Institution

12.07.2019

Date of Decision

08.10.2019

Mst. Uzma Anjum, Drawing Master (BPS-09), GGMS Musa Khan Killi, Tehsil Landi Kotal District Khyber. ... (Appellant)

VERSUS

The Director (E&SE) Khyber Pakhtunkhwa Peshawar and three others.

... (Respondents)

Mr. Mir Zaman Safi, Advocate.

For appellant

MR. HAMID FAROOQ DURRANI,

CHAIRMAN

JUDGMENT

HAMID FAROOO DURRANI, CHAIRMAN:-

1. The appellant is aggrieved of reinstatement order dated 28.11.2016 issued by the Agency Education Officer Khyber Agency at Jamrud (now respondent No. 3 in the memorandum of appeal). The impugned order provided for her reinstatement into service but with the riders that it was without back benefits, the salary drawn by her during the removal period was to be recovered in normal installments through source from her pay, the period during which she had not performed her duty after removal from service was converted into leave without pay (758 days) and against execution of an undertaking on stamp paper by the appellant to the effect that she would never be absent without proper approval and also remain careful in future. A departmental appeal was submitted by the appellant on 21.03.2019, which remained un-responded.

Mi.

2. Learned counsel for the appellant heard and available record gone through.

Regarding the issue of delay in submission of departmental appeal learned

counsel relied on a judgment reported as 2002-PLC(C.S)1388 and contended that a

recurring cause of action had accrued in favour of the appellant as the impugned

order involved her salary. For that reason, delay of more than two years in

submission of departmental appeal was to be overlooked.

3. The appellant was imposed upon major penalty of removal from service on

account of her absence through order dated 17.10,2014. She submitted a

departmental appeal against that order which was decided through the impugned

order. The penalty of removal from service was set aside and she was reinstated

into service with effect from the date of her removal. The above noted conditions

were, however, attached with the reinstatement. The order was issued on

28.11.2016 but the appellant was not vigilant enough to have filed service appeal till

12.07.2019. She preferred to submit a second departmental appeal on 31.03.2019

which itself was not only barred by more than two years but was also not

competent. The appeal in hand is, therefore, also bereft of competence in view of

judgments reported as 2006-SCMR-453 and 2012-SCMR-195. In the circumstances,

the judgment relied upon by learned counsel is distinguishable.

4. In view of the above, the appeal in hand does not merit admission for regular

hearing, therefore, it is dismissed in limine.

File be consigned to the record room.

(HAMID FAROOO DURRANI)

CHAIRMAN

Form- A FORM OF ORDER SHEET

Court of	
	•
Case No	919/ 2019

	Case No	919/ 2019
S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	12/07/2019	The appeal of Mst. Uzma Anjum presented today by Mr. Noor Muhammad Khattak Advocate may be entered in the Institution Register
		and put up to the Worthy Chairman for proper order please.
		REGISTRAR
2-	15/07/9	This case is entrusted to S. Bench for preliminary hearing to be put up there on $\frac{2608038}{}$
. :	, in the second	CHAIRMAN
	26.08.2019	Nemo for appellant.
		Notice be issued to appellant/counsel for preliminary
-		hearing on 08.10.2019 before S.B.
		Chairman

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

APPEAL NO.	919	/2019

MULIA AMZU

VS

EDUCATION DEPTT:

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PETITIONER

THROUGH:

NOOR MOHAMMAD KHATTAK ADVOCATE

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL **PESHAWAR**

APPEAL NO. /2019 Ehyber Pakhtukhwa

Mst. Uzma Anjum, Drawing Master (BPS-09), GGMS Musa Khan Killi, Tehsil Landi Kotal, District KhyberAPPELLAN1

VERSUS

- 1- The Director (E&SE), Khyber Pakhtunkhwa, Peshawar.
- 2- The Director Education Merged Area, Warsak Road, Peshawar.
- 3- The District Education Officer (F), District Khyber.
- 4- The District Accounts Officer, District Khyber.

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDER DATED 28-11-2016, WHEREBY THE APPELLANT WAS RE-INSTATED IN TO SERVICE W-E-F 17-10-2014 BUT THE INTERVENING PERIOD W.E.F. 17-10-2014 TILL 13-11-2016 (758 DAYS) HAS BEEN TREATED AS LEAVE WITHOUT PAY AND AGAINST NO ACTION TAKEN ON THE DEPARTMENTAL APPEAL OF APPELLANT WITHIN THE STATUTORY PERIOD OF **NINETY DAYS**

PRAYER:

That on acceptance of this appeal the impugned order dated 28.11.2016 may very kindly be modified/rectified to the extent that the intervening period w.e.f 17.10.2014 till 13.11.2016 may be treated as earned leave/leave of the kind due. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

R/SHEWETH: ON FACTS:

Brief facts giving rise to the present appeal are as follows:-

- 1- That appellant was appointed as Drawing Master BPS (09) at Govt. Girls Medal School Mus Khan Killi, Tehsil Landi Kotal, Disrict Khyber vide order dated 31.08.2007 in the respondents Department and is serving as such quite efficiently and up to the entire satisfaction of his superiors. (Copy of the appointment order is attached as annexure......A).
- 2- That during service the appellant was removed from service vide order dated 17.10.2014 on account of willful absence w-e-f 01-09-2013. Copy of the order dated 17.10.2014 is attached as

GROUNDS:

- A- That the impugned orders dated 28-11-2016 is against the law, facts, norms of natural justice and materials on the record hence not tenable and liable to be modified/rectified to the extent of back benefits.
- B- That appellant has not been treated by the respondent Department in accordance with law and rules on the subject noted above and as such the respondents violated Article-4 and 25 of the Constitution of Islamic Republic of Pakistan 1973.
- C- That the respondent Department acted in arbitrary and malafide manner by treating the intervening period as leave without pay as the appellant had submitted an affidavit before the respondent

- D- That the respondents department had not treated the appellant as per the law because the respondent No.3 had categorically mentioned in the re-instatement order that the appellant had been re-instated with effect from the date of her removal i.e 17-10-2014, so how it is possible that if the appellant had been re-instated retrospectively but without her back benefits, so it is an illegality on the part of respondents.
- E- That the action and inaction of the respondents are not in accordance with law and rules, therefore the impugned order dated 28.11.2016 is liable to be modify/rectify to the extent of back benefits.
- F- That the impugned order dated 28.11.2016 is against the leave rules because medical as well as leave for Umra/ Hajj is permissible to the civil servants according to the Revised Leave Rules, 1981.
- H- That appellant seeks permission to advance other grounds and proofs at the time of hearing.

It is therefore, most humbly prayed that the appeal of the appellant may be accepted as prayed for.

APPELLANT

Mst. Uzma Anjum

THROUGH:

NOOR MOHAMMAD KHATTAK

KAMRAN KHAN

MIRZAMAN SAFI

ADVOCATES

A-9)

AGENCY EDUCATION OFFICE KHYBER AGENCY AT JAMRUD APPOINTMENT ORDER

Consequent upon the approval of the Departmental Selection Committee Miss: Uzma Anjum D/O Faqir Muhammad (Non-Local) candidate is hereby appointed against vacant D.M post at GGMS Musa Khan Killi Tehsil Landi Kotal Khyber Agency in BPS No.09/PM plus usual allowances as admissible under the rules w.e.f the date of her taking over charge in the interest of public service.

Note: -

1. Charge report should be submitted to all concerned.

2. The appointment of the candidate is made purely on temporary basis and is liable to terminate at any time without any notice.

3. If the candidate wishes to resign her post she will be give one-month prior notice or her pay for one month will be forfeited in lieu thereof.

4. Her documents, Date of Birth and NIC should be checked before handed over charge of the post and attested copies thereof may be kept on record of the school/office.

5. She should produce her Health and Age certificate from the Agency Surgeon concerned.

6. She may not be handed over charge if she is below 18-years or above 45-years.

7. If she fails to report her arrival within 15-days of the issue of this appointment order then it will be treated as cancelled.

8. No salary may be drawn before the verifications of all the testimonials from the quarter concerned.

9. The appointment will not be entitled for pension/commutation and G.P.Fund emoluments as per Govt: contract policy.

(MR.ASMAT KHAN) AGENCY EDUCATION OFFICER KHYBER AGENCY AT JAMRUD

Dated Jamrud the 3/ / 8

Endst: No. 7585 - 89

Copy of the above is forwarded to the: -

1. Director Education (FATA) at Peshawar.

2. Agency Accounts Officer Khyber at Jamrud.

3. Agency Surgeon Khyber Agency at Landi Kotal

4. AAEO (Female)/Pay Clerk concerned.

5. Official concerned.

AGENCY EDUCATION OFFICER KHYBER AGENCY AT JAMRUD



NOTIFICATION-

WHEREAS the Assistant Agency Education Officer, reported that Miss. Uzma Anjum DM GGMS Musa Khan Killi LKL Khyber Agency was absent from duty with effect from 01/09/2013.

AND WHEREAS a committee was appointed consisting of Mr Saleem Khan Wazir Head Master GHS Hasham Abad, as Chairman and all AAEOs as members to dig out the cases of those who were willfully absent. Detailed report and documentary proof to proceed further into the matter in accordance with the rules vide notification No.6153 dated 18/07/14.

AND WHEREAS the committee after having examined the record has submitted its report after conducting a deep and detailed scrutiny of papers from all the relevant aspects and reported that Miss. Uzma Anjum DM GGMS Missa Khan Killi LKL Khyber Agency was absent from duty wef 01/09/2013

AND WHEREAS Miss. Uzma Anjum DM GGMS Mosa Khan Kilin LKL Kinyher Agency was proceeded against under Khyber Pakhtunkhwa Govt: Servant (Efficiency & Discipline) Rules 2011, for the charge of "willful absence from duty, with effect from 01/09/2013 as mentioned in the show cause notice served upon her under registered post at her home address vide AEO No.3615-21 dated 28/04/2014

- 2. AND WHEREAS the accused official did not submit her reply to the show cause notice.
- 3. AND WHEREAS absentee notices were served upon Miss. Uzma Anjum DM GGMS Musa Khan Killi LKL Khyber Agency through print media in daily newspapers "MASHRIQ" and "Aaj" on 30/06/2014 to attend the office and explain her absence period but she remained absent and did not report for duty in response to the above mentioned notices.
- 4. AND WHEARAS the competent authority, the Agency Education officer Khyber, after having considered the charges, evidence on record, enquiry report, and facts of the case, is of the view that the charge of willful and unauthorized absence against the accused official has been proved.
- 5. NOW THEREFORE, In exercise of the Powers conferred under Rules 4 (b) iii of Khyber Pakhtunkhwa Government Sensants (Efficiency and Discipline) Rules 2011, the competent Authority, Agency Education officer Khyber, is pleased to impose major penalty of Removal from service "upon Miss. Uzma Anjum DM GGMS Musa Khan Killi LKL Khyber Agency with immediate effect on account of her willful absence with effect from 01/09/2013 up to date. Her absence wef 01/09/2014 is notified as on EOL with out pay.

(Atiq-ur-Rahman,) Agency Education Officer, 'khyber Agency at jamrud

Endst: No. 7904-12 Dated Peshawar the 17/10/2014

Copy forwarded to the:-

- 1. Additional Chief Secretary FATA Secretariat Peshawar
- 2. Secretary (AI&C) FATA Secretariat.
- 3. Deputy Secretary (Services) FATA secretariat Peshawar.
- 4. Director Education FATA
- Agency Account officer Khyber Agency at Jamrud.
- 6. AAEO concerned.
- Z. Superintendenty Accountant
- 8. Official Concerned. --
- Pay therk local office for stuppage of her pay forth with.



FATA SECRETARIAT
DIRECTORATE OF EDUCATION
WARSAK ROAD PESHAWAR, PAKISTAN

NO. 76 PHONE. 891-9210166 FAX 091-

To

The Agency Education Officer

Khyber Agency

Subject:

APPEAL/RESTORATION.

Memo:

I am directed to refer to your letter No.12822 dated 24.4.2015 on the above noted subject and to state to submit actual exact absence period as the photocopy of attendance register produced by the Mst.Uzma Anjum Drawing Mistress show two days absentee i.e. 5, 6 December 2014 for clarification.

Furthermore you are directed to submit Para-wise comments/reply immediately.

Deputy Directress (Estab)

Endst No

Date

2015.

Copy to;

1. PS to Secretary SSD FATA.

2. P.A to Director Education FATA.

e/C Deputy Directress (Estab)

DATED _____/ 2015 E.7-FR/LA

DIRECTORATE OF EDUCATION (FATA) SECRETARIAT PESHAWAR

Dr

ENQUIRY OF ICERS/ORDER.

The following Officers are appointed as enquiry Officers authorized to dig out the facts/reality on the appeal of the following appellant whose services have been removed/dismissed by the Agency Education Officer Khyber Agency.

- 1. Mst.Naeema Gul PST and Mst.Shumaila PST GGPS Bagh Killi Kam Shalman.
- 2. Mst. Uzına Anjum DM GGMS Musa Killi Loi Shalman.
- 3. Shakeela Syed PET GGMS Azam Din Killi Redeployed to GGHS Hanif

Enquiry Officers.

- 1. Mr.Abdur Rauf Shah Agency Education Officer Khyber Agency.
- 2. Mr.Shahinshah Associate Professor GDC Jamrud.
- 3. Mst.Neelam Azam Principal GECT (W).

The committee should submit their report within seven (7) days positively with documentary proof and recommendation/finding.

Endst.No. 1608-11 Dated 31-12 2015
Copy to:

1. Agency Education Officer Khyber Agency.

Principal GDC Jamrud with the request to allow Mr. Shahinshah
 AP of your college for conducting the said enquiry.

3. Principal GECT (W) Jamrud Khyber Agency for compliance.

PA to Director Education, FATA.

Deputy Directress (Estab

- Herfel



Agency Education Office Khyber Agency at Jamrud 1HONE. DOI: 5820584 FAX 097: 5820584

No <u>:</u>		(B)
Date:	/2016	F

INQUIRY REPORT

Introduction.

The following officers are appointed as enquiry officers hereby authorized to dig out the facts/realities on the appeals of the following appellants, whose services have been dismissed/removed by the Agency Education Officer Khyber Agency.

- 1. Mst.NaeemaGul (PST) and MstShumaila (PST) Govt Girls Primary School BaghKillikamshalman
- 2. MstUzman.\njum (DM) Govt Girls Middle School Musa KilliLoiShalman
- 3. Shakeela Syed (PET) Govt ,Girls High School Azam Din Killi redeployed to Govt,Girls High School HanifjanKilli Bara.

We the members of the enquiry committee summoned the accused teachers namely NaeemaGul(PST),GGPS BaghKiliKamShalman, ShumailaUmbreen (PST) GGPS BaghKilliKamShalman, Mst UZMA GUL (DM) GGMS Musa Khan KilliLandiKotal Khyber Agency and ShakilaSayed (PET) GGMS Azam Din Killi, redeployed at GGHS Hanif Jan Killi to GCET (F) Jamrud where their documents were thoroughly checked and their written statements were taken. The inquiry Committee has deduced the following findings.

FINDINGS

- 1. Miss UzmaGul (DM) had taken medical leave and she had gone to Umrah (Documents Attached F/A) and in that period she has been marked absent which is not correct.
 - Mst.NaeernGul (PST) and ShumailaAmbreen (PST) of GGPS BaghKilliKamShalman Khyber Agency, attendance register was not in their custody which is still in the control of the School Malik, that is why they have been marked absent.
 - 3. The principal of Govt, Girls Higher Secondary School LandiKotal has given a written certificate to MstNaeemaGul and Shumaila. Ambareen that they are performing their duties very

efficiently and that both of them are very dutiful.(Copy attached

(g)

- 4. The most important point is that the Ex-Agency Education Officer (AEO at that time) has given a written statement to the teachers that their dismissal ought to be abolished. (Copy attached F/C)
- 5. The Agency Education Officer had reported that the transfer order and service documents of ShakeelaSayed (PET) are fake. The inquiry committee checked her transfer order and service documents (at ached F/D) and were found quite correct.

RECOMMENDATIONS

Keeping in view the above findings, we the members of the enquiry Committee recommend that the dismissal of Mst.UzmaGul (DM),NaeemaGul (PST),ShumailaAmbreen (PST) and ShakilaSeyed (PET) should be abolished.

Enquiry Officers

- 1. Mr.Muham nadiqbal Principal GDC Jamrud
- 2. NeelamAzam Principal GCET (F) Jamrud &
- 3. Mr.ShahinShah A/P GDC Jamud
- 4. MrAbdurRauf Shah AEO Khyber Agency

Northern



AGENCY EDUCATION OFFICE KHYBER AGENCY AT JAMRUD

REINSTATEMENT ORDER..

Consequent upon the approval of Director Education FATA, in his capacity as the appellate authority, vide Endst. No. 14860-61 Dated 14/11/2016 Mst.Uzma Anjum DM Govt Gils Middle School Musa Khan Loi Shelman Landikotal Khyber Agency is hereby re-instated with effect from the date of her dismissal from service i.e 17/10/2014, without back benefits on the following conditions:-

- The salaries drawn by her during the removal period is to be recovered in normal installments through source from her Pay.
- The period during which she had not performed her duty after dismissal from service will be converted into leave without pay w.e.f 17/10/2014 to 13/11/2016 (758 days)
 will not be entitled to any back benefits.
- 3. This order is effective w.e.f 14/11/2016.
- 4. An under- taking on stamp paper will be obtained from her to the effect that she will never be absent without proper approval and will warned to be careful in future. In case if she found absent she will be removed from the service under E&D Rules 2011.

Note:

Necessary entry to this effect should be made in her Service Book.

(Muhammad Jadoon Khan)
AGENCY EDUCATION OFFICER
KHYBER AGENCY AT JAMRUD

Endst: N09471-76 Reinstatement File

Dated <u>28/111/2010</u>

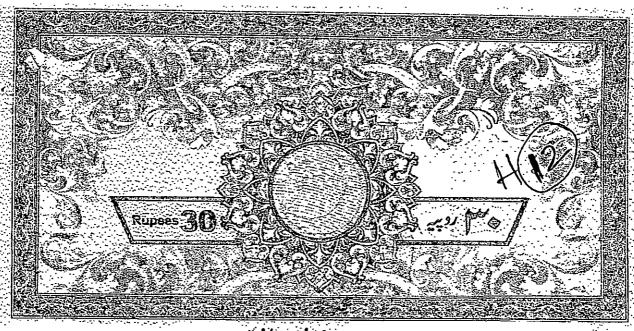
Copy of the forwarded to the:

- 6 Director Education FATA at Peshawar w/r to their Endst No. 14860-61 Dated 14/11/2016
- 3. Agency Accounts officer Khyber Agency at Jamrud.
 - 5. AAEO Concerned.
- 7 Superintendent Local Office
- 8 Female Accountant Branch for further pay process.
- 9 Data Entry operator EMIS local office
- 10 Official Concerned.

AGENCY EDUCATION OFFICER

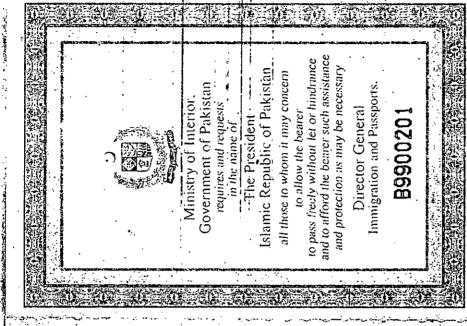
The pirector Educator G-W Merged trea, Warsak Road Pretamon Peshawar. Subject, Deportmental Appeal It is stated that, I was appointed as Drawing master (D.M) (BAS-09) vide order dated 3/ /8/ 2007. That during service a was removed from the service on the grounds of willful absence. The Said absence order was passed metafidely by the competant anthority so I challeged that before the appellate anthority and the same was setastell with order dated 28/11/2016 and I was vide order dated 28/11/2016 and 17/10/2014 re-instated in to some with effect I im. but without back beautits. The absence was not wrelful as I was on learne (medical) and went For umra. It is therefore requisted that the Intervening period with effect from 17-10-2014 till 13/11/2016 may be treated as carried lean and all the berefits to that period may please be granted to Sinchely your me.
Datud: 21/3/2019 Yma Anjum

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سائے حلی

خد مما في مسطى المجيم دختر فقرفد كن دفي برم كرورا تر سراری مخفی و تع جادات ره ی تول - حلف بیان كرك مكدي يول أمن MD بوسط يرموسي خان ك موت شما ف حقيل لمرون كوتل طرا يحيس مي لتعنيات بال اورمین دوستمبر 1013 در سے 31 جنوری سے 2014 د سکے سکول منورہ میں ڈیوئی دی سے اور سکم فردری سے 14 وری شے میر نفل کی ہے اور اس نے لعر الم وورى سے 12 مارچ د 1402 و سے عرف كي من كي جس ك متعلق دسنا ومزاث بم جهار الله موجود ہے۔ اس بیاف میں اول اعرفضنی ہوشرہ نہیں اس ئى جادرىنى مى ئاكۇئى سانى دروغ درائىسى ئالى كى ئان سان علی بون شخبواه جاری روز ای کا حم صادر وناری رفت او ارتهام 17/06/2014 3 600 ماة مظرانج در وتوثير الو



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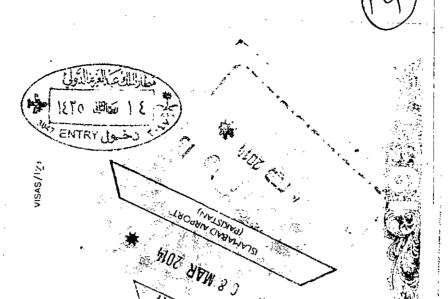
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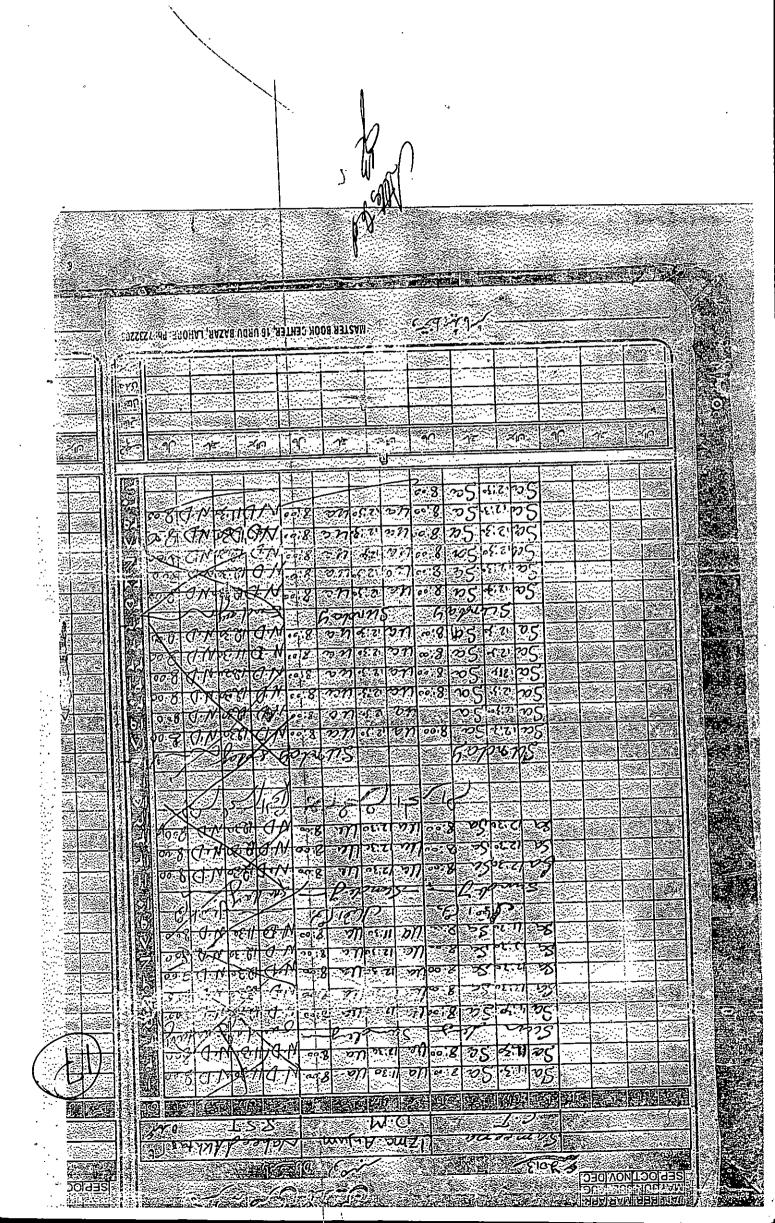
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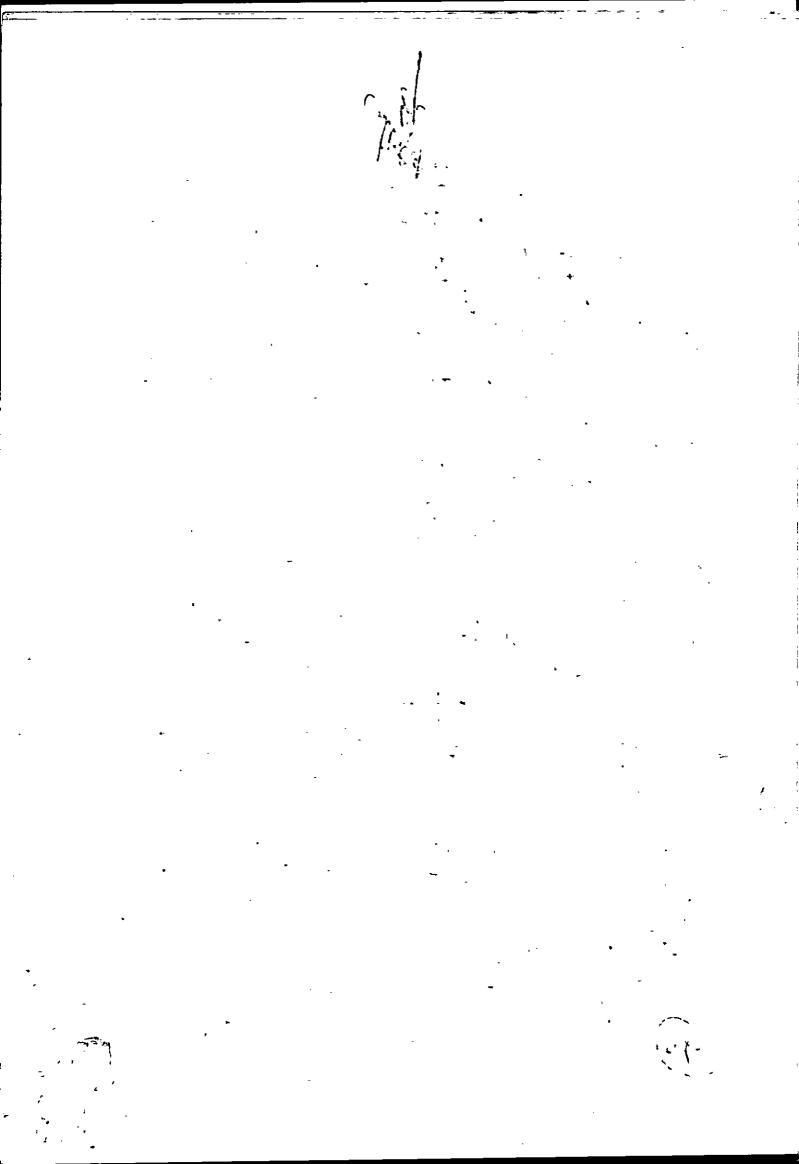
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ا**تفاق ترييد رز** كبير ستريث أردو بازار، لاهور.

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اتفاق شريد رز كبير سئريث، أردو بازار، لاهور.

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اتفاق شريد رز كبير ستريك، أردو بازار، لاهود.

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G.G.Mas Tark Loi Shalman (3)

Agence

VAKALATNAMA

	Before the KP Service Tribund, Poshawar
-	No/2019
• .	Ugma Anjum (APPELLANT) (PLAINTIFF) (PETITIONER) VERSUS
	tolucation Dept. (RESPONDENT) (DEFENDANT)
	Do hereby appoint and constitute NOOR MOHAMMAD KHATTAK, Advocate, Peshawar to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate Counsel on my/our cost. I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter.
	Dated
	MIR ZAMAN SAFI ADVOCATES

OFFICE:

Room No.1, Upper Floor, Islamia Club Building, Khyber Bazar,

Peshawar City.

Phone: 091-2211391 Mobile No.0345-9383141