

04.03.2020

Counsel for the appellant present. Additional AG for respondents present. Learned counsel for the appellant submitted before the court that the appellant wants to withdraw the instant service appeal as grievance of the appellant has been redressed departmentally. In this respect his statements also recorded in the margin of the order sheet. Request accepted and the appeal in hand is therefore, dismissed as withdrawn. File be consigned to the record room.

Announced:
04.03.2020


(Mian Muhammad)
Member

As per instruction of my client, he wants to withdraw the instant appeal as his issue has been redressed by declaring the NCA order for him. Statement by Mian Muhammad is recorded in the margin of the order sheet.
M. M. Muhammad
Att

16.12.2019

Junior to counsel for the appellant and Addl. AG
alongwith Waliur Rahman, ADEO for the respondents
present.

Representative of the respondents requests for time to
furnish the requisite reply/comments. Adjourned to
28.01.2020 on which date reply/comments shall positively
be submitted.

~~28.01.2020 - No one present on behalf of appellant. Written reply not
submitted. Wali Rehman, Assistant representative of respondents
present and seeks time to furnish written reply/comments. Granted.
To come up for written reply/comments on 04.03.2020 before S.B.~~

~~Member~~

28.01.2020

No one present on behalf of appellant. Written reply not
submitted. Wali Rehman Assistant representative of respondents
present and seeks time to furnish written reply/comments. Granted.
To come up for written reply/comments on 04.03.2020 before S.B.


Member

04.09.2019

Counsel for the appellant present.

Contends that through office order dated 13.03.2019 the salary of appellant has been stopped on account of some enquiry by the N.A.B Khyber Pakhtunkhwa. While, on the other hand, no law requires the stoppage of salary of a civil servant whose services are not terminated nor ^{he} has been dismissed or removed from service in accordance with law. In support of the case of appellant learned counsel referred to the copy of extract from attendance register pertaining to GPS Faqiro and stated that the appellant has been continuously performing his duty.

In view of arguments of learned counsel and available record, instant appeal is admitted for regular hearing subject to all just exceptions. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents. To come up for written reply/comments on 04.11.2019 before S.B.


Chairman

04.11.2019

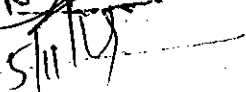
Counsel for the appellant present.

An application for extension of time to deposit security and process fee has been submitted. It is noted that the requisite deposit could not be made in time due to unavoidable circumstances.

The application is allowed and the period for making the deposit is extended for another period of three days. After the requisite deposit notices be issued to the respondents for submission of written reply/comments on 16.12.2019 before S.B.


Chairman

Appellant Deposited
Security & Process Fee





Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 1080/2019

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	22/08/2019	<p>The appeal of Mr. Fazal Wahab resubmitted today by Mian Muhammad Imran 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 22/8/19 </p>
2-	23/08/19.	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>04/09/19.</u></p> <p style="text-align: right;">  CHAIRMAN </p>

SP

Before the Worthy 2-P Serma Tribunal Peshawar

Fozal Warhab
Vs

Director, Elementary & Secondary
Education K.P. & others

Application request for extension of date
& time for depositing security as
on the last date, such was directed

Respected Sir,

1. That the above serma appeal is pending which is fixed for today.
2. That the security fee has not been deposited so far due to unavoidable.
3. That date may kindly be extended for depositing security fee which is essential for further proceedings.

Prayer: It is therefore, humbly requested that date may be extended for depositing the security fee please.

4/11/2019

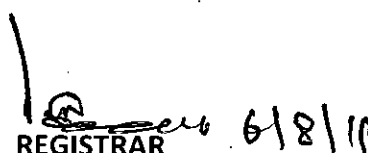
Appellant
Thru
(Mian Muhammad
Imran.
Att)

The appeal of Mr. Fazal Wahab SPST GPS Faqiro District Battagram received today by i.e. on 06.08.2019 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Memorandum of appeal may be got signed by the appellant.
- 2- Annexures of the appeal may be attested.
- 3- Annexures-G and H of the appeal are illegible which may be replaced by legible/better one.

No. 1380 /S.T,

Dt. 6/8 /2019


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mian Muhammad Imran Adv. Pesh.

*The deficiencies have
been rectified &
resubmitted please.*



*Mian
Imran
(Adv)*

*Registrar
KPSI*

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 1080 /2019

Fazal Wahab (SPST), GPS Faqiro, District Battagram R/O Rashang Tehsil Allai,
District Battagram

.....Appellant

VS

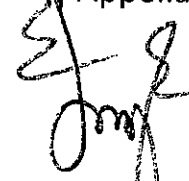
Director, Elementary & Secondary Education, Khyber Pakhtunkhwa, Grand Trunk Road, near Qilla Bala Hissar, Peshawar & Others


INDEX

<u>S.NO</u>	<u>DOCUMENTS</u>	<u>FLAG</u>	<u>PAGE</u>
01.	Service Appeal		1-3
02.	Copy of Judgment & Reinstatement Order	A&B	4-8
03.	Copy of Salary Stoppage Letter	C	9
04.	Copy of Request Application for release of Salary	D	10-11
05.	Copy of Letter for stoppage of Salary	E	12
06.	Copy of Departmental Appeal	F	13-17
07.	Copy of Attendance Register	G	18-29
08.	Copy of Training Letter	H	30-32


Appellant

Through


(Mian Muhammad Imran)
Advocate High Court

& 
(Muhammad Uzairullah Jan)
Advocate

①

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 1080 /2019

Fazal Wahab (SPST), GPS Faqiro, District Battagram R/O Rashang Tehsil Allai,
District Battagram

Khyber Pakhtunkhwa
Service Tribunal.....Appellant

Diary No. 1157

VS

Dated 06/8/2019

1. Director, Elementary & Secondary Education, Khyber Pakhtunkhwa, Grand Trunk Road, near Qilla Bala Hissar, Peshawar
2. District Education Officer (Male), District Battagram
3. District Accounts Officer, District Battagram

.....Respondents

SERVICE APPEAL UNDER SECTION 04 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974 AGAINST THE ORDER DATED: 13/03/2019 FOR THE RELEASE OF THE SALARIES OF THE APPELLANT STOPPED SINCE DECEMBER 2018 TILL DATE DESPITE THE FACT THAT THE APPELLANT HAS BEEN PERFORMING HIS DUTIES WITH ZEAL AND ZEST AND THE DEPARTMENTAL APPEAL DATED: 09/04/2019 PREFERRED HAS NOT BEEN REPLIED HITHERTO

The appellant is pleased to beseech before this Honorable Tribunal as under;

1. That the appellant was appointed as "PST" in the education department Battagram on 06/07/2008 and presently, performing his duties at "GPS Faqiro" as "SPST". In the year 2017, the appointment order was declared "null & void" by the respondents therefore, the appellant preferred a Service Appeal bearing no. 572/2017 which was allowed and re-instatement was directed. The appellant was re-instated and was also absolved in the departmental inquiry conducted by the respondents vide dated: 04/09/2018. (Copy of the Judgment in Service Appeal No. 572/2017 & Re-instatement Order is attached as F/A & F/B respectively)
2. That the appellant started performing his duties but his salary was stopped in the month of December 2018 due to the reason that the case of the appellant along with other employees is pending adjudication before the Honorable NAB court. (Copy of the Salary Stoppage Letter Dated: 08/11/2018 is attached as F/C)
3. That soon after the stoppage of salary the appellant preferred application request to the Respondent No. 02 but no heed was paid. (Copy of Request Application for the release of Salary is attached as F/D)

Filed to-day

Registrar

Re-submitted to-day
and Mag.

Registrar 22/8/19

- 4. That it is indispensable to submit that the appellant later on managed to acquire some letters issued by the respondents pertaining to stoppage of salaries Dated: 13/03/2019 due to which the appellant submitted departmental appeal to the Respondent No. 01 on 08/04/2019 for the released of his salaries but remained heedless. **(Copy of the Letter Dated: 13/3/2019& Departmental Appeal is attached as F/E & F/F respectively)**
- 5. That feeling aggrieved, the appellant has got no other remedy but to knock the door of this Honorable Tribunal on the following grounds inter alia;

GROUNDS:

- A. That the act of the respondents to stop the salary of the appellant is sheer violation of the fundamental rights of the appellant, against the mandate of law and rules.
- B. That FR 52 & 53 has rightly provided that salary of a civil servant cannot be stopped in any case except removal or dismissal from service, retirement and even in suspension, subsistence allowance is granted to the suspended person, hence, there is no law or rules which provides stoppage of salary, thus, the act of the Respondents is illegal and perverse.
- C. That the appellant has continuously been performing his duties which is evident from attendance register, training letter of "PITE" (Provincial Institute for Teachers Education KP) thus, legally his salary cannot be stopped due to the reason that he is still on the strength of the education department. **(Copy of the Attendance Register & Training Letter is attached as F/G & H respectively)**
- D. That to stop the salary of the appellant based on the reason that some issue is pending before the Honorable NAB Court is also un-tenable and un-justified because neither the NAB Court has issued any direction pertaining to stoppage of salary nor any other competent forum hence, act of the respondents is brazen violation of the basic rights of the appellant.
- E. That salary is not a bounty but in fact, the fundamental and basic right of the civil servant because it is enjoyed in lieu of performance of duties which is also the mandate of article 11 of the constitution of Islamic Republic of Pakistan 1973.
- F. That any other grounds can be raised at the time of the arguments.

PRAYER:

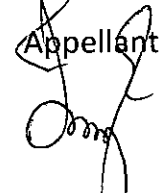
In light of the foregoing submissions, it is therefore, most convivially and humbly prayed that on acceptance of this service appeal, this Honorable Tribunal may graciously be pleased to;

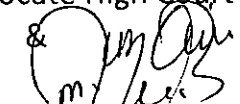


1. **Declare** the stoppage of the monthly salaries of the appellant vide letter dated: 13/03/2019 since December 2018 till date as un-lawful, void ab-initio, against the mandate of law and rules and liable to be set aside
2. **Direct** the Respondents to release the stopped monthly salary of the appellant since December 2018 till date
3. Any other relief in favor of the appellant against the respondents


Appellant

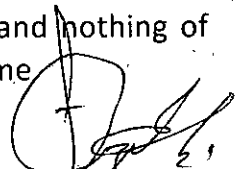
Through


(Mian Muhammad Imran)
Advocate High Court


(Muhammad Uzairullah Jan)
Advocate

the

Note: This is the first service appeal in the matter and nothing of same sort is pending or decided having the same subject-matter.


Appellant

1

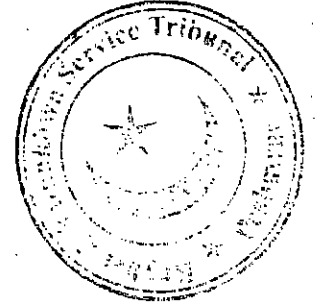
(4)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Appeal No. 572/2017

Date of Institution ... 02.06.2017

Date of Decision ... 12.04.2018



Fazal Wahab son of Rahim Ullah Primary School Teacher, R/O Rashang, Tehsil Allai District Battagram. ... (Appellant)

VERSUS

1. The District Education Officer, Elementary & Secondary Education Department, Peshawar and two others. ... (Respondents)

MR. KHUSHDIL KHAN,
Advocate

... For appellant

MR. ZIAULLAH,
Deputy District Attorney,

... For respondents.

MR. NIAZ MUHAMMAD KHAN, ...
MR. MUHAMMAD AMIN KHAN KUNDI, ...

CHAIRMAN
MEMBER

JUDGMENT

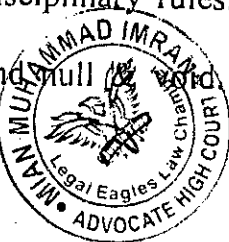
NIAZ MUIHAMMAD KHAN, CHAIRMAN.- Arguments of the learned counsel for the parties heard and record perused.

ATTENDED

FACTS

2. The appellant was appointed as PST on 06.07.2008. He thereafter served the department for almost 7 years. During this period, he was also upgraded on two different occasions. Then he was transferred to a new school on 02.7.2015. Thereafter, he was served with show cause notice on 09.08.2016 under the disciplinary rules. Finally his appointment order was declared as fake and bogus and null and void. Against this order, the appellant filed departmental appeal on

NIAZ MUHAMMAD KHAN
Chairman
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar



21.12.2016 which was rejected on 05.04.2017 and communicated to him on 23.5.2017. Thereafter, he filed the present service appeal on 02.06.2017.

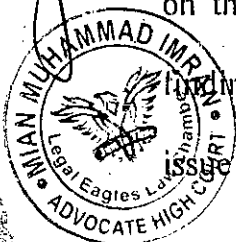
ARGUMENTS.

3. The learned counsel for the appellant argued that the appellant after appointment had been working in the department for almost 7 years. That his service book was prepared and he was allowed upgradation on two occasions. That his attendance was also marked in attendance register. That he was issued show cause notice under the Khyber Pakhtunkhwa Government Servants (E&D) Rules, 2011 but neither formal enquiry was conducted nor the same was dispensed with and finally the authority relied upon a so-called report of enquiry committee. That instead of awarding penalty, the authority declared the appointment letter as bogus. That when an enquiry committee was constituted it was incumbent upon the authority to have had issued the charge sheet to the appellant and appellant should have been afforded full opportunity of cross-examination of witnesses and also to defend himself in the light of the charge sheet. That the enquiry was also not dispensed with.

4. On the other hand, the learned Deputy District Attorney argued that the appellant was not a civil servant. That his appointment letter was bogus and fake and he could not be termed as civil servant. That it was proved by the enquiry committee that the appointment letter was bogus as it was issued on Sunday. That the attendance of the appellant in the attendance register was also bogus.

CONCLUSION.

5. Whatever has been argued by the learned Deputy District Attorney is based on the findings of the enquiry report and similarly the authority has based his findings on the basis of enquiry report which is itself a proof of the fact that the involved appreciation of factual controversy which could not be decided



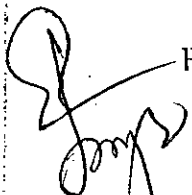
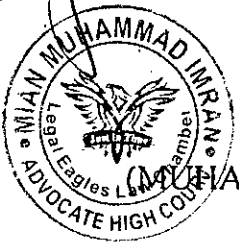
ATTEST
Khyber Pakhtunkhwa
Service Commission

6

without holding of formal enquiry. But the Authority neither opted for holding regular enquiry nor dispensed with the formal enquiry. The authority further initiated the proceedings under the disciplinary rules by issuing show cause and then culminated the proceedings by not awarded the penalty under the disciplinary rules but declared the appointment letter as bogus. Such proceedings in the eyes of law cannot be sustained. The Authority should have been clear regarding the proceedings to be conducted under the disciplinary rules or should have withdrawn the appointment order in exercise of the powers on the basis of *locus-poenitentiae*. In case the authority was to exercise his powers under the latter option then this Tribunal could decide the issue on the basis of the stage at which the same power was exercised. However in any event it was incumbent upon the authority to have given full opportunity to the appellant to participate in the enquiry proceedings by giving all rights of due process which has not been done.

6. As a sequel to the above discussion, the present appeal is accepted. The appellant is reinstated in service. However, the department is directed to hold denovo proceedings within a period of ninety days from the date of receipt of this judgment. The issue of back benefits etc. shall be subject to the final outcome of denovo proceedings and rules on the subject. Parties are left to bear their own costs.

File be consigned to the record room.

(MIAN MUHAMMAD AMIN KHAN KUNDI)
MEMBER

(NAZ MUHAMMAD KHAN)
CHAIRMAN

ANNOUNCED
12.04.2018

Certificate of Appointment
Kindly see the attached
Serial No. 1000/2018
Resdwaner

10-5-18

Date of Presentation _____
 Number of Pages _____ 1200
 Copying Fee _____ 8
 Urgent _____ 2
 Total _____ 10
 Name of Complainant _____
 Date of Complaint _____ 10-5-18
 Date of Delivery of Report _____ 10-5-18



OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE)
BATTAGRAM

RE-INSTATEMENT ORDER.

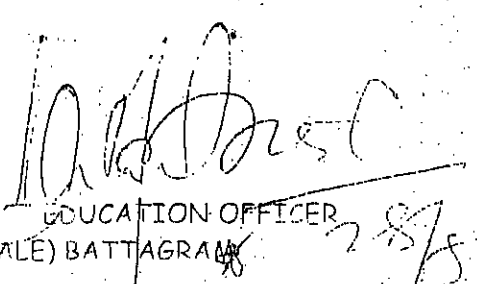
Consequent upon the judgment passed by Khyber Pakhtunkhwa Service Tribunal Peshawar Appeal No.572/2017 date of Decision 12/04/2018, Mr. Fazal Wahab SPST GPS: Faqiro Tehsil Allai District Battagram is hereby reinstated in service as per direction of Para 06 of court judgment.

- sd -
DISTRICT EDUCATION OFFICER
(MALE) BATTAGRAM

Endst: No. 5526-30 /EB/Pry/Dated. Battagram the 28/5/ /2018.

Copy for information to the:-

1. Registrar Khyber Pakhtunkhwa Service Tribunal Peshawar.
2. Director (E&SE) Khyber Pakhtunkhwa Peshawar
3. District Accounts Officer Battagram.
4. SDEO (Male) Allai.
5. Mr. Fazal Wahab SPST GPS: Faqiro (Allai).


DISTRICT EDUCATION OFFICER
(MALE) BATTAGRAM





OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE)
BATTAGRAM

RELEASE OF PAY.

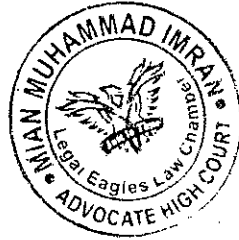
Consequent upon the recommendation of Inquiry Committee constituted by this office under Endst:No.5506-12 Dated 28/05/2018, and he has reinstated into Govt. Service vide office order issued under Endst:No.5526-30 Dated 28/05/2018, in the light of above decision the salary in respect of Mr.Fazal Wahab SPST GPS:Faqiro is hereby released with all back benefits WEF:16/01/2015.

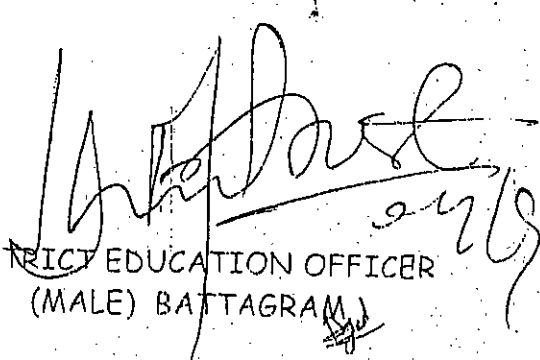
sd-
DISTRICT EDUCATION OFFICER
(MALE)BATTAGRAM

Endst:No. 9592-97 EB/AE-I(Pry) Dated Battagram the 4/9/2018.

Copy for information to the,

1. Registrar Khyber Pakhtunkhwa Service Tribunal Peshawar with reference Appeal No.572/2017.
2. District Accounts Officer Battagram.
3. SDEO(Male) Allai.
4. ASDEO Circle.
5. Head Teacher GPS:Faqiro.
6. Office copy.




DISTRICT EDUCATION OFFICER
(MALE) BATTAGRAM

9

OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE)

EMAIL: emisbattagram@gmail.com **BATTAGRAM** PHONE NO: 0997543540,539

OFFICE ORDER

As the case of Mr. Fazal Wahab GPS Faqero , Allai Battagram is under trial along with other ghost employees of District Battagram at the NAB, Khyber Pakhtunkhwa Peshawar and Investigation Officer NAB Khyber Pakhtunkhwa Peshawar directed inquiry officers as well as the undersigned during personal hearing on 05-11-2018 & 06-11-2018 at NAB office Khyber Pakhtunkhwa Peshawar, therefore:

In view of the above circumstances, the following steps / measures are immediately taken:

1. Release of pay and all back benefits vide order Endstt: No: 9592-97/EB/AE-1(Pry) dated Battagram the 04-09-2018 is declared null and void & hereby cancelled and pay be stopped immediately.
2. Explanation from the inquiry Committee.
3. Explanation from litigation branch.
4. Explanation from Ex-SDEO (Male) Allai about transfer proposal dated 06-05-2015.

[Handwritten Signature]
08/11/18

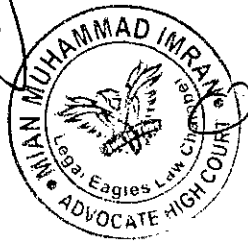
**DISTRICT EDUCATION OFFICER (MALE)
BATTAGRAM**

Endstt: No: 12939-44 /Etab: Primary
Copy for information to the.-

Dated: 09/11/2018

1. Registrar Khyber Pakhtunkhwa Service Tribunal Peshawar with reference appeal No: 572/2017.
2. District Accounts Office Battagram.
3. Mr. Naeem Ullah Investigation Officer NAB Khyber Pakhtunkhwa Peshawar.
4. Director E&SE Khyber Pakhtunkhwa Peshawar.
5. SDEO (Male) Allai & Battagram for strict compliance and report to the undersigned.
6. Office file for record.

[Handwritten Signature]



[Handwritten Signature]
08/11/18

**DISTRICT EDUCATION OFFICER (MALE)
BATTAGRAM**

[Handwritten Signature]

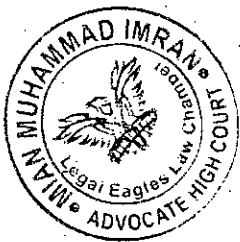
محکمیت جناب دستیار ڈپٹی ایجوکیشن آفیسر ملتان
مکرم

جناب عالی

موجودہ ماہ گزارش کے لیے کہ میں گورنمنٹ پرائمری
سکول فقیر و میں ڈپٹی سہرا نام دے رہا ہوں۔ میری
سینجواہ لیسٹریٹس اور ماہ 2018 کے جاری نہیں
ہے اور بند ہے۔ میں ایک لکڑیہ سینجواہ سکول اور
میرے سینجواہ سکول کے ہیں۔ اور اس سینجواہ سے میرا
گزارش ہوا تھا۔ مگر باقی گزارش میری سینجواہ
جاری فرمائی جائے۔

[Handwritten signature]

عین گزارش ہوگی



ایک تالیف

[Handwritten signature]
عین و صف

آڈس، سب سے فقیر و مکرم
27/12/18

خدمت جناب ڈیپٹی کمشنر ایجوکیشن ایف آئی اے (ڈی ای او) گلبرگ
11
درخواست بھرا دیا گیا ہے

- صفحہ نمبر 1
- سائل نمبر 1 اور 2
- (1) یہ کہ سائل گورنمنٹ ہائر ایجوکیشن سکول ایف آئی اے، فیصلہ 2015 سے
- SPST (1) کے تحت
- (2) یہ کہ سائل کی تاریخ 2018 سے فیصلہ کسی سے منظور ہو گیا
- بہتر کی طرف سے جس سے سائل کو مالی مشکلات کا سامنا ہے

3
کہنا بہتر درخواست دہندہ
سائل کی تاریخ 2018 سے
کی تاریخ 2018 سے
بہتر کی طرف سے جس سے

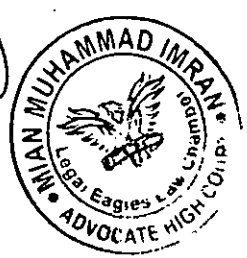
آپ کا جواب

20/3/2019

[Handwritten signature]

فیصلہ 2018

SPST فیصلہ 2018



To

Fazle Wahab, SPS Fagoro.

(12)

Subject Recovery of Payment.

Memo: Reference to District account office. in the subject line, you are hereby directed to deposit the amount drawn illegally as this office as well as the high authority do not consider you as a regular employee of Elementary & Secondary education department Khyber Pakhtunkhwa.

The amount may be deposited through challan in NBP Ballagram with in ten working days.

Failure which the highest authorities will be communicated for legal action against you. Your pay has already been stopped as directed by the competent authority.

End No.

Copy to -

- 1- District Education Officer (M) Ballagram
- 2- District Account Officer
- 3- DC Ballagram
- 1- ASOEO circle Kargil
- 5- office copy

[Handwritten signature]

Dated 13/3/19.

[Handwritten signature]
SDEO (M)
Allai

[Handwritten signature]
SDEO (M)
Allai

The Director,
Elementary & Secondary Education,
Khyber Pakhtunkhwa, Peshawar

DEPARTMENTAL APPEAL/REPRESENTATION AGAINST THE
IMPUGNED ORDER DATED: 13/03/2019 FOR THE RELEASE OF
THE MONTHLY SALARIES OF THE UNDERSIGNED WHICH HAS
BEEN STOPPED SINCE DECEMBER 2018 AND REVOCERY OF
BACK BENEFITS GRANTED BY THE DEPARTMENT AFTER
RE-INSTATEMENT INTO SERVICES KEEPING IN VIEW THE FACT
THAT THE APPELLANT/ UNDERSIGNED HAS RIGHTLY BEEN RE-
INSTATED ON THE DIRECTION OF THE WORTHY KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR VIDE DATED:
12/04/2018 AND ON THE DIRECTION, A DE-NOVO INQUIRY WAS
ALSO CONDUCTED WHEREIN THE APPELLANT/UNDERSIGNED
HAS BEEN EXONERATED FROM ALL THE ALLEGATION LEVELED
AGAINST HIM WITH ALL BACK BENEFITS ON 04/09/2018 IN
CONJUNCTION WITH THE FACT THAT THE
APPELLANT/UNDERSIGNED HAS BEEN PERFORMING HIS DUTIES
SINCE HIS RE-INSTATEMENT TILL DATE

Respected Sir,

The appellant/undersigned submits as under;

1. That the appellant was appointed as "PST" on 06/07/2008 by the competent authority of the office of the, the then, Executive District Office, School & Literacy, District Battagram and was directed to serve at "GPS Nehrai".
2. That after serving for more than about seven years, the appellant received a "Show Cause" on 09/08/2016 that his appointment order was fake and bogus followed by declaration of the appointment order of the appellant as "Null & Void" on 09/12/2016. Feeling aggrieved, the

12/15/18
9/14/18
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To

The Director,
Elementary & Secondary Education,
Khyber Pakhtunkhwa, Peshawar

DEPARTMENTAL APPEAL/REPRESENTATION AGAINST THE IMPUGNED ORDER DATED: 13/03/2019 FOR THE RELEASE OF THE MONTHLY SALARIES OF THE UNDERSIGNED WHICH HAS BEEN STOPPED SINCE DECEMBER 2018 AND REVOCERY OF BACK BENEFITS GRANTED BY THE DEPARTMENT AFTER RE-INSTATEMENT INTO SERVICES KEEPING IN VIEW THE FACT THAT THE APPELLANT/ UNDERSIGNED HAS RIGHTLY BEEN RE-INSTATED ON THE DIRECTION OF THE WORTHY KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR VIDE DATED: 12/04/2018 AND ON THE DIRECTION, A DE-NOVO INQUIRY WAS ALSO CONDUCTED WHEREIN THE APPELLANT/UNDERSIGNED HAS BEEN EXONERATED FROM ALL THE ALLEGATION LEVELED AGAINST HIM WITH ALL BACK BENEFITS ON 04/09/2018 IN CONJUNCTION WITH THE FACT THAT THE APPELLANT/UNDERSIGNED HAS BEEN PERFORMING HIS DUTIES SINCE HIS RE-INSTATEMENT TILL DATE

Respected Sir,

The appellant/undersigned submits as under;

1. That the appellant was appointed as "PST" on 06/07/2008 by the competent authority of the office of the, the then, Executive District Office, School & Literacy, District Battagram and was directed to serve at "GPS Nehrai".
2. That after serving for more than about seven years, the appellant received a "Show Cause" on 09/08/2016 that his appointment order was fake and bogus followed by declaration of the appointment order of the appellant as "Null & Void" on 09/12/2016. Feeling aggrieved, the appellant filed departmental appeal which was rejected on 05/04/2017, thus, the appellant filed service appeal no. 572/2017 which was decided on 12/04/2018 with the direction to re-instate the appellant along with conduction of de-novo inquiry within three months.

3. That the department re-instated the appellant and also conducted a de-novo inquiry wherein the appellant was exonerated from all the charges and also back benefits was also granted to the appellant.

4. That as the appellant had already started performing his duties on his post since his re-instatement order vide dated: 28/05/2018, when due to the mala fide approach of the concerned persons of the district education office Battagram, the salary of the appellant was stopped in



the month of December, 2018. The appellant very exhaustively made a number of requests to release the salaries but turned a deaf ear by the department.

5. That as the salary comes in the ambit of recurring cause of action therefore, on the passage of each month, the appellant also submitted written request to the district education office Battagram but despite the passage of about four months, the appellant has not taken his salary. Apart from it, the appellant repeatedly requested the concerned person of the said education office to provide him the stoppage of salaries in black & white but nothing was forwarded. At last, the appellant/undersigned received a letter vide dated: 13/03/2019 where it was directed to deposit the amount granted to the appellant based on back benefits by the department and also the stoppage of salaries issue was also discussed.

(Copy of the Impugned letter dated: 13/03/2019 is attached)

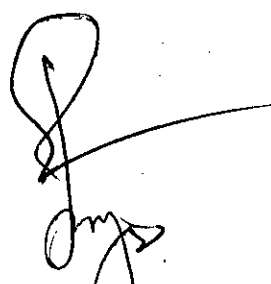

6. The appellant/undersigned is pleased to submit before your esteemed position on the following grounds inter-alia;

GROUND:

A. That the appellant/undersigned was reinstated on the direction of the worthy Khyber Pakhtunkhwa Service Tribunal on 12/04/2018 in Service Appeal No. 572/2017 so, stoppage of salary and also the issue of depositing the back benefits is sheer violation of the fundamental rights of the appellant/undersigned.

B. That even the competent authority of the district education office Battagram has conducted the de-novo inquiry and exonerated the appellant/undersigned along with the recommendation pertaining to granting of back benefits which was also extended to the appellant vide dated: 04/09/2018, thus, the act of the district education office Battagram is void ab-initio and un-lawful to stop the salary of the appellant and to direct him to deposit the amount of back benefits.

C. That after the conduction of de-novo inquiry, exoneration of the appellant, reinstatement into service with all back benefits has caused the competent authority of the District Education Office Battagram as "Functus Officio", which means he has no authority whatsoever to stop the salary of the appellant and also to direct him to deposit the amount of back benefits. Thus, the act of the district office Battagram is brazen

violation of natural justice and basic rights of the appellant.

- D. That as per the mandate of Article 11 of the Constitution of Pakistan, forced labor is prohibited but the appellant despite of performance of his duties, has been kept deprived from his monthly salaries which is against the mandate of constitution as well as natural justice.
- E. That the appellant has been re-instated by the worthy service tribunal which has got the jurisdiction and authority to hear and issue judgments pertaining to the issues regarding the civil servants, thus, after reinstatement by the worthy service tribunal followed by full-fledged inquiry, the stoppage of salary and direction for depositing of back benefits amount is un-warranted and needs to be intervened.
- F. That as per the mandate of FR 52 & 53, salary cannot be stopped, even in suspension, subsistence allowance is granted to the civil servant, so the act is un-lawful and based on mendacity.
- G. That the judgment of the worthy service tribunal has not been impugned by the August Apex Court of Pakistan which means that the judgment has got finality in the eye of law.
- H. That the appellant is still performing his duties and on the strength of education department, so stoppage of salary and direction of depositing of back benefits amount is totally based on spitefulness and mala fide which is required to be struck down.

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PRAYER:

In light of the foregoing submissions, it is therefore most convivially and humbly prayed that on acceptance of the instant departmental appeal/representation, the impugned order dated: 13/03/2019 and any other if

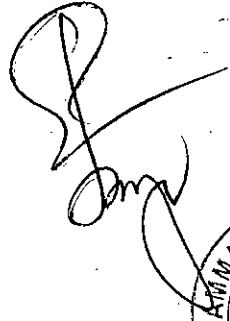
issued, may kindly be declared void, ultra vires and also against the mandate of law and rules and to issue directions to the competent authority of the District Education Officer, Battagram to release the salaries of the appellant/undersigned forthwith which has been stopped since December 2018 and also to withdraw/set aside the directions for the depositing of the amount granted to the appellant pertaining to back benefits please.

08/04/2019

(Fazal Wahab)

(PST) GPS Faqiro, Allai,

Batagram



20/8

رجسٹر حاضری مدرسین

یابت ماہ

ردیف	نام و نام خانوادگی			نوع خدمت	تاریخ	حاضر
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رجسٹر حاضری مدرسین

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نام نمبر	تاریخ	آمد	رواگی	دستخط	آمد	رواگی	دستخط	آمد	رواگی	دستخط	آمد	رواگی	دستخط
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رجسٹر حاضرگی مدرسین

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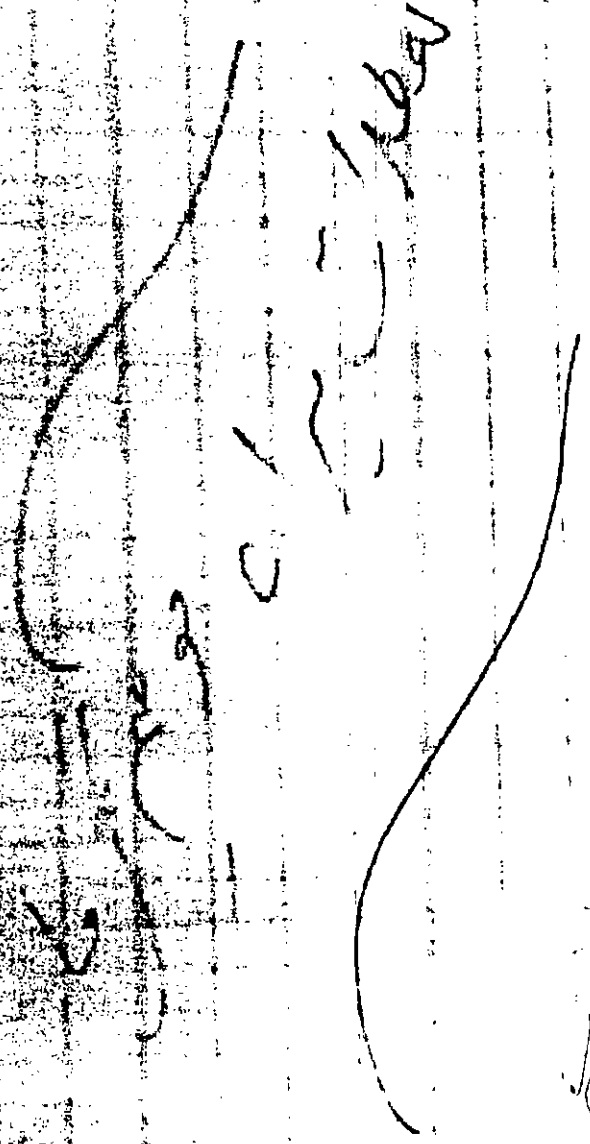
محل و صواب
تعداد
نام مدرسین

محل

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10 DAY

تعداد مدرسین

محل

رجسٹر حاضرین مدرسین سینیئر / بابت ماہ سنہ 2018ء

طارق راجہ		جاوید فیاض کمال		اعجاز احمد		شاہ امان اللہ		ردیف
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حاضر		سابقہ		میزان	حاضر		سابقہ		میزان	حاضر		سابقہ		میزان
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<p style="text-align: center;">  Head Teacher GPS Faqiro Alai Battagram </p>														

دستخط ایڈمنسٹریٹر

رجسٹر
تاریخ
میزان

رجسٹر حاضرین مدرستہ سنہ ۲۰۱۸ء

اساتذہ			اساتذہ			اساتذہ			اساتذہ			رقم
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اساتذہ			اساتذہ			اساتذہ			اساتذہ			رقم
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Signature and printed name of the Head Teacher: G.P.S Faqiro, Allal Battagram.

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رجسٹر حاضرگی مدرسہ سیدین
بابت ماہ جون 2018ء

حضور محمد اقبال PST
انجمن افسر PST
ذمہ سہیلہ SPST
سیدہ سحر الہیٰ PST

روز	حضور محمد اقبال PST	انجمن افسر PST	ذمہ سہیلہ SPST	سیدہ سحر الہیٰ PST	روز
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Head Teacher
SPS Faqir
Alai Battagram

رجسٹر حاضری ملازمین مدرسہ بابت ماہ اگست 2018ء

نام	شاہ امان الحق	فضلہ بیگم	رعجاز احمد	جلو دین محمد امین	تاریخ
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30	12:35	12:35	12:25	12:35	30
31	12:35	12:35	12:25	12:35	31

حالت	سابقہ میزان	حالت	سابقہ میزان	حالت	سابقہ میزان	حالت	سابقہ میزان
5	4	2	8	7	1	4	2
2	2	2	6	5	1		

Lead Teacher
G.P.S Fajiro
Allai Battagram

رجسٹر
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تاریخ

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حالت
امتیازی
بیماری
میزان

دستخط ہیڈ ماسٹر

رجسٹر حاضری مدرسہ سین 45 فیروز آباد ماہ ستمبر 2018ء

شاہ امام اللہ PSHT وحیدہ ونہاس SPST اعجاز حسن PST جاوید محمد امین PST

تاریخ	شاہ امام اللہ	وحیدہ ونہاس	اعجاز حسن	جاوید محمد امین	تاریخ
1	12:35	12:35	12:35	12:35	1
2					2
3	12:35	12:35	12:35	12:35	3
4	12:35	12:35	12:35	12:35	4
5	12:35	12:35	12:35	12:35	5
6	12:35	12:35	12:35	12:35	6
7	11:00	C-Leave	12:35	12:35	7
8	C-Leave	12:35	12:35	12:35	8
9					9
10	12:35	12:35	12:35	12:35	10
11	12:35	C-Leave	12:35	12:35	11
12					12
13	12:35	C-Leave	12:35	12:35	13
14	11:00	on duty Training	12:35	12:35	14
15	12:35	C-Leave	12:35	12:35	15
16					16
17	12:35	12:35	12:35	12:35	17
18	12:35	12:35	12:35	12:35	18
19	12:35	12:35	12:35	12:35	19
20	on duty	on duty	on duty	on duty	20
21					21
22	12:35	C-Leave	12:35	12:35	22
23					23
24	12:35	on duty	12:35	12:35	24
25	12:35	on duty	12:35	12:35	25
26	12:35	on duty	12:35	12:35	26
27	C-Leave	on duty	12:35	12:35	27
28	11:00	11:00	12:35	12:35	28
29	11:00	12:35	12:35	12:35	29
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31					31

اقاریہ: [Signature] [Signature] [Signature] [Signature]


Lead Teacher
G.P.S Faqiro
Allai Battagram

رجسٹر حاضری مدرسین G.P.S فقیر و بابت ماہ اکتوبر 2018ء

تاریخ	شاہ ایمان اللہ			فضلہ وہاب			اعجاز احمد			جاوید فریاض			تاریخ
	آمد	دستخط	رواگی	آمد	دستخط	رواگی	آمد	دستخط	رواگی	آمد	دستخط	رواگی	
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حاضریت	حالیہ	سابقہ	میزان	حاضریت	حالیہ	سابقہ	میزان	حاضریت	حالیہ	سابقہ	میزان	حاضریت	حالیہ	سابقہ	میزان
حاضریت				حاضریت				حاضریت				حاضریت			
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استحقاق				استحقاق				استحقاق				استحقاق			
بیماری				بیماری				بیماری				بیماری			
میزان				میزان				میزان				میزان			

دستخط ہیڈ ماسٹر


 Head Teacher
 G.P.S Faqiro
 Allai Battaaram

رجسٹر حاضری مدرسین
G.P.S. دفتر روایت ماہ اکتوبر 2018ء

نام	طارق حسین		تاریخ
	آمد	روایت	
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Dec 26 / 10 / 18

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حالت	سابقہ	میزان	حالت	سابقہ	میزان	حالت	سابقہ	میزان	حالت	سابقہ	میزان

دستخط ہیڈ ماسٹر

(Signature)
Head Teacher
G.P.S. Faqiro
Allai Battagram

رجسٹری

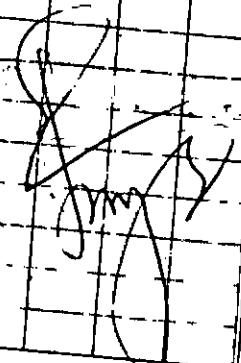
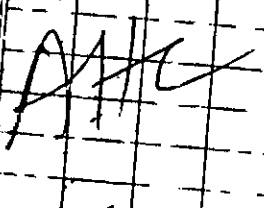
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سیدین PS با حقہ و ریاست ماہ نومبر

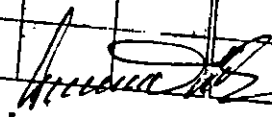
رجسٹر حاضری و ہدف

م	کارتی رسی	نمبر
1	پ	1
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5	پ	5
6	پ	6
7	پ	7
8	پ	8
9	پ	9
10	پ	10
11	پ	11
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31	پ	31

شاہ امام اللہ PST 1:35 to 8:30	انگزام PST 1:35 to 8:30	خفہ جاب SPSF 11:55 to 8:30	عاقبہ محمد امجد PST 1:35 to 8:30
1:35	1:35	11:55	1:35
8:30	8:30	8:30	8:30
1:35	1:35	11:55	1:35
8:30	8:30	8:30	8:30
1:35	1:35	11:55	1:35
8:30	8:30	8:30	8:30
1:35	1:35	11:55	1:35
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1:35	1:35	11:55	1:35
8:30	8:30	8:30	8:30
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1:35	1:35	11:55	1:35
8:30	8:30	8:30	8:30

حالت	سابقہ میزبان	حالت	سابقہ میزبان	حالت	سابقہ میزبان	حالت	سابقہ میزبان


 Head Teacher
 G.P.S Faqiro
 Allai Battagram

دستخط ایڈمٹر

اتفاقیہ
استحقاق
نیاری
میزان

PITE

30

Training/Workshop for ...

Perkuliahan Institut Pendidikan Guru

PROFESOR GHS

FAKULTAS

1	Mubammad Zahid	PST	Gps Pagar Cheras	13201-9955663-7	0346	
2	Fazal Wahab	PST	Gps Ali Shemia	13201-183065667	0346	
3	Abdul Aziz	PST	Gps Pagar Cheras	13201-2234207-1	0346	
4	Taj Ar-Razvi	PST	Gps Pagar Cheras	13201-1829757-9	0346	
5	Fazal Mahamad	PST	Gps Semporna	13201-2138257-1	0346	
6	U. U. Rahman	PST	Gps Semporna	13201-8679659-9	0346	
7	Shah Aman-ullah	PST	"	13201-1829570-7	0346	
8	Jamal-ud-din	PST	Gps Cheras	13201-1813372-7	0346	
9	Sufi-ullah	SPST	Gps Kajang	13201-1829383-3	0346	
10	Mubammad Rusli	PST	"	13201-1820605-5	0346	
11	Mubammad	SPST	Gps Cheras	13201-1820383-1	0346	
12	Shah Husain	PST	Gps Bab	13201-0448215-9	0346	
13	Shahbaz Khan	PST	Gps Bab	13201-1831174-9	0346	
14	Shahin Zada	PST	"	13201-1840764-1	0346	
15	David Khan	PST	Gps Cheras	13201-1818711-9	0346	
16	Fazlullah	SPST	Gps Alishan	13201-09824421	0346	
17						
18	Abdullah	PST	Gps Semporna	13201-1806128-3	0346	
19	Jamil Muhammad	PST	Gps Fajeno	13201-0745491-9	0346	
20	Taj Ar-Razvi	PST	Gps Fajeno	13201-9512165-9	0346	
21	Fazal Wahab	SPST	"	13201-1840418-1	0346	

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PROVINCIAL INSTITUTE OF TEACHER EDUCATION

ATTENDANCE SHEET

GHS

S.No	NAME	Designation	posting	CNIC	Mobile No	Signature
1						
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PARTICIPANTS						
1	Muhammad Zahir	PSHT	GIPS	13201-9955663-9		
2	Fazal Wahab	PSHT	GIPS Ali Shariq	13201-18306560-7		
3	Abdul Aziz	PSHT				
4						
5	Fazal Magbool	PSHT	GIPS Sappona	13201-9921382574		
6						
7						
8						
9	Saif Ullah	SPST	GIPS Koz-cheng	13201-1829383-3		
10						
11						
12	Shah Husain	PST	GIPS Bab	13201-0448215-9		
13						
14	Sherin Zada	PST	GIPS Bab	13201-1840764-1		
15						
16	Fazlullah	SPST	GIPS Ali Sherin	13201-09824421		
17						
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19						
20	Ijaz Ahmad	PST	GIPS Faqiro	13201-9512165-9		
21	Fazal Wahab	SPST	GIPS Faqiro	13201-1840418-1	0346 5556449	
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[Handwritten Signature]

37

OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE)

EMAIL: emobattagram@gmail.com BATTAGRAM PHONE NO: 0997543540 & 519

Dated: / / 2019

- 1. M. F. M. ...
- 2. GPS Faqir, Allai, Battagram
- 3. Bisan udhin, PST,
- 4. GPS Such Bhai, Allai, Battagram
- 5. Abdul Rehman, SPST,
- 6. GPS Banna Allai, Battagram
- 7. Lutfolah, PST,
- 8. GPS Set Kunda, Rashang, Allai, Battagram
- 9. **5** Fazal Wahab SPST,
- 10. GPS Faqir, Huthal Bathkool, Allai, Battagram
- 11. Sadeeq ul Rehman, SPST,
- 12. GPS Ilahang, Rashang, Allai, Battagram
- 13. Muhammad Nawab, PSST,
- 14. GPS Bani Yaro, Rashang, Allai, Battagram

Subject: PERSONAL HEARING

You are directed to appear in person before the competent authority for personal hearing on 21/5/2019 at the office DEO (Male) Battagram.

[Handwritten signature]
AHC

[Handwritten signature]
District Education Officer
(M) Battagram

Enstt: No: 5597-99 /IMU/Esth/Pry/Dated: 17/5/2019.

- Copy for Information & n/a to the:
1. SDEO (Male) Allai with the direction to serve this notice upon the above mentioned officials.
 2. DMO(IMU) Battagram.
 3. Office Copy

[Handwritten signature]
District Education Officer
(M) Battagram

with

13/1

32



Government of Khyber Pakhtunkhwa
Office of the District Education Officer Male
BATTAGRAM

File No: 6322
Dated: 23/05/2019

Notification

1. Whereas, (Fazal Wahab, Senior PST, GPS FAQIROO (EmisCode:26601)) ALLAI BATTAGRAM was proceeded against under the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011 for the charges of willful absence from duty.
2. And whereas, a show cause notice was served upon you vide No. 4557-14 dated 24/05/14 for willful absence from within the meaning of Rule-3 (d) and the Finance Department Notification No. So (FR)/FD/5-14/2014 dated 16-12-2014.
3. And whereas, the Competent Authority after having considered the charges, evidence on record, his/her explanation dated _____ and the personal hearing granted to him/her vide No. 4557-14 dated 17/5/14 is of the view that the charges mentioned in the show cause have been proved against (Fazal Wahab, Senior PST, GPS FAQIROO (EmisCode:26601)).
4. Now, therefore, in exercise of the powers conferred under the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011 the Competent Authority is pleased to impose the penalty of one-day salary deduction upon (Fazal Wahab, Senior PST, GPS FAQIROO (EmisCode:26601)) in accordance with Rule-4 (a) (iii) of the ibid rules and absent period is converted into leave without pay with immediate effect.

Note: Necessary entries may be made in his/her service book.

DEO BATTAGRAM MALE

Endst: Even No. & Dnt




Copy of the above is forwarded to the:-

- i. Director, Elementary & Secondary Education Department, G.T. Road, PESHAWAR
- ii. Deputy Commissioner concerned
- iii. District Accounts Officer concerned
- iv. District Monitoring Officer concerned
- v. Principal/Headmaster/Headmistress/DDEO/SDEO concerned for necessary action under intimation to this office within 7 days.
- vi. Fazal Wahab, Senior PST, GPS FAQIROO (EmisCode:26601), HUTAL BATHKOOL, ALLAI BATTAGRAM
- vii. Master File

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DEO BATTAGRAM MALE

By: do: battagram - Warning Letter

قیمت 50 روپے	25469			
ایڈوکیٹ: <u>Uzair</u>		پشاور بار ایسوسی ایشن، خیبر پختونخواہ		
بار کونسل/ ایسوسی ایشن نمبر: <u>Bc-16-6501</u>				
رابطہ نمبر: <u>0333-9577770</u>				

بعد ازاں جناب: خیبر پختونخواہ سروسز ٹریڈنگ کمپنی

منجانب: <u>سائل / اپیل کنندہ</u>	دعویٰ: <u>Service Appeal</u>
موضوع: <u>فضل و باب</u>	علت نمبر: <u>Appeal No. 1080/2019</u>
بنام	مورخہ
<u>ڈاکٹر گلبرگ ایلینڈ اینڈ سکیونڈری ایجوکیشن بورڈ</u>	جرم:
	تھانہ

بامٹ تحریر آگے

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کاروائی متعلقہ
 آن مقام پشاور کیلئے ارباب عزیز اللہ و مہمان محمد عمران ایڈووکیٹس کو وکیل مقرر
 کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا، نیز وکیل صاحب کو
 راضی نامہ کرنے و تقرر ثالث و فیصلہ برحلاف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق
 زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی، نیز
 دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی
 کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا اور صاحب
 مقرر شدہ کو وہی جملہ مذکورہ باختیارات حاصل ہوں گے اور اس کا ساختہ پرداختہ منظور و قبول ہوگا
 دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ یا حد سے
 باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ سند رہے

Omair
M. Tariq
Attc

M. Tariq
Attc

Adv. Arshad Usair Attc

الرقوم: _____
 الع _____ واہ شد الع _____
 مقام پشاور
M. Tariq Attc
M. Tariq Attc
M. Tariq Attc

Hand

Fazal Wahab (SPST), GPs, Fagiro, Allai, Bellgram

Attested & Accepted

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①

BEFORE THE HONORABLE PESHAWAR HIGH COURT PESHAWAR

W.P No. _____ /2019

Fazal Wahab (SPST), Government Primary School Faqiro, Allai, District Battagram




VS

1. Chairman, National Accountability Bureau (NAB), Islamabad
2. Director General, National Accountability Bureau (NAB), Khyber Pakhtunkhwa
3. Naeemullah Mehsud (Investigation Officer), National Accountability Bureau (NAB) Khyber Pakhtunkhwa Peshawar
4. Director, Elementary & Secondary Education, Khyber Pakhtunkhwa Peshawar
5. District Education Officer (DEO), District Battagram, Khyber Pakhtunkhwa

WRIT PETITION UNDER ARTICLE 199 OF THE CONSTITUTION OF ISLAMIC
REPUBLIC OF PAKSITAN 1973

The petitioner is pleased to beseech before this Honorable Court as under;

1. That Reference No. 07/2017 in pending adjudication in the Honorable Accountability Court-II Peshawar against one "Ayaz Qureshi & Others" where the petitioner is at serial no. 08 of the list of accused/beneficiaries". The allegation against the petitioner is of being a "Ghost Employee" of the education department. (Copy of the Extracts of Relevant Part of the Reference is attached as F/A)
2. That being the employee of the education department, the petitioner was appointed on 06/08/2008 as "PST" in the

ATTESTED

EXAMINER
Peshawar High Court

education sector in district "Battagram". It is also added that after serving for more than seven years, his appointment order was declared "Fake & Bogus" due to which the petitioner filed service appeal no. 572/2017 in the Worthy Service Tribunal Peshawar KP which was allowed vide dated: 12/04/2018 with the direction to the Respondent No. 04 & 05 qua de-novo inquiry. (Copy of the Null & Void Order, Service Appeal to the Worthy Tribunal and Judgment Dated: 12/04/2018 is attached as F/B)

3. That the Respondent No. 05 conducted the de-novo inquiry and the petitioner was exonerated from the allegation and was re-instated vide order dated: 04/09/2018 with all back-benefits. (Copies of the Inquiry Report & Re-Instatement Order is attached as F/C)
4. That after getting finality after the order passed by the Respondent no. 05, the petitioner started serving at "GPS Faqiro, Tehsil Allai & District Battagram" which is evident from the attendance register and workshop conducted by PITE (Provincial Institute of Teachers Education). (Copy of the Attendance Register & PITE Workshop Attendance is attached as F/D)
5. That the petitioner being a lawful civil servant, after proper exoneration in the enquiry conducted by the Respondent No. 05 on the direction of the Worthy Service Tribunal Peshawar, filed application u/s 265-K before the Learned Accountability Court-II Peshawar for his acquittal on 25/10/2018 but soon after, storm in the tea cup emerged when the Respondent no. 05 started harassing the petitioner on one pretext or the other by taking the plea that Respondent No. 03 is annoyed by the re-instatement order of the petitioner by saying that it was un-lawful because already, the reference is pending before the Learned Accountability Court.
6. That with the flow of time, the irony of fate faced by the petitioner when excess of jurisdiction with un-lawful authority exhibited by the Respondent No. 03 (Investigation Officer), (Naeemullah Mehsud is the Investigation Officer pertaining to the Reference No. 07/207), by summoning the Respondent No. 05 to

ATTESTED

EXAMINER
Peshawar High Court

the NAB Office Peshawar on 05/11/2018 & 06/11/2018 and directed him to cancel the reinstatement order dated: 04/09/2018 pertaining to which an office order was issued on 08/11/2018. (Copy of the Office Order Dated: 08/11/2018 is attached as F/E)

- 7. That feeling aggrieved, the petitioner submitted applications and appeal to the Respondent No. 04 as well as the Deputy Commissioner, Battagram but no heed has been paid. (Copy of the Applications & Appeal is attached as F/F)
- 8. That feeling peeved and deeply aggrieved due to the un-lawful acts of the Respondents, the Petitioner approaches this Honorable Court on the following grounds inter-alia;

GROUND:

- A. That the act of the Respondent No. 03, 04 and 05 is un-lawful, excess of jurisdiction, of no legal effect and violation of the Article 04 of the Constitution of Islamic Republic of Pakistan 1973.
- B. That it is a probity that NAB does not have the mandate to intervene in the departmental proceedings and cannot force, compel and coerce any department as well as any departmental official to act in any particular way or issue any order or notification.
- C. That the NAB Ordinance, 1999 as well as any other statute does not provide un-bridled powers to the NAB authorities to act as the competent authority of any department or intervene in their business except in accordance with law. The preamble of the NAB Ordinance 1999 is very much clear about the functions and authorities of the bureau which provides detection, investigation and prosecution. Reference can be made to 2013 PCrII 974.

ATTESTED

EXAMINER
Peshawar High Court


- D. That in fact, as per the mandate of Rule 14 (6), KP (E&D) Rules, 2011, even the enquiry committee was directed to conduct inquiry afresh which was complied with and recommendations were submitted on 2/08/2018 on which the competent authority issued the reinstatement order resulted in finality of the issue in question but still under the suppression and coercion of Respondent No. 03, the order was again taken back which is nullity in the eye of law.

- E. That it is also indispensable to submit that the impugned order issued by the Respondent No. 05 on the direction of Respondent No. 03 does not hold any water because once, the de-novo inquiry was directed by the competent court of law (Service Tribunal) to be conducted and after such de-novo conduction, when a person is exonerated and such gets finality, then the competent authority who issued such order becomes "Functus Officio" and he is un-authorized to take back such order but in this case, the impugned letter issued by the Respondent No. 05 is against the mandate of law and rules and sheer violation of the fundamental rights of the petitioner.

- F. That the de-novo inquiry was conducted on the direction of the competent court i.e. Service Tribunal which cannot be declared without lawful authority and un-lawful.

- G. That the impugned letter very conspicuously says about the un-lawful pressure and coercion poured over the Respondent No. 05 which cannot be covered by any law hence, tantamount to violation of the fundamental rights of the petitioner.

- H. That any other grounds can be raised at the time of arguments.

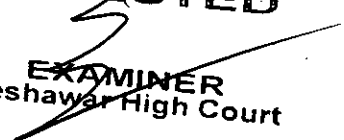
ATTESTED

EXAMINER
 Peshawar High Court

PRAYER:

In light of the foregoing submissions, it is therefore, most convivially and humbly prayed that on acceptance of the instant writ petition, this Honorable Court may graciously be pleased to;

1. Declare the interference of the Respondent No. 03 (Investigation Officer, NAB) in the official work being stepping into the shoes of the Respondent No. 04 & 05 by pouring undue influence and coercion to restrain/stop the petitioner from the performance of his duties as "SPST (Senior Primary School Teacher) at Government Primary School, Faqiro, Tehsil Allai & District Battagram" as un-lawful, void ab-initio, of no legal effect, Coram non judice, violation of the fundamental rights of the petitioner as well as against the spirit of the "National Accountability Ordinance, 1999"


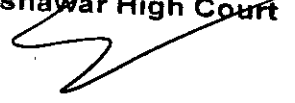
2. Declare the impugned Office Order Dated: 08/11/2018 issued by Respondent No. 05 based on the un-lawful coercion and influence used by the Respondent No. 03 as against the mandate of law, rules, of no legal effect, passed without lawful authority and having no legal protection and be set-aside

ATTESTED

EXAMINER
 Peshawar High Court

3. Direct the Respondent No. 04 & 05 to follow the mandate of law and rules and to comply with the re-instatement order issued vide dated: 04/09/2018 after conduction of regular inquiry as per the direction of the Worthy Khyber Pakhtunkhwa Service Tribunal keeping in view the fact that the Respondent No. 04 has become "Functus Officio" after issuance of the re-instatement order under the mandate of Rule 14(3) of the Khyber Pakhtunkhwa (Efficiency & Discipline) Rules, 2011

4. Direct the Respondent No. 01 & 02 to initiate departmental/disciplinary proceedings against the Respondent No. 03 for his un-professional attitude to use un-lawful coercion and undue influence by poking his nose into the official work and compelling the Respondent No. 04 & 05 to declare the re-instatement order of the petitioner as "null & void"

5. Any other relief may also be awarded in favor of the petitioner against the Respondents

ATTESTED

EXAMINER
Peshawar High Court


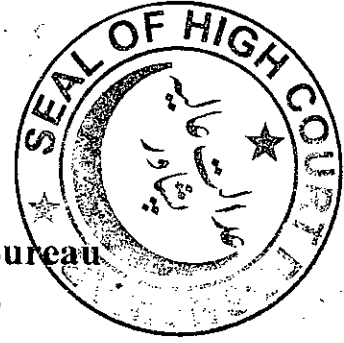
JUDGMENT SHEET
PESHAWAR HIGH COURT, PESHAWAR
JUDICIAL DEPARTMENT

W.P. No.5893-P/2019

Fazal Wahab

Vs.

**Chairman, National Accountability Bureau
(NAB), Islamabad and 04 others**



JUDGMENT

Date of hearing **19.02.2020**

Mian Muhammad Imran, Advocate, for the petitioner.

Muhammad Riaz Mohmand, ADPG, for the respondent-NAB.

IJAZ ANWAR, J. Fazal Wahab,
petitioner herein, through the instant
Constitutional petition under Article 199
of the Constitution of Islamic Republic of
Pakistan, 1973, has prayed for the
following relief:-

*“1. Declare the interference of the
respondent No.03 (Investigation
Officer, NAB) in the official work
being stepping into the shoes of
the respondent No.04 and 05 by
pouring undue influence and
coercion to restrain/stop the
petitioner from the performance
of his duties as SPST (Senior*

ATTESTED
EXAMINER
Peshawar High Court

Primary School Teacher) at Government Primary School, Faqiro, Tehsil Allai and District Battagram” as unlawful, void ab-initio, of no legal effect, coram-non-judice, violation of the fundamental rights of the petitioner as well as against the spirit of the “National Accountability Ordinance, 1999.

2. Declare the impugned Office Order dated 08.11.2018 issued by the respondent No.05 based on the unlawful coercion and influence used by the respondent No.03 as against the mandate of law, rules, of no legal effect, passed without lawful authority and having no legal protection and be set-aside.

3. Direct the respondent No.04 and 05 to follow the mandate of law and rules and to comply with the re-instatement order issued vide dated 04.09.2018 after conduction of regular inquiry as per the direction of the worthy Khyber Pakhtunkhwa Services Tribunal keeping in view the fact, that the respondent No.04 has become “Functus Officio” after issuance of the reinstatement order under the mandate of Rule 14(3) of the Khyber Pakhtunkhwa

ATTESTED

EXAMINER
Peshawar High Court

*(Efficiency & Disciplinary) Rules,
2011.*

*4. Direct the respondent No.01
and 02 to initiate departmental/
disciplinary proceedings against
the respondent No.03 for his
unprofessional attitude to use
unlawful coercion and undue
influence by poking his nose into
the official work and compelling
the respondent No.04 and 05 to
declare the reinstatement order of
the petitioner as "null and void".*

*5. Any other relief may also be
awarded in favour of the
petitioner against the
respondents.*

2. Facts, in brief, leading to the instant writ petition are that petitioner in the year, 2008 was appointed as Primary School Teacher in the respondent-Education Department. After serving for more than seven years, the petitioner's appointment order was cancelled by declaring it as fake and bogus vide Office Order dated 09.12.2016, issued by the District Education Officer (M), Battagram. Being aggrieved from the aforesaid order, petitioner called in

ATTESTED

EXAMINER
Peshawar High Court


question it in appeal before the Khyber Pakhtunkhwa Services Tribunal, Peshawar. The aforesaid appeal was allowed vide judgment and order dated 12.04.2018, with the direction to the respondents No.4 and 5 to conduct a de-novo inquiry within a period of ninety days. Accordingly, respondent No.5 conducted a de-novo inquiry, as a result of which, petitioner was exonerated from the charges/allegations leveled against him and accordingly, was reinstated in service. It has further been averred in the petition that a Reference bearing No.07/2017 has been filed by the NAB authorities in the learned Accountability Court-II, Peshawar against one "Ayaz Qureshi and others", wherein, petitioner has also been named as accused and same is pending adjudication before it. After his reinstatement, petitioner filed an application under Section 265-K before the learned Accountability Court, thereafter, respondent No.5 started

ATTESTED

EXAMINER
Peshawar High Court

harassing him by taking the plea that his re-instatement order is unlawful. At the same time, on 05.11.2018 and 06.11.2018, respondent No.5 summoned the respondent No.3 at the NAB Office, Peshawar and gave a direction to him to cancel the reinstatement order of the petitioner and accordingly, the reinstatement order was cancelled. Being aggrieved, petitioner filed applications and appeal to the respondent No.4 and as well to the Deputy Commissioner, Battagram for the redressal of his grievance, but all in vain. Hence, this writ petition.

3. In view of the averments made in the petition in hand, comments were called from the respondents No.1 to 3, who furnished the same accordingly. They, in their comments, submitted that petitioner is a ghost employee who connived with the main accused No.01 to 05 of Reference No.07/2017, pending before the learned Accountability Court-


ATTESTED
EXAMINER
Peshawar High Court

II, Peshawar, by providing copies of their
CNIC and bank accounts, thereby,
enabling them to embezzle a huge
amount in the garb of salaries of ghost
employees and as such, committed the
offence of corruption and corrupt
practices as defined in Section
9(a)(iv)(xii) of National Accountability
Ordinance, 1999. It is further averred that
petitioner in connivance with accused Ali
Rehman and others have frequently
withdrawn salaries without genuine
appointment orders and performing
duties. His service book is also factitious.
The concerned Department also
conducted an inquiry in the matter and
resultantly, petitioner was declared as
ghost employee. It is further submitted
that petitioner has never been
selected/appointed by the Departmental
Selection Committee as Primary School
Teacher and his appointment order is
fake and factitious as the diary and
dispatch number does not tally with the

ATTESTED

EXAMINER
Peshawar High Court

2-
appointment order. Thus, his reinstatement order has rightly been cancelled by the respondent-Education Department; as such, the instant writ petition, being meritless, deserves to be dismissed forthwith.

4. Arguments heard and record perused.

5. Perusal of the record reveals that petitioner has been charged by the respondent-NAB as ghost teacher and a NAB Reference is also pending trial before the learned Accountability Court at Peshawar against him. The record further transpires that petitioner was proceeded on the ground of obtaining appointment by committing fraud, as such, his appointment order was declared as null and void by the District Education Officer (M), Battagram vide Office Order dated 09.12.2016.

6. The petitioner filed an appeal before the Khyber Pakhtunkhwa Services Tribunal, Peshawar against the aforesaid

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ATTESTED


EXAMINER
Peshawar High Court

order, which was allowed vide judgment and order dated 12.04.2018, and accordingly, he was reinstated in service with a direction to the respondents to conduct a de-novo inquiry within a period of ninety days. The Departmental Authority, while complying with the judgment and order of the Khyber Pakhtunkhwa Services Tribunal vide Office Order dated 28.05.2018, reinstated the petitioner in service and further direction was issued for the de-novo inquiry. The inquiry Committee, so constituted, conducted the de-novo inquiry and gave the following recommendations regarding the petitioner:-

Recommendations:-

Since the said teacher has already been re-instated, the Committee recommends that:-

1. *The said teacher should be paid full back benefits w.e.f. 16.01.2015 upto dated.*
2. *Necessary entries should be made in his service book and*

ATTESTED

EXAMINER
Peshawar High Court

*be attested from the DDO
concerned.*

3. *His service for various years
should be re-verified.*

7. The competent authority, while accepting the recommendations of the Inquiry Committee, reinstated the petitioner in service vide order dated 04.09.2018, with all back benefits. Interestingly, the NAB Authorities called upon the appointing authority at the office of NAB, Peshawar and upon their direction, the reinstatement order of the petitioner was cancelled vide Office Order dated 08.11.2018 by the District Education Officer (M), Battagram.

8. Learned counsel, representing the respondent-NAB, was asked to justify that under what authority, respondent-NAB can interfere with the departmental matters of the Education Department; however, no satisfactory response was given to this query of the Court.

9. There is no cavil with the proposition that the Departmental

ATTESTED

EXAMINER
Peshawar High Court

proceedings and criminal proceedings can go side by side, however, direct interference of the respondent-NAB Authorities in forcing the District Education Officer (M), Battagram for the removal of petitioner from service, in no way, could be appreciated or sustained. If there is any charges/allegations against the petitioner regarding his misconduct, he, being employee of the Education Department, can only be proceeded under the Khyber Pakhtunkhwa Efficiency & Disciplinary Rules, 2011; while, for the criminal charges, he can be tried before the learned Accountability Court, where the charges are to be proved or otherwise, as the case may be. In the instant case, petitioner has been proceeded Departmentally and already exonerated from the charges, leveled against him, as such, he was rightly reinstated in service by the Education Department. Thus, the direction of the NAB authorities to the Education






ATTESTED
EXAMINER
Peshawar High Court

Department for cancellation of reinstatement order of the petitioner and recovery of his salaries is uncalled for and stands struck down.

10. For the reasons stated hereinabove, this writ petition is allowed. Consequently, the impugned order dated 08.11.2018 passed by the District Education Officer (M), Battagram is declared illegal, without lawful authority and a result of undue influence from the respondent-NAB, as such, is not sustainable under the law.

Announced
Dt:19.02.2020

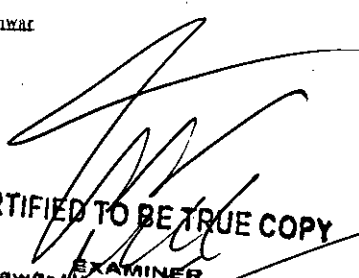

Senior Puisne Judge


Judge

(DB) Hon'ble Mr. Justice Quiser Rashid Khan and Hon'ble Mr. Justice Ijaz Anwar

!Muhamamdullah!

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Peshawar High Court, Peshawar
Authorised Under Article 8.7 of
The Governance (Punjab) Order 1994
04 MAR 2020