

**BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR**

**Service Appeal No. 1194/2019**

Date of Institution ... 19.09.2019

Date of Decision ... 22.06.2021

Abdur Rasheed Ex-Chowkidar, GGPS Ball Banda (Yaqubi),  
Tehsil & District Swabi. ... (Appellant)

VERSUS

The Secretary (E&SE), Khyber Pakhtunkhwa, Peshawar and two  
other.

... (Respondents)

-----  
Mr. TAIMUR ALI KHAN,  
Advocate

--- For appellant.

MR. USMAN GHANI,  
District Attorney,

--- For respondents.

**SALAH-UD-DIN**  
**ROZINA REHMAN**

--- **MEMBER (JUDICIAL)**  
--- **MEMBER (JUDICIAL)**

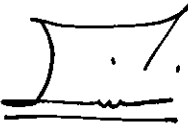
**JUDGMENT:**

**SALAH-UD-DIN, MEMBER:-** The appellant has filed the instant Service Appeal, challenging the order dated 25.06.2019, whereby the departmental appeal of the appellant was rejected and the penalty of dismissal from service imposed upon the appellant vide order dated 18.10.2018 was upheld.

2. Precise facts forming the background of the instant Service Appeal are that the appellant was serving as Chowkidar in Education Department and was to be retired on 23.04.2018 on attaining the age of superannuation. The appellant had applied for early retirement with effect from 18.02.2018, however he was dismissed from service with

effect from 31.01.2017, vide order dated 18.10.2018 passed by the competent Authority. The appellant challenged the order dated 18.10.2018 by way of filing of departmental appeal, however the same was also rejected on 25.06.2019, however the rejection order was received by the appellant on 05.09.2019. The appellant has now filed the instant Service Appeal seeking conversion of the penalty of dismissal from service into compulsory retirement.

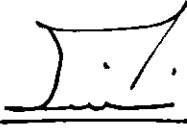
3. Respondents have submitted their comments, wherein they have mainly alleged that disciplinary proceedings were taken against the appellant by complying rule-9 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 and the appellant has rightly been awarded the major penalty of removal from service.

 4. Learned counsel for the appellant has argued that the appellant had already submitted an application to the competent Authority, seeking early retirement but he was wrongly and illegally proceeded against Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011. He next contended that the appellant was at the verge of retirement, having an unblemished record of serving the department for more than 24 years, therefore, the respondents were not justified in awarding him the penalty of dismissal from service. In the last he contended that as the impugned penalty of dismissal from service is so harsh in the given circumstances, therefore, the same requires to be converted in to compulsory retirement from service. Reliance was placed on 2019 PLC (C.S) 111 and 2019 PLC (C.S) 263.

5. Conversely, learned District Attorney for the respondents has contended that the appellant had willfully remained absent from his duty without any leave being granted by the competent Authority, therefore, disciplinary action was initiated against the appellant. He next contended that on account of willful absence of the appellant, proper proceedings as required under Rule-9 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 were taken against the appellant and he was rightly dismissed from service. He further contended that the request of the appellant for conversion of his

dismissal from service in to compulsory retirement is not tenable for the reason that the appellant has been dismissed from service after proper compliance of procedure as laid down in Rule-9 of Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011. Reliance was placed on 1998 PLC (C.S) 1144 and unreported judgment of Peshawar High Court, Mingora Bench, Dar-ul-Qaza, Swat dated 24.02.2021 rendered in Writ Petition No. 211-M/2016 titled "Akhtar Ali Khan Versus Government of Khyber Pakhtunkhwa and others".

6. We have heard the arguments of learned counsel for the appellant as well as learned District Attorney for the respondents and have perused the record.

 7. A perusal of record would show that on account of willful absence of the appellant from his duty, disciplinary proceedings were initiated against the appellant and vide order dated 18.10.2018 passed by competent Authority, the appellant was dismissed from service with effect from 31.01.2017 and his period of absence from duty was ordered to be considered as unauthorized absence. The departmental appeal filed by the appellant was also rejected by the appellate Authority vide order dated 25.06.2019. There is no specific denial of the respondents, regarding the fact of appointment of the appellant as Chowkidar in Education Department on 16.04.1992. The appellant has thus served for more than 24 years as Chowkidar in the Education Department. The appellant has alleged in the appeal that he was going to retire on attaining the age of superannuation on 23.04.2018, therefore, he applied for early retirement with effect from 18.02.2018, however despite action on his application, the appellant was dismissed from service on the basis of absence. The aforementioned contention of the appellant has not been specifically denied by the respondents. August Supreme Court of Pakistan of in its judgment reported as 2019 PLC (C.S) 111 has held as below:-

*"(5) Yes, the respondent at the relevant time rendered ten years service. He as such could avail leave with full pay upto 387 days and extraordinary leave upto five years. But extension could not be taken*

for granted. Nor could the unauthorized absence be justified on this ground. The respondent without extension of leave could not stay away from his duty even for a day let alone weeks and months. What are the circumstances justifying grant of extraordinary leave for three years and what were the circumstances justifying the extension of extraordinary leave. We have been told that in the first instance respondent went abroad for higher education and then his mother fell ill which called for extension in his extraordinary leave. But the questions whether his mother was suffering from a disease which was incapable of being treated in the country and that if at all it was so, was he alone in the family to attend his mother and bear the scourge have not been answered. It has become routine with the high ranking officers to go abroad on such pretexts and stay there for good without knowing that this country which has spent a great deal on them while holding examination for Civil Superior Services and providing training in the Academy needs their undivided and whole hearted service more than any other entity. Such a casual and even callous attitude towards the civil service tending to worsen it cannot be ignored so lightly. Respondent in the circumstances cannot go unpunished. But at the same time his unblemished service of more than 21 years cannot be allowed to go unrequited. We, therefore, convert this petition into appeal, allow it, set aside the impugned judgment and orders of the authority and convert his removal from service into compulsory retirement. Needless to say the service he rendered even after his reinstatement shall be counted towards his pensionary benefits. (emphasis provided).

8. Similarly, the august Supreme Court of Pakistan in its judgment reported as 2019 PLC (C.S) 263 has held as below:-

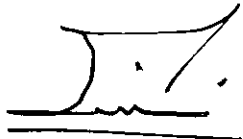
“(5) Keeping in view the facts and circumstances of the case, we consider that punishment of dismissal from service imposed upon the petitioner is quite disproportionate in the face of misconduct of remaining absent more so when the petitioner has 35 years of service with the respondents and the reason for his remaining absent is not disputed by the respondents themselves. We have proposed that the

*penalty of dismissal from service be converted into that of compulsory retirement, which was conceded by the counsel for the petitioner."*

9. In view of the above discussion, the appeal in hand is allowed and the penalty of dismissal from service awarded to the appellant is converted into that of compulsory retirement with effect from the date of his dismissal i.e 31.01.2017. The period of un-authorized absence of the appellant from duty shall be treated as leave without pay. Parties are left to bear their own costs. File be consigned to the record room.

**ANNOUNCED**  
**22.06.2021**

  
**(ROZINA REHMAN)**  
**MEMBER (JUDICIAL)**

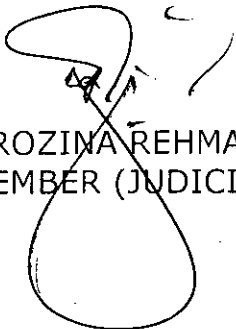
  
**(SALAH-UD-DIN)**  
**MEMBER (JUDICIAL)**

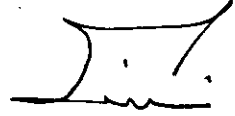
ORDER  
22.06.2021

Appellant alongwith his counsel Mr. Taimur Ali Khan, Advocate, present. Mr. Fazle Khaliq, ADEO (Litigation) alongwith Mr. Usman Ghani, District Attorney for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today, separately placed on file, the appeal in hand is allowed and the penalty of dismissal from service awarded to the appellant is converted into that of compulsory retirement with effect from the date of his dismissal i.e 31.01.2017. The period of un-authorized absence of the appellant from duty shall be treated as leave without pay. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED  
22.06.2021

  
(ROZINA REHMAN)  
MEMBER (JUDICIAL)

  
(SALAH-UD-DIN)  
MEMBER (JUDICIAL)

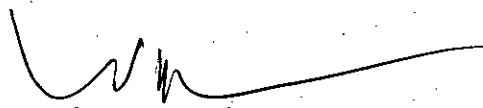
02.04.2021

Junior to counsel for the appellant present.

Muhammad Rasheed Khan, learned Deputy District Attorney alongwith Fazle Khaliq for respondents present.

Former made a request for adjournment as senior counsel for the appellant is busy before the Hon'ble Peshawar High Court.

Adjourned to 22/042021 for arguments before D.B.



(Atiq Ur Rehman Wazir)  
Member (E)



(Rozina Rehman)  
Member (J)

18.08.2020

Counsel for the appellant present. Mr. Ziaullah, DDA  
alongwith Mr. Fazal Khaliq, ADEO for respondents present.  
Written reply on behalf of respondents submitted which is  
placed on file.

To come up for rejoinder and arguments on  
21.10.2020 before D.B.

21.10.2020

Junior to counsel for the appellant and Addl. AG for  
the respondents present. (Mian Muhammad)  
Member(E)

The Bar is observing general strike today, therefore,  
the matter is adjourned to 12.01.2021 for hearing before  
the D.B.

(Mian Muhammad)  
Member

Chairman

12.01.2021

Junior to counsel for the appellant and Mr.  
Kabirullah Khattak learned Addl. AG for respondents  
present.

Due to COVID-19, the case is adjourned for the  
same on 02.04.2021 before D.B.

READER



1194/2019

21.01.2020

Appellant in person and Addl. AG alongwith Abdul Gahffar, Superintendent for the respondents present.

Representative of the respondents seeks further time to furnish the requisite reply/comments. Adjourned to 26.02.2020 on which date reply/comments shall positively be furnished.

  
Chairman

26.02.2020

Appellant in person present. Nemo for the respondents. Fresh notices be issued to the respondents by way of last chance. To come up for reply/comments on 06.04.2020 before S.B.

  
(Hussain Shah)  
Member

06.04.2020

Due to public holiday on account of COVID-19, the case is adjourned to 29.06.2020 for the same. To come up for the same as before S.B.

  
Reader

29.06.2020

The Worthy Chairman is on leave, therefore, the case is adjourned. To come up on 18.08.2020 before S.B.

  
Reader

04.11.2019

Counsel for the appellant present.

Contends that the date of retirement of appellant was 23.04.2018 upon reaching superannuation while the impugned order of dismissal from service was passed against the appellant on 18.10.2018 with effect from 31.01.2017. In the said manner, the impugned punishment was awarded after the date of retirement of appellant. Further contends that the appellant had applied for early retirement w.e.f. 18.02.2018 which was not considered by the respondents. Pertinently, the alleged absence pertaining to the years 2012, 2013, 2014, 2015 and 2016 was also made a ground for passing the impugned penalty. The departmental appeal of appellant was decided in negative on 25.06.2019 but communicated to the appellant on 05.09.2019.

Subject to all just exceptions regarding the delay in submission of instant appeal, it is admitted for regular hearing. The appellant is directed to deposit of security and process fee within 10 days. Thereafter, notices be issued to the respondents for submission of written reply/comments on 10.12.2019 before the S.B.

Appellant Deposited  
Security & Process Fee

4/11/19

  
Chairman

10.12.2019

Junior to counsel for the appellant and Addl. AG alongwith Irfanullah, Assistant for the respondents present.

Representative of respondents seeks time to furnish the requisite reply/comments. Adjourned to 21.01.2020 on which date reply/comments shall positively be furnished.

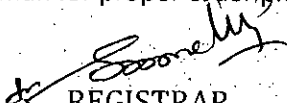

  
Chairman

Form- A

### FORM OF ORDER SHEET

Court of \_\_\_\_\_

Case No.- \_\_\_\_\_ 1194/2019 \_\_\_\_\_

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	26/09/2019	<p>The appeal of Mr. Abdur Rashid resubmitted today by Mr. Muhammad Asif Yousafzai Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p> REGISTRAR</p>
2-	01/10/19.	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>04/11/19.</u></p> <p> CHAIRMAN</p>


*Handwritten initials*

The appeal of Mr. Abdur Rashid Ex-Chowkidar GGPS Ball Banda District Swabi received today i.e. on 19.09.2019 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- Copy of application mentioned in para-2 of the memo of appeal (Annexure-A) is not attached with the appeal which may be placed on it.

No. 1626 /S.T,

Dt. 20-9- /2019.

  
REGISTRAR  
SERVICE TRIBUNAL  
KHYBER PAKHTUNKHWA  
PESHAWAR.

Mr.M.Asif Yousafzai Adv. Pesh.

*Respected Sir*

*1- Remo ned*

*2- copy of application is attached as Annexure at page: 4*

*Resubmitted after compliance*  
*MA*

BEFORE THE KPK, SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 1194 /2019

Abdur Rasheed

VS

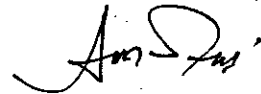
Education Deptt:

**INDEX**

S.No.	Documents	Annexure	P. No.
1.	Memo of Appeal	-----	01-03
2.	Copy of application	A	04
3.	Copy of order dated 18.10.2018	B	05
4.	Copy of departmental appeal and rejection order	C&D	06-07
5..	Vakalat Nama	-----	08

APPELLANT

THROUGH:



M. ASIF YOUSAFZAI  
ADVOCATE SUPREME COURT,



TAIMUR ALI KHAN  
ADVOCATE HIGH COURT,

&

S. NOMAN ALI BUKHRI  
ADVOCATE HIGH COURT

1

BEFORE THE KPK, SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 1194 /2019

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 1278

Abdur Rasheed, Ex-Chowkidar, GGPS Ball Banda (Yaqubi),  
Tehsil & District Swabi.

Dated 19-9-2019

(APPELLANT)

VERSUS

1. The Secretary (E&SE), Khyber Pakhtunkhwa, Peshawar.
2. The Director (E&SE), Khyber Pakhtunkhwa, Peshawar.
3. The District Education Officer (Female) Mardan.

(RESPONDENTS)

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APPEAL UNDER SECTION 4 OF THE KPK SERVICE TRIBUNALS ACT, 1974 AGAINST THE ORDER DATED 25.06.2019 RECEIVED ON 05.09.2019, WHEREBY THE DEPARTMENTAL APPEAL OF THE APPELLANT OF THE APPELLANT HAS BEEN REJECTED AGAINST THE ORDER DATED 18.10.2018, WHEREIN MAJOR PENALTY OF REMOVAL FROM SERVICE HAS BEEN IMPOSED UPON THE APPELLANT WITH EFFECT FROM 31.01.2017, FOR NO GOOD GROUNDS.

Filed to-day

Registrar

19/9/19

PRAYER:

THAT ON THE ACCEPTANCE OF THIS APPEAL, THE ORDER DATED 25.06.2019 MAY KINDLY BE SET ASIDE AND THE ORDER DATED 30.04.2014 MAY BE MODIFIED INTO COMPULSORY RETIREMENT AS THE APPELLANT HAS HAS MORE THAN 24 YEARS OF SERVICE AND WAS AT THE VERGE OF RETIREMENT AT THE TIME OF IMPOSING THE PENALTY OF DISMISSAL FROM SERVICE. ANY OTHER REMEDY, WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT, MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.

Re-submitted to-day  
and filed.

Registrar

26/9/19

.....

**RESPECTFULLY SHEWETH:**

**FACTS:**

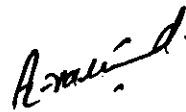
1. That the appellant was born on 24.04.1958 and appointed in Education Department on the post of Chowkidar on 16.04.1192 and has performed his duty with devotion and honesty what so ever assigned to him and no complaint has been filed against him during his service carrier.
2. That the appellant would be retire on 23.04.2018 on attaining the age of superannuation, therefore he applied for early retirement with effect from 18.02.2018. **(Copy of application is attached as Annexure-A)**
3. That despite taking action on the application, the appellant was removed from service on the basis of absence vide order dated 18.10.2018 with effect from 31.01.2017. **(Copy of order dated 18.10.2018 is attached as Annexure-B)**
4. That the appellant filed departmental appeal on 29.10.2018 against the dismissal order which was also rejected on 25.06.2019 for no good grounds and the rejection order was received by the appellant on 05.09.2019 as the copy of rejection order has forwarded to DEO (M) D.I Khan Office, while the appellant was serving in District Swabi. **(Copies of departmental appeal and rejection order are attached as Annexure-C&D)**
5. That the appellant come to this august Tribunal on the following grounds amongst others.

**GROUND:**

- A) That the impugned orders dated 25.06.2019 and 18.10.2018 are against the law, facts, norms of justice and material on record, therefore not tenable and the order dated 25.06.2019 liable to be set aside and the order dated 18.10.2018 liable to be modified to compulsory retirement as the appellant has has more than 24 years of service and was at the verge of retirement at the time of imposing the penalty of dismissal from service.
- B) That one sided inquiry has been conducted against the appellant before passing the impugned order, which is not permissible under the law.
- C) That no charge sheet was issued to the appellant before passing the impugned order which is violation of law and rules.

- D) That no show cause notice was issued to the appellant which is violation of law and rules.
- E) That penalty of dismissal from service is very harsh as the appellant has has more than 24 years of service and was at the verge of retirement at the time of imposing the penalty of dismissal from service, therefore the rejection order dated 25.06.2019 liable to be set aside and the order dated 18.10.2018 is liable to be modified to compulsory retirement.
- F) That the appellant has been condemned unheard and has not been treated according to law and rules.
- G) That the appellant seeks permission to advance others 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**  
Abdur Rasheed

THROUGH:



**M. ASIF YOUSAFZAI**  
**ADVOCATE SUPREME COURT,**



**TAIMUR ALI KHAN**  
**ADVOCATE HIGH COURT,**



**S. NOMAN ALI BUKHRI**  
**ADVOCATE HIGH COURT.**



بجذمت جناب سٹریٹ ایجوکیشن آفیسر صاحبہ (زنانہ) ضلع صوابی

بوساطت سب ڈویژنل ایجوکیشن آفیسر صاحبہ (زنانہ) تحصیل رزورٹ ضلع صوابی

درخواست برادر ریٹائرمنٹ (ایل پی آراز 1/3/2017 تا 8/2/2018)

جناب عالیہ!

متوہ بانہ گزارش ہے۔ کہ فدوی محکمہ تعلیم میں بحیثیت چوکیدار اپنی خدمات انجام دے رہا ہے۔ چونکہ فدوی کی تاریخ پیدائش 24-04-1958 ہے۔ جسکی رُو سے فدوی کی عمر مورخہ 23-04-2018 کو ساٹھ سال پوری ہو جائے گی۔ لیکن گھریلو اور دیگر وجوہات کی بنا پر فدوی قبل از وقت ریٹائرمنٹ لے رہا ہے۔

لہذا بذریعہ درخواست ہذا آپ صاحبان کی خدمت میں استدعا کیجاتی ہے۔ کہ فدوی کو مورخہ 28-02-2018 (بعد از دوپہر) سے ریٹائرمنٹ دینے کی احکامات صادر فرما کر مشکور و ممنون فرمادیں۔

ریٹائر / العارض

آپکی تابع فرمان

عبدالرشید ولد محمد سلیم خان چوکیدار پرسنل نمبر: 00229942

گورنمنٹ گراؤنڈ پرائمری سکول بال بانڈہ یقوبی تحصیل رزورٹ ضلع صوابی

Attest  
A

Attest  
A



B 5

**DISTRICT EDUCATION OFFICE (FEMALE) SWABI**  
(Office phone Fax No 0938280339)

**NOTIFICATION.**

1. WHEREAS Mr, Abdur Rasheed Chowkidar Govt. Girls Primary School Ball Banda (Yaqubi) Tehsil Razzar and District Swabi was proceeded against under the Khyber Pakhtunkhwa Government Servants (Efficiency & Disciplinary) Rules 2011 for the charges of willful absent from duty (habitual absent) and proxy Mr., Faqir s/o Akbar Shah was performing his duties as reported by IMU.
2. AND WHEREAS inquiry committee was constituted comprising of the following officers to conduct regular inquiry against the accused MR. Abdur Rasheed for the charges leveled against him in accordance with the rules.
  - i. Laiq Zaman ADEO(M) establishment Primary.
  - ii. Muhammad Naeem H/M GHS Gohar Abad.
3. AND WHEREAS the inquiry committee after having examined the charges, evidence on record and explanation of the accused submitted report. According to report/recommendation submitted by inquiry officer (1) The concerned chowkidar deserves major penalty under E&D rules, 2011 dismissal from service. (2) deductions be made from his dues as admissible under rules.
4. AND WHEREAS Mr. Abdur Rasheed Chowkidar GGPS Ball Banda Yaquobi has been served show cause notice vide No. 2382-87 dated 20.5.2017 as he was again found absent(proxy) as reported by IMU.
5. AND WHEREAS the final show cause notice published in the daily Mashriq Peshawar dated 25.12.2017 he failed to resume his duty and appear before the undersigned but failed to justify allegation leveled against him.
6. NOW, THEREFORE, in exercise of the power conferred under section 4 Khyber Pakhtun khawa Govt. Servant (Efficiency and discipline) rules 2011, the District Education Officer (Female) Swabi on the capacity of competent authority is pleased to impose the major penalty of **DISMISSAL FROM SERVICE** upon the accused Mr, Abdur Rasheed , Chowkidar, GGPS Ball Banda (Yaqubi) from Service with effect from 31-01-2017 and his absent period with effect from 14-12-2012-to 31-12-2012/(18 days)01-01-2013 to 31-01-2013/01-02-2013 to 01-12-2013/01-01-2014 to 01-02-2014 /02-03-2015 to 03-03-2015/01-12-2015 to 31-12-2015/01-01-2016/31-01-2016 and 15,27,28 May 2016 (3 days) may be treated as unauthorized absence. /

(REHANA YASMIN)  
DISTRICT EDUCATION OFFICER  
(FEMALE)SWABI

Endst: No. 39283/P. No. DA-III/Comp-Reg. dated Swabi the: 18/12/2018. ✓

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

1. Director Elementary & Secondary Education Khyber Pakhtunkhwa, Peshawar.
2. District Accounts Officer, Swabi.
3. Deputy Commissioner Swabi.
4. District Monitoring Officer Swabi
5. Circle Officer Anti-Corruption District Swabi with the requested to recover the over payment of Rs: - 84399/- from Mr, Abdur Rasheed Ex- Chowkidar GGPS Ball Banda (Yaqubi).
5. Sub-Divisional Education Officer (Female) Razzar
6. Mr Abdur Rasheed, Chowkidar GCPS BALL BANDA YAQOOBI.

**Attested**

M  
DISTRICT EDUCATION OFFICER  
(FEMALE)SWABI

18/12/18



76  
DO

NOTIFICATION.

1. WHEREAS, on finality of disciplinary proceedings under Khyber Pakhtunkhwa E&D Rules-2011 major penalty of Dismissal from service was imposed upon Mr. Abdur Rashheed Chowkidar GGPS Ball Banda (Yaqubi) Swabi vide DEO (F) Swabi Endst No. 3928-30 dated 18/10/2018.
2. AND WHEREAS, the said aggrieved Chowkidar filed a departmental appeal received through Section Officer (Primary) Elementary & Secondary Education Department vide letter SO(PE)E&SED/5-19/Re-Instatement/2018 dated 01/11/2018 to the Director E&SE Khyber Pakhtunkhwa Peshawar (appellate Authority) for redressal of his grievances/reinstatement in service.
3. AND WHEREAS, the appellate authority in pursuance of Section 17 read with sub rule (1) & (2) of the E&D Rules-2011 called for the record of the case and comments from the concerned DEO vide letter No. 4724-25 dated 20.11.2018 for consideration of the appeal.
4. AND WHEREAS, the DEO concerned provided the requisite record/comments accordingly vide his letter No. 2063 dated 17.04.2019 describing the reason/circumstances under which the appellant was dismissed from service after fulfillment of codel formalities.
5. AND WHEREAS, after consideration of the full record report/comments provided by DEO (F) Swabi the appellate authority has reject the appeal of appellant concerned.
6. NOW, THEREFORE, the appellate authority, the Director E&SE in exercise of the powers conferred under Section-17 rule (2) (a) of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules-2011, is pleased to uphold the major penalty of Dismissal from service in R/O Mr. Abdur Rasheed Chowkidar GGPS Ball Banda (Yaqubi) Swabi imposed upon him vide DEO (F) Swabi Notification No. 3928-30 dated 18/10/2019.

DIRECTOR  
Elementary & Secondary Education  
Khyber Pakhtunkhwa, Peshawar

Endst: No. 4729-32 /F.No. Litigation-I /Malik Abdullah

Dated Peshawar the 25/06/2019

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

- 1- District Education Officer (Male) DI Khan w/r to her letter No. cited above. ✓
- 2- District Accounts Officer D.I.Khan
- 3- Appellant concerned.
- 4- PA to the Director E&SE Khyber Pakhtunkhwa Peshawar.

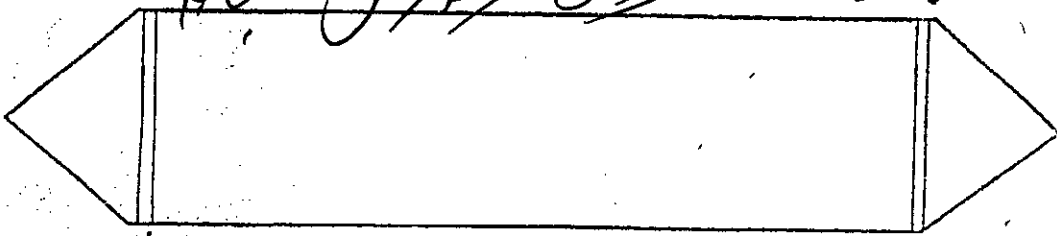
o/c

Assistant Director (Admn)  
E&SE, Khyber Pakhtunkhwa, Peshawar

وہیل کتہہ بنزانی پشاور  
15-06-19

Attested

# بعد الت سروس ٹریڈنگ کمپنی



عبدالمجید بنام

موزخہ  
مقدمہ  
دعویٰ  
جرم

## باعث تحریر آئیکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی و کل کاروائی متعلقہ  
 آن مقام ~~سید احمد علی شاہ~~ کیلئے ~~محمد علی شاہ~~ 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 ثالثہ فیصلہ برحلف دیے جواب دہی اور اقبال دعویٰ اور  
 بہ صورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق  
 زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی  
 نیز دائر کرنے اپیل عمرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور  
 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 بھی وہی جملہ مذکورہ با اختیار حاصل ہوں گے اور اس کا ساختہ  
 پرداختہ مندرجہ قبول ہوگا۔ دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے سبب سے ہوگا۔  
 کوئی تاریخ پیشی منقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی  
 مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سند ہے۔

الرقوم \_\_\_\_\_ ماہ \_\_\_\_\_ 20

واہ \_\_\_\_\_

18/8/2020

**BEFORE THE SERVICE TRIBUNAL K.P.K, PESHAWAR**

Service Appeal No. 1194/2019

Abdur Rasheed . Ex-Chowkidar GGPS Ball Banda.....  
R/O Village Yaqoobi, Tehsil Razzar, District Swabi

**Appellant**

**VERSUS**

1. Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Department, Civil Secretariat Peshawar.
2. Director Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
3. District Education Officer (Female) Swabi...

**Respondents**


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7. Enquiry Report

F

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**DISTRICT EDUCATION OFFICER  
(FEMALE) SWABI  
District Edu. Officer  
(Female) Swabi**

①

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

Service Appeal No. 1194/2019

Abdur Rasheed. Ex-Chowkidar GGPS Ball Banda.....

R/O Village Yaqoobi, Tehsil Razzar, District Swabi

**Appellant**

**VERSUS**

1. Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Department, Civil Secretariat Peshawar.
2. Director Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
3. District Education Officer (Female) Swabi...

..... **Respondents**

**PARAWISE COMMENTS ON BEHALF OF THE RESPONDENTS No. 3603**

Respectfully Sheweth,

Preliminary Objections;

1. That, the appellant has no cause of action to file the instant appeal.
2. That, the appeal is badly time barred and hit by the principle of laches.
3. That, the appellant has filed the instant appeal just to pressurize the respondents.
4. That, the appellant has not come to the Tribunal with clean hands.
5. That, the appellant concealed the material facts from honorable tribunal.
6. That, the appellant has been estopped by his own conduct to file the instant appeal.
7. That, upon concealment of fact no one can claim any relief hence the instant appeal is liable to be dismissed.
8. That, the appeal of the appellant is barred by Law.

## **Facts**

1. Admitted to the extent that he was serving as chowkidar at Govt. Girls Primary School Ball Banda (Yaqoobi), Tehsil Razzar, District Swabi. He was removed from service due to long absence as mentioned in the removal order Dated 18-10-2018.
2. That the appellant was absent from duty. Hence he was rightly removed from Service by respondent No.3.
3. That, therefore the competent authority has no option than to initiate proceeding against him to remove him from service under Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules 2011, rule (9). All the codal formalities have been observed in the removal of the appellant. Inquiry report, show case notice, Absence notices in two newspapers annexed as A,B,C,D,&E.
4. That the para relates to the rejection of departmental appeal of the appellant by the appellate authority.
5. That the appellant has no cause of action to file the instant appeal and the appeal in hand is liable to be dismissed on the following grounds.

## **Grounds.**

- A. Incorrect, hence Strongly denied, the removal from service is legal and in accordance with law, rules and policy. All the codal formalities have been observed in the removal of the appellant. The act of the respondents is according to the norms and the principles of natural justice. The rule of the Khyber Pakhtunkhwa government servants (efficiency and



discipline) Rules 2011 has been implemented in letter and spirit in this particular case. Infact the appellant himself is under the weight of negligence, disobedience willful and habitual absence and defiance. The removal has been strictly made in accordance with law, rules and policy in a fair and transparent way and the space of committing mala fide and illegality is out of question.

- B. Incorrect, hence strongly denied, the removal of the appellant is according to the norms and principles of natural justice. The relevant rule 9 of the Khyber Pakhtunkhwa government servants (Efficiency and discipline) rules 2011 has been strictly Implemented in this particular case. The removal has been strictly made in accordance with law, rules and policy in a fair and transparent way and the space of violation, miscarriage of justice is out of question. Service appeal No.562/2018 titled Rahim-ud-din versus Inspector General of police, Khyber Pakhtunkhwa Peshawar, decided on 02-03-2018 of this service Tribunal is very much clear in this regard. Reliance is placed on the said judgment.
- C. Incorrect, hence denied, the inquiry was made to determine whether the appellant was absent or proxy. Furthermore the act of conduction of inquiry by the respondent is according to the norm and the principles of natural justice.

It was the demand of fulfillment of codal; formalities which was rightly done in this particular case. The stance of the appellant is conjectural and ludicrous. He is talking argy bagry just to create right for his reinstatement which is bad in the eye of law. The conduction of inquiry made the process more genuine and authentic. The Space of contradiction and discredit of the entire authenticity of the proceedings against the appellant is out of question.

- D. Incorrect, hence denied, the appellant had been properly informed. The stance of the appellant is conjectural and ludicrous. He is talking argy

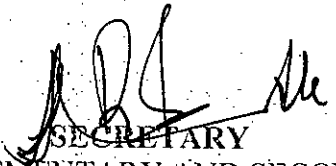
bagry just to create right of his reinstatement, which is the worst in the eye of law. He was kept Properly informed during the entire inquiry proceedings.

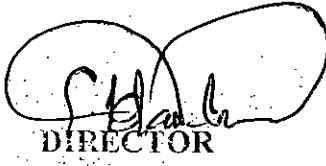
E. Incorrect, hence strongly denied, the inquiry committee probe into the matter and declared that appellant was willful absent and proxy. He did not perform his duty, that is why he was removed from service after completing all the codal formalities. The act of the respondents is according to the norms and principles of natural justice. The certificate he attached is not signed by any competent authority. It is not an authentic document.

F. Incorrect, hence denied, the appellant was disobedient. He deposited the amount after removal from service. He was removed on 18-10-2018 while deposited the amount on 24-10-2018, which shows his negligence and disobedience.


G. That the respondents seek permission of the honorable service Tribunal to raise / argue further points at the time of arguments.

In wake of the above submissions it is earnestly requested that this honorable service Tribunal may very graciously be pleased to dismiss the instant appeal with cast in favor of the respondents department.

  
**SECRETARY**  
ELEMENTARY AND SECONDARY  
EDUCATION DEPARTMENT  
CIVIL SECRETARIAT  
KHYBER PAKHTUN KHUWA  
PESHAWAR

  
**DIRECTOR**  
ELEMENTARY AND SECONDARY  
EDUCATION KHYBER PAKHTUN KHUWA  
PESHAWAR  
Elementary & Secondary Education  
Khyber Pakhtunkhwa Peshawar

**SECRETARY**  
Elementary and Secondary Education  
Govt. of Khyber Pakhtunkhwa

  
**DISTRICT EDUCATION OFFICER**  
FEMALE SWABI  
District Edu. Officer  
(Female) Swabi



**BEFORE THE SERVICE TRIBUNAL K.P.K, PESHAWAR**

Service Appeal No. 1194/2019

Abdur Rasheed Ex-Chowkidar... GGPS Ball Banda...  
R/O Village Yaqoobi, Tehsil Razzar, District Swabi**Appellant****VERSUS**

1. Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Department, Civil Secretariat Peshawar.
2. Director Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
3. District Education Officer (Female) Swabi...

**Respondents****AFFIDAVIT**

We do hereby solemnly affirm and declare on oath that the contents of the comments are true and correct to the best of our knowledge and belief, nothing has been concealed from this Honourable Tribunal.



**DISTRICT EDUCATION OFFICER  
(FEMALE) SWABI**

**District Edu. Officer  
(Female) Swabi**

# Inquiry Report

Annexure A (6)

Title: Abdur Rasheed chowkidar posted at GGPS Bal Banda Yaqubi reported as proxy and also as Habitual absent.

## Reference

Vide DEO (F) Swabi No. 4779/EMIS/IMU/ST 2017 Dated 01-11-2017, the undersigned committee was constituted to conduct impartial inquiry and to submit comprehensive report to DEO (F) Swabi to proceed further.

## Background

The reported chowkidar has been reported as absent on various dates 14-01-2017, 01-02-2017, 08-03-2017, 17-04-2017, 25-05-2017, and 13-09-2017. The committee visited GGPS Bal Banda Yaqubi on 25-11-2017 at 10:00am.

## Facts

1. Mr. Faqir S/O Akbar Shah CNIC No. 16201-0784646-5 nearly 58 years old was sitting on chair in front of school gate. On query, he disclosed that he was performing duty instead of his landlord Mr. Abdur Rasheed who is chowkidar at the school. He further added that he was doing proxy for him for the last 02 years.
2. The proxy chowkidar, Faqir Muhammad, a local fellow but peasant on the land of Abdur Rashid is compelled to do so.
3. Abdur Rashid is permanent resident of village Yaqubi, about 08km from this station. But actually he resides in Abbottabad, Mr. Faqir, Sabahat teacher at the school and other sources confirmed.
4. At the time of visit, Ms. Nusrat Bibi Head Teacher was on leave and the reported chowkidar was absent from duty. Ms. Sabahat Khan PST cooperated much with the committee and gave access to the record and relevant information.
5. Salary of the reported chowkidar is stopped so far but the school has not much information about this.
6. The reported chowkidar is proud enough and does not lift anybody else, the teacher told horrifyingly.
7. On perusal of attendance register, the committee was able to tabulate the following chart:

S No.	Month/Year	Dates	Days	Present/Absent
1	Dec-12	14th Dec to 31st Dec	18	Absent
2	Jan-13	Whole Month	31	Absent
3	Feb-13 to DEC-13	Whole Months	330	Absent

152  
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4	Jan-14 to Feb-14	Whole Months	60	Absent
5	Mar-14 to Feb-15	one year		Present
6	Mar-15	2nd and 3rd march	2	Absent
7	Apr-15 to May-15	two months	60	Present
8	Sep-15 to Oct-15	two months	60	Present
9	Nov-15	2nd and 6th Nov	2	Absent
10	Dec-15	whole month	30	Absent
11	Jan-16	whole month	30	Present
12	Feb-16	1, 24, 25, 26, 27, 29 Feb	6	Present
13	Mar-16	whole month	30	Present
14	Apr-16	whole month	30	Absent
15	May-16	15, 27, 28	3	Present
16	SEP-16 TO JAN-2017	five months		Absent
17	Feb-17	1st February	1	Absent
18	MAR-2017 till Date	Nine Months		

18

31/17

**Conclusion**


Keeping in view the above chart, it can easily be concluded that:

1. The reported chowkidar is doing his duty on proxy which is misconduct.
2. He is habitual to remain absent from his duty.
3. He is not interested in Government service and needs to be fired of his duty.


**Recommendations**

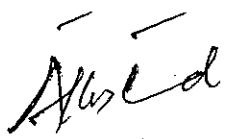

The committee recommends that:

1. The reported chowkidar deserves major penalty under E & D rules, 2011 i.e dismissal from service.
2. Deductions be made from his dues as admissible under rules.

  
**MUHAMMAD NAEEM**  
 HEADMASTER

GHS GOHARABAD ISMAILA (SWABI)

  
**LAIQ ZAMAN**  
 ADEO (PRIMARY)  
 DISTRICT EDUCATION OFFICE  
 (MALE) SWABI

  
  
**SUPERINTENDENT**  
 Distt. Smt. Officer  
 (Female) Swabi



Annexure (5) B

(7)

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**DISTRICT EDUCATION OFFICE (FEMALE) SWABI**  
(Office phone Fax No 0938280339, emisfswabi@yahoo.com)

**SHOW CAUSE NOTICE**

I, Miss Naghmana Sardar District Education Officer (F) Swabi, under the Khyber Pakhtunkhwa Government Servant (Efficiency & Disciplinary) Rules 2011, do hereby serve upon you, Mr. Abdur-Rasheed Chowkidar, GGPS Bal Banda, this show cause notice as follow: -

That consequent upon the material on record and other related papers provided by IMU, I am satisfied that you do not perform your duty by yourself and kept a proxy named Faqir.

You are, therefore, required to show cause as to why the major penalty of dismissal/ removal from service specified in Rule 4(b) of the ibid Rules should not to be impose upon you and also intimate whether you desire to be heard in person.

If no reply to this effect is received within 15 days of its delivery, it shall be presumed that you have no defense to put in and in that case Ex-Parte action shall be taken against you.

The competent authority has dispensed with the enquiry against you.

(NAGHMANA SARDAR)  
DISTRICT EDUCATION OFFICER  
(FEMALE) SWABI

Endst: No. 2382-87 / Dated Swabi the 20/05 /2017

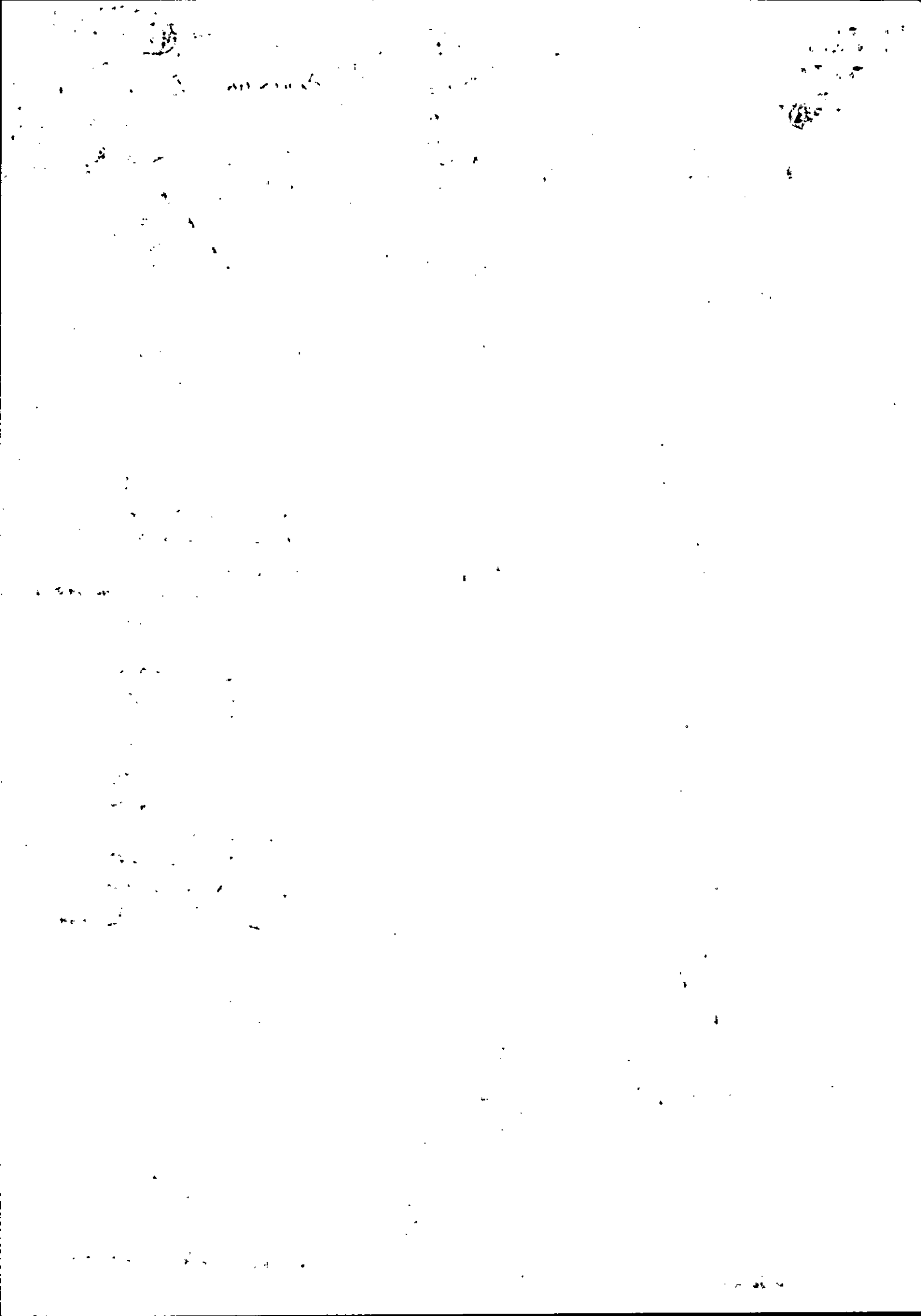
Copy of the above is forwarded for information to the: -

1. Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.
2. DMO Swabi
3. Sub-Divisional Education Officer Female Razzar with the remarks to Stop his salary immediately and send his complete record after proper inquiry.
4. Mr. Abdur- Rasheed Chowkidar, GGPS Bal Banda.
5. Superintendent Local Office.

*Attested*  
*[Signature]*  
SUPERINTENDENT  
Distt: Edu Officer  
(Female) Swabi

*[Signature]*  
DISTRICT EDUCATION OFFICER  
(FEMALE) SWABI





DISTRICT EDUCATION OFFICE (FEMALE) SWABI  
(Office phone Fax No 0938280339)

NOTIFICATION.

1. WHEREAS Mr, Abdur Rasheed Chowkidar Govt: Girls Primary School Ball Banda (Yaqubi) Tehsil Razzar and District Swabi was proceeded against under the Khyber Pakhtunkhwa Government Servants (Efficiency & Disciplinary) Rules 2011 for the charges of willful absent from duty (habitual absent) and proxy Mr. Faqir s/o Akbar Shah was performing his duties as reported by IMU.

2. AND WHEREAS inquiry committee was constituted comprising of the following officers to conduct regular inquiry against the accused MR. Abdur Rasheed for the charges leveled against him in accordance with the rules.

i. Laiq Zaman ADEO(M) establishment Primary.

ii. Muhammad Naeem H/M GHS Gohar Abad.

3. AND WHEREAS the inquiry committee after having examined the charges, evidence on record and explanation of the accused submitted report. According to report/recommendation submitted by inquiry officer (1) The concerned chowkidar deserves major penalty under E&D rules, 2011 dismissal from service. (2) deductions be made from his dues as admissible under rules.

4. AND WHEREAS Mr. Abdur Rasheed Chowkidar GGPS Ball Banda Yaquobi has been served show cause notice vide No. 2382-87 dated 20.5.2017 as he was again found absent(proxy) as reported by IMU.

5. AND WHEREAS the final show cause notice published in the daily Mashriq Peshawar dated 25.12.2017 he failed to resume his duty and appear before the undersigned but failed to justify allegation leveled against him.

6. NOW, THEREFORE, in exercise of the power conferred under section 4 Khyber Pakhtun khawa Govt. Servant (Efficiency and discipline) rules 2011, the District Education Officer (Female) Swabi on the capacity of competent authority is pleased to impose the major penalty of **DISMISSAL FROM SERVICE** upon the accused Mr, Abdur Rasheed , Chowkidar, GGPS Ball Banda (Yaqubi) from Service with effect from 31-01-2017 and his absent period with effect from 14-12-2012-to 31-12-2012/(18 days)01-01-2013 to 31-01-2013/01-02-2013 to 01-12-2013/01-01-2014 to 01-02-2014 /02-03-2015 to 03-03-2015/01-12-2015 to 31-12-2015/01-01-2016/31-01-2016 and 15,27,28 May 2016 (3 days) may be treated as unauthorized absence.

(REHANA YASMIN)  
DISTRICT EDUCATION OFFICER  
(FEMALE)SWABI

Endst: No. 3928/30 /F. No. DA-IIL/Comp: Ret: dated Swabi the: - 18/10/2018.

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

1. Director Elementary & Secondary Education Khyber Pakhtunkhwa, Peshawar.
2. District Accounts Officer, Swabi.
3. Deputy Commissioner Swabi.
4. District Monitoring Officer Swabi
5. Circle Officer Anti-Corruption District Swabi with the requested to recover the over payment of Rs: - 84399/- from Mr, Abdur Rasheed Ex- Chowkidar GGPS Ball Banda (Yaqubi).
5. Sub-Divisional Education Officer (Female) Razzar
6. Mr Abdur Rasheed, Chowkidar GGPS BALL BANDA YAQOOBI.

DISTRICT EDUCATION OFFICER  
(FEMALE)SWABI

18/10/18

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2017-26

میری نگر

روزنامہ

شاور

DAILY MASHRIQ PESHAWAR

مشرق

مستقیمت کے 51 سال

Construction of Street, Drains, Side Walls, Sanitation

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Annexure - F

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## Inquiry Report

Title: Abdur Rasheed chowkidar posted at GGPS Bal Banda Yaqubi reported as proxy and also as Habitual absent.

### Reference

Vide DEO (F) Swabi No. 4779/EMIS/IMU/ST 2017 Dated 01-11-2017, the undersigned committee was constituted to conduct impartial inquiry and to submit comprehensive report to DEO (F) Swabi to proceed further.

### Background

The reported chowkidar has been reported as absent on various dates 14-01-2017, 01-02-2017, 08-03-2017, 17-04-2017, 25-05-2017, and 13-09-2017. The committee visited GGPS Bal Banda Yaqubi on 25-11-2017 at 10:00am.

### Facts

1. Mr. Faqir S/O Akbar Shah CNIC No. 16201-0784646-5 nearly 58 years old was sitting on chair in front of school gate. On query, he disclosed that he was performing duty instead of his landlord Mr. Abdur Rasheed who is chowkidar at the school. He further added that he was doing proxy for for him for the last 02 years.
2. The proxy chowkidar, Faqir Muhammad, a local fellow but peasant on the land of Abdur Rashid is compelled to do so.
3. Abdur Rashid is permanent resident of village Yaqubi, about 08km from this station. But actually he resides in Abbottabad, Mr. Faqir, Sabahat teacher at the school and other sources confirmed.
4. At the time of visit, Ms. Nusrat Bibi Head Teacher was on leave and the reported chowkidar was absent from duty. Ms. Sabahat Khan PST cooperated much with the committee and gave access to the record and relevant information.
5. Salary of the reported chowkidar is stopped so far but the school has not much information about this.
6. The reported chowkidar is proud enough and does not lift anybody else, the teacher told horrifyingly.
7. On perusal of attendance register, the committee was able to tabulate the following chart:

S No.	Month/Year	Dates	Days	Present/Absent
1	Dec-12	14th Dec to 31st Dec	18	Absent
2	Jan-13	Whole Month	31	Absent
3	Feb-13 to DEC-13	Whole Months	330	Absent

152  
4/12/17

(12)

(18)

4	Jan-14 to Feb-14	Whole Months	60	Absent
5	Mar-14 to Feb-15	one year		Present
6	Mar-15	2nd and 3rd march	2	Absent
7	Apr-15 to May-15	two months	60	Present
8	Sep-15 to Oct-15	two months	60	Present
9	Nov-15	2nd and 6th Nov	2	Present
10	Dec-15	whole month	30	Absent
11	Jan-16	whole month	30	Absent
12	Feb-16	1, 24, 25, 26, 27, 29 Feb	6	Present
13	Mar-16	whole month	30	Present
14	Apr-16	whole month	30	Present
15	May-16	15, 27, 28	3	Absent
16	SEP-16 TO JAN-2017 ✓	five months		Present
17	Feb-17	1st February	1	Absent
18	MAR-2017 till Date	Nine Months		Absent

31/17

### Conclusion

Keeping in view the above chart, it can easily be concluded that:

1. The reported chowkidar is doing his duty on proxy which is misconduct.
2. He is habitual to remain absent from his duty.
3. He is not interested in Government service and needs to be fired of his duty.

### Recommendations

The committee recommends that:

1. The reported chowkidar deserves major penalty under E & D rules, 2011 i.e dismissal from service.
2. Deductions be made from his dues as admissible under rules.

  
MUHAMMAD NAEEM

HEADMASTER

GHS GOHARABAD ISMAILA (SWABI)

  
LAIQ ZAMAN

ADEO (PRIMARY)

DISTRICT EDUCATION OFFICE

(MALE) SWABI

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**JUDGMENT SHEET**

**PESHAWAR HIGH COURT, MINGORA  
BENCH (DAR-UL-QAZA), SWAT  
(Judicial Department)**

**W.P. No. 211-M/2016**

**JUDGMENT**

Date of hearing: **24.02.2021**

**Petitioner:- (Akhtar Ali Khan) by Mr.  
Shahzullah Khan Yousafzai, Advocate.**

**Respondents: - (Govt: of KPK & others) by Mr.  
Raza-ud-Din Khan, A.A.G.**

**WIOAR AHMAD, J.-** This order is directed to dispose of the petition filed by petitioner under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973.

2. Petitioner has contended in his writ petition that respondents/department had invited applications for the posts of Drawing Master by publishing a proclamation in daily newspapers. Petitioner applied against said posts, qualified the requisite test as well as interview and was accordingly appointed against the subject post vide appointment order dated 17.01.1995, upon recommendations of the Departmental Selection Committee duly constituted for the subject recruitment. He also alleged in his petition that later on services of the petitioner were terminated vide order dated 13.02.1997 upon directions of the then M.P.A due to political motivation. On promulgation of the Khyber

Nawab (D.R.) Hon'ble Mr. Justice Ishfaq Ibrahim  
Hon'ble Mr. Justice Wajeez Ahmad

Abdurashheed  
From  
Respondant

Pakhtunkhwa Sacked Employees (Appointment) Act, 2012 (hereinafter referred to as 'the Act'), the petitioner filed an application to respondents/department and requested for his re-instatement under the Act, but to no avail. Feeling aggrieved from the acts of respondents, he has filed the instant writ petition with the following prayer;

*"It is therefore most humbly prayed that on acceptance of this writ petition the inaction of the respondent No. 3 by not re-instating/appointing the petitioner in light of 30% quota reserved for sacked employees may be declared as illegal, unconstitutional and ineffective upon the rights of petitioner. That the respondent No. 3 may further please be directed to re-instate/appoint the petitioner on the post of Drawing Master under the 30% quota. Any other remedy which this august Court deems fit that may also be in favour of the petitioner."*

3. Respondents were summoned, out of whom respondent No. 3 filed his para-wise comments. It was contended in the comments by respondent that petitioner had been appointed on fixed pay, against leave vacancy and as a stop-gap arrangements. It further stated in the comments that petitioner had not been appointed against a regular civil post, therefore on completion of his contractual period he was removed from service.

4. We have heard arguments of learned counsel for petitioner, learned Adll: A.G. appearing on behalf of official respondents and perused the record.



5. Perusal of record reveals that the reasons for non-consideration of petitioner had been provided by respondents in their letter dated 05.05.2014 addressed to the petitioner, contents of which are also reproduced hereunder for ready reference;

- (1) *You have been appointed as untrained DM purely on adhoc and temporary basis and as stopgap arrangement and liable to termination and reversion at any time without assignment any reason in 1995.*
- (2) *You were appointed against DM leave vacancy. On the arrival of original candidate your services will stand ceased.*
- (3) *Your services were irregular, ab-intio void, and against the prescribed rules, therefore your service is hereby dispensed with, with immediate effect.*
- (4) *You have not possessed the prescribed qualification meant for the DM post at the time of your appointment in 1995.*
- (5) *Your appointment had been made in 1995 against DM post on stopgap arrangement and not on regular basis.*

*AND WHERE in pursuance of Government of Khyber Pakhtunkhwa sacked Employees Act, 2012 allowed the appointment of those candidates who was appointed on regular basis to a civil post in the province and who possessed the prescribed qualification and experience for the said post at that time."*

Perusal of appointment order of petitioner available with the writ petition reveals that he had been appointed in BPS-09 but on a fixed pay of Rs. 1605/-, against a leave vacancy. Terms and conditions provided therein also indicated that the

appointment had been made purely on temporary basis and as stop-gap arrangements liable to termination without assigning any reasons. Section 3 of the Act provided for reinstatement of sacked employees to the following effect;

**S. 3; Appointment of sacked employees.—**  
*Notwithstanding anything contained in any law or rule for the time being in force, on the commencement of this Act, all sacked employees subject to section 7, may be appointed in their respective cadre of their concerned Department, in which they occupied civil posts before their dismissal, removal and termination from service:*

*Provided that the sacked employees shall be appointed against thirty percent of the available vacancies in the said Department:*

*Provided further that the appointment of sacked employees shall be subject to the medical fitness and verification of their character antecedents to the satisfaction of the concerned competent authority*

Definition of "sacked employee"

provided in clause (g) of section 2 of the Act is also relevant for the present discourse, which is reproduced hereunder for ready reference;

- S.2.....
- (a).....
- (b).....
- (c).....
- (d).....
- (e).....
- (f).....

(g) "Sacked employee" means a person who was appointed on regular basis to a civil post in the Province of the Khyber Pakhtunkhwa and who possessed the prescribed qualification and experience for the said post at that time, during the period from 1st day of November 1993 to the 30th day of November, 1996 (both days inclusive) and was dismissed, removed, or terminated from service during the period from 1st day of November 1996 to 31st day of December 1998 on the ground of irregular appointments.

Petitioner had not been appointed on regular basis to a civil post in the province, at the time of his appointment. As such he would not fall in the definition of sacked employee given in the Act and resultantly not entitled to be appointed under section 3 of the Act thereof.

It is otherwise settled by now that Courts of law have no jurisdiction to add or subtract to the clear words of a statute. Reliance in this respect may be placed on judgment of Hon'ble Supreme Court of Pakistan rendered in the case of "Abdul Haq Khan and others vs Haji Ameerzada and others" reported as PLD 2017 Supreme Court 105, wherein it was observed;

*"The reading in of words or meaning into a statute when its meaning is otherwise clear is not permissible. As a matter of statutory interpretation, Courts generally abstain from providing 'casus omissus' or omissions in a statute, through construction or interpretation. An exception to this rule is, when there is a self-evident omission in a provision and the purpose of the law as intended by*

the legislature cannot otherwise be achieved, or if the literal construction of a particular provision leads to manifestly absurd or anomalous results, which could not have been intended by the legislature. However, this power is to be exercised cautiously, rarely and only in exceptional circumstances.

Similar observations had also been recorded by Hon'ble Apex Court in the case of "The Collector of Sales Tax, Gujranwala vs Messrs Super Asia Mohammad Din & sons and others reported" reported as 2017 SCMR 1427 in the following words;

*"In-fact the Courts should refrain from supplying an omission in the statute because to do so steered the courts from the realms of interpretation or construction into those of legislation."*

Thus, extending benefit of re-instatement to the petitioner would require addition to the clear provisions of the Act, which does not envisage for re-employment of an employee who had not been appointed on regular basis to a civil post in the service of the province.

6. In light of what has been discussed above, the petition in hand was found lacking any substance and same is accordingly dismissed.

**ANNOUNCED**  
**Dt: 24.02.2021**

  
JUDGE

  
JUDGE

Nawab (D.B.) Hon'ble Mr. Justice Ishaq Ibrahim  
Hon'ble Mr. Justice Wiqar Ahmad

Office  
09/03/2021

KHYBER PAKHTUNKWA SERVICE TRIBUNAL, PESHAWAR

No. 1160 /ST

Dated 07/07/2021

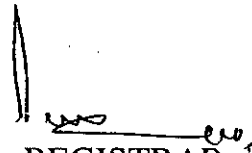
To

The District Education Officer Female,  
Government of Khyber Pakhtunkhwa,  
Swabi.

Subject: JUDGMENT IN APPEAL NO. 1194/2019, MR. ABDUR RASHEED.  
HUSSAIN.

I am directed to forward herewith a certified copy of Judgement dated 22.06.2021 passed by this Tribunal on the above subject for strict compliance.

Encl: As above

  
REGISTRAR  
KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL  
PESHAWAR.