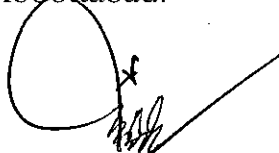


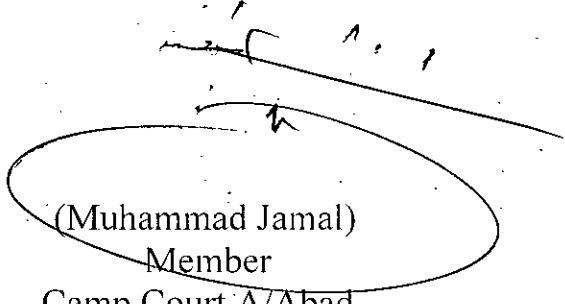
15.09.2020

Appellant is present in person. Mr. Muhammad Riaz Khan Paindakhel, Assistant Advocate General for respondents present.

Appellant requested for adjournment on the ground that his counsel is busy before the Peshawar High Court, Peshawar.

Adjourned to 18.11.2020 for arguments before D.B at camp court Abbottabad.

  
(Mian Muhammad)  
Member(E)

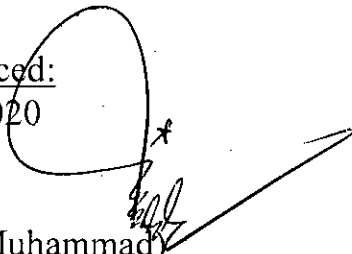
  
(Muhammad Jamal)  
Member  
Camp Court A/Abad

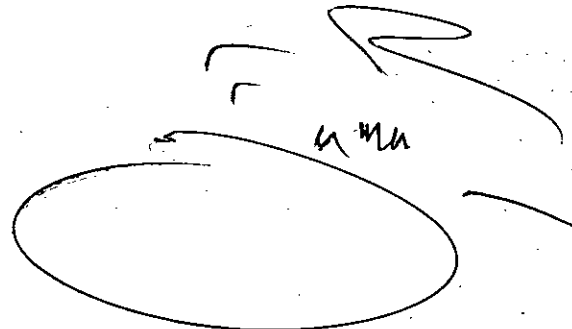
18.11.2020

Appellant is present in person. Mr. Muhammad Riaz Khan Paindakhel, Assistant Advocate General for respondents is present.

According to the appellant he has been transferred from GPS, Trimkan to GPS Khanpur No.1 by virtue of order bearing endorsement No. 11648-54/5-2/GB/SDEO/HR dated 30.12.2019 in consequence of which he has assumed the charge of his assignment at GPS Khanpur No.1 on 04.01.2020. His grievance has been redressed. He is seeking withdrawal of the instant appeal. The charge report alongwith office order dated 30.12.2019 submitted in this regard, the contents of which were reiterated which he accepted as correct. Accordingly grievance of the appellant being redressed, the appeal stands dismissed as withdrawn. File be consigned to the record room.

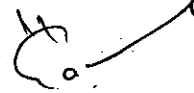
Announced:  
18.11.2020

  
(Mian Muhammad)  
Member(E)

  
(Muhammad Jamal Khan)  
Member(J)  
Camp Court Abbottabad

21.01.2020

Clerk to counsel for the appellant present. Mr. Muhammad Jan learned Deputy District Attorney alongwith Sardar Wali Rehman Assistant present and submitted reply. Adjourn. To come up for rejoinder if any and arguments on 18.02.2020 before D.B at Camp Court Abbottabad.



Member  
Camp Court, Abbottabad

Due to covid ,19 case to come up for the same on / /  
at camp court abbottabad.

Reader

Due to summer vacation case to come up for the same on  
15 / 9 / 20 at camp court abbottabad.



Reader



**OFFICE OF THE DISTRICT EDUCATION OFFICER (M)**

**HARIPUR**

Ph. No. 0995-920151,920152



**OFFICE ORDER:**

Consequent upon the approval of competent authority, the following surplus teachers as reported by ASDEO(C) Khanpur are hereby transferred/ rationalized under rationalization policy in the school noted against each which are facing shortage of staff with immediate effect in the best interest of public service.

S. No	Name of Teacher / Designation	Adjustment		Remarks
		From	To	
01	Muhammad Zaman PST	GPS Kainthla	GPS Ladar Mang	Against Vacant Post (being surplus) on need base
02	Naseem Haider SPST	GPS Trimkan	GPS No 1 Khanpur	Against Vacant Post being surplus on need base

Note:

3. Charge Report should be submitted to all concerned.
4. No TA/DA & TG is allowed.

sd/....

**District Education Officer (M)  
Haripur**

Endst No. 11648-54 /S-2/GB /SDEO/HR

Dated Haripur the 30/12/2019

Copy for information to:

1. The Dy: District Education Officer (Male) Haripur.
2. The District Monitoring Officer IMU Haripur.
3. PA to Director Elementary & Secondary education Khyber Pakhtunkhwa Peshawar.
4. The Head Teachers Concerned.
5. The Teacher Concerned
6. Office Record File.

*[Signature]*  
Asst: District Education Officer (Estb)  
Haripur

25.10.2019

Learned counsel for the appellant present. Preliminary arguments heard.

Through the present service appeal, the appellant (SPST) has challenged the office order dated 20.04.2019 whereby the appellant was transferred from GPS Khanpur No 1 and adjusted at GPS Tarimkam.

Points urged consideration. The present service appeal is admitted for regular hearing subject to all just legal objections. The appellant is directed to deposit security and process fee within 10 days. Thereafter notices be issued to the respondents for written reply/comments. To come up for written reply/comments on 16.12.2019 before S.B at Camp Court, Abbottabad.

Appellant Deposited  
Security & Process Fee

05/11/19



Member  
Camp Court, A/Abad.

16.12.2019

Appellant in person and Mr. Usman Ghani, District Attorney for the respondents present. Neither written reply on behalf of respondents submitted nor representative of the department is present, therefore, notices be issued to the respondents with the direction to direct the representative to attend the court and submit written reply on the next date positively. Case to come up for written reply/comments on 21.01.2020 before S.B at Camp Court Abbottabad.


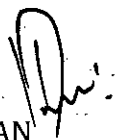


(Muhammad Amin Khan Kundi)  
Member  
Camp Court Abbottabad

Form- A  
FORM OF ORDER SHEET

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

Case No.- \_\_\_\_\_ 1137/2019 \_\_\_\_\_

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	12/09/2019	<p>The appeal of Mr. Naseem Haider presented today by Mr. Muhammad Arshad Khan Tanoli Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR 12/19/19</p> <p>This case is entrusted to touring S. Bench at A.Abad for preliminary hearing to be put up there on <u>25-10-19</u></p> <p style="text-align: right;"> CHAIRMAN</p>

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

Service Appeal No. 1137 /2019

Naseem Haider SPST Govt. Primary School Trimkan District Haripur.

...APPELLANT

**VERSUS**

Govt. of Khyber Pakhtunkhwa, through Secretary Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar and others.

....RESPONDENTS

**SERVICE APPEAL**

**INDEX**

<b>S. #</b>	<b>Description</b>	<b>Page #</b>	<b>Annexures</b>
1.	Service appeal alongwith affidavit	1 to 9	
2.	Copies of impugned transfer orders of the appellant dated 20/04/2019	10-11	"A"
3.	Copy of departmental appeal	12-13	"B"
4.	Copies of the judgments of this Honourable Court	14-44	"C"
5.	Wakalatnama	45	

*Naseem Haider*  
...APPELLANT

Through

Dated: \_\_\_\_\_/2019

*(Muhammad Arshad Khan Tanoli)*  
Advocate High Court, Abbottabad

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

Service Appeal No. 1137 /2019

Naseem Haider SPST Govt. Primary School Trimkan District Haripur.

...APPELLANT  
Khyber Pakhtunkhwa  
Service Tribunal

VERSUS

Diary No. 1240

... 12-9-2019

1. Govt. of Khyber Pakhtunkhwa, through Secretary Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
2. Director Secretary Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
3. District Education Officer (Male) District Haripur.

....RESPONDENTS

**SERVICE APPEAL** UNDER SECTION 4 OF  
SERVICE TRIBUNAL ACT, 1974, FOR  
DECLARATION TO THE EFFECT THAT THE  
APPELLANT WAS INITIALLY  
TRANSFERRED FROM GPS JOULIAN TO GPS  
KHANPUR-1 AGAINST VACANT POST VIDE  
ORDER NO. 601-4 DATED 22/12/2018 AND  
AFTER NEAR ABOUT 05 MONTHS HAS  
BEEN TRANSFERRED FROM GPS KHANPUR-

**Filed to-day**

**Registrar**  
12/9/19

1 TO TRIMKAN VIDE IMPUGNED ORDER NO. 771-74 DATED 20/04/2019, THE APPELLANT AND HIS BROTHER FILED WRIT PETITION NO. 1207-A/2016 AGAINST ONE OF THE MINISTER, NAMELY, ANSAR MAJEED NIAZI WHICH HAS BEEN DECIDED BY THIS HONOURABLE COURT ON 29/05/2018 WHEREIN, THE CRUSHING PLANT OF THE SAID MINISTER NAMELY AL-ANSAR AND NIAZI BROTHERS HAVE BEEN ORDERED TO STOPPED CRUSHING STONES IN THE RESIDENTIAL AREA. HENCE, DUE TO THE POLITICAL PRESSURE OF THE SAID MINISTER, THE APPELLANT HAS BEEN TRANSFERRED FROM GPS KHANPUR-1 TO TRIMKAN WHICH IS PREMATURE AND HUNDRED OF MILES AWAY FROM THE PLACE OF ABODE OF THE APPELLANT. AND THE GOVT. FUNCTIONARIES ARE PRESSURIZING THE APPELLANT TO LEAVE THE RESIDENTIAL HOUSE SITUATED NEAR THE CRUSHING PLANTS OR TO FACE CONSEQUENCES, HENCE, THE TRANSFER ORDER OF THE APPELLANT IS MALAFIDE AND THE SAME



IS LIABLE TO BE SET-ASIDE TO PROTECT  
THE APPELLANT FROM THE CRUEL  
CLUTCHES OF THE GOVT. FUNCTIONARIES  
ESPECIALLY RESPONDENT NO.3.

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**PRAYER:** ON ACCEPTANCE OF INSTANT  
SERVICE APPEAL, THE IMPUGNED  
TRANSFER ORDER NO. 771-74 DATED  
20/04/2019 OF APPELLANT, MAY  
GRACIOUSLY BE SET-ASIDE. ANY OTHER  
RELIEF WHICH THIS HONOURABLE  
TRIBUNAL DEEMS EXPEDIENT/  
APPROPRIATE IN THE CIRCUMSTANCES OF  
THE CASE MAY ALSO BE ALLOWED TO  
THE APPELLANT.

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Respectfully Sheweth:-

The facts forming the background of service appeal are  
arrayed as under:-

1. That the appellant is serving in Education  
Department for the last 12 years and served the

department with complete devotion and dedication smoothly.

2. That the appellant is serving by dint of merit and hard work and produced excellent results. The respondents department with malafide intentions transferred/ adjusted the appellant from GPS Khanpur-1 to GPS Trimkan vide impugned order No. 771/74 dated 20/04/2019. Copy of impugned transfer order dated 20/04/2019 is annexed as Annexure "A".

3. That the appellant filed departmental appeal on 20/05/2019 against the impugned transfer orders. Copy of departmental appeal is attached as Annexure "B". But respondents did not bother to redress the grievances of the petitioners. Hence, the instant service appeal is being filed inter-alia, on the following grounds; -

**GROUND S;-**

a) That the appellant and his brother filed writ petition No. 1207-A/2016 and writ petition No. 281-A/2018 against the installation of

Crushing Plant in the residential area near there houses of one sitting Minister of Govt. of Punjab, namely, Ansar Majeed Niazi whose Al-Ansar & Niazi Brothers Crushing Plant were crushing the stones in the residential area which resulted into environmental pollution, safety of residents of the area. The Honourable Peshawar High Court Abbottabad Bench accepted writ petition of the appellant and his brother on 29/05/2018 and 12/02/2019 wherein, the owners of the said crushing plants were ordered to stop functioning of there Crushing Plant in the residential area. Copies of the judgments of this Honourable Court are annexed as Annexure "C".

- b) That as a result, the said Minister of the Punjab Govt. through Govt. functionaries of Khyber Pakhtunkhwa is exerting pressures / exploiting and intimidating the appellant through unlawful transfer order. The respondent No. 3 is forcing the appellant to vacate the residential area near the crushing

plant otherwise, the appellant shall face consequences.

c) That the Govt. functionaries to pressurize the appellant and his entire family transferred his sister namely Mst. Naheeda Bibi from the place of her abode for flung area of District Haripur and similarly brother of the appellant his also been transferred from GPS Khuai Maira to GPS Gandaf which is hundred miles of way from place of residence of the brother and sister of the appellant. Hence, as a retaliation, the appellant has also been illegally transferred from GPS Khanpur-1 to GPS Trimkan.

d) That the act of respondents towards the appellant is absolutely malafide, against the law because the appellant has not completed his service tenure and has been targeted to accomplish their nefarious designs. Therefore, such type of transfer order of the appellant his against the fundamental rights enshrined in the Constitution of Islamic Republic of Pakistan, 1973.

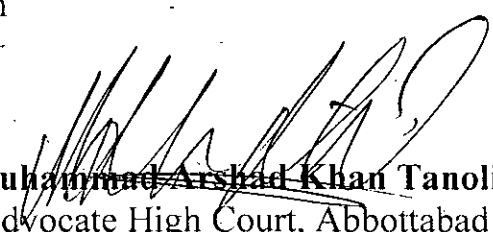
- e) That the appellant's fundamental rights to be treated in accordance with law have been infringed and Govt. functionaries especially respondent No. 3 can not exploit, intimidate the appellant as the appellant is entitled to be treated fairly.
- f) That the tribunal should not folds up its hands while granting protection to the appellant from the cruel clutches of the respondents especially respondent No. 3.
- g) That this fact may not be left to fade in oblivion that the respondents are creating embarrassing situation for the appellant as well as to his other serving brother and sister just to give wrongful gain to the owners of the crushing plants and wrongful loss to the appellant.
- h) That there is no other prompt, efficacious remedy, available to the appellant except the instant appeal.

It is, therefore, humbly prayed that on acceptance of instant service appeal, the impugned transfer order No. 771-74 dated 20/04/2019 of appellant, may graciously be set-aside. Any other relief which this Honourable Tribunal deems expedient/ appropriate in the circumstances of the case may also be allowed to the appellant.

*Waider*  
...APPELLANT

Through

Dated: 6/9 /2019

  
(Muhammad Arshad Khan Tanoli)  
Advocate High Court, Abbottabad

**VERIFICATION:-**

Verified on oath that the contents of foregoing service appeal are true and correct to the best of our knowledge and belief and nothing has been concealed therein from this Honourable tribunal.

*Waider*  
...APPELLANT

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

Service Appeal No. \_\_\_\_\_/2019

Naseem Haider SPST Govt. Primary School Trimkan District Haripur.

...APPELLANT

**VERSUS**

Govt. of Khyber Pakhtunkhwa, through Secretary Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar and others.

....RESPONDENTS

**SERVICE APPEAL**

**AFFIDAVIT**

I, Naseem Haider SPST Govt. Primary School Trimkan District Haripur, do hereby solemnly affirm and declare that the contents of foregoing service appeal are true and correct to the best of my knowledge and belief and nothing has been concealed therein from this Honourable Court.

*Naseem Haider*  
**DEPONENT**



10

Annex 'A'

OFFICE OF THE SUB DIVISIONAL EDUCATION OFFICER (MALE)  
KHANPUR, HARIPUR

Ph: 0995-640166  
sdeokhanpur@gmail.com

**ORDER:**

On the proposal of ASDEO Circle Khanpur Mr. Naseem Haider (SPST) GPS Khanpur No. 1 is hereby adjusted at GPS Trimkan due to single school teacher on need basis and best interest of public service with immediate effect

Note:-

- (i) Charge report should be submitted
- (ii) No TA /DA is allowed

*sd*  
Sub Divisional Education Officer (M)  
Khanpur (Haripur)

No. 771-74 Dated: 20/10/2019

Copy to:

1. District Education Officer (M) Haripur.
2. District Monitoring Officer Haripur.
3. ASDEO Circle concerned.
4. Head Teacher concerned.
5. Office record.

*Attested*

*Muhammad Arshad Khan Tanoli*

Muhammad Arshad Khan Tanoli  
Advocate High Court  
Office No. 33 Adjacent to  
Distt Bar Abbottabad

*[Signature]*  
Sub Divisional Education Officer (M)  
Khanpur Haripur





OFFICE OF THE SUB DIVISIONAL EDUCATION OFFICER (M)  
KHANPUR (HARIPUR)

Ph: 0995-640166  
SDEOKhanpur@gmail.com



**Adjustment Order:**

As reported by IMU the following surplus teachers according to student teacher ratio are hereby adjusted against vacant posts on need basis with immediate effect.

S#	Name of Teacher/Design,	From	To	Remarks
1.	Adil Siddique (PST)	GPS Kotha	GPS Mumrial	AVP
2.	Naseem Haider (SPST)	GPS Joulain	GPS Khanpur No. 1	AVP

- Note:
1. No TA/DA is allowed.
  2. Charge report should be submitted.

Sub Divisional Education Officer (M)  
Khanpur (Haripur)

No. 601-2 Dated: 22-12-2018

Copy to;

1. DEO(M) Haripur
2. DMO Haripur
3. ASDEO Circle concerned
4. Head Teacher concerned.
5. Office file.

*A. Kestred*  
  
Muhammad Ahsan Khan, Advocate  
Advocate High Court  
Office No. 33 Adjacent to  
Distt. Jir Abbottabad

Sub Divisional Education Officer (M)  
Khanpur Haripur

خدمت صاب ڈائریکٹر ایگزیکٹو اینڈ سیکنڈری ایجوکیشن خیر بختون جواہ پشاور

# Annex 'B'

بابت گزارش ہے کہ سائل نسیم حیدر SPSAT گورنمنٹ پرائمری سکول خان پور غزلا جو کہ سائل کی اپنی پوسٹن کونسل  
 ایسے فریق منضی مورخہ 2018-01-07 سے لطف احسن شہزاد نام دے دیا گیا۔ سائل کو تبدیل کر کے پوسٹن کونسل نجف پور  
 افتادہ پیڑی علاقے میں گورنمنٹ پرائمری سکول شہر مکن میں تعینات کیا گیا ہے۔ جو کہ سائل کے گوت 55 کلومیٹر  
 ہے اور راستہ بھی تبدیل ہے۔ سائل حال ہی میں اپنی ع/ا میں تعینات ہوا تھا اور اپنی ع/ا میں سروس کرتے ہوئے  
 4 ماہ میں پورے ہوئے۔ ع/ا نجف پور کے ٹیچر ع/ا خان پور میں تعینات ہیں۔ مگر سائل کو DEO صاحب  
 اپنی انانکی وجہ سے انتقام کا نشانہ بنایا ہے۔ سائل کے آرڈر سے KPK کے ایکٹ نمبر "11/2011" سے  
 کی خلاف ورزی کی گئی ہے۔

سائل حضور سے التماس کرتا ہے کہ ہائی کورٹ کے آرڈر جو کہ 17 اکتوبر 2007 کو ہائی کورٹ کا  
 ایک چوں ہے سائل کو خان پور میں خالی پوسٹن ہوگی اس پر تعینات کرنا ہے۔ سائل آج سے استعفا کرتا ہے۔  
 سائل کے ٹرانسفر آرڈر کو مستوخ کیا جائے۔ اور اپنی ع/ا خان پور میں والے تعینات کیا جائے۔  
 سے قبل سائل کے معافی کو بھی DEO صاحب نے ذاتی انانکی بنا کر اپنے گوت 55 کلومیٹر دور تعینات  
 جو کہ بائبل میں نا انصافی ہے۔ میرے شہزادانی مسائل کے حوالہ پر رقم کر کے میرے سائل کے درخواست کو منظور  
 مائے۔ اور آرڈر کو مستوخ کیا جائے۔

صاحب کی عین گزارش ہوگی۔

*Muhammad*  
*Muhammad*

Muhammad Asif Khan, Barrister  
 Advocate High Court  
 Office No: 33 Adjacent to  
 Distt Bar Abbottabad

الفضل  
 سائل نسیم حیدر

RGL15639880

Notices see reverse Rs. Ps.

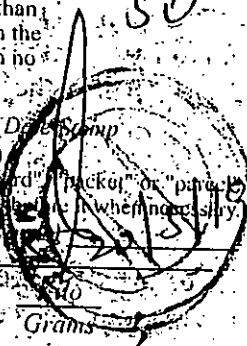
ed except in case of  
uninsured letters of not more than  
the initial weight prescribed in the  
Post Office Guide or on which no  
acknowledgment is due

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13

Received a registered  
addressed to

PESHAWAR



Write here "letter", "postcard", "packet" or "parcel"  
Initials of Receiving Officer with the word "insured" when necessary

Insured for Rs. (in figures)

Insurance fee Rs. Ps. (in words) Weight Grams

Name and address of sender

*interested*  
*[Signature]*

Advocate High Court  
Office No. 33 Adjacent to  
Abbottabad

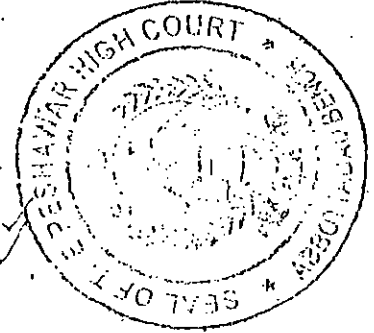
14

Annex 'C'

BEFORE THE PESHAWAR HIGH COURT  
ABBOTTABAD BENCH

W.P No. 281 -A/2018

1. Chief Abdul Rehman son of Fazal ur Rehman.
2. Muhammad Rizwan son of Muhammad Daini.
3. Sajad Mehmood son of Muhammad Sarwar.
4. Said ur Rehman son of Fazal ur Rehman.
5. Kamran Wahab son of Muhammad Sadiq.
6. Sohail Shahzad son of Muhammad Sadiq.
7. Nasir Rehman son of Said ur Rehman.
8. Muhammad Sadiq son of Sardar Khan.
9. Kamran Khalid son of Malik Khalid Mehmood.
10. Muhammad Ishfaq son of Muhammad Nawaz.
11. Muhammad Hiyas son of Sher Afzal.
12. Muharamad Ibrar son of Sher Afzal.
13. Muhammad Ashraf son of Ghulab Khan.
14. Shaighar Ahmad son of Masood Riaz.
15. Naseem Haider son of Ghulam Haider.
16. Liaquat Zaman son of Mian Khan.
17. Muhammad Fiaz son of Khan Bahadar.
18. Muhammad Javed son of Gul Dad residents of Suraj Gali, Tehsil Khanpur District Haripur.



...PETITIONERS

VERSUS

1. Government of Khyber Pakhtunkhwa, through Secretary Industries, Commerce and Technical Education Department, Peshawar.
2. Principal Secretary to Chief Minister KPK.
3. Law Department through Director legal KPK.
4. Director, Industries and Commerce Peshawar.
5. Commissioner, Hazara Division, Abbottabad.
6. Deputy Commissioner, Haripur.
7. Assistant Director Industries, Commerce Development Haripur.
8. Secretary Planning and Establishment, KPK, Peshawar.
9. Secretary Finance KPK, Peshawar.

No. 1371  
07.3.18

Vide order of Hon'ble Court DB in C.M. No. 848-A/18 dt: 18-10-2018, No (19) to (20) are Impleaded as Respondents. P-T-O.

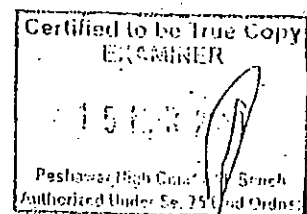
...RESPONDENTS

WRIT PETITION UNDER ARTICLE 199 OF  
THE CONSTITUTION OF ISLAMIC REPUBLIC  
OF PAKISTAN 1973, FOR ISSUANCE OF A

8

9

Muhammad Anwar Khan Janoli  
Advocate High Court  
Office No. 23 Adjacent to  
Distt Bar Association



15

5

Vide order of Honorable Court DB in CM No. SFS-A/18  
dt: 18-10-2018, no. (19), (21) are Impleaded as Respondents.

10. Rehman Gul s/o Wali Khan r/o near Shall Pump Gondal Tehsil and District Attock
11. Lal Faqir s/o Khawaja Muhammad r/o Village Dilazak Tehsil Shabqadar District Charsadda
12. Tariq Mehmood s/o Gohar Zaman r/o Village Dara Khanpur, Haripur
13. Said Hassan Khan s/o Muhammad Jan r/o Ghari Sikandar p/o Usman Kutter Mohallah Terbela Colony Taxila District Rawalpindi
14. Said Waris s/o Gul Amin Jan r/o Village Mumral Khanpur, Haripur.
15. Javed Akhtar s/o Muhammad Akram r/o Suraj Gali Khanpur, Haripur
16. Maqbool Ellahi s/o Fazal ur Rehman Bera Khanpur, Haripur
17. Amir Majeed Khan Niazi s/o Abdul Majeed Khan Niazi r/o Bangla No.10/17 near cirkat House Ketuchery Road Sargodha.
18. Azam Khan s/o Noor Khan r/o Rehana Khanpur, Haripur.
19. Sayed Naqash Haidar s/o Jalal Haidar r/o Deo Bandi, Khanpur, Haripur
20. Syed Zavar Hussain Shah s/o Syed Gulzar Hussain Shah r/o Ghari Saeed, Khanpur, Haripur
21. Muhammad Imtiaz s/o Iqbal Hussain r/o Gharia, Khanpur, Haripur

*Arrested*  
*Muhammad Arshad Khan*

Muhammad Arshad Khan Janc.  
Advocate High Court  
Office No. 33 Adjacent to  
Distt Bar Abbottabad

Certified to be True Copy  
EXAMINER  
15 MAR 2019  
Peshawar High Court  
Authorized Officer

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DECLARATION TO THE EFFECT THAT AMENDMENTS MADE IN RULE 2 AFTER CLAUSE (B) BY INSERTING B-II AND SUBSTITUTION IN RULE 3 OF KHYBER PAKHTUNKHWA POWER CRUSHER (INSTALLATION OPERATION AND REGISTRATION RULES 1998, VIDE NOTIFICATION BEARING ENDST NO: SOII (IND) 11-15/2017/1068-1121 DATED 25<sup>TH</sup> JANUARY, 2018 ISSUED BY RESPONDENTS No 1 ARE ILLEGAL, UNLAWFUL, WITHOUT LAWFUL AUTHORITY, WITHOUT JURISDICTION, MALAFIDE, CAPRICIOUS, PERVERSE, VOID-AB-INITO AGAINST THE FUNDAMENTAL RIGHTS OF PUBLIC / CITIZEN PROTECTED UNDER ARTICLE 9 AND 14 OF CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN 1973 AND ARE IN CONTRAVENTION TO THE SPRIT OF BASIC PREVALING LAW AND ARE THUS LIABLE TO BE SET ASIDE.

*Submitted*  
*M. K. Khan*  
 M. K. Khan  
 Peshawar High Court

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 Advised by  
 Peshawar High Court  
 Authorized Under Sec 15 of the Act

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PRAYER:- ON ACCEPTANCE OF INSTANT WRIT PETITION, THE IMPUGNED NOTIFICATION BEARING ENDST NO. SO-II

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(IND) 11-15/2017/1068-1121 DATED 25<sup>th</sup> JANUARY 2018 ISSUED BY RESPONDENTS NO 3 MAY GRACIOUSLY BE SET ASIDE AND RESPONDENTS BE DIRECTED NOT TO TAKE ANY ACTION, AVERSE TO THE RIGHTS OF PETITIONER, OR ANY OTHER RELIEF DEEMED FIT AND PROPER IN THE CIRCUMSTANCES OF THE CASE.

Respectfully Sheweth;-

*Muhammad Arshed Khan Tanoli*

Muhammad Arshed Khan Tanoli  
Advocate High Court  
Office No. 33 Adjacent to  
Court No. 207, Abbottabad

Certified True Copy  
of the above  
document  
Produced before me  
on 25/01/2018  
at Abbottabad  
Signature of the Officer  
Public Relations  
District Court  
Abbottabad

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1. That, the petitioners are the residents of Suraj Gali, in resent past when Honourable Supreme Court of Pakistan took sue moto Action against the power crusher mafia who were working against the law within radius of one KM of human dwelling and were creating air and noise pollution , on their ejection from Margalla Hills the said mafia to do their illegal work migrated to Suraj Gali and after purchasing four(4) simple weal barrow crushing machines and converted them into power crushers having capacity of 40 TPH. (Copy of abstract from Google map are attached as Annexure "A" & "A-1").

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it deserves straight away cancellation/  
setting aside.

- i. That there being no alternate, adequate and efficacious remedy available to the petitioner, hence, this petition.
- j. That the addresses of the parties have correctly been given in the heading of the petition.
- k. That the court fee stamp paper worth Rs. 500/- has been affixed.

*Muhammad Arshad Khan*  
 Muhammad Arshad Khan Tareq  
 Advocate High Court  
 Office No. 433 Adjacent to  
 3rd Bar Abbottabad

It is, therefore, humbly prayed that on acceptance of instant writ petition, the impugned notification bearing notification bearing, Endst No. SOII (IND) 11-15/2017/1068-1121 dated 25<sup>th</sup> January 2018 issued by respondents no. 3 may graciously be set aside and respondents be directed not to take any action, averse to the rights of petitioner, or any other relief deemed fit and proper in the circumstances of the case.

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**INTERIM RELIEF:**

It is further prayed that the operation of impugned Notification dated 25/01/2018 may graciously be suspended, till final disposal of the main writ petition.

Dated: 07/03 2018

Through

...PETITIONERS

*[Signature]*

(OWAIS KHAN)  
Advocate High Court, Abbottabad

**VERIFICATION:-**

Verified on oath that the contents of foregoing writ petition are true and correct to the best of my knowledge and belief and nothing has been suppressed from this Honourable Court.

*[Handwritten mark]*

*[Signature]*

...PETITIONERS

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Peshawar High Court Ad Bench  
Authorized Under Sec: 75 Evid Ordns

*[Signature]*

Arshad Khan Tanc  
Advocate High Court  
Office No: 33 Adjacent to  
Dist Court Abbottabad

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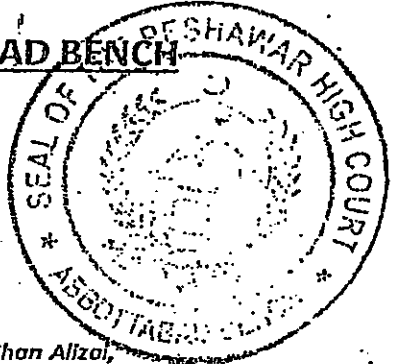
JUDGMENT SHEET.

PESHAWAR HIGH COURT, ABBOTTABAD BENCH

JUDICIAL DEPARTMENT

W.P No.281-A of 2018

JUDGMENT



Date of hearing.....12.02.2019.....

Petitioner(s) ...(Abdul Rehman and others) by Mr. Owais Khan Alizai,  
Advocate.....

Respondent(s)...(Government of KPK, through Secretary,  
Industries, Commerce and Technical Education  
Department, Peshawar and others) ...by M/S  
Raja Muhammad Zubair, Additional Advocate  
General alongwith Musharaf Khan, Assistant  
Director Industries for official respondents, and  
Naveed Akhtar, Advocate for added  
respondents .....

\*\*\*\*\*

IAZ ANWAR, J.- Through this single judgment,  
this Court shall also dispose of Writ Petition  
No.513-A/2018, titled 'Shahnaz and others Vs.  
Government of KPK and others', as common  
questions of law and facts are involved therein.

2. The brief and essential facts leading to  
filing of these petitions are that petitioners are  
inhabitants of village Suraj Gali and Khui Maira,  
District Haripur, respectively, where private  
respondents have installed stone crushing machines  
and started their business, which is causing

*Attested*  
*Muhammad*

Arshad Khan Tanoli  
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nuisance and pollution thereby severely affecting the health and the natural environment of the area; that despite submission of various applications to the Mines and Minerals Department for cancellation of their lease and licenses as they all are functioning in violation of the Rules on the subject, however, the respondents in collusion with the Mines and Mineral Department got issued Notification Bearing Endst. No.SO-II(IND)11-15/2017/1068-1121 dated 25.01.2018, whereby, certain amendments and substitutions were introduced in Rule 2 and 3 of Khyber Pakhtunkhwa Power Crushers (Installation, Operation and Registration) Rules, 1998 in contravention to the basic fundamental rights of the petitioners guaranteed by the Constitution of the Islamic Republic of Pakistan, 1973; that the private respondents are humiliating and harassing the petitioners and a criminal case was also registered in Police Station Khan Pur; that the acts of the respondents are also against the provisions of Environmental Protection Act, 1997 and the Khyber Pakhtunkhwa Environmental Protection

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Act, 2014, and the respondents have not obtained NOC from the Environmental Protection Agency rather NOC was refused to them on the ground that the power crushers are installed within the radius of 500 meter of the population. The petitioners in both the writ petitions prayed for setting aside the impugned Notification dated 25.01.2018, as the same is against the fundamental rights of the petitioners enshrined in the Constitution of Islamic Republic of Pakistan.

3. The main grievances of the petitioners are that being residents of Khui Maira, Tehsil Khan Pur District Haripur the environment of their area has been adversely affected due to installation of crushing machines which on the one hand is causing pollutant emissions and on the other hand due to noises of the crushing machines, blasting activities has significant adverse environmental impact. They have also taken exception to the recent amendments introduced in the Khyber Pakhtunkhwa Power Crushers (installation, operation and registration) Rules, 1998. While, it is the stance of the respondents/Government that the added respondents are performing their lawful

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crushing activities under proper permission and in accordance with law. Similarly, the added respondents are of the view that the petitioners have malafidely filed this petition and throughout they have created law and order situation for the owners of the crush machines.

4. Arguments heard. Record perused.

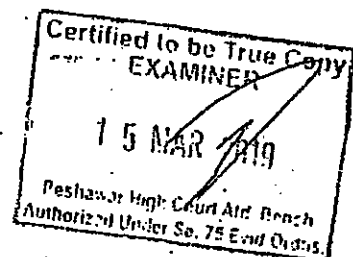
5. In order to regulate the activities of power crushers, vide Notification dated 31 July 1998, Khyber Pakhtunkhwa (Installation, Operation and Registration) Rules, 1998, were notified. Rule 3 and 4 are relevant, which are reproduced below for reference:

"3. Restriction on grant of license. --No license shall be granted for installation of power crusher within a distance of one Kilometer of a strategic location, a school, a hospital or a human dwelling.

4. A person, who is operating a crusher, shall control its emission and comply with the National Environmental Quality Standards (NEQS) as notified by the Federal Government."

6. Recently vide Notification No.SO-II(IND)11-15/2017 dated 25.01.2018, certain amendments were introduced. Its vires has also been challenged in this petition. Amendment in Rule 3 being relevant is reproduced below:

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Advocate High Court  
Office No. 33 Adjacent  
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**"3. Restriction on grant of license.—(1) No license shall be granted for installation of power crusher within a safe distance of three hundred (300) meters from the strategic location, a school, a hospital or a human dwelling in the rural areas and river bed, whereas in respect of urban area the safe distance shall be maintained as five hundred (500) meters.**

**(2) No power crusher shall be installed within a distance of two hundred (200) meters from the major road."**

Rule-4 reproduced above is most relevant as despite permission/license for installation of power crush machines, the crusher operators are required to control emission and comply with the National Environmental Quality Standards as notified by the Federal Government. The record is overwhelmed with the complaints of the locals, of the crush machines owners and police reports that the locals have taken exception to the pollution and emission generated due to the production activities of these crush machines and damage caused to the houses of the locals in view of the uncontrolled blasting. Similar matter was earlier brought before this Court, which was disposed of vide order dated 29.05.2018 (WP No.1207-A/2016) in the following manner:

"In this view of the matter, we will remit this case to Secretary Industry and Commerce of Khyber Pakhtunkhwa to reconsider the

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licenses issued to various persons under the Finance Act of 1995 after obtaining detailed report from Director General Environment Department and Director General Mines and Mineral Department, which shall include the following issues:-

1. Whether the cutting of mountains in question shall have any adverse effect on environment.
2. If the answer of the above issue is in negative then what steps should be taken by the owners of crushing plant to make the crushing plant compliant to environmental law and regulations made thereunder, so that the right of the nearby residents are duly protected.
3. Mining through blasting should be regulated and should not be allowed.
4. The needful be done within a period of two months positively till then no crushing plant will operate in the area in question."

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7. During the course of hearing when inquired from learned AAG that what steps have been taken by the Government after the direction contained in the order of this Court above referred, however, the learned AAG was having no answer. Though it is the requirement under Rule-4 of the Power Crusher (Installation, Operation and Registration) Rules, 1998 for complying with the National Environmental Quality Standards for control of its emission. Similarly, the Environmental Protection Agency established under the Khyber Pakhtunkhwa Environmental Protection Act, 2014, has never allowed any NOC to carry out such activities in that

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area rather we find that in many cases directions were issued to stop mining/crushing activities. It will be advantageous to reproduce the observation so recorded by the Environmental Protection Agency regarding one of the crush machines of the added respondents.

**"OBSERVATIONS:**

*Following observations were made during field visit.*

*Estimated Cost: 160 Millions*

*Total Area of the project: 132 kanals*

*Capacity of the Plant: 240 tones per hour*

*Status of physical work: Foundations for crusher, syndicators and screeners have already been made. Two transformers (each of 400 KVA) have also been installed. Moreover, one tube well had been dig out. Building for offices has also been constructed. Machinery parts have also been observed.*

**Existing Land Use.**

*The proposed site for the said crush plant is barren land surrounded by agriculture land, mountainous area and residential houses. There is also a small crush plant (Hazara Crush Plant) near the entrance of the proposed crush plant. However, the owner informed the EPA team that the same is now closed and the land is purchased.*

**Quarry Area:**

*On the South adjacent side Kohi Mera Hills are located in which the quarrying & mining will be carried out. There is no prominent vegetation in the said hills. The EPA team asked about the allotted mining lease copy and the copy of the same is provided.*

**Environmental Impacts:**

*There will be impacts from mining/blasting from quarry area &*

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crushing plant. Fugitive dust will arise from both the aforementioned. Moreover, noise will also arise which will affect the nearby community/village. On the North western adjacent side agriculture land is present followed by residential houses which are approx. 20 in numbers. The same will be affected and the same lied within 500 meters radial distance.

It is also observed that the project site is at elevation of 591 meters from Sea level and the community settlements is at elevation of 585 meters.

**Meeting with the nearby community/village:**

The EPA team met the nearby community residents. The spoken persons informed that the community is against the construction of the Crush plant and they had also filed writ petition against the same and the Peshawar High Court, Abbottabad Bench granted status Quo as an interim relief. Director General EPA is also respondent in the same petition. Copy of the same is provided to EPA team.

**Suggestion:**

The project is not feasible from environmental point of view; however the following is suggested;

1. The owner of the crush plant may be directed to stop all the activities immediately till the decision of Peshawar High Court, Abbottabad Bench.
2. The crushing unit of the same may be shifted to another suitable place away from residential area."

8. Unfortunately, amendment brought about vide Notification dated 25.01.2018 in the Khyber Pakhtunkhwa Power Crushers (Installation, Operation and Registration) Rules, 1998 is in total negation of the fundamental rights of the petitioners besides

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Distt. Bar Abbottabad

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against the express provisions of Khyber Pakhtunkhwa Environmental Protection Act, 2014.

9. Article 4 of the Constitution of Islamic Republic of Pakistan, 1973 provides for right of individuals to be dealt with in accordance with law. It is reproduced for ease of reference:-

“Right of individuals to be dealt with in accordance with law, etc.

4. (1) To enjoy the protection of law and to be treated in accordance with law is the inalienable right of every citizen. Wherever he may be, and of every other person for the time being within Pakistan.

(2) In particular—

- (a) no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law;
- (b) no person shall be prevented from or be hindered in doing that which is not prohibited by law; and (c) no person shall be compelled to do that which the law does not required him to do.”

*Muhammad Arshad Khan Tanzeel*

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Similarly, Article 9. is one of the foremost fundamental rights provided by the Constitution to persons living in this country and it provides “No person shall be deprived of life or liberty save in

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accordance with law." The august Supreme Court of Pakistan in the case of case of 'Ms. SHEHLA ZIA and others versus WAPDA' (PLD 1994 SC 693) while commenting about the rights to life and liberty as provided in Article-9 of the Constitution observed as under:-

*"Article 9 of the Constitution provides that no person shall be deprived of life or liberty save in accordance with law. The word 'life' is very significant as it covers all facts of human existence. The word 'life' has not been defined in the Constitution but it does not mean nor can it be restricted only to the vegetative or animal life or mere existence from conception to death. Life includes all such amenities and facilities which a person born in a free country, is entitled to enjoy with dignity, legally and constitutionally."*

*Attested*  
*Muhammed Arshad Khan Tanoli*  
Muhammed Arshad Khan Tanoli  
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Similarly, while referring to dictionary meaning of life and the meaning provided by the Constitutional Law in America, the Supreme Court observed as follows:

*"According to Oxford dictionary, 'life' meant state of all functional activity and continual change peculiar to organized matter and specially to the portion of it constituting an animal or plant before death and animate existence."*

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In Black's Law Dictionary, 'life' means "that state of animals, humans, and plants or of an organized being, in which its natural functions and motions are performed, or in which its organs are capable of performing their functions. The interval between birth and death. The sum of the forces by which death is resisted....."

"Life" protected by the Federal Constitution includes all personal rights and their enjoyment of the faculties, acquiring useful knowledge, the right to marry, establish a home, and bring up children, freedom of worship, conscience; contract, occupation, speech, assembly and press".

The Constitutional Law in America provides an extensive and wide meaning to the word 'life' which includes all such rights which are necessary and essential for leading a free, proper, comfortable and clean life. The requirement of acquiring knowledge, to establish home, the freedoms as contemplated by the Constitution, the personal rights and their enjoyment are nothing but part of life. A person is entitled to enjoy his personal rights and to be protected from encroachments on such personal rights, freedom and liberties. Any action taken which may create hazards of life will be encroaching upon the personal rights of a citizen to enjoy the life according to law. In the present case this is the complaint the petitioners have made. In our view the word 'life' constitutionally is so wide that the danger and encroachment complained of would impinge fundamental right of a

Attested  
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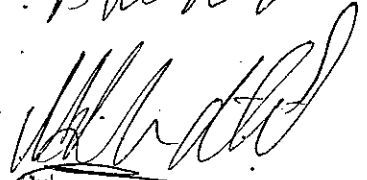
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citizen. In this view of the matter the petition is maintainable."

The Honourable Lahore High Court in the environmental public interest petition titled '*Asghar Leghari Vs. Federation of Pakistan and others*' (PLD 2013 Lahore 364), while referring to Article 9 of the Constitution observed as follows:

*"Fundamental rights, like the right to life (Article 9) which includes the right to a healthy and clean environment and right to human dignity (Article 14) read with constitutional principles of democracy, equality, social, economic, and political justice include within their ambit and commitment, the international environmental principles of sustainable development, precautionary principle, environmental impact assessment, inter and intra-generational equity and public trust doctrine. Environment and its protection has taken a center stage in the scheme of our constitutional rights. It appears that we have to move on. The existing environmental jurisprudence has to be fashioned to meet the needs of something more urgent and overpowering i.e., Climate Change."*

Attested  
  
Muhammad Arshad Khan Tanoli  
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Office No. 23 Adjacent to  
Court No. Abbottabad

10. In view of the eighteenth amendment Pakistan Environmental Protection Act, 1997 was repealed to the extent of this province and Khyber Pakhtunkhwa Environmental Protection Act, 2014

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was promulgated vide Khyber Pakhtunkhwa Act No. XXXVIII of 2014 on 11th December, 2014. This Act has further explored and clarified the law for the protection, conservation, rehabilitation and improvement of the environment, for the prevention and control of pollution, and promotion of sustainable development in the province of the Khyber Pakhtunkhwa. Section 2(b) provides definition of 'Adverse environmental effect' as follows:

"Adverse environmental effect" means pollution or impairment of, or damage to, the environment, and includes,—

- (i) impairment of, or damage to, human health and safety or to property or biodiversity;
- (ii) pollution to physical, biological, social, economic environment or to geological, hydrological resources or various landforms;
- (iii) damage to public comfort, aesthetic conditions, ecological balance and meteorological conditions;
- (iv) damage to aquifers, vegetal canopy, cultural heritage or archeological sites; and
- (v) any other adverse environmental effect as may be specified in the rules."

*Arshad*  
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Section 2(o) defines 'effluent', as under:

"Effluent" means any material in solid, liquid or gaseous form or combination hereof being discharged from industrial activity or any other source and includes a slurry, suspension or vapour."

Section 2(q) defines 'emission', which reads:

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"Emission" means the extent of pollutant's discharges per unit time or the extent of pollutant per unit volume of gas, liquid or vapour emitted."

Section 2(r) defines 'environment, as follows:

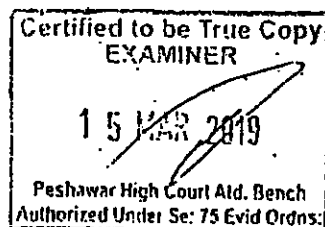
"Environment" means,---

- (i) air, water and land;
- (ii) all layers of the atmosphere;
- (iii) all organic and inorganic matter and living organisms;
- (iv) the ecosystem or flora and fauna, and ecological relationships;
- (v) buildings, structures, roads, facilities, installations and works;
- (vi) all social or cultural and economic conditions and activities affecting community life; and
- (vii) the inter-relationships between any of the factors specified in sub-clauses (i) to (vi)."

Under Section 21 of the Khyber Pakhtunkhwa Environmental Protection Act, 2014, Khyber Pakhtunkhwa Environmental Protection Tribunal was established. During course of arguments an objection was also raised to the jurisdiction of this Court.

However, we think that in view of limited jurisdiction of environmental Tribunal, vires of law cannot be adjudged there.

11. In the instant case, violation of the fundamental rights with regard to right to life as defined in Article-9 of the Constitution is alleged, while Article-8 (1) (2) of the Constitution is relevant, it is reproduced below:



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"8. Laws inconsistent with or in derogation of Fundamental Rights to be void. (1) Any law, or any custom or usage having the force of law, in so far as it is inconsistent with the rights conferred by this Chapter, shall, to the extent of such inconsistency, be void.

(2) The State shall not make any law which takes away or abridges the rights so conferred and any law made in contravention of this clause shall, to the extent of such contravention, be void.

(3).....  
(4).....  
(5).....

Recently the august Supreme Court of Pakistan in the case of "Lahore Development Authority Vs. Mst. Imrana Tiwana and others" (2015 SCMR 1739) provided guidelines, which are to be taken into consideration before the constitutionality of any law is adjudged. It is reproduced for reference and guidance of this Court.

*Arshad Khan Tanoli*  
*Muhammed Arshad Khan Tanoli*

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I. There is a presumption in favour of constitutionality and a law must not be declared unconstitutional unless the statute is placed next to the Constitution and no way can be found in reconciling the two;

II. Where more than one interpretation is possible, one of which would make the law valid and the other void, the Court must prefer the interpretation which favours validity;

III. A statute must never be declared unconstitutional unless its invalidity is beyond reasonable doubt. A reasonable doubt must be resolved in favour of the statute being valid;

IV. If a case can be decided on other or narrower grounds, the Court will abstain from deciding the constitutional question;

V. The Court will not decide a larger

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constitutional question than is necessary for the determination of the case;

VI. The Court will not declare a statute unconstitutional on the ground that it violates the spirit of the Constitution unless it also violates the letter of the Constitution;

VII. The Court is not concerned with the wisdom or prudence of the legislation but only with its constitutionality;

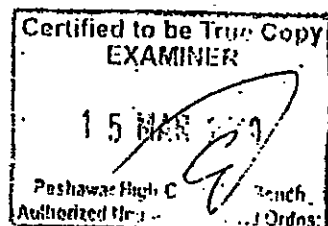
VIII. The Court will not strike down statutes on principles of republican or democratic government unless those principles are placed beyond legislative encroachment by the Constitution;

IX. *Mala fides* will not be attributed to the Legislature."

12. Strange enough earlier the restriction on the grant of license under the Khyber Pakhtunkhwa Power Crusher (Installation, Operation and Registration) Rules, 1998 was stringent when it provided that 'No license shall be granted for installation of power crusher within a distance of one Kilometer of a strategic location, a school, a hospital or a human dwelling' (underlines provided by us) It is the matter of record that the situation regarding air pollution, emission or effluent on account of industrialization etc has adversely affected the whole world and environmental problems due to climate change is cry of the day. Particularly in Pakistan the implementation of environmental protection laws is mere eyewash and our country is internationally

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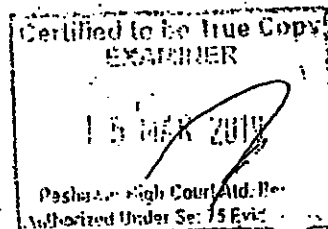


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termed as one worst environmentally polluted country. Keeping in view this background, the amendment introduced and substituting Rule-3 of the Khyber Pakhtunkhwa Power Crusher (Installation, Operation and Registration) Rule, 1998 vide Notification dated 25.01.2018 curtailing the distance from one kilometer to just 300 meters, has made the life of the residents living near such power crush machines became miserable and vulnerable to dangerous health issues. We have already reproduced the observation of the Environmental Protection Agency on these crush machines, wherein, the effect on the human life has been highlighted but unfortunately the local administration particularly and the government in general has given blind eye. In the case of *"Adeel-ur-Rehman and others Vs. Federation of Pakistan and others"* (2005 SCMR 1), the Apex Court held that *'Public Health-Question of public health cannot be left at the discretion of persons who, for their vested interest, can go to any extent'*. It was further held that *"It is the duty of the State to see that the life of a person is protected as to enable him to enjoy it within the prescribed limits of*

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District Court Peshawar



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law. Pollution, environmental degradation and impure food items also fall in the category of deprivation of life."

13. We have noted that except in this province nowhere such amendment was introduced in the Power Crusher Rules, 1998 and thereby it legalized and gave protection to all such illegal power stone crushers established in derogation of the earlier Rules. On the one hand, the emphasis of Khyber Pakhtunkhwa Environmental Protection Act, 2014 is on the pollution free environment while through the impugned amendment in the rules emission, pollution has been given protection at the cost of life of people of this province. Article 199 (2) of the Constitution of Islamic Republic of Pakistan, 1973 entrust jurisdiction to this Court for the enforcement of the fundamental rights, it is reproduced below:

"199. Jurisdiction of High Court: (1) Subject to the Constitution, a High Court may, if it is satisfied that no other adequate remedy is provided by law,—

- (a).....
(b).....
(c).....

(2) Subject to the Constitution, the right to move a High Court for the enforcement of any of the Fundamental Rights conferred by Chapter 1 of Part II shall not be abridged.

Attested
Muhammad Arshad Khan Tani
Advocate High Court
Office No: 33 Adjacent to
Distt Bar Abbottabad

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15 MAR
Peshawar High C.
Authorized Under Ordns

38

- (3).....
- (4).....
- (4A).....
- (5).....

As noted above, this Court earlier vide order dated 29.05.2018 (WP No.1207-A/2016) remitted a similar matter to the Secretary, Industries and Commerce Khyber Pakhtunkhwa to reconsider the license issued to such stone crushers and also formulated certain crucial issues for his consideration, however, it received dead response.

*Attested*  
*Muhammad Arshad Khan Tanoli*

Muhammad Arshad Khan Tanoli  
Advocate High Court  
Office No. 23 Adjacent to  
Court Bar, Peshawar

14. We have also noted that these crush plants have not complied with the National Environmental Quality Standards as provided in Rule 4 of the Rules *ibid*. Similarly, there are serious observations of the Environmental Protection Agency, which also considered it a threat in view of its close location to human dwellings. Similarly, the record is replete of the fact that the locals and the crush plants owners are at dagger-drawn in view of the damage to their persons and properties due to its adverse effect. Thus, keeping in view all these factors and primarily the life and dignity of the citizens i.e. locals of that area in particular. Rule-3 amended through

*11*

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15 MAR 2018  
Peshawar High Court  
Authorized Under S. 203 of the P.A.C. Act, 1973

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Notification dated 25.01.2018 is hereby struck down.  
 The Director General, Environmental Protection Agency Khyber Pakhtunkhwa is directed to exercise his powers conferred on him under the Environmental Protection Act, 2014 and the rules made thereunder to undo the wrong and implement the safety standards. The Secretary, Industries and Commerce, Khyber Pakhtunkhwa, Peshawar is also directed to comply with the judgment of this Court earlier passed and to ensure the safety of the residents of the area by implementing the judgment of this Court and to protect the life and dignity of the peoples as secured and protected under different laws. This and the connected writ petition are allowed and disposed of in the above terms.

Announced.  
 Dt.12.02.2019.

*sd/ Judge*  
*sd/ Judge*

*Attested*  
*[Signature]*

Certified to be True Copy  
 EXAMINER  
 15 MAR 2019  
 Peshawar High Court/Ald. Bench  
 Authorized Under Sec. 75 Evid Ord. M. Saleem

(DD) Mr. Justice Lal Jan Khattok and Mr. Justice Ijaz Anwar  
 Muhammad Arshad Khan Janjani  
 Advocate High Court  
 Office No 33 Adjacent to  
 Abbottabad



# Office of the District Education officer Female (Haripur)

Ph: No 613244

Annex - A

B 15

## Adjustment Order

Consequent upon the approval by the competent authority the following adjustment is hereby made in the best interest of public service with immediate effect.

S.No.	Name of Teacher	To	Remarks
1.	Ruqia Kalsoom SPST GGPS Suraj Gali	GGPS Kot Jandan	On need base enrrollement is 206 and only one teacher working this school
2	Nida Kiyani PST GGPS Kohala Payeen	GGPS Khoi Maira	Against vacant post

Note: -

1. No. TA/DA & TG are allowed.
2. - Charge reports should be submitted to all concerned.

Sub Divisional Education Officer (Female)  
Khanpur

Endst: No. 270-74 /

Dated: 29 / 07 / 2019

Copy to the: -

1. The District Education Officer (Female) Haripur.
2. The DMO IMU Haripur.
3. The Teachers concerned.
4. Office record file.

Sub Divisional Education Officer (Female)  
Khanpur  
Office No. 103  
Distt Bar Abbottabad



ANB

(91)

**OFFICE OF THE  
DISTRICT EDUCATION OFFICER (FEMALE)  
HARIPUR**

(Office Phone No. 0995-613244, Email: emissharipur@yahoo.com)

Corrigendum:

In partial modification of this notification of No.7157-62/Promotion/PSITs to PSHT/2019 dated 06-05-2019, on the acceptance of appeal by Mst. Anjaman Shaheen PSHT, the revise adjustment is hereby made in respect of following Teaching Staff on the stations mentioned against each, in the best interest of public service.

S.No.	Name & Designation	From	To	Remarks
01	Anjaman Shaheen PSHT	GGPS Sanjihala	GGPS Pind Gujran	Versus S.No.02
02	Naheed PSHT	GGPS Pind Gujran	GGPS Sanjihala	Versus S.No.01

*Saima Akter*  
District Education Officer (F)  
Haripur

Even No. & Dated,

Copy forwarded for information to:-

1. The Director E&SE KPK Peshawar.
2. The District Accounts Officer Haripur.
3. The DMO (IMD) Education Haripur.
4. The Teachers Concerned
5. Office Record.

*Saima Akter*  
District Education Officer (F)  
Haripur

*Attested*  
*Muhammad*

Muhammad Iqbal Khan Tanoli  
Advocate High Court  
Office No 33 Adjacent to  
Distt



OFFICE OF THE DISTRICT EDUCATION OFFICER (MO)  
HARIPUR

Ph. No. 0995-610178, 610268

Email: deo@taharp@gmail.com

Promotion order Phase-II



**ORDER**

Consequent upon the recommendations of the District Promotion committee in its meeting held 16/03/2019 and in pursuance of Govt. of Khyber Pakhtunkhwa Elementary and Secondary Education Notification SO(II&A)/1-18/E&S/2012 dated 11/07/2012 and So(PE)/E&SED/SSRC/4-5/meeting/2012/teaching cadre /17 do 09/01/2019 and Finance Department Endst: No SO(FR)/FD/10-22/E/2010 dated 16/07/2012 and worthy Director Element and Secondary Education Khyber Pakhtunkhwa Reshwar letter Endst: No 3791-3843/J. No (PST/Promotion do 15/01/2019, the following SPST (BPS 14) are hereby promoted to the post of PSHT (BPS 15) (16120-1330-56020) plus up allowance as admissible under the rules on regular basis under the existing policy of the provincial Govt, in teaching cadres the terms and given below w.o.f date of taking over charge and are adjusted against vacant post of PSHT, in schools aga vacant posts noted against each.

S. No	Gen. Sec. No.	Teacher Name	Father Name	School Name	Date of Apptt. as PST	Date of Promotion AS SPST B-14	Adjusted ut against the post PSHT.
1	14	Syed Shabbir Hussain Shah	Syed Munawar Hussain Shah	GPS Chach Maira	27/08/1987	20/03/2013	GPS Nikkali Pu
2	31	Altaf Hussain	Muhammad Yousuf	GPS Raus	08/01/2001	20/03/2013	GPS Juhaira
3	43	Muhammad Shaukat	Akhtar Din	GPS Teera Bagra No-2	13/11/1989	20/03/2013	GPS Jubbi
4	44	Amjad Hussain	Ali Asghar	GPS Karwala Bala	13/04/2000	20/03/2013	GPS Dallah
5	58	Rah Nawaz	Hussain Bakhsb	GPS Ban Fuzar	01/04/1996	20/03/2013	GPS Darya Baroeli
6	65	Abdul Waheed	Abdul Qayum	GPS No.4 Haripur	12/10/1994	20/03/2013	GPS Chapri
7	68	Arif Nawaz	Fizal Dad	GPS Sikanderpur	01/11/2005	20/03/2013	GPS Budhar
8	82	Muhammad Naeem Khan	Muhammad Zareen Khan	GPS Mohra Ali Khan	12/02/1990	20/03/2013	GPS Nelore B
9	94	Zahid Mehmood	Juma Khan	GPS Maira Ali Hsian	14/04/2000	20/03/2013	GPS Sarra
10	95	Fayyaz Iqbal	Gohar Rehman	GPS No.4 Haripur	01/09/2006	20/03/2013	GPS Pharaji
11	100	Amir Nawaz	Ali Zae Gul	GPS Tareen Abad	01/09/2006	20/03/2013	GPS Bharwas
12	103	Muhammad Ejaz	Muhammad Ismail	GPS Ganjian	10/12/1994	20/03/2013	GPS Pah Dapi
13	108	Muhammad Rafique	Abdul Rehman	GEMPS Khej Maira	17/10/2005	20/03/2013	GPS Raniwal
14	120	Ghulam Mujtaba	Ferooz Din	GPS Bajeedi	09/01/2006	20/03/2013	GPS Gorrahi Maira

*(Signature)*  
Muhammad Arshad Khan Tanc.  
Advocate High Court  
Office No 33 Adjacent to  
2nd Floor Abbottabad



135	Israr Ahmad	Muhammad Ajab Khan	GPS Bandh	09/01/2000	20/03/2013	GPS Jaleo	
16	154	Muhammad Saeed	Muhammad Ayub	GMPS Mohira Khatri	21/10/2005	20/03/2013	GPS Neela Bhoto
17	160	Habib	Ghulam Suwar	GPS Dheri Sikandar Pur	01/09/2006	20/03/2013	GPS Chota (Ghazi)
18	162	Muhammad Ismail	Abdul Khai	GPS Chanjaila	15/10/2005	20/03/2013	GPS Chan
19	178	Muhammad Sadaqat	Muhammad Younis	GPS Kot Najibullah No.1	01/09/2006	20/03/2013	GPS Belki
20	214	Muhammad Anip	Sikandar Khan	GPS Bandi Syedan	20/10/2005	20/03/2013	GPS Bandi Syedan
21	219	Adeel Ahmed Siddiqui	Mushtaq Ahmed Siddiqui	GPS Ding Soka	06/03/1996	20/03/2013	GPS Phare
22	223	Abdul Khaliq	Gulab Khan	GPS Bees Ban	24/10/2005	20/03/2013	GPS Bees
23	246	Muhammad Pervaiz	Subir Ali	GPS LatifAbad	29/10/2005	20/03/2013	GPS Latifi
24	248	Khalid ur Rehman	Fazal u Rehman	GPS Drug	18/10/2005	20/03/2013	GPS Drug
25	249	Ajmal Khan	Abdul Hakeem	GPS Dab Dheri	17/10/2005	20/03/2013	GPS Lari
26	254	Said Ali	Gul Khan	GPS Marion Gali	20/10/2005	20/03/2013	GPS Shad Zareon
27	257	Abdul Raheem	Muhammad Gul Abbasi	GPS Sad Pur Jun	17/10/2005	20/03/2013	GPS Seidr
28	269	Muhammad Inved	Allah Baksh	GPS Kot Najibullah No-1	09/01/1987	22/11/2014	GPS Khoi No.2
29	278	Saeed ur Rehmani	Muhammad Akbar	GPS Gali No1	20/04/1995	22/11/2014	GPS Bajti
30	287	Aurang Zeb	M Nuzoor Khan	GPS Thallikot	20/12/1982	02/12/2014	GPS Thali
31	295	Najib ulah	Muhammad Inyat	GPS Kangra	28/04/1988	02/12/2014	GPS Khoi
32	296	Javed Akhtar	Abdul Sattar	GPS No. 2 Khanpur	12/04/1989	02/12/2014	GPS Phari
33	301	Ghulam Hussain Shah	Muhammad Anwar Shah	GPS Sarai Gadai	06/11/1982	04/08/2016	GPS Salat Khand
34	320	Israr Khan	Ghulam Khan	GPS Dalungi	31/01/1988	05/08/2016	GPS Dulu
35	335	Muhammad Saeed Akhtar	Qazi Muhammad Abid	GPS Rgh	01/06/1988	05/08/2016	GPS Roh
36	346	Raja Saeed Ahmad	Raja Kishrif Zaman	GPS Darra	01/09/1992	05/08/2016	GPS Khoi
37	357	Mudassar Yaqoob	Yaqoob Ellahi	GPS Kot Najibullah No.1	08/01/1987	05/08/2016	GPS Nall
38	367	Rafaqat Ali	Nazir Muhammad	GPS Maira Kharoo	18/04/2000	05/08/2016	GPS Mair

Attested

*[Signature]*  
 Arshad Khan  
 Advocate High Court  
 Office No 33 Adjacent to

135	Israr Ahmad	Muhammad Ajaib Khan	GPS Dault	09/01/2006	20/03/2013	GPS Jalec
154	Muhammad Saeed	Muhammad Ayub	GMPS Mojra Khatri	21/10/2005	20/03/2013	GPS Neela Bhoto
160	Bahar	Ghulam Suwar	GPS Dheri Sikandar Pur	01/09/2006	20/03/2013	GPS Choia (Ghazi)
162	Muhammad Ismail	Abdul Khai	GPS Chanjaila	15/10/2005	20/03/2013	GPS Chanj
178	Muhammad Saduqat	Muhammad Younis	GPS Kot Najibullah No.1	01/09/2006	20/03/2013	GPS Behla
214	Muhammad Amir	Sikandar Khan	GPS Bandi Sayedan	20/10/2005	20/03/2013	GPS Bandi Syedan
219	Adeel Ahmed Siddiqui	Mushtaq Ahmed Siddiqui	GPS Ding Soka	06/03/1996	20/03/2013	GPS Phare
223	Abdul Khaliq	Gulab Khan	GPS Bees Ban	24/10/2005	20/03/2013	GPS Bees
246	Muhammad Pervaiz	Subir Ali	GPS Latifabad	29/10/2005	20/03/2013	GPS Latif
248	Khalid ur Rehman	Fozal ur Rehman	GPS Brug	18/10/2005	20/03/2013	GPS Brug
249	Ajmal Khan	Abdul Hakeem	GPS Dab Dheri	17/10/2005	20/03/2013	GPS Larj
254	Said Ali	Gul Khan	GPS Marjan Gali	20/10/2005	20/03/2013	GPS Sheld Zareon
257	Abdul Raheem	Muhammad Gul Abbasi	GPS Sod Pur Jun	17/10/2005	20/03/2013	GPS Saidd
269	Muhammad Javed	Allah Baksh	GPS Kot Najibullah No.1	09/01/1987	22/11/2014	GPS Khoi No.2
278	Saeed ur Rehman	Muhammad Akbar	GPS Gali Ho1	20/04/1995	22/11/2014	GPS Bajti
287	Aurang Zeb	M Nuzeer Khan	GPS Thallikot	20/12/1982	02/12/2014	GPS Thali
295	Najib ullah	Muhammad Inyat	GPS Kangra	28/04/1988	02/12/2014	GPS Khoi
296	Javed Akhtar	Abdul Sattar	GPS No. 2 Khanpur	12/04/1989	02/12/2014	GPS Phaur
304	Ghulam Hussain Shah	Muhammad Anwar Shah	GPS Sarai Gadai	06/11/1982	04/08/2016	GPS Salut Khand
320	Israr Khan	Ghulam Khan	GPS Dalungi	31/01/1988	05/08/2016	GPS Dalu
335	Muhammad Saeed Akhtar	Qazi Muhammad Abid	GPS Roh	01/06/1988	05/08/2016	GPS Roh
346	Raja Saeed Ahmad	Raja Kishrif Zaman	GPS Darra	01/09/1992	05/08/2016	GPS Khoi
357	Mudassar Yaqoob	Yaqoob Ellahi	GPS Kot Najibullah No.1	08/01/1987	05/08/2016	GPS Mall
367	Rafaqat Ali	Nazir Muhammad	GPS Maira Kharoo	18/04/2000	05/08/2016	GPS Mair

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9

P-18

Attested  
 Muhammad Arshad Khan Tano.  
 Advocate High Court  
 House No. 23 Adjacent to  
 ...

DBA number

BC No.

Name of Advocate

محمد ارشد خان تنوئی

S.No 8982

45

SECRETARY

High Court

وکالت نامہ



بعد ازاں اس کے وکیل کے لئے ایک نوٹس جاری کیا گیا اور اس کے جواب میں اس کے وکیل نے ایک نوٹس پیش کیا جس میں اس نے اپنی درخواستوں کی تصدیق کی ہے۔

عنوان: محمد ارشد خان تنوئی

منجانب: Appellant

نوعیت مقدمہ: حکومت پاکستان

باعث تحریر آئٹم: ...

مقدمہ مندرجہ بالا عنوان میں اپنی طرف سے واسطے بیرونی وجوہات ہی برائے پیشی یا تفسیر مقدمہ مقام اپنی طرف سے کے لیے محمد ارشد خان تنوئی کے وکیل نے ایک نوٹس پیش کیا ہے کہ میں برپیشی پر خود یا بذریعہ مختار خاص رو برو عدالت حاضر ہوتا ہوں گا اور بروکٹ پکا کرے جانے مقدمہ وکیل صاحب موصوف کو اطلاع دے کر حاضر عدالت کروں گا۔ اگر پیشی پر مظہر حاضر نہ ہوا اور مقدمہ میری غیر حاضری کی وجہ سے کسی طور پر میرے خلاف ہو گیا تو صاحب موصوف اس کے کسی طور پر ذمہ دار نہ ہوں گے نیز وکیل صاحب موصوف صدر مقام کچہری کے علاوہ کسی جگہ یا کچہری کے اوقات سے پہلے یا پیچھے یا بروز تعطیل بیرونی کرنے کے ذمہ دار نہ ہوں گے اور مقدمہ کچہری کے علاوہ کسی اور جگہ سماعت ہونے پر یا بروز تعطیل یا کچہری کے اوقات کے آگے پیچھے پیش ہونے پر مظہر کو کوئی نقصان پہنچے تو اس کے ذمہ دار یا اس کے واسطے کسی معاوضہ کے ادا کرنے یا مختانہ کے واپس کرنے کے بھی صاحب موصوف ذمہ دار نہ ہوں گے۔ مجھ کو کل ساختہ پرداختہ صاحب موصوف مثل کردہ ذات منظور و مقبول ہوگا اور صاحب موصوف کو عرض دعویٰ یا جواب دعویٰ اور درخواست اجراءے ڈگری و نظر ثانی اپیل سرائی و ہر قسم درخواست پر دستخط و تصدیق کرنے کا بھی اختیار ہوگا اور کسی حکم یا ڈگری کرانے اور ہر قسم کاروبار وصول کرنے اور رسید دینے اور داخل کرنے اور ہر قسم کے بیان دینے اور اس پر ثالثی و راضی نامہ و فیصلہ برحلاف کرنے اقبال دعویٰ دینے کا بھی اختیار ہوگا اور بصورت جائزہ پیر نجات از کچہری صدر اپیل و برآمدگی مقدمہ یا منسوخی ڈگری یکطرفہ درخواست حکم استماعی یا قرقنی یا گرفتاری قبل از گرفتاری و اجراءے ڈگری بھی صاحب موصوف کو بشرط ادا ہونے کی علیحدہ مختانہ بیرونی کا اختیار ہوگا۔ اور بصورت ضرورت صاحب موصوف کو یہ بھی اختیار ہوگا کہ مقدمہ مذکور یا اس کے کسی جزو کی کاروائی کے یا بصورت اپیل کسی دوسرے وکیل کو اپنے بجائے یا اپنے ہمراہ مقرر کریں اور ایسے وکیل کو بھی ہر امر میں وہی اور ویسے اختیارات حاصل ہوں گے جیسے صاحب موصوف کو حاصل ہیں اور دوران مقدمہ جو کچھ ہر جانہ التوا پڑے گا وہ صاحب موصوف کا حق ہوگا۔ اگر وکیل صاحب موصوف کو پوری نہیں تارخ پیشی سے پہلے ادا نہ کروں گا تو صاحب موصوف کو پورا اختیار ہوگا کہ وہ مقدمہ کی بیرونی نہ کریں اور ایسی صورت میں میرا کوئی مطالبہ کسی قسم کا صاحب موصوف کے برخلاف نہیں ہوگا۔

لہذا وکالت نامہ لکھ دیا ہے کہ سندر ہے۔

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

مورخہ 6/4/2019

دن ما سال

Accepted

*(Signature)*

Muhammed Arshed Khan Tan  
Advocate High Court  
Office No. 33 Adjacent to  
Court, Per Abbotabad

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL CAMP COURT  
ABBOTTABAD

Service Appeal No. 1137/2019

Mr. Naseem Haider SPST, GPS Trimkan, District Haripur.....

(Appellant)

VERSUS

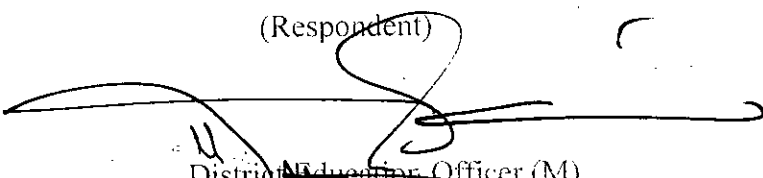
Secretary E&SE Department, Khyber Paktunkhwa & Others.....

(Respondents)

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1	Accompanying Para wise Comments & Affidavit.	01-03	
2	Affidavit.	04	

(Respondent)

  
District Education Officer (M)  
Haripur

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR,  
CAMP COURT ABBOTTABAD

Service Appeal No.1137/2019

Title: Mr. Naseem haider, SPST, District Haripur..... (Appellant)

VERSUS

Govt: of Khyber Pakhtunkhwa through Secretary Education & Others (Respondents)

Joint Para wise comments for and on behalf of respondents:

Respectfully Sheweth:

The respondents respectfully submit as under:

Preliminary Objection:-

1. That the appellant has got no cause of action/Locus Standi to file the instant appeal.
2. That the instant appeal is badly time barred.
3. That the appellant has concealed the material facts from this honorable Tribunal hence liable to be dismissed.
4. That the appellant has not come to this Honorable Tribunal with clean hands.
5. That the present appeal is liable to be dismissed for non-joinder /mis-joinder of necessary parties.
6. That the appellant has filed the instant appeal on malafide motives.
7. That the instant appeal is against the prevailing law/rules.
8. That the appellant is estopped by his own conduct to file the present appeal.
9. That the present appeal is not maintainable in the present form and also in present circumstances of the issue.
10. That the appeal of the appellant is not maintainable under the law.
11. That as the impugned order has been passed by proper government authority, therefore under Section 56 (d) of specific relief Act such orders cannot be stayed.
12. That under Section 10 of Civil Servant Act 1973, every civil servant shall be liable to serve anywhere within or outside the province, on any post.

13. That the impugned order has already been complied with by the appellant, hence the appeal in hand is liable to be dismissed.

COMMENTS ON FACTS.

1. Para-1 pertains to service history of the appellant, hence needs no comments.
2. Incorrect, the appellant was transferred being senior, due to single teacher issue at GPS Trimkan on need basis, as the post of PSHT was lying vacant due to retirement of PSHT, just to save the precious time of the students as the new academic session has been started, and new admissions were in progress. Furthermore that under Section 10 of Civil Servant Act 1973; every civil servant shall be liable to serve anywhere within or outside the province, on any post.
3. That the impugned order has been passed by proper government authority keeping the need of the students just to save the precious time of their careers and to regulate the schooling system in the whole District. It is further added that the departmental appeal of the appellant could not be justified as the impugned order was passed in the interest of public service, inter alia on the following and some other grounds.


GROUNDS:-

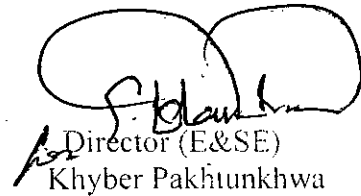
- a) That the instant Para does not relate to the circumstances of the case in hand, however the impugned transfer order dated 20-04-2019 was passed in the larger interest of public as the new academic session/ admission process was suffering due to non-availability of senior in the said school. Hence the appellant was transferred in exigency of services in accordance with Section-10 of Civil servant Act 1973.
- b) Incorrect & misleading on the grounds that the appellant was transferred in the best interest of public under the provision of the civil servant Act 1973 whereby "Every civil servant shall be liable to serve anywhere within or outside the province, on any post, keeping in view the need of the students/ school he was transferred to GPS Trimkan, in the adjacent union Council.
- c) Para "c" of the grounds is incorrect as composed; the brother of appellant was transferred on his poor performance however his representation was considered and the impugned transfer order of his brother was later on withdrawn and he was adjusted at GPS Tarnawa, Khanpur on his own request, while the appellant was transferred on need basis as explained in preceding Para above.
- d) Incorrect, the impugned order has been passed by proper government authority keeping in view the need of the


- students just to save the precious time of their careers and to regulate the schooling system in the whole District.
- e) Incorrect & denied, the answering respondent discharged legal and moral duty and performed functions as a trustee with complete transparency as per requirement and need of the students.
- f) Incorrect, the case of the appellant is not a fit case in the circumstances, as he was transferred on need base in the interest of public service which is liable to be maintained.
- g) Incorrect, misconceived and baseless, the detail reply is already given in the above Paras.
- h) Incorrect, the appellant is not entitled to the relief seeking through this appeal, hence is liable to be dismissed with further submissions that the impugned order has already been complied with in letter and spirit by the teacher/appellant.

**PRAYER:**

It is therefore humbly prayed that on acceptance of foregoing Comments/reply, the instant service appeal may very graciously be dismissed and the order dated 20-04-2019 may very kindly be maintained in the interest of public service, please.

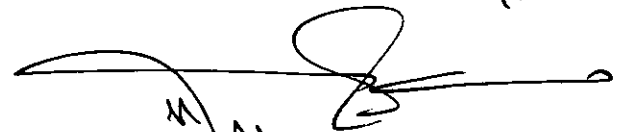
  
Secretary (E&SE) Khyber Pakhtunkhwa  
Peshawar.  
(Respondent No. 1)

  
Director (E&SE)  
Khyber Pakhtunkhwa  
Peshawar.  
(Respondent No. 2)

  
District Education Officer (M)  
Haripur  
(Respondent No. 3)

**VERIFICATION:**

*Certified that contents of forgoing comments are correct and true according To the best of my knowledge and belief and nothing has been suppressed from this Honorable Tribunal.*

  
District Education Officer (M)  
Haripur

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL CAMP COURT  
ABBOTTABAD

Service Appeal No. 1137/2019  
(Appellant)

Mr. Naseem Haider SPST, GPS Trimkan, District Haripur.....

**VERSUS**

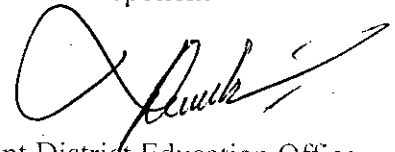
Secretary E&SE Département, Khyber Paktunkhwa & Others.....

(Respondents)

AFFIDAVIT

I Mr. Said Badshah Assistant District Officer (Litigation) Haripur do hereby solemnly affirmed and declare that the contents of accompanying Para wise comments on behalf of the respondents are true and correct to the best of my knowledge and belief and nothing has been suppressed/concealed from this Honorable High Court.

Deponent



Assistant District Education Officer  
(Litigation) Haripur