

18.12.2020

Mr. Fazal Shah Mohmand, Advocate, for appellant is present.

2. By way of the instant service appeal, the actions of respondents for keeping back the conveyance allowance, its deduction from the monthly pay of the appellant during the prevalence of summer and winter vacations, has been challenged, hitherto assailed through departmental appeal but to no avail thus a prayer was made directing the respondents not to make any deductions regarding the conveyance allowance during the vacations period and making payment of all outstanding amount/back benefits of the referred to allowance.

3. Learned counsel for the appellant placed reliance on the judgment of the Hon'ble Peshawar High Court, Peshawar, dated 1st of October, 2019, whereby it has been held that the pay of civil servant per mensem includes special pay, personal pay and other emoluments declared by the authority to be paid and that conveyance allowance is the integral part of pay. He submitted that in a judgment of Sindh Services Tribunal Karachi dated 23.12.2015 it has been held that vacations counts as duty and the civil servant in vacations departments are allowed to receive conveyance allowance during summer and winter vacations which are holidays and not leave of any kind.

4. Since it has been held consistently in categorical terms that conveyance allowance allowed to civil servants of vacation departments, is part and parcel of their pay, therefore, it cannot be separated from other emoluments to which they are held entitled, therefore, its deduction and consequent holding back during the sessions of summer and winter vacations is violation of law and rules in vogue, reliance is placed on judgment of this Tribunal vide Appeal No. 1452/2019 Captioned Maqсад Hayat Versus Government of Khyber Pakhtunkhwa decided on 11.11.2019, therefore, respondents are directed not to deduct conveyance allowance from the pay of appellant during the course of summer and winter vacations, respondents are also directed to give effect to the findings made above in its letter and spirit and in case of non-compliance the legal course of action is open to appellant. File be consigned to the record room.

ANNOUNCED

18.12.2020


(MUHAMMAD JAMAL KHAN)
MEMBER (JUDICIAL)

Form- A

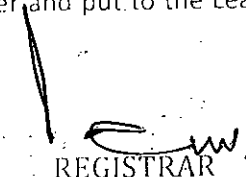
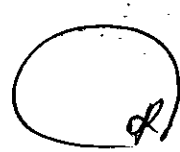
FORM OF ORDER SHEET

Court of _____

Case No. -

4643

/2020

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	20/11/2020	<p>The appeal presented today by Mr. Fazal Shah Mohmand Advocate may be entered in the Institution Register and put to the Learned Member for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p> <p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>18/12/2020</u></p> <p style="text-align: right;"> MEMBER(J)</p>
2-		

BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR

Service Appeal No _____/2020

Mst. Nusrat Banu.....Appellant

V E R S U S

Govt. and Others.....Respondents

I N D E X

S. No	Description of Documents	Annexure	Pages
1.	Service Appeal		1-2
2.	Copy of Pay Slips	A	3-4
3.	Copy of departmental appeal	B	5
4.	Copies of Judgments	C	6-9
5.	Wakalat Nama		10

Dated:- 18-11-2020


Appellant

Through


Fazal Shah Mohmand
Advocate Supreme Court

OFFICE:- Cantonment Plaza Flat 3/B Khyber Bazar Peshawar Cell#
0301 8804841

Email:- fazalshahmohmand@gmail.com

Note:

Spare copies will be provided after the admission of Service Appeal.


Advocate

1

BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR

Service Appeal No. 14643 2020

Mst. Nusrat Banu, Lecturer (Pak. Studies) (BPs-17) Govt. Girls Degree College Chitral Upper **Appellant**

Govt. of Khyber Pakhtunkhwa
Service Tribunal
No. 15148
Date: 20/11/2020

V E R S U S

1. Govt. of KPK through Secretary Higher Education, Archives and Libraries Department Peshawar.
2. Director Higher Education, Govt. of Khyber Pakhtunkhwa Peshawar.
3. Govt. of Khyber Pakhtunkhwa through Secretary Finance Department, Peshawar.
4. Accountant General, Khyber Pakhtunkhwa Peshawar.

..... **Respondents**

APPEAL U/S 4 OF THE KPK SERVICE TRIBUNAL ACT 1974 AGAINST THE IMPUGNED ACTION OF RESPONDENTS OF ILLEGALLY DEDUCTING CONVEYANCE ALLOWANCE FROM THE APPELLANT DURING SUMMAR AND WINTER VACATIONS AND PAYMENT OF DEDUCTED AMOUNT MADE TO THE APPELLANT MADE FROM HER IN THIS RESPECT, FOR WHICH DEPARTMENTAL APPEAL OF THE APPELLANT HAS NOT BEEN RESPONDED SO FAR DESPITE THE LAPSE OF THE STATUTORY PERIOD OF NINETY DAYS.

PRAYER:-

On acceptance of this appeal the respondents may kindly be directed not to deduct from the appellant the Conveyance allowance during the summer and winter vacations and pay the appellant the illegally deducted amount in this respect.

Respectfully Submitted:-

1. That the appellant is serving as Lecturer (Pak. Studies) (BPs-17) Govt. Girls Degree College Chitral Upper in the respondent department and since then she performed her duties with honesty and full devotion with spotless service career.
2. That the department in which the appellant is serving is vacation department and the conveyance allowance is deducted from the appellant during summer and winter vacations in violation of **Rule 82 (b)** of the Fundamental Rules 1922, according to which **vacation counts as duty. (Copy of Pay Slip is enclosed as Annexure A).**
3. That the appellant approached respondents for directing respondents not to deduct and pay her the conveyance allowance

Filed to-day
Registrar
20/11/20

2

during summer and winter vacations with further directions to the respondents to pay the appellant the already illegally deducted amount in this regard, vide departmental appeal which has not been responded so far despite the lapse of the statutory period of ninety days. **(Copy of departmental appeal is enclosed as Annexure B).**

4. That this action of the respondents of not paying the appellant the conveyance allowance during the summer and winter vacations and not paying the appellant the illegally deducted amount in this respect, is against the law, facts and principles of justice on grounds inter alia as follows:-

GROUND S:-

- A. That the omissions and commissions of the respondents are illegal and void ab-initio.
- B. That **Rule 82 (b)** of the Fundamental Rules 1922, is very much clear on the point, according to which **vacation counts as duty**, hence deduction of conveyance allowance during the Summer and Winter vacations is illegal and against the **Rule 82 (b)** of the Fundamental Rules 1922.
- C. That even this issue was agitated before the Sindh Service Tribunal, Federal Service Tribunal and even before this honorable Tribunal which appeals were accepted and even that judgments have been implemented. **(Copy of Judgment is enclosed as Annexure C).**
- D. That the illegal deduction of the conveyance allowances during vacations cause monetary loss to the appellant and she is subjected to monetary loss illegally.

It is therefore prayed that appeal of the appellant may kindly be accepted as prayed for in the heading of the appeal.

Dated:- 18-11-2020


Appellant
(Mst. Nusrat Banu)

Through


Fazal Shah Mohmand
Advocate Supreme Court

(5) "B"

**BEFORE THE SECRETARY HIGHER EDUCATION,
ARCHIVES AND LIBRARIES DEPARTMENT, KPK
PESHAWAR**

Government of Khyber Pakhtunkhwa
District Accounts Office Chitral
Monthly Salary Statement (July-2020)

(3)

"A"



Personal Information of Mr NUSRAT BANO d/w/s of HABIB ULLAH

Personnel Number: 00751882 CNIC: 1520117035346 NTN:
Date of Birth: 07.07.1985 Entry into Govt. Service: 16.03.2015 Length of Service: 05 Years 04 Months 017 Days

Employment Category: Active Temporary

Designation: ASSISTANT PROFESSOR 80001205-GOVERNMENT OF KHYBER PAKH

DDO Code: CL4264-

Payroll Section: 001

GPF Section: 001

Cash Center:

GPF A/C No:

Interest Applied: Yes

GPF Balance:

221,661.00

Vendor Number: -

Pay and Allowances:

Pay scale: BPS For - 2017

Pay Scale Type: Civil BPS: 17

Pay Stage: 1

Wage type		Amount	Wage type		Amount
0001	Basic Pay	32,670.00	1000	House Rent Allowance	4,433.00
1916	UAA-CHITRAL 50%(17-22)	4,500.00	1974	Medical Allowance 2011	1,846.00
2211	Adhoc Relief All 2016 10%	2,544.00	2224	Adhoc Relief All 2017 10%	3,267.00
2247	Adhoc Relief All 2018 10%	3,267.00	2265	Adhoc Relief All 2019 05%	1,633.00

Deductions - General

Wage type		Amount	Wage type		Amount
3017	GPF Subscription	-4,270.00	3501	Benevolent Fund	-800.00
3609	Income Tax	-157.00	3990	Emp.Edu. Fund KPK	-250.00
4004	R. Benefits & Death Comp:	-900.00			0.00

Deductions - Loans and Advances

Loan	Description	Principal amount	Deduction	Balance

Deductions - Income Tax

Payable: 2,496.23 Recovered till July-2020: 157.00 Exempted: 623.01 Recoverable: 1,716.22

Gross Pay (Rs.): 54,160.00 Deductions: (Rs.): -6,377.00 Net Pay: (Rs.): 47,783.00

Payee Name: NUSRAT BANO

Account Number: 071000258891001

Bank Details: MCB ISLAMIC BANK LIMITED, 760070 ATALIQ BAZAR BYPASS RD BUS ADDA CHITRAL ATALIQ BAZAR BYPASS RD BUS ADD, CHITRAL

Leaves: Opening Balance: Aailed: Earned: Balance:

Permanent Address:

City: 17200

Domicile: NW - Khyber Pakhtunkhwa

Housing Status: No Official

Temp. Address:

City:

Email:

ATTESTED
To Be True Copy

Government of Khyber Pakhtunkhwa
District Accounts Office Chitral
Monthly Salary Statement (August-2020)



Personal Information of Mr NUSRAT BANO d/w/s of HABIB ULLAH

Personnel Number: 00751882

CNIC: 4520117035346

NTN:

Date of Birth: 07.07.1985

Entry into Govt. Service: 16.03.2015

Length of Service: 05 Years 05 Months 017 Days

Employment Category: Active Temporary

Designation: ASSISTANT PROFESSOR

80001205-GOVERNMENT OF KHYBER PAKH

DDO Code: CL4264-

Payroll Section: 001

GPF Section: 001

Cash Center:

GPF A/C No:

Interest Applied: Yes

GPF Balance:

225,931.00

Vendor Number: -

Pay and Allowances:

Pay scale: BPS For - 2017

Pay Scale Type: Civil BPS: 17

Pay Stage: 1

Wage type		Amount	Wage type		Amount
0001	Basic Pay	32,670.00	1000	House Rent Allowance	4,433.00
1210	Convey Allowance 2005	5,000.00	1916	UAA-CHITRAL 50%(17-22)	4,500.00
1974	Medical Allowance 2011	1,846.00	2211	Adhoc Relief All 2016 10%	2,544.00
2224	Adhoc Relief All 2017 10%	3,267.00	2247	Adhoc Relief All 2018 10%	3,267.00
2265	Adhoc Relief All 2019 05%	1,633.00			0.00

Deductions - General

Wage type		Amount	Wage type		Amount
3017	GPF Subscription	-4,270.00	3501	Benevolent Fund	-800.00
3609	Income Tax	-344.00	3990	Emp.Edu. Fund KPK	-250.00
4004	R. Benefits & Death Comp:	-900.00			0.00

Deductions - Loans and Advances

Loan	Description	Principal amount	Deduction	Balance
------	-------------	------------------	-----------	---------

Deductions - Income Tax

Payable: 5,246.20 Recovered till August-2020: 501.00 Exempted: 1310.90 Recoverable: 3,434.30

Gross Pay (Rs.): 59,160.00 Deductions: (Rs.): -6,564.00 Net Pay: (Rs.): 52,596.00

Payee Name: NUSRAT BANO

Account Number: 071000258891001

Bank Details: MCB ISLAMIC BANK LIMITED, 760070 ATALIQ BAZAR BYPASS RD BUS ADDA CHITRAL ATALIQ BAZAR BYPASS RD BUS ADD, CHITRAL

Leaves: Opening Balance: Aailed: Earned: Balance:

Permanent Address:

City: 17200

Domicile: NW - Khyber Pakhtunkhwa

Housing Status: No Official

Temp. Address:

City:

Email:

ATTESTED
To Be True Copy

5

"B"

**BEFORE THE SECRETARY HIGHER EDUCATION,
ARCHIVES AND LIBRARIES DEPARTMENT, KPK
PESHAWAR**

**Subject:- Departmental Appeal for the payment
of Conveyance Allowance during Summer and
Winter vacations and declaring the deduction of
the same as illegal and unlawful**

Respectfully Submitted:-

1. That the appellant is serving as Lecturer (Pak. Studies) (BPs-17) Govt. Girls Degree College, Chitral Upper and the department in which she is serving is vacation department wherein the conveyance allowance cannot be deducted as per law and rules. Even the deduction of conveyance has been declared illegal by the Service Tribunal in many appeals. The deduction of conveyance allowance as such during summer and winter vacations is illegal and the appellant is entitled to be paid the deducted amount in this respect.

It is therefore prayed that on acceptance of this appeal, Conveyance Allowance during summer and winter vacations may not be deducted from the appellant and pay back the appellant the deducted amount in this respect.

Dated:-27-07-2020



Mst. Nusrat Banu

Lecturer (Pak. Studies) (BPs-17)
Govt. Girls Degree College Chitral
Upper.

ATTESTED
To Be True Copy



**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR**

APPEAL NO. 1452 /2019

Diary No. 1500

Mr. Maqсад Hayat, SCT (BPS-16),
GHS Masho Gagar, Peshawar.....

Dated 24/10/2019
APPELLANT

VERSUS

- 1- The Government of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
- 2- The Secretary (E&SE) Department, Khyber Pakhtunkhwa, Peshawar.
- 3- The Secretary Finance Department, Khyber Pakhtunkhwa, Peshawar.
- 4- The Accountant General, Khyber Pakhtunkhwa, Peshawar.
- 5- The Director (E&SE) Department, Khyber Pakhtunkhwa, Peshawar.

.....RESPONDENTS

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ACTION OF THE RESPONDENTS BY ILLEGALLY AND UNLAWFULLY DEDUCTING THE CONVEYANCE ALLOWANCE OF THE APPELLANT DURING WINTER & SUMMER VACATIONS AND AGAINST NO ACTION TAKEN ON THE DEPARTMENTAL APPEAL OF APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS.

PRAYER:

That on acceptance of this appeal the respondents may kindly be directed not to make deduction of conveyance allowance during vacations period (Summer & Winter Vacations) and make the payment of all outstanding amount of Conveyance allowance which have been deducted previously with all back benefits. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

Filed to-day
Registrar
24/10/19

R/SHEWETH:

ON FACTS:

- 1- That the appellant is serving in the elementary and secondary education department as Certified Teacher (BPS-15) quite efficiency and up to the entire satisfaction of the superiors.
- 2- That the Conveyance Allowance is admissible to all the civil servants and to this effect a Notification No. FD (PRC) 1-1/2011 dated 14.07.2011 was issued. That later on vide revised Notification dated 20.12.2012 whereby the conveyance allowance for employees

ATTESTED
To Be True Cop

Received to-day
Registrar

Appeal No. 1452/2019
Marbad Hayat vs Govt



11.11.2019

Counsel for the appellant present.

Learned counsel referred to the judgment passed by learned Federal Service Tribunal in Appeal No. 1888(R)CS/2016 which was handed down on 03.12.2018. Through the said judgment the issue of payment of Conveyance Allowance to a civil servant during summer and winter vacations was held to be within his entitlement and the deduction already made from him was to be reimbursed. Similar reference was made to the judgment by Honourable Peshawar High Court passed on 01.10.2019 in the case of appellant.

Learned counsel, when confronted with the proposition that the issue, in essence, was dilated upon by the Federal Service Tribunal and, more particularly, by the Honourable Peshawar High Court in the case of appellant, stated that in case the respondents are required to execute the judgment of Peshawar High Court, the appellant will have no cavil about disposal of instant appeal.

The record suggests that while handing down judgment in the Writ Petition preferred by the appellant, the Honourable High Court not only expounded the definition of "Pay" as well as "Salary" but also entitlement of a civil servant for the Conveyance Allowance during the period of vacations. It is important to note that the respondents were represented before the High Court during the proceedings.

In view of the above noted facts and circumstances and in order to protect the appellant from a fresh round of litigation which may protract over a formidable period, the appeal in hand is disposed of with observation that the judgment of Honourable Peshawar High Court passed in Writ Petitions including W.P No. 3162-P/2019 shall be honoured and implemented by the respondents within shortest possible time. The appellant shall, however, be at liberty to seek remedy in accordance with law in case his grievance is not redressed by the respondents within a reasonable time.

File be consigned to the record.

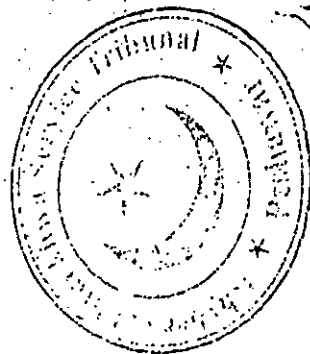
Date of Presentation of Appeal 11-2-2019
Chairman

ANNOUNCED	Number of Words	<u>800</u>
	Copying Fee	<u>10</u>
11.11.2019	Urgent	<u>4</u>
	Total	<u>14</u>
	Manuscript	<u>1</u>

ATTESTED

CHIEF CLERK
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

ATTESTED
To Be True Copy



BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR

Service Appeal No 3823/2020

Shad Ali, Primary School Teacher, Govt. Primary School Ahmad Gul Banda District Mardan.....**Appellant**

Khyber Pakhtunkhwa Service Tribunal

V E R S U S

Diary No. 2702

Dated 24/04/20

1. Director Elementary and Secondary Education, KPK Peshawar.
2. District Education Officer (Male) Mardan.
3. Secretary, Elementary and Secondary Education, KPK Peshawar.
4. Govt. of Khyber Pakhtunkhwa through Secretary Finance Department, Peshawar.
5. Accountant General, Khyber Pakhtunkhwa Peshawar.

.....**Respondents**

Filed to day

Registrar
24/4/20

APPEAL U/S 4 OF THE KPK SERVICE TRIBUNAL ACT 1974 AGAINST THE IMPUGNED ACTION OF RESPONDENTS OF ILLEGALLY DEDUCTING CONVEYANCE ALLOWANCE FROM THE APPELLANT DURING SUMMAR AND WINTER VACATIONS AND PAYMENT OF DEDUCTED AMOUNT MADE TO THE APPELLANT MADE FROM HIM IN THIS RESPECT, FOR WHICH DEPARTMENTAL APPEAL OF THE APPELLANT HAS NOT BEEN RESPONDED SO FAR DESPITE THE LAPSE OF THE STATUTORY PERIOD OF NINETY DAYS.

PRAYER:-

Resubmitted to day
Registrar
27/4/20

On acceptance of this appeal the respondents may kindly be directed not to deduct from the appellant the Conveyance allowance during the summer and winter vacations and pay the appellant the illegally deducted amount in this respect.

Respectfully Submitted:-

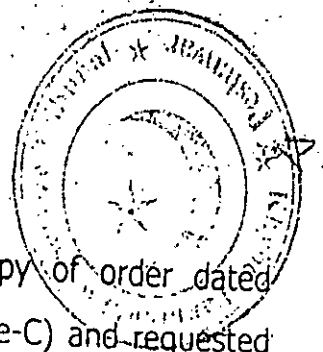
ATTESTED
To Be True Copy

1. That the appellant is serving in the respondent department and since then he performed his duties with honesty and full devotion with spotless service career.

ATTESTED

EXAMINER
Khyber Pakhtunkhwa Service Tribunal

That the department in which the appellant is serving is vacation department and the conveyance allowance is deducted from the appellant during summer and Winter vacations in violation of Rule 82 (b) of the Fundamental Rules 1922, according to which vacation counts as duty. (Copy of Pay Slip is enclosed as



Counsel for the appellant present.

1. At the outset learned counsel referred to copy of order dated 11.11.2019 passed in Appeal No. 1452/2019 (annexure-C) and requested for disposal of instant appeal also in terms of the order.
2. It shall be useful for the purpose to reproduce hereunder the contents of referred order dated 11.11.2019:-

"Learned counsel referred to the judgment passed by learned Federal Service Tribunal in Appeal No. 1888(R)CS/2016 which was handed down on 03.12.2018. Through the said judgment the issue of payment of Conveyance Allowance to a civil servant during summer and winter vacations was held to be within his entitlement and the deduction already made from him was to be reimbursed. Similar reference was made to the judgment by Honourable Peshawar High Court passed on 01.10.2019 in the case of appellant.

Learned counsel, when confronted with the proposition that the issue, in essence, was dilated upon by the Federal Service Tribunal and, more particularly, by the Honourable Peshawar High Court in the case of appellant, stated that in case the respondents are required to execute the judgment of Peshawar High Court, the appellant will have no cavil about disposal of instant appeal.

The record suggests that while handing down judgment in the Writ Petition preferred by the appellant, the Honourable High Court not only expounded the definition of "Pay" as well as "Salary" but also entitlement of a civil servant for the Conveyance Allowance during the period of vacations. It is important to note that the respondents were represented before the High Court during the proceedings.

In view of the above noted facts and circumstances and in order to protect the appellant from a fresh round of litigation which may protract over a formidable period, the appeal in hand is disposed of with observation that the judgment of Honourable Peshawar High Court passed in Writ Petitions including W.P. No. 3162-P/2019 shall be honoured and implemented by the respondents within shortest possible time. The appellant shall, however, be at liberty to seek remedy in accordance with law in case his grievance is not redressed by the respondents within a reasonable time.

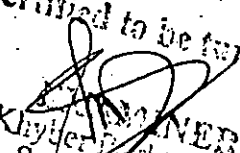
File be consigned to the record."

3. Having identical features instant appeal is disposed of accordingly. ✓

File be consigned to the record.

Chairman 

ANNOUNCED

Certified to be true copy

 Keyed
 ANNOUNCED

ATTESTED
 To Be True Copy

10

VAKALATNAMA

BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR

Service Appeal No. _____/2020

Mst. Nusrat BanuAppellant

VERSUS

Govt. and others Respondents

I/We, the undersigned, do hereby appoint and constitute **Fazal Shah Mohmand** Advocate Supreme Court & **Rabia Muzaffar** Advocate Peshawar. To act, appear and plead in the above-mentioned matter and to withdraw or compromise the said matter or submit to arbitration any differences or dispute that shall arise touching or in any manner relating to the said matter and to receive money and grant receipts therefore and to do all other acts and things which may be necessary to be done for the progress and the course of the prosecution of the said matter.

1. To draft and sign files at necessary pleadings, applications, objections, affidavits or other documents as shall be deemed necessary and advisable for the prosecution of the said matter at all its stages.
2. To employ any other Legal Practitioner, authorizing him to exercise the power as conferred on the undersigned Advocate, wherever he may think fit to do so.

AND I/We hereby agree to ratify whatever the Advocate or his substitute shall do in the above matter. I/We also hereby agree not to hold the Advocate or his substitute responsible for the result of the said matter in consequence of his absence from the Court when the said matter is called up for hearing. I/We further hereby agree that in the event for the whole or any part of the fee to be paid to the Advocate remaining unpaid, he shall be entitled to withdraw from the above matter. Received by me on 18-11-2020

ACCEPTED BY:



FAZAL SHAH MOHMAND
Advocate,
Supreme Court of Pakistan.


CLIENT(S)

&

ACCEPTED BY:



RABIA MUZAFFAR
Advocate Peshawar.

ZIA UD DIN
Advocate Peshawar.

OFFICE:-Cantonment Plaza Flat 3/B Khyber Bazar Peshawar Cell# 0301 8804841.
(Clerk) Cell# 03339214136
Email: - fazalshahmohmand@gmail.com.