03.10.2018

Appellant Khan Bahadar in person present. Mr. Shah Alam, TSHT alongwith Mr. Usman Ghani District Attorney for the respondents present. Appellant requested for adjournment. Granted. To come up for arguments before the D.B on 05.12.2018 before the D.B at camp court, Swat.

Member

Chairman Camp Court Swat

05.12.2018

Appellant absent. Mr. Usman Ghani learned District Attorney alongwith Mr. Aziz Ullah PST present. Case called but none appeared on behalf of appellant. Adjourn. To come up for arguments on tomorrow i.e. on 06.12.2018 before D.B at camp court Swat.

Member

Member Camp Court, Swat

06.12.2018

Appellant absent. Learned counsel for the appellant absent. Mr. Usman Ghani learned District Attorney for the respondents present. Case called for several times but no one appeared on behalf of the appellant. Consequently the present service appeal is dismissed in default. No order as to costs. File be consigned to the record room.

Member

Member
Camp Court Swat

ANNOUNCED 06.12.2018

04.06.2018

Neither the appellant nor his counsel is present. Mr. Usman Ghani, District Attorney for respondents present. Written reply could not be submitted as learned District Attorney informed this Tribunal that none of the respondents has approached him. As such fresh notice be issued to the respondents. To come up for written reply on 02.07.2018 before S.B at camp court, Swat.

Chairman Camp Court, Swat

02.07.2018

Neither appellant nor his counsel present. Mr. Azizullah, PST on behalf of the respondents alongwith Mr. Ghani, District Attorney present. Written reply submitted. To come up for arguments on 03.09.2018 before the D.B at camp court, Swat.

Chairman Camp court, Swat

03.09.2018

None for the appellant present. Mr. Aziz Ullah, PST alongwith Mr. Usman Ghani, District Attorney for respondents present. Arguments could not be heard due to incomplete bench. Case to come up for arguments on 03 10.2018 before D.B at camp court Swat.

(AHMAD HASSAN)
MEMBER
Camp Court Swat

06.04.2018

Counsel for the appellant present. Preliminary arguments heard. The appellant was serving as Naib Qasid in the Education Department since 1988. He was involved in murder of his wife on 22.08.2006. Later on, he was sentenced by the court of law on 28.7.2007. The punishment was then reduced by the appellate court on 28.4.2009. He was however, released from the jail in March, 2014 after serving his punishment. When he was in the jail he was removed from service on 15.03.2010 during his absence. After the release, the appellant filed writ petition before the Worthy Peshawar High Court, which was withdrawn on 25.10.2016 with the request to file departmental appeal/representation. It is not known that whether the appellant filed departmental appeal before the decision of the writ petition or after that. However, a letter dated 12.10.2017 in between the departmental officers shows that there was some departmental appeal. Finally, the appellant filed the present appeal on 26.12.2016. The present appeal appears to be time barred, however, the learned counsel for the appellant brought to the notice of this Tribunal that an application for condonation of delay has been filed alongwith the memorandum of appeal.

is admitted to regular hearing subject to the determination of the issue of condonation etc. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents. To come up for written reply/comments on 07.05.2018 before the S.B at camp court,

The points raised need consideration. The present appeal

Appellant Deposited
Security Process Fee

Camp court Swat.

09.05.2018

Swat.

Due to retirement of the Worthy Chairman, the Tribunal become non-functional. To come up for the same on 04.06.2018 before the S.B at camp court, Swat.

O5.01.2018 Appellant in person present and seeks adjournment as his counsel is not available. Adjourned. To come up for preliminary hearing on 02.02.2018 before S.B at camcourt Swat.

(Muhammad Hamid Mughal)

Member
Camp Court, Swat

02.02.2018

Mr. Rashid Ali Khan, Advocate present and submitted fresh wakalat nama on behalf of appellant and requested for adjournment. Adjourned. To come up for preliminary hearing on 09.03.2018 before S.B at Camp Court, Swat.

(Gul Zet Khan) Member Camp Court, Swat

09.03.2018

Appellant present in person. Counsel for the appellant is not in attendance. Seeks adjournment. To come up for preliminary hearing on 06.04.2018 before S.B at camp court, Swat.

Chairman Comp Court, Swat 08.06.2017

Since the tour programme for the month of June, 2017 to camp court Swat has been cancelled by the Worthy Chairman, therefore, to come up for the same on 2018.2017 at camp court, Swat. Notices be issued to the appellant and his counsel for the date fixed accordingly.

Registrar

10.08.2017

- None present for the appellant. Notices be issued to appellant and his counsel. To come up for preliminary hearing on 06.10.2017 before S.B at camp court, Swat.

Camp court, Swat.

06.10.2017

Counsel for the appellant present. He seeks adjournment. Granted. To come up for preliminary hearing on 08.12.2017 before S.B at camp court, Swat.

Chairman Camp Court, Swat.

08.12.2017

Appellant in person present. He seeks adjournment as counsel for the appellant is not in attendance. To come up for preliminary hearing on 05.01.2018 before S.B at camp court, Swat.

Camp court, Swat

09.02.2017

Counsel for the appellant present. Seeks adjournment. To come up for preliminary hearing on 09.03.2017 before S.B at camp court, Swat,

Chairman Camp Court, Swat,

09.03.2017

Clerk of counsel for the appellant present and requested for adjournment. Adjourned for preliminary hearing to 06.04.2017 before S.B at camp court, Swat.

Chorman Camp Court, Swat

06.04.2017

Appellant in person present and requested for adjournment on the ground that his counsel is not available today. Adjourned. To come up for preliminary hearing on 04.05.2017 before S.B at Camp Court Swat.

(MUHAMMAD AMIN KHAN KUNDI)

MEMBER

Camp Court Swat

04.05.2017

Appellant in person present and requested for adjournment as his counsel is not available. Adjourned for preliminary hearing for 08.06.2017 before S.B at Camp Court Swat.

(MUHAMMAD AMIN KHAN KUNDI) MEMBER

Camp Court Swat

# Form- A

# FORM OF ORDER SHEET

. Court of	Lati	<u>i</u>	
Case No.		1257/ <b>2016</b>	

	Case No	
S.No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	26/12/2016	The appeal of Mr. Khan Bahadar presented today by Mr. Syed Abdul Haq Advocate may be entered in the Institution
2-	27-12-2016	Register and put up to the Worthy Chairman for proper order please:  REGISTRAR  This case is entrusted to Touring S. Bench at Swat for preliminary hearing to be put up there on Of Olyon CHAIRMAN
	05.01.2017	None present for appellant. Notices be issued to appellant and his counsel. To come up for preliminary hearing on 09.02.2017 before S.B at camp court, Swat.  Charman Camp court Swat.
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# PAKHTUNKHWA AT PESHAWAR

	Section 19	
Appeal No	). <u>125 7 / 2</u> 01	б

Khan Bahadar ...... Appellant VERSUS
District Education Officer and others......Respondents

# INDEX

S.No	Description of Documents	Annex	Pages
1.	Service Appeal		1-7
2.	Application for condonation of delay with affidavit		8-9
3.	Copy of appointment order dated 15.03.2010 along with revenue record	A	10-15
4.	Copy of Departmental Appeal	, В ,	16
5.	Copy of Writ Petition	С	17-20
6.	Copy of Comments	D	21
7.	Copy of Order dated 25.10.2016	E	22-23
8.	Wakalat Nama		24

Appellant

Through

SYED ABDUL HAQ

Advocate, Mingora Bench / Darul Qaza

# BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA AT PESHAWAR

Appeal No 125 7 of 2016

Khan Bahadar S/o Habib Khan
Resident of Ramora, Tehsil Adinzai, District
Dir Lower.

Diary No. 1314

Dated 26-12-20/6

.....Appellant

### **VERSUS**

- 1. District Education Officer (Male) Dir Lower at Timergara.
- 2. Director Elementary & Secondary Education Khyber Pakhtunkhwa at Peshawar.
- 3. Secretary Elementary & Secondary Education Khyber Pakhtunkhwa at Peshawar.

.....Respondents

SERVICE APPEAL UNDER SECTION 4, OF
THE KPK SERVICE TRIBUNAL ACT, 1974,
AGAINST THE ORDER DATED 15-03-2010,

Registrare, 26/12/16.

WHEREBY THE APPELLANT WAS REMOVED FROM SERVICE.

### PRAYER IN APPEAL

On acceptance of this appeal the order passed by Respondent No. 1 be declared as illegal, against law, void ab-initio by setting aside the same and the appellant may be reinstated on service with all back benefits.

Any other relief which are proper in the instant circumstances of the may also be granted.

Respectfully Sheweth,

- 1) That the appellant was working on the post of Peon in Government High School Ramora since 01-08-1998.
- 2) That the appellant was charged for the murder of his wife vide F.I.R No. 1240 dated 22-08-2006 Police Station Oach under section 302 PPC.
- 3) That the appellant was convicted and sentenced by the Additional Sessions Judge Timergara under section (B)

  PPC and the appellant filed an appeal before Peshawar High Court Peshawar where his appeal was partially

Allowed vide judgment dated 28.04.2009.

- 4) That the Appellant was removed from service by the concerned Department vide removal order dated 15.03.2010. (Copy of all relevant record is attached as annexure A)
- 5) That after release the Appellant approached to the concerned departmental appeal for his adjustment / reinstatement but the department on one pretext or other cannot respond positively. (Copy of departmental Appeal is attached as annexure B)
- 6) That after the Appellant filed a writ petition No. 383-M of 2015 before this Hon'ble High Court Peshawar Mingora Bench/Darul Qaza Swat regarding their removal order.
- 7) That after the respondents filed comments in writ petition above No. 383-M of 2015. (Copies of writ petition & comments are attached as annexure C & D)
- Parul Qaza passed an order dated 25.10.2016, whereby the writ petition stand dismissed, however Appellant

(u)

would be at liberty to seek his remedy from the proper forum but in accordance with law. (Copy of order dated 25-10-2016 is attached) at annex of

9) That extremely aggrieved from the order, the appellant have no other remedy except to file instant appeal before this Honorable Tribunal on the following grounds.

### **GROUNDS:-**

- a. That the order of respondent No. 2 as well as respondent No. 1 are illegal, against the rules & regulation and exercised their power not vested to them.
- b. That in case of imposing major penalty principle of natural justice requires that a regular inquiry was to be conducted in the matter and opportunity of defense of personal hearing was to be provided to the civil servant proceeded against him otherwise the procedure against him without following the rules would be amount to condemned unheard. So, on this

5/

ground to the impugned orders regarding dismissal is liable to be set aside.

- c. That issuance of show cause notice and holding of inquiry was necessary under section 3 removal from service ordinance 2000 but Respondents fails to issue show cause notice nor any inquiry was hold and major penalty of dismissal was imposed upon him without adopting mandatory procedure resulting in manifest injustice so, the impugned orders are liable to be set at naught.
- d. That the penalty of dismissal from service imposed upon appellant for absence from service is illegal being violative of section 7 (a).
- e. That the Respondents while passing the impugned orders regarding dismissal appellant whose absentee was treated as leave without pay so, such absentee cannot be treated as absent from duty, furthermore it is settle law when absence is treated is leave without pay then civil servant cannot be treated as absent and

6

at least he would not be awarded major penalty of dismissal from service.

- f. That the appellant was illegally treated & dismissal from service is too harsh so, the impugned orders are not maintainable in the eye of law.
- g. That in service law concept of penalty was to make an attempt to reform the individual wrong doer (if any) but such penalty deprived the appellant from the right of earning, which defeat the reformatory concept of punishment in administration of justice so, the orders passed by the Respondents No. 1 & 2 are not sustainable on this ground too.
- h. That further grounds, with leave of this Honorable

  Court, would be raised at the time of arguments

  before this Honorable Court.

Therefore in view of the above submissions, it is most humbly prayed that on acceptance of this appeal the order passed by Respondent No. 1 be declared as illegal,

against law, void ab-initio by setting aside the same and the appellant may be reinstated on service with all back benefits. Any other relief which are proper in the instant circumstances of the may also be granted.

Appellant Through Counsel

> SYED ABDUL HAQ Advocate, High Court

### **CERTIFICATE:**

(As per directions of my client) No such like Appeal earlier has been filed by the appellants on the subject matter before this Honorable Court.

ADVOCATE

8

# BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA AT PESHAWAR

Appeal NoM of 2016
Khan Bahadar (Appellant)
VERSUS
District Education Officer and others (Respondents
Application for Condonation of delay (if any) in submission of the above captioned appeal

Respectfully Sheweth!

- *1.* That the captioned appeal has filed today.
- 2. That the delay (if any) occurred in filing the captioned appeal was due to unavoidable circumstances which were beyond the appellant control.

It is, therefore, thumbly prayed that by the acceptance of instance. Application the delay (if any) in filing the captioned appeal may kindly be condoned.

Appellant Through Counsel

> SYED ABDUL HAQ Advocate, High Court

2

# BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA AT PESHAWAR

Appeal NoM of 2016	
Khan Bahadar	(Appellant)
VERSUS	
District Education Officer and others	(Respondents)

## **AFFIDAVIT**

I, Khan Bahadar S/o Habib Khan Resident of Ramora,
Tehsil Adinzai, District Dir Lower, do hereby solemnly
affirm and declare on oath that the contents of the above
Application
titled Appear is true and correct to the best of my knowledge
and belief.

Anner

# OFFICE OF THE EXECUTIVE DISTRICT OFFICER ELEMENTARY & SECONDARY EDUCATION DISTRICT DIR (L).

### Notification:-

Where as one Mr.Khan Bahadar Naib Qasad GHS.Ramora Adentai District Dir lower, remained absent willfully from duties w.e.from 22-8-2006 to date.

And where as show cause notice was issued / served upon him through registered cover and then through a notice publiched in "daily mashriq" dated 25-1-2010 but no convincible reply has been received so far.

Where as a committee was constituted under the chairmanship of District Officer (M)local office , to scrutinize / finalize the cases of absent teachers/officials .

On the recommendation of the committee, and after consultation with District Coordination Officer Dir lower, the undersigned , being the competent authority do hereby ordered the removal from service of Mr. Khan Bahadar Naib Qasad GHS.Ramora Adenzai Dir lower under the E&D rules 1973 from the date of her absence.

Dated Timergara the

**EXECUTIVE DISTT:OFFICER** (E&SE)DISTRICT DIR LOWER

(SAEED KHAN)

Copy to:-

1.The District coordination officer Dir lower.

- 2. The District Accounts Officer Dir lower.
- 3.The District Officer M local office.
- 4. The Headmaster GHS. Ramora.
- 5. The accused concerned.

EXECUTIVE DISTT: OFFICER (E&SE)DISTRICT DIR LOWER

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# BEFORE THE PESHAWAR HIGH COURT MINGORA BENCH / DARULQAZA SWAT

W.P 383 -- M/2015

#### VERSUS

District Education Officer (Male) Dir Lower at Timergara.

- 2. Director Elementary and Secondary Education Khyber Pakhtoonkhwa at Peshawar.
- 3. Secretory Elementary and Secondary Education Khyber Pakhtoonkhwa at Peshawar...... Respondents

# WRIT PETITIONER UNDER ARTICLE 199 OF THE CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN 1973

Respectfully Sheweth;

The facts of the instant are as under.

- That the petitioner was working on the post of Peon in Government Primary School Ramora since 1.08.1998.
- 2. That the petitioner was charged for the murder of his wife vide F.I.R No 1240 dated 22.8.2006 Police station Oach Under Section 302 PPC.

(18) (A3

That the petitioner was convicted and sentenced by the trail

Court Additional Sessions Judge Timergara under section (B)

PPC and the petitioner filed an appeal before Peshawar High

Court Peshawar where his appeal was partially allowed vide

judgment dated 28.4.2009. (Copy of order/ Judgment Is

attached as annexure-A)

That the petitioner was removed form service by the concerned department vide removal order dated 15.3.2010. (Copy of all Relevant is attached as annexure-B)

Examiner

Examiner

Sestiawar High Count Bench

Inth gorathar ut Oaza, Swat.

3.

That after release the petitioner approached to the concerned department for his adjustment/reinstatement but the department on one pretext or the other cannot respond positively.

That the petitioner have long service record and was involved in above alleged case so the petitioner after refusal of the concerned department have no other adequate remedy except to file the instant write petition on the following grounds.

Y





# GROUND!

That the act of respondent in shape of refusal regarding adjusting of petitioner in his own post is illegal, unlawful, void ab-initio liable to be set aside.

That the petitioner having unblemished and clean service track record throughout, therefore, the petitioner is entitled to be adjusted/reinstated on his own post.

That the respondent without any reasonable and justifiable causes is not willing to adjust the petitioner so this act of

respondent is highly discriminatory, against the natural justice, hence liable to be set at naught.

That the matter narrated in the instant petition out of the ambit of terms and conditions so this honourable Court having vested power to entertain the matter under constitutional jurisdiction.

That the petitioner repeatedly visited the concerned office for his redressal of their grievances but the concerned department categorically stated that there is no vacant post exist so the act of respondent is based on mala-fidely, ultra vires and not supported by the constitution.

it Bench Mingoralbar-br-Waza, Swat.

D.

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ATTESTED

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That further ground with leave of this honourable Court may be raise at the time of arguments with the permission of this Hounorable Court.

# PRAYER

SHAWAR HIGH COUNTY OF THE SHAWAR HIGH COUNTY

It is, therefore, humbly prayed that on acceptance of this writ petition this honourable Court may issue an appropriate writ to respondents to appoint/adjust/reinstate the petitioner on his respective post.

Any other relief which this honorable Court deem fit and proper in the circumstances may also be very kindly granted.

Examiner

Peshawar High Court Bench Mingora/Dar-ul-Gaza, SwatPetitioner

Through

Counsels

Syed Abdul Haq and Muhammad Nabi Advocates High Court

Khan Bahadar S/O Habib Khan Resident Of Ramora Tehsil Aden Zai District Dir Lower.

(Petitioner)

#### Versus

- 1. District Education Officer Dir Lower At Timergara.
- 2. Director Elementary and Secondary Education Khyber Pakhtoonkhwa at Peshawar.
- 3. Secretary Elementary and Secondary Education Khyber Pakhtoonkhwa at Peshawar. (Respondents)

#### **PARA WISE COMMENTS/REPLIES**

#### **Preliminary Objections:**

- 1. The petitioner has got no cause of action to file the instant petition.
- 2. The instant writ petition suffers from laches.
- 3. The petitioner has concealed material facts from the honorable court.
- 4. The petitioner is estoped due to his own conduct to file the present petition
- 5. The petitioner has got no locus standi to file the petition.
- 6. The petition is not maintainable in the present from.
- 7. The petition is badly time barred.

#### On facts

- 1. Correct.
- 2. This para relates to the petitioner, hence needs no comments.
- 3. In addition to para 2 above, the petitioner had been remained absent w.e.f 22.8.2006 till the date of his removal.
- 4. Correct. He was removed from service after observing all the codel formalities.
- 5. Incorrect. He failed to approach the department for any relief in due course of time.
- 6. Incorrect. He only served in the department for 08 years and the remained absent.

#### Grounds.

- a. Incorrect: he was removed from services after observing all the formalities, hence denied.
- b. Incorrect .After his removal, he remained no Govt servant and has no right to be adjusted.
- c. Para "b" above may be considered as reply to this Para.
- d. Needs no comments.
- e. As stated above in Para "b" he is not a civil servant, hence has no right to be adjusted.
- The respondents will argue further at the time of hearing, with the leave of this honorable court.

In the light of the above facts the petition in hand may very graciously be dismissed with cost.

District Education Officer (E&SE) Dir (L) at Timergara.

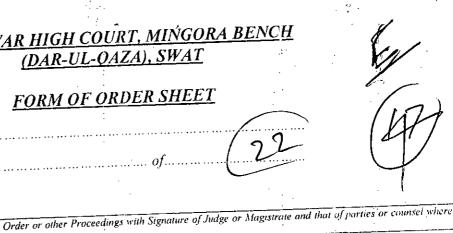
Respondent No.1

panch

WAR HIG

FORM OF ORDER SHEET

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Court of		/	27	
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Case No.				



Serial No. of order or	Proceedings
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	25-10-2016
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	i I.

# WP 383-M/2015

Syed Abdul Haq Advocate for the petitioner. Present:

This writ petition under <u>LAL JAN KHATTAK, J</u>.-

Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, is directed against the order dated 15-03-2010 passed by the Executive District Officer (E&SE) Dir Lower whereby the petitioner has been removed from his service.

Facts of the case need no reiteration as after <u>2.</u> arguing the petition at some length, learned counsel for the petitioner submitted at the bar that he wouldn't press this petition any further, if the petitioner is allowed to file representation/appeal before the proper forum for redressal of his grievance.

In view of the above, this petition stands <u>3.</u> dismissed, however petitioner would be at liberty to seek his remedy from the proper forum but in accordance with Sd: Lal Jan Khattak-J law. Sd.Muhammad Younis Than **JUDGE** He of the second of the Dry Grane Dets of Gelevity of Confermo 9.5. Corified to be true copy

Nasir

0/10-26/10

لعدالت من مرمن رس سرم Cup (b. 1), vio ----دعوى باعث تحرريا نكه مقدمه مندرجه عنوان بالاوس ابني طرف سے واسطے پیردی و جواب دہی دکل کا روائی متعلقه مقرركر كے اقراركيا جاتا ہے۔ كەصاحب موصوف كومقدمه كى كل كاروا كى كا كامل اختيار ہوگا۔ نيز وکیل صاحب کوراضی نامه کرنے وتقرر ثالت ہ فیصلہ برحلف دیئے جواب دہی اورا قبال دعوی اور بهمورت ومحرى كرنے اجراءاورصولى چيك وروبية ارعرضى دعوى اور درخواست ہرتىم كى تقدريت زرایں پردستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیردی یا ڈگری میکطرفہ یاا بیل کی برامدگی اورمنسوخی نیز دائر کرنے اپیل تکرانی ونظر ثانی و پیروی کرنے کا ختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور کے کل باجز دی کاروائی کے واسطے اور وکیل یا مختار قانونی کواپنے ہمراہ یا اپنے بجائے تقرر کا ختیار موگا \_اورهها حب مقرر شده کوجهی و ای جمله ندکوره باا نقتیا رات حاصل مبون می اوراس کاسا نهته برواخة منظور قبول ہوگا۔ دوران مقدمہ میں جوخر چہد ہرجاندالتوائے مقدمہ کے سبب سے وہوگا۔ کوئی تاریخ بیتی مقام دوره پر ہویا حدہ باہر ہوتو دکیل صاحب پابند ہوں مے کہ بیر دی ند کورکریں ۔لہذا و کالت نامہ کھونہ یا کے سندر ہے ۔ الرتوم <u>- 2 م</u> 

Call

ورفيس مسكر مسكر مسكر المستراب والمراب المستراب والمراب المستراب والمراب المستراب والمراب المستراب والمراب المستراب والمراب المستراب والمراب المستراب والمراب المستراب والمراب المستراب والمراب المستراب والمستراب والمست هجوار بخته مقدم و گوگ Siffer 12 مقدم مندرج عنوان بالامين الى طرف سے واسط بيروى وجواب دى وكل كاروائى متعلقة آن مقام مل المروسية مقرركرك اقراركياجا تاب كهصاحب موصوف كومقدمه كى كل كاروائى كاكال اختياط موگا نيز وكيل صاحب كوراضى نامه وتقرر ثالث وفيصله پرحلف دييخ جواب وى اورا قبال وعوى اورورخواست برسم كى تقديق زراوراس پر دستخط كرنے كا اختيار موكا نیز بصورت عدم پیروی یا د کری ایک طرف یا اپیل کی برامد موگی اور منسوخ ندکور کے تسل یا جزوی کاروائی کے واسطے اوروکیل ما مختار قانونی کواپنی ہمراہ یا پی بچائے تقرر کا اختیار ہوگا۔ "اورصاحب مقرره شده کو بھی جملہ مذکورہ بالا اختیارات حاصل ہوئے اوراسکا ساختہ برواختة منظور وقبول موكا \_اوردوران مقدمه ميل جوخر چدو مرجاندالتواييم مقدمه كے سبب سے ہوگا اسکے ستحق وکیل صاحب ہو نگے۔ نیز بقایا وخرچہ کی وصولی کر ہے تے وفت كا بحى اختيار موكا اگركوئى تارى بيشى مقام دوره بر مويا صدي بابر موتووكيل صاحب پابندند موسظ كى پيروى مقدمه ندكورلېد اوكالت نامه لكه وياك سندر ب العبر o Nella 

### BEFORE HE KHYBR PUKTHUN KHWA SERVICE TRIBUNAL, PESHAWAR AT CAMP COURT SWAT.

SERVICE APPEAL NO. 1257/2016.

Khan Bahadar	S/O	Habib	Khan	, R/O	Ramora,	Tehsil	Adenzai,	, District Dir
lower								.(Appellant).

#### **VERSUS**

The Secretary Elementary & Secondary Education Department Khyber .....Respondents Pakhtunkhwa, Peshawar & Others

### PARA WISE COMMENTS / REPLY FOR AND ON BEHALF OF THE RESPONDENTS No: 1,2 ,&3.

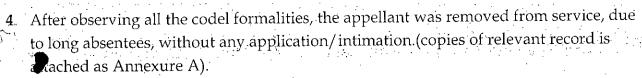
### Respectfully Sheweth:-

#### Preliminary objections

- 1. The appellant has no cause of action/locus standi.
- 2. The instant appeal is badly time barred.
- 3. The appellant has concealed the material fact from this Honourable Tribunal hence liable to be dismissed.
- 4. The appellant has not come to Honourable Tribunal with clean hands.
- 5. The present appeal is liable to be dismissed for mis-joinder/non-joinder of necessary parties.
- 6. The appellant has filed the instant appeal on malafide motives.
- 7. The instant appeal is against the prevailing laws & rules.
  - 8. The appellant is estopped by his own conduct to file the present appeal.
  - 9. The instant appeal is not maintainable in the present form & also in the present circumstances of the issue.

#### ON FACTS

- 1. Pertain to record therefore need no comments.
- 2. This para relates to the appellant, hence need no comments.
- 3. In addition to para 2 above, the appellant had been remained absent w.e.f 22/08/2006 till the date of his removal.



- 5. Incorrect. The appellant failed to approach the department for any relief in due course of time.
- 6. Correct.
- 7. Correct.
- 8. Correct.
- 9. That, the appellant has got no cause of action.

#### ON GROUNDS.

- A. Incorrect. The order of respondents NO: 1 & 2 are correct, legal and according to law.
- B. Incorrect, according to law all the codel formalities were fulfilled, by the department/respondents. And the order is lawful.
- C. Incorrect, the respondents issue show cause notice upon the appellant and hold inquiry.
- D. Incorrect, the penalty of dismissal from service imposed upon appellant for absence from service is legal and just.
- E. Incorrect, the respondents never treated his absence as leave without pay. The appellant was absent for the grant treated him according to law.
- F. Incorrect, the appellant was treated according to law. And the order of respondents is also according to law.
- G. Incorrect, the order passed by the respondents No:1 and 2 are lawful and sustainable.
- H. The respondents would like to offer some other grounds during the course of arguments.

It is therefore, most humbly prayed that the appeal of appellant may be set aside with cost.

Director E&SE kpk,Peshawar Secretary E&SE Education kpk,Peshawar

District Education Officer Male E & SE District Dir (Lower)

20100 Annexu اوت معنی طرع ل الاند معم لول کی می مل مل نے اسافہ کے باحث می قلام کا پالی لیراد تری نمیث ک مار بی جاب کی ک والے ہے طاق ایم ملک می معید ، جزل کو<sup>0</sup> ايف ون ميد كرفر لي النف فو بخت روز مال في النه تمرى مالد مان لي النب ماد عنير كل آفروي في البند فان مودير فان اين فان اور حالي ايراجم في شرق بالح في بنت خان في ايف ل د کرم سے برونت ون میا DU:DIR( كويتا كر الدكاه و ي كلي الدروي معر اوريد وان خالات كاعمد مداناد لاين كالمنظريز كى جاريرى عدر بن عالم كان عاد ك يراترى المانيان ال مروت نے جولی اطلاع اور دیرے آئے ہو مى داخل بول يى داخل بول كى بول كى بالله كال كامامة كى الدون ما بد كى محد منى بو حرا الراب -حمل سماک بج اب کے والدین سے بج ال کا مز ا كر الراب منال كا تع مور تمال كيام کے موقع پر کیااسلم مر دے نے می بربلداد جلد کام شروع کرے موام ييلز پار في بزار خواني رينان مال قبل سيامريس بديافون كامرورت شمشاد خان کو چیف آرگزانزد حنایت خان کو نر پرم مند کے توانے فور کی طور پر ممارا فاؤ لایش رواند کر اللى مثان اور كوزي جزل ميروى لويد مان كوسينر الثارات الكارة مثل مند الله يك ففل اكري بمسان مطاله رقیالی کاموں عی استمال کے بی انبوں نے ڈائر یکڑ معدد ان الرود ميال في محد ظام مهايان ، ظام ، جزل ادراكا عرب اداكرة اد يك تاكر الك اد كا مدرعاديا كيائي مدرسيدا بإب شاه أوكنا تزعك بهت آسال سے عل مو كاور اسے بر سم كافون مفت سول كري جلريان بمرجود شف مرداد أو كي شال ادراس كل طاقه عي كام كرقادى حكادج كن ك جيزين جزل يكروي في الدن امادي میاکیاجاے گاانیوں نے کہاکہ اس سلط میں مہاکل ب على المول ديات عيدك للا مات كام الوكوان كاد في المراد م ذاكر الداد مايت الشررياض امرؤه النقارام ان مر تغيق بر 9105033 إ 9303-9105033 بر كريل وري يمن مندا وريكر سزيان پشاور كاركرك

اوے بی انہوں نے مایک طاقہ کی 99 فعد کیاں

بات ک جا بکی ہیں لر لز ہائی سکول ال سلسله على اخبرات عي نينذر مجي ثالغ كان كي كي ليكن

مل ے زائد موم كردے كے بعد مى علاق عى سكول شردع كبي بواب انبول في موسد ي الك كاب كمد طاقد عن طالبات كميلة متورث مكول كو

مالد كل ع بنادد ملک کل شرف آف لار زی جزل سے موسیفی فرب بدعال ایر دد اور کا خات بدی

غام: (٢) سيد بهاور ولد شيروالله (١٠) الجاز ولد كل الفنز ۱.A.C مازی براها اندرد بادر براجکت مازی منلع بری م رساكان كولد قعيل وهلع مرالي (رسياط ئان)

اب كىنداكى بمرز كازد الأمل عن لا ل جا يكى ۰ . ۱۰ (میرهدالت) (دستخلا مانم)

مندنی عی (مبدار شده ار برکل) سخد مندنی اونی ی يك تلد رُقّه أيك كنال خالي ذاك يمم عرالت صين ال مرك ع -11.75000 و كرى در كروار كي جايكاند بال الدورة ماك براعي فع كي بالكي والديوالي فالى مورى 1/10 كر يوت دوري بمقام ودا أجريناه مزمسل قرستان رك وكالماء مرى جدود وي گ - برمامی دمام بلای می معرب لیکائے۔

بعدالت جناب آمف نوازخان ADJ-II صاحب موال

کے ماہ دیکر امثلاث میں سپالک کی جاتی ہیں۔

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: شراز الريام مرز الحدوثيره (الخلاد يال)

تعامد معدد رسا فرئان بالا کی اطناعیالی معمولی اور آسا الرفيق سے او في مشكل سے لدارسا فرنان بالا كر بذري عبار في مل كاما تا ي كورو 27/1/10 كوم لكورك المتيارة مامز مدالت موكر يودى مقدركري بعروت وم

اشتبار نيلام عام

رخاص وعام كوبذر بيراشتهار بدامطلع كياجاتاب كرموض گرداور سرکل تینگی

ثانوی و اعلی ثانوی تعلیمی بورڈ کوھاٹ

بميالور فياز عادل اس موقع ير موجود تق

باكترك عول

ت دیسر کے سابل معم

انعالت بحاركم كے بي.

ر کت کیلے تار کراہے سول کے ذک زور

مقعد معمل كومام في مالاور آسال بدر اكر الحد الى مقافي عمل ملي وزيش ليد والى طلاو طالبات كميل

دولا كم ايكز با تا بل كاشت زمينوں كو قا بل كاشت مال

كالمجرين الاقراى سط

ع سالموں عرور مال کے اور اس سالے کا اجرور ملک اور اور ارد اور الر المرور کرد اللہ اللہ اللہ اللہ اللہ اللہ اللہ

تام متعلقین کے اطلاع کے لئے مشتمر کیا جاتا ہے کہ روز نامہ آج اور شرق متاریخ 24-12-2009 اور 2010-1-5 مي عوان بالا ك تحت ديئے كے اشتبار عي يريل نبر 3,2,1 اونبر 4 ك وال ساء ي مح اليران كام كواعم ال سورخ تقور کیا جائے واض رہے کریر یل مبر 6,5 اور مبر 7 کے آئم کے میڈواپ شیڈول کے مطابق ومول کئے جائیں کے

كنڈرى ايجوكيشن كوهات

في عيد كالرول كالمات عيدون كالدوارية الل شاق كالواعة ما تروك وما مرى كالدويان كريام وكرويان كريام وكروية

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	5243-30/9/2009	19/9/2009	ئى لى ايم كمنك مهو كعيل او يزل ويرا ين	بدائيد باليمال	1-7-	-{
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	4355-58-15/9/2009	1/9/2009	نى كى الحريث المسلم المساور المي	كيب حال ج كيدار	12	
	4355-58-15/9/2009	1/9/2009	ملل النوسياه مهو قصيل اديزي وريا من	محتنان وكيبار	17. 17	
l-	8244-23/11/2009	15/1/2009	ين در مير مير الريادي	معان کل چرکیدار		1
1-	8242-23/11/2009	2(/4/2009	کی لیا ایس شاکل منان پر قصیل اوینز ل در یا مین	نياز قر لي اليس في	_]_!:	늬
1-	3672-29/8/2009	3/7/2009	الماليل مرري إوروقهم لل الكوروا عن الماليل الموريا عن الماليل الموريا عن الماليل الموريا عن الماليل	رميم الله في اليس في	_[_!	<u>6</u>
1	8240-2.V11/2009	1/8/2007	133 - 3141	" كالمعاش إيالي أن . "		7.
-	8238-23/11/2009	1/8/2009	المام لايم المراكز المام المراكز المرا			IR I
-	MCMassing and and a con-	Long absence	". U./- Z.U-U.G.	سعادت فان في الس		19
1	7350-5/11/2009	1/9/2009	والمستقد والمالي كمية مدان	رمنامة الرمن جركيدار		20
ŀ	8566-1/12/2009	V10/2009	. ئائىرىدارلود	الركادل فالتدام		21
1.	5862-1/12/2009	24/8/2009	فالمامي كالسابق	ور خان لي الحر لي	$\overline{\mathbf{x}}$	22
-		2/11/2009	كى ليالس الوميدان	نظار تن ع كيدار	<u>-</u> }-	23
	8185-18/11/2009	Since long	٠٠٠٠٠ لي لي الحرك الله الحرك الله المركز الله المركز الله المركز الله المركز الله المركز الله المركز الله المركز الله الله المركز الله الله الله الله الله الله الله الل	ماحبادمن ليايمن <u>ل</u>		24
1	10887-31/12/2009	1/11/2009	ى بى ايس قلىد مز رئى قسيل لال قلى	فالشروكيار		25
ll	8568-71-1/12/2009	1/11/2009	ى لايس الرقعيل والطر			26
۱ ۱	8568-71-1/12/2009		تى فى الى باغداسورى باد	6 mg 5 mg		27
	8568-71-1/12/2009		نَّ لِي الْمِن الْوَمِيدَ الْنَ	مجن الرج كدار	<u>-</u>	
	8568-71-1/12/2009	22/8/2006	عَيَا عَيْ الْمِن والموزِّ والريز لَيْ	غال بهادرنا بحب قاصد	<u></u> l-	.28
	8187-18/11/2009	12/8/2000	and the second of the second of the	CONTRACTOR ACTOR	S. Silver	1,0
				A 1 (1 a 2 a 2 a 2 a 2 a 2 a 2 a 2 a 2 a 2 a	ALC: No. of	

روزنامه مشرق.....(9)

آ پسسی ممر مان کیلا «رکر اصلی ( را ویت چارسد مورور 16/11/2009 سے امال دوران غير ما مرى آپ كومپار (4) نونمر بدريد 497 مودند 2/12/2009 نجر 559 مو 7/1/2010 کے می جس میں آپ کوزیون کے باد جود مجی آپ ڈیوٹی پر مامر نہیں ہو متنبه کیاجا تا ہے کو نوٹس ہذا کے پندرہ 15 دن اظهار وجوه برائے فیر ماضری بیش کریں کریے جائے عدم فیل کے مورت میں آپ کے خلاف مطابق كمطرفه كارروالي كي جائيكي جوكه أب كي

رج بس محف دابله كرا جاسكا ب-

مغدر ناؤن

يك الم المار الماك الماك الله إلى

عال فد كور كذب كط بات إلى جل كا م

فى كالي ك الل كاي حالك لكر مدر الدين

كموس كما بذك وأي

ノンシン

ے کا لائیں السلے کی ارض سے کا \_

تمام مينوني كرز بااختيار ذيلرز جوكه ايمولين -حات جو که ایک عدد للیکسیل مواسیل سریخ آ اليكثرك فين ادر ايمرجنسي لائث جاتی ہے کہ وہ مندرجہ بالا اشیاء کے لئے س دُ بِبِازِث جو كه زير د تخطى كوبتار ئ<u>2010 - 2</u>. چاہیں ادرای دن 12:00 بیج ٹینڈر دہندی لے جا کی کسے \_ قمام دیش F.O.R کی كأل ذيبإزت بحق جيف الميخز يكو بلحاظ فهده ف **شوابنط** :- (1) دیے گے زخ 2010. (2) دِئِ مِثْرًا طاور البير كال اليهازك يا مطاور كابل تيول مد مون محرر (3) سيلال مقرره مد سلال برجر ماندعا كدكيا جائے گا۔ (4) برفرم ليند ادر محكمة سلزنيس كارجنريش فوفليك سبلك كريا ..." ك الفاظ تحرير موا م منتن میں۔(7) سمین کمی بھی نیندر کومنظوریا

FIGE OF THE EXECUTIVE DISTT: OFFICER ELEMENTARY & SECY: EDU: DIR(I

To.

Mr.Khan Behder Ex(Neib Qesid) GHS Remore S/O Habib Khen Villege Remore Dehri Tehsil Adenzai Dir(L).

Subject; - ABSENCE REPORT IN RESPECT OF MR, KHAN BAHDAR N. QABID.
Memo; -

As reported by the Readmester Gevt; High School Ramor Bir lower vide letter No. 1746 dated 19/10/2009, about yournx wilful absence from the duty w.e.f 22/8/2006, without any Application/Int to the competentum authority, and thus remained absent.

In this regard you are directed to explain your posiabout wilful absence from duty, as to why a disciplinary action she not be taken against you under the NWFF Removal from Service (Spec: Powers) Ordinance 2000-1.

Your explanation should reach to this office within a week period positively. Other-wise ex-parts decision will be taken against you.

EXECUTIVE GITTO

madet; No. 6[88]

Copy of the above is forwarded to:The Headmaster GHS Ramora for information.

ELEMENTARY & SECY: EDU: D

... unt: No. 1746 /GHS. Ramora Dostt: Bir Dated. The Head Master. GHS. Ramora Distt:Dir (L) The Executive Distt; Officer. (E & Se)Distt:Dir (LOwer)

Subject; -ABSENTEE REPORT IN RESPECT OF KHAN BAHADAR NAIB QASID

Memo; -

Mr. Khan Gahadar S/G Habib Khan (Naib Qasid ) of this School has been remained absentee from school w.e.f.22.08.2006. He has also informed previously by letter NO 1294 Dated 28.08.2006.

Sovil High School Raspora Dista Di

Head Master. Govt: High School Ramor Distt:Dir (L)

Akom:

Heed Master GHS Chamdara as an Inquiry Officer.

The Executive DisttiOfficer (S&L)

200 .

District Dir Lower at Timergara.

Bubject:

INQUIRY.

Mim 60 :

Reference your No. 7630-34 Dated 14.10 2006 regarding to the subject cited above the copulete inquiry report is submitted for further necessary action Please.

NO 1685 paco 19/10/2006.

Head Maste GHS Chakd: Distr; Dir

OFFICE OF THE EXECUTIVE DISTT: OFFICE! SCHOOLS & LIT: BIR LOWER No. //78/ /Date 2//1

Mr. Mehammad Nacem, Headmaster GHS Chakdara.

Subject: -

INQUIRY.

Memo;-

Inquiry report, received under your memo; No, 168; dated 18/10/2006, conducted against Mr. Khan Bahadar No Queid ( Ramora Disterbir Levero

In this connection you are directed to disease the inquiry report with the undersigned in person verking day, to proceed further in to the matt

> DISTT: OFFICE SCHOOLS & ATTIDIR LOWE!

2

OFFICE OF THE EXECUTIVE DISTT: OFFCER SCHOOLS & LIT: DIR LOWER No. 76307Dated 110/

To,

1. The Mohammad Nacem, (Chairman)
Headmaster GHS Chakdara

2.Mr.Fazal Mabood SET GHS Chakdara (Member).

# Subject; - COMPLAINT/INQUIRY.

Memo; - Enclosed, find herewith original complaint from t

Headmaster GHS Ramora against Khan Bahdar N.Qasid of the school for inquiry and report within a week period to proc

further in to the matter.

EXECUTIVE WISTT: OFFICER SCHOOLS & LIT DIR LOWER

Mr. Forzal malbood with how to some how the son which have to some how the son which have to some how the son which have to some how the son which have to some how the son which have to some how the son which have to some how the son which have to some how the son which have to some how the son which have to some how the son which have to some how the son which have to some how the son which have to some how the son which have to some how the son which have to some how the son which have to some how the son which have to some how the son which have the son w

Ng. 1294

GHS. Ramora Distt; Dir (L) Dated. 28/8 /2006.

The Head Masser.

GHS. Ramora Distt; Dir (L)

To.

The Executive Distt:Officer.

(S&L) Dir at Timergara.

Subject; ABSENTEE REPORT IN RESPECT OF KHAN BAHADAR NAIB QASID.

Memo; Mr. Khan Bahadar 3/0 Habib Kham (Naib Qasid ) of this school has been remained absent from school w.e.f. 22.08.2006.

There fore the information report for about his absentee is hereby submitted in your honour for further n/a please.

HEAD MASTER G.H.S. Ramors Olests: Dir (L)

Head Master. GHS.Ramora Distt;

(P)