

Order

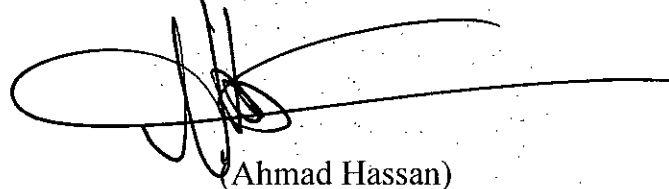
31.10.2019

Counsel for the appellant present. Addl: AG alongwith Mr. M. Sharif, ADEO for respondents . Arguments heard and record perused.

This appeal is also remitted as per detailed judgment of today placed on file in service appeal No. 1259/2014 titled "Musharraf Khan-vs-The Additional Chief Secretary FATA, FATA Secretariat, Warsak Road, Peshawar and two others." Parties are left to bear their own cost. File be consigned to the record room.

Announced:

31.10.2019



(Ahmad Hassan)  
Member



(Muhammad Amin Khan Kunid)  
Member

SCANNED  
KPST  
Peshawar

24.04.2019

Counsel for the appellant and Addl. AG alongwith  
Naseem Mehmood, AAEO for the respondents present.

Learned counsel for the appellant requests for  
adjournment due to over work before the honourable High Court  
today.

Adjourned to 08.07.2019 before the D.B.



Member



Chairman

08.07.2019

Counsel for the appellant and Addl:AG for respondents  
present. Counsel for the appellant seeks adjournment.  
Adjourned. Case to come up for arguments on 23.09.2019  
before D.B.



Member



Member

23.09.2019

Due to general strike on the call of Khyber  
Pakhtunkhwa Bar Council learned counsel for the appellant  
is not in attendance. Mr. Kabirullah Khattak learned  
Additional Advocate General for the respondents present  
Adjourned. To come up for arguments on 31.10.2019  
before D.B.



(Hussain Shah)  
Member



(M. Amin Khan Kundi)  
Member

26.09.2018

Counsel for the appellant present. Mr. Kabirullah Khattak, Addl: AG for respondents present. Learned Addl: AG seeks adjournment. Granted. Case to come up for arguments on 08.11.2018 before D.B.

  
(Ahmad Hassan)  
Member

  
(M. Amin Khan Kundi)  
Member

08.11.2018

Due to retirement of Hon'ble Chairman, the Tribunal is defunct. Therefore, the case is adjourned. To come up on 31.12.2018

  
READER

31.12.2018

Junior to counsel for the appellant and Mr. Kabirullah khattak learned Additional Advocate General alongwith Naseem Mehmood AAEO present. Junior to counsel for the appellant seeks adjournment as senior counsel for appellant is indisposed. Adjourn: To come up for arguments on 06.02.2019 before D.B.


  
Member

  
Member

06.02.2019

Clerk to counsel for the appellant present. Mr. Kabirullah Khattak, Addl: AG alongwith Mr. Nasim Mehmood, ADEO for respondents present. Clerk to counsel for the appellant seeks adjournment due to general strike of the Bar. To come up for arguments on 24.04.2019 before D.B.

  
(Ahmad Hassan)  
Member

  
(M. Amin Khan Kundi)  
Member

29.03.2018

Counsel for the appellant and Addl. AG alongwith Daud Jan, Supdt. for the respondents present. Learned AAG seeks adjournment. Adjourned. To come up for record and arguments on 01.06.2018 before D.B.

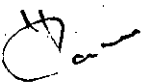
  
Member

  
Chairman

01.06.2018

Counsel for the appellant and Mr. Muhammad Jan, Deputy District Attorney alongwith Mr. Naseem Mehmood, AEO for respondents present. Representative of the respondent-department seeks adjournment to produce complete record as mentioned in previous order sheet dated 20.12.2017. Last opportunity is granted. Adjourned. To come up for record and arguments on 02.08.2018 before D.B.

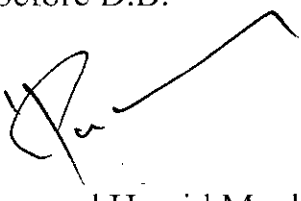
  
(M. Amin Khan Kundi)  
Member

  
(M. Hamid Mughal)  
Member

202.08.2018

Junior to counsel for the appellant and Mr. Kabir Ullah Khattak alongwith Mr. Naseem Mehmood AAEO for the respondents present. Junior to counsel for the appellant seeks adjournment as senior counsel is not in attendance. Adjourned. To come up for arguments on 26.09.2018 before D.B.

  
(Ahmad Hassan)  
Member

  
(Muhammad Hamid Mughal)  
Member

25.09.2017

Since 07.09.2017 has been declared as a public holiday on account of first Muharram. Therefore cases adjourned to 20.12.2017

READER

20.12.2017

Counsel for the appellant and Mr. Muhammad Jan DDA for the respondents present. Arguments partly heard. During the arguments, this Tribunal reaches the conclusion that for proper appreciation of the facts of the present appeal the record of selection process is must. The department is directed to produce all the record of selection process including the advertisement, minutes of the DPC and record whether the posts were project posts or regular posts. To come up for further arguments on 07.02.2018 before this D.B.

Member

Chairman

7.2.2018

Counsel for the appellant and Addl. AG for the respondents present. Due to shortage of time, arguments could not be heard. To come up for record and further arguments on 29.03.2018 before the D.B already heard the case on 20.12.2017.

Member

Chairman

29.09.2016

Clerk to counsel for the appellant and Mr. Murtaza Khan Stenographer alongwith Addl. AG for respondents present. Written reply submitted. Cost of Rs. 300/- also paid and receipt thereof obtained from the learned counsel for the appellant. The appeal is assigned to D.B for rejoinder and final hearing on 9.01.2017.

Chairman

09.01.2017

Clerk to counsel for the appellant and Mr. Haja Muhammad AAO alongwith Addl. AG for respondents present. Rejoinder submitted which is placed on file. To come up for arguments on 30.05.2017.

  
(AHMAD HASSAN)  
MEMBER

  
(MUHAMMAD AMIR NAZIR)  
MEMBER

30.05.2017

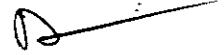
Clerk of the counsel for appellant present. Mr. Muhammad Adeel Butt, Additional AG for the respondents also present. Due to strike of the bar learned counsel for the appellant is not in attendance. Adjourned. To come up for arguments on 22.09.2017 before D.B.

  
(GUL ZEB KHAN)  
MEMBER

  
(MUHAMMAD AMIN KHAN KUNDI)  
MEMBER

24.02.2016

Agent of counsel for the appellant and Mr. Kifayatullah, Junior Clerk alongwith Addl: A.G for respondents present. Written reply not submitted despite extension of last opportunity and cost of Rs. 200/-. Requested for further adjournment. Another last opportunity is extended subject to payment of further cost of Rs. 100/- which shall be borne by the respondents from their own pockets. To come up for written reply/comments and cost of Rs. 300/- on ~~28.4.~~2016 before S.B.



Member

28.4.2016

Agent of counsel for the appellant and Mr. Shahabud Din, AAEO for the respondents present. Cost of Rs. 300/- paid and receipt whereof obtained from the agent of counsel for the appellant. Written reply not submitted despite extension of last opportunity and cost of Rs. 300/-. Requested for further adjournment. Another last opportunity is extended subject to payment of further cost of Rs. 300/- which shall be borne by the respondents from their own pockets. To come up for written reply/comments and cost of Rs. 300/- on 04.08.2016 before S.B.



Chairman

5

13.05.2015

Counsel for the appellant, M/S Daud Jan, Supdt. and Akhtar Nawaz, Assistant Agency Education Officer alongwith Addl: A.G for respondents present. Written reply not submitted. Requested for adjournment. To come up for written reply on 10.8.2015 before S.B.

  
Chairman

6

10.08.2015

Counsel for the appellant, M/S Daud Jan, Supdt. and Akhtar Nawaz, Assistant Agency Education Officer alongwith Assistant A.G for respondents present. Written reply not submitted. Requested for further adjournment. Last opportunity granted. To come up for written reply/comments on 29.10.2015 before S.B.

  
Chairman

7

29.10.2015

Counsel for the appellant and Mr. Daud Jan, Supdt. alongwith Addl: A.G for respondents present. Written reply not submitted despite last opportunity. Requested for further adjournment. Last opportunity is extended subject to payment of cost of Rs. 200/- which shall be borne by the respondents from their own pockets. To come up for written reply/comments and cost on 24.02.2016 before S.B.

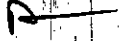
  
Chairman



19.01.2015

Clerk of counsel for the appellant present, and requested for adjournment due to General Strike of the Bar. Request accepted.


To come up for preliminary hearing on 23.02.2015.


  
Member

23.2.2014.

Counsel for the appellant present and submitted that the appellant was appointed on the strength of judgment of the Hon'ble Peshawar High Court, Peshawar dated 20.12.2011; that subsequently, the said appointment order was withdrawn on the plea of non-availability of post and that his departmental appeal has not been responded within the statutory period of ninety days, hence the present appeal. Counsel for the appellant further submitted that cases of similar nature have already been admitted in service appeal No. 1139/2014 and fixed for written reply before the Hon'ble Bench-I.

Points raised need consideration. The appeal is admitted for regular hearing subject to all legal objections. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for submission of written on 13.05.2015 before the learned Bench-I with the above said similar nature cases.


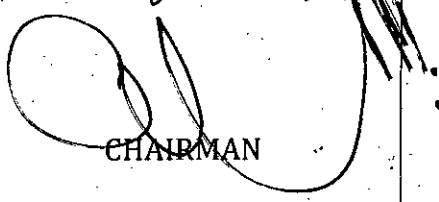
  
Member

*Appellant deposited process fee  
of Rs. 500/-*  


Form- A  
FORM OF ORDER SHEET

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

Case No. 1264 /2014

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	23/10/2014	<p>The appeal of Mr. Ihsanullah presented today by Mr. Noor Muhammad Khattak Advocate may be entered in the Institution register and put up to the Worthy Chairman for preliminary hearing.</p> <p style="text-align: right;"> REGISTRAR</p>
2	29-10-2014	<p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on <u>19-1-2015</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>

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

APPEAL NO. 1264 /2014

**IHSANULLAH**

**VS**

**A. C.S FATA**

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5.	Application	<b>C</b>	13.
6.	Scrutiny Committee report	<b>D</b>	14-16
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**APPELLANT**

**THROUGH:**

  
**NOOR MOHAMMAD KHATTAK**  
**ADVOCATE**

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

Appeal No. \_\_\_\_\_/2014

D.W.P. No. \_\_\_\_\_  
Case No. 1295  
Dated 23/10/14

Mr. Ihsanullah, TT,  
GPS Raji Kot, North Waziristan Agency

..... Appellant

**VERSUS**

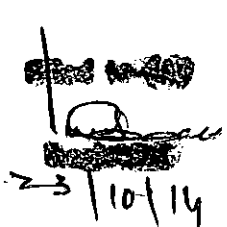
- 1- Additional Chief Secretary FATA, FATA Secretariat, Warsak Road, Peshawar.
- 2- The Director of Education FATA, FATA Secretariat, Warsak Road, Peshawar.
- 3- The Agency Education Officer, North Waziristan Agency at Miran Shah.

..... Respondents

**APPEAL UNDER SECTION-4 OF KHYBER**  
**PAKHTUNKHWASERVICE TRIBUNAL ACT 1974**  
**AGAINST THE IMPUGNED ORDER DATED 16-06-2014**  
**WHEREBY THE APPOINTMENT ORDER OF THE**  
**APPELLANT HAS BEEN WITH DRAWN/CANCELLED IN**  
**VOILATION OF LAW AND RULES AND AGAINST NO**  
**ACTION TAKEN ON THE DEPARTMENTAL APPEAL OF**  
**THE APPELLANT WITHIN THE STATUTORY PERIOD**  
**OF NINETY DAYS**

**PRAYERS:**

That on acceptance of this appeal the impugned order dated 16-06-2014 may vary kindly be set aside and respondents may be directed to re-instate the appellant with all back benefits. Any other remedy which this august Court deems fit may also be awarded in favor of the appellant.



**R/SHEWETH:**

**ON FACTS:**

- 1- That the appellant is the local resident of Miran Shah North Waziristan Agency and have the requisite qualifications for the post of Theology Teacher.
- 2- That appellant filed a writ petition No.568-P/2011 in the Hon'ble Peshawar High Court Peshawar for appointment on the post of Theology Teacher. That the Hon'ble Peshawar High Court Peshawar while disposing the writ petition of appellant directed the respondents for disposed of the

representation/application of appellant with in a month time strictly on merit and in accordance with rules and policy of the Government on the subject vide judgment dated 08-05-2012. Copies of the memo of writ petition and judgment are attached as annexure ..... **A and B.**

- 3-** That on the direction of Hon'ble Peshawar High Court Peshawar, respondent No.3 (Agency Education Officer) constituted a committee to check/Scrutinized the documents and determines the merit/rights of the appellant. That the committee has strongly recommended the appellant for appointment on the post of TT vide dated 26.3.2014. Copies of the application and scrutiny committee report are attached as annexure ..... **C & D.**
- 4-** That on the directions of Hon'ble Peshawar High Court Peshawar, and recommendation of the respondent No.2, the respondent No.3 issued appointment order of the appellant as TT vide order dated 20-05-2014. That accordingly the appellant took over the charge of his post vide dated 21.05.2014 and started performing his duty quite efficiently and up to the entire satisfaction of superiors. Copies of the appointment order and charge report are attached as annexure ..... **E and F.**
- 5-** That astonishingly respondent No.3 vide order dated 16.06.2014 withdrawn the appointment order of the appellant with out any reasons/justification. That it is very pertinent to mention here that the Directorate of Education FATA Peshawar already directed the respondent No.3 to re-appoint the community School Teachers as per policy vide dated 19-02-2014. That it is further stated the respondent No.3 vide letter dated 06-06-2014 addressed to respondent No.2 refused to comply with the verdicts of Hon'ble Peshawar High Court Peshawar judgment dated 08-05-2012. Copies of the withdrawal order and letters are attached as annexure ..... **G & H.**
- 6-** That feeling aggrieved from the impugned order dated 16-06-2014 the appellant filed Departmental appeal to respondent No.2 but no reply has been received so for. Hence the present appeal on the following grounds amongst the others. Copy of the Departmental appeal is attached as annexure ..... **I.**

**GROUND:**

- A-** That the impugned order dated 16-056-2014 is against the law, facts, norms of natural justice and materials on record hence not tenable and liable to set aside.

- B- That the appellant has not been treated by the respondent Department in accordance with law and rules on the subject noted above and as such respondents violated article 4 and 25 of the constitution of Islamic Republic of Pakistan 1973.
- C- That no show cause notice has been served on the appellant by the respondent Department before issuing the impugned order 16.06.2014 against the appellant.
- D- That no chance of personal hearing/ personal defense has been given to appellant before issuing the impugned order dated 16.06.2014 against the appellant.
- E- That the impugned order dated 16.06.2014 has been issued by the respondents in violation of the principle of Locus Poenitentiae.
- F- That the respondent Department acted in arbitrary and malafide manner while issuing the impugned order dated 16.06.2014 against the appellant.
- G- That appellant seeks permission to advance other grounds and proofs at the time hearing.

It is therefore humbly prayed that the appeal of the appellant may be accepted as prayed for.

- ۱۷۰۱  
**APPELLANT**

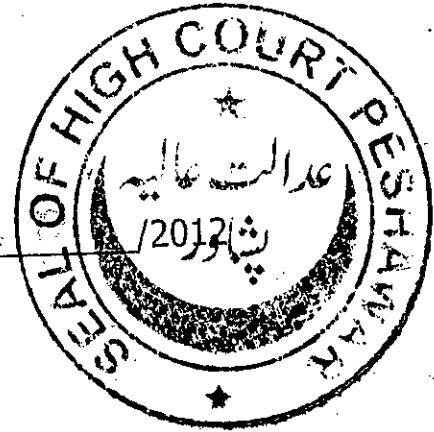
**IHSANULLAH**

**THROUGH:**  
**NOOR MOHAMMAD KHATTAK**  
**ADVOCATE**

BEFORE THE PESHAWAR HIGH COURT, PESHAWAR.

A-5

Writ Petition 568-P



1. Mr. Ihsanullah S/O Khanawal Shah, Presently R/O Khan Town, H.NO-1, Warsak Road, Peshawar.
2. Mr. Ishaq S/O Mursal Khan, Presently R/O, Darmangi Garden, Warsak Road, Peshawar.
3. Mr. Qismatullah S/o Abdur Rehman, Khuhai Bagh, Warsak Road, Peshawar.
4. Qari Huzoor S/O Rasul Sadiq, mad S/O Sher Ayub, Presently R/O Kabayan Canal Road, Warsak Road, Peshawar.

K  
1076/12

**PETITIONERS**

VERSUS

1. The Additional Chief Secretary (FATA), Government of Khyber Pakhtunkhwa, FATA, Secretariat, Warsak Road, Peshawar.
2. The Director of Education, FATA, FATA Secretariat, Warsak Road, Peshawar.
3. The Agency Education Officer, North Waziristan Agency, (N.W.A).

**RESPONDENTS**

.....  
**WRIT PETITION UNDER ARTICLE 199 OF  
THE CONSTITUTION OF PAKISTAN 1973  
AS AMENDED UPTO DATE.**  
.....

**ATTESTED**

**EXAMINER  
Peshawar High Court.**

21 AUG 2014

11  
⑥

**RESPECTFULLY SHEWETH:**

Brief Facts giving rise to the present Petition are as under:

1. That the petitioners are qualified Qari/T.T/A.T. and have the qualification of SSC/F.A, Shahadatul Khassa, Shahadatul Alia (B.A) and Shahadatul Alamia (M.A). The qualification of the petitioner are recorded in the Merit list, the copy of which is already attached as Annexure-A.
2. That the respondent No.3 advertised some posts of Qari/T.T/A.T for which the petitioner had also applied. The petitioners had appeared in test and interview and became on the top of merit list on their respective Tehsils. Copy of the Merit list is attached as Annexure-B.
3. That despite of the having merit position, the petitioners were not appointed for the reason of non availability of posts. Therefore, the petitioner's field appeals to the respondent No.2 with post availability certificates, issued by the Principals of the concerned schools. The said appeal was forwarded to AEO, NWA for appointing the petitioner. Copies of the Appeal and Post Availability are attached as Annexure- C&D.
4. That on the appeals of the petitioners, the AEO (NWA) requested the respondent No.2 for allowing the AEO to appoint the petitioners against the available posts. Copy of the letter is attached as Annexure-E.
5. That after that letter of AEO, the respondent No.2 kept mum and further directions was<sup>not</sup> issued. Therefore, the petitioners again made appeals for justice to the respondent No.2 who was kind enough and issued a clear direction to AEO for appointment on the appeal but respondent No.3 was not taking action on the said directives. Copy of Appeals are attached as Annexure-F.
6. That no action was taken on the clear direction of the DE FATA by the respondent No.3, then the respondent No.2 again issued a clear direction to AEO on 1.4.2011 for appointment of petitioners. Copy of the Appeal is attached as Annexure-G.
7. That recently the other candidates of the same advertisement and merit list filed a writ petition in this

FILED TODAY

Deputy Registrar

17 FEB 2012

ATTESTED

EXAMINER  
Peshwar High Court

21 AUG 2014



⑦ ②

august Court bearing no.2768/2011 decided on 20.12.2011. The Hon'able High Court was pleased to treat the writ petition as appeal and set to the ACS FATA for decision according to law, rules, policy and merit within one month. Thus the petitioners are also entitled to same relief under the principles of consistency. Copy of the order sheet is attached as Annexure - H.

8. That despite of clear direction of the respondent No.2, the respondent No.3 is not willing to comply with the directions of respondent No.2 due to which the petitioners have continuously been suffering. Thus, having no other alternated remedy, the petitioner comes to this august Court on the following grounds amongst the others:

**GROUND:**

- A) That not complying with the directions of respondent No.2 by respondent No.3 causes to kept deprive the petitioners from the legal rights are against the norms of justice, equity and fair play.
- B) That though the petitioners are having merit position and the respondent Ho.2 has also issued directions for the appointment of the petitioners but the respondent No.3 is not willing to give due rights to the petitioners; thus the in-action of the respondent No.3 is arbitrary and without lawful authority.
- C) That the respondent No.3 is not performing his duty which he required under the law to do; due to which the valuable rights of the petitioners are suffering a lot.
- D) That due to illegal and unlawful <sup>inaction</sup> ~~insertion~~ of the respondent No.3, the petitioners have been kept deprived from their value rights of appointment because the petitioners are not only on the merit but the post <sup>are</sup> also available.
- E) That the petitioners have not been treated according to law and rules.

ATTESTED

EXAMINER  
Peshawar High Court.

21 AUG 2014

- (8) 8
- F) That the in-action and attitude of the respondent No.3 is against the spirit of Article-4, 25, 27 of the Constitution.
- G) That the petitioners seek permission to advance other grounds and proofs at the time of hearing.

It is, therefore, most humbly prayed that on acceptance of this Writ Petition, the in-action and not appointing the petitioners may be declared as illegal, unlawful, without lawful authority and against the norms of justice. The respondents may further please be directed to issue the appointment order (from 04.05.2009) of the petitioners being on merit and post ~~452~~ also available. Any other remedy which this august Court deems appropriate and not specifically <sup>prayed</sup> ~~period~~ for, may also be awarded in favour of petitioner.

Petitioners

*Jal*  
Ihsanullah & Others.

Through:

*M. Asif Yousafzai*  
( M. ASIF YOUSAFZAI )  
Advocate Peshawar.

**NOTE:**

It is verified that no other similar Writ Petition has been filed between the same parties earlier in this august Court.

*Asif*  
DEPONENT

**LIST OF BOOKS**

1. Constitution of Pakistan 1973.
2. Any other laws as per needs.

ATTESTED  
EXAMINER  
Peshawar High Court,  
21 AUG 2014

**BEFORE THE PESHAWAR HIGH COURT, PESHAWAR.**

160  
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Writ Petition No. \_\_\_\_\_/2012.

Ihsanullah & Others.

V/S

ACS (FATA) & Others.

**ADDRESSES OF THE PARTIES**

**PETITIONERS**

1. Mr. Ihsanullah S/O Khanawal Shah,  
Presently R/O Khan Town, H.NO-1,  
Warsak Road, Peshawar.
2. Mr. Ishaq S/O Mursal Khan,  
Presently R/O, Darmangi Garden,  
Warsak Road, Peshawar.
3. Mr. Qismatullah S/o Abdur Rehman,  
Khuhal Bagh, Warsak Road, Peshawar.
4. Qari Huzoor S/O Rasul Sadiq, mad S/O Sher Ayub,  
Presently R/O Kabayan Canal Road,  
Warsak Road, Peshawar.

**RESPONDENTS**

1. The Additional Chief Secretary (FATA), Government of Khyber  
Pakhtunkhwa, FATA, Secretariat, Warsak Road, Peshawar.
2. The Director of Education, FATA, FATA Secretariat, Warsak Road,  
Peshawar.
3. The Agency Education Officer, North Waziristan Agency, (N.W.A).

*Just*  
Petitioners  
Ihsanullah & Others

Through:

*M. Asif Yousafzai*  
( M. ASIF YOUSAFZAI )  
Advocate Peshawar.

**ATTESTED**

**EXAMINER**  
Peshawar High Court.

21 AUG 2014

BEFORE THE PESHAWAR HIGH COURT, PESHAWAR.

10

Writ Petition No. \_\_\_\_\_/2012

Ihsanullah & Others.

V/S

ACS (FATA) & Others.

**AFFIDAVIT**

I, Muhammad Asif Yousafzai, Advocate, High Court, Peshawar on instructions and on behalf of petitioner, do hereby solemnly affirm and declare that the contents of the Writ Petition are true and correct to the best of my knowledge and belief.

DEPONENT

( M. ASIF YOUSAFZAI )  
Advocate Peshawar.

7235-

12 - Muhammad Asif Adv  
Feb 17 16 H.  
Self

ATTESTED

EXAMINER  
Peshawar High Court,

21 AUG 2014

FILED TODAY

Deputy Registrar

17 FEB 2012

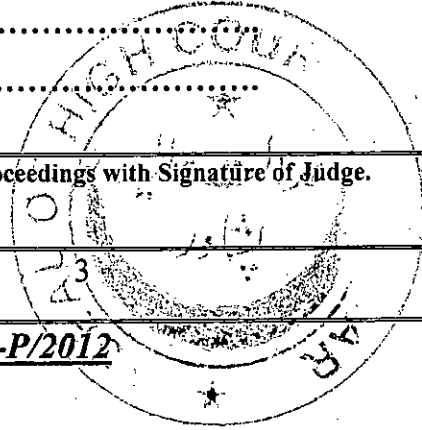
# PESHAWAR HIGH COURT, PESHAWAR

B-11

## FORM OF ORDER SHEET

Court of.....

Case No.....of.....



Serial No. of Order of Proceedings	Date of Order of Proceedings	Order or other Proceedings with Signature of Judge.
1	2	
	<b>ORDER</b> <b>08.05.2012</b>	<p><u>Writ Petition No.568-P/2012</u></p> <p>Present: Mr. Muhammad Asif Yousafzai, Adv., for Ihsanullah etc., petitioners.</p> <p>*****</p> <p><b><u>ATTAULLAH KHAN, J.</u></b>-Ihsanullah etc., petitioners herein, through the instant petition, have asked for the issuance of an appropriate writ declaring that the act of respondent No.3 by not appointing them as Qari / T.T., being nullity in the eye of law is of no effect whatever. They have also asked for the issuance of an appropriate directing the respondents to issue their appointment orders with effect from 04.05.2009 being on merit.</p> <p>2. We have gone through the available record carefully and considered the submissions made by the learned counsel for the petitioners.</p> <p>3. The learned counsel for the petitioners at the very outset requested that he would be satisfied if this</p>

ATTESTED  
EXAMINER  
Peshawar High Court.  
21 AUG 2014

*[Handwritten signature]* 12

Court treats the instant petition as a representation and sends it to the concerned authority for disposal in accordance with law. In this view of the matter, we while disposing of this writ petition, treat it as a representation and direct the office to send it to the Additional Chief Secretary (FATA) Peshawar for decision in accordance with law, rules, policy and merits within a month. This writ petition, thus, stands disposed of. However, the petitioners would be at liberty to approach this Court through a fresh petition, if their grievance is not redressed.

**Announced.**  
**08. 05. 2012**

*[Signature]*  
JUDGE

*[Signature]*  
JUDGE

*G/bee*  
*9/5*

*sd/* *Attaullah Khan. j*  
*sd/* *Waseer Ahmad Seth. j*

*pc issue*

CERTIFIED TO BE TRUE COPY

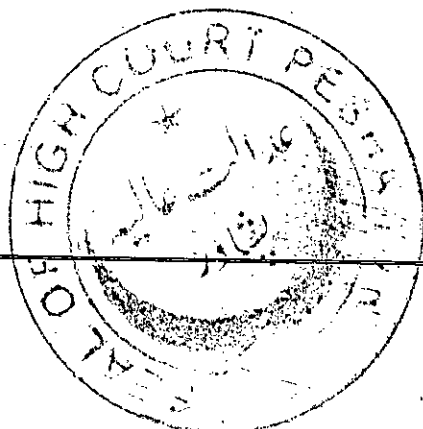
Examiner  
Peshawar High Court, Peshawar  
Authorized Under Article 177 of  
the Constitution of the Islamic Republic of Pakistan, 1973

21 AUG 2014

*Add Register*  
*9/5*

*2051*

No. ....  
 Date of Presentation of Application *19-8-14*  
 No of Pages *8P*  
 Copying fee .....  
 Urgent Fee .....  
 Total *16:00*  
 Date of Preparation of Copy *21-8-14*  
 Date Given for Copy *21-8-14*  
 Date of (Fayaz) Copy of Copy *28-8-14*  
 Received by *[Signature]*



To

The worthy Director Education  
DATA Peshawar Road Peshawar

Attention  
AEO Sh.

Subject: Appeal for implementation of Court decisions bearing  
appeal nos 1516/01, 1587/01, 232/2006, 189/2001, 1125/2002, 2768/01  
and 568-P/012

With great respect it is brought into your kind notice  
that the honourable Court has been decided our cases  
which is still pending in the office of AEO Sh.  
The Ex. AEO used to be delaying a delay tactics and he  
appointed favourable Candidates in place of our rights  
which comes CoE of the Honourable Court.


Therefore it is humbly requested in your kind honour that  
wonder may kindly be passed to the quarters concerned  
to strictly comply the Court decisions with out no further  
delay crisis in the larger interest of justice/public.  
Thanking you in anticipation.

Yours obediently

1. Ahmad Qader and others  
appeals nos 1516/01
2. Naimullah PTC and others  
appeal no 232/2006
3. Kausar PTC and others  
appeal no 189/2001
4. Raiz PTC and others  
appeal no 1125/2002, and 1587/01  
w.p no 2768/01 and 568-P/012  
w.p 46/01.

AEO NWA

The Court decisions may  
be implemented in letter and  
spirit ~~in accordance with the regulations.~~

  
Director Education/4  
DATA Secretariat, Peshawar.

Ali  
JWP

D-14  
~~14~~ ~~14~~

From:

The Enquiry Committee  
AEO Office Miran Shah.

To:

The Agency Education Officer  
North Waziristan Miran Shah.

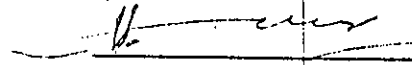
SUBJECT: **ENQUIRY REPORT.**

Memo:

Kindly refer your order dated 26/03/2014 and to state that we the undersigned Scrutinized check the documents and determined the merit of the candidates recorded there in and the applicants in the write petition No. 2768/2011, 568-P/2012 and 46/2011 and found that they deserved appointment as required in the applications. The Court decision may be honoured in favour of the above mentioned write petitioners.

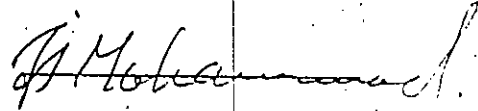
1- Mr. Umer Niaz Khan Supdt

Chairman



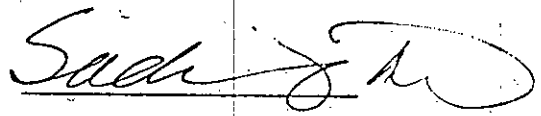
2- Taj Muhammad AAEO

Member

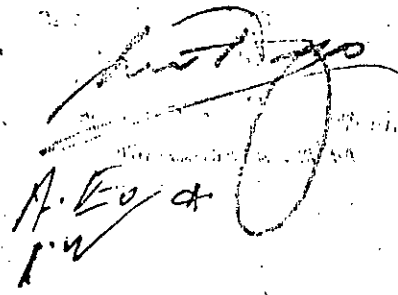


3- Sadiq Ali AAEO

Member



*of Signed agreed and physically checked.*



*Send!  
Till!*



OFFICE OF THE AGENCY EDUCATION OFFICER N.W. AGENCY MIRANSHAH

APPOINTMENT

E - 15

In the light of Peshawar High Court Peshawar, decision vide Writ Petition No. 2768/2011 dated 20/12/2011 and W.P No. 568-P/2012 dated 8/5/2012 and Director Education FATA K.P.K Peshawar order direction dated 16/12/2013 and dated 11/2/2014. Mr: Ihsanullah S/O Khanawal Shah is hereby appointed against the vacant TT post at GPS Raji Kot in BPS-14 at Rs: (8000-610-26300) Per Month plus usual allowances as admissible under the rules with *effect from 4-5-09* in the interest of Justice /Public Service.

**Terms condition:-**

1. His appointment is made on Temporary basis and is liable to terminate at any time without any notice. If he wish to resign from his post he should give One month prior notice or forfeit One month pay in lieu thereof.
2. He should bring his medical certificates from Medical Superintendent AHQ Hospital MRN
3. If he fail to assume his charge within 15 days, his order shall be treated as cancelled.
4. He should be handed over charge if he is not less than 18years and above than 33 years of age.
5. His original qualification date of Birth and Domicile certificate should be checked and be placed on the record.
6. His service will be terminated if he found absent for four days continuously from the date of taking over charge.
7. He will be terminated if his certificates found fake/bogus and tempered.

  
Agency Education Officer  
North Waziristan Agency

Ends:- No. 1786-90 /Appointment/ TT /AEO/MRN Dated 20 15 /2014.

Copy To:-

1. The honorable Registrar Peshawar High Court Peshawar w/r to writ petition No.2768/2011 and W.P No. 568-P2012.
2. The Director of Education (FATA) KPK Peshawar w/r to his direction dated 5/12/2013 .
3. The Political Agent NWA Miranshah.
4. The Agency Accounts Officer Miranshah.
5. AAEO Concerned.
5. Candidate concerned.

  
Agency Education Officer  
North Waziristan Agency

*Allied*  
*JWP*

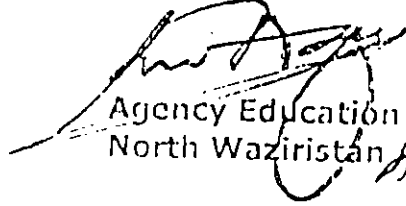
G-17

OFFICE OF THE AGENCY EDUCATION OFFICER NW AGENCY MIRANSHAH

Termination Order

As per report of AAEO male the following Qari / TT Teacher are hereby terminated due to non availability of Posts. Hence this office is not in the position to honour the court decision due to above mentioned reason.

S. No.	Name	Name of School
1.	Musharaf Khan TT	GGPS Shahbaz Kot
2.	Rashid Ullah S/o Peshawar Khan TT	GGPS ZarJanan Kot
3.	Ishaque TT	GGPS Zabardast Kot
4.	Ashraf Ali TT	GGPS Pipali Pekat
5.	Qari Kabir	GHS Muhammad Khel
6.	Qari Huzur	GMS Ghazlama
7.	Ihsan Ullah TT	GPS Raji Kot
8.	Islam Muhammad TT	GPS ZarJanan Kot
9.	Nek Muhammad TT	GPS Khunam Shah Kot
10.	Qismat Ullah TT	GPS Spin Khur Bura Khel
11.	Rashid Ullah S/o Ahmad Khan	GPS Ghulam Khan
12.	Sanbal Laila Gul TT	GGPS Noor Khan Kot

  
Agency Education Officer  
North Waziristan Agency

Ends: No. 1869-73 /Termination / TT/Qari/AEO/MIRN

Dated: 16-6-2016

Copy to:

1. The Director Education (FATA) KPK Peshawar. The Political Agent NWA Miranshah
2. The Agency Account Officer Miranshah
3. AAEO Concerned.
4. Candidate Concerned.

  
Agency Education Officer  
North Waziristan Agency

*Ahmed*  
*Ward*

No. 1608 /AEO/NWA/MRN Dated 30 /04/2014.

~~D-14~~  
H-18

From

The Agency Education officer  
North Waziristan Agency.

To

The Director of Education  
FATA KPK Peshawar.

Subject:- Vacant Post.

Memo:

Ref: Assistant Director (Mr. Laiq Khan) P&D Directorate  
of Education FATA Peshawar Memo: NO. 14498 dated 24.4.2014.

As per report of Assistant Agency Education Officers  
regarding vacant Posts of P.S.T(PTC) in N.W. Agency is sent for  
further necessary action as demanded by the Community school Teachers.  
(List of 14 posts attached).

Agency Education officer  
North Waziristan Agency.

*[Signature]*  
ATTESTED

ATTESTED

*[Signature]*  
*[Signature]*

6      ②      ⑤  
①9

OFFICE OF THE AGENCY EDUCATION OFFICER,  
NWA, MIRAN SHAH.

From: The Agency Education Officer,  
NWA, Miranshah

To: The Director Education FATA,  
KPK, Peshawar.

Subject: Implementation of Court Decision Bearing Appeal  
No.1516/2011 Ahmad Qadar V/S Agency Education Officer,  
NWA Miran Shah

Memo:

Kindly refer to your letter No.20093; dated 11/11/2013 and to state that there is no vacant post to comply with the order/judgment of the Hon'ble Service Tribunal, KPK Peshawar passed in respect of Ahmad Qadar, PTC and others on dated 15.5.2012.

Report is submitted for your kind perusal please.

  
AGENCY EDUCATION OFFICER  
NORTH WAZIRISTAN AGENCY

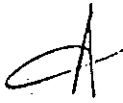
Encl. No. 10-11 /



Dated 18-12 /2013.

Copy to:

Political Agent, NWA, Miran Shah, for information.

Agency Education Officer,  
NWA, Miran Shah.

  
ATTESTED

OFFICE OF THE AGENCY EDUCATION OFFICER  
NWA, MIRAN SHAH

(16)  
(20)

**OFFICE OF THE AGENCY EDUCATION OFFICER N.W.AGENCY**

**DETAIL OF CATEGORY-WISE SANCTIONED POSTS (MALE & FEMALE)**

S.No	Category	Male			Female			Total Sanct. Posts
		Total Sanctioned posts	Filled-up	Vacant	Total Sanctioned posts	Filled-up	Vacant	
1	CT	209	259	3	97	57	40	386
2	DM	85	68	1	44	12	32	129
3	PET	87	63	1	43	19	24	130
4	AT	81	68	1	42	13	29	123
5	TT	396	368	3	112	104	8	508
6	Qari	25	22	3	10	4	6	35
7	P/Imam	17	15	2	0	0	0	17
8	PTC	255	234	2	707	705	2	1562
9	ET	3	3	0	0	0	0	3
<b>G:Total</b>		<b>1838</b>	<b>1723</b>	<b>15</b>	<b>1055</b>	<b>914</b>	<b>141</b>	<b>2893</b>

*K.P.O.*

*N*

*[Signature]*

*[Signature]*  
**Agency Education Officer**  
**North Waziristan Agency**

The Above Posts/ Statement is Verified for Up-gradation

**Agency Accounts Officer**  
**North Waziristan Agency**

*Aliud*  
*W.P.*

I-(21)

جناب ڈائریکٹر ایجوکیشن خانہ دارالعلوم اور لٹریچر  
جو اس وقت ریجنل ایجوکیشن افسر NWFA سرالتا  
عنوان: ریجنل سائیکھل سائیکھل کے سلسلے بحالی

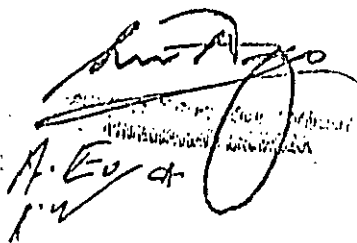
جناب عالی!  
خود نام لڈاروشی نے کہ لڈاروشی کورس نے ہمیں کورس ریڈیشن  
نمبر 2768/011/12/21 ریڈیشن 12/01/2012 م 568-012/012-8-5-012 کے تحت  
سین فیصد کیا اور وہی روشنی میں ڈائریکٹر ایجوکیشن خانہ نے 12/01/2013 کو AEO نادو  
کو اجراء کیلئے خدمات جاری کیا۔ اور AEO کے تحت اس خدمات کا روشنی میں  
سبب تقرری کے ارضیات جاری کیا۔ لیکن اس وقت AEOs نے AEO کو  
پرکھتے ہیں کہ یہاں تک اس کو سبب نہیں ہیں۔ اور اس کے لیے AEO  
کے لئے نہیں کیونکہ اس وقت جاری کیا۔ اور یہ کہ یہاں تک اس کو سبب نہیں ہیں  
کے لئے نہیں ہیں۔

لڈاروشی کی خدمات میں عرض ہے کہ مع عرب فورس اور لڈاروشی کے ذریعہ  
آج تک نہیں ہے۔ لہذا ہمیں سائیکھل سائیکھل کے سلسلے کا اوتھی میں 4-5-09  
سے بحالی کے ارضیات کے سلسلے جاری کرنا ضروری ہے۔

ایک تاجدار سائیکھل  
اسان کے ذریعہ سائیکھل  
اسان کے ذریعہ سائیکھل

Director Edu: PATA

Forwarded please.

  
A. Eo  
1/2

Allied  
1/2

- 1) Musharraf Khan TT SPS Shahbazkot ✓
- 2) Ashraf Ali TT SPS Papali percel ✓
- 3) Naeel Mohd TT SPS Wacil Khan kot ✓
- 4) Islam Mohamed TT SPS Ranjanan kot ✓
- 5) Qismatullah TT SPS ✓
- 6) Ishaque TT SPS ✓
- 7) Ihsanullah TT SPS Raji kot ✓
- 8) Rasheedullah TT SPS Ranjanan kot ✓
- 9) Davi <sup>M.</sup> Huzoor SPS Mohd Ayaz Ichuslat ✓
- 10) Davi Mohd Kabir SPS Land charichal ✓
- 11) Saibal Kiala Gul TT SPS. Noor Khan Banda Minusrah ✓
- 12) Rasheedullah. S/o Ahmad Ichus TT SPS Shulani Ichus ✓

12

Received  
To Lay

17/6/  
2014

Ali  
Wali

VAKALATNAMA

IN THE COURT OF ICPK SUP TRIBUNAL PESHAWAR  
APPEAL OF 2014

IHSANULLAH

(APPELLANT)  
(PLAINTIFF)  
(PETITIONER)

VERSUS

ACS FATA

(RESPONDENT)  
(DEFENDANT)

I/We Ihsanullah

Do hereby appoint and constitute **NOOR MOHAMMAD KHATTAK, Advocate, Peshawar** to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate Counsel on my/our cost. I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter.

Dated. 26 / 09 / 2014

OWJ

CLIENT

Accepted

**NOOR MOHAMMAD KHATTAK**  
(ADVOCATE)

OFFICE:

Room No.1, Upper Floor,  
Islamia Club Building, Khyber Bazar,  
Peshawar City.

Phone: 091-2211391

Mobile No.0345-9383141



SA-1259/16

Receipt

32 others

I have received Rs. 9900/- of fine  
in connected appeals of Musharraf  
Khan & 32 others vs A.C.S FATA  
in appeal No. 1259/2014 today dated  
28/4/2016.

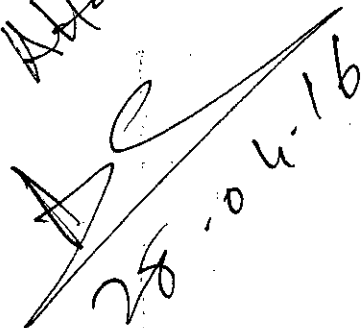
Dated: 28/4/2016

Appellant

Through:

Neer Mohammad Khattak  
Advocate

Attested

  
28.04.16

**BEFORE THE KHYBER PUKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

Appeal No: 1264/2014

Ihsanullah .....Appellant.

**VERSUS**

1. The Additional Chief Secretary FATA Secretariat, Warsak Road, Peshawar.
2. The Director Education FATA, FATA Secretariat, Peshawar.
3. The Agency Education Officer, North Waziristan Agency ... Respondents.

**Para-wise comments on behalf of respondent No: 2 & 3.**

**Respectfully Sheweth:**

**Preliminary Objection**

1. That the appellant has got no cause of action to file the instant appeal.
2. That the appellant has not come to this Honorable Tribunal with clean hands.
3. That the appellant has concealed material facts from this Honorable Tribunal.
4. That the appellant is estopped by his own conduct to bring the present appeal.
5. That the appeal is bad due to mis-joinder and non-joinder of necessary parties.
6. That the appeal is barred by law and no departmental appeal is made to the competent authority against the impugned order. Hence not maintainable under Section-4 of Service Tribunal Act.

**On Facts:**


1. Subject to proof.
2. Incorrect. The writ petition earlier filed by the petitioner/appellant clearly showed, that they pray before the honorable court for issuance of writ to direct the respondent i.e. Agency Education Officer for appointment against project communal TT post, so it is incorrect, that they had file the same petition for permanent TT post. (Copy of writ petition already attached as Annexure (A) by appellant.
3. The committee so constituted has wrongly/mistakenly implemented court directions dated 24.02.2011. As the honorable court has directed to dispose of the case of the petitioners as per law/policy, (copy already attached as Annexure-B by appellant). Whereas committee has altogether ignored the fact, that appellant had filed their case for appointment against Project TT posts, which was not advertised, nor applications were called from the appellants, and furthermore, no merit record have been shown by the committee from which it can be inferred that they were entitled for appointment.
4. Incorrect. The appointment orders were issued without due course of law/policy, as direct inductions without any advertisement/merit and policy is liable to be cancelled/withdrawn. Furthermore, the appellant appointment were made without taking into consideration the availability of vacant posts, therefore, respondent department legally interfered and rectified the matter as was required.
5. Incorrect. The cancellation/withdrawn order dated 20.05.2014 is legal, as under the law, the competent authority where can make an order also can rescind an order under the law.
6. The competent authority cancelled/withdrawn the appointment order of the appellant being repugnant to rules/policy.

**Grounds:**


- A. Incorrect. That the impugned order dated 20.05.2014 is in accordance with law/policy.
- B. Incorrect. Respondents have acted according to law/policy, as the appellant was wrongly appointed, therefore, their appointment was liable to be struck down under the law.
- C. Incorrect. The show cause notice is usually issued in absentees cases, whereas case of the appellant was of serious nature being a loss to national exchequer, because there were no available vacant posts on which appellant were appointed which was a sheer violation of law/policy. Further an illegal act can not create a right.
- D. Incorrect. The appellant were properly informed to submit their initial appointment and service book which they did not so provide, and it is clearly showed on their part that they were quiet known the fact of their illegal appointment.
- E. Incorrect. The rule of locus poenitentiae is not applicable in an illegal rules.
- F. Incorrect. Hence denied.
- G. The respondents also seek permission to advance other grounds and proofs at the time of arguments.

In light of the above facts it is humbly requested to please dismiss the appeal with cost throughout.

Respondent No. 2.

  
Per Director Education FATA.

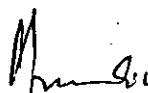
Respondent No. 3.

  
Per Agency Education Officer,  
North Wazisistan Agency.

**AFFIDAVIT**

We the above respondents do hereby declare and affirm that the above comments are true and correct to the best of our Knowledge and belief and nothing has been concealed from this Honorable Tribunal.

Respondent No. 2.

  
Per Director Education FATA.

Respondent No. 3.

  
Per Agency Education Officer,  
North Wazisistan Agency.

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

**APPEAL No.1264/2014**

**IHSANULLAH**

**VS**

**A.C.S FATA**

**REJOINDER ON BEHALF OF APPELLANT IN RESPONSE**  
**TO THE REPLY SUBMITTED BY THE RESPONDENTS**

**R/SHEWETH:**

**Preliminary Objections:**

**From 1 to 6:**

All the preliminary objections raised by the respondents are incorrect, baseless and not in accordance with law and rules rather the respondents are estopped due to their own conduct to raise any objection at this stage of the appeal.

**ON FACTS:**

**(1 To 6):**

- 1- Admitted correct by the respondents hence need no comments.
- 2- Incorrect and not replied accordingly. That the appellant filed a writ petition No. 2767/2011 in the Hon'ble Peshawar High Court Peshawar for appointment on the post of Theology Teacher. That the Hon'ble Peshawar High Court Peshawar while disposing the writ petition of the appellant directed the respondents to disposed of the representation/application of the appellant with in a month time strictly on merit and in accordance with rules and policy of the government on the subject vide judgment dated 20-12-2011.
- 3- Incorrect and not replied accordingly. That on the direction of Hon'ble Peshawar High Court Peshawar, respondent No.3 (Agency Education Officer) constituted a committee to check/scrutinized the documents and determined the merit/rights of the appellant. That the committee strongly recommended the appellant for appointment on the post of T.T vide dated 26-03-2014.
- 4- Incorrect and not replied accordingly. That on the direction of Hon'ble Peshawar High Court Peshawar, respondent No.3 (Agency Education Officer) and recommendation of respondent No.2, respondent No.3 issued appointment order of the appellant as TT vide order dated 12-05-2014. That accordingly the appellant took over the charge of his post

vide dated 12-05-2014. That the respondent Department has falsely stated the non availability of vacancies.

- 5- Incorrect and not replied accordingly. That respondent No.3 vide order dated 16-06-2014 withdrawn the appointment order of the appellant without any reason/justification. That Directorate of Education FATA Peshawar already directed the respondent No.3 to re-appoint the community School Teachers as per policy vide dated 16-06-2014.
- 6- Incorrect and not replied accordingly hence denied.

**GROUNDS:**  
**(A to E):**

All the grounds of main appeal are correct and in accordance with law and prevailing rules and that of the respondent are incorrect, baseless and not in accordance with law and Rules hence denied. That the impugned order dated 16-06-2014 issued by the respondents are against the law, facts, norms of natural justice and materials on the record hence not tenable and liable to be set aside. That no show cause notice and chance of personnel hearing/defense has been given to the appellant. That the impugned order dated 16-06-2014 has been issued by the respondents in violation of the principle of Locus Poenitentiae. That the respondent Department acted in arbitrary and mala fide manner while issuing the impugned order dated 16-06-2014 against the appellant.

It is therefore most humbly prayed that on acceptance of this rejoinder the appeal of the appellant may be accepted in favor of the appellant.

**APPELLANT**

  
**IHSANULLAH**

**THROUGH:**

  
**NOOR MOHAMMAD KHATTAK**

**&**

**SYED IMDAD HUSSAIN  
ADVOCATES**