


FORM OF ORDER SHEET

Court of _____

Appeal No. 640/2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	09/05/2024	<p>The appeal of Mst. Aisha Kanwal resubmitted today by Miss. Naila Jan Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on 13.05.2024. Parcha Peshi given to the counsel for the appellants.</p> <p>By the order of Chairman</p> <p> REGISTRAR</p>

D

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Aisha Kanwal

Versus

Govt of KPK & Others

APPLICATION FOR ADJUDICATION OF
THE SERVICE APPEAL AT PRINCIPLE
SEAT PESHAWAR.

Respectfully Sheweth:-

The applicants submits as under:-

- 1. That the above title Service Appeal is file before this Hon'ble Tribunal and which no date has been fixed yet.*

- 2. That the council of the applicant/appellant is a female who is practicing at Peshawar. Whereas the respondent offices are also situated at Peshawar and persuing the case on behalf of the respondents at Peshawar. Therefore persuing of the case at Peshawar would be more convenient not only to the appellant but to the respondents as well.*

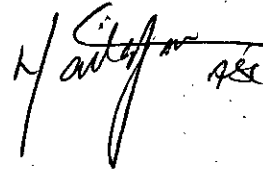
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3. *That there is nothing which may prevent this Hon'ble Tribunal from hearing/ adjudication at Peshawar.*

It is, therefore, most humbly prayed that on acceptance of the instant application the above title service appeal may kindly be adjudicated at Peshawar.

Applicant

**Through
Naila Jan
ASC**

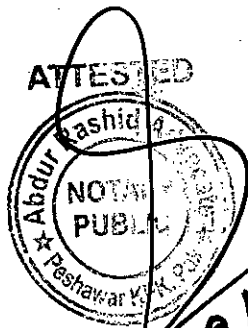


Dated:- 09.05.2024

AFFIDAVIT

I, Naila Jan Advocate Supreme Court, Counsel for the applicant/appellant, do hereby solemnly affirm and declare on oath that the contents of the application are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.

n/ Naila Jan asc
DEPONENT




9/5/2024

The appeal of Mst. Aisha Kanwal received today i.e on 29.04.2024 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1✓ According to sub-rule-4 of rule-6 of Khyber Pakhtunkhwa Service Tribunal rules 1974 respondent no. ~~1~~, ~~4~~ and ~~5~~ are unnecessary/improper parties, in light of the rules ibid and on the written direction of the Worthy Chairman the above mentioned respondent number be deleted/struck out from the list of respondent.
- 2✓ Check list is not attached with the appeal.
- 3✓ Appeal has not been flagged/marked with annexures marks.
- 4- Annexures of the appeal are not in sequence.
- 5- All the Annexures attached with the appeal are illegible be replaced by legible/better one.
- 6- Annexures of the appeal are unattested.
- 7- Copy of departmental appeal is not attached with the appeal be placed on file.
- 8- Three copies/sets of the appeal along with annexures i.e. complete in all respect for Tribunal and one for each respondent may also be submitted with the appeal.

No. 997 /S.T,

Dt. 30/4 /2024.


REGISTRAR 30/4/24
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Naila Jan Adv.
High Court Peshawar.

*Remand
all the objection
resubmitted by
Naila Jan Adv
07/05/2024*

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. **640** /2024

Aisha Kanwal

VERSUS

Govt of KPK through Chief Secretary & Others

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Dated: 29-4-2024

Appellant

Through

Naila Jan
Advocate, Supreme Court of
Pakistan

D

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

Appeal No. 640/2024

Aisha Kanwal SST (Bio-Chemistry) GGHS Hayaseri Dir Lower.
(Appellant)

VERSUS

1. The Secretary to Govt. of Khyber Pakhtunkhwa Elementary & Secondary Education, Civil Secretariat, Peshawar.
2. Director Elementary and Secondary Education Khyber Pakhtunkhwa at Peshawar.

(RESPONDENTS)

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974
AGAINST THE IMPUGNED ORDER DATED 15/12/2023 OF RESPONDENT WHEREBY
THE APPELLANT HAS BEEN REMOVED FROM SERVICE WITH RETROSPECTIVE EFFECT IN UTTER
VIOLATION OF LAW, RULES, PRINCIPLES OF NATURAL JUSTICE AND INACTION ON THE
DEPARTMENTAL APPEAL OF THE APPELLANT AFTER EXPIRY OF THE STATUTORY PERIOD OF 90
DAYS ON THE PART OF APPELLATE AUTHORITY IS VOID AB-INITIO ,CORAM NON-JUDICE AND
NOT SUSTAINABLE IN THE EYES OF LAW.

Respectfully Sheweth;

The appellant submits the following few lines;

1. That the appellant was appointed as SST (BS-16) Science Teacher on 2/05/2014 and since her appointment, the appellant performed her duties with due diligence, honesty and to the entire satisfaction of the High ups.
2. That during posting as SST (BS-16) Science Teacher at GGHS Hayaseri Dir Lower, the appellant applied for Extra Ordinary Leave(E.O.L) for study & NOC to get PhD at Shaanxi Normal University China through proper channel.
3. That the Respondent, was kind enough to grant two years E.O.L w.e.f 20/09/2019 to 19/09/2021 Vide endorsement No: 4848-86 A-17/ Leave/Vol – III Dated 03/09/2019 and the Respondent No 04 issued NOC for getting PhD vide

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letter No 2424 dated: 04/09/2019. (Copies of the letter dated 03/09/2019 & NOC are annexure "A&B").

4. That the appellant after obtaining NOC and leave, proceeded aboard with the prior permission of the competent authority (Respondent No 02) and was busy in getting PHD however after expiry of the two years EOL, the appellant applied through proper channel for extension of her EOL for further two years w.e.f 20/09/2021 to 30/06/2023 as the Honorable Tribunal is well aware of the fact that the standard duration for a PhD program is usually between 4 to 5 years. (Copy of the extension Application is annexure "C")
5. That the Respondent No 01 duly forwarded application for extension to the Respondent No 03, vide letter 17143 dated 24/09/2021 however the appellant did not get any information about the fate of the application and the appellant was in the apprehension that the application would have been accepted. (Copy of the letter 17143 dated 24/09/2021 is annexure "D").
6. That the respondent No 01 vide letter dated 04/03/2023 and letter 10/04/2023 requested respondent No 03 for sanctioning of the leave extension application of the appellant and its fate however the respondent No 03 did not responded the same. (Copies of the letters dated 04/03/2023 and 10/04/2023 are annexures "E & F").
7. That after completion of the PHD in Chemistry, the appellant submitted her arrival report before Respondent No 02 duly countersigned by Respondent No 01 however respondent No 04, without issuing Charge sheet along with statement of allegation or regular inquiry, handed over a show cause notice which was issued on 02-06-2023 against the appellant despite the fact that respondents were in knowledge of the fact that the appellant is abroad and engaged in the completion of her PHD with prior permission of the respondents. However thereafter, the appellant replied the show cause Notice. (Copies of the show cause Notice and reply are annexures "G & H")
8. That Respondent No 03 without consideration of the justified reply of the appellant to the show cause notice or conducting regular inquiry or opportunity of meaningful personal hearing, straightaway removed the appellant from services with retrospective effect vide order dated 15/12/2023 in a cursory manner in violation of Law, Rules, Principles of Natural Justice hence the Impugned Order dated 15/12/2023 is void ab Initio, Coram Non-Judice and not sustainable in the eyes of law. (Copy of the Impugned Order dated 15/12/2023 is annexure "I")
9. That the appellant feeling aggrieved from the Impugned Order dated 15/12/2023 filed departmental appeal before Respondent No 01 well within the statutory period under the law however after expiry of 90 days period the same has not been decided yet. (Copy of the Departmental Appeal is annexure "J")
10. That the appellant has no other adequate remedy against the Impugned Order dated 15/12/2023 of Respondent No 03 and inaction on the part of the respondent No 01 hence filing the instant Service Appeal on the following grounds interalia;

GROUNDS:

- A. That the impugned order 15/12/2023 of Respondent (No 03) and inaction on the part of Respondent No 01 is against the law, rules and Principles of natural justice hence void ab initio and liable to be set-aside.

- 3
- B. That no opportunity of meaningful personal hearing or defense has been provided to the appellant hence the appellant has been condemned unheard.
- C. That no charge sheet along with statement of allegation had been issued to the appellant which are mandatory under the Khyber Pakhtunkhwa (Efficiency & Disciplinary) Rules 2011.
- D. That no regular or fact finding inquiry has been conducted before awarding the major penalty to the appellant nor did regular inquiry had been dispensed with under Rule 05 read with Rule 07 of Khyber Pakhtunkhwa (Efficiency & Disciplinary) Rules 2011 which is mandatory under the Ibid Rules 2011 hence the appellant has not been proceeded under the Ibid Rules and impugned order 15/12/2023 is liable to be set-aside on this score alone.
- E. That opportunity of Fair Trail, as guaranteed by Art 10 A of the Constitution of Islamic Republic of Pakistan 1973 has not been provided to the appellant which is violation of the fundamental Rights of the appellant.
- F. That neither the appellant has been proceeded under Rule 5 by conducting regular inquiry or dispensing with the inquiry Nor did proceeded under Rule 9 of Khyber Pakhtunkhwa (Efficiency & Disciplinary) Rules 2011 by issuing notices or publication before awarding the punishment of removal vide impugned order dated 15/12/2023 hence the impugned order dated 15/12/2023 is not sustainable in the eyes of law.
- G. That the appellant has not been treated in accordance with Art 4&25 of the Constitution of Islamic Republic of Pakistan 1973.
- H. That the appellant has been awarded the punishment with retrospective effect which is void order as per dictum laid down by the Apex Court in 2002 SCMR 1124.
- I. That the absence of the appellant is not willful but due to the reason that the appellant was proceeded abroad for PHD with the prior approval of the department therefore the appellant was in the apprehension that for the purpose of completion PHD the leave may be extended hence the so called absence does not amount to misconduct therefore awarding of Major penalty is not sustainable in the eyes of law.
- J. That since the impugned order the appellant is jobless and facing hardship.
- K. That the appellant after getting NOC and Necessary approval of the department proceeded for the PHD Abroad and spent studying for two long years therefore without completion of PHD would certainly destroy the career of the appellant but study for the last two years would amount to a futile exercise which may cause irreparable loss to not only the appellant but her students.

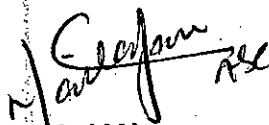
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- L. That after Obtaining PHD and equipped with the modern scientific education from a developed Country, the appellant would serve the nation in more effective manner which would be more beneficial to the poor students of the district Dir lower who even could not afford to get education in Peshawar however by issuing the impugned order dated 15/12/2023 the department not only penalized the appellant but deprived the poor student of the district from the modern scientific knowledge and service of the appellant.
- M. That the appellant hails to a backward area where getting female education is a challenge while the appellant got PHD with prior approval of the respondents however instead of appreciating and encouraging her and other female of the locality the appellant has been subjected to major penalty of removal which is inhuman and violation of the Fundamental rights of the appellant.
- N. That the punishment is harsh one which does not commensurate with the act of the respondents.

It is therefore requested that on acceptance of the instant appeal the impugned order dated 15/12/2023 may graciously be declared against the law rules and principles of natural justice and the same may be set aside by reinstating into service with all back benefits.

Dated: 29-4-2024

Through

APPELLANT


NAILA JAN
Advocate, Supreme Court of
Pakistan

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO...../2024

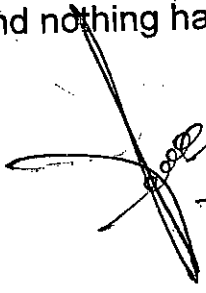

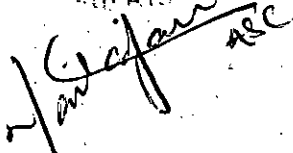
Aisha Kanwal

VERSUS

Govt of KPK through Chief Secretary & Others

AFFIDAVIT

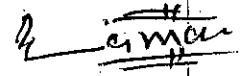
I, Aisha Kanwal SST (Bio-Chemistry) GGHS, Hayaseri Dir Lower, do hereby solemnly affirm & declare on oath that all contents of instant service appeal are true & correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.

Identified By

Naila Jan
Advocate Supreme Court of
Pakistan

DEPONENT
CNIC:
CELL NO:



b

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

Appeal No...../2024.

Aisha Kanwal

VERSUS

Director E&S Department etc

ADDRESSES OF PARTIES

Appellant

Aisha Kanwal SST (Bio-Chemistry) GGHS Hayaseri Dir Lower.

Respondents

1. The Secretary to Govt: of Khyber Pakhtunkhwa Elementary & Secondary Education, Civil Secretariat, Peshawar.
2. Director Elementary and Secondary Education Khyber Pakhtunkhwa at Peshawar.

Dated:- 29/04/2024

Through:-

Appellant


Naila Jan
Advocate Supreme Court

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A
Amdur "A"

The District Education Officer (Female)
Dir Lower Timergara.

SUBJECT: APPLICATION FOR NOC FOR FURTHER STUDIES.

Respected Sir/Madam,

Reference to the above cited subject it is to bring your kind notice that, I am serving as SST (Bio-Chem) at GGHS Hayasery Dir Lower since May 2014. I did my master in the discipline of chemistry and now I would like to enroll in PhD to fulfill my desire of further studies.

In the view of the above subject, kindly grant me No Objection Certificate (NOC).

Regards

Aishta Kanwal

SST (Science)

GGHS Hayasery

Aishta Kanwal

[Handwritten Signature]

HEAD MISTRESS
GGHS hayasera
Distt Lower Dir



NOTIFICATION

DIRECTORATE OF ELEMENARY & SECONDARY
EDUCATION KHYBER PAKHTUNKHWA PESHAWAR

Sanction is hereby accorded to the grant of Extra Ordinary Leave in respect of Mst. Aisha Kanwal W/O Saeed Ullah, SST (Bio/Chem) BPS-16 GGHS Hayaserai Dir Lower with effect from 20-09-2019 to 19-09-2021 (2 years without pay) as due and admissible to her under the Revised Leave Rules 1981.

Director
Elementary & Secondary Education
Khyber Pakhtunkhwa Peshawar

Endst.No. 4884-86 A-17/Leave/Vol-III

Dated Peshawar the 3/9/2019

Copy forwarded for information to the:-

- 1- The District Education Officer (F) Dir Lower w.r to her letter No. 2355 Dated 31-08-2019.
- 2- District Accounts Officer Dir Lower.
- 3- PA to Director (E&SE) Local Office.

*Amended
YAR*

Amended
Deputy Director Establishment (F)
Elementary & Secondary Education
Khyber Pakhtunkhwa Peshawar

*dl
3/9/19*

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Amulok C

To
The DEO (female)
Dir lower Timargara
Subject:

Further extension as extra ordinary leave (without pay) for PHD.

Respected madam,

Reference to the above cited subject, it is to bring to your kind notice that, I was serving as SST (Science) at GGHS Hayasari Dir Lower since May 2014.

I am already on extra ordinary leave (without pay) since 20-09-2019. Now I want to extend my leave further because my PHD will about to complete till June 2023.

In view of the above, extra ordinary leave (without pay) from 20-09-2021 to 19-06-2023 may please be sanctioned.


Regards: Aisha Kanwal

SST (Science) GGHS Hayasari

Accepted
[Signature]

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Noted D



OFFICE OF THE DISTRICT EDUCATION OFFICER FEMALE DIR LOWER.

NO. 17143

Dated: 24/09/2021



emlsdeofdirlower@gmail.com



DEO Female Dir Lower



@DEOFemaleDir(L)

To

**The Director of Elementary and Secondary,
Education Khyber Pakhtunkhwa Peshawar.**

Subject: -
Memo;

GRANT OF EXTRA ORDINARY LEAVE WITHOUT PAY.

Enclosed please find herewith Leave application in original regarding Extra Ordinary Leave without pay for the period from 20/09/2021 to 30/06/2023, in r/o Mst; Aisha Kanwal SST (Bio, Chem) GGHS Hayaseral Dir Lower.

Further it is stated that the Teacher concerned already granted Extra Ordinary Leave for the period w.e.f 20/09/2019 to 19/09/2021 without pay vide your good office order Endst No.4848-86 A-17/Leave/Vol-III Dated Peshawar the 03/09/2019. Copy attached.

Hence submitted for further order please.

Noted
Mst

DISTRICT EDUCATION OFFICER
FEMALE DIR LOWER.

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Mst



OFFICE OF THE DISTRICT EDUCATION OFFICER FEMALE DIR LOWER.

NO _____

Dated: 07/03/2023

M

eduofemalelower@gmail.com

F

DIO Female Dir Lower



@DIOFemaleDir

To:

The Director (DPS) K.P. Shikhar

Subject:

GRANT OF EXTRA ORDINARY LEAVE WITHOUT PAY.

Memo:

It is stated for your kind information that one Mst, Aisha Kanwal SST Bio/Chem: GGHS Haya seral already granted Extra ordinary leave for a period from 20/9/2019 to 19-9/2021 (Two Years) without pay.

After the Expiry of leave She submitted another application for extension in extra ordinary leave for a period from 20/9/2021 to 30-06-2023 which has already been submitted to your good office vide this office letter No. 17143 dated 24/9/2021 copy attached.

The Head Mistress concerned submitted absent report against the above named teacher on 04-02-2023 copy attached for ready reference.

If your good self-granted extension in extra ordinary leave a copy of the same may be submitted to this office for record, otherwise she may be proceeded under E&D rules 2011 in light of per documents attached.

DISTRICT EDUCATION OFFICER
FEMALE DIR LOWER.

Encls No. 987-88

Copy of the above is forwarded to:-

1. The Head Mistress GGHS Haya Seral Dir lower
2. The Teacher concerned.

*Accepted
WBR*

DISTRICT EDUCATION OFFICER
FEMALE DIR LOWER.

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**DIRECTORATE OF ELEMENTARY & SECONDARY
EDUCATION KHYBER PAKHTUNKHWA PESHAWAR**

P.O. No. 1795/AD/10 Koton/SS/Dir Lower

Dated Peshawar 21/01/2023

SHOW CAUSE NOTICE

I, Dr. Iqbal Khan, Director (Elementary & Secondary Education Khyber Pakhtunkhwa as competent authority under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, do hereby serve upon Mrs. Aisha Kanwal SST-B/C GGHS Hayaserai Dir Lower as follows:

1. That as per report of District Education Officer (Female) Dir Lower vide No. 1894 dated 10-01-2023, you have remained absent from duty w.e.f. 01-02-2023 without any proper sanction /approval of the competent authority.
2. That after going through material on record under Rule 5 (a) and to dispose with the formal inquiry in accordance with Rule-7 (b) of the aforementioned Rules, I, Dr. Iqbal Khan, Director Elementary & Secondary Education Khyber Pakhtunkhwa, as the competent authority, am convinced that you have committed acts/omissions specified in Rule-3 (b) & (d) i.e.
 - a. "Guilty of misconduct"
 - b. "Guilty of habitually absenting yourself from duty without prior approval of leave"
3. That in exercise of powers conferred under the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011, I the Dr. Iqbal Khan, Director E&SE Khyber Pakhtunkhwa as, the Competent Authority have tentatively decided to impose upon you any of the major penalties mentioned in Rule-4 (b) of the ibid rules.
4. You are, therefore, required to show cause as to why the aforementioned penalty should not be imposed upon you and also intimate whether you desire to be heard in person.
5. If no reply to this show cause is received within 7 days of its receipt, it shall be presumed that you have no defense to put in and, in that case, an Ex-Parte decision will be taken against you.

*Attested
W/mt*

Director
Competent Authority
Elementary & Secondary Education
Khyber Pakhtunkhwa, Peshawar

32-361

Endst of Even No. & Date.

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

1. District Education Officer (F) Dir Lower w/r to her letter No and date cited above.
2. Principal GGHS Hayaserai Dir Lower with remarks to inform the teacher concerned.
3. Mst. Aisha Kanwal SST-B/C GGHS Hayaserai Dir Lower.
4. PA to Director E&SE, Peshawar.
5. Office Copy.

[Signature]
Director
Elementary & Secondary Education
Khyber Pakhtunkhwa, Peshawar

Mu Gen

**DIRECTORATE OF ELEMENTARY & SECONDARY
EDUCATION KHYBER PAKHTUNKHWA, PESHAWAR.**

No:-

Dated Peshawar 02/06/2023

SHOW CAUSE NOTICE

I Dr. Iqbal Khan Director Elementary & Secondary Education Khyber Pakhtunkhwa as competent authority under the Khyber Pakhtunkhwa Government Servant E&D Rules, 2011 do hereby Served upon you Mss: Aisha Kanwal SST/BC GGHS Hayaserai Dir Lower as follows:-

1. That as per report of District Education Officer Female Dir Lower vide No 1894 dated 10/04/2023 you has remained absent from duty w.e.f 04/02/2023 without any proper sanction/approval of the competent authority.
2. That after going through material on record under Rule 5 (B) (a) and to dispense with the formal inquiry in accordance with Rule 2 (b) of the aforementioned Rules, I Dr. Iqbal Khan Director Elementary & Secondary Education Khyber Pakhtunkhwa as the competent authority am convinced that you have committed acts/omission specified in Rule 3 (b) (d).
 - i. Guilty of misconduct
 - ii. Guilty of habitually absenting yourself from duty without prior approval of leave
3. That in exercise of powers conferred under the Khyber Pakhtunkhwa Government Servant E&D Rules, 2011 I the Dr. Iqbal Khan, Director E&S Education Khyber Pakhtunkhwa as competent authority have tentatively decided to impose upon you any of the major penalties mentioned in Rule 4(b) of the ibid rules.
4. You are therefore, required to show cause as to why the aforementioned penalty should not be imposed upon you and also intimate whether you desire to be heard in person.
5. In no reply to the show cause notice is received within 7 days of its receipt, it shall be presumed that you have no defence to put in and in that case an Ex-parte decision will be taken against you.

Director
Competent Authority
Elementary & Secondary Education
Khyber Pakhtunkhwa, Peshawar.

Endst: No 32-34

Copy of the above forwarded for information to the:-

1. District Education Officer (F) Dir Lower w/r to her letter No and date cited above.
2. Principle GGHS Hayaserai Dir Lower with remarks to inform the teacher concerned.
3. Mst: Aisha Kanwal SST B/C GGHS Hayaserai Dir Lower
4. PA to Director E&SE Peshawar
5. Office Copy

Director
Elementary & Secondary Education
Khyber Pakhtunkhwa, Peshawar.

[Signature]

To

The Director
Elementary and Secondary, Education
Khyber Pakhtunkhwa, Peshawar.

Subject: Reply to the Show Cause Notice dated 02-06-2023

Dear Sir,

With reference to the show cause Notice dated 02-06-2023 issued from your good Office, the undersigned has to submit that the same has not been communicated to me however the undersigned received a copy of the same today on 21/08/2023 via WhatsApp from one of my relative however the undersigned submits the following few lines as reply;

- I. That the undersigned was appointed as SST (BS-16) Science Teacher on May 2, 2014 and since appointment, the undersigned performed his duties with due diligence, honesty and to the entire satisfaction of the High ups.
- II. That during posting as SST (BS-16) Science Teacher at GGHS Hayasari Dir Lower, the undersigned applied for Extra Ordinary Leave for study & NOC to get PhD at Shaanxi Normal University China and your good self was kind enough to grant two years EOL w.e.f 20/09/2019 to 19/09/2021 Vide endorsement No: 4848-86 A-17/ Leave/Vol -III Dated Peshawar 03/09/2019 whereas the DEO (F) Dir (L) was kind enough to grant the NOC vide letter No 2424 dated: 04/09/2019. (Copies of the letter dated 03/09/2019 & NOC are annexure A&B).
- III. That the undersigned proceeded abroad and was busy in getting PhD however after expiry of the two years EOL, the undersigned applied through proper channel for extension of my EOL for further two years w.e.f 20/09/2021 to 30/06/2023 as your good self is aware of the fact that the standard duration for a PhD program is usually between 4 to 5 years. (Copy of the extension Application is annexure C)
- IV. That the DEO(F) Dir Lower dully forwarded application for extension to your good office vide letter 17143 dated 24/09/2021 however till date the undersigned did not get any information about the fate of the application.
- V. That all of sudden the instant show cause notice was issued against the undersigned despite the fact that department is in knowledge of the fact that the undersigned is abroad and engaged in the completion of her PhD which has not been completed yet and the show cause notice has not been served upon as per Khyber Pakhtunkhwa (E&D) Rules 2011.
- VI. That the undersigned after getting NOC and Necessary approval of the department proceeded for the PhD Abroad and spent two long years however now by issuing show cause Notice and not granting further extension EOL for completion of PhD would certainly destroy the career of the undersigned but study for the last two years would amount to a futile exercise which may cause irreparable loss to the undersigned and thus

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Auditor

27/12/23

DIRECTORATE OF ELEMENARY & SECONDARY EDUCATION
KHYBER PAKHTUNKHWA PESHAWAR

NOTIFICATION

1. WHEREAS, Miss Aisha Kanwal SST (B/C) GGHS Hayasari Dir Lower was proceeded against under the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011 for unauthorized absence w.e.f 20-09-2021.
2. AND WHEREAS, the DEO (F) Dir Lower submitted her absence report that the teacher concerned remains absent from her duty w.e.f 20-09-2021 till date by proceeding abroad without any prior approval of the Competent Authority on dated: 07-03-2023.
3. AND WHEREAS, this office issued a show cause notice vide No. 32-34 dated: 01-06-2023. The teacher concerned submitted the reply of the show cause notice on 20-10-2023.
4. AND WHEREAS, This office grants her an opportunity of personal hearing on 28-11-2023 and she attended the said meeting on scheduled date along with DEO (Female) Concerned.
5. AND WHEREAS, after going through the material on record, the report of DEO (F) Dir Lower, and the teacher concerned did not satisfy/convince the personal hearing committee, and the committee has come to the conclusion that charges against the above teacher has been partially proved.
6. NOW THEREFORE, in exercise of powers conferred under the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011, the Director E&SE, Khyber Pakhtunkhwa as the Competent Authority is pleased to impose the major penalty of "Removal from service" upon Miss: Aisha Kanwal SST (B/C) GGHS Hayasari Dir Lower, as specified in Rule-4 (b) (iii) of the Rules ibid with effect from the date her absence in the interest of public service.

Arrested
Arin

DIRECTOR
Elementary & Secondary Education
Khyber Pakhtunkhwa, Peshawar

Endst: No. 7608-10 /A-17/PE/Aisha Kanwal /SST/Dir Lower.

Dated: 15/12/2023

Copy forwarded for information and necessary action to the: -

1. District Education Officer (F) Dir Lower with reference to her letter No.4201 dated 09-10-2023.
2. District Accounts Officer Dir Lower.
3. Principal/HM GGHS Hayasari Dir Lower.
4. Miss Aisha Kanwal SST (B/C) GGHS Hayasari Dir Lower.
5. Master file.

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Deputy Director Establishment (F)
Elementary & Secondary Education
Khyber Pakhtunkhwa Peshawar

16

Amber J

To

The Worthy Secretary,
Elementary and Secondary, Education
Khyber Pakhtunkhwa, Peshawar.

Subject: Departmental appeal against the Impugned Order dated 15/12/2023 where by the appellant has been removed from service with retrospective effect in utter violation of law, rules, principles of Natural Justice hence the Impugned Order dated 15/12/2023 is void ab initio, Coram Non-Judice and not sustainable in the eyes of law

Dear Sir,

The appellant submits the following few lines;

1. The appellant was appointed as an SST (BS-16) Science Teacher on May 2, 2014, and since her appointment, the appellant performed her duties with due diligence, honesty, and to the complete satisfaction of the high-ups.
2. During her posting as an SST (BS-16) Science Teacher at GGHS Hayaseri Dir Lower, the appellant applied for Extra Ordinary Leave (E.O.L.) for study and a NOC to get a PhD at Shaanxi Normal University, China.
3. That the Worthy Director of Elementary and Secondary Education, Khyber Pakhtunkhwa, was kind enough to grant two years E.O.L w.e.f 20/09/2019 to 19/09/2021 Vide endorsement No: 4848-86 A-17/ Leave/Vol - III Dated 03/09/2019 and the DEO (F) Dir (L) was kind enough to grant the NOC vide letter No 2424 dated: 04/09/2019. (Copies of the letter dated 03/09/2019 & NOC are annexure A&B).
4. The appellant, after obtaining NOC and leave, proceeded aboard with the prior permission of the competent authority (Worthy Director Elementary and Secondary Education Khyber Pakhtunkhwa) and was busy getting a PhD. However, after the expiry of the two-year EOL, the appellant applied through the proper channel for an extension of her EOL for another two years w.e.f 20/09/2021 to 30/06/2023 as your good self is well aware of the fact that the standard duration for a PhD program is usually between 4 to 5 years. (A copy of the extension application is Annexure C.)
5. That the DEO (F) Dir Lower dully forwarded the application for extension to the Worthy Director, Elementary and Secondary Education, Khyber Pakhtunkhwa, vide letter 17143 dated 24/09/2021 however, the appellant did not get any information about the fate of the application, and the appellant was in the apprehension that the application would have been accepted (a copy of the letter 17143 dated 24/09/2021 is Annexure D).
6. All of a sudden, without issuing a charge sheet along with a statement of allegation or regular inquiry, a show cause notice was issued on 02-06-2023 against the appellant, despite the fact that the department was aware of the fact that the appellant was abroad

Amber J

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and engaged in the completion of her PhD with prior permission of the department, which was in process and was not completed. However, the show cause notice was not served upon the appellant as per the mandatory provisions of Khyber Pakhtunkhwa (E&D) Rules 2011. However, after completion of the PhD, the appellant came back to Pakistan, and after receiving the show cause notice, the appellant replied that the show cause notice (copies of the show cause notice and reply are annexures E and F.) Also, since joining on September 26th, the appellant has been a valuable asset, consistently performing her duties with dedication to date. (The school staff attendance register record is Annexure G.)

7. Without consideration of the reply of the appellant to the show cause notice or conducting a regular inquiry or opportunity for meaningful personal hearing, the appellant was removed from service with retrospective effect via the order dated 15/12/2023 in violation of the law, rules, Principles of Natural Justice. Hence, the Impugned Order dated 15/12/2023 is void ab Initio, Coram Non-Judice and not sustainable in the eyes of law. (A copy of the impugned order dated 15/12/2023 is annexure H.)
8. That the appellant has no other adequate remedy, hence filling the instant departmental appeal with the following grounds, interalia;

GROUND S

- A. That the impugned order 15/12/2023 is against the law, rules, and Principles of natural justice void ab initio, hence liable to be set aside.
- B. No opportunity of meaningful personal hearing or defense has been provided to the appellant; hence, the appellant has been condemned unheard.
- C. No charge sheet along with a statement of allegation had been issued to the appellant, which is mandatory under E&D Rules 2011.
- D. No regular or fact-finding inquiry has been conducted, nor has the regular inquiry been dispensed with under Rule 05, read with Rule 07 of the E&D Rules 2011, which is mandatory under the E&D Rules 2011.
- E. That opportunity of FAIR TRAIL, as guaranteed by Art. 10A of the Constitution of the Islamic Republic of Pakistan 1973, has not been provided to the appellant.
- F. That neither the appellant has been proceeded under Rule 5 nor did he proceed under Rule 9 by issuing notices or publication before awarding the punishment of removal vide the impugned order dated 15/12/2023.
- G. The appellant has not been treated in accordance with Art. 4 and 25 of the Constitution of the Islamic Republic of Pakistan, 1973.
- H. The appellant has been awarded the punishment with retrospective effect, which is a void order as per the dictum laid down by Apex Court 2002 SCMR 1124.
- I. The absence of the appellant is not wilful, but due to the fact that the appellant was proceeding abroad for a PhD with the prior approval of the department, the appellant

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was in the apprehension that for the purpose of completing a PhD, the leave may be extended, hence it does not amount to misconduct.

- J. Since the impugned order, the appellant become jobless and facing hardship.
- K. The appellant, after getting the NOC and necessary approval from the department, proceeded for the PhD abroad and spent two long years in study therefore, without the completion of the PhD, it would certainly destroy the career of the appellant, but studying for the last two years would amount to a futile exercise that may cause irreparable loss to the appellant, and thus the same would be a violation of Art. 4, 25, and 25A of the Constitution of the Islamic Republic of Pakistan 1973.
- L. With a PhD degree, the appellant would serve the nation in a more effective manner, which would be beneficial to the students. However, by issuing the impugned order dated 15/12/2023 the department deprived the students of the district of the knowledge and service of the appellant.
- M. That the punishment is harsh one which does not commensurate with the acts of the respondents.

It is therefore requested that, on acceptance of the instant departmental appeal, the impugned order dated 15/12/2023 may be set aside and the appellant kindly reinstated into service with all back benefits.

sincerely,

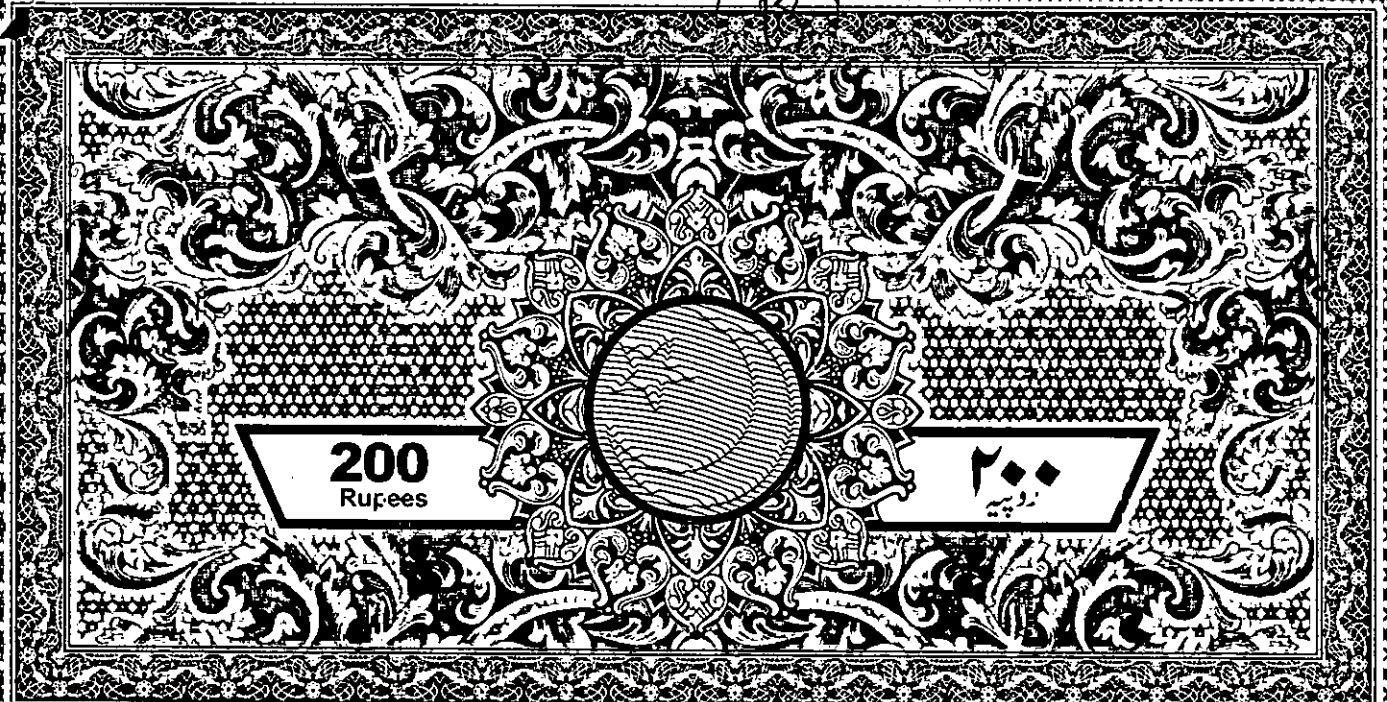
Kanwal

Yours

Aisha

SST(Bio-
Chem) GGHS Hayasari Dir lower)

Handwritten signature



200
Rupees

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بعدالت جناب خیبر پختونخواہ سروس ٹریڈیوئل بمقام پشاور

مسماة عائشہ کنول بنام حکومت خیبر پختونخواہ وغیرہ

(مختیار نامہ خاص)

سروس اپیل:

جناب محمد عثمان ولد شیر حضرت ساکن کمر کوٹ کے مکمل تحصیل بلا مٹ ضلع دریا پائین۔

از ان مسماة عائشہ کنول زوجہ سعید اللہ ساکن کمر کوٹ کے مکمل تحصیل بلا مٹ ضلع دریا پائین۔

مردے تحریر ہذا اقرار کر کے لکھ دیتی ہوں کہ من مقررہ بوجہ زانہ ذات و پردہ نشین خاتون ہونے اصالتاً بیروی مقدمہ سے قاصر ہوں۔ اس لئے من مقررہ اپنے جانب سے محمد عثمان ولد شیر حضرت کو مختیار خاص مقرر کر کے لکھ دیتی ہوں کہ وہ میری جانب سے اپیل دائر کرے، بیروی اپیل کرے، درخواست و جواب درخواست کرے، بیان حلفی، دیں، عذرات یا جواب عذرات دائر کریں، گواہ طلب کریں، میری طرف سے بیان/شہادت قلمبند کرے، درخواست سرسبزگی مقدمہ کریں، درمیان مقدمہ کوئی درخواست کریں، راضی نامہ کریں، مصالحت کرے کوئی وکیل یا بیرونی مقرر کریں، اپیل، نگرانی، رٹ پیشیں، بعدالت عالیہ پشاور ہائی کورٹ منگورہ بیخ سوات مقرر کرے نظر ثانی، تجویز ثانی، راضی نامہ، گواہان، گواہان کیلئے خرچہ خوراکہ، جمع کریں، درخواست اخراج مقدمہ دائر کرے و نیز العرض جو اختیارات مجھے مقدمہ عنوان بالا میں حاصل ہے وہ مختیار خاص مذکورہ بالا کو تفویض کرتی ہوں۔ مختیار ان خاص کی جملہ کاروائی مکمل کردہ مجھے قبول و منظور ہوگی۔

مورخہ 25-04-2024

Attested



Aisha

(اختیار دہندہ)

15306-6955939-2 مسماة عائشہ کنول

محمد عثمان

(اختیار گزہندہ)

15306-9931455-9 محمد عثمان

قیمت
50 روپے

39482

پشاور بار ایسوسی ایشن، خیبر پختونخواہ

ایڈوکیٹ: *Janla Jan*

بار کونسل ایسوسی ایشن نمبر: *13-1172*

رابطہ نمبر: *03129215471*

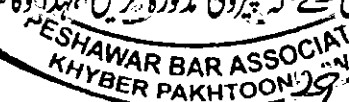


بعدالت جناب: *پ کس اس سٹریٹجیٹل سفاہ*

مخانب: <i>عائشہ نون ابرار</i>	دعویٰ: <i>Service appeal</i>
<i>عائشہ نون</i>	علت نمبر: _____
<i>بنام</i>	مورخہ: _____
<i>حکومت</i>	جرم: _____
	تھانہ: _____

باعت تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کاروائی متعلقہ
آن مقام *رضی طور / کیلے* *راہنہ جہان* *ایڈووکیٹ سسر جم کو روٹ کورٹ داسستان* کو دیل مقرر
کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کال اختیار ہوگا، نیز وکیل صاحب کو
راضی نامہ کرنے و تقرر ثالث و فیصلہ بر حلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق
زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی، نیز
دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی
کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا اور صاحب
مقرر شدہ کو وہی جملہ مذکورہ بالا اختیارات حاصل ہوں گے اور اس کا ساختہ پر داخہ منظور و قبول ہوگا
دوران مقدمہ میں جو خرچہ ہر جانب التوائے مقدمہ کے سبب سے ہوگا کو کوئی تاریخ پیشی مقام دورہ یا حد سے
باہر ہو تو وکیل صاحب یا ہند نہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ سند رہے



المرقوم: *120 24*

العواہ شد العبد
مقام *مشاہد* کے لیے منظور ہے۔

نوٹ: اس وکالت نامہ کی فوٹو کاپی ناقابل قبول ہوگی۔

accepted
Accepted
by Janla Jan

محمد عثمان (محمد ضامن)