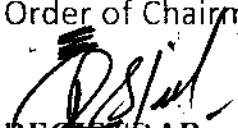


Form- A

FORM OF ORDER SHEET

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

Case No. 1031/2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	23/07/2024	<p>The present appellants initially went in Writ Petition before the Hon'ble Peshawar High Court Mingora Bench and the Hon'ble High Court vide its order dated 25.06.2024 while treating the Writ Petition into an appeal and has sent the same to this Tribunal for decision in accordance with law. This case be entered in Institution Register and entrusted to touring Single Bench at Swat for preliminary hearing to be put up there on 03.09.2024. Counsel for the appellant has been informed telephonically.</p> <p style="text-align: right;">By the Order of Chairman  REGISTRAR</p>



THE  
PESHAWAR HIGH COURT  
MINGORA BENCH, SWAT.

All communication should be addressed to the Additional Registrar of this Bench and not to any official by name

No. 2215

Dated: 13.06.2024

To

The Registrar,  
Khyber Pakhtunkhwa Service Tribunal,  
Peshawar

Khyber Pakhtunkhwa  
Service Tribunal

No. 14443

Dated 23-07-2024


Subject:

TRANSMISSION OF WRIT PETITION 873-M/2020  
ALONG WITH C.M<sup>2</sup> 1072-M/2024 TITLED AS  
"MUHAMMAD AZHAR & OTHERS VS  
GOVERNMENT OF KHYBER PAKHTUNKHWA  
THROUGH SECRETARY E&SE & OTHERS"

Dear Sir,

I am directed to send herewith the mentioned above case (in original), in compliance with the order dated: 25.06.2024 passed in C.M 1072-M/2024, by the Divisional Bench of this Hon'ble Court, for compliance of the directions contained therein.

Receipt of this letter alongwith enclosures may please be acknowledged.

  
11.07.2024.  
(Arbab Aziz Ahmad)  
Additional Registrar

Encl:

1. W.P 873-M/2020 alongwith enclosures 107 Sheets
2. C.M 1072-M/2024 in W.P 873-M/2020 alongwith enclosures 36 Sheets

**JUDGMENT SHEET**

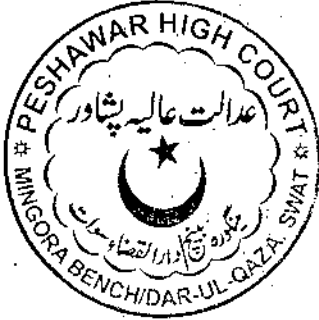
**PESHAWAR HIGH COURT,  
MINGORA BENCH (DAR-UL-QAZA), SWAT  
(Judicial Department)**

**C.M No.1072-M/2024  
In W.P. No.873-M/2020**

**Muhammad Azhar & others ..... (Petitioners)**

**vs.**

**Govt. of Khyber Pakhtunkhwa through  
Secretary E&SE and others.....(Respondents)**



**Present:**

Syed Abdul Haq, ASC for the petitioners.

Mr. Rahimullah Chitrali, Asstt: A.G for the respondents.

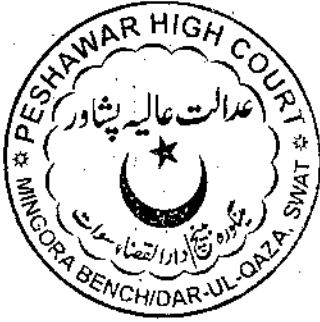
**Date of hearing: 25.06.2024**

**JUDGMENT**

**SHAHID KHAN, J.-** Muhammad Azhar & others, hereinafter the applicants, have filed the subject miscellaneous application in writ petition No.873-M of 2020, titled '*Muhammad Azhar & others vs Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education & others*', decided on 05.12.2023. They seek directions of this Court that the W.P referred to above be treated as service appeal followed by its sending to the Khyber Pakhtunkhwa Services Tribunal for disposal in accordance with law.

2. In essences, the petitioners had filed the above referred writ petition, which was disposed of by

this Court vide judgment, dated 05.12.2023, with the following observations:



"In view of the above, this aspect shall also be decided by the competent forum keeping in view the initial appointment of the petitioners in juxtaposition with the terms and conditions of their service. Thus, without dilating upon the rest of the merits, both the matters require proper adjudication by the worthy Services Tribunal. The petitioners may approach to the worthy Services Tribunal for redressal of their grievances, if so advised, in accordance with law."

3. Keeping in view the aforesaid observations, the petitioners approached the worthy Services Tribunal through filing their appeals but the same were returned to them vide order, dated 02.05.2024, with certain objections including objection No.4 to the effect that copy of the departmental appeals have not been annexed therewith. For the sake of ready reference, relevant part of the aforesaid order is reproduced as under:

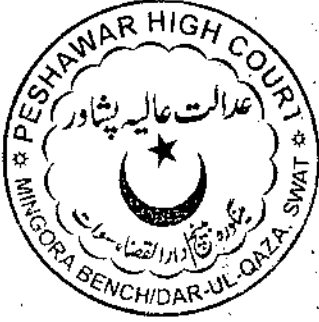
"[...] A civil servant may file appeal before the Tribunal after fulfilling the requirements conditionalities enumerated in Section-4 of the Khyber Pakhtunkhwa Services Tribunal Act, 1974, wherein, filing at departmental appeal before coming to the Tribunal is a pre-requisite and a step towards filing of appeal, which step has admittedly, not been taken by the appellant in this appeal, therefore, objections sustain and appeal is returned."

4. It obliged the petitioners to approach this Court through the subject application.

5. Arguments of learned counsel for the petitioners as well as the learned Assistant A.G for the respondents were heard and record gone through with their valuable assistance.

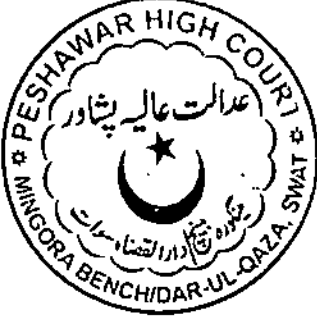
6. At the very outset of the arguments, learned counsel for the petitioners stated at the bar that while passing the judgment, dated 05.12.2023, in W.P No.873-M/2020, the Court observed that the petitioners may approach the worthy Services Tribunal for redressal of their grievances and accordingly, they approached but of no avail. As such, he requested that it would be in the interest of petitioners, if, the main writ petition is ordered to be treated as Service Appeal, followed by its sending to the Khyber Pakhtunkhwa Services Tribunal for disposal in accordance with law.

7. In view of the above, the subject application is disposed of in terms that the main writ petition No.873-M/2020 filed by the petitioners is



873  
X

ordered to be sent in original alongwith its annexures to the Khyber Pakhtunkhwa Services Tribunal, where it shall be treated as Service Appeal and shall be decided in accordance with law. A copy of the same be retained for office record.



Announced  
Dt: 25.06.2024

  
JUDGE

  
JUDGE

**Certified to be True Copy**

  
EXAMINER

Peshawar High Court, Mingora/Dar-ul-Qaza, Swat  
Authorized Under Article 07 of Qanoon-e-Shahadat Order 1984

Office  
28/06/2024

Bakht Sher Ali/Sleno

(D.B) Hon'ble Mr. Justice Muhammad Naeem Anwar  
Hon'ble Mr. Justice Shahid Khan

File Temp: No. 2024-6505

Case Auto Number: 5-11796-2024

IN THE PESHAWAR HIGH COURT, MINGORA BENCH/  
DAR-UL-QAZA, SWAT

Civil Miscellaneous (C.M) No. 1072 -M OF 2024

<sup>873</sup>  
IN W.P.No. ~~873~~-M of 2020

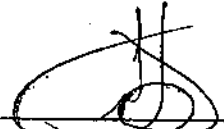
Muhammad Azhar & others V/S Govt. of Khyber Pakhtunkhwa, through Secretary (E&SE)  
& others

This petition has been presented by: **Syed Abdul Haq** Advocate  
on behalf of the Applicant.

The petition is in proper form, and is accompanied by copies of all necessary documents.

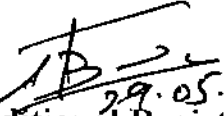
Petition be entered in the relevant register and placed before Hon'ble Court  
( .B) for further orders on \_\_\_\_\_.

Inform Applicant and his Counsel.

  
\_\_\_\_\_  
READER

Dated: 29/05/2024

COUNTERSIGNED

  
29.05.2024.  
Additional Registrar,  
Peshawar High Court, Mingora  
Bench / Dar-ul-Qaza, Swat

Dated: 29/05/2024

\*Muhammad Idris\*

**BEFORE THE PESHAWAR HIGH COURT MINGORA BENCH**

**(DARUL QAZA SWAT)**

C.M No. 1072 -M/2024

In

W.P No. 837-M/2020

Muhammad Azhar & others..... (Petitioners)

VERSUS

Govt of KP & others..... (Respondents)

**APPLICATION FOR RESUBMISSION**

**Respectfully Sheweth:**

1. That the above-mentioned CM was filed before this Hon'ble court, which was returned due to objections.
2. That the above delay is not intentionally and willfully but due to unavoidable circumstances.
3. That petitioners valuable rights are connected with writ petition.
4. That for the reason mention above your honor may please condone only 1 day delay and grant permission to re-submit the same.

It is therefore humbly prayed that due to the aforesaid reason the delay may be condoned please.

Petitioners

Through

*Re-Submission allowed subject to objection by the opposite party / Court order. Resubmit today possibly i.e; 29.05.2024*

*[Signature]*  
Additional Registrar  
Peshawar High Court, Bench  
Mingora, Darul Qaza, Swat.

*[Signature]*  
SYED ABDUL HAQ  
ASC

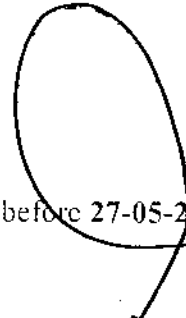


IN THE PESHAWAR HIGH COURT, MINGORA BENCH/ DAR-UL-QAZA, SWAT  
OBJECTION SLIP

Muhammad Azhar & others VERSUS Govt. of Khyber Pakhtunkhwa, through Secretary (E&SE) & others

Receipt No. 2024-6013

Copies of annexures/ page # 22,25 to 27 along with second copy are not legible.



Reader

Returned with the objections mentioned above. Case be re-submitted on or before 27-05-2024



Additional Registrar  
PHC, Mingora Bench

Dated: 17-05-2024

R/Sir objection has been  
removed.



29-5-2024

**URGENT FORM**

**BEFORE THE PESHAWAR HIGH COURT MINGORA BENCH  
/ DAR-UL-QAZA SWAT**

C.M 1072-M 2024 IN  
W.P No. 873-M/2020

Muhammad Azhar & others.....**Petitioners**  
**VERSUS**  
Govt of KP & others..... **Respondents**

1. Will you kindly treat the accompanying C.M as urgent and in accordance with the provisions of Rules, 9 Chapter 3-A Rules of orders of the High Court, Lahore Volume V.

2. The grounds of urgency are.

That the matter has already been deiced by this honorable Court and directed the applicants/petitioners to approached the worthy service tribunal but tribunal cannot entertain the same, so the applicants/petitioners now filing the instant petition just for seeking direction of this honorable Court to transmit the same decided writ petition along with annexures to the Service Tribunal as the applicants/petitioners is arguable case and if the matter was not decided then the petitioners would be failed to get their original position in the matter of promotion, secondly due to summer vacation this case needs its early fixation.

Dated: 17/5/2024  
Cell No: 03110950959

↑  
YOURS OBEDIENTLY

Filed Today

17 MAY 2024

Additional Registrar

**BEFORE THE PESHAWAR HIGH COURT MINGORA  
BENCH/ DARULQAZA SWAT**

C.M. 1072-01 2024 IN

W.P No. 873-M/2020

Muhammad Azhar & others.....**Petitioners**

**VERSUS**

Govt of KP & others..... **Respondents**

**INDEX**

<b>S.No.</b>	<b>Description</b>	<b>Annexure</b>	<b>Pages</b>
1.	Application		1-5
2.	Affidavit		6
3.	Copies of writ petition	<u>A</u>	7-14
4.	Copy of the judgment dated 05.12.2023	<u>B</u>	15-20
5.	Copy of the order of Registrar service tribunal dated 04.04.2024	<u>C</u>	21-26
6.	Copy of order dated 02.05.2024	<u>D</u>	27
7.	wakalatnama		28

Applicants/petitioners through Counsel

**SYED ABDUL HAQ**

Advocate Supreme Court

BAR ROOM SWAT

Cell No 0333-9546154

Filed Today

17 MAY 2024

Additional Registrar

Re-Filed Today

29 MAY 2024

Additional Registrar

Noted for

AAG

Sign.....

Date.....

17/05/2024

(1)

**BEFORE THE PESHAWAR HIGH COURT MINGORA  
BENCH/ DARULOAZA SWAT**

C.M. 1072-M 2024 IN

W.P No. 873-M/2020

*Muhammad Azhar & others.....Petitioners*

**VERSUS**

*Govt of KP & others..... Respondents*

**APPLICATION FOR SEEKING DIRECTIONS OF  
THIS HONORABLE COURT THAT THE WRIT  
PETITION MENTIONED ABOVE BE TREATED AS  
SERVICE APPEAL FOR REMITTING THE SAME TO  
THE WORTHY SERVICE TRIBUNAL FOR ITS  
DISPOSAL IN ACCORDANCE WITH LAW.**

Respectfully Sheweth;

The facts of the instant application are, as  
under.

1. That the applicants/petitioners filed a writ  
petition No. 873-M/2020, details has already  
mentioned in the said writ petition, however,  
this honorable Court on first date of hearing  
called comments from the concerned  
respondents, so they submitted the same.  
(Copies of writ petition is attached as annexure  
"A")

Filed Today

7 MAY 2024

Additional Registrar

2. That after hearing this honorable Court has decided the matter mentioned above and stated therein, **"without dilating upon the rest of the merit both the matters require proper adjudication by the service tribunal the petitioners may approach to the service Tribunal for Redressal of their grievance in accordance with law"**. (Copy of the judgment dated 05.12.2023 is attached as annexure "B")

3. That after getting the judgment the petitioners approached the worthy service tribunal as per direction of this honorable Court but the same was returned with certain objections including objection No.4, that department appeal has not attached with the appeal. (Copy of the order of Registrar service tribunal dated 04.04.2024 is attached as annexure "C")

4. That the petitioners removed all the objections but the same was again returned regarding the objection No.4, however, lastly vide order passed by the worthy service tribunal on

Filed Today

17 MAY 2024

Additional Registrar

3

02.05.2024 and returned the appeals with the observations that the appeal filed by the petitioners are premature and stated therein the petitioners may refile the appeals after fulfilling all the requirement of law. (Copy of order dated 02.05.2024 as annexure "D")

5. That the applicants/petitioners approached the Tribunal as per the direction of this honorable Court but the same was returned, so the petitioners have no other efficacious remedy, except to file the instant Petition on the following grounds.

## **GROUND**

- A. That this honorable Court has ample power to remit the petition to the service tribunal for its disposal in accordance with the law.
- B. That this honorable Court has rightly directed the applicants/petitioners to approach the worthy service tribunal but vide order dated 02.05.2024, where the appeals have been

Filed Today

17 MAY 2024

Additional Registrar

(4)

returned and directed the applicants/petitioners to remove the objection, so if the applicants/petitioners were compelled to fulfill the alleged pre-requisite for filing the appeals before the service tribunal then it would become time-barred, so in order to save the lis from the rigor of limitation the writ petition may kindly be converted into appeal and be transmitted along with annexures.

C. That the applicants/petitioners seeking the remittance of the instant petition mentioned above under the mandate of judgment of august Supreme Court of Pakistan reported as **2023 SCMR 1451**, so in this way the applicants/petitioners should not be suffer and such pathway is the safe administration of justice.

D. That in view of the direction of this honorable Court which was binding upon the tribunal. Furthermore, this honorable court has ample power to transmit the petition mentioned above along with its annexure to the tribunal which

**Filed Today** shall be treated as a service appeal and the

77 MAY 2024

Additional Registrar


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Tribunal shall decide the appeal in accordance with law and applicable rules after notice and opportunity of hearing to the parties, as it is admitted no person should suffer of a delay and procedure or part of the Court as the act of the Court shall prejudice no one. the same wisdom as rendered by the apex Court in the judgment reported as **2023 SCMR 334**.

- E. That the applicants/petitioners seek leave of this honourable court to raise/argue any additional point at the time of arguments.

***It is, therefore, humbly prayed on acceptance of this application, the matter be remitted to the worthy service Tribunal along with annexures to decide the same in accordance with the law.***

Applicants/Petitioners  
Through Counsel

  
**SYED ABDUL HAQ**  
Advocate, Supreme Court

Filed Today

17 MAY 2024

  
Additional Registrar



BEFORE

C.M. \_\_\_\_\_

W.P No. 873-M/2020

**PAKISTAN** National Identity Card  
ISLAMIC REPUBLIC OF PAKISTAN

Name: Halimur Rashid  
Father Name: Muhammad Afsar Khan  
Country of Stay: Pakistan  
Gender: M  
Identity Number: 15601-1417186-7  
Date of Birth: 10.01.1978  
Date of Issue: 10.05.2019  
Date of Expiry: 10.05.2029

Holder's Signature

6

Muhammad Azhar & others.....Petitioners

**VERSUS**

Govt of KP & others..... Respondents

**AFFIDAVIT**

I, **Halim Ur Rashid (applicant/petitioner No.5)**, do hereby solemnly affirm and declare on oath that contents of the above application are true and correct to the best of my knowledge and belief and nothing has been kept concealed from this honourable Court.

**DEPONENT**

  
**HALIM UR RASHID**

Filed Today

17 MAY 2024

Registrar

No. 1939  
Certified that the above was verified on Solemn affirmation before me on this 17 day of May 2024 by Halim Ur Rashid who was identified by self

Oath Commissioner  
Peshawar High Court  
Mingora Bench/Dar-ul-Qaza, Swat.

15601-1417186

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BEFORE THE PESHAWAR HIGH COURT MINGORA BENCH /  
DARULQAZA SWAT

"A"  
ANNEXURE

W.P. 873 -M/2019

1. Muhammad Azhar Son of Sikandar Hayat, Subject Specialist (I.T), Resident of Nasafa Tehsil Timergara District Dir Lower.
2. Rooh Ullah Jan Son of Ghulam Wahid Jan Subject Specialist (I.T) Resident of Sherkhanay Tehsil Balambat District Dir Lower.
3. Mukhtyar Son of Mehmood Zai, Subject Specialist (I.T) Resident of Kalpanai, Tehsil Daggar District Dir Buner.
4. Muhammad Khan Son of Khan Badshah Subject Specialist (I.T) Resident of Banda Tehsil Wari District Dir Upper.
5. Alim ur Rashid Son of Muhammad Afsar Khan SST (I.T), Resident of Bar Palaw, Tehsil Matta District Swat.
6. Mian Said Wahab, Son of Noor ul Wahab, (I.T) ,Working against Subject Specialist (I.T), Resident of Osakai, Tehsil Adenzai District Dir Lower..... Petitioners

VERSUS

- 1) Govt of KPK through Secretary Elementary & Secondary Education KPK at Peshawar.
- 2) Secretary Information and Technology Govt of Khyber Pakhtunkhwa, Peshawar.
- 3) Secretary to Government of KPK Finance Department at Peshawar.
- 4) Director Elementary and Secondary Education KPK Peshawar.
- 5) District Education officer District Dir Lower.
- 6) District Education officer District Dir Upper.
- 7) District Education officer District Buner.
- 8) District Education officer District Swat..... Respondents

FILED TODAY

31 AUG 2020

Additional Registrar

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**WRIT PETITION UNDER ARTICLE 199 OF**  
**THE CONSTITUTION OF ISLAMIC REPUBLIC**  
**OF PAKISTAN 1973**

Respectfully Sheweth;

The facts of the instant are as under.

1. That the Petitioners are law abiding citizens and belong to Malakand Division, and their addresses mentioned against their name are sufficient for service upon them.
2. That the Petitioners were appointed on the post of I.T. Teachers (BPS-16) under the NWFP/Project establishment of information Technology Government of Khyber Pakhtunkhwa. as their appointments are mentioned in the proforma below on contract basis, and all the Petitioners were terminated from their services on 30.06.2009. (Copies of appointment orders, Termination order are attached)

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31 AUG 2020

Additional Registrar

S.No	Name of teacher	Date of appointment
1.	Muhammad Azhar	26.09.2006
2.	Rooh Ullah Jan	26.09.2006
3.	Mukhtyar	26.09.2006

ATTACHED TO BE  
TRUE COPY

4.	Muhammad Khan	26.09.2006
5.	Alim ur Rashid	26.09.2006
6.	Mian Said Wahab	26.09.2006

3. That the Petitioners impugned the same in W.P bearing No. 2380/2009, wherein this honourable court directed the respondents to treat the Petitioners as regular employees from the date of their services; and further directed their interse seniority be determine strictly in accordance with law and the rules on the subject vide judgment dated 17.5.2012 (Copy of the judgment is attached as annexure-A)
4. That the respondents assailed the judgment *ibid* in civil appeal bearing No. 113-P/2013 before supreme court of Pakistan which was dismissed vide judgment dated 24.2.2016 (Copy of judgment dated 24.2.2016 is attached as annexure-B).
5. That the respondents (after dismissal of their Civil Petition), issued appointment order of Petitioners vide dated 04.07.2016 and they all were regularized against the post of I.T (Teachers) BPS-16 w.e.f 01.07.2009 without

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31 AUG 2020

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back benefits. (Copy of the Notification dated 4.7.2016 is enclosed as annexure-C).

6. That the respondents only awarded annual increments from 2010 as well as awarded seniority w.e.f 24.10.2009 although all the Petitioners were regularized from 01.07.2009, so the Petitioners time and again approached the concern authority for redressal of their grievances in the light of the judgment passed by this honourable court vide dated 17.05.2012, but the respondents are reluctant to pass a proper order, so the act of respondents is based on malafide, against the spirit of the judgment, hence the Petitioners have no other efficacious remedy, except to file the instant Petition on the following grounds.

**GROUND**

A. That after induction in service (26.09.2006) the Petitioners served the department till termination and without any fault on their part but the blunder committed by the department which is not only regrettable but against the good governance, based on malafide, highly discriminatory, hence liable to be struck down and the

**FILED TODAY**

31 AUG 2020

Additional Registrar

**ATTESTED TO BE TRUE COPY**

(11) 8

Petitioners are entitled for back benefits from the date initial appointment.

B. That the Petitioners were regularized w.e.f 01.7.2009 while seniority have awarded from 24.10.2009 although as per law their seniority be reckoned from the date of initial appointment and not from the date of regularization, as per judgment reported as 2014 SCMR 1289 citation "d".

C. That after acceptance the claim of Petitioners vide judgment dated 17.5.2012 passed by this honourable court the respondents failed to re-instate the Petitioners although there was no suspension order passed the Supreme Court of Pakistan, the Petitioners legally entitled for the arrears/benefits, since 17.05.2012, but they were deprived without any justification, rhyme and reasons so such act of the respondents is against the mandate of constitution.

D. That as per their pay slips the length of their services have been mentioned according to their initial appointment order but on the other their seniority has been reckoned from 24.10.2009 which is against the law and liable to be

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31 AUG 2020

Additional Registrar

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corrected.(Copy of pay slips are attached may be considered part of this petition).

E. That this honourable court directed for regularization of services of employees/Petitioners from the date of their termination (i.e. 30.06.2009) but the respondent on one hand awarded seniority to them from 24.10.2009 but on the other hand they all were deprived from national increase of their pay from the date of their appointment without any arrears, so such act amounts to discrimination and this honourable court has jurisdiction to entertain the

*instant petition, however the department benefited their colleagues, so the petitioners are entitled for alike treatment. (copies annexed)*

F. That the respondents only granted annual increments for the year 2010, although, the Petitioners were entitled for the same relief since their date of appointments and they were deprived from their legitimate rights which affected their monthly salaries, so the case of Petitioner involved enforcement of guarantee, provided by article 25 of the constitution, so the Petitioners are entitled for annual increments i.e. 2006 to 2009 as well as other adhoc reliefs.

G. That the Petitioners were reinstated in service from the date of termination i.e. 30.06.2009 but it is evident from

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31 AUG 2020  
Additional Registrar

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record that the Petitioners worked with the respondents since 23.09.2006, so the Petitioners were entitled for the back benefits from intervening period i.e. from the date of their initial appointment till date of termination i.e. 30.6.2009 as per judgment bearing C.P # 605/2015 (Copy of judgment C.P 605/2015 is attached may be considered part of this petition).

H. That the petitioners seek leave of this honourable court to raise/argue any additional point at the time of arguments.

*It is, therefore, humbly prayed on acceptance of this writ petition in the light of aforementioned submissions the respondents be directed to reckon their seniority from the date of their initial appointment.*

*ii. to award all the annual increments as well as adhoc reliefs w.e.f 2006 to 2009.*

**FILED TODAY**

31 AUG 2020

Additional Registrar

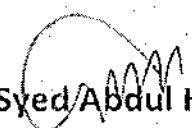
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\$

iii. it is further prayed that the  
Petitioners be held entitled for the period  
as they have worked from 2006 to 2009.

Petitioners  
Through  
Counsels

  
Syed Abdul Haq  
Advocate, High Court  
0311.0950959


**CERTIFICATE**

As per instruction of my client no such like writ petition,  
earlier has been filed by the petitioners on the subject matter before  
this Hon'able Court.

  
ADVOCATE

**LIST OF BOOKS**

1. Relevant law on the subject
2. Constitution of Islamic republic of Pakistan.

  
ADVOCATE

**FILED TODAY**

31 AUG 2020

  
Additional Registrar

  
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B

ANNEXURE

**JUDGMENT SHEET  
IN THE PESHAWAR HIGH COURT,  
MINGORA BENCH (DAR-UL-QAZA), SWAT  
(Judicial Department)**

**W.P No. 873-M/2020**

**Muhammad Azhar and 05 others Vs. Government of Khyber  
Pakhtunkhwa through Secretary Elementary & Secondary  
Education Peshawar and 07 others.**

**Present:** Syed Abdul Haq, Advocate for Petitioners,  
Khwaja Salah-ud-Din, A.A.G for official Respondents.

Date of hearing: **05.12.2023**

**JUDGMENT**

**MUHAMMAD NAEEM ANWAR, J.** - This single judgment in the instant petition shall also decide **W.P No.944-M/2022** titled "**Zia-ur-Rahman Vs. Govt. of KPK through Secretary Elementary and Secondary Education KPK and others**" as an identical question of law and facts is involved in both these petitions. Muhammad Azhar along with 05 others (the petitioners of the instant petition) and Zia-ur-Rahman (the petitioner of connected petition) have approached to this Court under Article 199 of the Constitution of Islamic Republic of Pakistan 1973 seeking the issuance of appropriate writ in terms of directing the respondents to place them in the seniority list with effect from the date of their initial appointment.

**2.** Facts as per the contents of the petitions are that initially all the petitioners were appointed on 26.9.2006 by the Directorate of Information Technology N.W.F.P, Peshawar on contract basis as I.T. Teachers in the Project with the title of "**Establishment of one Science and one Computer Lab**



in the School/College of N.W.F.P. Their contracts were extended time and again by the competent authority and lastly, their contracts were extended from 01.07.2008 to 30.06.2009, but later on their services were terminated with effect from 30<sup>th</sup> June, 2009. They submitted their representations but to no avail. Besides their appointments, Schools & Literacy Department of Government of N.W.F.P had also appointed many I.T. and S.T. Teachers on contract basis on different projects having the same nature of job as the petitioners were performing, but the services of employees of Schools & Literacy Department were converted to regular side on contract basis till the arrival selectees of N.W.F.P Public Service Commission on 05.12.2007. They approached to this Court through W.P No. 2380 of 2009 which was allowed by this Court on 17.05.2012. The respondents filed Civil Appeal No. 113-P of 2013 before the Hon'ble Supreme Court, however, the same was dismissed on 24.02.2016. Thereafter, the respondents through notification dated 04.07.2016 regularized the services of the petitioners with effect from 01.07.2009 without back benefit. Hence, these petitions. Respondents were directed to furnish their para-wise comments, who through their comments, have refuted the contents of petitions and opposed the issuance of writ on different legal issues.

3. Arguments heard and record perused.

4. Admittedly, in earlier round of litigation, the writ of the petitioners was allowed by this Court and for ease the



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operative part of the judgement of this Court is reproduced as under:

"We in the circumstances have no option but to direct the respondents to treat the petitioners as regular employees from the date, their services were terminated/discontinued and their inter se seniority be determined by the competent authority strictly in accordance with law and the rules on the subject. Formal orders in this regard be also issued. However, they will not be entitled to back benefits as they have not served the department. This writ petition is disposed of in above terms."

It appears from the order of this Court that the respondents were directed to determine the *inter se* seniority in accordance with law. The petitioners have not placed on file their seniority list prepared by the respondents in order to determine the validity thereof qua the prayer of the petition. Be that it may be, the seniority of the civil servants is the matter which relates to the terms and condition of their service in view of the dicta laid down by the apex Court in the case of *Khalilullah Kakar Versus Provincial Police Officer, Balochistan and others* (2021 PLC (CS) 1030) wherein it was laid down that:

"The word 'entertain' used in Article 212(2) of the Constitution is of significance importance. This means that any petition or proceeding relating to the terms and conditions of service even should not be entertained by the High Court in its constitutional jurisdiction under Article 199 of the Constitution. In view of the facts and circumstances of this case, entertaining and then proceeding with the constitutional petitions amounts to defeating the express Constitutional mandate under which Tribunal is vested with jurisdiction to deal with the matters of civil servants. This Court in the case of *Ali Azhar Khan Baloch v. Province of Sindh* (2015 SCMR 456) has held as under: -

"149. Article 212 of the Constitution ousts the jurisdiction of High Courts and civil Courts in respect of the matters pertaining to terms and conditions of civil servants. In other words, the provisions of Article 212 do not confer a concurrent jurisdiction to civil Courts, High Courts and Tribunals. The ouster contemplated under the said Article is a Constitutional command, and, therefore, of necessity

Sabiz Ali/\* (D.B)

HON'BLE MR. JUSTICE MUHAMMAD NAEEM ANWAR  
HON'BLE MR. JUSTICE SHAHID KHAN

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restricts the jurisdiction of civil courts and High Courts on the subject, which squarely falls within the exclusive domain of Tribunals."

10. In *Asadullah Rashid v. Muhammad Muneer* (1998 SCMR 2129), this Court held as under: -

"Constitutional petition under Art. 199 of the Constitution is not maintainable by a civil servant in relation to any matter connected with the terms and conditions of service in respect whereof the Service Tribunal has jurisdiction, in view of Art. 212 of the Constitution of Pakistan. Orders, even if mala fide, ultra vires or coram non iudice, fell within the ambit of Service Tribunal and jurisdiction of Civil Courts including High Court is ipso facto ousted as result of barring provision of Art. 212 of the Constitution."

Undoubtedly, the petitioners are civil servants, thus, the seniority *inter se* as per the list if offends the rights of the petitioners they may approach the competent authority for redressal of their grievance.

5. Though, it was not specifically prayed for by the petitioners that they may be awarded increment prior to their regularization, however, in the body of the petition and during the course of arguments, learned counsel for the petitioners also requested that the increment prior to regularization was illegally withheld by the respondents. Insofar as the increment prior to regularization is concerned, that too is the part of terms and conditions of service and requires the decision from the competent forum. It is pertinent to mention that in the case of "Abdul Hameed and others Vs. Special Secretary Education Government of Punjab Lahore and others" (2016 SCMR 1611), a set of teachers approached to the High Court for grant of increment prior to their regularization, however, the Hon'ble Lahore High Court treated the writ petitions as appeals and transmitted the same to Punjab Services Tribunal for

Sabz Ali\* (D.B)

HON'BLE MR. JUSTICE MUHAMMAD NAEEM ANWAR  
HON'BLE MR. JUSTICE SHAHID KHAN

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decision thereon alongwith other service appeals, which were already pending adjudication before the worthy Services Tribunal in view of the dicta laid down in the case of "Hameed Akhtar Niazi Vs. Secretary Establishment Division Government of Pakistan and others" (1996 SCMR 1185), where the service appeals of the teachers were allowed and the teachers were held entitled for the increment prior to their regularization, against which, the department approached to the Hon'ble Supreme Court, where the leave was granted and thereafter, it was observed by the apex Court that:

"From the above provision, it is definite that when a civil servant appointed to a post is entitled to the pay sanctioned for such post then obviously, he would also be entitled to the ancillary privileges of such pay. As such it has been held that when their salaries which they have received prior to their regularization/confirmation were in accordance with law then they are entitled also to the annual increment on the basis of the same no distinction can be drawn between the Un-Trained and Trained Teachers so the findings of the Tribunal by allowing the Teachers to full annual increment for a period of first two years from the date of their original appointment till their regularization/ confirmation and restricting them only to 1/2 of the increment for rest of their services would not be just and fair and does not meet the ends of justice.

In the light of the above discussion, Civil Appeals Nos. 398-L to 403-L/2010, filed by the Teachers, are allowed entitling them to receive full annual increments for the whole period prior to their regularization whereas Civil Appeals Nos. 404-L, 405-L/2010, 179-L to 183-L, 231-L, 424 -L, 425-L/2011 and 17 to 23/2012, filed by Department, are dismissed."

In view of the above, this aspect shall also be decided by the competent forum keeping in view the initial appointment of the petitioners in juxtaposition with the terms and conditions of their service. Thus, without dilating upon the



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rest of the merits, both the matters require proper adjudication by the worthy Services Tribunal. The petitioners may approach to the worthy Services Tribunal for redressal of their grievance, if so advised, in accordance with law. Both these petitions are disposed of accordingly.

Announced  
05.12.2023.  
Released on  
23.02.2024.

  
JUDGE

  
JUDGE

Office 23/2/2024

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ANNEXURE

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The appeal of Mr. Muhammad Azhar received today i.e on 03.04.2024 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 respondents no. 3, 5 & 6 are un-necessary/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. Address of appellant is incomplete be completed according to rule-6 of the Khyber Pakhtunkhwa Service Tribunal rules 1974.
3. Copy of termination order mentioned in para-2 of the memo of appeal is not attached with the appeal be placed on it.
4. Copy of departmental appeal is not attached with the appeal be placed on it.
5. Annexures of the appeal attached with the appeal are not in sequence.

No. 744 /S.T.

On 4/4/2024.

REGISTRAR  
SERVICE TRIBUNAL  
KHYBER PAKHTUNKHWA  
PESHAWAR.

Syed Abdul Haq Adv.  
Supreme Court at Swat.

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The appeal of Mr. Rooh Ullah Jan received today i.e on 03.04.2024 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 respondents no. 3, 5 & 6 are un-necessary/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- Address of appellant is incomplete be completed according to rule-6 of the Khyber Pakhtunkhwa Service Tribunal rules 1974.
- 3- Copy of termination order mentioned in para-2 of the memo of appeal is not attached with the appeal be placed on it.
- 4- Copy of departmental appeal is not attached with the appeal be placed on it.
- 5- Annexures of the appeal attached with the appeal are not in sequence.

No. 743 /S.T.

Di. 03 / 04 /2024.

  
REGISTRAR  
SERVICE TRIBUNAL  
KHYBER PAKHTUNKHWA  
PESHAWAR.

Syed Abdul Haq Adv.  
Supreme Court at Swat.

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The appeal of Mr. Rooh Ullah Jan received today ie on 03.04.2024 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 respondents no. 3, 5 & 6 are un-necessary/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 respondents.

2. Address of appellant is incomplete be completed according to rule-6 of the Khyber Pakhtunkhwa Service Tribunal rules 1974.

3- Copy of termination order mentioned in para-2 of the memo of appeal is not attached with the appeal be placed on it.

4- Copy of departmental appeal is not attached with the appeal be placed on it.

5. Annexures of the appeal attached with the appeal are not in sequence.

No. 743/S.T,

Dt. 4/4/2024

Registrar  
Service tribunal  
Khyber Pakhtunkhwa  
Peshawar.

Syed Abdul Haq adv.

Supreme Court at Swat.

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REGISTRAR  
SERVICE TRIBUNAL  
KHYBER PAKHTUNKHWA  
PESHAWAR

Syed Abdul Haq Adv.  
Supreme Court at Swat

No. 716 /S.T.  
Dt. 4/4 /2024

The appeal of Mr. Mukhtyar received today i.e on 03.04.2024 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 respondents no. 3, 5 & 6 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 Address of appellant is incomplete be completed according to rule-6 of the Khyber Pakhtunkhwa Service Tribunal rules 1974.
- 3 Copy of termination order mentioned in para-2 of the memo of appeal is not attached with the appeal be placed on it.
- 4 Copy of departmental appeal is not attached with the appeal be placed on it.
- 5 Annexures of the appeal attached with the appeal are not in sequence.

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The appeal of Mr. Muhammad Khan received today i.e. on 03/04/2024 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 respondents no. 3, 5 & 6 are un-necessary/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- Address of appellant is incomplete be completed according to rule-6 of the Khyber Pakhtunkhwa Service Tribunal rules 1974.
- 3- Copy of termination order mentioned in para-2 of the memo of appeal is not attached with the appeal be placed on it.
- 4- Copy of departmental appeal is not attached with the appeal be placed on it.
- 5- Annexures attached with the appeal are not in sequence.

No. 742 /S.T.

Dt. 4/4 /2024.

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

Syed Abdul Haq Adv.  
Supreme Court at Swat.

  
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The appeal of Mr. Alam ur Rasheed received today i.e. on 03.04.2024 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 respondents no 3, 5 & 6 are un-necessary/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 Address of appellant is incomplete be completed according to rule-6 of the Khyber Pakhtunkhwa Service Tribunal rules 1974
- 3 Copy of termination order mentioned in para-2 of the memo of appeal is not attached with the appeal be placed on it.
- 4 Copy of departmental appeal is not attached with the appeal be placed on it
- 5 Annexures of the appeal attached with the appeal are not in sequence.

No 745 /S.I.

DT. 4/4 /2024.

  
REGISTRAR  
SERVICE TRIBUNAL  
KHYBER PAKHTUNKHWA  
PESHAWAR.

Syed Abdul Haq Adv.  
Supreme Court at Swat.

  
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The appeal of Mr. Alim Ur Rashid received today i.e on 03.04.2024 is incomplete on the following score which is returned to the counsel for the appellatant for completion and resubmission within 15 days.

1- According to sub-rule-4 of rule-6 of Khyber Pakhtunkhwa Service Tribunal rules 1974 respondents no. 3, 5 & 6 are un-necessary/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. Address of appellatant is incomplete be completed according to rule-6 of the Khyber Pakhtunkhwa Service Tribunal rules 1974.

3- Copy of termination order mentioned in para-2 of the memo of appeal is not attached with the appeal be placed on it.

4- Copy of departmental appeal is not attached with the appeal be placed on it.

5. Annexures of the appeal attached with the appeal are not in sequence.

No. 745/S.T,

Dt. 4/4/2024

Registrar  
Service tribunal  
Khyber Pakhtunkhwa  
Peshawar.

Syed Abdul Haq adv.

Supreme Court at Swat.

CTC



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3

The appeal of Mian Said Wahab received today i.e on 03.04 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 respondents no. 3, 5 & 6 are un-necessary/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- Address of appellant is incomplete be completed according to rule-6 of the Khyber Pakhtunkhwa Service Tribunal rules 1974.
- 3- Copy of termination order mentioned in para-2 of the memo of appeal is not attached with the appeal be placed on it.
- 4- Copy of departmental appeal is not attached with the appeal be placed on it.
- 5- Annexures attached with the appeal are not in sequence.

No 74 /S.T.

DU 4/4/2024

  
REGISTRAR  
SERVICE TRIBUNAL  
KHYBER PAKHTUNKHWA  
PESHAWAR.

Syed Abdul Haq Adv.  
Supreme Court at Swat.

  
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The appeal of Mr. Mian Said Wahab received today i.e on 03.04.2024 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 respondents no. 3, 5 & 6 are un-necessary/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. Address of appellant is incomplete be completed according to rule-6 of the Khyber Pakhtunkhwa Service Tribunal rules 1974.

3- Copy of termination order mentioned in para-2 of the memo of appeal is not attached with the appeal be placed on it.

4- Copy of departmental appeal is not attached with the appeal be placed on it.

5. Annexures of the appeal attached with the appeal are not in sequence.

No. 741/S.T,

Dt. 4/4/2024

Registrar  
Service tribunal  
Khyber Pakhtunkhwa  
Peshawar.

Syed Abdul Haq adv.

Supreme Court at Swat.

Ctc



etc

Usabun Arshad Khan  
(Chairman)

may refer the appeal after fulfilling the requirements of law. Therefore, objections sustain and appeal is returned. The appellant accordingly, not been taken by the appellant in this appeal requisite and a step towards filing of appeal, which step has of departmental appeal before coming to the Tribunal - a pre- Khyber Pakhtunkhwa Service Tribunal Act, 1974, wherein filing requirements conditions enumerated in Section 4 of the 1974 Act. Appeal before the Tribunal after fulfilling the of the grievances but in accordance with law. A civil servant may petitioner was left at liberty to approach this Tribunal for redressal Tribunal. High Court has been perused wherein, although, the Tribunal for redressal of his grievances. The judgment of the was left at liberty to approach the Khyber Pakhtunkhwa Service Tribunal. Peshwar dated 05/12/2023 and stated that the appellant Khyber Pakhtunkhwa through Secretary, Government of Punjab, Islamabad, Azhar and others vs Government of Punjab and others. Judgment passed in Writ Petition No. 873 of 2020. The departmental appeal is the appeal to which the appellant has submitted that as to objection No. 1 regarding the law. Advocate present on behalf of learned counsel for

Mohibul As Government of Khyber Pakhtunkhwa

02.05.2024

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Mukhtiar VS Government of Khyber Pakhtunkhwa

Mr. Tariq Advocate present on behalf of learned counsel for the appellants and submitted that as to objection No. 4 regarding annexing the departmental appeal with the appeal to which he referred to the judgment passed in Writ Petition No 873-M of 2020 titled Muhammad Azhar and 05 others Vs Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education, Peshawar dated 05.12.2023 and stated that the appellant was left at liberty to approach the Khyber Pakhtunkhwa Service Tribunal for redressal of his grievances The judgment of the Peshawar High Court has been perused, where, although, the petitioner was left at liberty to approach this Tribunal for redressal of his grievances but in accordance with law. A civil servant may file appeal before the Tribunal after fulfilling the requirements conditionalities enumerated in Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, wherein, filing at departmental appeal before coming to the Tribunal is a pre- requisite and a step towards filing of appeal, which step has admittedly, not been taken by the appellant in this appeal. therefore, objections sustain and appeal is returned. The appellant may refile the appeal after fulfilling the requirements of law.

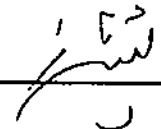
(Kalim Arshad Khan)

Chairman

CTC  
RM

بار کونسل نمبر: BC/10-02-98	سرٹیفکٹ نمبر: 29133
بار ایسوسی ایشن کا نمبر:	
رابطہ نمبر: 0311-0950959	پشاور ہائی کورٹ مینگورہ بینچ بار ایسوسی ایشن سوات

## پشاور ہائی کورٹ مینگورہ بینچ

مخائب: 	نوعیت مقدمہ:
عنوان مقدمہ:	علت نمبر:
محمد زاید علیہ السلام - بنام حکومت	مورخ:
CM-24	۲۲:
in WP 873-02/2020	تاریخ:

## اعتبار آگے

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے برائے پیروی مقدمہ

آن مقام دارالقضاء سوات کیلئے صاحب الحق اسد کو مقرر کر کے

اقرار کیا جاتا ہے، کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا، نیز وکیل صاحب کو راضی نامہ کرنے بیان بر راضی نامہ دینے و تقرر ثالث کرنے، دعویٰ جواب دعویٰ، جواب الجواب، اقبال دعوائی، درخواست برائے سرسبزی مقدمہ، درخواست منسوخی ڈگری یکطرفہ، جواب درخواست ہائے اختیار ہوگا۔ نیز دائر کرنے اپیل، نگرانی، رٹ پیشین، نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ اور مقدمہ مذکورہ کیلئے کل وقتی یا جزوی کاروائی کیلئے کسی دیگر وکیل یا مختار قانون کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا اور صاحب مقرر شدہ کو بھی جملہ مذکورہ اختیارات حاصل ہوں گے، اور اس کا ساختہ و پرداختہ کاروائی منظور و قبول ہوگا، بدوران مقدمہ جو خرچہ و ہرجانہ کسی بھی سبب سے حاصل ہوگا، وہ وکیل موصوف وصول کرنے کا حقدار ہوگا، کوئی تاریخ پیشی مقام مذکورہ بالا سے باہر ہو، تو وکیل صاحب پیروی مقدمہ کرنے کے پابند نہ ہوں گے، مقدمہ کسی عدالت میں بعدم پیروی خارج ہونے یا ڈگری یکطرفہ ہونے کے صورت میں وکیل صاحب ذمہ دار نہیں ہوں گے۔

لہذا وکالت نامہ لکھ دیا کہ سند ہے۔



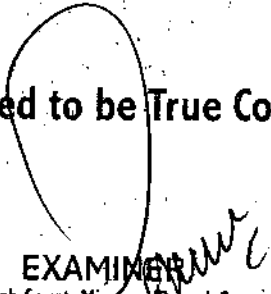
مقام پشاور ہائی کورٹ مینگورہ بینچ کے لئے منظور ہے۔

**PESHAWAR HIGH COURT, MINGORA BENCH**  
**(DAR-UL-QAZA), SWAT**

**FORM OF ORDER SHEET**

Court of .....

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

Serial No. of order or proceeding	Date of Order or Proceedings	Order or other Proceedings with Signature of Judge and that of parties or counsel where necessary.
1	2	3
	05.06.2024	<p><b><u>C.M 1072-M/2024 in W.P 873-M/2020 (W.P be Treated as Service Appeal)</u></b></p> <p><b>Present:</b> Syed Abdul Haq, Advocate for petitioner.</p> <p align="center">***</p> <p>In view of the prayer sought by the petitioner through instant application in juxtaposition with the principle laid down in the reported case <b>223 SCMR 334</b>. Notice of this application be issued to the respondents for 25.06.2024.</p> <p align="right">   <b>JUDGE</b> </p> <p align="right">   <b>JUDGE</b> </p> <p align="center"> <b>Certified to be True Copy</b>    <b>EXAMINER</b>  Peshawar High Court, Mingora, Dar-ul-Qaza, Swat  Authorized Under Article 07 of Qanun-e-Shahadat Order 1984 </p>