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**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL  
PESHAWAR**

Service Appeal No: 2614/2023

Zarmala W/O Mukamil R/O Babuzai Bhrat khail Katlang, Mardan. &  
Others. ....Appellants

**Versus**

The Government of KPK through Chief Secretary & Others.  
.....Respondents

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**IMTIAZ KHAN**

District Education Officer  
Mardan (Male) Mardan

29-04-24

S-B

Peshawar

(2)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL  
PESHAWAR

Service Appeal No: 2614/2023

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 12379

Dated 25-04-2024

Zarmala W/O Mukamil R/O Babuzai Bhrat khail Katlang, Mardan. &  
Others. ....Appellants

**Versus**

The Government of KPK through Chief Secretary & Others.  
.....Respondents

Joint Para Wise Comments on Behalf of Respondents No 5 & 6

*Respectfully Sheweth,*

PRELIMINARY OBJECTIONS:

1. That the appellants have got no cause of action as well as locus standi to file the instant appeal.
2. That the instant appeal is badly time barred, by law and limitation.
3. That the appellants have not come to this Honorable Tribunal with clean hands, hence the appeal is liable to be dismissed.
4. That the appellants are estopped by his own conduct.
5. That the appellants have concealed the material facts from this Honorable Tribunal, hence the appeal is liable to be dismissed.
6. That the predecessor of appellant namely Mukamil Khan was willful absent / absconder from duty w.e.f 15/08/2018 and after fulfillment of all codal formalities the predecessor of appellant has been removed from service vide order Endst No 5581/ G Dated 21/05/2019.

*(Copy of Removal order is as Annexure "A")*

7. That the predecessor of appellant namely Mukamil Khan has not filed departmental appeal during his life against the removal order.
8. That A civil servant forfeits his past service in following cases:-
9. Resignation, Removal from service and absence from duty without leave.

*( Copy of Rule is as Annexure "B" )*

FACTS:

1. Para No 1 related his appointment, need no comments.
2. Para No 2 is **Incorrect & not admitted**. As the duty of the predecessor of appellant was not satisfactory, because he was charged in a criminal case, hence denied.

- 3. Para No 3 is **Incorrect & not admitted**. As the predecessor of appellant has been charged in FIR No 492 date 15/06/2018 under section 302/324/34 PPC and he was absconder from the date of FIR i-e 15/06/2018. The respondent issued the removal order on 21/05/2019 due to the absentee/ absconder of the appellant, hence denied.
- 4. Para No 4 is **Incorrect & not admitted**. As the predecessor of appellant was absconder from the date of FIR i-e 15/06/2018 and the departmental appeal has not filed by the predecessor of appellant during his life. The departmental appeal of the legal heirs is not maintainable as well as **badly Time Barred**, hence denied.
- 5. Para No 5 is related his death, need no comments.
- 6. Para No 6 is related Succession Certificate, need no comments.
- 7. Para No 7 is **Incorrect & not admitted**. As the departmental appeal of the legal heirs is not maintainable as well as **badly Time Barred**, hence denied.
- 8. Para No 8 is **Incorrect & not admitted**. As the departmental appeal of the legal heirs is not maintainable as well as **badly Time Barred**, by law and limitation, hence denied.
- 9. Para No 9 is **Incorrect & not admitted**. As the respondents have not delayed the case of the appellants and the appeal of the legal heirs is not maintainable, hence denied.
- 10. Para No 9, need no comments.

**GROUND** :-

- A. Para A is **Incorrect & not admitted**. As the respondent department have been adopted codal formalities and the issuing authority has been obeyed the legal manner, hence denied.
- B. Para B is **Incorrect & not admitted**. As the respondent department has issued show cause Notice regarding his absence and has conducted inquiry on 07/02/2019 and the Inquiry Officer proved his absence from duty, hence denied. *(Copies of show cause & Inquiry are as Annexure C & D)*
- C. Para C is **Incorrect & not admitted**. As the removal order of the predecessor of appellant is valid, legal and is not illegal manner of the respondent department, hence denied.
- D. Para D is **Incorrect & not admitted**. As the respondents have not been ignored the procedure and after fulfillment of all codal formalities the predecessor of appellant has been **removed from service**, hence denied.
- E. Para E is **Incorrect & not admitted**. As the predecessor of appellant was not wrong involvement in the FIR, because the appellant has killed by

complainant party( Jawad Hussain), and the appellant was not acquitted of the said charges , hence denied.

F. Para F is Incorrect & not admitted. As per NWFP Civil Servants Pension Rules and Orders 2006, section 2.11, Forfeiture of Past Service. A Government servant forfeits his past service in the following cases sub section (C) Absence from duty without leave and the appellant is absence from duty without leave, therefore he is not entitled for back benefits, hence denied.


(Copy of Rule is as Annexure B)

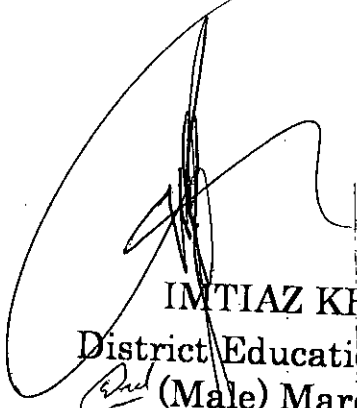
G. Para G is Incorrect & not admitted. As the punishment of the predecessor of appellant is not harsh and he was responsible of his own conduct, hence denied.

H. Para H is Incorrect & not admitted. As the predecessor of appellant was not condemned unheard because the respondent department has issued show cause Notice regarding his absence and has also conducted inquiry on 07/02/2019 and the Inquiry Officer proved his absence from duty, hence denied.

(Copies of show cause & Inquiry are as Annexure C & D)

Therefore, in view of the above made submissions, it is most humbly prayed that on the acceptance of this reply/ comments, the appeal in hand may kindly be dismissed in favor of the Respondents Department in the interest of justice.

  
SAMINA ILTAF  
DIRECTOR  
E&SE Department Khyber  
Pakhtunkhwa, Peshawar.  
(Respondent No: 6)

  
IMTIAZ KHAN  
District Education Officer  
(Male) Mardan  
(Respondent No: 5)

(5)

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

Service Appeal No: 2614/2023

Zarmala W/O Mukamil R/O Babuzai Bhrat khail Katlang, Mardan. &  
Others. .... **Appellants**

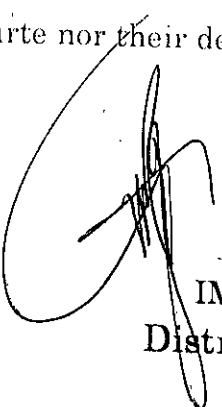
**Versus**

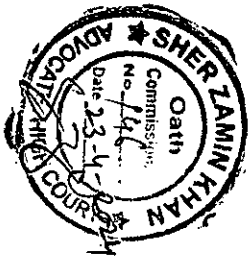
The Government of KPK through Chief Secretary & Others.  
..... **Respondents**

**AFFIDAVIT**

I, Mr. Imtiaz DEO (Male) Mardan do hereby solemnly affirm and declare that the contents of Para Wise Comments submitted on behalf of respondents are true to the best of my knowledge and belief and nothing has been concealed from this Honorable Court. It is further stated on oath that in this appeal, the answering respondents have neither been placed ex-parte nor their defense has been struck off.

Deponent

  
IMTIAZ KHAN  
District Education Officer  
(Male) Mardan





# DISTRICT EDUCATION OFFICER (Female) MARDAN

## AUTHORITY LETTER

I, IMTIAZ KHAN District Education Officer (Male) Mardan do hereby authorized Mr. Sajid khan, Legal Representative on behalf of District Education Office (Male) Mardan, to deal with the issues regarding litigation, represent, submit comments/ Reply of the Service Appeals and attend the KPK Honorable Service Tribunal, Peshawar.



*[Signature]*  
IMTIAZ KHAN  
District Education Officer  
(Male) Mardan

**OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) MARDAN**

**OFFICE ORDER**

Annexure - A- (7) //

WHEREAS, Mr. Mukamil Khan PSHT GPS Bharat Khel Katlang remained willful absent from duty with effect from 15-08 2018 till date, without approval of the Competent Authority as per report of the SDEO concerned.

AND WHEREAS, a departmental inquiry was conducted vide this office order No.1090-91 dated 07-02-2019 in the light of absence report submitted by SDEO(M) Katlang vide his letter Nos.1089 dated 27-12-2018 and No.1194 dated 24-01-2019 and inquiry officer proved his absence from duties and recommended him for disciplinary action under E&D rules.

AND WHEREAS, a show cause notice regarding his willful absence from duty was already served upon him vide this office Memo No.6607-08 dated 04-09-2018 and No.8042/G dated 22-10-2018 in the light of absence report of IMU.

AND WHEREAS non response to the show cause notice and badly failed to resume his duty and to justify his absence from duty.

AND WHEREAS, his absence notice was also published in daily newspaper on 26-04-2019 and 27-04-2019 to resume his duties within 15 days but he failed to resume his duty.

AND WHEREAS, he is found guilty of gross misconduct, absenting himself under the khyberPakhtunkhwa Govt servants E&D rules 2011.

Now in exercise of the power conferred under khyberPakhtunkhwa Govt servants E&D rules 2011, the undersigned being Competent Authority is pleased to impose the major penalty of Removal from Service upon Mr. Mukamil Khan PSHT GPS Bharat Khel Katlang with immediate effect.

Note: Pay and other benefits for the absence period i.e w.e.f 15-08 2018 till the date of issuance of this order will not be claimed at any stage.

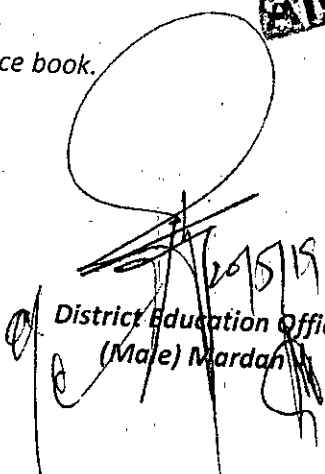
Endst No. 5581/9 /P/F Dated: 21-5-2019

(Zulfiqar ul Mulk)  
District Education Officer  
(Male) Mardan

copy forwarded for information and necessary action to the:-

1. Director E&SE Education KPK, Peshawar.
2. SDEO(M) Katlang with the remarks to made entry in his service book.
3. Mr. Mukamil Khan PSHT GPS Bharat Khel Katlang .(Registry)

~~RECEIVED~~

**ATTESTED**  
  
District Education Officer  
(Male) Mardan

## CHAPTER - II

### SERVICE QUALIFYING FOR PENSION

2.1 **Conditions of Qualifications** - The service of a Government Servant does not qualify for pension unless it conforms to the following three conditions -

First - The Service must be under Government.

Second - the service must not be Non-pensionable.

Third - the service must be paid by Government from the Provincial Consolidated Fund

\* Note - (1) For the previous service of displaced Government servants which qualifies for pension see Chapter VII.

\* Note - (2) Service rendered after retirement on superannuation pension retiring pension shall not count for pension or gratuity.

2.2 **Beginning of service** - Subject to any special rules the service of Government servant begins to qualify for pension when he takes over charge of the post to which he is first appointed.

2.3 **Temporary and officiating service** - Temporary and officiating service shall count for pension as indicated below: -

- (i) Government servants home on temporary establishment who have rendered more than five years continuous temporary service shall count such service for the purpose of pension or gratuity; and
- (ii) Temporary and officiating service followed by confirmation shall also count for pension or gratuity.

2.4 **Service in a temporary post on abolition of a permanent post** - If a permanent post, on which a Government servant holds a lien, is abolished under circumstances entitling him to get a compensation pension or gratuity, his service thereon or a temporary post under Government qualifies for pension

2/3

Note (1) and (2) Substituted vide notification No. SC(SR) V-915/65 Dated 6<sup>th</sup> May, 1965

  
**ATTESTED**



(X)

(9)

allowances for the period of suspension. In other words, the mere act of reinstatement should be deemed to have rendered the period of suspension as qualifying for pension.

Para-1 (j) of F.D. N.W.F.P. Letter  
No. SO (SR-III) FD-4-36/76  
Dated 4<sup>th</sup> June, 1977 (Appendix-III)

2.11 **Forfeiture of Past Service** - A Government servant forfeits his past service in the following cases: -

- (a) Resignation of a post unless it is to take up another post service in which counts for pension.
- (b) Removal or dismissal from service.
- (c) Absence from duty without leave.

Note - The authority which sanctions the pension may commute retrospectively periods of absence without leave into extraordinary leave.

Note - In case of a civil servant, who, with the proper concurrence of the competent authority leaves service under the Government of NWFP and seeks absorption/employment under an autonomous, semi-autonomous/local body, where service is pensionable, the Government, if it is so requested, will be liable to share pensionary liability for the period of service rendered by such civil servant under the Government in accordance with the Government rules.

#### GOVERNMENT INSTRUCTIONS.

"Service in an Autonomous or Semi-Autonomous Body. For the purpose of grant of pension under these orders, the pay drawn and the effective service rendered by a Government servant in an autonomous or semi-autonomous body, the authorized capital of which is wholly subscribed by the Central and/or a Provincial Government, in a post, appointment to which is, by law, required to be made and the salary of which is required to be fixed by the Central or a Provincial Government shall be treated as pay drawn and effective service rendered in a post in Government service.

2.12 **Condonation of Interruptions and deficiencies.** - (1) The Administrative Department may for purposes of pension condone all gaps between " [Periods of qualifying service] of a Government Servant.

(2) The Administrative Department may condone deficiency in qualifying service for pension upto six months provided the service is meritorious and the condonation, if allowed will bring the service upto 25 completed years of qualifying service.

Inserted vide notification No. FD/SR-III-4-112/80, dated 22.11.1980.

\* Para 9 of the Government of West Pakistan Finance Department letter No. SO(SR) V.25/67 dated 27 April 1967 (Appendix B)

[ ] Substituted by Finance Department Notification No. SO(SR) V.171/68, dated 21<sup>st</sup> May 1968.

**ATTESTED**

## ڈسٹرکٹ ایجوکیشن آفیسر (مردانہ) مردان

### نوٹس غیر حاضری

آپ مسمی مکمل خان پی ایس ایچ ٹی GPS Bharat Khel Katlang مورخہ 15-08-2018 سے اپنی ملازمت سے بغیر کسی تحریری اطلاع کے غیر حاضر ہیں۔ جس کی بنا پر آپ کو شوکاز نوٹس جاری ہوئی۔ آپ کے ایس ڈی او صاحب نے آپ کے غیر حاضری کی رپورٹ دفتر ہذا کو بزریغہ خط و کتابت نمبر 1194 بمرخہ 24-01-2019 ارسال کی جس کی بنیاد پر ڈسٹرکٹ ایجوکیشن آفیسر مردانہ مردان نے بموجب آرڈر نمبر 1090-91 بمرخہ 07-02-2019 آپ کے حاضریوں کی وجہ سے آپ کی خلاف انکواری منعقد کی گئی جس میں انکواری آفیسر نے آپ کی غیر حاضری کی تصدیق کی۔ لہذا آپ کو بذریعہ نوٹس اخبار ہذا مطلع کیا جاتا ہے کہ آپ اس نوٹس کی اشاعت کے پندرہ دن کے اندر اپنی ملازمت پر حاضر ہو کر مجاز حکام کو اپنی غیر حاضریوں کی معقول وجہ بتائیں۔ بصورت دیگر آپ کے خلاف کارکردگی و انتظامی رولز مجریہ 2011 (E&D Rules) کے تحت یکطرفہ کارروائی عمل میں لا کر آپ کو نوکری سے برخاست کیا جاسکتا ہے۔

اشتہ  
19/1/19  
(ذوالفقار الملک)  
ڈسٹرکٹ ایجوکیشن آفیسر مردانہ  
ضلع مردان

**ATTESTED**  
District Education Officer  
(Male) Mardan

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**OFFICE OF THE DISTRICT EDUCATION OFFICER(MALE) MARDAN**

**OFFICE ORDER**

Mr. Nisar Ahmad ADEO(Pry) local office is hereby nominated as inquiry officer to conduct inquiry in the light of absent report submitted by SDEO(M) Katlang in r/o Mukamil Khan PSHT GPS Bharat Khel.

The inquiry officer is directed to inquire the case immediately and submit his report within a week time to proceed further in the case.

(Zulfiqar ul Mulk)

**DISTRICT EDUCATION OFFICER  
(MALE) MARDAN**

Endst:No. 1090-91 /P.F/Dated: 7-2 /2019

Copy forwarded to the:-

1. The SDEO(M) Katlang for information
2. ADEO(Pry) local office

**ATTESTED**

*Sherif*  
District Education Officer  
(Male) Mardan

*Zulfiqar ul Mulk*  
DISTRICT EDUCATION OFFICER  
(MALE) MARDAN

**INQUIRY REPORT**

In compliance with DEO(M) Mardan letter No.1090-91 dated 07-02-2019, the undersigned visited GPS Baharat Khel Katlang and conducted inquiry against Mr. Mukamil Khan PSHT of cited school.

**Title of inquiry:** ABSENCE CASE

**Date of inquiry:** 22-03-2019

**Place of inquiry:** GPS Bharat Khel Katlang

**Authority:** District Education officer (Male) Mardan

*Handwritten signature and initials*  
22/3/19

**Proceedings:**

The undersigned paid visit to GPS Baharat Khel Katlang, consulted the relevant record and obtained information from school's staff, Mr. Mukamil Khan was found absent during the visit.

**Findings:**

It came to the notice that Mr. Mukamil Khan has remained willful absent from duties w.e.f 15<sup>th</sup> August 2018. The absent report has been sent from SDEO(M) Katlang to DEO office. A show cause has already been issued to him but no reply has been submitted.

**Recommendations:**

As cited teacher is willful absent from duties and didn't able to reply of the show cause deliberately, therefore the absent report may be published in daily newspapers regarding his absentia and then departmental proceeding may pleased be initiated against him under the existing rules please.



*Handwritten signature*  
Nisar Ahmad ADEO(Pry) 22-3-  
Local office.

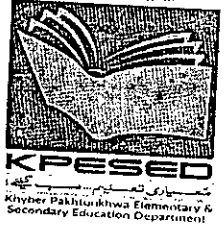
**ATTESTED**

*Handwritten signature*  
District Education Officer  
District Education Officer  
(Male) Mardan



OFFICE OF THE  
SUB DIVISIONAL EDUCATION OFFICER  
(M/P) KATLANG

sdeomkatlang@gmail.com



No. 1424 / Mukamil Khan P.File

Dated: 21 / 03 / 2019

To,

The District Education Officer  
(M) Mardan.

4  
**REMINDER**

*ADREOC party*  
*[Signature]*

**Subject: BSENTEE REPORT IRO MUKAMIL KHAN PSHT, GPS BHARAT KHEL.**

Memo

Refer to this office letter No. Dated: 704 Dated: 13/09/2018, no. 853 Dated: 15/10/2018, No. 1089 Dated: 27/12/2018 and No. 1194 Dated: 24/01/2019, also your good office letter (nomination of inquiry officer) No. 1090-91/P.F/Dated: 7/2/2019, No. 1 show cause File No. 6919/G/IMU/EMIS Dtd: 15-Sep-2018 and No. 2 Show cause File No. 8045/G/IMU/EMIS Dated: 22-Oct-2018.

The absentee case of Mr. Mukamil Khan PSHT GPS Bharat Khel Babuzai is still pending indecisive and he is still absent from duty, submitted for further necessary action and guidance please.



*[Signature]*  
Sub-Divisional Education Officer  
(M/P) Katlang

**ATTESTED**

*[Signature]*  
District Education Officer  
(Male) Mardan

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OFFICE OF THE DISTRICT EDUCATION OFFICER  
(MALE) MARDAN

No. 4101 / Dated 19-4-2019

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To

The Assistant Director Information  
Mardan

SUBJECT: ABSENCE NOTICE

Memo:

Enclosed please find here with seven copies of absence notice in respect of Mukamil Khan PSHT GPS Bharat Khel Katlang, Mardan.

In this connection you are requested to publish the said absence notice in two Daily News Papers under intimation to this office please.

Enclose=Seven copies

**ATTESTED**

*[Signature]*  
District Education Officer  
(Male) Mardan

*[Signature]*  
19/4/19  
DISTRICT EDUCATION OFFICER  
(MALE) MARDAN

15



OFFICE OF THE  
SUB DIVISIONAL EDUCATION OFFICER  
(M/P) KATLANG



sdeomkatlang@gmail.com

No. 1548 / Mukamil Khan P.File

Dated: 04/05/20

To,

The District Education Officer  
(M) Mardan.

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*Handwritten signature and date: 04/05/20*

Subject:

ABSENTEE REPORT IRO MUKAMIL KHAN PSHT, GPS BHARAT KHEL.

Memo

Refer to this office letter No. 1452/Mukamil Khan P:File date: 02/04/2019.  
The absentee case of Mr. Mukamil Khan PSHT GPS Bharat Khel Babuzai is still pending indecisive and he is still absent from duty, the said teacher may please be proceeded under E&D rules 2011.



*Handwritten signature*  
Sub-Divisional Education Officer  
(M/P) Katlang

ATTESTED

*Handwritten signature*  
District Education Officer  
(Male) Mardan