

22.02.2022

Due to retirement of the Worthy Chairman, the Tribunal is defunct, therefore, case is adjourned to 28.04.2022 for the same as before.



Reader

28.04.2022

Counsel for the petitioner present. Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present. Learned AAG seeks time for implementation report. To come up on 27.05.2022 before S.B.



(FAREEHA PAUL)  
Member (E)

27<sup>th</sup> May, 2022

Clerk of counsel for the appellant present. Mr. Kabir Ullah Khattak, AAG for respondents present.

Due to general strike of the bar. Case is adjourned. To come up for the same on 06.07.2022 before S.B.



(Kalim Arshad Khan)  
Chairman

6<sup>th</sup> July, 2022

Learned counsel for the petitioner present. Mr. Kabirullah Khattak, Addl: AG alongwith Mr. Masood Khan, Litigation Officer for respondents present.

The department has filed reply/compliance report which is placed on file. Learned counsel for the petitioner after going through the reply submitted that he would come up with submissions for which he sought time. To come up for further proceedings on 07.09.2022 before S.B.

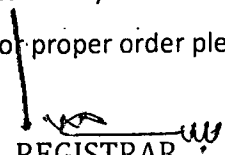

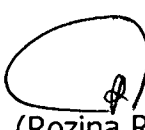


(Kalim Arshad Khan)  
Chairman

Form- A  
FORM OF ORDER SHEET

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

Execution Petition No. \_\_\_\_\_ 350/2021

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	29.11.2021	<p>The execution petition submitted by Mr. Muhammad Usman through Mr. Fazal Shah Mohmand Advocate may be entered in the relevant register and put up to the Court for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p> <p>This execution petition be put up before S. Bench on <u>07/01/22</u>.</p> <p style="text-align: right;"> CHAIRMAN</p> <p>Rabia Muzaffar, Advocate for the petitioner present.</p> <p>Notices be issued to the respondents. Case to come up for implementation report on 22.02.2022 before S.B.</p> <p style="text-align: right;"> (Rozina Rehman) Member (J)</p>
2-	07.01.2022	

/

**BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR.**

Implementation Petition No 351 /2021

In

Service Appeal No. 10407/2020

Yasir Khan ..... **Petitioner/Appellant.**

**V E R S U S**

DEO and Others..... **Respondents**

**I N D E X**

<b>S.No</b>	<b>Description of documents</b>	<b>Annexure</b>	<b>Pages</b>
<b>1.</b>	implementation Petition with Affidavit		1-2
<b>2.</b>	Copy of the Order and Judgment dated 10-09-2021	<b>A</b>	3-8
<b>3.</b>	Copy of Application	<b>B</b>	9
<b>4.</b>	Wakalat Nama		10


**Dated:- 25-11-2021**

  
**Petitioner/Applicant**

**Through**

  
**FAZAL SHAH MOHMAND**  
ADVOCATE,  
SUPREME COURT OF PAKISTAN.

**&**

  
**RABIA MUZAFFAR**  
ADVOCATE,  
HIGH COURT, PESHAWAR

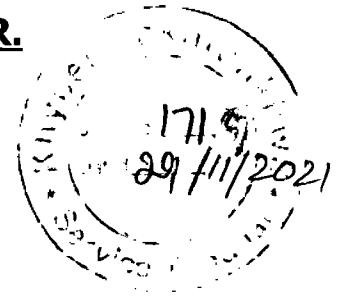
**BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR.**

Implementation Petition No 351 /2021

In

Service Appeal No. 10407/2020

Yasir Khan, S/O Shah Passand, Qari at Govt Higher Secondary School,  
Rashakai R/O, Railway Par, Village Rashaki, District Nowshera



.....**Appellant/Applicant.**

**VERSUS**

1. Director Elementary and Secondary Education, KPK Peshawar.
2. District Education Officer (Male) Nowshera.
3. Secretary, Elementary and Secondary Education, KPK Peshawar.

.....**Respondents**

**PETITION FOR THE IMPLEMENTATION OF ORDER/JUDGMENT DATED 10-09-2021 PASSEDBY THIS HONORABLE TRIBUNAL IN THE ABOVE TITLED SERVICE APPEAL.**


**Respectfully Submitted:-**

1. That the petitioner/appellant earlier filed Service Appeal No 10407/2020 for promotion, wherein the service appeal of the appellant was disposed of in terms that the cases of the appellant are remitted to respondents to examine their promotion cases strictly in accordance with the promotion criteria together with the correct distribution of the seats amongst the cadres and promote the appellants on the basis of seniority cum fitness upon availability of posts. **(Copy of the Order and Judgment dated 10-09-2021 is enclosed as Annexure A).**
2. That the petitioner/appellant time and again approached respondents for the implementation of the Order and Judgment of this honorable Tribunal and also filed application dated 29-09-2021 for his promotion as Qari (M/P) SST which was not responded and the promotion of the appellant has not been duly processed as per the Judgment of this honorable tribunal. **(Copy of the Application is enclosed as Annexure B).**
3. That the respondents are not ready to implement the Order and Judgment of this honorable Tribunal in its true spirit for no legal and valid reasons, this act of the respondents is unlawful,

unconstitutional and goes against the Orders and Judgment dated 10-09-2021 of this honorable Tribunal.

It is therefore prayed, that on acceptance of this Application/Petition, respondents may kindly be directed to implement the Order and Judgment of this honorable Tribunal dated 10-09-2021 passed in Service Appeal No 10408/2020.

Dated: - 25-11 - 2021



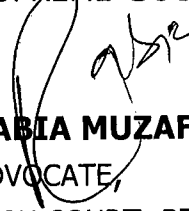
Petitioner/Applicant

Through



**FAZAL SHAH MOHMAND**  
ADVOCATE,  
SUPREME COURT OF PAKISTAN.

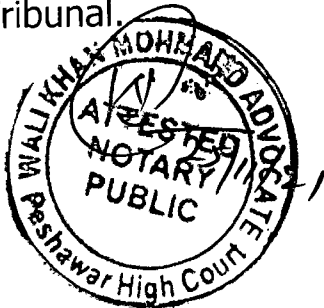
&



**RABIA MUZAFFAR**  
ADVOCATE,  
HIGH COURT, PESHAWAR

## **AFFIDAVIT**

I, Yasir Khan, Qari at Govt Higher Secondary School, Rashakai S/O Shah Passand R/O, Railway Par, Village Rashaki, District Nowshera, do hereby solemnly affirm and declare on oath that the contents of the accompanying **Implementation Petition** are true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable Tribunal.



**DEPONENT**

"A" -3-

**BEFORE THE KHYBER PUKHTUNKHWA SERVICES TRIBUNAL**  
**PESHAWAR**

Service Appeal No. 10405 /2020



Khyber Pakhtunkhwa  
Service Tribunal

Case No. 9851

Dated 8/9/2020

Yasir Khan Son of Shah Passard R/O Railway Par, Village Rashakai, District Nowshera  
Working and posted presently as Qari at Government Higher Secondary School Rashakai  
(Nowshera)..... (**Appellant**)

**VERSUS**

- (1) Secretary to Government of Khyber Pukhtunkhwa Elementary and Secondary  
Education Department, Civil Secretariat, Peshawar
- (2) Director Elementary and Secondary Education Department, KP, Peshawar.
- (3) District Education Officer (Male) Nowshera..... (**Respondents**)

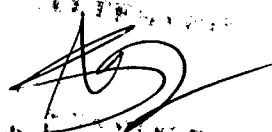
Filed to-day

Registrar  
8/9/2020

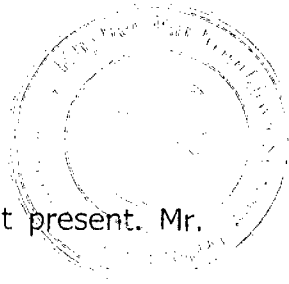
**APPEAL U/S 4 OF THE SERVICES  
TRIBUNAL, ACT, 1973**

Respectfully Sheweth,

- (1) That the Appellant joined the service of education department as Qari and is working as such for more than 6 years by now.
- (2) That the respondent department in consultation with the Establishment and Finance Department has passed notification No. SO (PE)45/SSRC/Meeting/2013 Teaching Cadre Peshawar dated 18<sup>th</sup> December 2013. whereby 75% quota for the posts of Secondary School Teacher (BPS-16) has been reserved/sanctioned for promotion on the basis of seniority-cum fitness and 25% for initial recruitment. Furthermore the note to the policy also provided that promotions could also be made on need based policy but instead of following the need based

  
Registrar  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

-4-





ORDER  
10.09.2021


Mr. Ishfaq Ahmed Khan, Advocate for the appellant present. Mr. Riaz Khan Painc akheil, Assistant Advocate General for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today passed in service appeal bearing No.104(8/2020 titled "Muhammad Usman Vs. Secretary to Government of Khyber Pakhtunkhwa Elementary and Secondary Education Department, Civil Secretariat, Peshawar and two others", we have not observed any illegality in the promotion process, but to make it sure that justice is done to the appellants, the cases of appellants are remitted to respondents to examine their promotion cases strictly in accordance with the promotion criteria together with the correct distribution of seats amongst the cadres and promote the appellants on the basis of seniority cum fitness upon availability of posts. Parties are left to bear their own costs. File be conigned to record room.

ANNOUNCED  
10.09.2021

  
(ROZINA REHMAN)  
MEMBER (JUDICIAL)

  
(ATIQ-UR-REHMAN WAZIR)  
MEMBER (EXECUTIVE)



10-9-2021

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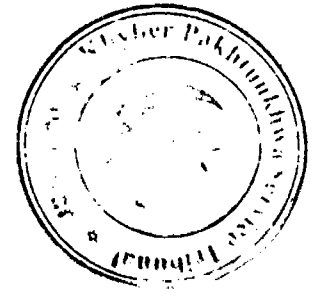
22-09-21  
22-09-21

-5-

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

Service Appeal No. 10408/2020

Date of Institution ... 08.09.2020  
Date of Decision ... 10.09.2021



Muhammad Usman Son of Muhammad Hanif F/O Mohallah Nawab Abad, Village Kheshti Bala, District Nowshera, Working and posted presently as Qari at Government High School No.2 Nowshera Kalan (Nowshera)  
... (Appellant)

VERSUS

Secretary to Government of Khyber Pakhtunkhwa Elementary and Secondary Education Department, Civil Secretariat, Peshawar and two others.  
... (Respondents)

ISHFAQ AHMAD KHAN  
Advocate ... For Appellant

RIAZ KHAN PAINDAKHEIL,  
Assistant Advocate General ... For Respondents

**ROZINA REHMAN** ... **MEMBER (JUDICIAL)**  
**ATIQU-UR-REHMAN WAZIR** ... **MEMBER (EXECUTIVE)**

*Wh*

**JUDGMENT**

**ATIQU-UR-REHMAN WAZIR MEMBER (E** :- This single judgment shall dispose of the instant service appeal as well as the connected service appeal bearing No. 10407/20 titled "Yasir Khan Vs. Secretary to Government of Khyber Pakhtunkhwa Elementary and Secondary Education Department Civil Secretariat, Peshawar and two others", as common question of law and facts are involved therein.

Brief facts of the case are that the appellants joined education department as Qari. The appellants are mainly aggrieved with the inaction of the respondents by not promoting the appellants as per 3% quota reserved for qari specified in the


02.  
ARRESTED  
EX-MINISTER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar



Notification dated 18-12-2013, against which the appellants filed separate departmental appeals dated 03-03-2020 and 09-05-2020 respectively, which were not responded, hence the instant service appeals instituted on 08-09-2020 with prayers that the appellants may be considered for promotion to the post of Secondary School Teacher (SPS-16) with immediate effect enabling the appellants to enjoy the financial benefits and seniority in accordance with law to meet the ends of justice.

03. Learned counsel for the appellant has contended that the notification dated 18-12-2013 envisages a clear and transparent policy of promotion, whereby 75% quota is reserved for promotion and 25% for initial recruitment; that out of 75% quota specified for promotion, 3% is specified for Qari Cadre, but the respondents have illegally amalgamated all the seats of quota just to accommodate their own blue eyed candidates, whereas the appellants are ignored repeatedly, which is discriminatory, hence is liable to be set at naught; that the appellant being qualified in every respect as per policy was required to be considered for promotion, but the respondents recently conducted departmental promotion committee meeting and again ignored the appellants; that the appellants have not been treated in accordance with law and illegally made to suffer financially; that the appellants are deserving and eligible candidates for promotion to the next grade with no adverse remarks from any quarter and thus valuable rights have been accrued to them, which could not be taken away in an arbitrary or fanciful manner; that the respondents have exceeded their power and jurisdiction by enjoying their own innovation and monopoly, creating problems for the entire family of the appellant by treating the appellant with discrimination and depriving the appellants from their due right of promotion as well as financial benefits; that a total of 97 vacancies have been filled from 2014 to 2020, where only one Qari was promoted, whereas the share of Qari comes to 3 seats, which were not allocated to the Qari Cadre, hence both the appellants were deprived of their right of promotion.

ATTESTED

  
 EXAMINER  
 Khyber Pakhtunkhwa  
 Service Tribunal  
 Peshawar

04. Learned Assistar : Advocate General appearing on behalf of respondents has contended that the appellants were initially appointed as Qari on 25-05-2012 and 02-12-2014 respectively and as per Notification dated 18-12-2013, the appellants were required to complete five years mandatory period as Qari and such period in respect of appellants comes to 25-05-2017 and 02-12-2019 respectively, hence they have become eligible for promotion in the mentioned dates, but they are calculating their quota from the dates when they were initially appointed, which is wrong, as such quota for promotion is observed and calculated on yearly basis and the appellants quota will be considered from the date, when they become eligible for promotion; that in 2017, one Mr. Zaibullah, who was senior most amongst Qari, has already been promoted to SST in their 3% quota; that after 2017, the next and last promotions were made in 2020 in which 10 seats were filled as according to the reserved quota 3% is 0.3, not even half of a seat, so for that very reason, candidates in other cadres, whose quota percentage is higher, were promoted as per rule and policy, hence the collective calculations of vacant seats from 2014 to 2020 makes no sense; that the appellants at the moment are eligible for promotion to the post of SST and they will be promoted on availability of posts; that all the promotions have been made in accordance with law and the appellant has got no cause of action to file the instant service appeal.

05. We have heard learned counsel for the parties and have perused the record. respondents vide notification dated 18-12-2013 have devised criteria for filling in the post of Secondary School Teacher (BPS-16), where 75% of the vacant posts are required to be filled in by promotion on the basis of seniority cum fitness with further distribution of such percentage amongst SCT/CT holding 40% share, PSHT with share of 20% drawing master 4%, senior Arabic teacher 4%, senior theology teacher 4% and 1% seats reserved for Qari cadre. Promotions against such post is made conditional with seniority cum fitness and at least five years service as senior Qari/Qari. The appellants stands qualified to this effect after completion of five


ATTESTED


EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal

years service on 25-05-2017 and 02-12-2019 respectively and after their fitness for promotion until 2020, one Qari namely Zaibullah was promoted vide order dated 09-10-2017 and again promotions were made against ten vacant posts, where share of the Qari comes to 0.3%, which does not make a share even to half of the seat hence the Qari Cadre was not allocated any seat. Placed on record is a tentative seniority list of Senior Qari, Qari, where the appellants stand at serial No. 37 and 51 but it was un-disputed and representative of the respondents admitted to the fact that both the appellants stand at the top for promotion, as his other colleagues senior to them are otherwise deficient in fitness for promotion, hence they both are considered as fit for promotion at the moment and they will be promoted upon availability of posts.

06. We have not observed any illegality in the promotion process, but to make it sure that justice is done to the appellants, the cases of appellants are remitted to respondents to examine their promotion cases strictly in accordance with the promotion criteria together with the correct distribution of seats amongst the cadres and promote the appellants on the basis of seniority cum fitness upon availability of posts. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED  
10.09.2021

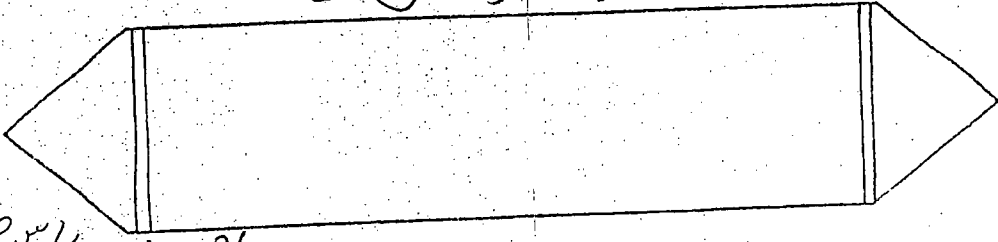
  
(ROZINA REHMAN  
MEMBER (JUDICIAL))

  
(ATIQU UR REHMAN WAZIR)  
MEMBER (EXECUTIVE)

*Consented to by the court*

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10-09-21  
22/09/21  
22/09/21

# -10- بعدالت سدس برسول لیس



باسر خان  
بنام لکھنؤ DE مشرق  
2021ء منجانب باسر خان

مدرجہ  
مقدمہ  
دعویٰ  
جرم

## باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی دکن کاروائی متعلقہ آن مقام لکھنؤ کے لئے فضل شاہ صمدی AS + راجہ مظفر اللہ علی مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار دیا گیا۔ نیز دکن صاحب کو راضی نامہ کرنے و تقرر ثالثہ فیصلہ برحلف دیئے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی براندگی اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور 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 بھی وہی جملہ مذکورہ اختیارات حاصل ہوں گے اور اس کا ساختہ پرواختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھنؤ یا کہ سند ہے۔

باسر خان

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الحق مقدمہ 25 ماہ نومبر 2021

بمقام

Accepted  
by  
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کے لئے منظور ہے۔

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