

Sr. No.	Date of order/ proceedings	Order or other proceedings with signature of Judge/ Magistrate
1	2	3
1.	29.05.2015	<p data-bbox="614 461 1380 535" style="text-align: center;"><b>KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.</b></p> <p data-bbox="614 585 1356 697">Service Appeal No. 230/2014, Mst. Taranum Nishat, Service Appeal No. 231/2014, Mst. Zahidan Begum Versus Director, E&amp;SE, Peshawar etc.</p> <p data-bbox="614 784 1500 1059" style="text-align: center;"><u>PIR BAKHSH SHAH. MEMBER.-</u> Counsel for the appellant (Hassan U.K Afridi, Advocate) and Government Pleader (Mr. Muhammad Jan) with Sadiqur Rahman, Supdt. for the respondents present.</p> <p data-bbox="614 1158 1500 2317">2. The appellant Mst. Tarranum Nishat and Mst. Zahidan Begum were transferred vide impugned order dated 30.01.2014 from GGPS Billitang, Kohat to GGPS, Shadi Khel and GGPS Kohati Dhoke respectively, in place of private respondents Mst. Robina Begum, (PST) and Sajeela Rano (PST) respectively who were posted against the posts of the appellants. Departmental appeals of the appellants dated 04.2.2014 were also rejected on the ground that the transfers were made on the recommendations of local MPA concerned, therefore, the impugned transfer order cannot be cancelled. Feeling aggrieved from the said order, the instant separate service appeals were instituted before this Tribunal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974. In view of common facts and law involved, both the appeals are directed to dispose of through this single judgment.</p> <p data-bbox="614 2354 1500 2404">3. The learned counsel for the appellant while referring</p>

to a letter of the Local MPA addressed to DEO(F) Kohat copy of which is available on the file, stressed that the impugned order was made on the political interference of the local MPA, in violation of the rules/regulations and transfer/posting policy of the government. He further submitted that the impugned order is against law as the appellants belong to Union Council Bilitang. He referred to an unreported judgment of the Hon'ble Peshawar High Court, Peshawar in Writ Petition No. 3776/2010 dated 3.11.2010 and stressed that transfer order being politically motivated has been condemned and discouraged in strongest terms by the august Superior courts of the country. He requested that both the appeals may be accepted.

4. The learned Government Pleader on behalf of the respondent department defended the impugned order and submitted that the appellants had completed their tenure in Union Council Bilitang. It was further submitted that the impugned order was passed in public interest. He requested that both the appeals may be dismissed.

5. We have heard the learned counsel for the appellant and learned Government Pleader for the respondents-department and perused the record.

6. Since the matter involved was transfer, therefore, on grant of an application of the appellant for early hearing, notice was issued to the respondents on which the respondents-

department was put in appearance, however, none is present on behalf of the private respondents despite the said notice.

7. It transpired from perusal of the record that transfers of the appellants and private respondents were made on the demand of the local MPA. The local MPA has not given reason in his recommendatory letter. The record further revealed that departmental appeal of the appellants have been rejected for no reason in consonance of contemplation of Section 24-A of General Clauses Act. Reference has been made only to the recommendatory letter of local MPA. The record revealed that the appellants are PST Teachers and to posting/transfer of PST teachers, there is special law namely "Khyber Pakhtunkhwa (Appointment, Deputation, Posting and Transfer of Teachers, Lecturers, Instructors and Doctors) Regulatory Act, 2011". It was not found that the impugned order has been made in conformity of that law. The impugned order has not been rationalized on record, and the same cannot be maintained.

8. For the said reasons the impugned order is likely to be set aside but before the same being set aside as the appeal has not been decided by the proper appellate authority and private respondents are also not in attendance, therefore, it is the considered opinion of the Tribunal to convert these appeals to departmental appeals of the appellants and to remit the same to the proper appellate authority for decision afresh strictly in accordance with law, rules and judgments of superior courts. The appeals be decided within one month after its receipt by

the appellate authority failing which the impugned orders shall be deemed to have been set aside. Both the appeals are disposed of accordingly. Parties are left to bear their own costs.

File be consigned to the record.

ANNOUNCED

29.5.2015



(ABDUL LATIF)  
MEMBER



(PIR BAKHSH SHAH)  
MEMBER

230/14

25.2.2015

Counsel for the appellant, Addl. A.G with Siddiqur Rahman, Supdt. for the official respondents present. Mr. Mosam Khan, AD also appeared on behalf of Director E&SE, KPK, Peshawar. The learned Judicial Member is on official tour to D.I.Khan, therefore, case is adjourned to 13.3.2015 for further arguments.

  
MEMBER

13.3.2015

Appellant with counsel and Mr. Muhammad Jan, GP with Khursheed Khan, SO, Mosam Khan, AD and Abid Hussain, Asstt. Programme Officer for the official respondents present. The learned Member-II of the Bench is on leave, therefore, case is adjourned to 22.6.2015 for arguments.

  
MEMBER

29.05.2015

Counsel for the appellant and Mr. Muhammad Jan, GP with Sadiqur Rahman, Supdt. for the official respondents present. Arguments heard. Record perused. Vide our detailed judgment of to-day and placed on file, this appeal is disposed off as per detailed judgment. Parties are left to bear their own costs. File be consigned to the record.

ANNOUNCED  
29.05.2015

  
MEMBER

  
MEMBER

29.12.2014

Clerk to counsel for the appellant and Mr. Muhammad Jan, GP with Sadiqur Rahman, Supdt. and Khaista Rahman, AD for the respondents present. The Tribunal is incomplete. To come up for the same on 10.2.2015.

  
READER

10.02.2015

Counsel for the appellant and Mr. Abdul Majeed, B & A.O on behalf of official respondents alongwith Assistant A.G present. None present for private respondent No. 4 despite service, hence proceeded *against* ex-parte. The case is assigned to D.B for arguments for today.

  
Chairman

10.2.2015

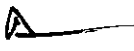
Counsel for the appellant and M/S. Muhammad Adeel Butt, AAG, Usman Ghani, Sr.GP and Muhammad Jan, GP with Abdul Majeed, B&A.O on behalf of the official respondents present. Arguments partly heard.

It was jointly worked out <sup>during arguments</sup> that since departmental appeal of the appellant has not been decided by the Director of Education (respondent No. 1)/competent authority, therefore, he may be summoned personally for his views/comments before the Tribunal so that time may be saved. To come up for further arguments on 25.2.2015.

12

12

09.02.2015

 MEMBER of counsel for the appellant and Mr. Abdul Majeed, B & A.O on behalf of official respondents present. Request for adjournment granted. The case is assigned to D.B for arguments for today.  
11.02.2015

  
MEMBER

12

02.02.2015

Counsel for the appellant and Mr. Abdul Majeed, B & A.O on behalf of official respondents present. Request for adjournment granted. The case is assigned to D.B for arguments for today.

19.05.2014

Clerk to counsel for the appellant present and requested for extension of time to deposit security and process fee, which have not been deposited due to misunderstanding. Request is accepted. Be deposited within three days. Thereafter, notices be issued to the respondents for submission of written reply on main appeal as well as reply/arguments on application on 7.7.2014.

MEMBER

MEMBER

Clerk to counsel for the appellant, and Sr.GP with Rizwana Bibi, EDO and Sidiqur Rahman, Supdt. for respondents No. 2 and 3 present and reply on main appeal submitted. Copy handed over to Clerk to counsel for the appellant. Fresh notices be issued to respondents No. 1 and 4. To come up for written reply of respondents No. 1 & 4 on main appeal as well as reply/arguments on stay application on 28.10.2014.

MEMBER

MEMBER

28.10.2014

Counsel for the appellant and Mr. Muhammad Jan, GP with Sadiqur Rahman, Supdt. for respondents No. 2 & 3 present and reply filed. Mr. Mosam Khan, AD for respondent No. 1 present and relied on the written reply of respondents No. 2 & 3. Fresh notice be issued to respondent No. 4 for submission of written reply on main appeal as well as reply/arguments on application on 29.12.2014.

MEMBER

Appellant deposited  
Process fees Security  
Rs. 200/- Bank Receipt  
attached with file.  
7.2014.

7-

Appeal No. 230/2014  
Mst. Jannum Nisbat

31.03.2014

Counsel for the appellant present and requested for adjournment. To come up for preliminary hearing on 24.04.2014.

Member

24.04.2014

Counsel for the appellant present. Preliminary arguments heard and case file perused. Counsel for the appellant contended that the appellant has not been treated in accordance with law/rules. Against the impugned transfer order dated 30.01.2014, she filed departmental appeal on 04.02.2014, which has been rejected on 15.02.2014, hence the present appeal on 21.02.2014. He further contended that the impugned transfer order is pre-mature and politically motivated. Points raised at the Bar need consideration. The appeal is admitted to regular hearing subject to all legal objections. The appellant is directed to deposit the security amount and process fee within 10 days. Thereafter, Notices be issued to the respondents. Counsel for the appellant has also filed an application for suspension of the impugned order dated 31.01.2014. Notice of application should also be issued to the respondents for reply/arguments. To come up for written reply/comments on main appeal on 07.07.2014 as well as reply/arguments on application on 19.05.2014.

Member

03/2014

This case be put before the Final Bench for further proceedings.

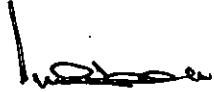
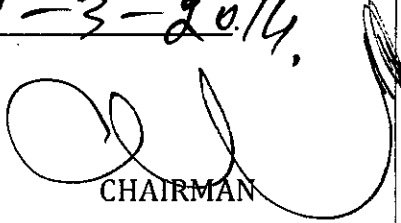
Chairman



Form- A  
FORM OF ORDER SHEET

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

Case No. 230/2014

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	21/02/2014	<p>The appeal of Mst. Taranum Nishat presented today by Mr. Hassan U.K. Afridi Advocate may be entered in the Institution register and put up to the Worthy Chairman for preliminary hearing.</p> <p style="text-align: right;"> REGISTRAR 21/2/14</p>
2	26-2-2014	<p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on <u>31-3-2014</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>

BEFORE THE KHYBER PUKHTUN KHAWA SERVICE TRIBUNAL,  
PESHAWAR.

SERVICE APPEAL NO. 230 / 2014.

=====

Mst. Taranum Nishat , P.S.T. Teacher ..... APPELLANT.

VERSUS.

Director Elelementary & Secondary Education ,  
Peshawar & others . . . . . RESPONDENTS.

=====

I N D E X.

S.No.	Description of documents.	Pages.
1.	Service Appeal with affidavit.	1 - 5
2.	Application for Stay.	6 - 7
3.	Service Certificate.	8
4.	Impugned order dated 30/1/2014.	9
5.	Departmental appeal.	10
6.	Order of Rejection of Departmental appeal of the appellant, dated 15/2/14.	11
7.	Domicile Certificate.	12
8.	Letter of M.P.A.	13
9.	Letter to accomodate teacher to their own Union Council.	14
10.	Wakalatnama.	15

Appellant

Through:-

( HASSAN U.K. AFRIDI )  
Advocate High Court,  
Peshawar.

Dated : 20 /2/2014.

1

BEFORE THE KHYBER PUKHTUN KHAWA SERVICE TRIBUNAL  
PESHAWAR.

SERVICE APPEAL NO. 230 / 2014.

244  
21-274

Mst. Taranum Nishat, P.S.T. G.G.P.S. Billitang,  
Head Teacher, Kohat . . . . . APPELLANT.

VERSUS.

1. Director Elementary & Secondary Education ,  
Peshawar.
2. District Education Officer, (Female) Elementary  
& Secondary Education , Kohat.
3. Sub Divisional Education Officer, (Female)  
Elementary & Secondary Education , Kohat.
4. Robina Begum , P.S.T. Govt: Primary Girls, Shadi Khel,  
Kohat . . . . . RESPONDENTS.

=====

APPEAL UNDER SECTION = 4, OF THE K.P.K.  
SERVICE TRIBUNAL ACT, 1974, AGAINST THE  
IMPUGNED TRANSFER ORDER NO. 2036, -39/PST,  
TRANSFER FILE DATED 30/1/2014, WHILE  
DEPARTMENTAL APPEAL FILED IN 4/2/2014, BY  
the APPELLANTS HAS BEEN REJECTED ON 15/2/2014.

=====

21/2/14

FOR APPELLANT  
TARANUM NISLET

IN THE PESHAWAR HIGH COURT, PESHAWAR

W.P.No. 3776/2010

Hussamul Haq S/O Mian Haji,  
Executive District Officer (E&SE)  
Karak . . . . . Petitioner

VERSUS

1. Govt of Khyber Pukhtun Khawa, through Secretary Elementary & Secondary Education, at Peshawar.
2. Director Elementary & Secondary Education K.P.K., at Peshawar .
3. District Coordination Officer, Karak, District Karak
4. Muhammad Shahid Zaman S/o Muhammad Zaman ( Ex-Secretary BISE Kohat) . . . Respondents

**Writ petition under article 199 of  
the constitution of the Islamic  
Republic of Pakistan 1973.**

Respectfully Sheweth:

1. That the petitioner is a teacher by profession and has performed his duties on different post in different station of Pukhtun Khawa.

FILED TODAY  
19 OCT 2010

# PESHAWAR HIGH COURT, PESHAWAR

## FORM OF ORDER SHEET

Court of.....

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

22

Serial No. of Order of Proceedings	Date of Order of Proceedings	Order or other Proceedings with Signature of Judge.
1	2	3
	<p><b>ORDER</b> <b>03.11.2010</b></p> <p><i>[Signature]</i></p>	<p><u>Writ Petition No.3776/2010 with Interim Relief.</u></p> <p>Present: Mr. Hazrat Said Khan, Advocate, for Hussamul Haq, petitioner.</p> <p>*****</p> <p><b><u>EJAZ AFZAL KHAN, CJ.</u></b>-Petitioner through the instant petition has asked for the issuance of an appropriate writ declaring that the transfer order dated 06.10.2010 passed by respondent No.1 being nullity in the eye of law is of no effect whatever.</p> <p>2. The learned counsel appearing on behalf of the petitioner contended that when the order has been passed under the influence of the Chief Minister, it cannot be said to have been passed either in the public interest or in the exigencies of service, therefore, interference of this Court would be rather imperative and even indispensable, the more-so, when the Chief Minister of the Province is also pitched against him in the arena. Alternate remedy, the learned counsel</p>

added, not being the rule of law but a rule of procedure can't limit or restrict the jurisdiction of this Court in the cases of this nature. He, in support of his contentions, placed reliance on the judgments of The Murree Brewery Co. Ltd. vs. Pakistan through the Secretary to Government of Pakistan, Works Division & 2 others (PLD 1972 SC 279); Ahmad Ali vs. District Education Officer (EE-M), Okara (PLJ 2002 Lah: 2011) and Muslimabad Cooperative Housing Society Ltd. through Secretary vs. Mrs. Siddiq Faiz & others (PLD 2008 SC 135).

3. We have gone through the available record carefully and considered the submissions made by the learned counsel for the petitioner.

4. We agree with the learned counsel for the petitioner that the Chief Minister of the Province has no power to interfere with posting and transfer of civil servants but since in view of the judgments rendered in the cases of Miss Rukhsana Ijaz vs. Secretary, Education, Punjab & others (1997 SCMR 167); Ayyaz Anjum vs. Government of Punjab, Housing and Physical Planning Department through Secretary and others (1997 SCMR 169); Rafique Ahmad Chaudhry vs. Ahmad Nawaz Malik &

am

others (1997 SCMR 170); Secretary Education  
NWFP, Peshawar and 2 others vs. Mustamir Khan  
& another (2005 SCMR 17) and Peer Muhammad  
vs. Government of Baluchistan through Chief  
Secretary & others (2007 SCMR 54), posting and  
 transfer being related to the terms and condition of  
 service can well be urged before the departmental  
 authority in the first instance and then the Service  
 Tribunal, this Court, while exercising its jurisdiction  
 under Article 199 of the Constitution of Islamic  
 Republic of Pakistan, can't step-in. This is what we  
 held in the cases of Bakhtiar Ahmad vs. SMBR in  
W.P.No.1167 of 2006 decided on 03.08.2006;  
Professor Rehana Matiullah vs. Chief Secretary &  
others in W.P.No.1496 of 2006 decided on  
12.02.2006; S. Mansoor Hussain Shah vs. Secretary  
LG/RD in W.P.No.1153 of 2006 decided on  
03.08.2006; Waqif Khan Vs. Government of  
N.W.F.P. in W.P.No.1114 of 2006 decided on  
28.07.2006; Pervez Khan vs. Addl. Chief Secretary  
FATA in W.P.No.2261 of 2006 decided on  
14.02.2007; Serat Bibi vs. Government of NWFP in  
W.P.1559 of 2006 decided on 05.10.2006; Abdal  
Qadir vs. Government in W.P.No.561 of 2006  
decided on 12.05.2006; Nawab Gul vs. SMBR in

am

24

W.P.No.1033 of 2006 decided on 18.07.2006;  
Sardar Ali vs. Director Schools in W.P.No.942 of  
2006 decided on 13.07.2006 and Muhammad Ilyas  
Khan vs. District Revenue and Estate Officer and  
others in W.P.No.835 of 2007 decided on  
23.05.2007. In the case of Zahid Akhtar vs.  
Government of Punjab through Secretary, Local  
Government and Rural Development, Lahore & 2  
others (PLD 1995 SC 530), the Hon'ble Supreme  
 Court inspite of condemning the phenomenon of  
 passing orders of transfer and posting of civil servants  
 on the dictates of the elected representatives,  
 dismissed the petitions questioning such orders by  
 observing as under:-

*"We need not stress here that tamed  
 and subservient bureaucracy can  
 neither be helpful to Government nor it  
 is expected to inspire public  
 confidence in the administration. Good  
 governance is largely dependent on an  
 upright, honest and strong  
 bureaucracy. Therefore, mere  
 submission to the will of superior is  
 not a commendable trait in a  
 bureaucrat. Elected representatives  
 placed as Incharge of administrative  
 departments of Government are not  
 expected to carry with them a deep  
 insight in the complexities of*

@mm



administration. The duty of a bureaucrat, therefore, is, to apprise these elected representatives the nicety of administration and provide them correct guidance in discharge of their functions in accordance with the law. Succumbing to each and every order or direction of such elected functionaries without bringing to their notice, the legal infirmities in such orders / directions may sometimes amount to an act of indiscretion on the part of bureaucrats, which may not be justifiable on the plane of hierarchical discipline. It hardly needs to be mentioned that a Government servant is expected to comply only those orders/ directions of his superior, which are legal and within his competence. Compliance of an illegal or an incompetent direction/order can neither be justified on the plea that it came from a superior authority nor it could be defended on the ground that its non-compliance would have exposed the concerned Government servant to the risk of disciplinary action."

Another paragraph also merits verbatim reproduction, which reads as under: -

*AM*

"A reading of rule 21 (2) with Schedule V of the Rules of Business

*ibid*, makes it clear that the transfer of a Section Officer/ Under-Secretaries and other officers of equivalent rank within the department is to be done by the Secretary of that department. Rule 21 of the Rules of Business, which deals with power of posting, promotion and transfer of Government servants, does not contemplate exercise of these powers by the Minister. The normal period of posting of a Government servant at a station, according to the above referred policy decision of the Government, is 3 years, which has to be followed in the ordinary circumstances, unless for reasons of exigencies of services mentioned in the aforesaid policy of Government, a transfer before expiry of 3 years' period becomes necessary in the opinion of competent Authority. The transfer orders in the present case, therefore, could neither be justified on the plane of policy directive of Government referred to above, nor they were sustainable on the language of Rule 21 (2) read with Schedule V of the Rules of Business, *ibid*. We are in no doubt that if the transfer orders in the case before us would have been made in accordance with the policy directives of the Government referred to above and power was exercised by the competent Authority as

Dm

27

contemplated by Rule 21 (2) read with Schedule V of the Rules of Business, *ibid*, there would have been no room for maneuvering by the officers affected by such transfer. The fact that the transfers were made in violation of policy directive of the Government, which has the status of a Rule, and provisions of Rule 21 (2) *ibid*, were not followed strictly, opened the door for the Government servant concerned to bring in outside influences to obtain the desired transfers. We are also sorry to note that the Secretary LG & RD, neither resisted these unethical and undesirable moves of his subordinates nor he pointed out to the Hon'ble Minister Incharge, that the transfer orders made by him from time to time in respect of various officers of his department were neither in conformity with the declared policy of government nor these transfer orders conform to the provisions of Rule 21 (2) of the Rules of Business, *ibid*. It was the duty of the Secretary LG & RD to have pointed out to the Minister concerned the extent of his authority in such matter, besides bringing to his notice that such frequent transfer of a Government servant could neither be justified as the exigencies of service nor it could be described in the Public interest. We are constrained to observe

DM

28

*that such unconcerned and lukewarm attitude on the part of a Head of a Government is not expected to promote discipline or efficiency in the Department. On the contrary such attitude may have a demoralizing effect on his subordinates encouraging to seek intervention and favours of outside agencies, which may ultimately adversely affect the overall discipline and efficiency in the department. We, therefore, expect that the guide lines mentioned in the policy directives of the Government referred to above and the provisions of Rule 21 of the Rules of Business, ibid, will be kept in view by all concerned while dealing with the transfers of Government servants. The office is directed to send a copy of this judgment to the Government of Punjab for circulating it to all its departments, for future guidance. With these observations, this petition stands dismissed as not maintainable."*

5. It is shocking to note that the Government functionaries, despite clear-cut directives of the Apex Court, pass orders of posting and transfer by behaving like pawns and playthings in the hands of Ministers, MNAs and MPAs, who have nothing to do with such matters in view of the provisions contained in Article 129 of the Constitution. The cases of The Murree

ew

Brewery Co. Ltd. vs. Pakistan through the Secretary to Government of Pakistan, Works Division & 2 others; Ahmad Ali vs. District Education Officer (EE-M), Okara and Muslimabad Cooperative Housing Society Ltd. through Secretary vs. Mrs. Siddiq Faiz & others

(Supra) referred by the learned counsel for the petitioner are distinguishable because it is mandate of Article 199 of the Constitution itself that the High Court will not exercise its jurisdiction when an alternate remedy is available to the person aggrieved. We, however, instead of dismissing the writ petition, treat it as a representation before the departmental authority by following the dictum rendered in the case of Muhammad Anis & others vs. Abdul Haseeb & others (PLD 1994 SC 539) and direct the office to send it to the Chief Secretary for decision in accordance with law within a month. This writ petition, thus, stands disposed of.

Announced.  
03. 11. 2010

*Amr*  
CHIEF JUSTICE

*Majid*  
JUDGE

*Amr*  
*11/5/10*

*MR Justice*

*Add Report*  
*11/5/10*

**BEFORE THE SERVICE TRIBUNAL, KPK, PESHAWAR**

In Ref of:

Service Appeal No. \_\_\_\_\_ of 2014

Mst. Taranum Nishat.....Appellant

**VERSUS**

Sub-Divisional Education Officer & others.....**Respondents**


*Posting / Transfer  
is in dispute - Allowed  
to be put up as respondents  
near date with  
notice to  
a.o.  
8/5*

**APPLICATION FOR EARLY HEARING OF  
THE CAPTIONED APPEAL**

**Respectfully Sheweth:**

1. That the captioned service appeal is pending adjudication and is fixed for 22.06.2015 in this Honourable Tribunal.
2. That till date for the last one year no order of suspension of transfer order has been passed and the respondents are forcefully relieving the appellant from her duty as the monthly salary has already been stopped.

For the aforesaid reasons, it is, therefore, humbly prayed that on acceptance of this application, an early date of hearing may kindly be fixed in the captioned service appeal.

Appellant  
Through   
**Hazrat Said Khan**  
Advocate, Peshawar

Date: 18/03/2015

**BEFORE THE SERVICE TRIBUNAL, KPK, PESHAWAR**

In Ref of:

Service Appeal No. \_\_\_\_\_ of 2014

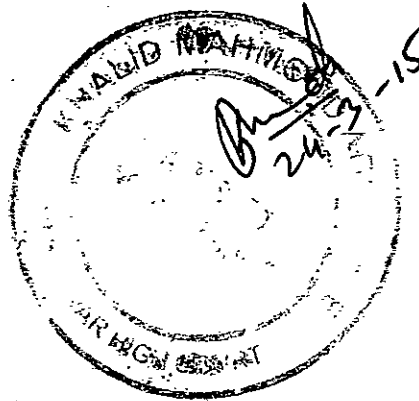
Mst. Taranum Nishat.....**Appellant**

**VERSUS**

Sub-Divisional Education Officer & others.....**Respondents**

**AFFIDAVIT**

I, Abdul Khaliq S/o Abdul Rehman, R/o Shadi Khel, Billitang District Kohat (Special Attorney) do hereby solemnly affirm and declare on oath that the contents of the **Application** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.



*[Handwritten Signature]*  
DEPONENT

PRAYER IN APPEAL:

On acceptance of this appeal the impugned order dated 30/01/2014, passed by the Respdt: No.3, may kindly be set-aside and the Respondents may kindly be directed to remain the appellant on duty in Government Primary School for Girls Billitang, Kohat.

Any other relief which this Honourable Tribunal may deem fit/ proper for the safe administration of justice.

=====  
=====

RESPECTFULLY SHEWETH:

Facts of the case are as under:-

1. That the appellant was appointed as P.S.T. Teacher in the Education Department on 02/12/1992, (Copy of Service Certificate is attached ).
2. That from the date of appointment , the appellant has been performed his duties well and to the entire satisfaction of the Superiors.
3. That the appellant has been up-graded to the Head Teacher on 3/4/2012. and she has been posted in Govt: Girls Primary School Billitang, Kohat.
4. That the appellant has been transferred from Govt: Girls Primary School Billitang Kohat to Govt: Girls Primary School Shadi Khel, Kohat on 30/1/2014. (Copy of order is attached ).



5. That feeling aggrieved from the Transfer order dated 30/1/2014, the appellant submitted Departmental appeal on 4/2/2014, which was rejected on 15/2/2014. (Copy of Departmental appeal is attached ).

Hence this Service appeal on the following amongst the other grounds :-

G R O U N D S :

- A). That the impugned order vide dated 30/1/2014, of the Respondents is against law and facts and is liable to be set-aside.
- B). That the appellant has not been dealt in accordance with Law and Rules.
- C). That the appellant has been transferred on the intimation of M.P.A. i.e. on Political basis, which is very much clear from the order of cancellation / Rejection of Departmental appeal, passed on 15/2/2014 by the Respdt: No.2.
- D). That the transfer order of the appellant is based on malafide intention , hence not tenable in the eyes of law.
- E). ~~That, the view of the Apex Court and as well as the~~ Tribunal is very much clear that the Political pressure may not be involved in the cases of transfer of Govt: Employees.

- F). That according to the policy of Provincial Government the appellant may be posted in a school of her own Union Council, but the appellant has been transferred to the other Union Council which is far away from her Union Council.
- G). That the appellant has a legal right to be posted in a school of her own Union Council.
- H). That some other grounds may be adduced at the time of arguments with the permission of this Honourable Tribunal.

It is, therefore, humbly prayed that on acceptance of this appeal the impugned order dated 30/1/2014, passed by the Respondent No.3, may please be set-aside and the Respondents may kindly be directed to remain the appellant on duty in Government Girls Primary School Billitang, Kohat.

Any other relief which this Hon'ble Tribunal may deem fit / proper for the safe administration of justice.

  
Appellant

Through:-

( HASSAN U.K. AFRIDI )  
Advocate High Court,  
Peshawar.

Dated : 20 / 12 / 2014.


:= 9 :=

51

A F F I D A V I T.

I, Mst. Taranum Nishat ,P.S.T. Teach, (Appellant )  
do hereby solemnly affirm and declare on Oath that  
the contents of the accompanying Service appeal are  
true and correct to the best of my knowledge and belief  
and that nothing has been concealed from this Honourable  
Tribunal.

DEPONENT

  
(Mst. Taranum Nishat)

6

BEFORE THE KHYBER PUKHTUN KHAWA SERVICE TRIBUNAL,  
PESHAWAR.

C.M. No. \_\_\_\_\_ / 2014.

IN

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

=====

Mst. Taranum Nishat, P.S.T. Teacher . . . . . APPLICANT.

VERSUS.

Director Elementary & Secondary Education etc.. RESPONDENTS.

=====

APPLICATION FOR THE SUSPENSION OF THE IMPUGNED  
ORDER VIDE DATED 30/01/2014, TILL THE FINAL  
DECISION OF THE MAIN SERVICE APPEAL.

=====

RESPECTFULLY SHEWETH:

1. That the appellant filed the above noted Service Appeal alongwith this application , which has sufficient chances to success.
2. That the appellant has got a good prima facie case in his favour as the same is on very strong grounds .
3. That the balance of convenience is also lies in favour of the applicant/ Appellant.
4. That if the impugned order of transfer has not been suspended then the appellant will suffer an irreparable loss.

2

5. That the grounds of appeal may please be considered as integral part of this application.

It is therefore, most humbly prayed that on acceptance of this application, the impugned transfer order of the appellant dated 30/1/2014, may kindly be suspended till the final decision of the main Service Appeal.

Applicant/ Appellant

Through:-

(HASSAN U.K. MERIDI )  
Advocate High Court,  
Peshawar.

Dated : 20 /2/2014.

-----  
AFFIDAVIT.

I, Mst. Taranum Nishat PST, Teacher (Appellant) do hereby solemnly affirm and declare on Oath that the contents of this application ~~are true~~ and correct to the best of my knowledge and belief and that nothing has been concealed from this Hon'ble Tribunal.

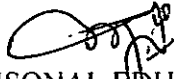
  
DEPONENT.

OFFICE OF THE SUB DIVISIONAL EDUCATION OFFICER (FEMALE) KOHAT

8

SERVICE CERTIFICATE

Certified that Miss: Taranum Nishat has been serving in Education Department since 02-12-1992. Presently she is working at Govt: Girls Primary School Billitang (Kohat) as PST post.

  
SUB DIVISIONAL EDUCATION OFFICER  
(FEMALE) KOHAT

9

OFFICE OF THE  
DISTRICT EDUCATION OFFICER (FEMALE) KOHAT

TRANSFER ORDER

Consequent upon the verbal direction of the competent authority the following PSTs are hereby transferred school noted against each on their own pay and grade in the interest of public service with immediate effect.

S. No	Name of Teacher	From	To	Remarks
1	Taranum Nishat PST	GGPS Billitang	GGPS Shadi Khel	V.Sr.No. 2
2	Robina Begum PST	GGPS Shadi Khel	GGPS Billitang	V.Sr.No. 1
3	Sajeela Rani PST	GGPS Kohati Dhoke	GGPS Billitang	V.Sr.No. 4
4	Zahidan Begum	GGPS Billitang	GGPS Kohati Dhoke	V.Sr.No. 3

- Charge Report should be submitted to all concerned in duplicate.
- No TA/DA is allowed.

*Rizwana Liaqat*  
District Education Officer  
(Female) Kohat

Endst: No. 2036-39 /PST Transfer File

Dated: 30 /Jan, 2014

Copy of the above forwarded to:

1. Mr. Amjad Khan Afridi Special Assistant to Chief Minister, for Housing, Govt. of Khyber Pakhtunkhwa Peshawar for information please.
2. District Education Officer (Female) Kohat.
3. District Accounts Officer, Kohat
4. Accountant Local Office.

*H. Anwar*  
Sub-Div. Education Officer  
(Female) Kohat

*D. H. Khan*  
*K. M. Khan*

محترم ڈسٹرکٹ انجکشن آفیسر صاحبہ (زنانبہ) ضلع کوہاٹ  
عنوان: اپیل: خلاف ٹرانسفر آرڈر نمبر 39-2036 حرم 03-01-2014

جناب عالیہ

- گزارش ہے کہ سائلہ کی ٹرانسفر در اسبلم نمبر 39-2036 حرم 14-01-2014 کے تحت  
G.G.P.S بلی ٹنگ سے G.G.P.S شادی خیل کردی گئی ہے۔ جو کہ سراسر  
ناالضافی ہے۔ لہذا مندرجہ ذیل وجوہات کو بنیاد بناتے ہوئے پُر زور اپیل  
کرتی ہوں کہ میرا ٹرانسفر آرڈر کینسل کیا جائے۔
- 1- یہ کہ میری ٹرانسفر اپنی یونین کونسل سے باہر دوسری یونین کونسل کو کی گئی  
ہے۔ جو کہ حکومتی پالیسی کے خلاف ہے۔ (Tenuze)
  - 2- یہ کہ میرا عرصہ تعیناتی بطور پیڈ ٹیچر ابھی ~~تعمیناتی~~ بھی پورا نہیں کہ دوبارہ  
میری تبدیلی کردی گئی ہے۔
  - 3- یہ کہ میری تبدیلی، ٹرانسفر پر پابندی کے باوجود کی گئی۔
  - 4- یہ کہ میری تبدیلی حکومت کی ٹرانسفر پالیسی کے خلاف ہے۔
  - 5- یہ کہ میری تبدیلی خلقہ ایم پی کے کی سیاسی مداخلت کی وجہ سے کی گئی ہے۔

جو کہ صرف ناالضافی ہے۔  
لہذا پُر زور اپیل کی جاتی ہے کہ میرا ٹرانسفر آرڈر عنوان بالا کینسل کیا  
جائے اور دلچسپی سے اپنے فرائض منصبی سرانجام دینے کا موقع فراہم کیا جائے

حرم: 04-02-2014

اپیل کنندہ

ترجم نشاط

پیڈ ٹیچر گورنمنٹ گرلز پرائمری سکول بلی ٹنگ کوہاٹ  
File Put up in  
6/2/14

Handwritten signature and notes at the bottom of the page.



دو سوں کے لئے  
— دیہی سکول کوٹھار

11

OFFICE OF THE DISTRICT EDUCATION  
(FEMALE) KOHAT

NO. 350-51 /DEO (F)/TRANS:

DATED KOHAT THE 15.2 /2014

To:-

1. Mst: Taranum Nishat  
PST GGPS Billitang
2. Mst: Zahidan Begum PST  
GGPS Billitang


Subject:- APPEAL FOR CANCELLATION OF TRANSFER ORDER

Memo:-

Reference your applications/Appeal Dated 04-02-2014 on the subject cited above.

Your transfer order issued by the Sub Divisional Education Officer (Female) Kohat bearing Endst: No. 2036-39/PST Transfer dated 30-Jan-2014 on the recommendation of Halqa MPA concerned. This office is not in a position to cancel your transfer order.


Hence your appeal is rejected.

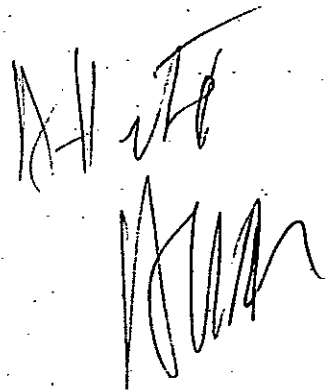
  
DISTRICT EDUCATIO OFFICER  
(FEMALE) KOHAT

Endst: No. \_\_\_\_\_

Copy of the above is forwarded for information to:-

1/ Amjid Khan MPA-PK-37 Kohat

  
DISTRICT EDUCATIO OFFICER  
(FEMALE) KOHAT



**DOMICILE CERTIFICATE.**

12

I declare that I am born of parents, who are permanently domiciled in N.W.F.P.,  
having born in this Province.

I was born at BILLI TANG Signature Taranum  
Resident of BILLI TANG  
Tehsil KOHAT  
District KOHAT

Dated 8-5-91

In pursuance to the declaration, dated 8-5-91  
TARANUM NISHAT D/o son of MUHAMMAD ILYAS  
BILLI TANG Tehsil KOHAT District KOHAT

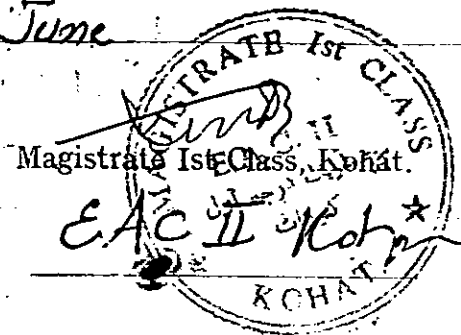
to the effect that he has been born of parents, who are permanently domiciled in  
N.W.F.P.

It is hereby certified that the said TARANUM NISHAT  
parents are permanent resident of N.W.F.P., having been born within it.

I have satisfied myself ~~from my own knowledge~~/by verification  
through Tehsildar Kohat that the above declaration is true and  
certify accordingly.

Given under my hand and that the seal of the Court of, this

First day June 1991.



**COUNTERSIGNED.**

[Signature]  
Deputy Commissioner, Kohat.

No. 716 /D,



Dated 4-6-1991

[Signature]  
[Signature]

آئندہ کی حالتی ہے کہ مہماہ ترک نشا تہیہ میں مصلح علی گڑھ میں کھینچ دیا گیا ہے

کی سکوٹس ہے اس کے بعد ڈاکٹر اہمداد کے بل ٹنڈ کے مصلح روٹس وید ایسی ہائڈ ہے

MOB. MMAD ASIF  
Numbardar  
Bilitang Distt: Kohat

سید ذوالقادر بنو رفیع صاحب  
RAHIMULLAH KHAN  
KOHAT

جناب عالی

حسب لہجہ لائق نمبر دار سید اللہ خان و نمبر دار آصف صاحب بل ٹنڈ بہ مہماہ نشا تہیہ  
دفتر محمد الیاس صاحب بل ٹنڈ مصلح کوٹہ فارمانی وید ایسی ہائڈ ہے  
اور ایسے آٹا و اہمداد بھی مصلح بل ٹنڈ مصلح کوٹہ کے زبانی وید ایسی  
ہائڈ ہے۔

ذوالقادر بنو رفیع صاحب

22/5/91

روٹس وید ایسی ہائڈ ہے

مصلح کوٹہ

1166

Verified as above

30/11/91  
SERSILDAR KOHAT  
1-6-91

13



AMJAD KHAN AFRIDI

SPECIAL ASSISTANT TO  
CHIEF MINISTER FOR HOUSING  
GOVERNMENT OF KHYBER PAKHTUNKHWA

To

D.O. Education (F)

Kohat

Subject: Posting / Transfer

Respectfully it's stated that on public demand it proposes that the following teachers may be transfer in my constituency

PK-37-

S. No.	name of post	Present Position	proposed school of posting
1	<del>Tuanam Niskal</del>	GGPS <del>Politang</del>	Shadi khel
2	Robora	Shadi khel	V.S. NO - 1
3	Sajeda Rana	Kohate Okoke	GGPS <del>Politang</del>
4	<del>Shikdau</del>	<del>Politang</del>	V.S. <del>3</del> - 3

I shall be thankful to you for this act of kindness.

AMJAD KHAN AFRIDI  
Special Assistant to Chief Minister  
For Housing Khyber Pakhtunkhwa

11-07-2011

14

GOVERNMENT OF KHYBER PAKHTUNKHWA  
ELEMENTARY & SECONDARY EDUCATION DEPARTMENT  
No. SO(PE)4-3/APPTT/PTC Rules.  
Dated Peshawar the 25-06-2011.



To,

1. The Directress  
Elementary & Secondary Education  
Khyber Pakhtunkhwa, Peshawar.
2. All Executive District Officers, - *Hansu*  
Elementary & Secondary Education in Khyber Pakhtunkhwa.

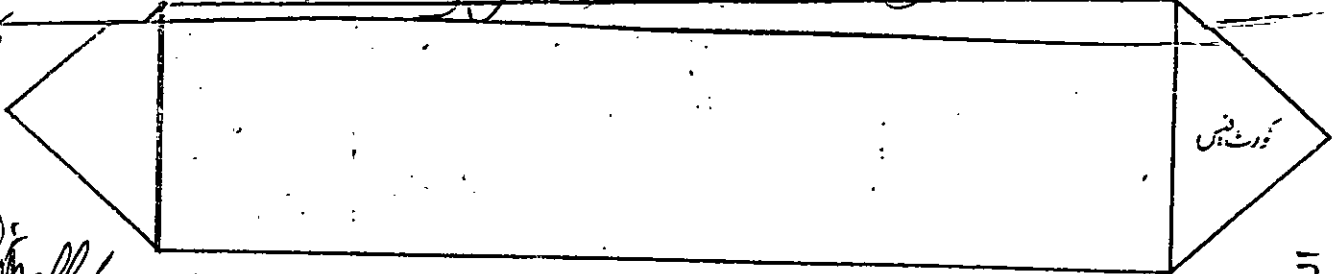
Subject:- APPOINTMENT/POSTING AND TRANSFER OF PRIMARY SCHOOL TEACHERS IN ELEMENTARY AND SECONDARY EDUCATION DEPARTMENT.

In continuation of this department letter of even No. dated 3-6-2011 on the subject noted above, I am directed to draw your attention once again to the Khyber Pakhtunkhwa (Appointment, Deputation, Posting and Transfer of teachers, Lecturers, Instructors and Doctors) Regulatory Act, 2011 which over-rides the existing rules for appointment of PST teachers and according to which a vacancy of Primary School Teacher shall be filled in from the candidates belonging to the Union Council of their permanent residence mentioned in their Computerized National Identity Card and domicile on merit. As the Act further provides, in case of non availability of candidates in a Union Council where the school is situated such appointment shall be made on merit from amongst the eligible candidates belonging to the adjacent Union Council. Due to the over riding effect of the Act the previous method of recruitment of PST i.e. 60% on merit at the district level and 40% at Union Council level stands null and void and henceforth 100% recruitment of PST shall be made on merit at Union Council level. This applies to the recruitment process initiated after introduction of new service structure notified on 18-1-2011 and recently advertized posts on the basis of EATA tests.

2. In addition to the above I am further directed to state that as per provision of the Act, arrangements for posting of all Primary School Teachers appointed prior to coming into force of the Act be made to the schools of their respective Union Councils and quarterly report sent to this Department. The whole process be completed before 11-5-2012 as envisaged in the said Act.

3. In view of the above clarification pertaining to 100% recruitment of PST on merit at Union Council level, the Standing Instructions may please be complied in letter and spirit.

(MOHAMMAD AYUB KHAN)  
SECTION OFFICER (PRIMARY)



Appellate - ۲۰۵ منجانب

نام	ڈیڑھ ستر ایلو میٹریٹس اینڈ سٹینڈرڈس ایلو میٹریٹس	سماہ ترمیم نشاٹ	تعداد
(Respect)	شکر سترہ ۲	(Appellate)	جسپر دھنوتھو
Service Appeal - 114			مورد
			تعداد

### باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جوابدہی کل کارروائی متعلقہ آں مقام کے لیے  
 سبب - جوہر دھنوتھو جوہر سروکس انڈرٹیکول سٹار  
 مقرر کر کے اثر کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا اختیار ہوگا۔ نیز وکیل صاحب کو کرنے راضی نامہ و تقرر  
 ثالث و فیصلہ بر حلف دینے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرانے اجرا اور وصولی چیک در روپیہ اور عرضی دعویٰ اور  
 درخواست ہر قسم کی تصدیق زر اس پر دستخط کرنے کا اختیار ہوگا۔ نیز بصورت عدم پیروی یا ڈگری یک طرفہ یا اپیل کی برآمدگی اور  
 منسوخی و نیز دائر کرنے اپیل نگرانی نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ اور بصورت ضرورت مقدمہ مذکور کے کل یا جزو کارروائی  
 کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنی بجائے تقرر کا اختیار ہوگا اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ بالا  
 اختیارات حاصل ہوں گے اور اس کا ساختہ پرداخت منظور و قبول ہوگا۔ دراصل مقدمہ میں جو خرچہ دہر جانہ التوائے مقدمہ کے  
 سبب سے ہوگا اس کے مستحق کیا صاحب موصوف ہوں گے نیز بقایا خرچہ وصولی کرنے کا بھی اختیار ہوگا۔ اگر کوئی تاریخ پیشی  
 مقام دورہ پڑ ہو یا حد سے باہر ہو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکور کریں۔ لہذا نکالت نامہ لکھ دیا کہ سندر ہے۔

المرقوم

مقام جسپر دھنوتھو کے لیے منظور ہے

Receipt

T. T. T.

HAS  
 Advocate  
 HAWAF

②

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

Appeal No. 230/2014

Mst: Taranum Nishat PST GGPS Billitang Kohat ..... Appellant

Versus

1. Director Elementary & Secondary Education Deptt: Peshawar Respondents  
2. District Education Officer (Female) Kohat  
3. S.D.E.O (Female) Kohat

**PARAWISE COMMENTS / REPLY ON BEHALF OF RESPONDENTS**

**PRELIMINARY OBJECTION**

1. That the appellant has got no cause of action / locus standi to file present appeal.
2. That the appellant has not come to honourable service tribunal with clean hand.
3. That the appellant has suppressed / concealed material fact from the honourable service tribunal.
4. That the present appeal is barred by law.
5. That the present appeal is bad in its present form hence not maintainable and liable to be dismissed with cost.

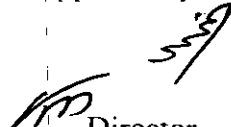
**FACTS:**


1. Correct.
2. Subject to proof.
3. Correct.
4. Correct.
5. Posting and transfer is a part of job and every civil servant is leally bound to obey the order of competent authority but the appellant didn't perform her duties as required by law.

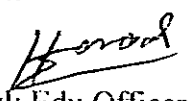
**GROUND:-**

- A. Incorrect hence denied order dated: 30-01-2014 is passed by the competent authority and is in accordance with law and justice.
- B. Incorrect hence denied. Appellant is treated in accordance with law and rules.
- C. The impugned transfer order is issued in public interest and appellant was duly bound to obey the order of competent authority.
- D. Incorrect. The transfer order is passed in public interest and is liable to be upheld.
- E. Incorrect. As reply above.
- F. The teacher transferred in the place of appellant also belong to the union council Billitang and completed her normal tenure too.
- G. Incorrect. The other teachers have also right to be posted in their own union council. Hence the appellant transfer cannot be term as illegal
- H. That the respondent will raise other grounds at the time of arguments with the permission of this honourable service tribunal.

It is therefore humbly prayed that on acceptance of this reply, instant appeal may kindly be dismissed with cost.

  
Director  
Elem: & Secy: Edu  
K.P Peshawar  
Respondent No. 1

  
District Education Officer  
District Education Officer  
(Female) Kohat No. 2

  
Sub: Divl: Edu Officer  
(Female) Kohat  
Respondent No. 3  
Sub Divl: Education Officer  
(Female) Kohat.

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

APPEAL NO. 230/2014

Mst: Taranum Nishat PST GGPS Billitang ..... Appellant

Versus

1. Director E&SE KP Peshawar
  2. District Education Officer (Female) Kohat
  3. S.D.E.O (Female) Kohat
- Respondent

**AFFIDAVIT**

I Mst: Rizwana Bibi D.E.O(F) do hereby solemnly affirm & declare on oath that the contents of the reply to the appeal true & correct to the best of my knowledge & belief & nothing has been concealed from the Honourable Service Tribunal Khyber Pakhtunkhwa Peshawar

Deponent # 2



**BIBI RIZWANA**

District Education Officer  
(Female) Kohat

NIC No. 21302-9687692-6

District Education Officer  
(Female) Kohat



BEFORE THE HONOURABLE SERVICE TRIBUNAL  
KHYBER PAKHTUNKHWA PESHAWAR

APPEAL NO. 230/2014

Mst: Taranum Nishat PST GGPS Billitang ..... Appellant

Versus

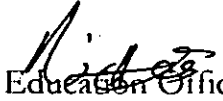
Government ..... Defendant

REPLY TO APPLICATION FOR SUSPENSION OF THE IMPUGNED ORDER

Respectfully Shweth,

1. Incorrect. The appellant has no chance to success.
2. Incorrect. The appellant has no prima faice case in her favour and there is no hope of success.
3. Incorrect, balance of convenience lies in favour of respondent.
4. In correct, if the transfer order is suspended the respondent well be suffer reparable loss.
5. That the fact and ground of Para wise comments may kindly be considered as integral part of this reply.

It is requested that the application of appellant for suspension of impugned transfer order etc may be dismissed.

  
District Education Officer  
(Female) Kohat

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

No. 903 /ST

Dated 9 / 6 / 2015


To

The District Education Officer (Female),  
E&SE  
Kohat.

Subject: - APPEAL NO. 230/2014 MST. TARANUM NISHAT & 231/2014 MST  
ZAHIDAN BEGUM VS DIRECTOR E&SE PESHAWAR AND OTHERS.

I am directed to forward herewith a certified copy of Judgement dated 29.05.2015 passed by this Tribunal on subject appeal for strict compliance.

Encl: As above

  
REGISTRAR  
KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL  
PESHAWAR.