

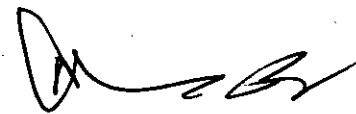
Execution Petition 49/2022

3rd August, 2022

1. Learned counsel for the petitioner present. Mr. Kabir Ullah Khattak, Additional Advocate General alongwith Mr. Iftikhar Ul Ghani, DEO(M) Buner for respondents present.

2. Mr. Iftikhar Ul Ghani, DEO(M) Buner produced a copy of office order substituted with office order bearing endorsement No. 3158-65 dated 01.07.2022 in compliance of the judgment of the Tribunal. Learned counsel for the petitioner objected that although the reinstatement of the petitioner was ordered but back benefits was not granted to the petitioner. The respondents assured that they will modified this order within a month. Since the order of the Tribunal has been complied with, therefore, the instant execution petition is disposed off in the above terms. Consign.

4. *Pronounced in open court in Peshawar and given under my hand and seal of the Tribunal on this 3rd day of August, 2022.*



(Kalim Arshad Khan)
Chairman

18.07.2022

Learned counsel for the petitioner present. Mr. Kabirullah Khattak, Additional Advocate General alongwith Mr. Obaid Ur Rehman ADEO for the respondents present.

Representative of the respondent department submitted appointment order/Endst. No. 3158-65 dated 01.07.2022 whereby the appellat has been conditionally appointed as PST (BPS-12), as per Service Tribunal judgement dated 07.10.2021 in service appeal No. 734/2019. On perusal of the said order, it came to notice that date of the Service Tribunal judgment has erroneously been mentioned as 07.06.2022 instead of 07.10.2021. Learned Additional Advocate General requested that it will be rectified accordingly and copy of the corrigendum will be submitted on the next date. Adjourned. To come up for further proceedings on 03.08.2022 before S.B



(MIAN MUHAMMAD)
MEMBER(E)

19th April, 2022

Counsel for the petitioner present. Notices be issued to the respondents for the date fixed. To come up for implementation report on 07.06.2022 before S.B. Original file be also requisitioned.




Chairman

07.06.2022

Nemo for petitioner. Lawyers are on strike.

Muhammad Adeel Butt, learned Additional Advocate General is absent.

Petitioner and his counsel be put on notice for 18.07.2022 before S.B.






(Rozina Rehman)
Member (J)

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Form- A
FORM OF ORDER SHEET

Court of _____

Execution Petition No. 49/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	18.01.2022	<p>The execution petition of Mr. Saidul Ibrar submitted today by Mr. Muhammad Farooq Malik 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>
2-	18.02.2022	<p>This execution petition be put up before S. Bench at Peshawar on <u>18/02/2022</u>.</p> <p style="text-align: right;"> CHAIRMAN</p> <p>Due to retirement of the Worthy Chairman, the Tribunal is defunct, therefore, case is adjourned to 19.04.2022 for the same as before.</p> <p style="text-align: right;"> Reader</p>

BEFORE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA
PESHAWAR

COC

In

Execution petition no. 49/2022

Service Appeal No. 734/2019

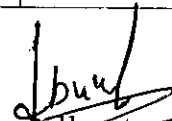
Said ul ibrarPetitioner

VERSUS


Iftikhar ul GhaniRespondent

INDEX

S.No.	Description of documents	Annex	Pages
1.	Grounds of COC with Affidavit		1-48
2.	Address of parties		5
3.	Copy of judgment and order dated 07.10.2021	A	6-12


Appellant

Through


Mohammad Farooq Malik,
Advocate
Supreme Court of Pakistan

Dated 12.01.2022

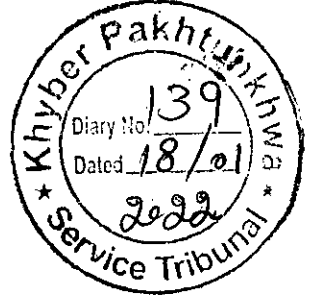
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BEFORE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA
PESHAWAR

COC Execution petition No. 49/2022

In

Service Appeal No. 734/2019



Said ul ibrar S/o FAzal Karim R/o village Cheengli District Bunir
.....Petitioner

VERSUS

Iftikhar ul Ghani, District Education Officer (DEO) District
Bunir.....Respondent

Application FOR INITIATION OF CONTEMPT OF
COURT (COC) PROCEEDING AGAINST DELINGUISH
OFFICER/RESPONDENT

Respectfully Sheweth

1. That petitioner had filed service appeal No 734 of 2019 before this Hon'able tribunal which was eventually allowed in favor of applicant vide order and judgment dated 07.10.2021 as prayed for. (Copy of judgment and order dated 07.10.2021 of this hon'able tribunal is attached as Annexure-A)
2. That after getting attested copy of judgment and order of this hon'able tribunal , petitioner through an application dated 25.10.2021 approached respondent for fulfillment of judgment and order of this hon'able tribunal , but till date that has not been materialized for the reason best known to the official respondent.

3. That withholding the relief so granted by this Hon'able tribunal to the petitioner is somehow amount to contempt of court willfully committed by official respondent.
4. That feeling aggrieved from high headiness of the official respondent approached to this Hon'able tribunal through instant COC petition inter alia on the following grounds

GROUND

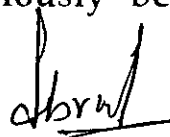
- a. That the act and action done by the Respondent is calculated to lower the authority of Hon,able Court to obstruct or interfere with due course of justice and lawful process of the court this Petition for Contempt of Court is being filed not to wreak vengeance but to vindicate honor of the court so as to keep the public confidence in superior court undiminished
- b. Those Contempt of Court proceedings are criminal in nature, the respondent is to be prosecuted by framing charge, recording evidence and awarding adequate sentence both of imprisonment and fine so that it shall be a lesson for all the other likeminded people.
- c. That the act of Respondent manifestly amounts to disobey and disregard the order and directions of this Hon'ble Court.

It is, therefore, prayed that on acceptance of instant COC petition respondent may graciously be directed to implement judgment and order of this Hon'able tribunal in its true prospective


or

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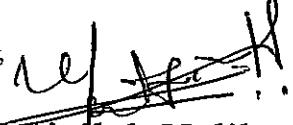
any other remedy been appropriate in the fact and
circumstances the case may graciously be passed in
favor of petitioner


Appellant

Through


Mohammad Farooq Malik,
Advocate
Supreme Court of Pakistan
&


Sohieb Malik
Advocate High court

& 
Matiullah Malik
Advocate Peshawar

& 
Naveed Ullah
Advocate Peshawar

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BEFORE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA
PESHAWAR

COC

In

Service Appeal No. 734/2019

Said ul IbrarPetitioner

VERSUS

Iftikhar ul GhaniRespondent

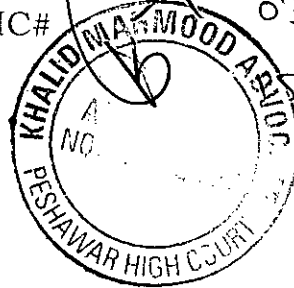
AFFIDAVIT

I, Said Ul Ibrar S/o Fazal Karim R/o Mohallah Jaffer khel post office khanakhas , Tehsil Khodokhel, District Bunir do hereby solemnly declare that the accompanying **COC** is true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.

Identified by

Muhammad Farooq Malik,
Advocate.

NIC#



Dependent

0314-9996937

101-7134647-1

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BEFORE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA
PESHAWAR

COC

In

Service Appeal No. 734/2019

Said ul ibrarPetitioner

VERSUS

Iftikhar ul GhaniRespondent

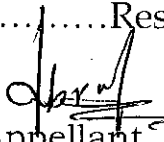
ADDRESSES OF PARTIES.

APPELLANT

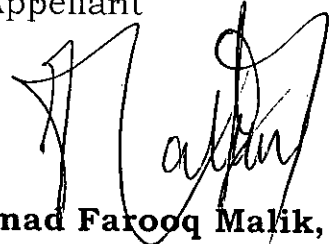
Said ul ibrar S/o FAzal Karim R/o village Cheengli District Bunir
.....Petitioner

RESPONDENT

Iftikhar ul Ghani, District Education Officer (DEO) District
Bunir.....Respondent


Appellant

Through


Mohammad Farooq Malik,
Advocate
Supreme Court of Pakistan

حکومت صفا DEO ڈسٹرکٹ ایجوکیشن افسر ضلع کوئٹہ

سائل سید الابرار ولد فضل کریم سکول جھنگل تحصیل ضلع کوئٹہ

درخواست برآمد بحال ناچ و ناچہ علاقہ آرڈر مطابق کورٹ فیصلہ ایڈمیشن کے لیے
سابقہ سینیٹ

صفا عالی درخواست کے لیے

۱/ یہ سائل مذکورہ بالا مسائل کے ساتھ ساتھ اسکول اور کونسل کے ساتھ

۲/ یہ سائل کا حکم تعلیم میں 28/02/2019 بحیثیت PST آرڈر سے ملتا ہے

۳/ یہ سائل کا فیورہ ۲۰۱۹ PST آرڈر کے تحت کونسل کے ذریعہ ملتا ہے

۴/ یہ سائل کے ساتھ ساتھ اسکول کے ساتھ ساتھ کونسل کے ساتھ ساتھ

۵/ یہ سائل کے ساتھ ساتھ اسکول کے ساتھ ساتھ کونسل کے ساتھ ساتھ

۶/ یہ سائل کے ساتھ ساتھ اسکول کے ساتھ ساتھ کونسل کے ساتھ ساتھ

۷/ یہ سائل کے ساتھ ساتھ اسکول کے ساتھ ساتھ کونسل کے ساتھ ساتھ

۸/ یہ سائل کے ساتھ ساتھ اسکول کے ساتھ ساتھ کونسل کے ساتھ ساتھ

کورٹ فیصلہ بحال کیا جائے تو دادر کا ہونا

البرار

سائل سید الابرار ولد فضل کریم

NIC: 15101-7134647-1

PH: 0314 9996937

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25/10/2021

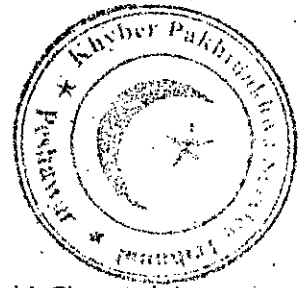
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**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR
AT CAMP COURT SWAT.**

Service Appeal No. 734/2019

Date of Institution ... 28.05.2019

Date of Decision ... 07.10.2021



Saidul Ibrar S/O Fazal Karim Ex-PST Government Primary School Mirzaki Cheenglai,
R/O Village Cheenglai, District Buner. ... (Appellant)

VERSUS

District Education Officer (M) Buner and five others.

... (Respondents)

MR. MUSHTAQ AHMAD KHAN
Advocate

... For Appellant

MR. RIAZ KHAN PAINDAKHEIL,
Assistant Advocate General

... For official respondents No. 1 to 5

MR. MUHAMMAD IKRAM KHAN
Advocate

... For private respondent No.6

ROZINA REHMAN
ATIQU-UR-REHMAN WAZIR

MEMBER (JUDICIAL)
MEMBER (EXECUTIVE)

JUDGMENT

ATIQU-UR-REHMAN WAZIR MEMBER (E):-

Brief facts of the case are

that the appellant was appointed as Primary School Teacher (PST) vide order dated 28-02-2019 and the appellant assumed the charge of his duty. Appointment order of the appellant was withdrawn vide order dated 09-03-2019 and respondent No. 6 was appointed in his place. Feeling aggrieved, the appellant filed departmental appeal, which was rejected vide order dated 10-05-2019, hence the instant service appeal

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with prayers that the impugned orders dated 09-03-2019 and 10-05-2019 may be set aside and the appellant may be re-instated in service with all back benefits.

02. Learned counsel for the appellant has contended that the impugned orders are against law, rules and natural justice as the appellant was appointed by the competent authority after observance of due process of law, but while withdrawing his appointment order, no chance of defense was offered to the appellant to clarify his stance and it is a well settled legal proposition that any irregularity, whatsoever, if committed by the appointing authority itself, appointee could not be harmed or damaged. Reliance was placed on 2009 SCMR 663; that the principles of Audi alturm partum has grossly been violated and on this score alone, the impugned orders are liable to be set at naught. Reliance was placed on 2011 PLC (C.S) 1651; that the appellant has been removed from service through an alien procedure which is not known to law and rule applicable to the civil servants; that the impugned order of withdrawal of the appointment order of the appellant and appointment of respondents No. 6 in his place is illegal and result of mala fide on part of the respondents; that the appellant could not be removed from service as he had neither obtained such appointment through fraudulent means nor through any misrepresentation, rather the respondents had appointed the appellant after approval and recommendation of the departmental selection committee; that legal procedure was not adopted, which resulted into refusal of chance to defend his cause, which is contrary to the norms of natural justice; that the appellant has not been treated in accordance with law applicable to the civil servants, hence the impugned orders are against the spirit of prevailing law and rules; that duration of obtaining secondary and higher secondary qualification as well as inter board co-ordination committee (IBCC) qualification in respect of respondent No. 6 are at the same time duration, which was required to be verified by the appellate committee as to how respondent

No. 6 had obtained such qualifications at one time; that respondent No. 6 applied to the post on BISE qualification and accordingly his merit position was low than the

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appellant but after conclusion of the whole process, the IBCC qualifications were considered at a belated stage by the respondents, which is violation of clause-8 of the advertisement, which provides that no changes would be admissible in documents after cutoff date.

03. Learned Assistant Advocate General for official respondents has contended that the appellant was appointed against the post of PST vide order dated 28-02-2019 and he took over charge and performed his duty in GPS Mirzakai for only three days; that after declaration of result and selection of candidates, respondent No. 6 submitted an appeal that he is also holding qualification of IBCC exam of "Shahadat-us-Sanwia Khassa" and "Shahadat-us-Sanwia Aama", therefore IBCC equivalent marks may be considered in his favor instead of Board of Intermediate and Secondary Education (BISE) marks; that on BISE marks the merit score of respondents No. 6 was 102.06 but after consideration of his IBCC equivalent marks, his score raised to 107.06, hence the score of respondent No. 6 stood higher than the appellant whose score was 106.28 and he was the last candidate, hence appointment of the appellant was withdrawn and respondent No. 6 was appointed in his place; that the appellant has been treated in accordance with law and his appointment order was withdrawn due to lower marks than respondent No. 6.

04. Learned counsel for respondent No. 6 has contended that as per clause-6 of terms and condition of the appointment order dated 28-02-2019, it has been very clearly mentioned that if any meritorious candidate is deprived of appointment by this order, the appointment order of the lowest candidate in merit shall be withdrawn on acceptance of the appeal and adjustment order will be reviewed accordingly as per merit; that the appointment order of the appellant was withdrawn by the competent authority after hearing the appeal of respondent No. 6, who had higher marks than the appellant, but due to non consideration of equivalency certificate issued by IBCC at the time of appointment, respondent No. 6 was placed low in merit position and when his IBCC marks were considered, the merit position raised and he was

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Attested

to be done

(10)

considered for appointment in place of the appellant; that it is undisputed that IBCC qualification are equivalent to BISE qualification, hence calculating marks of respondent No 6 on such qualification is not illegal.

05. We have heard learned counsel for the parties and have perused the record.

06. Record reveals that District Education Officer Buner advertized posts of PST with prescribed qualification of Bachelor Degree, but with no mention of any equivalent qualification. Besides other, the appellant as well as respondent No. 6 applied for the post. Appellant was the last selected candidate in order of merit amongst the selected candidates obtaining 106.28 marks, whereas respondent No 6 being the leftover candidate had obtained 102.06. Respondent No. 6 submitted an appeal to the appellate committee requesting therein that the he is also holding qualification of IBCC exam of "Khassa" and "Aama" and his marks in Khassa and Aama are higher than SSC and FA qualification, therefore IBCC Aama and Khassa marks may be considered instead of Board of intermediate and secondary education(BISE) marks. The appellate committee considered his request and his marks were re-calculated based on his IBCC qualification, which raised his marks to 107.06, thus the appointment letter of the appellant being the last candidate in order of merit in the selected candidates was withdrawn and respondent No. 6 was appointed in his place.

ATTESTED
07/10
We have observed that in the first place, there is no mention of any equivalent qualification in the advertisement made for the purpose, but equivalent qualifications in respect of respondent No 6 were considered for calculation of his merit and that too after issuance of appointment order to the appellant, which was not warranted. It is undisputed that IBCC qualifications are equivalent to BISE qualifications, but such qualifications were not required as per advertisement, hence calculation of his merit on such documents would be illegal. Had the intention of concerned department been to appoint candidates having qualification equivalent to

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IBCC, it would have stipulated the same in the advertisement, but non-mentioning of such fact in the advertisement meant that only those candidates were required who had (specific) qualification as laid down in the advertisement and deviation from the dictates published in the advertisement amounts to illegality. Reliance is placed on 2014 PLC (G.S) 39 and PLJ 2014 Lahore 670. Respondent No-6 initially applied on SSC, HSSC and Bachelor degree, but was not selected due to his low merit position, which necessitated him to submit his IBCC qualifications to the appellate committee, whereas the appellate committee re-considered his marks based on equivalent qualification, which raised his merit position and the appellant, who was already appointed and who had also assumed his duty, was removed which procedure is nowhere mentioned in the service rules and which also is negation of their own terms and conditions published in the advertisement. It was also noted that both the qualification of SSC, FA and equivalent IBCC qualifications were obtained by respondent No. 6 in the same time period, which could not attract attention of the appellate committee to verify such point, but which certainly creates doubts, as to how one can get equivalent qualification in the same time period, but now it would be futile to dig out such issue, as the respondent No. 6 has also developed vested rights over the post, upon which he served for two and half years and he also shall not suffer for fudge of the respondents. It is otherwise a question of common sense that qualification of Khassa and Aama are not specific for the subject post and mere its equivalency with SSC and FA does not mean that it can be taken interchangeably when it was not specifically required as prescribed qualification. Placed on record is an advertisement, through which the subject recruitments were held, Clause-8 of the advertisement provides that no changes would be admissible in educational documents after the cutoff date, but documents of respondent No. 6 were changed even after announcement of result and issuance of appointment orders. Placed on record is another advertisement for District Abbottabad, which clearly mentions in its terms and condition that no marks will be considered for qualification of Khassa and Aama, which means that the marks considered for respondent No. 6 on account of

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Attested

such qualification was not in accordance with their own terms and conditions framed for such recruitment and when prescribed procedure is not followed by the concerned authority, the civil servant could not be blamed for what was to be performed and done by the competent authority, rather competent authority should be held responsible and liable for the lapses on their part. Reliance is placed on 2004 SCMR 303. We have also noted that appointment order of the appellant was neither illegal nor contrary to any provision of law nor issued by an incompetent authority, in a situation, respondents had no authority to withdraw such appointment arbitrarily. Reliance is placed on 2011 MLD 1494 and PLJ 2013 Peshawar 132(DB). It is a well settled law that before withdrawal of such order, appointing authority must adopt proper course to hold a full-fledged inquiry, which however was not done in case of the appellant. Reliance is placed on 1993 SCMR 603. In the present case the appellant applied for the post concerned, was selected, appointed and order was communicated to the appellant, in consequence whereof he joined duty, such order of appointment, which had taken legal effect, was not amenable to withdrawal. Reliance is placed on 2011 PLC (CS) 1651.

08. We are of the considered opinion that the appellant has not been treated in accordance with law as he was deprived of his rights accrued to him by considering irrelevant marks of respondent No. 6, thus injustice was done to the appellant, hence the impugned order dated 09-03-2019 is liable to be set aside. On the other hand, the same principles as discussed above, would equally be required to be applied in favor of respondent No. 6, as he has already developed vested rights over such post and to deprive him of his post, would be contrary to the principles already laid down in case of the appellant as discussed above, hence in order to meet the ends of justice, the instant appeal is accepted, impugned orders dated 09-03-2019 and 10-05-2019 stands set aside and appointment order dated 28-02-2019 in respect of the appellant is hereby restored with all back benefits. Appointment order of respondent No. 6 cannot be withdrawn for follies of the official respondents,

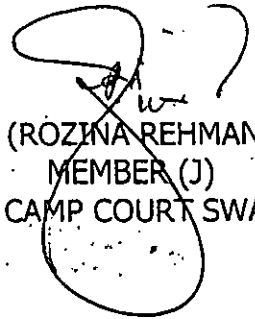
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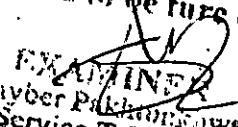
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hence respondents are further directed that respondent No.6 shall be adjusted upon occurrence of vacancy. Parties are left to bear their own costs. File be consigned to record room.

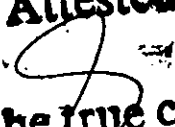
ANNOUNCED
07.10.2021


(ROZINA REHMAN)
MEMBER (J)
CAMP COURT SWAT


(ATIQ UR REHMAN WAZIR)
MEMBER (E)
CAMP COURT SWAT

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EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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Date of Completion of Copy 22/10/21
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وکالت نامہ

بعدالت صاحب سروسز سٹیٹوٹل ایچ ایس ایس ڈی

بمسید النہار ایام امتحان الکنی

منجاب ڈسٹریکٹس ڈیوٹی اجرم

تھانہ ایف آئی آر تاریخ

باعث تحریر آنکہ

مقدمہ مندرجہ بالا عنوان میں اپنی طرف سے واسطے پیروی و جوابدہی بمقام کمیٹی کے لئے

محمد فاروق ملک ایڈووکیٹ ہائی کورٹ کو بدین شرط وکیل مقرر کیا ہے کہ میں ہر پیشی پر خود یا بذریعہ مختار خاص روبرو عدالت حاضر ہوتا رہوں گا۔ اور بوقت پکارے جانے مقدمہ وکیل صاحب موصوف کو اطلاع دیکر حاضر عدالت کرونگا اگر پیشی پر من مظہر حاضر نہ ہوں اور مقدمہ میری غیر حاضری کی وجہ سے کسی طور میرے برخلاف ہو گیا تو صاحب موصوف اس کے کسی طرح ذمہ دار نہ ہوں گے۔ نیز وکیل صاحب موصوف صدر مقام کچہری کے کسی اور جگہ یا کچہری کے مقررہ اوقات سے پہلے یا پچھپچھ یا بروز تعطیل پیروی کرنے کے ذمہ دار نہ ہوں گے۔ اگر مقدمہ علاوہ صدر مقام کچہری کے کسی اور جگہ سماعت ہونے یا بروز تعطیل یا کچہری کے اوقات کے آگے پچھپچھ پیش ہونے پر من مظہر کو کوئی نقصان پہنچے تو اس کے ذمہ دار یا اس کے واسطے کسی معاوضہ کے ادا کرنے یا مختار نامہ واپس کرنے کے بھی صاحب موصوف ذمہ دار نہ ہوں گے۔ مجھ کو کل ساختہ پرداخت صاحب موصوف مثل کردہ ذات خود منظور قبول ہوگا۔ اور صاحب موصوف کو عرضی دعوی و جواب دعوی اور درخواست اجراءے ڈگری و نظر ثانی اپیل و نگرانی ہر قسم کی درخواست پر دستخط و تصدیق کرنے کا بھی اختیار ہوگا۔ اور کسی حکم یا ڈگری کے اجراء کرانے اور ہر قسم کاروبار وصول کرنے اور رسید دینے اور داخل کرنے اور ہر قسم کے بیان دینے اور پیرو تالی و رضی نامہ کو فیصلہ برخلاف کرنے، اقبال دعوی دینے کا بھی اختیار ہوگا۔ اور بصورت اپیل و برآمدگی مقدمہ یا منسوخی ڈگری یکطرفہ درخواست حکم استثنائی یا قرتی یا گرفتاری قبل از اجراء ڈگری بھی موصوف کو بشرط ادائیگی علیحدہ مختار نامہ پیروی کا اختیار ہوگا۔ اور بصورت ضرورت صاحب موصوف کو بھی اختیار ہوگا یا مقدمہ مذکورہ یا اس کے کسی جزو کی کاروائی کے واسطے یا بصورت اپیل، اپیل کے واسطے کسی دوسرے وکیل یا بیرسٹر کو بجائے اپنے یا اپنے ہمراہ مقرر کریں۔ اور ایسے مشیر قانون کو ہر امر میں وہی اور ویسے ہی اختیارات حاصل ہوں گے۔ جیسے کہ صاحب موصوف کو حاصل ہیں اور دوران مقدمہ میں جو کچھ ہر جانہ التواء پڑے گا۔ وہ صاحب موصوف کا حق ہوگا۔ اگر وکیل صاحب موصوف کو پوری فیس تاریخ پیشی سے پہلے ادا نہ کروں گا تو صاحب موصوف کو پورا اختیار ہوگا کہ مقدمہ کی پیروی نہ کریں اور ایسی صورت میں میرا کوئی مطالبہ کسی قسم کا صاحب موصوف کے لئے

Said-ul-Javed
Bumer khadar khadar

[Handwritten signature]

برخلاف نہیں ہوگا۔ لہذا یہ مختار نامہ لکھ دیا کہ سند ہے مورخہ 12/11/2022 مضمون مختار نامہ سن لیا ہے اور اچھی طرح سمجھ لیا ہے منظور ہے۔

ATTESTED & ACCEPTED:
Mohd Ullah Khan Advocate
BC-19-1200

Mohammad Farooq Malik
Advocate Peshawar.

Naveed Ullah
Advocate Peshawar
Bc-19-1129

①

Before the service tribunal khyber pukhtoonkhwa Peshawar .

Service appeal No...734/.....2019

Saidul Ibrar s/o Fazli Karim Ex PST Government primary school Mirzaki cheenglai, r/o village cheenglai, district Buner.....appellant

Vs

Khyber Pukhtoonkhwa Service Tribunal

Case No. 815

Dated 28/5/2019

- ✓ 1. District Education officer (M) Buner .
- ✓ 2. Director E & SE khyber pukhtoonkhwa at Peshawar.
- ✓ 3. Govt of K.P.K through secretary E & SE khyberpukhtoonkhwa at Peshawar.
- ✓ 4. Manager operation National testing Service(NTS),96 street No 4 Sector H8/1 Islamabad.
- 5. Manager operation National testing Service(NTS),Peshawar
- ✓ 6. Rukhtaj khan s/o Durjamil shah, presently serving in Government primary school Mirzaki cheenglai, r/o village cheenglai, district Buner.

Under 4 K.P Service Tribunal Act 1974.

Appeal against the impugned orders Endst No 1307.14 and Endst No 1323.30 dated 9/3/2019 whereby the respondent No 1 illegally canceled the appointment order Endst No 1124.32 dated 28/2/2019 of the appellant and illegally appointed the respondent No 6 on his post.

Respectfully sheweth:

- 1. That the District education officer (M) Buner advertised certain posts of Primary school teachers for specified schools in district Buner and as per advertisement each candidate could select only upto 5 schools from the school list provided by the authorities at the time of advertisement. (Advertisement attached as anx A)
- 2. That being the permanent resident of U.C chinglai and having the prescribed qualification for the post of PST, the appellant applied for the aforesaid post and after qualifying the written test and interview he was appointed as PST in Govt primary school Mirzaki vide appointment order dated 28/2/2019. (appointment order dated 28/2/1019 of the appellant is attached as anx B).
- 3. That after fulfilling all the legal formalities and taking into consideration the merit list of the candidates the respondent no 1 issued the aforesaid appointment order pursuant to which the appellant took the charge of his duties in GPS mirzaki, submitted his medical certificate and also performed his duties (charge report, medical certificate and extract of register of attendance in GPS Mirzaki attached as anx C, D and E)
- 4. That astonishingly after few days the appointment order of the appellant was cancelled and respondent no 6 was appointed on his place vide impugned orders dated 9/3/2019 in violation of law and rules. (impugned

Filed to-day

Registrar

28/5/19

Re-submitted to-day and filed.

Registrar

14/10/19

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orders endst no 1307.14 and 1323.30 dated 9/3/2019 are attached as annex F and G)

5. That the appellant then went to the office of the respondent for inquiring into the matter but no heed was paid to his submissions hence an order to find the reasons for the cancellation of his appointment order the appellant started investigation in his personal and private capacity and one of a candidate told him that the respondent no 6 produced the sanad of "khasa" and "Amma" from a deeni madrasa after appointment of the appellant and the respondent no 1 with malafide intention have included the score of sanad khasa and amma with the score of the respondent no 6 after subtracting his academic score where after he has got the meritorious position.
6. That the appellant then filled appeal through proper channel against the aforesaid impugned orders which was rejected by the appellate authority without assigning any reasons vide impugned appellate order dated 10/5/2019.(copies of the deptt appeals, factum of its reception in documentary form by respondent no 2 and impugned appellate order dated 10/5/2019 are attached as annex H, I and J)
7. That aggrieved from the orders dated 9/3/2019 and appellate rejection order dated 10/5/2019, the appellant approached this honorable court for ventilation of his grievances on the following grounds inter alia.

GROUND:

1. That the impugned orders dated 9.3.2019 of the respondent no 1 and impugned appellate rejection order dated 10/5/2019 of the respondent No 2 is against the law, rules and natural justice.
2. That no care for the accrued rights of the petitioner have taken into consideration while passing the impugned orders. The principle of audi alturm partum has grossly been violated on which score alone the impugned orders are against the law and natural justice.
3. That the appellant has been removed from service through an alien procedure which is not known to the law and rules applicable to the civil servants. Moreover the principle of locus peonitentia is fully in favour of the appellant.
4. That the impugned orders whereby the appointment order of the appellant was canceled and the respondent no 6 was appointed on his place is illegal and result of milafide on the part of the respondent no 1 and the appellant could not be so removed from service as he had neither obtained the appointment order through fraud nor through any misrepresentation rather the respondent no 1 had appointed him after the approval and recommendation of the departmental selection committee.
5. That neither any show cause notice or inquiry has been conducted in the matter nor any final show cause notice have been send to him and he has been completely condemn unheard.

3

6. That the appellant have not been treated according to the law applicable to the civil servants, hence the impugned order is against the spirit of the law.
7. That the appellant seek the permission of this worthy tribunal to rely on additional grounds at the time of arguments.

It is therefore kindly prayed that on acceptance of this appeal the impugned order dated 9/3/2019 and order dated 10/5/2019 of the appellate authority may kindly be set aside and the appellant be re-instated in service with all back benefits.

Any other relief not specifically prayed for and which this worthy tribunal deem fit and appropriate in the facts and circumstances of the instant case may also kindly be granted for the end of justice.

Dated: 21 / 5 / 2019

سید الابرار

Appellant

Through



Mushtaq Ahmad Khan Alizai

Advocate, office district court

Buner, cell No 03469014199.

Always quote case no. While making any correspondence.
 The hours of attendance in the court are the same that of the High Court except Sunday and gazetted holidays.

பெர்தாவம்
 க்ளயேர் பாக்டிஸ்தான சேவலிசு டிரிபுனல்
 பெர்தாவம்

(For July-Aug file)
 15th

Case No. _____ dated _____
 Office Notice No. _____ dated _____

Copy of appeal is attached. Copy of appeal has already been sent to you vide this

this appeal/petition notice posted to this address by registered post will be deemed sufficient for the purpose of address given in the appeal/petition will be deemed to be your correct address and further address. If you fail to furnish such address your address contained in this notice which is given to you by registered post. You should inform the Registrar of any change in your Notice of any alteration in the date fixed for hearing of this appeal/petition will be

appeal/petition will be heard and decided in your absence. default of your appearance on the date fixed and in the manner aforementioned, the alongwith any other documents upon which you rely. Please also take notice that in this Court at least seven days before the date of hearing a copy of written statement advocates, duly supported by your power of attorney. You are, therefore, required to file in the case may be postponed either in person or by authorized representative or by any appeal/petitioner, you are at liberty to do so on the date fixed, or any other day to which you may wish to do so. If you wish to make anything against the matter referred to in the said appeal/petition is fixed for hearing before the Tribunal the above case by the petitioner in this Court and notice has been ordered to issue. You are Province Service Tribunal Act, 1974, has been presented/registered for consideration in

WHEREAS an appeal/petition under the provision of the Khyber Pakhtunkhwa

Notice to: *Dist. Dir. Peshawar* *Dist. Dir. Peshawar*
DEP Dist. Dir. Peshawar

Date: *10th July 2011*
E.6.40

பெர்தாவம்
 JUDICIAL COMPLEX (OGD), KHAYBER ROAD,
 க்ளயேர் பாக்டிஸ்தான சேவலிசு டிரிபுனல் பெர்தாவம்

cc B



OFFICE OF THE DISTRICT EDUCATION OFFICER
(MALE) DISTRICT BUNER
PHONE & FAX-NO. 0939-555110
EMAIL: edobuner@gmail.com



TO BE SUBSTITUTED WITH THIS OFFICE ENDST. NO. 3158-65 DATED 01/7/2022

OFFICE ORDER

WHEREAS Mr. Said Ul Abrar was appointed vide this office Endst No. 1124-32 dated 28-2-2019.

AND WHEREAS Mr. Rukhtaj Khan (Private Respondent No.6) submitted an appeal to DEO (M) Buner regarding his non-consideration of IBCC certificates and the resultant exclusion from appointment order.

AND WHEREAS the DEO (M) constituted a committee to decide appeals in the light of rules and policy. The committee after threadbare scrutiny decided all the cases in the light of rule and policy. The case of appellant was decided falling at S.No. 15 of the minutes, wherein appeal of Rukhtaj Khan (Private Respondent No. 6) was accepted.

AND WHEREAS in the light of decision of the committee, One Year contract School Based Appointment of Mr. Said Ul Abrar (Appellant) was withdrawn vide this office endst No. 1307-14 dated 09/03/ 2019 and Mr. Rukhtaj Khan (Private Respondent No. 6) was appointed vide this office endst No. 1323-30 dated 09/03/2019.

AND WHEREAS the appellant filed an appeal before the Honourable Service Tribunal Khyber Pakhtunkhwa Peshawar vide Service Appeal No. 734/2019, which was allowed in favour of the appellant.

AND WHEREAS CPLA No. 765-P/2021 has been filed in the August Supreme Court of Pakistan in the instant case.

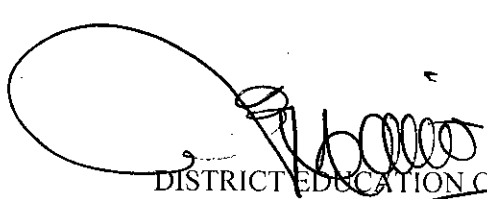
NOW, THEREFORE, in compliance with the Honourable Court's directive, render in its judgment Dated 7/10/2021 in Service Appeal No. 734/2019, I, Iftikhar Ul Ghani, District Education Officer (M) Buner as Competent Authority conditionally restore appointment order in respect of Said Ul Abrar issued vide this office endst No. 1124-32 dated 28-2-2019, subject to the final outcomes of the CPLA already filed in the August Supreme Court of Pakistan vide No. 765-P/2021. Since private respondent No. 6 (Rukhtaj Khan) has already performed duty and received salaries on one and the same school based post at GPS Mirzakay till February 2022, therefore, financial benefits/salaries in respect of the appellant (Said Ul Abrar) shall be subject to final outcomes of CPLA.

(IFTIKHAR UL GHANI)
DISTRICT EDUCATION OFFICER
(MALE) BUNER

Endst; No. Even No. & Date.

Copy for information to :-

1. Registrar Khyber Pakhtunkhwa Service Tribunal at Camp Court, Swat.
2. Secretary Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.
3. Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.
4. District Monitoring Officer Buner.
5. SDEO (M) Khadu Khel (Buner).
6. Teachers Concerned.
7. Master File.


DISTRICT EDUCATION OFFICER
(MALE) BUNER

21/7/22



OFFICE OF THE DISTRICT EDUCATION OFFICER
(MALE) DISTRICT BUNER
PHONE & FAX NO: 0939-555110
EMAIL: edobuner@gmail.com



TO BE SUBSTITUTED WITH THIS OFFICE ENDST. NO. 3158-65 DATED 01/7/2022

OFFICE ORDER

WHEREAS Mr. Said Ul Abrar was appointed vide this office Endst No. 1124-32 dated 28-2-2019.

AND WHEREAS Mr. Rukhtaj Khan (Private Respondent No.6) submitted an appeal to DEO (M) Buner regarding his non-consideration of IBCC certificates and the resultant exclusion from appointment order.

AND WHEREAS the DEO (M) constituted a committee to decide appeals in the light of rules and policy. The committee after threadbare scrutiny decided all the cases in the light of rule and policy. The case of appellant was decided falling at S.No. 15 of the minutes, wherein appeal of Rukhtaj Khan (Private Respondent No. 6) was accepted.

AND WHEREAS in the light of decision of the committee, One Year contract School Based Appointment of Mr. Said Ul Abrar (Appellant) was withdrawn vide this office endst No. 1307-14 dated 09/03/ 2019 and Mr. Rukhtaj Khan (Private Respondent No. 6) was appointed vide this office endst No. 1323-30 dated 09/03/2019.

AND WHEREAS the appellant filed an appeal before the Honourable Service Tribunal Khyber Pakhtunkhwa Peshawar vide Service Appeal No. 734/2019, which was allowed in favour of the appellant.

AND WHEREAS CPLA No. 765-P/2021 has been filed in the August Supreme Court of Pakistan in the instant case.


NOW, THEREFORE, in compliance with the Honourable Court's directive, render in its judgment Dated 7/10/2021 in Service Appeal No. 734/2019, I, Iftikhar Ul Ghani, District Education Officer (M) Buner as Competent Authority conditionally restore appointment order in respect of Said Ul Abrar issued vide this office endst No. 1124-32 dated 28-2-2019, subject to the final outcomes of the CPLA already filed in the August Supreme Court of Pakistan vide No. 765-P/2021. Since private respondent No. 6 (Rukhtaj Khan) has already performed duty and received salaries on one and the same school based post at GPS Mirzakay till February 2022, therefore, financial benefits/salaries in respect of the appellant (Said Ul Abrar) shall be subject to final outcomes of CPLA.

(IFTIKHAR UL GHANI)
DISTRICT EDUCATION OFFICER
(MALE) BUNER

Endst; No. **Even No. & Date.**

Copy for information to :-

1. Registrar Khyber Pakhtunkhwa Service Tribunal at Camp Court, Swat.
2. Secretary Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.
3. Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.
4. District Monitoring Officer Buner.
5. SDEO (M) Khadu Khel (Buner).
6. Teachers Concerned.
7. Master File.


DISTRICT EDUCATION OFFICER
(MALE) BUNER 01/7/22



OFFICE OF THE DISTRICT EDUCATION OFFICER (M)
DISTRICT BUNER
PHONE & FAX NO. 0939-555110
EMAIL: EDOBUNER@GMAIL.COM

APPOINTMENT.

In compliance to the decision of Honorable Service Tribunal Khyber Pakhtunkhwa Peshawar in Service appeal No. 734/2019 and Execution petition No.49/2022 in service appeal No.734/2019 Dated 07/06/2022, the competent authority is pleased to conditionally appoint **Mr. Saidul Ibrar S/O Fazal Karim** village Chinlai U/C Chinlai against the vacant Post of PST at GPS **Mirzakai** in BPS-12 (Rs.13320-960-42120) plus usual allowances as admissible under the rules on one year Contract basis under the existing rules-policy of the Provincial Government, in Teaching Cadre from the date of taking over charge subject to the outcome of CPLA, already filed in the August Supreme Court of Pakistan in the interest of public service on the following terms and conditions.

Terms & Conditions.

1. NO TA/DA etc is allowed.
2. Charge reports should be submitted to all concerned in duplicate.
3. Appointment is purely on temporary & contract basis.
4. He shall not be handed over charge if he exceeds 35 years or below 18 years of age.
5. Appointment is subject to the condition that the certificate/documents must be verified from the concerned authorities by the DEO. In case of bogus Certificates / Degrees will be reported to the law enforcing agencies for further action.
6. His services are liable to termination on one month's notice from either side. In case of resignation without notice his one-month pay/allowances shall be forfeited to the Government.
7. Pay will not be drawn until and unless a certificate to this effect issued by DEO, that his certificates/Degrees are verified.
8. He should join his post within 15 days of the issuance of this notification. In case of failure to join his post within 15 days of the issuance of this notification, his appointment will expire automatically and no subsequent appeal etc shall be entertained.
9. Health and Age Certificate should be produced from the Medical Superintendent concerned before taking over charge.
10. He will be governed by such rules and regulations as may be issued from time to time by the Govt.
11. His services shall be terminated at any time, in case his performance is found unsatisfactory during his contract period. In case of misconduct, he will be proceeded under the rules framed from time to time.
12. His appointment is made on School based, He will have to serve at the place of posting, and his service is not transferable to any other station.
13. He will take over charge of his duty with effect from 01/9/2022.
14. **His appointment is subject to the final outcome of CPLA No.765-p/2021 already filed in the instant case.**
15. Before taking over charge, he will sign an agreement/affidavit with the department, otherwise this order will not be effective.
16. The appointee shall take nine (09) months mandatory training at RPDC or DPD.
17. Errors and omissions will be accepted for further rectification within the specified period.

(IFTIKHAR UL GHANI)
DISTRICT EDUCATION OFFICER (M)
DISTRICT BUNER.

Encls: No. 3158-65 Dated 01/07/2022.

Copy forwarded for information and necessary action to the: -

1. Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.
2. Deputy Commissioner Buner.
3. Honorable Registrar Service Tribunal Khyber Pakhtunkhwa Peshawar.
4. Additional Advocate General Service Tribunal Khyber Pakhtunkhwa Peshawar
5. SDEO (M)KK Primary Buner.
6. District Accounts Officer Buner.
7. Medical Superintendent DHQ Hospital Buner.
8. Teacher Concerned.

DISTRICT EDUCATION OFFICER (M)
DISTRICT BUNER

[Handwritten Signature]
1/7/22