

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 8654/2020

Date of institution 17.07.2020

Hayat Gul, SDM (BPS-16), GHSS Kulyari Tehgagra, District Buner.

VERSUS

Secretary Elementary & Secondary Education Department, Khyber Pakhtunkhwa Peshawar and four others.

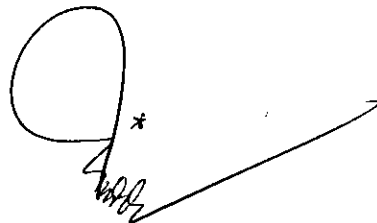
ORDER
13.09.2022

Mr. Noor Muhammad Khattak, Advocate for the appellant present. Mr. Muhammad Riaz Khan Paindakhel, Assistant Advocate General for the respondents present.

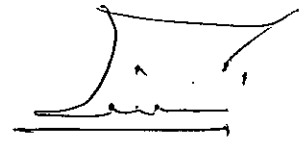
Appellant has filed an application alongwith affidavit through Diary No. 872 dated 01.08.2022 for withdrawal of instant appeal as well as Service Appeal bearing No. 11551/2021, stating therein that the department has agreed to give him promotion, therefore, he wants to withdraw both the appeals. Application alongwith affidavit is placed on file.

In light of the above, the appeal in hand stands dismissed as withdrawn. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
13.09.2022



(MIAN MUHAMMAD)
MEMBER (EXECUTIVE)



(SALAH-UD-DIN)
MEMBER (JUDICIAL)

الف كتاب سروس سیدیل
شارہ حیدر خٹوخواں

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 872
Dated 01/08/2022

عند ان مقدمہ - میا کے کل بناغ حکومت / سرفار

سروس ایپل لمبڑا - 8654 / 2020 - 11531 / 2021

دفعہ استناد سرفار واپسی لینے مقدمہ زیر بال

Put up on relevant File/Appeal.

مناجہ کافی!

A
01/08/22
طعنہ میں

① یہ سائل نے عند ان بالا مقدمہ آپریشن میں لیا گیا ہے اور اس کی تاریخ صفر 2022ء - 08 - 01ء تاریخ صفر 2022ء

② یہ سائل ایسا نہیں عند ان بالا واپسی لینا چاہتا ہے کہ نہ محلہ تعلیم سائل و پروموشن (Promotion) دینے پر آمادہ کیا ہے۔

لہذا یہی وجہ سائل ایسا نہیں واپسی لینا چاہتا ہے اور حیدر
رہی برفلاف محلہ تعلیم کے لیے لیا جاتا ہے۔

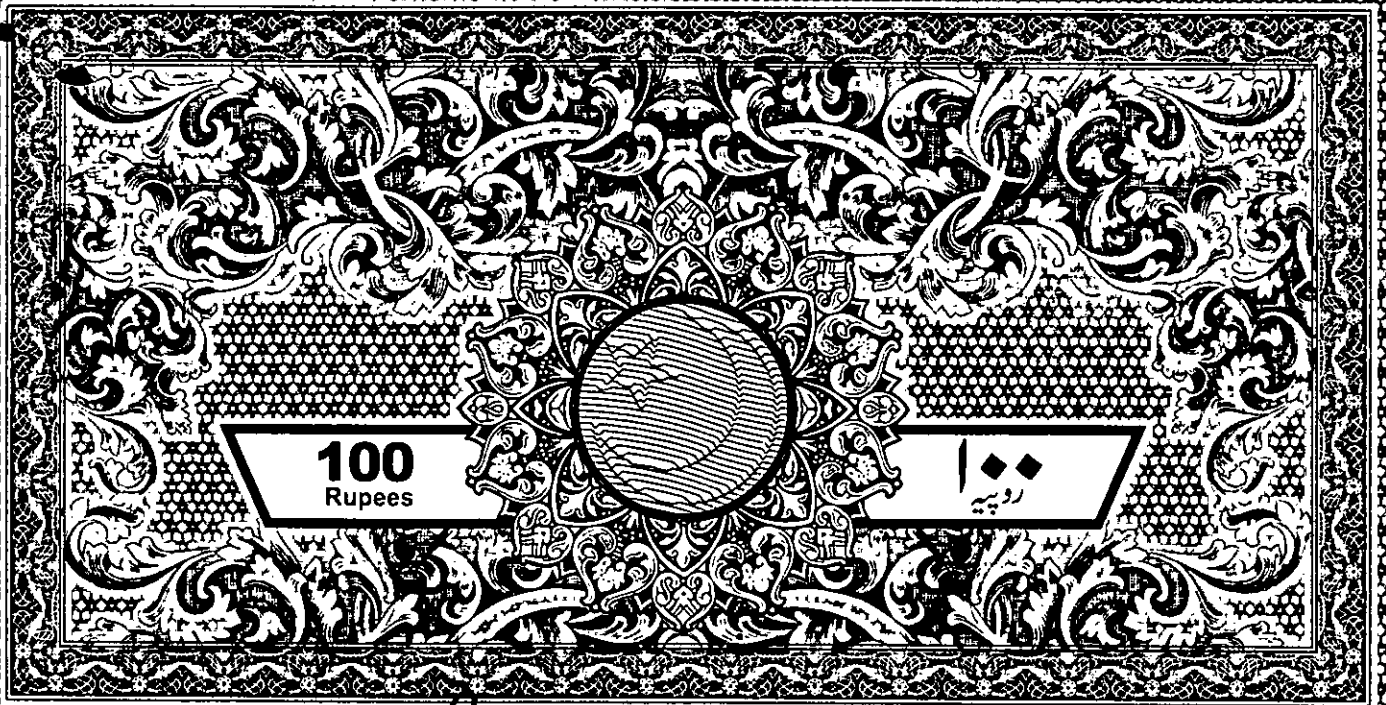
سائل / درخواست گزار

حیات علی ولد رحمان گل بند
پونشیر، دیوانہ بابا

5-871087-0341-15101
03339708306



تاریخ: 22-08-22



بیان ملکی
گورنر جناب سرگودھا سرگودھا

سرگودھا ایس ایف
869/2020 تا 11551/2021
صیانتی نایم حکومت

نور محمد صیانتی اور دیگر اہل سائنس دیوانہ بابا کھیلڈاگڑہ لہور
کاٹھن محلہ تحصیل پوٹھوہار ضلع گوجرانولہ صیانتی اور دیگر اہل سائنس
سرگودھا ایس ایف۔ گورنر نے ہدف بنیادوں کے تحت دیوانہ بابا کھیلڈاگڑہ لہور

میں ازمنہ ان بائبلہ سرگودھا ایس ایف 869/2020 تا 11551/2021
سرگودھا ایس ایف۔ تاہم ان کے زیر سماعت ہیں

دیوانہ محمد علی بھٹی دیوانہ بابا کھیلڈاگڑہ لہور میں گورنر نے ایسی
شکایت کی ہے۔ ایسی ڈیڑھ لاکھ روپے کی رقموں کے تحت ان بائبلہ سمیت
بائبلہ دیوانہ لہور۔ مزید کارروائی کرنا نہیں چاہیے
کھیلڈاگڑہ لہور کے ذریعہ سرگودھا

منجلیف
راکھت
صیانتی نایم حکومت

دیوانہ بابا کھیلڈاگڑہ لہور
15101-0341087-5

حاجان "م" بس "م" بس

815
25.07.2002

ABDUL KHALID
Sitting Venues: Davao
List: Courts - Dagupan
Date: 25.07.2002
Reg.

Handwritten signature

Handwritten signature

8 JUL 2002
DAO BUNEL

30-9-21

DB is on Tour case to come up
For the same on Dated. 3-2-22

Reader

03.02.2022

Due to retirement of the Worthy Chairman, the Tribunal is defunct, therefore, case is adjourned to 17.05.2022 for the same as before.

Reader

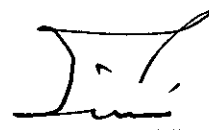
17.05.2022

Mr. Umar Farooq, Advocate (junior of learned counsel for the appellant) present. Mr. Kabirullah Khattak, Additional Advocate General for the respondents present.

Junior of learned counsel for the appellant requested for adjournment on the ground that learned counsel for the appellant is out of station today. Adjourned. To come up for arguments on 30.05.2022 before the D.B.



(Rozina Rehman)
Member (J)

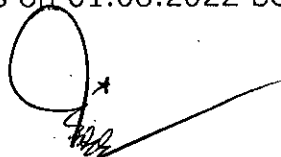


(Salah-ud-Din)
Member (J)

30th May, 2022

Learned counsel for the appellant present. Mr. Muhammad Rasheed, DDA alongwith Imtiaz Khan, ADO (Litigation) for the respondents present.

Learned counsel for the appellant seeks adjournment in order to properly assist the court. Adjourned. To come up for arguments on 01.08.2022 before the D.B.



(Mian Muhammad)
Member(E)



(Kalim Arshad Khan)
Chairman

1-8-22

Case is adjourned to 13-9-22

Reader

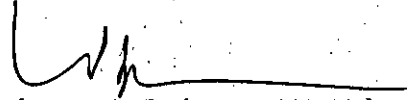
31.03.2021

Junior to counsel for the appellant present.

Addl: AG for respondents present.

Written reply/comments on behalf of respondents not submitted. Learned AAG seeks time for submission of written reply/comments. Granted.

Adjourned to 01.06.2021 before S.B.


(Atiq Ur Rehman Wazir)
Member(E)

01.06.2021

Counsel for the appellant and Addl. AG for the respondents present.

Learned AAG is required to contact the respondents for

submission of written reply/comments in office within 10 days.

If the written reply/comments are not submitted within the stipulated time, the office is directed to submit the file with a report of non-compliance. File to come up for arguments on 30.09.2021 before the D.B.

*stipulated period has
along with two connected
been passed by reply appeals
has not been submitted,*


Chairman

P.S

11.06.2021

Learned Addl. A.G be reminded about the omission and for submission of reply within extended time of 10 days.


Chairman

Qm

P

17.11.2020

Counsel for the appellant present.

Whether the appellant was not entitled to the benefits accruing through the judgments of Honourable Peshawar High Court in Writ Petition No. 1041-A/2015 and Writ Petition No. 73-B/2014 under the principle of similarly placed person?

In order to settle the proposition, instant appeal is admitted to regular hearing. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents. To come up for written reply/comments on 01.02.2021 before S.B.

Appellant Deposited
Security & Process Fee


Chairman

01.02.2021

Counsel for the appellant and Addl. AG for the respondents present.

Learned counsel requests for time to rectify the error in addresses of some of the respondents for proper service of notice. Allowed. May do so within a fortnight. Thereafter, notices be issued to the respondents. Adjourned to 31.03.2021 for submission of reply/comments.

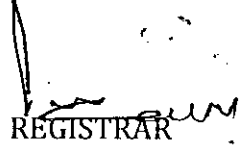



Chairman

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 8654 /2020

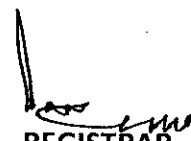
S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	27/07/2020	<p>The appeal resubmitted today by Mr. Noor Muhammad Khattak Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-	14.09.2020	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>14/09/2020</u></p> <p style="text-align: right;"> CHAIRMAN</p> <p>Mr. Afrasyab Wazir, Advocate on behalf of counsel for the appellant present.</p> <p>Requests for adjournment as learned counsel is engaged before the Touring Bench of this Tribunal at Abbottabad. Adjourned to 17.11.2020 before S.B.</p> <p style="text-align: right;"> Chairman</p>

The appeal of Mr. Hayat Gul SDM received today i.e. on 17.07.2020 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Annexures of the appeal may be attested.
- 2- Annexures of the appeal may be flagged.
- 3- Annexures-C, D and E of the appeal are illegible which may be replaced by legible/better one.
- 4- Seven more copies/sets of the appeal along annexures i.e. complete in all respect may also be submitted with the appeal.

No. 1685 /S.T,

Dt. 17-07/2020.


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Noor Muhammad Khattak Adv.

Sir,

*All objections have been removed,
hence re-submitted today dated 24.7.2020.*

M-B

24/7/2020.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

APPEAL NO. 8654 /2020

HAYAT GUL

VS

EDUCATION DEPTT:

INDEX

S.NO.	DOCUMENTS	ANNEXURE	PAGE
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4	Judgments	C & D	13- 19.
5	Departmental appeal	E	20.
6	Notification	F	21.
7	Vakalat nama	22.

APPELLANT

THROUGH:


NOOR MOHAMMAD KHATTAK
ADVOCATE

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. 8654 /2020

Khyber Pakhtunkhwa
Service Tribunal

Diry No. 7424

Dated 17/7/2020

Mr. Hayat Gul, SDM (BPS-16),
GHSS Kulyari tehgagra, District Buner.

..... **APPELLANT**

VERSUS

- 1- The Secretary Elementary & Secondary Education Department, Khyber Pakhtunkhwa Peshawar.
- 2- The Secretary Establishment Department, Khyber Pakhtunkhwa, Peshawar.
- 3- The Secretary Finance Department, Khyber Pakhtunkhwa, Peshawar.
- 4- The Director Elementary & Secondary Education Department, Khyber Pakhtunkhwa Peshawar.
- 5- The District Education Officer, (male) District Mardan Buner *al/02/21 order*

..... **RESPONDENTS**

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE INACTION OF THE RESPONDENTS BY NOT CONSIDERING THE APPELLANT FOR PROMOTION TO THE POST OF S.S.T (BPS-16) ON THE BASIS HAVING BACHELOR DEGREE IN 3RD DIVISION AND AGAINST THE SERVICE RULES NOTIFIED ON 24.7.2014 WHEREBY THE CONDITION OF BACHELOR 2ND DIVISION HAS BEEN INSERTED IN SERIAL NO.1B, COLUMN NO.3(i) OF THE TABLE AND AGAINST NOT TAKING ACTION ON DEPARTMENTAL APPEAL OF APPELLANT WITHIN STATUTORY PERIOD OF NINTY DAYS

PRAYER:

That on acceptance of this appeal the impugned service Rules dated 24.7.2014 may kindly be modified to the extent that the condition of Second Division/Class be expunged from Column No.3 (i), serial No.1B of the table and the respondents may kindly be directed to consider the appellant for promotion to the post of Secondary School Teacher (BPS-16) from the date when his Colleagues and junior colleagues were promoted with all consequential back benefits including seniority. Any other remedy which this august Tribunal deems fit that may also be awarded in favour of the appellant.

R/SHEWETH:
ON FACTS:

Filed to-day
Registrar
17/7/20

Re-submitted to-day
and filed.
Registrar
17/7/2020

Brief facts giving rise on the present appeal are as under:

- 1- That appellant was initially appointed as drawing master and right from appointment till date the appellant is serving the respondents department quite efficiently and of to the entire satisfaction of his superiors.
- 2- That appellant is higher qualified having master in islamiat in second division. Copy of academics documents are attached as annexure.....**A.**
- 3- That it is pertinent to mention here that the respondents issued the impugned notification dated 24/07/2014 whereby the post of secondary school teacher was restructured and 20 % promotion quota to the aforementioned post was reserved for primary school teachers. That according to the said notification required qualification for initial recruitment as well as promotion was mentioned as second class bachelor degree. copy of impugned notification dated 24/07/2014 is attached as annexure.....**B.**
- 4- That it is pertinent to mention here that the respondents denied promotion to some colleagues of the appellant to the post of SST due to having third class bachelor degree. That feeling aggrieved some colleagues filed writ petitions which were allowed in favor of petitioners vide judgment dated 05/04/2016 and 28/01/2016 and consequently they were promoted to the post of SST. Copies of the judgments dated 28/1/2016 and 05/04/2016 are attached as annexure.....**C&D.**
- 5- That it is worth mentioning that appellant was also denied promotion due to having third class bachelor degree despite the fact that appellant is having second division in higher qualification i.e. master in Pashto and master in education
- 6- That appellant being a similar placed employee approached the respondents to extend him the benefits of above mentioned judgments, but still in vain. Copy of the Departmental appeal is attached as annexure **E.**
- 7- That it is also pertinent to mention that establishment department issued a notification dated 15/12/2011 whereby amendment has been made in PMS rules 2007 by providing that a candidate who has obtain 3rd division in bachelor degree will be eligible for the examination in cases where he/she has obtained a higher division in Master's degree. Copy of notification is attached as annexure**F.**

- 8- That feeling aggrieved and having no other remedy the appellant filed the instant appeal on the following grounds amongst the others.

GROUND:

- A- That the impugned notification dated 24/07/2014 to the extent of second class bachelor degree for promotion is against the law facts and judgment of Peshawar high court, hence not tenable and liable to be modified and the words second class be expunged only for promotion purpose.
- B- That the petitioner has not been treated in accordance with law and rules by the respondent Department on the subject noted above and as such the respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973.
- C- That appellant is entitled to be promoted to the post of SST from due date in light of judgments of Peshawar high court by attracting principle of consistency as mentioned in 2009 SCMR 1.
- D- That appellant has second division in higher qualification i.e. master and entitle to be promoted from due date in light of notification dated 15/12/2011.
- E- That as per Section-9 of the Civil Servant Act, 1973 read with Rule-7 of the appointment, promotion & Transfer Rules, 1989 the appellant is fully entitle for promotion to the post of SST (BPS-16).
- F- That appellant seeks permission to advance other grounds and proofs at the time of hearing.

It is therefore most humbly prayed that the appeal of the appellant may be accepted as prayed for.

APPELLANT


HAYAT GUL

THROUGH:


NOOR MOHAMMAD KHATTAK

&

**SHAHZULLAH YOUSAFZAI
ADVOCATES**

A-9

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

University of Peshawar (Pakistan)

Session SUPPLEMENTARY 1999

HAYAT GUL

Son / Daughter of

RAHMAN GUL

and a student/private candidate of

DISTRICT BUNER

having passed the Prescribed examination held in

FEBRUARY 2000

is this day admitted by the University of Peshawar to the Degree of

Bachelor of Arts

in THIRD Division

The Examination was taken as a whole/ in parts

Serial No. 0126726

Registration No. 93 - DP - 820

Roll No. 33231

Result declared on MAY 20, 2000



ATTESTED

[Signature]
Registrar

Countersigned

[Signature]
Vice-Chancellor

UNIVERSITY OF MALAKAND
PAKISTAN

Serial No. 005140



Session 2008-2010

HAYAT GUL Son of RAHMAN GUL Registration No. 2008690520 Private Candidate of District Buner having passed the prescribed examination held in Sep-Oct, 2010 under Roll No. 6876 is admitted by the University of Malakand to the degree of

Master of Arts

in Islamiyat in Second Division

The examination was taken as a whole.

Controller of Examinations

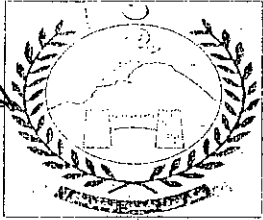
Countersigned

Result Declared on 02-Feb-2011

Issuance Date 06-Jun-2011

M. Asad Ullah
Vice Chancellor

ATTESTED



GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION DEPARTMENT

Peshawar, dated the 24th July, 2014.

NOTIFICATION

No.SO(PE)4-5/SSRC/Meeting/2013/Teaching Cadre:- In pursuance of the provisions contained in sub rule (2) of rule 3 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, the Elementary and Secondary Education Department in consultation with the Establishment Department and the Finance Department hereby directs that in this Department's Notifications No.SO(G)S&LD/1-28/2003/Vol-II dated, 09-04-2004, Notification No.SO(G)S&L/1-69/06/Vol-1/DPE/LIB dated, 13-11-2007, and Notification No.SO(PE)4-5/SSRC/Meeting/2012/Teaching Cadre, dated, 13.11.2012, the following further amendments shall be made, namely:

AMENDMENTS


In the Appendix,-

- (i) Serial No. 1 shall be renumbered as 1B and before Serial No. 1B, as so renumbered, the following new entries shall be inserted in respective columns, namely:

1	2	3	4	5
1	Subject Specialist (BPS-17)	i. At least second class Master's Degree or four years BS Degree in the relevant subject; and ii. Bachelor of Education or Master of Education (Industrial Art or Business Education) or M.A Education or equivalent qualification from a recognized University.	23 to 35 years	(a) Fifty per cent by promotion, on the basis of seniority-cum-fitness, for the relevant subject from amongst the Secondary School Teachers (BPS-16), with at least five years service as such and having qualification mentioned in column No. 3. Note: If no suitable candidate is available in the relevant subject the post falling in their promotion quota shall be filled by initial


ATTESTED

8				recruitment; and (b) fifty percent by initial recruitment.
IA	Director Physical Education (BPS-17)	At least second class Master's Degree in Physical Education from a recognized University.	22-35 years	<p>(a) Fifty percent by promotion, on the basis of seniority-cum-fitness; from amongst Senior Physical Education Teachers (BPS-16), with at least five years service as Senior Physical Education Teacher and Physical Education Teacher and having qualification mentioned in column No. 3:</p> <p>Provided that if no suitable person is available from amongst Senior-Physical Education Teachers for promotion then the post shall be filled by promotion, on the basis of seniority-cum-fitness, from amongst the Physical Education Teachers, with at least five years service as such and having qualification mentioned in column No. 3;</p> <p>Note:- If no suitable candidate is available in the relevant cadres of the above teachers, the post falling in their promotion quota shall be filled by initial recruitment; and</p> <p>(b) fifty percent by initial recruitment; and</p>

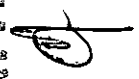
ATTESTED


(ii) against Serial No. 1B, as so renumbered, for the existing entries, the following shall be substituted, in respective columns, namely:

1	2	3	4	5
1B.	Secondary School Teacher (BPS-16)	<p>I. At least second class Bachelor Degree's from a recognized University on need basis from the following groups with two subject</p> <p>(a) (Chemistry, Botany or Zoology),</p> <p style="text-align: center;">Or</p> <p>(b) (Physics, Maths "A" or "B" or Statistics)</p> <p style="text-align: center;">Or</p> <p>(c) (Humanities and other equivalent groups at degree level with English as compulsory subject;</p> <p style="text-align: center;">and</p> <p>II. Bachelor of Education or Master of Education (Industrial Art or Business Education) or M.A. Education or equivalent qualifications from a recognized University.</p>	21 to 35 years.	<p>1. Seventy Five per cent by promotion, on the basis of seniority-cum-fitness, from the district concerned in the following manner:</p> <p>(a) forty per cent from amongst the Senior Certified Teachers (BPS-16), with at least five years service as Senior Certified Teacher and Certified Teacher and having qualification mentioned in column.No.3:</p> <p style="text-align: center;">Provided that if no suitable candidate is available from amongst Senior Certified Teachers for promotion then the post shall be filled by promotion, on the basis of seniority-cum-fitness, from amongst Certified Teachers, with at least five years service as such and having qualification mentioned in column No. 3;</p> <p>(b) four per cent from amongst the Senior Drawing Masters(BPS-16), with at least five years service as Senior Drawing Masters and Drawing Masters and having qualification mentioned in column No.3:</p>

ATTESTED


<p>91</p>			<p>Provided that if no suitable candidate is available from amongst Senior Drawing Masters for promotion then the post shall be filled by promotion, on the basis of seniority-cum-fitness, from amongst Drawing Masters with at least five years service as such and having qualification mentioned in column No. 3;</p>
			<p>(c) four per cent from amongst the Senior Arabic Teachers(BPS-16), with at least five years service as Senior Arabic Teachers and Arabic Teachers, and having qualification mentioned in column No.3:</p> <p>Provided that if no suitable candidate is available from amongst Senior Arabic Teachers for promotion then the post shall be filled by promotion, on the basis of seniority-cum-fitness; from Arabic Teachers with at least five years service as such and having qualification mentioned in column No. 3;</p> <p>(d) four per cent from amongst the Senior Theology Teachers(BPS-16), with at least five years service as Senior Theology Teachers and Theology Teachers and having qualification mentioned in column No.3:</p>

ATTESTED


11

Provided that if no suitable candidate is available from amongst Senior Theology Teachers for promotion then the post shall be filled by promotion, on the basis of seniority-cum-fitness, from amongst Theology Teachers with at least five years service as such and having qualification mentioned in column No. 3;

- (e) three per cent from amongst the Senior Qaris (BPS-16), with at least five years service as Senior Qari and Qari and having qualification mentioned in column No.3:

Provided that if no suitable candidate is available from amongst the Senior Qaris then the post shall be filled by promotion, on the basis of seniority-cum-fitness, from Qaris with at least five years service as such and having qualification mentioned in column No. 3;

- (f) twenty per cent from amongst the Primary School Head Teachers (BPS-16), with at least seven years service as Primary School Head Teachers and Senior Primary School Teachers and Primary School Teachers and having qualification mentioned in column No. 3:

Provided that if no suitable candidate is available from amongst

ATTESTED

SECRETARY TO GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION DEPARTMENT

Endst : of even No & date:

1. The Secretary to Government of Khyber Pakhtunkhwa, Establishment and Administration Department Peshawar.
2. The Secretary to Government of Khyber Pakhtunkhwa, Finance Department Peshawar.
3. The Secretary to Government of Khyber Pakhtunkhwa, Law Department Peshawar
4. The Secretary Khyber Pakhtunkhwa, Public Service Commission Peshawar.
5. The Accountant General Khyber Pakhtunkhwa Peshawar.
6. The Director, Elementary and Secondary Education Department Khyber Pakhtunkhwa Peshawar.
7. The Director of Education (FATA) Peshawar.
8. The Director, Curriculum and Teacher Education Khyber Pakhtunkhwa Abbottabad.
9. The Director, (PITE) Khyber Pakhtunkhwa Peshawar.
10. The Director, ESRU Elementary and Secondary Education Department Khyber Pakhtunkhwa Peshawar.
11. Manager Government Printing Press Khyber Pakhtunkhwa Peshawar.
12. The Deputy Director, EMIS (S&SE) Department Khyber Pakhtunkhwa Peshawar.
13. All District Education Officer (M&F) in Khyber Pakhtunkhwa.
14. All District Account Officer in Khyber Pakhtunkhwa.
15. All Agency Education Officer in FATA
16. All Agency Account Officer in FATA.
17. PS to Governor Khyber Pakhtunkhwa. Peshawar.
18. PS to Chief Minister Khyber Pakhtunkhwa. Peshawar.
19. PS to Chief Secretary Khyber Pakhtunkhwa. Peshawar.
20. PS to Minister E&SE Khyber Pakhtunkhwa. Peshawar.
21. PS to Secretary E&SE Khyber Pakhtunkhwa. Peshawar.
22. Master file

ATTESTED

(ZAMIN KHAN MOMAND)
SECTION OFFICER (PRIMARY)

PESHAWAR HIGH COURT BANNU BENCH


FOR OF ORDER SHEET


Date of order or other proceedings	Order or other proceedings with signature of judge(s)
(1)	(2)
28/01/2016	<p>W.P No. 73-B-2014, Present: Mr. Ali Jan Khan advocate for petitioner</p> <p><u>MUHAMMAD GHAZANFAR KHAN</u> (J):- The petitioner namely Mumtaz Khan S/O Guli Jan, through the instant Constitutional petition under Article 199 of the Constitution of Islamic Republic of Pakistan 1973, seeks issuance of directions to the respondents/department to consider him for promotion in the post of SST in BPS-16 in view of the Departmental Promotion Committee meeting held on 18.01.2014.</p> <p>2. We have heard learned counsel for the petitioner and gone through the available record of the case.</p> <p>3. Perusal of record transpires that the petitioner has passed BA in third division while as per Notification bearing No. SO(III)S/SSR(Y)III, dated 18.1.2011, the minimum qualifications for the post of SST (BPS-16) are Second Class Bachelor's degree or MA in Education or Bachelor's Degree in Education. The record further shows that the petitioner has also passed M.Ed during the year 2000 in second division and M.A History and Pak Study during the session 2003 in second division and M.A. History and Pak Study during the session 2003 in second division.</p> <p>4. In wake of the above, we direct the respondents to consider the petitioner for promotion to the post of SST (BPS-16) in the next Departmental Promotion Committee meeting on the basis of his degree in MA. History and Pak Study coupled with M.ED qualifications. The writ petition is disposed of in the above terms.</p> <p>ANNOUNCED 28.01.2016</p>

FORM OF ORDER SHEET

Date of order or other proceedings	Order or other proceedings with signature of Judge(s)
(1)	(2)
28/01/2016	<p>WP No.73-B-2014. Present: Mr. Ali Jan Khan advocate for petitioner.</p> <p><u>MUHAMMAD KHUZANFAR KHAN J.</u> The petitioner, namely, <u>Munir Khan</u> son of Gull Jan, through the instant Constitutional petition under Article 199 of the Constitution of Islamic Republic of Pakistan 1973, seeks issuance of directions to the respondents/department to consider him for promotion to the post of SST in BPS-16 in view of the Departmental Promotion Committee meeting held on 18-01-2014.</p> <p>2. We have heard learned counsel for the petitioner and gone through the available record of the case.</p> <p>3. Perusal of record transpires that the petitioner has passed BA in third division while as per notification bearing No.860/PM/5288/2011 dated 18/1/2011, the minimum qualifications for the post of SST (BPS-16) are second class Bachelor's degree, or MA in Education or Bachelor's degree in Education. The</p>

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 District High Court,
 Bannu Bench

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record further shows that the petitioner has also passed M.Ed during the year 2000 in second division and M.A. History and Pak Study during the session 2003 in second division.

4. In wake of the above, we direct the respondents to consider the petitioner for promotion to the post of SST (BPS-16) in the next Departmental Promotion Committee meeting on the basis of his degree in MA History and Pak Study counted with M.Ed qualifications. The writ petition is disposed of in the above terms.

Sd/- Irfanullah Khan, J

ANNOUNCED
28/01/2016.

Sd/- Muhammad Ghazanfar Khan, J

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15/2/16

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15/2/16

Examinor
Daudpur High Court Bench
Authorized Under Article 57 of
The Quota-Suhdat Order 1984

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IN THE PESHAWAR HIGH COURT, ABBOTTABAD BENCH
JUDICIAL DEPARTMENT

Writ Petition No. 1041-A/2015.

JUDGMENT

Date of hearing 5-11-16
Petitioner Mohammad Bari by Mr. Abdul Samad
Respondents Govt. of NWFP Abdullah

IRAMULLAH KHAN, J. - Through the instant writ petition under Article 199 of the Islamic Republic of Pakistan, 1973 the petitioner seeks declaration to the effect that the act of respondent No.3 whereby the promotion notification dated 28.10.2014 was withdrawn vide impugned notification dated 24.04.2014 on the ground of having qualification of B.Sc. (3rd division) is illegal and without lawful authority and against the judgment of this court passed in W.P.No. 58-B of 2014.

2. In essence, the petitioner was initially appointed as Certified Teacher and, as per entitlement, later on promoted to the post of Senior Certified Teacher (BPS-16) vide notification dated 28.10.2014 whereafter the petitioner assumed the charge of the said post on 30.10.2014 and after performing his duties to the satisfaction of his competent authority, on 24.04.2015 respondent No.3 has passed the impugned notification and, as

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such, the promotion order of the petitioner was withdrawn on the ground of having B.Sc in third division.

3. Comments were called from respondent No.3, who filed the same, averring therein that though petitioner was promoted to the post of SST vide notification dated 23.10.2014 by respondent No.2 but on scrutinizing his qualification documents, it was found that petitioner was not eligible for promotion to the post of SST being B.Sc third divisioner, hence, his promotion order was de-notified by the Director Elementary and Secondary Education Khyber Pakhtunkhwa Peshawar and on the direction of Director the promotion order of the petitioner was withdrawn vide impugned notification dated 24.04.2015.

4. It has further been averred in the comments that promotion order of the petitioner was withdrawn on the ground of B.Sc third division and it was done in light of policy circulated vide Notification No.SO(PE)4-5 / SSRC / meeting / 2013 / teaching cadre dated 24.07.2014 according to which the method of recruitment of SST was specified with a first condition of at least second class BA / B.Sc from a recognized University on need basis with two relevant subjects along with second condition of MA Education or B.Ed from the recognized University. Further averred that it is the prerogative of the government to enhance, modify or alter the promotion

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criteria / policy for the civil servants and a civil servant is not supposed to be treated with a set of rules of his own choice. (A)

5. In response to Para-6 of the petition, respondent No.3 averred in the comments that the judgment of this court was announced on 04.06.2015 whereas the withdrawal order of the petitioner was passed on 24.04.2015, prior to the announcement of the judgment.

6. The main contention of learned counsel for the petitioner is that this court has already declared the condition of having third division as null and void in its judgment dated 04.06.2015 and the case of the petitioner is on better footing for the reason that in the referred judgment the petitioner had not been appointed but so far as the case of the petitioner is concerned, he was duly promoted rather received its benefits from 28.10.2014 to 24.04.2015 and thus, the impugned order is illegal, without lawful authority and jurisdiction.

7. Admittedly, the petitioner was duly promoted to the post in question on 28.10.2014 after the departmental promotion committee evaluated his case / PERs.

8. Now the question for determination before this court would be that when the petitioner actually performed his duties on the promoted post and that too for six long months, then how the respondent No.3 could withdraw the earlier promotion order only on the pretext of having B.Sc third division.

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8. It appears from the record that a Division Bench of this had already declared the condition of having third division as null and void in its judgment dated 04.06.2015 which fact has also been affirmed by the respondent No.3 in his comments by stating that they were not aware of that judgment at the time of withdrawal of the impugned promotion of the petitioner and when the case of the present petitioner is at par with that of the petitioner therein, rather on better footing because the petitioner was not only promoted to the post in question but he performed his duties for six long months and received its benefits, the impugned notification passed by respondent No.3 is required to be set at naught.

9. It is also a well settled principle of law that once a benefit is granted to a civil servant, cannot be taken back from him and, if so, very stringent strong reasons are required for the same, which are not available in the case in hand, moreso, when the promotion order of the similarly placed teachers having B.Sc third division have not been so far withdrawn which is clearly violation of Article 25 of the Constitution of Pakistan.

10. For the reasons mentioned above, this petition is accepted and the impugned notification dated 24.04.2015 issued by respondent No.3, whereby the promotion order of the petitioner was withdrawn, is declared to be without lawful

unlawful

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2015

Sanctioned to be
Court
Abbotabad Bench
Under Sec 5 of the
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authority and, as such, the promotion notification dated 28.10.2014 is hereby restored.

Announced:
05.04.2016.

Sd/- Judge
Sd/- Judge

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E. J. ...
24/1/16

To,

The Secretary,
E&SE Department,
Khyber Pakhtunkhwa, Peshawar

Subject:

DEPARTMENTAL APPEAL AGAINST THE INACTION OF THE RESPONDENTS BY NOT CONSIDERING THE APPELLANT FOR PROMOTION TO THE POST OF SST (BPS-16) ON THE BASIS OF HAVING BACHELOR DEGREE IN 3RD DIVISION AND AGAINST THE SERVICE RULES NOTIFIED ON 24.07.2014 WHEREBY THE CONDITION OF BACHELOR 2ND DIVISION HAS BEEN INSERTED IN SERIAL NO.1B, COLUMN NO.3(i) OF THE TABLE.

Respected Sir,

With due respect it is stated that I was initially appointed as Primary School Teacher in the respondent Department and right from my 1st appointment I am performing my duties quite efficiently and upto the entire satisfaction of his superiors. I have the higher qualification of Master in Education in second Division but the authorities issued the impugned Notification dated 24.07.2014 whereby the post of SST was restricted and 20% promotion quota to the aforementioned post was reserved for Primary School Teachers. That according to the said Notification, required qualification for initial recruitment as well as promotion was mentioned as second class bachelor degree. That the concerned authority denied promotion of my some colleagues to the post of SST due to having third class bachelor degree. They were feeling aggrieved filed writ petitions which were allowed in favor of petitioners vide judgment dated 05.04.2016 and 28.01.2016 and consequently they were promoted to the post of SST. That I was also denied promotion due to having third class bachelor degree despite the fact that I am having second division in higher qualification of Master in education. That being a similar placed employee approached the concerned authority to extend the same benefit of the above mentioned judgments but in vain. That the establishment Department issued a Notification dated 15.12.2011 whereby amendment has been made in PMS rules 2007 by providing that a candidate who has obtain 3rd division in bachelor degree will be eligible for the examination in cases where he/she has obtained a higher division in Master's degree. That feeling aggrieved from the inaction of the concerned authority by not considering me for promotion to the post of SST (BPS-16) filed the instant Departmental appeal before your good self.

It is therefore, most humbly prayed that on acceptance of this Department appeal I may very kindly be considered for promotion to the post of SST (BPS-16) from the date when my colleagues and junior colleagues were promoted with all consequential benefits including seniority. Any other remedy which your good self deems fit that may also be awarded in my favor.

Dated: 19.03.2020

APPLICANT

HAYATGUL, SDM (BPS-16),
GHSS Kulyari Tehgagra, Buner

BETTER COPY OF PAGE- 20

GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT
Dated Peshawar the December, 15 of 2011

NOTIFICATION

No. SOE-II (ED) 2(14)2011:-In exercise of the powers conferred by Section 26 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 (Khyber Pakhtunkhwa Act No.XVIII of 1973), the Chief MINISTER OF THE Khyber Pakhtunkhwa is pleased to direct that in the Khyber Pakhtunkhwa Provincial Management Service Rules 2007, the following further amendment, shall be made, namely:

AMENDMENT

In Schedule-I, against Sr. No.1, in Column No.3, the full stop appearing at the end shall be replaced by colon and thereafter that following proviso shall be added, namely:

“Provided that a candidate who has obtained a 3rd Division or D-Grade in Bachelor’s Degree will be eligible for the examination in cases where he/she has obtained a higher Division in Master’s Degree”.

CHIEF SECRETARY
KHYBER PAKHTUNKHWA



GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT

Dated Peshawar the December, 15, 2011

Amex (circled)
F-21 (circled)

NOTIFICATION

No. SOE.II (ED) 2(14)/2011.- In exercise of the powers conferred by Section 26 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 (Khyber Pakhtunkhwa Act No. XVIII of 1973), the Chief Minister of the Khyber Pakhtunkhwa is pleased to direct that in the Khyber Pakhtunkhwa Provincial Management Service Rules, 2007, the following further amendment, shall be made, namely:

AMENDMENT

In Schedule-I, against Sr. No.1, in Column No. A, the full stop appearing at the end shall be replaced by colon and thereafter the following proviso shall be added, namely:

"Provided that a candidate who has obtained a 3rd Division or D-Grade in Bachelor's Degree will be eligible for the examination in cases where he/she has obtained a higher Division in Master's Degree."

CHIEF SECRETARY
KHYBER PAKHTUNKHWA

Encls. No. & date even

Copy of the above is forwarded to:-

1. Additional Chief Secretary, Khyber Pakhtunkhwa.
2. Secretary to Governor, Khyber Pakhtunkhwa.
3. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
4. Senior Member Board of Revenue, Khyber Pakhtunkhwa.
5. All Administrative Secretaries, Khyber Pakhtunkhwa.
6. Secretary (Administration & Coordination) Civil Secretariat FATA.
7. Chairman, Khyber Pakhtunkhwa Public Service Commission.
8. Accountant General, Khyber Pakhtunkhwa, Peshawar.
9. Director, S.T. & A Department.
10. Secretary Khyber Pakhtunkhwa Public Service Commission.
11. PS to Chief Secretary, Khyber Pakhtunkhwa.
12. PS to Secretary Establishment.
13. PAS to Additional Secretary (Estt)/Deputy Secretary (Estt) Establishment Department.
14. Office order file.

(Signature)

(PARVAT KAZIMI)
SECTION OFFICER (E.II)

ATTESTED

(Signature)

ATTESTED

(Signature)

VAKALATNAMA

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

_____ OF 2020

Hayat Gul

(APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

Education Dept.

(RESPONDENT)
(DEFENDANT)

I/We *Hayat Gul*

Do hereby appoint and constitute **NOOR MOHAMMAD KHATTAK, Advocate, Peshawar** to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate Counsel on my/our cost. I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter.

Dated. ____/____/2020

[Signature]

CLIENT

ACCEPTED
NOOR MOHAMMAD KHATTAK

KAMRAN KHAN

MIR ZAMAN SAFI

&

AFRASIAB KHAN WAZIR
ADVOCATES

OFFICE:
Flat No.4, 2nd Floor, Juma Khan
Plaza, near FATA Secretariat,
Warsak Road, Peshawar.
Mobile No.0345-9383141

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. _____/2020

HAYAT GUL

VS

EDUCATION DEPTT:

APPLICATION FOR CORRECTION OF ADDRESS OF THE
RESPONDENT NO.5 IN THE ABOVE TITLED APPEAL

R/SHEWETH:

1- That the appellant filed the abovementioned appeal which is pending adjudication before this August Tribunal and is fixed for hearing/reply on dated 31.03.21.

2- That there is certain mistake in the address of the respondent No.5, mistakenly copied and pasted in the subject appeal which is subject to correction, as correct address is as under:-

"Correct Address of Respondent No:5"

5- The District Education Officer, (male) District Buner.

It is therefore most humbly requested that the above correct address of the respondent may very kindly be inserted in the array of respondents.

APPLICANT

HAYAT GUL

THROUGH:


AFRASIAB KHAN WAZIR
ADVOCATE

03/02 DB I

BEFORE THE KHYBER PUKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

SERVICE APPEAL NO. 8654/2020

Mr. Hayat Gul SDM (BPS-16) _____ Appellant

Versus

- 1- The Secretary (E &SE) Department, Khyber Pukhtunkhwa, Peshawar
- 2- The Secretary Establishment Department, Khyber Pukhtunkhwa, Peshawar
- 3- The Secretary to Government of Khyber Pukhtunkhwa Finance Department Civil Secretariat, Peshawar
- 4- The Director (E &SE) Department, Khyber Pukhtunkhwa, Peshawar
- 5- The District Education Officer (M), District Buner

_____ Respondents

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DEPONENT

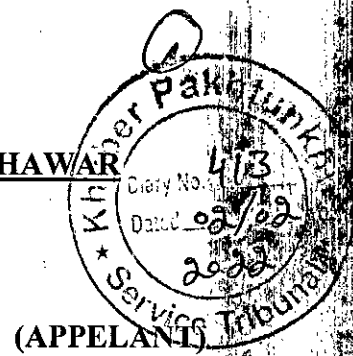
CNIC No.15101-0882586-3

19/1/20

BEFORE THE KHYBER PUKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 8654/2020

Hayat Gul SDM BPS 16, District Buner



Versus

1. Secretary to Government of Khyber Pakhtunkhwa Elementary and Secondary Education, Civil Secretariat Peshawar
2. Secretary Establishment Department of Khyber Pakhtunkhwa Peshawar
3. Secretary to Government of Khyber Pakhtunkhwa Finance Department Civil Secretariat Peshawar
4. Director Elementary and Secondary Education Khyber Pakhtunkhwa Peshawar Peshawar
5. District Education Officer Male District Buner

(RESPONDENTS)

Written Reply/Para wise Comments for & on behalf of Respondents No. 1, 4 & 5

Respectfully Sheweth!

Preliminary Objections.

1. The Appellant has no cause of action/locus standi to file the instant appeal.
2. The instant appeal is badly time barred.
3. The Appellant has concealed the material facts from this honorable Tribunal, hence liable to be dismissed.
4. The Appellant has not come to this honorable Tribunal with clean hands.
5. The instant appeal is against the prevailing law and rules.
6. The appellant has been estopped by his conduct to file the appeal.
7. That the appeal is bad for mis-joinder and non-joinder of necessary and proper parties

Reply on Facts:-

1. That it is mandatory for each and every government servant to perform his duty with zeal and zest and up to the entire satisfaction of his superiors because he is paid for his services from the national exchequer.
2. That the criteria for promotion to the post of SST BPS 16 is as under:
 - i. At least second class degree from a recognized University on need basis from the following groups with two subjects.
 - a) (Chemistry, Botany or Zoology)
 - Or**
 - b) (Physics, Maths 'A' or 'B' or Statistics)
 - Or**
 - c) Humanities and other equivalent groups at degree level with English is compulsory subject
 - And**
 - ii. Bachelor of education or master of education (Industrial art or Business education) or MA in education or equivalent qualification from a recognized University.

The appellant is third class degree holder, therefore, is not entitled for promotion.

3. That the para is irrelevant to the appellant. 4% promotion quota is reserved in SST for SDM/ DM with second class degree while the appellant is third division bachelor degree holder, therefore; due to lack of initial prescribed qualification for promotion to SST, the appellant is not entitled to be promoted to SST under prescribed quota.
4. Incorrect hence denied. No one has been appointed /promoted to the post of SST having 3rd class bachelor degree. The writ petition was not allowed but instead disposed off with the direction to the respondents to consider the petitioner for promotion to the post of

SST (BPS 16) in the next Departmental Promotion Committee meeting on the basis of his degree in MA history and Pak study coupled with MEd qualification. They were considered but not promoted to the post of SST due to the lack of initial prescribed qualification required for promotion to the post of SST. 3rd class degree holder is not entitled for promotion /appointment to the post of SST.

In the Supreme Court of Pakistan held in case of Abdul Haq khan and others vs Haji Amir zada and others reported as PLD 2017 SC 105 that, "it is otherwise stated by now that courts of law have no jurisdiction to add or subtract to the clear words of statutes."

For further clarification similar observations had already been recorded by the apex court in the case of collector of sales, Gujranwala Vs Messes Super Asia Mohammed Din and sons and other reported as 2017 is CMR 1427. The dictum laid down by the apex court of Pakistan in the judgements need to be followed.

- 5. That due to the lack of initial prescribed qualification required for the post of SST, i.e., BA 2nd division, the appellant was rightly not promoted to the post of SST. There is plethora of judgments of Supreme Court of Pakistan that due to lack of initial prescribed qualification (but having higher qualification in a better grade) does not entitle anyone to be promoted/ appointed against a particular post.
- 6. Incorrect hence denied. No one has been promoted to the post of SST in the light of mentioned judgment. The stance of the appellant is conjectural and contemptuous.
- 7. Incorrect, hence denied. It is irrelevant to the instant appeal.
- 8. That the appellant is not an aggrieved person at all due to lack of initial prescribed qualification required for promotion to the post of SST. Thus the appellant has no cause of action to file the instant appeal and appeal in hand is liable to be dismissed inter-alia amongst the following grounds:-

Reply on Grounds:

- A. Incorrect, hence denied. The impugned notification dated 24-07- 2014 to the extent of second class degree for promotion is in accordance to law, facts and judgments of Peshawar High Court. There are plethoras of judgments of the apex court of Pakistan that government is empowered to enhance promotion policy or amend it for better results. Hence, the impugned notification dated 24-07-2014 is tenable in the eye of law. Civil servants cannot ask for promotion as a right and granting or refusal of promotion is a matter which is within the Exclusive domain of the government /executive authority. If promotion is denied to a Civil Servant, it could not be termed as denial of any fundamental right. Same is reported in 2003 PLC (CS) 212 and 2003 PLD SC 110. There is no fundamental right with regard to the posting, transfer or promotion as such. Reliance is placed on 2009 SCMR 61.
- B. Incorrect, hence denied. The petitioner has been treated in accordance with law and rules by the respondent department on the subject noted above and as such, the respondent did not violate article 4 and 25 of Constitution of the Islamic Republic of Pakistan 1973.
- C. That no one was promoted to the post of SST due to lack of initial prescribed qualification required for promotion to the post office SST. Furthermore, all the appointments and promotions were made according to the real soul of notification dated 24-07-2014. Thus plea of the appellant is conjectural the ludicrous and contemptuous.
- D. That the appellant is holding third division in bachelor degree which is less than the required standard, hence he is not entitled for promotion to the post office SST. There is plethora of judgments of the apex court of Pakistan that no one can be appointed on higher qualification having lacking of initial prescribed qualification.
- E. Incorrect, hence denied. That all the appointments except PST in the province of Khyber Pakhtunkhwa under Section (4) of the KP (appointment, deputation, posting and transfer of teachers, lecturers, instructors and doctors) Regulation Act 2011 read with rule 11, sub Rule (1), rule 12, sub rule (2) of the KP civil servants appointment, promotion and transfer rules 1989;

"No one is entitled to be promoted, lacking of initial prescribed qualification required for appointment."

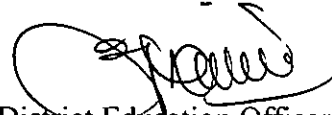
- F. That the respondents seek permission to advance other Grounds and facts at the time of hearing the instant appeal.

It is, therefore prayed that the subject service appeal, being devoid of merits against law/ facts/ rules may please be dismissed with cost, throughout.



Director
Elementary and Secondary Education
Khyber Pakhtunkhwa Peshawar

Director
Elementary & Secondary Education
Khyber Pakhtunkhwa Peshawar



District Education Officer
(Male) Buner 21/10/20



Secretary
Elementary and Secondary Education
Khyber Pakhtunkhwa Peshawar

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BEFORE THE KHYBER PUKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

SERVICE APPEAL NO. 8654/2020

Mr. Hayat Gul SDM (BPS-16) _____ Appellant

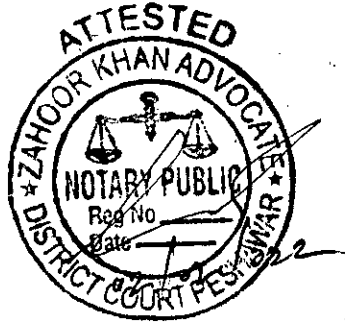
Versus

- 1- The Secretary (E &SE) Department, Khyber Pukhtunkhwa, Peshawar**
- 2- The Secretary Establishment Department, Khyber Pukhtunkhwa, Peshawar**
- 3- The Secretary to Government of Khyber Pukhtunkhwa Finance Department Civil Secretariat, Peshawar**
- 4- The Director (E &SE) Department, Khyber Pukhtunkhwa, Peshawar**
- 5- The District Education Officer (M), District Buner**

_____ Respondents

AFFIDAVIT

I, Ubaid ur Rahman, ADEO (Litigation), District Education Office (Male) Buner, do hereby solemnly affirms & state on oath that the whole contents of the reply are true & correct to the best of my knowledge & belief & nothing has been concealed from this Hon'ble Tribunal.



**Deponent
15101-0882586-3**