

14<sup>th</sup> Sept, 2022

Learned counsel for the appellant present. Mr. Muhammad Adeel Butt, Addl: AG for respondents present.

Written reply/comments not submitted. Last opportunity is granted to the respondents for reply. To come up for reply/preliminary hearing on 22.09.2022 before S.B at camp court Abbottabad.



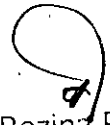
(Kalim Arshad Khan)  
Chairman

22.09.2022

Appellant present through counsel.

Kabir Ullah Khattak, Additional Advocate General for respondents present.

Despite last chance, reply was not submitted. Therefore, case is adjourned on payment of cost of Rs.3000/- to be paid by the respondents with direction to the learned AAG to make sure personal appearance of representative of respondents but not below Grade-17. To come up for reply/preliminary hearing on 16.11.2022 before S.B at Camp Court, Abbottabad.



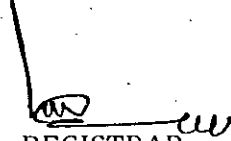



(Rozina Rehman)  
Member (J)  
Camp Court, A/Abad

Form- A

## FORM OF ORDER SHEET

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

Case No.- \_\_\_\_\_ 619/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	26/04/2022	<p>The appeal of Mr. Nisar Ahmad presented today by Mr. Inyatullah Khan Tareen Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p> REGISTRAR</p>
2-	28.04.2022	<p>Appellant present through counsel.</p> <p>He made a request for adjournment in order to prepare the brief. Adjourned. To come up for preliminary hearing on 08.07.2022 before S.B.</p> <p> (Rozina Rehman) Member (J)</p>
08.07.2022		<p>Due to Public Holiday on account of Eid-UI-Adha case to come for the same on <del>28.07</del> 2022.</p> <p> Reader</p>
28.07.2022		<p>Counsel for the appellant present.</p> <p>Let pre-admission notice be issued to respondents for submission of written reply/comments. To come up for written reply/preliminary hearing on 14.09.2022 before S.B.</p> <p> (Farecha Paul) Member (E)</p>

**BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR  
CHECK LIST**

Case Title: Nisar Ahmed vs Govt of Khyber Pakhtunkhwa and others

S.#	Contents	Yes	No
1.	This appeal has been presented by: <u>Inayatullah Khan Tareen Advocate</u>		
2.	Whether Counsel / Appellant / Respondent / Deponent have signed the requisite documents?	✓	
3.	Whether Appeal is within time?	✓	
4.	Whether the enactment under which the appeal is filed mentioned?	✓	
5.	Whether the enactment under which the appeal is filed is correct?	✓	
6.	Whether affidavit is appended?	✓	
7.	Whether affidavit is duly attested by competent oath commissioner?	✓	
8.	Whether appeal/annexures are properly paged?	✓	
9.	Whether certificate regarding filing any earlier appeal on the subject, furnished?	✓	
10.	Whether annexures are legible?	✓	
11.	Whether annexures are attested?	✓	
12.	Whether copies of annexures are readable/clear?	✓	
13.	Whether copy of appeal is delivered to A.G/D.A.G?	✓	
14.	Whether Power of Attorney of the Counsel engaged is attested and signed by petitioner/appellant/respondents?	✓	
15.	Whether numbers of referred cases given are correct?	✓	
16.	Whether appeal contains cuttings/overwriting?		✓
17.	Whether list of books has been provided at the end of the appeal?	✓	
18.	Whether case relate to this Court?	✓	
19.	Whether requisite number of spare copies attached?	✓	
20.	Whether complete spare copy is filed in separate file cover?	✓	
21.	Whether addresses of parties given are complete?	✓	
22.	Whether index filed?	✓	
23.	Whether index is correct?	✓	
24.	Whether Security and Process Fee deposited? on		
25.	Whether in view of Khyber Pakhtunkhwa Service Tribunal Rules 1974 Rule 11, notice along with copy of appeal and annexures has been sent to respondents? on		
26.	Whether copies of comments/reply/rejoinder submitted? on		
27.	Whether copies of comments/reply/rejoinder provided to opposite party? on		

It is certified that formalities/documentation as required in the above table have been fulfilled.

Name:

Inayatullah Khan Tareen Adv

Signature:

Inayatullah Khan Tareen Adv

Dated:

26-04-2022

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

Service Appeal No. 619 /2022.

Nisar Ahmad      V/S      Government of Khyber Pakhtunkhwa through  
the Secretary, Elementary and Secondary  
Education Department, Civil Secretariat  
Peshawar and others.

**SERVICE APPEAL**

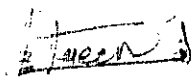
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Sr: No:	Description of Documents	<u>Annexure</u>	Page No:
(1)	Memorandum of Appeal alongwith affidavit, addresses of the parties, certificate & list of Books.	-	01-10
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(3)	Copy of the appointment order.	"A"	12
(4)	Copy of retirement certificate/order.	"B"	13
(5)	Copy of Department appeal alongwith copy appeal dismissal letter.	"C&D"	14-18, 18-9
(6)	Copy of judgment of august Supreme Court.	"E"	19-21
(7)	Copy of the office order dated 16-07-2021 in identical cases.	"F"	22-23
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Dated: 26-04-2022

Appellant  
(Nisar Ahmad)

Through:

  
(Inayat Ullah Khan Tareen)  
Advocate High Court.

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

Service Appeal No. \_\_\_\_\_/2022.

Nisar Ahmed . S/O Ghulam Gilani,  
R/O Village Shadi, Hattar, Tehsil & District Haripur.

.....Appellant

**VERSUS**

1. Government of Khyber Pakhtunkhwa through the Secretary,  
Elementary and Secondary Education Department, Civil Secretariat  
Peshawar.
2. Director Elementary and Secondary Education Khyber Pakhtunkhwa,  
Peshawar.
3. District Education Officer (Male) Haripur.

.....Respondents

**APPEAL U/S 4 OF THE KHYBER PAKHTUNKHWA  
SERVICES TRIBUNAL ACT, 1974 AGAINST THE DECISION  
OF RESPONDENT NO: 3 ISSUED VIDE HIS OFFICE  
LETTER NO: 4157-60/F.No.7-8/E.B/RETIR:CASE,DATED  
23-07-2020, WHEREBY THE APPELLANT HAS NOT BEEN  
HELD ENTITLED TO PENSIONERY BENEFITS AND  
GRATUITY AND APPEAL IN THIS RESPECT WAS  
DISMISSED.**

**PRAYER:**

On acceptance of this appeal, it may be declared and held that Section-5 of the Khyber Pakhtunkhwa Sacked Employees (Appointment) Act, 2012 (Act No: XVIII of 2012) does not exclude the claim of appellant for pensionery benefits on his retirement by superannuation as the fresh appointment of the appellant by virtue of Section 3 of the said Act is incidental to his original

appointment which was subsequently terminated without any fault attributable to the appellant; and as such, the period from the date of termination of appellant's service after the original appointment till his fresh appointment by operation of law is countable in service for the purpose of pension. Consequently, the appellant having on his credit qualifying service for pension, is entitled for usual pensionary benefits on his retirement by superannuation; and impugned order is liable to be set-aside being against the facts and law.

Any other relief deemed fit according to circumstances of the case may also be granted.

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Respectfully Sheweth:-

The facts giving rise to this appeal are as follows:-

**FACTS:**

1. That the appellant was appointed by the Respondent department according to the prescribed method of recruitment in the year 1995. (Copy of the appointment order is annexed as **Annexure "A"**).
2. That, the services of the appellant were illegally terminated in the year 1996-97.
3. That in the year 2012, sacked employees (Appointment) Act, 2012 KPK was promulgated. Department was bound to reinstate/reappoint the appellant as per criteria mentioned in the said Act, but appellant was not appointed under the said Act.
4. That lateron, in compliance with the judgment 24-05-2016 passed by Honourable Peshawar High Court and up held by the August Supreme Court of Pakistan vide order dated 24-05-2017, the appellant was reappointed/reinstated in service in the year 2017.
5. That after reappointment, appellant again served in the Department and was retired on having attained the age of superannuation in the

year 2021. (Copy of retirement certificate/order is annexed as Annexure "B").

6. That upon retirement, respondents were bound by law to pay all the pensionary benefits to the appellant, but they failed to pay pension to the appellant. He moved numerous applications for the grant of pensionary benefits, but respondent No. 3 vide order dated 11-08-2021 dismissed the applications of the appellant.
7. That feeling aggrieved from the impugned order, the appellant preferred the Departmental Appeal before Respondent No: 2, and the Respondent No. 2 gave no response as yet, however the Respondent No. 3/District Education Officer (Male) Haripur dismissed the appeal and deprived the appellant from gratuity and pensionary benefits. It is pertinent to mention here that 90 days statutory period of Departmental Appeal has expired, hence the appellant in pursuit of the next remedy has to file this Service Appeal, inter alia on the following grounds:- (Copy of Department appeal alongwith appeal dismissal letter is annexed as Annexure "C&D").

**G R O U N D S:**

- A- That preamble of Khyber Pakhtunkhwa Sacked Employees (Appointment) Act, 2012 construes that very purpose of making said law is to provide relief to eligible sacked employees who were appointed in the Province of Khyber Pakhtunkhwa during the period from 1<sup>st</sup> day of November 1993 to 30<sup>th</sup> day of November 1996 and were dismissed, removed, or terminated from service on various grounds. In content of the said preamble, previous appointment of sacked employees was taken as basis for fresh appointment with certain exceptions as to their claim of seniority, promotion and other back benefits.

B- That the appellant having been appointed in the year 1995 as CT Teacher had served in the respondent department and was terminated from service before 31<sup>st</sup> day of December 1998. As such, the original appointment of the appellant having been made after 1<sup>st</sup> day of November 1993 and his termination before 31<sup>st</sup> December 1998 was covered under the definition of 'sacked employee' given in Khyber Pakhtunkhwa Act No: XVII of 2012 and relief of appointment within meaning of section 3 of the said Act was also extended in appellant's favor.

C- That legally admissible nexus between previous and fresh appointment of sacked employees makes a good ground for treatment of intervening period between termination of service and fresh appointment in a beneficial manner for its counting towards qualifying service for pension of the appellant on his retirement by superannuation.

D- That Section 5 of the Act No: XVII of 2012 does not specifically or by implication excludes the counting of aforementioned intervening period towards qualifying service for pension and it does not warrant by law and principles of natural justice to interpret said section for supplying an omitted cause by departmental interpretation.

E- That in view of the forgoing grounds herein above, appointment of the appellant after termination of his original service was the outcome of operation of a remedial law.

F- That when the original appointment of the appellant was taken as paramount consideration for relief under Act XVII of 2012, the termination of said appointment during a particular regime without any fault of the appellant is not workable to disconnect his original appointment from the fresh appointment made under operation of law which in terms of its preamble is remedial law. As such, it is highly unjust, perverse, arbitrary, perfunctory, erroneous, wrong and unlawful to exclude the intervening period from termination of



appellant after original appointment till his fresh appointment from its counting towards the qualifying service for pension on appellant's retirement by superannuation.

G- That seniority and promotion are part of terms and conditions of service governed under the rules namely Khyber Pakhtunkhwa Government Servants (Appointment, Promotion and Transfer) Rules, 1989 and claim of a sacked employee to this effect has not been specifically excluded by Section 5 of the Act XVII of 2012 and the expression "other back benefits" does not logically and legally cover the exclusion of intervening period as above mentioned for the purpose of pension particularly when the august Supreme Court of Pakistan in the judgment dated 27-03-2020 passed in Civil Petition No: 468-P, 469-P, 471-P and 472-P of 2016 allowed the counting of protected period for payment of pensionary benefits. (Copy of judgment of august Supreme Court is annexed as **Annexure "E"**).

H- That in identical case, similarly placed employees have been given all the pensionary benefits but vide impugned order, appellant has been deprived of his pension totally on flimsy grounds. (Copy of the office order dated 16-07-2021 in identical cases is annexed as **Annexure "F"**).

I- That the right to pension is provided under the law and rules. There are a number of pronouncements of the august Supreme Court of Pakistan that grant of pension is not a bounty rather a vested right of a government servant after his retirement. The appellant was prevented from rendering service in the respondent department because of his termination from service and enactment of remedial law for relief to the sacked employees is not prone to the interpretation of the expression "other back benefits" to exclude the period of his absence from service in between his termination and appointment by operation of law.

J- That the impugned order is against the facts, against the law, random, arbitrary, erroneous, unfounded and suffers from misinterpretation and misunderstanding of the law. Hence not tenable under the facts and law.

K- That the appeal at hand is not otherwise time barred for the reason of its caesura under Khyber Pakhtunkhwa Epidemic Control and Emergency Relief Act, 2020 and but as matter of precaution, an application for condonation of delay is accompanying this appeal.

L- That the matter in appeal is fit for adjudication in jurisdiction of this Hon'ble Tribunal.

With the forgoing facts and grounds it is respectfully submitted that the Appeal may graciously be accepted as prayed for.

Dated: 26-04-2022

Through:

*Nisar Ahmed*  
Appellant  
(Nisar Ahmed)

*Inayat Ullah Khan Tareen*  
(Inayat Ullah Khan Tareen)  
Advocate High Court.

**VERIFICATION**

Verified that the contents of this appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honourable Court.

Dated: 26-04-2022

Through:

*Nisar Ahmed*  
Appellant  
(Nisar Ahmed)

*Inayat Ullah Khan Tareen*  
(Inayat Ullah Khan Tareen)  
Advocate High Court.

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

Service Appeal No. \_\_\_\_\_/2022.

Nisar Ahmed V/S

Government of Khyber Pakhtunkhwa  
through the secretary, Elementary and  
Secondary Education Department, Civil  
Secretariat Peshawar and others.

**SERVICE APPEAL**

**AFFIDAVIT**

I, Nisar Ahmed S/O Ghulam Gilani, R/O Village Shadi Hattar, Tehsil & District Haripur, do hereby solemnly affirm and declare on oath that the contents of accompanying Service Appeal are true and correct to the best of my knowledge and belief and nothing has been suppressed from this Honourable Tribunal.

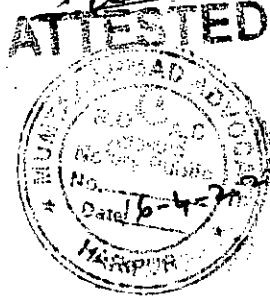
Dated: 26-04-2022

*Nisar Ahmed*  
Deponent

Identified by:

*Inayat Ullah Khan Tareen*

(Inayat Ullah Khan Tareen)  
Advocate High Court.



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

Service Appeal No. \_\_\_\_\_/2022.

Nisar Ahmed      VIS      Government of Khyber Pakhtunkhwa through  
the secretary, Elementary and Secondary  
Education Department, Civil Secretariat  
Peshawar and others.

**SERVICE APPEAL**

**ADDRESSES OF THE PARTIES**

**Appellant:**

Nisar Ahmed S/O Ghulam Gilani R/O Village Shadi Hattar, Tehsil &  
District Haripur.

**Respondents:**

1. Government of Khyber Pakhtunkhwa through the secretary,  
Elementary and Secondary Education Department, Civil Secretariat  
Peshawar.
2. Director Elementary and Secondary Education Khyber Pakhtunkhwa.
3. District Education Officer (Male) Haripur.

Dated: 26-04-2022

Appellant

(Nisar Ahmed)

Through

*Inayat Ullah Khan Tareen*  
(Inayat Ullah Khan Tareen)  
Advocate High Court.

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

Service Appeal No. \_\_\_\_\_/2022.

Nisar Ahmed V/S


Government of Khyber Pakhtunkhwa  
through the secretary, Elementary and  
Secondary Education Department, Civil  
Secretariat Peshawar and others.

**SERVICE APPEAL**


**CERTIFICATE**

It is certified that the appellant prefers the accompanying first appeal before this Honourable Tribunal. The Appellant did not file any appeal in this Honourable Tribunal.

Dated: 26-04-2022

  
Appellant  
(Nisar Ahmed)

Through:

  
(Inayat Ullah Khan Tareen)  
Advocate High Court.

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

Service Appeal No. \_\_\_\_\_/2022.

Nisar Ahmed V/S

Government of Khyber Pakhtunkhwa  
through the secretary, Elementary and  
Secondary Education Department, Civil  
Secretariat Peshawar and others.

**SERVICE APPEAL**

**LIST OF BOOKS**

- (1) Servant Act 1974.
- (2) K.P.K. Services Rules E&D 2011.
- (3) Other Ruling of High Courts, Superior Courts and Service Tribunal will be cited at the time of hearing.

Dated: 26-04-2022

Appellant  
(Nisar Ahmed)

Through:

Inayat Ullah Khan Tareen  
(Inayat Ullah Khan Tareen)  
Advocate High Court.

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

Service Appeal No. \_\_\_\_\_/2022.

Nisar Ahmed

....Appellant

**VERSUS**

Government of Khyber Pakhtunkhwa through the Secretary, Elementary and Secondary Education Department & others.

.....Respondents

**APPLICATION UNDER RULE-8 R/W RULE 27 OF KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL RULES, 1974 FOR CONDONATION OF DELAY IN FILING OF  
SUBJECT SERVICE APPEAL.**

Respectfully Sheweth:

1. That the applicant has filed the above titled appeal in this Hon'ble Tribunal.
2. That there is short delay in filing the service appeal due to the reasons beyond control of the appellant and unavoidable circumstances.
3. That the delay in filing the appeal is neither intentional nor willful, but due to the good and sufficient reason shown above and to be explained in arguments. Interest of justice demands that the present application is allowed and the delay in filing appeal is condoned so that the matter can be adjudicated upon on its merit.

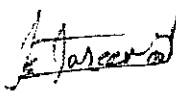
It is, therefore, most respectfully prayed that this application may kindly be allowed and the delay in filing the appeal may kindly be condoned and the matter may kindly be heard on its merit in the interest of justice.

Such other orders as deemed fit and proper in the facts and circumstances of the case may kindly also be passed.

Applicant  
(Nisar Ahmed)

Dated: 26-04-2022

Through:

  
(Inayatullah Khan Tareen)  
Advocate High Court

**Affidavit**

I, **Nisar Ahmed**, do hereby solemnly affirm and declare as under :-

1. That forgoing application has been prepared under my instructions. The contents of forgoing application are correct and true to the best of my knowledge.
2. That I further solemnly affirm and declare that this affidavit of mine is correct and true, no part of it is false and nothing material has been concealed therein.

Dated: \_\_\_\_\_

Deponent



OFFICE OF THE DISTRICT EDUCATION OFFICER (M),  
HARIPUR.

Annex 'A'

P/12

Phone Fax # 0995-610178

Email #deomalehrp@yahoo.com

Notification

- (a) In pursuance of Khyber Pakhtunkhwa Sacked Employee (Appointment) Act: 2012 and
- (b) In compliance with the Judgments passed by the Honorable Peshawar High Court, Abbottabad Bench in Writ Petition No-20-A/2014 and WP No-115-A/2013 vide order dated 25-05-2016 which was upheld by the august Supreme Court of Pakistan vide order dated 24-05-2017, and
- (c) in compliance with COC No-58-A/2016 & COC No-31-A/2017 vide order dated 08-05-2017 and
- (d) Consequent upon the recommendations of Departmental Selection Committee in its meeting held on 08-09-2017, the competent authority is placed to order the appointments of the following Sacked Employees in BPS-15 (Rs-16120-1330-56020) plus usual allowances as admissible under the rules against the post of TT and posted him/them against vacant position in the school mentioned against their name with immediate effect, on the terms and conditions given below.

S.No.	Name with CNIC.	Father's Name.	Date of Birth.	Station where posted.	Remarks.
1.	Nisar Ahmad 13302-599541-9	Ghulam Gilani	01-05-1960	Sawabi Macia	A.V.P

Terms & Conditions:

(A) Specific Conditions.

- (a) Their/his appointments are subject to the conditions that their/his Certificates/Documents and their domicile be verified from their issuing authority before release of their/his monthly salary in the light of section 3 of the said ACT.  
(b) The Verification of his/their service/duty record from schools where he/they had been performs his/their duty during previous appointments, during the period from 1<sup>st</sup> day of November 1993 to the 30<sup>th</sup> Day of November 1996 (Both Days inclusive) and terminated from the 1<sup>st</sup> day of November 1996 to 31<sup>st</sup> Day of December 1998.
- They/He shall not be entitled to claim any of Seniority, promotion and their back benefits, Their/his appointments have been made in pursuance of Khyber Pakhtunkhwa Sacked Employee (Appointment Act:2012) Hence under Section 5 of the said Act: they shall not be entitled to claim any of Seniority, promotion and their back benefits.
- The period during which they/he remained dismissed, removed or terminated from service till the date of their/his appointment shall have been deemed automatically relaxed. Their/His appointment have been made in pursuance of Khyber Pakhtunkhwa Sacked Employee (Appointment) Act:2012. Hence under Section 4 the said Act: the period during which their remained dismissed, removed or terminated from service till the date of their appointment shall have been deemed automatically relaxed.
- In case they/he failed to acquire the requisite training certificate within the 03 Years, specified by the department, their service: shall stand terminated automatically, in the light of Judgment passed by the Peshawar High Court Abbottabad bench dated 24.05.2016 in para 8 (IV).



Annex "B"

P/13

OFFICE OF THE DISTRICT EDUCATION OFFICER (M)  
HARIPUR

Ph. No. 0995-920150,920151,920152

KPESSED

Email:

Sanction:

Sanction is hereby accorded for grant of retirement from service in r/o Nisar Ahmed TT GMS Khoi ~~Maira~~ w.e.f 31-05-2020 AN on superannuation.  
*Nara*

He is entitled for grant of 32 days leave encashment in lieu of LPR on full average pay as due and admissible under the revised leave rules 1981.

- Note:
1. According to SSC Certificate/Service Book his date of birth is 01.06.1960.
  2. He was appointed as Sacked employee on 14.10.2017 under the Sacked Employee's act-2012( in the light of High Court Judgment W/P No-20-A/2014 & WP No-115-A/2013 dated 24.05.2017).
  3. His qualifying service is less than 09 year (02 Year-07month & 18 days). hence he is not entitled for pension.
  4. If any overpayment made to him during whole service that should be recovered from his dues relating to encashment/LPR.
  5. Necessary entry to this effect should be made in his Service Book accordingly.

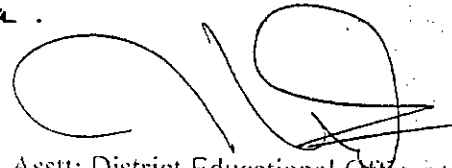
Sd\_\_\_\_\_

District Educational Officer (Male)  
Haripur


Endst No. 4157-60 /F.No.7-8/E.B/Retir: Case Dated Haripur: 23/07/2020

Cc.

1. The Senior District Account Officer Haripur.
2. PA to Director E&SED Khyber Pakhtunkhwa Peshawar.
3. The Headmaster GMS Khoi ~~Maira~~.
4. The B&A Officer local office. *Nara*
5. Office record file.

  
Asstt: District Educational Officer (Male)  
Haripur

Counter Sign

  
District Education Officer  
(Male) Haripur

**BEFORE THE DIRECTOR, ELEMENTARY AND  
SECONDARY EDUCATION KPK, PESHAWAR**

A.P.No. 384

Nisar Ahmed S/o Ghulam Gilani R/o Village Shadi Hattar Tehsil and District Haripur

...APPELLANT

VERSUS

District Education Officer (Male) Haripur.

...RESPONDENT

**DEPARTMENTAL APPEAL**

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7.	Copy of the officer order dated 16-07-2021 in identical cases	"F"	17-18
8.			

Dated:- 15/11/2021

...APPELLANT

1

0/15

**BEFORE THE DIRECTOR, ELEMENTARY AND  
SECONDARY EDUCATION KPK, PESHAWAR**

A.P.No. \_\_\_\_\_

Nisar Ahmed S/o Ghulam Gilani R/o Village Shadi Hattar Tehsil and  
District Haripur

...APPELLANT

**VERSUS**

District Education Officer, (Male) Haripur.

...RESPONDENT

---

**DEPARTMENTAL APPEAL AGAINST THE  
ORDER, DATED 11-08-2021 PASSED BY  
RESPONDENT WHEREBY THE APPLICATIONS  
OF THE APPELLANT FOR THE GRANT OF  
PENSIONARY BENEFITS WAS DISMISSED.**

---

*Respected Sir,*

1. That, the appellant were appointed by the respondent according to the prescribed method of recruitment in the year 1995 (Copies of the appointment order is annexed as Annexure "A")
2. That, the services of the appellant were illegally terminated in the year 1996-97. (Copies of the termination order is annexed as Annexure "B")
3. That in the year 2012, sacked employees (Appointment) Act 2012 KPK was promulgated. Department was bound to reinstate/ reappoint the appellant as

per criteria mention in the said act but appellant was not appointed under the said act.

4. That later on, in compliance with the judgment passed by this Honourable Court dated 24/05/2016 which was up held by the August Supreme Court of Pakistan vide order dated 24/05/2017, Appellant were reappointed / reinstated in service in the year 2017.
5. That after reappointment, appellant again served in the Department and was retired on superannuation in the year 2020. **(Copy of retirement certificates are annexed as Annexure "C")**.
6. That upon retirement, respondent was bound to pay all the pensionary benefits to the appellant but respondent failed to pay pension to the appellant. Appellant moved numerous applications for the grant of pensionary benefits but respondent vide order dated 11-08-2021 dismissed the applications of the appellant. **(Copy of order dated 11-08-2021 is annexed as Annexure "D")**.
7. That feeling aggrieved appellant hereby prefers departmental appeal interalia on the strength of following grounds amongst others.

**GROUND:-**

- a) That the impugned order dated 11-08-2021 is illegal, unlawful, callous, hence liable to be struck down.
- b) That the impugned order is arbitrary, perverse, fanciful and against the legitimate expectation of the appellant.
- c) That the impugned order dated 11-08-2021 has been passed in blatant violation of the judgments passed by the superior forums hence liable to be setaside.

- d) That while passing the impugned order respondent has completely overlooked the judgment passed by the Hon'able Supreme Court dated 27-03-2020 wherein it was held that petitioners (Sacked employees) will be allowed counting of their service for the protected period for the payment of pensionary benefits. (Copy of the judgment of Hon'able Apex Court is annexed as Annexure "E").
- e) That in identical cases, similarly placed employees have been given all the pensionary benefits but vide impugned order, appellant has been deprived of his pension totally on flimsy grounds. (Copy of the officer order dated 16-07-2021 in identical cases is annexed as Annexure "F").
- f) It is also pertinent here to mention that the law department also cleared / elaborate the judgment passed by the Hon'able apex court that the period remained out of service is to be treated as leave of the kind due and thereby the said period shall be counted towards pension.
- g) That the impugned order is passed in an arbitrary manner and rules on the subject and fair opportunity of hearing has also not been afforded to the petitioner. Thus the impugned order is illegal, without lawful authority being violation of the principles of natural justice.
- h) That the petitioner has more than 10 years unblemished service record and has served the department with utmost devotion and dedication. Respondent was bound to decide the application of the petitioner in accordance with law and rules on the subject and keeping in view the dictum laid down by the Hon'able apex court but the impugned order has laid down by the superior court hence liable to be turned down.
- i) That the appellant is sole bread winners of his families and has no other source of income by which he could feed his family and meet hid expenditure. Appellant is waiting for long time to get his pension /pensionary benefit which has been illegally refused by the respondent.

**PRAYER:-**

It is, therefore, most humbly prayed that on acceptance of the instant appeal the impugned order dated 11-08-2021 passed by respondent by dismissing the applications of appellant and not granting any pensionary benefits may please be declared illegal, arbitrary, against the fundamental rights and be struck down and the respondent may please be directed to pay the pension along with pensionary benefits to the appellant counting from the period of their initial appointment in the year 1995 till the date of their retirement.

...APPELLANT

*X.M. and*  
Nisar Ahmed S/o  
Ghulam Gilani T.T.

R/o Village Shadi Hattar  
Tehsil and District Haripur

Dated: 15.11/2021

Annex D  
P/18-a

**OFFICE OF THE DISTRICT EDUCATION OFFICER (M)**

**HARIPUR**

Ph. No. 0995-920150, 920151  
Email: deomalehrp@gmail.com

KPESSED

No. 3998-4000 /F No. 7-1 /lit./HRP

Dated 11 / 08 / 2021

To,

Mr. Nisar Ahmad S/O Ghulam Geelani  
Ex-TT GMS Khoi Maira, R/O  
Village Shadi, Hattar, Tehsil & District Haripur.

Subject:- **DECISION ON DEPARTMENTAL APPEAL FOR GRANT OF PENSIONARY BENEFITS**

Memo:

With reference to the subject noted above it is decided that:-

7. According to SSC Certificate/Service Book date of birth of appellant is 01-06-1960.
8. He was appointed as sacked employees (fresh appointment) on 14-10-2017 through WP No. 20-A/2014 and WP No. 115-A/2013 dated 24-05-2017.
9. The total time period of his service is 02 years 07 months and 18 days.
10. As per Article 404-A of the Civil Service Regulations (CSR) Revised Addition 2014, qualifying service for pensionary benefits and gratuity is 10 years as provided in the Article "No officer can claim the benefits of this article unless his actual qualifying service at the time he quits Government Service is not less than 10 years"
11. As per Section 05 of the Khyber Pakhtunkhwa Sacked Employees "A Sacked Employee appointed under section 03 shall not be entitled to any claim of seniority, promotion or other back benefits and his appointment shall be considered as fresh appointment"
12. His total service is less than 10 years.

Keeping in the view of above the appellant is not entitled for pensionary benefits and gratuity, hence the appeal is hereby dismissed.

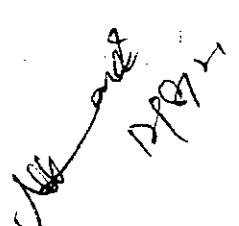
  
District Education Officer (M)  
Haripur

Even No. & Date:

Copy forwarded for information to the:-

1. Registrar Peshawar High Court Abbottabad Bench.
2. PA to Director E&SE Khyber Pakhtunkhwa, Peshawar.
3. Office Copy.

  
District Education Officer (M)  
Haripur



Annex - "E"

P/19

IN THE SUPREME COURT OF PAKISTAN  
(APPELLATE JURISDICTION)

PRESENT:  
MR. JUSTICE GULZAR AHMED, H.C.J.  
MR. JUSTICE JAZ UL AHSAN

CIVIL PETITIONS NO. 468-P, 469-P, 471-P & 472-P OF  
2016.

Against the judgment dated 12.07.2016 passed by the Khyber Pakhtunkhwa  
Service Tribunal Camp Court, Swat in Appeals No. 1202 and 1203 of 2013

Muhammad Sheryar,  
In CPs 468-P & 469-P

Anwar Zeb,  
In CPs 471-P & 472-P

The Secretary to Education (E&S), Government of Khyber  
Pakhtunkhwa, Peshawar and others.  
In CPs 471-P & 472-P

...Petitioner(s)

Versus

The Secretary to Education (E&S), Government of Khyber  
Pakhtunkhwa, Peshawar and others.  
In CPs 468-P & 469-P

Muhammad Sheryar,  
In CPs 471-P & 472-P

Anwar Zeb,  
In CPs 471-P & 472-P

...Respondent(s)

For the Petitioner(s):

Mr. M. Asif, ASC.  
(For Petitioners in CPs 468-P & 469-P &  
For Respondents in CPs 471-P & 472-P)

Barister Qasim Wadood, Addl.  
A.O.-KP.  
(In CPs 471-P & 472-P)

Date of Hearing:

27.03.2020.

ORDER

GULZAR AHMED, C.J. - We have heard the learned  
Additional Advocate General, Khyber Pakhtunkhwa appearing  
for the Petitioners in Civil Petitions No.471-P and 472-P of

CTC  
Waqar Noor  
**ATTESTED**



P/20

2016 as well as Mr. Muhammad Asif, learned ASC for the petitioners in Civil Petitions No.468-P and 469-P of 2016. The petitioners in Civil Petitions No.468-P and 469-P of 2016 (to be referred as the petitioners) were employed as PTC Teachers. Their services were terminated in the year 1997 against which they filed service appeals before the Khyber Pakhtunkhwa Service Tribunal ("the Tribunal") which vide judgment dated 04.01.2013 accepted the appeals with direction to the Respondents to consider their grievances. Pursuant to this direction of the Tribunal, the petitioners were reinstated in service, vide Office Order dated 05.07.2013 from the date of their taking charge but back benefits were not allowed to them for the period they remained out of service. The petitioners again filed service appeals before the Tribunal which vide impugned judgment dated 12.07.2016 accepted the appeals.

C.T.C  
Waqar Waqar  
**ATTESTED**

2. The learned counsel for the petitioners contends that the petitioners were entitled to grant of back benefits but we are unable to see as to how such back benefits could have been allowed to them more so when in the earlier judgment of the Tribunal dated 04.01.2013 no such relief was allowed to the petitioners and by the impugned judgment dated 12.07.2016 also apparently no such relief has been granted to them. He adds that some other similarly placed employees have been given back benefits.

3. We have asked the learned counsel for the petitioners to show us as to whether in the memo of appeal

before the Tribunal such point has been urged or any other ground in this regard was taken. He went through the memo of appeal and conceded that no such assertion in the memo of appeal was taken by the petitioners. The Tribunal has disallowed back benefits to the petitioners twice and it is obvious that such has been disallowed to the petitioners for the reason that they have not served the department for the said period and there is no material on record on the basis of which relief of back benefits could be allowed to them. There appears no illegality in the impugned judgment. Even otherwise, no substantial question of law of public importance in terms of Article 212(3) of the Constitution of the Islamic Republic of Pakistan, 1973 has been raised.

5. For what has been discussed above, all the listed petitions being devoid of merit stand dismissed and leave to appeal is refused.

6. It is however observed that the petitioners will be allowed counting of their service for the protected period for payment of pensionary benefits.

*CFC*  
*Waqar Nigam*  
**ATTESTED**

2009 SCMR P-1

ISLAMABAD  
27.03.2020  
ZB/  
Not Approved For Reporting

*[Faded signature and stamp area]*

Area 85  
0/25

**OFFICE ORDER**

Whereas Mr. Muhammad Shereyaz S/O Muhammad Shariq, vide office order No. 1453-55/M-2/T&A dated 17.4.1995 and Mr. Anwar Zeb S/O Hina, vide office order No. 1453-55/M-2/T&A dated 21.5.1995 were appointed as the vide office order No. 1453-55/M-2/T&A dated 21.5.1995.

Whereas their appointments were found to be *ab initio* void and against the prescribed rules and were dispensed with immediate effect vide office order Endst No. 581-607 dated 13.2.1997. Whereafter they filed Service Appeal No. 532/2008 under title "Muhammad Shereyaz VS ACO etc" and Service Appeal No. 533/2008 under title "Anwar zeb VS ACO etc" before the Khyber Pakhtunkhwa Service Tribunal/Peshawar, which were accepted by the Honorable Tribunal vide judgment dated 3.1.2013 and directed the respondents to consider the grievances of the appellants.

Whereas in compliance of the said judgment, the appellants were re-instated vide office order Endst No. 77-32/RST (M)/Apptt. dated 5/7/2013 and posted them at GPS, Khakhtoy and GPS, Peshawar respectively, but back benefits were not given to them.

Whereas feeling aggrieved from the said re-instatement order, the appellants filed Service Appeal No. 1-02/2013 and 1203/2013 before the Khyber Pakhtunkhwa Service Tribunal/Peshawar, which were accepted by the Honorable Tribunal and directed the respondents to nullify the impugned order and directed to extend the benefits of the previous services to the appellants and further directed that the period in which they remained out of service shall be treated as leave of the kind due.

Whereas the respondents as well as the appellants filed CPAs in the apex court against the said judgment. The Honorable court dismissed both CPAs and leave refused vide judgment dated 27.3.2020, however in the last Para of the judgment, the Honorable Court allowed counting of their service for the protected period for payment of pensionary benefits.

Whereas the office sought guidance/legal opinion about the last Para specifically the unaccounted period from law department through proper channel.

Whereas the law department cleared the judgment in the following words:  
"The service Tribunal has extended the service benefits of the previous service of the appellants and the period remained out of service was treated as leave of the kind due during the period in which the appellants remained out of service. It be treated as an leave of the kind due during the period in which they remained out of service."

Now in view of the above factual position, the re-instatement order dated 5/7/2013 (appellants Mr. Muhammad Shereyaz and Mr. Anwar Zeb) is hereby confirmed and the respondents are directed to consider the grievances of the appellants.

8/23

provides service from 21/5/1995 and 17/4/1995 respectively  
the period in which they remained out of service  
leave of the kind due and thereby the said period

from 2/10/71 to 15/1/81 and  
from 1/9/71 to 5/7/2013 is to be treated as  
leave counted towards pensionary benefits

as mentioned in the re-instatement  
order dated 10/07/2013

On the terms and conditions mentioned  
in the order dated 10/07/2013

(SUJAMMAD RIAZ)  
DISTRICT EDUCATION OFFICER  
(MALE) SWAT

Dated 16/07/2021

Encl: No. 242-46-Swat

Copy forwarded to:-

- 1. The Director Elementary and Secondary Education Khyber Pakhtunkhwa Peshawar.
- 2. The District Educational Officer (Male) Swat.
- 3. The SOEDS (M) Mardan and Charbagh Swat.
- 4. The DEO (M) Local Office.
- 5. The teachers concerned.

DISTRICT EDUCATION OFFICER  
(MALE) SWAT





Office of the District Education Officer (Male) P/24

PH No. 0995-610178, 610268

No. 3512 /7-1/Instl/Vef/Deg:  
Dated 03 / 04 /2018.

**CERTIFICATE.**

Certified that Mr. Nisar Ahmed S/o Ghulam Jilani has been appointed as TT BPS (15) at GMS Swabi Miara (Newly appointed as Sacked employee) Vide this Office Endst No. 1122-39/3-1/EB/Apptt:Sacked 17 dated 13.10.2017.

His Certificates/Degrees has been verified through this office from concerned Board and found correct.

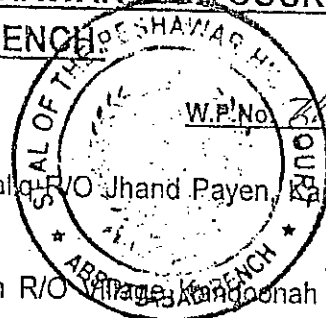
1. SSC.
2. Aama.

BISE Peshawar.  
Jamia Shamsia Lahore.

Dy; Dist: Education Officer (M)  
Haripur.

P/25

BEFORE THE HONURABLE PESHAWAR HIGH COURT,  
ABBOTTABAD BENCH



1. Muhammad Rasheed s/o Abdul Khalid R/O Jhand Payen, Karori, Tehsil oghi, District Mansehra.
2. Sher Bahadur S/O Samundar Shah R/O Village Khandoonah P/O Kheroach, village sirikot, Tehsil And District Haripur.
3. Nisar Ahmed S/O Ghulam Gilani R/O Village Shadi Hattar Tehsil And District Haripur.

...PETITIONERS

**VERSUS**

1. Government of KPK through secretary Elementary and secondary Education KPK Peshawar.
2. Director (E & SE) KPK Peshawar
3. District Education Officer ( Male) Haripur.
4. District Education Officer ( Male) Manshera.

No. 3905  
17-06-21

WRIT PETITION UNDER ARTICLE 199 OF  
CONSTITUTION OF ISLAMIC REPUBLIC OF  
PAKISTAN 1973 AS AMENDED UP TODATE.

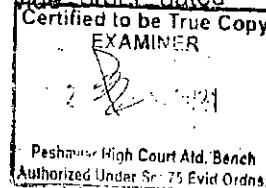
**FILED TODAY**  
ADDITIONAL REGISTRAR  
PESHAWAR HIGH COURT  
ABBOTTABAD BENCH  
17/6/21

Certified to be True Copy  
EXAMINER  
2  
Peshawar High Court Atd Bench  
Authorized for Sec. 73 Evid Ordns.

Respectfully Sheweth,

1. That, the petitioners were appointed by the respondent according to the prescribed method of recruitment in the year 1995 (Copies of the appointment order are annexed as Annexure "A")
2. That, the services of the petitioner were illegally terminated in the year 1996-97 by the respondents. (Copies of the termination orders are annexed as Annexure "B")
3. That in the year 2012, sacked employees (Appointment) Act 2012 KPK was promulgated. Respondents were bound to reinstate/ reappoint the petitioner as per criteria mention in the said act but respondent did not appoint the petitioners under the said act.
4. That later on, in compliance with the judgment passed by this Honourable Court dated 24/05/2016 which was up held by the August Supreme Court of Pakistan vide order dated



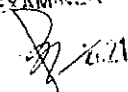
EX-100-10000  
ADDITIONAL REGISTRAR  
PESHAWAR HIGH COURT  
ABBOTTABAD BENCH  
a 7/6/17

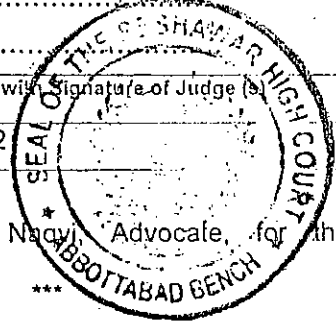


1127

PESHAWAR HIGH COURT, ABBOTTABAD BENCH.  
FORM OF ORDER SHEET

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

Date of Order of Proceedings	Order or other Proceedings with Signature of Judge (s)
1	2
23.06.2021	<p><u>WP No. 746-A/2021</u></p> <p>Present: Syed Waqas Nazyli, Advocate, for the petitioners.</p> <p style="text-align: center;">***</p> <p><b>SHAKEEL AHMAD, J.-</b> At the very outset, learned counsel for the petitioners stated at the bar that petitioners would not press this writ petition anymore, if the case of the petitioners is sent to the concerned departments / respondents for redressal of their grievances.</p> <p>In view of the above, this petition is dismissed being not pressed. However, the competent authority is directed to decide the fate of the appeal already submitted by the petitioners within a period of one (01) month from the date of receipt of this order, positively, strictly in accordance with law.</p> <p style="text-align: right;">   <b>JUDGE</b> </p> <p style="text-align: right;">   <b>JUDGE</b> </p> <div style="border: 1px solid black; padding: 5px; width: fit-content; margin: 10px auto;"> <p>Certified to be True Copy EXAMINER</p> <p>7  2021</p> <p>Peshawar High Court Atd. Bench Authorized Under Sec: 75 Evid Ordns.</p> </div>



(Arshad Iqbal)

Hon'ble Justices Mohammad Ibrahim Khan & Shakeel Ahmad



