


20.09.2022

Learned counsel for the appellant present. Mr. Zahid Ullah Khan, Litigation Officer on behalf of respondents No. 1 to 3 alongwith Mr. Muhammad Adeel Butt, Additional Advocate General present. None present on behalf of official respondent No. 4 as well as private respondents No. 5 to 7.

Written reply on behalf of official respondents No. 1 to 3 submitted, which is placed on file and copy of the same is handed over to learned counsel for the appellant.

Previous two consecutive dates were changed on Reader Note, therefore, notice be issued to respondents No. 4 to 7 through registered A.D with the direction to submit written reply/comments on the next date positively, failing which their right for submission of written reply/comments shall be deemed as struck of. Adjourned. To come up for submission of written reply/comments on behalf of respondents No. 4 to 7 on 04.11.2022 before the S.B.

The appellant shall submit registered A.D within 02 days.


(Salah-Ud-Din)
Member (J)

04.11.2022

Clerk of counsel for the appellant present.

Kabir Ullah Khattak, learned Additional Advocate General for respondents present.

File to come up alongwith connected Service Appeal No. 12780/2020 titled "Shams Un Nehar Vs. Education Department" on 15.12.2022 before S.B.


(Rozina Rehman)
Member (J)


27.06.2022

Appellant alongwith his counsel present.

Learned Member (Executive), is on leave.
Therefore, the case is adjourned to 08.08.2022
for the same as before.


READER

8.8.2022 Due to the Public Holiday
The case is Adjourned to 20-9-2022


Reader.

14.12.2021

Counsel for the appellant present. Mr. Noor Zaman Khattak,
District Attorney for respondents present.

Written reply/comments not submitted. Learned District
Attorney seeks time to contact the respondents for submission of
written reply/comments. Fresh notice be issued to the
respondents for submission of written reply/comments.
Adjourned. To come up for written reply/comments on
23.02.2022 before S.B.


(MIAN MUHAMMAD)
MEMBER (E)

23 .02.2022

Due to retirement of the Hon'able Chairman, the case is
adjourned to 9.05.2022 for the same before D.B.


Reader

09.05.2022

Junior to counsel for appellant present.

Kabir Ullah Khattak learned Additional Advocate
General alongwith Haseen Ullah Assistant for respondents
present.

File to come up alongwith connected Service Appeal
No.12780/2020 titled Shams un Nihar Vs. Government of
Khyber Pakhtunkhwa 27.06.2022 before S.B.


(Rozina Rehman)
Member (J)

Stipulated period passed reply not submitted.

29.07.2021

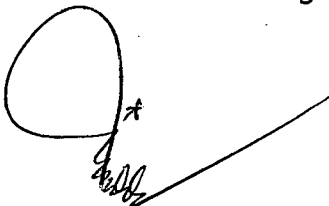
Learned Addl, A.G be reminded about the omission and for submission of reply/comments within extended time of 10 days.



Chairman

06.10.2021

Ms. Najma Kamran, Advocate, for the appellant present and submitted fresh Wakalat Nama on behalf of the appellant, which is placed on file. Ms. Surrya, District Education Officer (F) and Mr. Mujeeb-ur-Rehman, Assistant Accounts Officer alongwith Mr. Kabirullah Khattak, Additional Advocate General for official respondents present and sought time for submission of reply/comments. Adjourned. To come up for reply/comments as well as arguments on 14.12.2021 before the D.B.

None present on behalf of private respondents No. 5 to 7 therefore, notice be issued to them for submission of reply/comments as well as arguments for the date fixed.


(MIAN MUHAMMAD)
MEMBER (E)


(SALAH-UD-DIN)
MEMBER (J)

10.06.2021

Counsel for the appellant present. Preliminary arguments heard.

Points raised need consideration. The appeal is admitted to regular hearing, subject to all legal and just objections. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for submission of written reply/comments in office within 10 days after receipt of notices, positively. If the written reply/comments are not submitted within the stipulated time, the office shall submit the file with a report of non-compliance. File to come up for arguments on 26.10.2021 before the D.B.

Appellant Deposited
Security & Process Fee



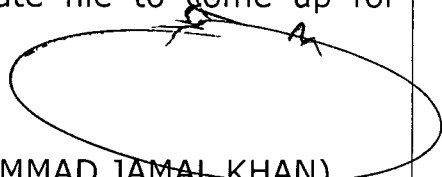

10/6/21


Chairman

FORM OF ORDER SHEET

Court of _____

Case No.- 12929 /2020 20

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	28/10/2020	<p>The appeal resubmitted today by Mr. Masood-ur-Rehman 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-		<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>30/11/2020</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
30.11.2020		<p>Neither appellant nor anyone else representing him has appeared despite having been called time and again, therefore, appellant as well as his respective counsel be noticed for 24.02.2021 on which date file to come up for preliminary hearing before S.B.</p> <p style="text-align: right;"> (MUHAMMAD JAMAL KHAN) MEMBER (JUDICIAL)</p>
24.02.2021		<p>The learned Member Judicial Mr. Muhammad Jamal Khan is under transfer, therefore, the case is adjourned. To come up for the same before S.B on 10.06.2021.</p> <p style="text-align: right;"> Reader</p>

(2)

To,

The Registrar,
KPK Service Tribunal,
Peshawar .

SUBJECT: Application under Khyber Pakhtunkhwa Service Tribunal Rules, 1974, under Rule.6 clause (e) sub clause G for waiving of Judgment of Peshawar High Court Abbottabad Bench.

Dear Sir,

That petitioner counsel file appeal for back benefit on behalf of appellant and in office objections in para 2 of the objections for submitting Peshawar High Court Abbottabad Bench.

That petitioner annexed the judgment of Peshawar High Court Bannu Bench in which all the judgments are discussed and petitioner counsel will submit judgment of Abbottabad Bench during course of arguments.

It is, therefore, requested that Khyber Pakhtunkhwa Service Tribunal Rules, 1974, under Rule.6 clause (e) sub clause G Judgment of Peshawar High Court Abbottabad Bench may kindly be waived for the ends of justice.

Dated: 16/10

Masood Ur Rahman Advocate
Peshawar High Court
Bannu Bench

Objection no. 7 is still stands
The appeal in hand is returned to
his counsel for completion and
resubmission within 15 days.

no 3023 /S.T
dt. 24/10/2020

Registrar

R/ sir

After renewal of office
objection appeal is submitted
once again.

J
26/10


The joint appeal of M/S Muhmtaz Khan and Zareen Khan received today i.e. on 06 .10.2020 is in complete on the following score which is returned to the counsel for the appellants for completion and resubmission within 15 days.

- ① Addresses of respondent no. 5 to 7 are incomplete which may be completed according to the Khyber Pakhtunkhwa Service Tribunal rules 1974.
- 2- Copies of Writ petition and judgment of Peshawar High Court Abbottabad Bench mentioned in para-3 and 5 of the memo of appeal respectively are not attached with the appeal which may be placed on it.
- 3- Annexure-B, C and E of the appeal are illegible which may be replaced by legible/better one.
- ④ Sub-rule- 2 of rule-3 of the appeal rules 1986 requires that every affected civil servant shall prefer the appeal separately. Therefore, the appeal of the above named appellants may be filed separately/individually.
- 5- Annexures of the appeal may be attested.
- 6- Annexures of the appeal may be flagged.
- ⑦ Three copies/sets of the appeal along with annexures i.e. complete in all respect for Tribunal and one for each respondent in each appeal may also be submitted.

Two more copies

No. 2850 /S.T

Dt. 06/10/2020


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Masoodur-Rehman Wazir
Adv. High Court Bannu

Respected sir,

- 1- Address of Res. Nos 5 to 7 are included in memo of address of parties.
- 2- placed on record.
- 3- Annexure are replaced.
- 4- For Zareen separate appeal is filed.
- 5- Annexure is already attested by counsel with Benarati CTC (Certified to Be True Copy).
- 6- annexure are flagged.
- 7- In Murat already submitted 7 copy and for Zareen also submitted 7 copy.

⑦

**BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR**

Service Appeal No. 12929/2020.

Zarin Khan

...(Appellant)

Versus.

Government of Khyber Pakhtunkhwa through Secretary Education Khyber
Pakhtunkhwa Civil Secretariat Peshawar and others.

.....Respondents / defendants

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S#	Description of documents	Annexed as	Page(s)
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4.	Copy of Advertisement	"A"	7
5.	Copy of writ Petition	"B"	8 - 12
6.	Copy of Court Order	"C"	13 - 25
7.	Copy of Appointment order	"D"	26
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10.	Copy of registry receipts	"G"	35
11.	Wakalatnama		

Dated:

Appellants

Zarin Khan

Through,

Masood Ur Rehman Wazir
Advocate, High Court, Bannu

03339740590

*Noted After office objection
separate appeal is filed*

16/10

①

**BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR**

Service Appeal No. 12929 /2020.

Zarin Khan S/O Gul Marjan PST Teacher posted at GPS Hamesh Gull Kaki.

...(Appellant)

Versus.

1. Government of Khyber Pakhtunkhwa through Secretary Education Khyber Pakhtunkhwa Civil Secretariat Peshawar.
2. Director Education Khyber Pakhtunkhwa Peshawar.
3. District Education Officer Male Bannu.
4. District Account Officer Bannu.
5. Farooq Khan S/O Muhammad Arif PTC Teacher R/O Sabo Khel Mandan Bannu posted at GPS Sabo Khel Mandan Bannu.
6. Raqiaz Khan S/O Bahader Sher PTC Teacher R/O Mandew District Bannu posted at GPS Mandew Khas Bannu.
7. Atta Ullah Khan S/O Wali Ayaz Khan PTC Teacher R/O Mumir Khas District Bannu.

.....Respondents / defendants

SERVICE APPEAL U/S 4 OF KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL ACT 1974 FOR GRANT OF SENIORITY/ARREAR OF PAY
AND OTHER BACK BENEFITS W.E.F 30/05/2000 TO 29/07/2017
WHICH IS GRATED TO RESPONDENTS NO.5 TO 7 ALONGWITH
ABOVE HUNDRED OTHER CANDIDATES WHO ARE APPOINTED
THROUGH COURTS ORDER FROM 25% QUOTA A.I.O.U
QUOTA AND DENIED TO PETITIONERS WHICH
DISCRIMINATORY AND VIOLATION OF ARTICLE 25
CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN 1973.

Re-submitted to -day
and filed.

Registrar

**PRAYER: ON ACCEPTANCE OF INSTANT SERVICE APPEAL AND
GRANTING SENIORITY ARREAR OF PAY AND OTHER
BACK BENEFITS WHICH IS GRANTED TO RESPONDENTS
NO.5 TO 7 ALONGWITH ABOVE HUNDRED OTHER PST**

(2)

TEACHERS APPOINTED FROM 25% QUOTA A.I.O.U
1999 AND OTHER PST TEACHERS FROM 30/05/2000
TILL THEIR APPOINTMENT ORDER WHO ARE
STANDING ON SAME FOOTING HENCE PETITIONERS
MAY BE GRANTED SENIORITY ARREAR OF PAY AND
OTHER BACK BENEFIT.

RESPECTFULLY SHEWETH:

- 1) That, respondent No.1 to 4 issue advertisement for appointment of PTC teacher on dated 07/02/1999.
(Copy of advertisement as annexure "A")
- 2) That, on response appellant submitted application for appointment appeared in test and interview and denied appointment on the soul ground that he has got PTC certificate from Ilama Iqbal Open University Islamabad.
- 3) That, the august Supreme Court of Pakistan in C.A No. 1904, 1906, 1907 of 2000 decided that all certificates are equal hence in 2004 in writ petition No.75/2004 titled Shaukat Ullah VS Provincial Government 25% quota is allocated to those candidate who are denied from appointment in 1999. (Copy of writ petition is annexure as "B")
- 4) That on dated 29/07/2017 Petitioners are appointed as PTC teachers on direction of Court from 25% denied candidate quota and upto High Court Judgment is maintained. (Copies of Court order and appointment order are annexed as C & D)
- 5) That respondent No. 5 to 7 along with other hundred PTC teachers who are appointed on denied 25% quota were given seniority arrear of pay and other back benefits on the direction of Honourable Peshawar High Court Bench Bannu and writ petition No. 242-B/2014 and writ petition No.543A/2012 titled Baber Ilahi vs

Govt of KPK & other decide by Peshawar High Court Abbottabad Bench. **(Copy of the Judgment of PHC Bannu Bench is annexed as E)**

- 6) That petitioners made departmental appeal on dated 09/06/2020 to the respondent No.1 but till date not decided hence approach this Honourable Service Tribunal enter alia the following grounds. **(Copies of service appeals & registry receipt are annexed as F, G & H, I).**

GROUND:

- A) That, petitioners are not treated according to law, rules and regulations and as per Judgment deliver by the Peshawar High Court Bannu Bench and Abbottabad Bench and it is well established principle of law that once question of law is decide a competent forum then its benefits will be also extended to those Civil Servant who are not before the Court (2009 SCMR page 1).
- B) That, respondents made discrimination to giving back benefits seniority arrears to respondents No.5 to 7 along with hundred others while refusing to appellants which is against norms of good administration.
- C) That, when from same merit list interview list giving back benefit of service from 2000 while refusing to appellant is against article 25 of the Constitution of Islamic Republic of Pakistan 1973 and against legitimate expectation, good governance.
- D) That, every monthly pay giving fresh cause of action to the petitioner hence petitioner is entitled to claim seniority along with other benefits granted to others appointees of 25% quota while refusing to appellants so coming in the ambit of term & condition of civil servant hence this tribunal has got the jurisdiction and appeal of the appellant is with in time.

4

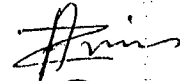
That, appellant is victim of the discriminatory treatment and it is the for most duty of the Court/Tribunal to save the citizen/employees from discriminatory treatment and decide the fundamental rights granted by the Constitution of Islamic Republic of Pakistan 1973 which is coming in the ambit of this Honourable Tribunal.

It is, therefore, humbly prayed that on acceptance of instant service appeal and appellants may granted seniority, arrear of pay and other back benefits from 30/05/2000 till 29/07/2017 which is granted to respondents and other PST teachers from 30/05/2000 till appointment order who are standing on same footing as appellant.

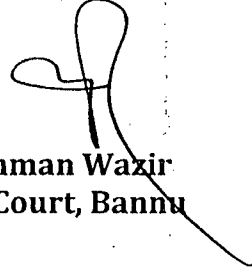
Dated: 16-10-20

Appellant

Zarin Khan




Through,



Masood Ur Rehman Wazir
Advocate, High Court, Bannu

Note:- After office objection in Joint appeal of Muntaqz where present appellant is also petitioner/oppnt submitted separate appeal

Court of the
of appeal.



5

BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR

Service Appeal No. _____/2020.

Zarin Khan.

...(Appellants)

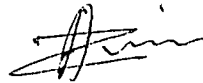
Versus.

Government of Khyber Pakhtunkhwa through Secretary Education Khyber
Pakhtunkhwa Civil Secretariat Peshawar and others.

...Respondents / defendants

Affidavit

I Zarin Khan S/O Gul Marjan PST Teacher posted at GPS Hamesh Gull Kaki,
do hereby solemnly affirm and declare that the contents of the above
noted appeal are true correct and noting has been kept secret or
concealed from this Honourable Court.



Deponent
Zarin Khan

SEEMAN LIGNAN
Cath...
Dist...

6

**BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR**

Service Appeal No. _____/2020.

Memo of addresses.

Zarin Khan S/O Gul Marjan PST Teacher posted at GPS Hamesh Gull Kaki.

...(Appellant)

Versus.

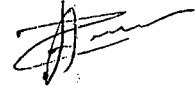
1. Government of Khyber Pakhtunkhwa through Secretary Education Khyber Pakhtunkhwa Civil Secretariat Peshawar.
2. Director Education Khyber Pakhtunkhwa Peshawar.
3. District Education Officer Male Bannu.
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7. Atta Ullah Khan S/O Wali Ayaz Khan PTC Teacher R/O Mumir Kaki District Bannu.

.....Respondents / defendants

Dated:

Appellant

Zarin Khan



Through,

**Masood Ur Rehman Wazir
Advocate, High Court, Bannu**

Better Copy (8)

Amex B

JUDGMENT SHEET

IN THE PESHAWAR HIGH COURT D.I KHAN BENCH

JUDGMENT

Date of hearing. 28/04/2004

Appellant/Petitioner:

Respondents:

TARIQ PARVEZ KHAN, J: by this common judgment we intend to dispose of Writ Petition No.75/03, 120/03 and 43/04 as all the petitioners in the three petitions are holder of Primary Teaching Certificate but from Allama Iqbal Open University.

1. They all applied for their appointment in the Education Department but were denied the appointment on the basis of a policy then prevalent i.e. if there shall be available vacancies of PTC Teachers, the education Department shall advertise it. 25% shall be filled on District wise basis and 75% on the basis of Union Council/batch wise. It was further subjected to those candidates who have qualified/obtained their Primary Teaching Certificate from Government Elementary Schools/Collage/Institutions shall get preference over candidates who have similar qualification i.e from Allama Iqbal Open University.

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(8)

Amud B

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT, D.I. KHAN BENCH
(JUDICIAL DEPARTMENT)

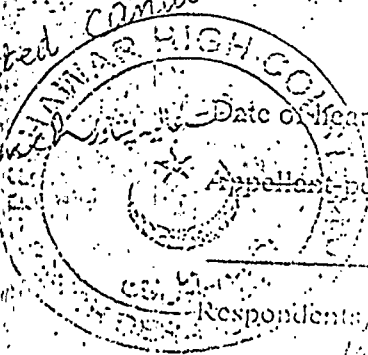
No. 75 of 2003

JUDGMENT

Date of hearing: 28-4-2004

Appellant/petitioner: Shaukatullah & Jany S. Zafar others

Respondents: Govt. of NWFP
through Secretary Primary Education
District Mardan
Mr. Faris Nazki I.D.O. B...



Handwritten notes on the right side of the page, including 'CFC', 'CW', 'N.S.', and other illegible markings.

TARIO PARVEZ KHAN, J. - By this common judgment

we intend to dispose of Writ Petitions No: 75/03, 120/03 and 45/04 as all the petitioners in the three petitions, are holder of Primary Teaching Certificate but from Allama Iqbal Open University

They all applied for their appointment in the Education Department but were denied the appointment on the basis of a policy then prevalent i.e. if there shall be available vacancies of PTC teachers, the Education Department shall advertise it. 25% shall be filled on District wise basis and 75% on the basis of Union Council/batch wise. It was further subjected to those candidates who have qualified/obtained their Primary Teaching Certificate from Government Elementary Schools/College/institutions shall get preference over candidates who have similar qualification i.e. from Allama Iqbal Open University.

Vertical handwritten notes on the left margin. The most prominent note reads '25% Quota reserved candidates'. Other notes include 'D.I. Khan Bench' and some illegible scribbles.

ATTESTED
JUDGE
Peshawar High Court,
D.I. Khan Bench

They are

Small rectangular stamp or mark at the bottom right corner.

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etc

2. At some stage in our province difference of opinion arose between the two benches of equal jurisdiction, therefore, matter was placed before a full bench of this Court in Writ Petition No. 374/98 (Darber Elahi and others VS Director of Education Primary Schools NWFP Peshawar and others). The Full Bench on 20/05/2000 held that certificate obtained from Government Institutions and the one obtained from Allama Iqbal Open University should be taken not only equal but as par and if the then policy of the Govt. was allowed to continue was held to be discriminatory.
3. The Government dissatisfied from the Full Bench Judgment of this Court filed petition before august Supreme Court of Pakistan as well as certain private individuals and the august Supreme Court upheld the decision of this Court vide judgment dated 28/05/2002 and in para 7 of its judgment observed as under:-

In most of the appeals, learned counsel stated at the Bar that the appellants/respondents were duly selected by the relevant selection committees of the government on merits but their appointments have been withheld on account of order of status quo passed by this Court while granting leave to appeal on 17/08/2000. Since these appeals are being finally disposed of such selectees subject to academic qualifications shall be immediately appointed to their respective posts as, prima facie: there is no other embargo in their way. We are informed at the Bar that a large number of vacancies of PTC Teachers, exist at the moment. Such of the appellants who were non-suited in C.A No. 1910 of 2000 shall be sympathetically considered for appointment in the first instance and, if they are otherwise qualified and suitable

2. At some stage in our Province difference of opinion arose between the two Benches of equal jurisdiction, therefore, matter was placed before a Full Bench of this court in Writ Petition No. 374/98 (Barber Elahi and others Vs. Director of Education Primary Schools NWFP Peshawar and others). The Full Bench on 20.5.2000 held that certificate obtained from Government Institutions and the one obtained from Allama Iqbal Open University should be taken not only equal but at par and if the then policy of the Government was allowed to continue was held to be discriminatory.

CTC
[Signature]

3. The Government dissatisfied from the Full Bench judgment of this court filed petition before august Supreme Court of Pakistan as well as certain private individuals and the august Supreme Court upheld the decision of this court vide judgment dated 23.5.2002 and in para 7 of its judgment observed as under:-

CTC
[Signature]

"In most of the appeals, learned counsel stated at the Bar that the appellants/respondents were duly selected by the relevant Selection Committees of the Government on merits but their appointments have been withheld on account of order of status quo passed by this Court while granting leave to appeal on 17.8.2000. Since these appeals are being finally disposed of, such selectees subject to academic qualifications shall be immediately appointed to their respective posts as, prima facie, there is no other imbargo in their way. We are informed at the Bar that a large number of vacancies of PTC Teachers exist at the moment. Such of the appellants who were non-suited in C.A. No.1910 of 2000 shall be sympathetically considered for appointment in the first instance and, if they are

ATTESTED

EXAMINER
Peshawar High Court
Bannu Bench
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EXAMINER
Peshawar High Court
Bannu Bench
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for the job, they must be given preference over new entrants. In case some of the effected appellants/respondents are over-age by passage of time, Provincial Government shall consider their case with utmost compassion and fairness by relaxing upper age limit. Needless to urge that technicalities should not thwart the course of justice, as legal procedures are essentially meant to regulate the proceedings and to advance the cause of justice rather than to frustrate the ends of justice.

4. We have heard learned Counsel for the petitioners and learned Deputy Advocate General who is appearing alongwith Mr. Farid Nawaz DEO Bannu.

The latter informs that notwithstanding judgment of Full Bench of this Court and the august Supreme Court of Pakistan But Now policy for appointment to the post of PTC Teachers has been changed by the Provincial Government and batch wise appointment/consideration has been omitted, thus the petitioners if at all would like to be appointed as PTC Teachers shall compete on open merit.

5. We doubt that the contentions raised by learned counsel for the respondents, when seen on the touchstone of justice and when applied to the case of the petitioners, would be tenable.

Present policy apart, the petitioners who were similarly placed as were the petitioners before Full Bench of this Court and the parties before august Supreme Court of Pakistan could not be discriminated nor denied any advantage merely on the ground that they did not approached the High Court or the Supreme Court at that

etc

otherwise qualified and suitable for the job, they must be given preference over new entrants. In case some of the affected appellants/respondents are over-age by passage of time. Provincial Government shall consider their case with utmost compassion and fairness by relaxing upper age limit. Needless to urge that technicalities should not thwart the course of justice, as legal procedures are essentially meant to regulate the proceedings and to advance the cause of justice rather than to frustrate the ends of justice."

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ATTESTED
EXAMINER
Bannu District Court

ATTESTED
EXAMINER
Bannu District Court

Beit v Govt
11

CF
A

stage when other petitioners were knocking the door of the courts for seeking redress.

6. The purpose of our reproducing para 7 of the judgment of the august Supreme Court is to get support that where the petitioners were discriminated against candidates holding certificate from Government Elementary Institutions and when such discrimination was set aside by the High Court and by the august Supreme Court, their non-consideration in the first instance on the basis of the then prevalent policy was not legal and if it was not legal they shall be having a legal right to ask for their appointment.
7. Whether in the given scenario have got an outright right of appointment? We doubt it cannot be answered in affirmative. However, respondents are directed that the petitioners if apply against the vacancies of PTC Teachers they shall be given their own merit position as against new entrants keeping in view the fact that at the time they first appeared they were to be considered on batch wise basis with other candidates of the same batch.

Now as the policy of appointment on batch wise basis has been done away with we, therefore, while allowing these writ petitions direct the respondents that since refusal meter out to the petitioners has been tested by the august Supreme Court and Full Bench of this court whereby they have been held to be at par with candidates holding certificates from Government institutions, respondents-Government shall henceforth adopt the procedure that whenever the vacancies of PTC Teachers occurred they shall be accordingly notified. The

Supreme Court at that stage when other petitioners were knocking the door of the courts for seeking redress.

6. The purpose of our reproducing para 7 of the judgment of the august Supreme Court is to get support that where the petitioners were discriminated against candidates holding certificate from Government Elementary Institutions and when such discrimination was set aside by the High Court and by the august Supreme Court, their non-consideration in the first instance on the basis of the then prevalent policy was not legal and if it was not legal they shall be having a legal right to ask for their appointment.

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C.T.C

Attorney

EXAMINOR
Peshawar High Court
D.I. Khan Bench

26/07/11

ATTESTED
EXAMINER
Peshawar High Court
D.I. Khan Bench



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petitioners or any other candidates similar to the case of the petitioners shall be allocated 25% seats of the available vacancies 75% vacancies shall go to the new entrant. This 25% is for those who were denied because of holding certificate from Allama Iqbal Open University and such 25% would be filled amongst them but on the basis of their own merit separately prepared.

8. By the time that all the candidates like petitioners and similarly placed persons are adjusted but on merit, those found fit on merit if because of earlier denial to their appointment by the Government, the government shall relax age as permissible under the law. With these recommendations we allow these three writ petitions but with no order as to costs.

Announced:

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petitioners or any other candidates similar to the case of the petitioners shall be allocated 25% seats of the available vacancies. 75% vacancies shall go to the new entrant. This 25% is for those who were denied because of holding certificate from Allama Iqbal Open University and such 25% would be filled amongst them but on the basis of their own merit separately prepared.

8. By the time that all the candidates like petitioners and similarly placed persons are adjusted but on merit, those found fit on merit if because of earlier denial to their appointment by the Government, the Government shall relax age as permissible under the law. With these recommendations we allow these three writ petitions but with no order as to costs.

Announced:
28.04.2004.

Sol - Tariq Parwez Khan J
Sol - Ejaz-ur-Rasool Khan J

Qaseem

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A. J. Khan

ATTESTED

EXAMINOR
Peshawar High Court
Q. Khan

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26/10/11

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EXAMINOR
Peshawar High Court
Q. Khan

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IN THE COURT OF SULTAN HUSSAIN,
CIVIL JUDGE-V, BANNU.

Civil Suit No: 2017
Date of Institution: 28-3-2014
Date of Decision: 28-3-2017

1. Muntaz Khan S/O Maqsood Jan
2. Zareen Khan Vs Gul Marjan
R/O Kakki, Tehsil & District. Bannu
..... (PLAINTIFFS)

VERSUS

Provincial Government. Secretary Education through
Agent Government Pleader. Bannu etc.
..... (DEFENDANTS)

SUIT FOR DECLARATION AND INJUNCTION.

JUDGMENT
28-3-2017

Muntaz Khan and Zareen Khan are the holders of PST certificates, passed from Allama Iqbal Open University Islamabad in the year 1996. In 1999 vacant posts of PST were advertised. The government policy for recruitment at that time was that 25% was to be filled on district-wise basis and 75% on the basis of union council/batch-wise. At the same time candidates who qualified their PTC from Government Elementary Colleges/Institutions were given preference over candidates having similar qualification from Allama Iqbal Open University Islamabad. It so happened that when the vacant posts were advertised in the year 1999.

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only candidates from Elementary Colleges were given preference and recruited, while candidates having similar qualification from Allama Iqbal Open University Islamabad in spite of their merits were denied for recruitment. This discriminatory policy of the government was challenged in court, and then came the full bench judgment of the august Peshawar High court, through which candidates having similar qualification from Allama Iqbal Open University Islamabad were treated equal and at par with the candidates having similar qualification from Government Elementary Colleges. The judgment was upheld by the august Supreme Court of Pakistan. The candidates of Allama Iqbal Open University Islamabad who suffered in the year 1999 are in the common parlance are called "the effectees of 1999". It was then formulated that 25% recruitment was to be made from such effectees while 75% were to be recruited from new entrants. A number of such effectees were recruited following the above verdicts and decrees and judgments of other courts. Allegedly the present plaintiffs also applied for recruitment in the year 1999; however, they also were dropped solely on the ground of their qualification from Allama Iqbal Open University Islamabad. Plaintiffs are said to have applied from time to time whenever vacancies were advertised however they were discriminated against and

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candidates lower on merit list were appointed and plaintiffs were not recruited.

2. Plaintiffs have now prayed for declaration cum injunction to be declared effectees of 1999 as well as to be recruited on the vacant posts of PST on the basis of 25% quota reserved for such effectees.

3. Defendants were summoned, who contested the suit by filing their written statements. Parties recorded their evidence, however, at the last stage issues were not found to have been framed, hence, the following issues were framed at the last stage.

1. Whether plaintiffs have a cause of action? OPP
2. Whether the suit is time-barred? OPD
3. Whether plaintiffs have locus standi? OPP
4. Whether plaintiffs are the Allama Iqbal Open University's effected candidates of 1999? OPP
5. Whether defendants omitted to mention the names of the plaintiffs as "effectees of 1999", in their list prepared during the inquiry for the purpose of actual number of such effectees? OPP
6. Whether defendants recruited candidates left out from the ibid list and plaintiffs were deliberately dropped and discriminated against? OPP
7. Whether defendants recruited candidates lower in merits from the plaintiffs, if so, its effect? OPP

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8. Whether the suit is bad for the non-joinder and mis-joinder of parties? OPD
 9. Whether plaintiffs are entitled to the decree as prayed for? OPP
 10. Relief.

4. Counsel for the parties relied on the evidence already recorded. Pro and contra arguments heard and record perused. On the basis of which issue-wise findings are as under:

ISSUE NO.2

Plaintiffs have sued for declaration-eum-injunction on the ground that they are effectees of 1999, being PST from Allama Iqbal Open University Islamabad, who were declared at par and equal with candidates having similar qualification from Government Elementary Colleges. 25% quota was reserved for such effectees. A number of candidates were recruited on the basis of august High Court Full Bench judgment and judgments and decrees of other courts. The recruitments were made intermittently. They applied from time to time, however, they were not recruited. In the beginning there was a policy that 25% PST teachers were appointed on district basis and 75% were recruited on union council basis. Plaintiffs have the case that effectees lower on the merit list were recruited on 30.12.2010 and 31.12.2010 and plaintiffs were deprived. They have stated that cause of action accrued to them one week

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before the defendants refused to recruit them on vacant posts. The suit was instituted on 27.3.2014. Plaintiffs have alleged that defendants appointed candidates from 2005 to 2013 intermittently and plaintiffs were deprived inspite of their applications and entitlement. In effect they have challenged the said orders generally. Plaintiffs feel aggrieved from all such orders. Attorney for the plaintiffs recorded his statement as PW-2 and in cross he admitted that the Education Department, Bannu made recruitments of PST in 2005, 2009, 2012 and 2016 and that they applied for all these vacant posts. He was asked about PW-1, Record Keeper, that through him application forms submitted by plaintiffs were not produced in court, however, he dismissed the suggestion that plaintiffs did not apply for those posts that is why application forms were not produced. Defendants on the other hand, examined, Wajidullah Khan, ADEO, DW-1, however, the crux of his evidence is that plaintiffs are not the effectees of 1999 and it was only on this ground that they were not appointed. He has not spoken a single word that the suit is time-barred or that the plaintiffs have not applied for recruitments from time to time. Thus, the suggestion to PW-2 that he did not apply in different years or that the application forms were not produced has no sound foundation. In the absence of evidence in rebuttal the plaintiffs' version has to be accepted. Thus, recurring cause of

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action accrued to plaintiffs from time to time when they were not appointed as per their entitlement. Under Article 14 of the Limitation Act the limitation will start running when they came to know of the orders passed by defendant No.2 in his official capacity. Plaintiffs have challenged consecutive orders passed within the period from 2005 to 2013. Subsequent orders were also made during the pendency of the suit. Every fresh wrong order gave fresh cause of action to plaintiffs. Hence, the suit is within the period of limitation and is not time-barred. The issue is decided in the negative.

ISSUE NO.4

Plaintiffs have the case that they have passed PST training from Allama Iqbal Open University Islamabad in 1996. For the first time they competed on the vacant posts of PST in the year 1999. Like many other candidates they were not recruited solely on the ground that they were qualified from Allama Iqbal Open University Islamabad. This issue was resolved by higher courts and both the certificates were declared equal and at par. Defendants in rebuttal have taken the plea that plaintiffs are not the effectees of 1999. GP for defendants submitted that effectees were those candidates who were otherwise qualified to be recruited and when finally all the effectees were asked to apply plaintiffs did not show themselves as such effectees and as such they cannot be treated as effectees. Initially the

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government followed the batch-wise recruitment policy, however, it was done away with and new and old entrants were to be recruited on open merit. As per judgments of the higher courts 25% quota was reserved for the effectees of 1999. The august Peshawar High Court judgment dated 28.4.2004 is relevant for the dispute involved in this case. as similar nature dispute arose in the said case. Relevant para of the said judgment is reproduced for ready reference:

"The petitioners or any other candidates similar to the case of the petitioners shall be allocated 25% seats of the available vacancies. 75% vacancies shall go to the new entrants. This 25% is for those who were denied because of holding certificate from Allama Iqbal Open University Islamabad and such 25% would be filled amongst them but on the basis of their own merit separately prepared.

8. By the time all the candidates like petitioners and similarly placed persons are adjusted but on merit, those found fit on merit if because of earlier denial to their appointments by the Government, the Government shall relax age as permissible under the law."

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PW-1 has produced list of the effectees of 1999 as EXPW-1/1. He also produced appointments orders of such effectees as EXPW-1/2. The interview list of such candidates is EXPW-1/3. PW-2 is the attorney of plaintiffs, who has stated that since 2004-2005 25% recruitment is made from the effectees of 1999. Plaintiff No.1 in the interview secured 39.60 marks while plaintiff No.2 secured 37.69, however, candidates at serial No.42 to 46 of the merit list obtained marks ranging from 29.61 to 35.51 which is lessor score from the plaintiffs, while candidates at serial No.36 to 40 have lessor score from plaintiff No.1. DW-1 in cross has admitted that as per list EXPW-2/3 candidates at serial No.1 to 3 of the session of 1996 were given scoring (37.60), (37.56), and (37.24) and were appointed in UC Kakki, however, the list of effectees does not contain their names, while plaintiffs admittedly secured 39.60 and 37.69 scores and also belong to UC Kakki, but they were not appointed. Thus, keeping in view the judgment of the august Peshawar High Court dated 28.4.2004, and the evidence on record plaintiffs are indeed the effectees of 1999. The next question is about their merit and the above evidence clearly establishes the fact that candidates lower in merit from the plaintiffs in the same UC were recruited even though their names do not find mention in the list prepared about such effectees. Plaintiffs are suffering

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because their names were not mentioned in the effectees' list while the position is that candidates at serial No.1 to 3 were originally not mentioned in the list and were even lower in merit from the plaintiffs but were recruited. This shows the malafide of the defendants that those having high scores were ignored and dropped while those of lower scoring were recruited. This act of the defendants cannot be immunized from the scrutiny of the court and is bound to be declared illegal and dishonest appointments. Plaintiffs are certainly the effectees of 1999 and the issue is decided in the affirmative.

ISSUE NO.5

As held under issue No.4 that plaintiffs as effectees of 1999 were deliberately and without any justification not mentioned in the list of effectees, however, GP for defendants took the plea that those subsequently recruited from the effectees of 1999 having lower score than the plaintiffs had a different batch of 1995 and plaintiffs belong to the batch of 1996. Firstly, this objection has not been raised in the written statement and the rule is that no one can deviate from the stance taken in the pleading and secondly the effectees of 1999 are actually all those who qualified PTC from Allama Iqbal Open University Islamabad and under the policy then in vogue were not treated at par with those who had qualified from Government Elementary Colleges.

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The admitted position is that the list prepared by defendants of such effectees is not exhaustive and even left over candidates were recruited except the plaintiffs. The Peshawar High Court judgment referred to under issue No.4 above leaves no room for the kind of interpretation made by learned GP and it has categorically held that any other candidates similar to the case of the petitioners in that case were to be allocated 25% seats of the available vacancies and it was further held that "by the time all the candidates like petitioners and similarly placed persons are adjusted but on merit those found fit on merit if because of earlier denial to their appointments by the government, the government shall relax age as permissible under the law". Plaintiffs have clearly established that not only they were dropped from the list of the effectees but subsequent conduct of the defendant No.2 shows that candidates lower in merits from the plaintiffs were recruited despite the fact that they were not originally mentioned in the list. Plaintiffs have a far better case than the said candidates but without any reason their right was infringed. It is held that plaintiffs were effectees of 1999 but their names were deliberately omitted from the list. hence, the issue is decided in affirmative.

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ISSUE NO.6

As held above that defendants recruited even those candidates who were not in the original list of the effectees and were also lower in the merit list but still they were appointed and plaintiffs were left out and thus they were discriminated. It is the inviolable right of every citizen to be dealt with in accordance with the law and that no discriminatory treatment should be meted out to persons placed in the similar circumstances. The issue is decided in affirmative.

ISSUE NO.7

Keeping in view the findings given under issues No.4 to 6, the issue is decided in the affirmative.

ISSUE NO.8

Plaintiffs have the case that they are the effectees of 1999 and PW-2 enumerated the names of the candidates who secured lessor score but were appointed. These candidates, however, have not been impleaded in the suit. Plaintiffs have actually challenged the illegal orders of the said candidates made by defendant No.2. The illegal order even in their presence before the court could not have been justified but any person likely to be effected by the decree was required to have been impleaded. Plaintiffs, in essence, do not want to disturb the already recruited persons and pray that in future they should be recruited on vacant posts. Under O.1, R.9 CPC the court can adjudicate the controversy

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between the parties before the court. Hence, the issue is decided accordingly.

ISSUES NO.1 & 9

Plaintiffs have, thus, a cause of action and are entitled to the decree to be declared effectees of 1999 and to be recruited on fresh vacant posts. Both the issues are decided accordingly.

RELIEF

Plaintiffs have proved that they are the effectees of 1999 and that they were discriminated against. But those already recruited cannot be disturbed and plaintiffs shall be entitled for recruitment on fresh vacant posts and age relaxation as given to others. The fresh vacancy shall be considered from the date of the decree. The suit is decreed in the above terms. Parties to bear the costs. File be consigned to record room.

ANNOUNCED
28-3-2017

SULTAN HUSSAIN
Civil Judge-V, Bannu
28/3/2017

CERTIFICATE

Certified that this judgment consists of 12 (TWELVE) pages. Each page of which was signed and corrected wherever found necessary.

SULTAN HUSSAIN
Civil Judge-V, Bannu
28/3/2017

- 1- Registration No: 5271
- 2- Date of Registration of Notification: 15-10-20
- 3- Date of...: 16-10-20
- 4- Date of...: 16-10-20
- 5- Date of...: 18-10-20
- 6- No. of...: 12
- 7- No. of...: 24
- 8- UT...: 24
- 9- Total...: 24
- 10- Signatures: B. K.

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Lower Court Bannu

پروٹیکشن ڈگری

مدعیات جناب سید نور محمد صاحب عنبر کی بیوی

فقدان 28-3-14 (جوئی) 11-11-14
28-3-17

- 1- ممتاز خان ولد مقصود جہاں
 - 2- زرین خان ولد گل مرہاں
- ساکنان گنگی ضلع بنوں - مدعیان

Or
27131019
S.C.J. BANNU

بنام

- 1- صوبائی حکومت، سیکرٹری ایجوکیشن ہنزلیہ ایجنٹ گورنمنٹ بلیڈریوں
- 2- ڈسٹرکٹ آفیسر لبرڈاٹہ ایجوکیشن بنوں - مدعا علیہم

"الف" دعویٰ مراد صدر ڈگری استوار یہ بدیں معنون کہ مدعیان نے متاثرہ 1999 کی مقصود کو نہ برائے لیبائی PTE پوسٹ پر 25% کی رد سے دو لیبائی شدہ ایڈورٹن سے برتر حق دہتے ہے اور PTE پوسٹ پر مدعا علیہم کے بند کیا جا رہا ہے اور اس میں آتا ہے کہ ان کے لبرڈاٹہ جاری کرے لیبائی انویسٹمنٹ بنایا جاوے کہ وہ مدعیان کا لبرڈاٹہ PTE پوسٹ پر جاری کرے بدیں دم برتر حق کے بنیاد پر لیبائی کے حقدارے حقدار قرار لبر عدالت عظمیٰ اور عالیہ کے احکامات کے زر لبر پید شدہ حق تسلیم کرے مدعی سے بھلائی قانون سلو کرے کہ جبکہ مدعیان کو لیبائی نہ کرنا اور متاثرہ لسٹ مبنی بر لبرڈاٹہ و فراڈ قرار دیکر مدعی کے حقوق پر غیر موثر دما لبرڈاٹہ ہونے سے مدعا علیہم مقدمہ

دعویٰ مراد صدر ڈگری طلبہ دواہی تا کیدی بدیں معنون کہ مدعا علیہم کو بند کیا جاوے کہ مدعیان سے بھلائی قانون سلو کرے برتر حق کے بنیاد پر PTE پوسٹ پر لیبائی جاری کرے اور اپنے خراب لیبائی لبرڈاٹہ احکامات عدالت عالیہ عظمیٰ متاثرہ کہہ کرے مدعیان کو PTE پوسٹ پر لیبائی نہ کرے مدعا علیہم مقدمہ

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بعدالت
رٹ فیس
مورث
مقد
دع

Plaintiffs have proved that they are the effectees of 1999 and that they were discriminated against. But those already recruited cannot be disturbed and plaintiffs shall be entitled for recruitment on fresh vacant posts and age relaxation as given to others. The fresh vacancy shall be considered from the date of the decree. The suit is decreed in the above terms. Parties to bear the costs. File be consigned to record room.

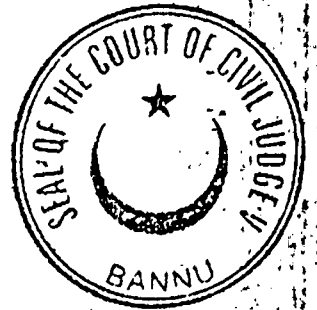
خرچہ نالاش

Civil Judge/ JM-V. Bannu

شمار	خرچہ دعوی	پیسہ	روپیہ	خرچہ مد علیہم	پیسہ	روپیہ
	اسٹامپ عرضی دعوی			اسٹامپ ترمیمی دعوی		
	اسٹامپ مختیار نامہ			اسٹامپ مختیار نامہ	3500	
	اسٹامپ وکالت نامہ			اسٹامپ وکالت نامہ	400	
	خرچہ گواہان			خرچہ گواہان		
	متفرق			متفرق		
	میزان			میزان	700	

Civil Judge/ JM-V. Bannu

آج بتاریخ 17-3-28 کو بہ ثبت میرے دستخط اور مہر عدالت کے جاری کیا گیا ہے۔



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- 1- Registration No. 5271
- 2- Date of presentation of application 15-10-20
- 3- Date of 16-10-20
- 4- Date of 16-10-20
- 5- Date of 16-10-20
- 6- No. of 2
- 7- Cost of 4
- 8- Urgent 4
- 9- Total Fee 4
- 10- Signature of copyist

APPOINTMENT ORDER

In compliance with the directions/Judgment of Hon: Civil Judge-I Bannu decision dated: 28-03-2017 and Additional District Judge-II Bannu decision, dated: 14 June, 2017 and execution proceeding under process with CJ-XI Bannu issued NBWA of the undersigned, the appointment orders of the below mentioned Male PST candidates are hereby issued conditionally on the basis of denied 1999 quota in BPS mentioned against their names plus usual allowances as admissible under the existing rules/ policy at the schools noted against his name with effect from the date of taking over charge in the best interest of public service subject to the terms /conditions given below.

S.No.	Name	Father Name	U/Council	Place of posting	BPS	Remarks
1.	Mumtaz Khan	Maqsood Jahan	Kakki-I	GPS Azghafar Kakki Bannu	12	Against V/P
2.	Zareen Khan	Gul Merjan	Kakki-I	GPS Shabaz Kakki No1 Bannu.	12	-do-

TERMS & CONDITIONS

- His/Their service will be considered regular but without pension & gratuity in-term of Section-19 of NWFP, civil servant Act, 1973 as amended vide NWFP, civil servant (Amendment) Act, 2005. He will however be entitled to contributory provident Fund in such a manner and such rates may be prescribed by the Government.
- This appointment order is clearly on conditional basis and will be finally decided after the Judgement of next Higher Court, if otherwise appeal of the Education Department accepted by the next Higher court.
- His/Their services will be liable to termination on one month's notice from either side, in case of resignation without notice their/ his two months' pay/ allowances shall be forfeited to Govt.
- The appointee should join his post within 15 days after obtaining proper age relaxation from the competent authority. The SDEO(M) Bannu should furnish necessary report to the effect that the candidate has joined the post or otherwise, after 15 days of the issuance of this order, failing which, his/ their order will be treated as cancelled.
- His/Their services can be terminated at any time, in case his performance is found unsatisfactory during probationary period. In case of misconduct, he will be proceeded against under E&D Rules 2011 & the rules framed from time to time.
- Charge should not be handed over if age of the candidate is below 18 years or above 35 years as per policy.
- If the candidate is exceeding from the required age i.e. 35 years, he should obtain proper age relaxation from the competent authority and his pay may not be released till the completion of age relaxation process.
- In case of fake certificates/ Degree or any other mistake in the said appointment order detected later on the undersigned reserves the right of amendment in the appointment order accordingly.
- They will not claim the back benefits on the basis of 1999 rights and their inter seniority will be considered from the date of taking over charge under the rules.
- They will produce Health & Fitness certificates from Medical Superintendent concerned before taking over charge.
- If the above terms & Conditions are acceptable to them, He will receive the charge of the post at the mentioned school & report to Office within 15 days accordingly.
- No TA/DA etc is allowed.

District Education Officer
(Male) Bannu

Dated Bannu the 29/07/2017.

Endst No 8886-92/AE-I (M) Pzy:

Copy For information & necessary action to:-

- Director Elementary & Secondary Edu: KPK Peshawar.
- Civil Judge No. XI District Bannu.
- SDEO (M) Bannu with the remarks that their pay may not be drawn until & unless his testimonials are not verified on OPSS from concerned Board/University.
- ASDEO(C) concerned.
- District Account officer, Bannu.
- Candidate concerned.

District Education Officer
(Male) Bannu

2017

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BEFORE THE PESHAWAR HIGH COURT BANNU BENCH BANNU

Writ Petition No. 242-B/2014
with GR

- 1) Farooq Khan Son of Muhammad Arif Khan Resident of Sabo Khel Mandan Bannu.
- 2) Raqiaz Khan Son of Bahadur Sher Khan Resident of Mandeve, District Bannu.
- 3) Ataullah Khan Son of Wali Ayaz Khan Resident of Momeer Kakki, District Bannu.
- 4) Farid Ullah Khan Son of Mir Nawaz Khan Resident of Sikander Bharat, District Bannu.
- 5) Muhammad Tariq Son of Mir Saudad Khan Resident of Hakim Bharat, District Bannu.
- 6) Irfan Ul Haq Son of Abdul Khalim Resident of Kotka molvi Fazal Ghani Daud Shah, District Bannu.
- 7) Muhammad Imtiaz Khan Son of Muhammad Ghulam Khan Resident of Nar Sharif Nar Jaffar, District Bannu.
- 8) Inam Khan Son of Maeen Ullah Khan Resident of Nekam Kakki, District Bannu.
- 9) Bashir Ahmad Son of Abbas Khan Resident of Niab Kakki, District Bannu.
- 10) Sher Andaz Khan Son of Muhammad Ali Khan Resident of Shah Baz Kakki, Bannu.
- 11) Farooq Khan Son of Mir Wali Khan Resident of Kakki Khas District Bannu.
- 12) Hakim Nawaz Khan Son Balqiaz Khan Resident of Bharat District Bannu.
- 13) Umer Ayaz Khan Son of Muhammad Daraz Khan Resident of Nekam Kakki District Bannu.
- 14) Gulap Khan Son of Sakhi Sarwat Resident of Mandeve District Bannu.
- 15) Nawab Khan Son of Mir Zalim Khan Resident of Nekam Kakki District Bannu.
- 16) Naimat Ullah Khan Son of Aman Ullah Khan Resident of Nekam Kakki, District Bannu.

Filed Today
Additional Registrar
24-5-14

ATTESTED

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17) AKhter Ali Shah Son of Bahader Ali Shah Resident of Machan Khel Khojari District Bannu.

All are Primary School Teachers. (Petitioners)

VERSUS

- 1) Secretary to Government of K.P, Elementary & Secondary Education Department Civil Secretariat, Peshawar.
- 2) Secretary to Government of K.P, Finance Department, Civil Secretariat, Peshawar.
- 3) Director Elementary & Secondary Education K.P.K, Peshawar.
- 4) District Education Officer (Male) Bannu.
- 5) District Account Officer Bannu. (Respondents)

**WRIT PETITION UNDER ARTICLE 199 OF THE CONSTITUTION OF ISLAMIC
REPUBLIC OF PAKISTAN, 1973.**

PRAYER: ON ACCEPTANCE OF INSTANT WRIT PETITIONER, THIS HONOURABLE COURT MAY VERY GRACIOUSLY BE DIRECTED THE RESPONDENTS TO VERIFY THE SERVICE BOOKS OF THE PETITIONERS SINCE 2000 AND MAY ALSO GRANTED ARREARS / SALARIES SINCE 30/05/2000 TILL 2003.

Note: Addresses of the parties given above are sufficient for the purpose of

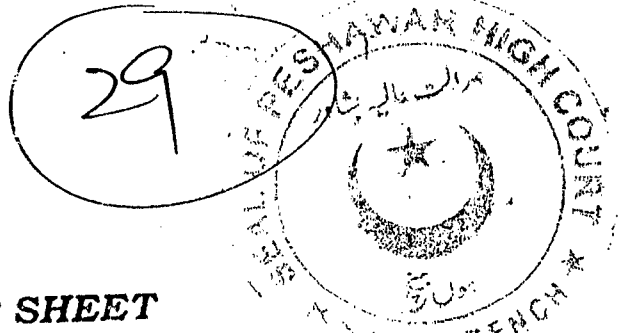
Service.

Respectfully Sheweth;

- 1) Brief facts of the case in hand are that on 07/02/1999 the respondent No. 3 advertised PST posts / vacancies in daily news paper for public attention,

ATTESTED

EXAMINER



JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
BANNU BENCH.
(Judicial Department)

W.P No. 242-B of 2014

Farooq Khan etc Vs Government of Khyber

Pakhtunkhwa etc

JUDGMENT

Date of hearing 04/04/2016

Appellant-Petitioner Farooq Khan and others By
Sir Hameedullah Shah Adv.

Respondent Country and others By Qudratullah
Jehan Gandapur Asst. AG a/o Farzand Ali Supt.

HAIDER ALI KHAN J.- Farooq Khan and 16 others

petitioners seek constitutional jurisdiction of this Court praying
that :

“On acceptance of instant Writ
petition, this honourable court
may very graciously be directed
the respondents to verify the
service books of petitioners
since 2000 and may also
granted arrears/salaries since
30/05/2000 till 2003”

ATTESTED
EXAMINER
Peshawar High Court

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2. Brief facts giving rise to the instant Writ petition are that initially some posts of Primary School teachers (PST) were advertised on 07/02/1999 in the Daily News paper by the District Education Officer (M), Bannu (respondent No.4), to which the petitioners had also applied being eligible and qualified for the said posts of PST having certificates of Primary School teachers from Allama Iqbal Open University Islamabad; that after qualifying the test and interview, merit list was prepared and those who were having Primary teaching certificates (PTC) from Elementary Colleges were appointed while the petitioners were not considered by the respondents at par with P.T.C teachers, having certificates from Government Elementary Colleges; that the petitioners approached the Peshawar High Court D.I.Khan Bench against such like discrimination vide Writ petition No.79/1999 which was allowed on 30/05/2000 by treating the petitioners at par with others while appointment orders of those who were appointed in pursuance of advertisement dated 07/02/1999, having certificates of P.S.T from Government Elementary Colleges, were also declared illegal, void ab-initio and having no sanctity in the eyes of law; that the said decision of Peshawar High court, D.I.Khan Bench was challenged by said appointed candidates before the august Supreme court of Pakistan in C.A No.1904 of 2000, CA No.1906 of 2000 and C.A No. 1907 of 2000 which were decided in their favour on 28/05/2002 and in compliance of that order, appointment orders

ATTESTED
EXAMINER
Peshawar High Court
Bannu Bc

of the petitioners were issued. Relevant portion of said order dated 01/07/2002, issued by Executive District Officer, Literacy and Education, Bannu is reproduced herein below:-

"His arrear/appointment will be considered with effect from 30.05.2000 as per the decision/judgment of the Hon'ble Peshawar High Court, DIKhan Bench (announced on 30/05/2000), but their pay will be drawn with effect from taking over charge, i.e 01/09/200".

4) The petitioners time and again requested the respondents to verify the service books of petitioners since 2000 and they may also be granted arrears/salaries since 30/05/2000 till 2003" but invain, hence the instant Writ petition.

3. The comments were invited from the concerned respondents, which were submitted accordingly, wherein prayer for dismissal of instant Writ petition has been made.

4. We have heard valuable arguments of the learned counsel for the parties and gone through the record appended with the petition.

5. Learned counsel for petitioner argued that respondents refused to verify the service books of petitioners since 2000 and to grant arrears/salaries since 30/05/2000 till 2003" with malafide and without any justification. He relied on

ATTESTED

EXAMINER
Peshawar High Court
Bannu Bench

32

judgment delivered by this court in WP No.62 of 2008 on 10/05/2011.

6. From perusal of the record, it appears that the appointment orders of the petitioners were outcome of the judgment of the Peshawar High court and in this respect, petitioners have faced the ordeal of lengthy litigation upto the august Supreme Court of Pakistan and after their appointment orders, their service books were issued and entries were also made therein. Admittedly grievances of petitioners stand redressed except verification of service books of petitioners, while in similar circumstances Abbot Abad Bench of this Court has allowed the following Writ petitions whereby the petitioners of those petitions were held entitled for their arrears/back benefits. The act of the respondents was also declared against the constitution:-

“WP No.543-A/2012, titled Babar Illahi & others VS Government of Khyber Pakhtunkhwa etc decided on 29/03/2011 as well as Writ petition No.62/2008 of 2008, titled Muhammad Saeed & others Vs Government of Khyber Pakhtunkhwa, etc, decided on 10/05/2011”

7. Thus it is very much clear that it is incumbent upon the respondents to consider and to verify their respective service books from the date of their appointment and similarly their

ATTESTED
EXAMINER
Peshawar High
Court

salaries need to be fixed right from their dates of appointment and are also entitled for their arrears and salaries.

8. In light of the above, coupled with the judgments of this court as well as august Supreme Court of Pakistan, this writ is allowed and respondents are directed to verify the service books of petitioners in accordance with law.

Announced.
Dt.04/04/2016

Sd/ Mr. Justice Muhammad Ghazanfar Khan, J
Sd/ Mr Justice Haider Ali Khan, J

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04/04/2016

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Examiner
Peshawar High Court Sana Bench
Authorized Under Article 87 of
The Qanun-e-Shahadat Ordinance 1984

14/10/2020

Azmat Awan

640

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Stamps affixed except in case of
uninsured letters of not more than
the initial weight prescribed in the
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35 Rs
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Date Stamp

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*Write here "letter", "postcard", "packet" or "parcel"
with the word "insured" before it when necessary.
(in words)

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وکالت نامہ

38

S No

KPIC سروس ٹریڈ سٹور

۲۰ پنجاب ہسٹری

زورین نام صوبائی صوبہ وکالت

سروس اسٹور

اعداد
مورخہ
مقدمہ
جرم
تھانہ

باعث تحریر آنکھ

KPIC سروس ٹریڈ سٹور

مقدمہ مندرجہ بالا عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ ان مقام پر کی گئی ہے۔
مسعود الرحمن وزیر اعلیٰ مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار، وکالت، نیز وکیل صاحب اور اس نامہ تقرر ثالث و فیصلہ پر طائف دینے جو اب دینی اور اقبال دعویٰ اور بصورت ڈگری کرانے اجراء اور وصولی چیک، روپیہ اور عرضی اور درخواست ہر قسم کی تصدیق زراس پر دستخط کرنے کا اختیار ہوگا۔ نیز بصورت ڈگری کرانے اجراء اور وصولی چیک، روپیہ اور عرضی اور درخواست ہر قسم کی تصدیق زراس پر دستخط کرنے کا اختیار ہوگا۔ نیز بصورت عدم پیروی یا ڈگری ایک طرفہ یا اپیل کی برآمدگی اور منسوخی دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا اور بصورت ضرورت مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے کسی اور وکیل یا مختیار قانونی کو اپنے ہمراہ یا کوئی اپنے بجائے تقرر کا اختیار ہوگا اور صاحب مقرر شدہ کو بھی وہی جملہ مذکور بالا اختیارات حاصل ہوں گے اور اس کا ساختہ و پرداختہ ہی منظور قبول ہوگا۔ اور دوران مقدمہ میں جو خرچہ و ہرجانہ التوائے مقدمہ کے سبب سے ہوگا۔ اس کے مستحق وکیل صاحب موصوف ہوں گے۔ نیز بقایا خرچہ کی وصولی کرنے کا بھی اختیار ہوگا۔ اگر کوئی تاریخ پیشی مقام دورہ پر ہو یا پیشی سے باہر تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مقدمہ مذکور کریں۔ نیز اگر بھی وجہ مثلاً بیماری، معذوری، غنالت وغیرہ کی وجہ سے عارضی یا مستقبل پیروی مقدمہ نہ کر سکیں تو بھی وکیل صاحب یا اس کے لواحقین کو بقایا فیس (اگر کوئی ہے) ادا کرنے کا پابند ہونے اور ادا شدہ فیس لی واپسی و تقاضہ کرنے کا حق نہیں ہوگا۔ نمونہ وکالت نامہ سن اور سمجھ کر وکالت نامہ لکھ دیا تاکہ سند رہے۔

المترقوم 16
 ماہ اکتوبر ۲۰۲۰ء
 العبد
 گواہ شدہ

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کے تعیناتی کے حق میں فیصلے کیئے۔ آخر کار DEO بنوں نے 29/07/2017 کو سائل کو PST پوسٹ پر تعینات کرنے کا حکم صادر فرمایا۔

جناب والا سائل کو عدالت عالیہ و عظمیٰ نے سال 1999 میں ٹیسٹ اور انٹرویو پاس کرنے، میرٹ پر پورا اترنے اور تعینات کرنے کے حقوق دیئے ہیں۔ لیکن DEO صاحب بنوں نے سائل کے ساتھ دوبارہ دھوکہ، فراڈ، ناانصافی اور رولز ریگولیشن کے خلاف سلوک کر کے مورخہ 29/07/2017 سے تعینات کیا ہے۔ اور 1999 کی سینیاریٹی سے محروم رکھا ہے۔ جبکہ سائل نے سال 1999 میں ٹیسٹ اور انٹرویو پاس کیا تھا اور سال 1999 میں سائل سے کم میرٹ والے امیدواران کو بھرتی کیے تھے۔ ان بھرتی شدہ امیدواروں کو 1999 سے سینیاریٹی مع Benefit دی گئی ہے۔

جناب والا سائل نہایت غریب ہے۔ سائل کا تاریخ پیدائش 23/03/1975 ہے۔ سائل کی عمر تقریباً 45 سال ہے۔ اگر سائل کو 1999 کی سینیاریٹی سے محروم رکھا گیا تو ہمیشہ کے لیے سائل پر ترقی کے دروازے بند ہو جائیں گے۔ لہذا سال 1999 میں بھرتی شدہ دیگر امیدواروں کی طرح سائل کو بھی 1999 سے اپنا سینیاریٹی مع Benefit دیئے جانے کا حکم صادر فرمادیں۔ سائل دعا گو رہے گا۔

مورخہ: 07/06/2020

Amir

سائل زرین خان PST جی پی ایس ہمیش گل کئی تحصیل و ضلع بنوں

موبائل نمبر: 0334-8838582

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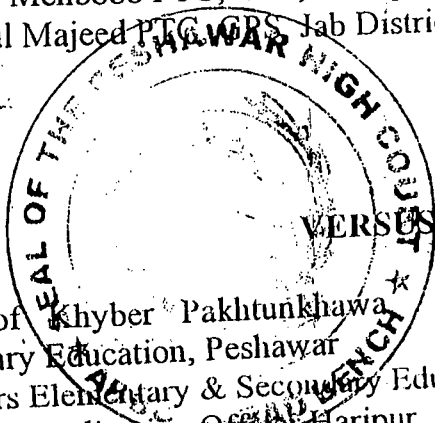
(B)

BEFORE THE PESHAWAR HIGH COURT,
ABBOTTABAD BENCH

W. P No. 543-A/2012

1. Babar Ellahi, PTC, GPS Noor Pur, District Haripur.
2. Arif Mehmood PTC, GPS, Chitti Dhaki District Haripur.
3. Tahir Mehboob PTC, GPS, Khanpur District Haripur.
4. Abdul Majeed PTC, GPS, Jab District Haripur.

...PETITIONER S



1. Govt. of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education, Peshawar
2. Directors Elementary & Secondary Education Peshawar.
3. District Coordination Officer Haripur.
4. Executive District Officer, Elementary & Secondary Education Haripur.
5. Deputy District Officer, Elementary Education, Haripur.

....RESPONDENTS

WRIT PETITION UNDER ARTICLE 199 OF THE
CONSTITUTION OF ISLAMIC REPUBLIC OF
PAKISTAN 1973.

Respectfully Sheweth: -

TODAY

The brief facts leading to the present writ petition are as under;

1. That prior here to petitioners filed writ petition No. 205/2011, for declaration that verification of their service and fixation in their service books may kindly be considered from the year 2000 instead of

g. allah
Additional Registrar
Peshawar High Court
Abbottabad Bench
6-7-2012

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Peshawar High Court
Abbottabad Bench
Authorized Under Section 23-A of Ordinance

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28/04/2003. Attested copy of writ petition alongwith all the relevant annexures are annexed as Annexure "A" to "G".

2. That on 29/03/2011, Honourable Court directed the respondents to verify their service books according to law. Attested copy of order dated 29/03/2012 in writ petitioner No. 205/2011 is attached as Annexure "H".

3. That on 15/05/2012, respondent No. 4, issued order vide Endst No. 5427-35 and ordered that the service of the petitioner may be treated from 10/04/2000. Copy of order/ letter dated 15/05/2012 is annexed as Annexure "I".

4. That in the letter/ order dated 15/05/2012, it was mentioned in note two that there service should be fixed from 10/04/2000 instead of 28/04/2003 on presumptive basis and in Para No. 1 of note it was mentioned they are not entitled for arrears prior to be 28/04/2003, due to reason that they have not performed their duties from 10/04/2000 to 28/04/2003.

5. That this fact was ignored by the respondents that petitioners were dragged into litigation by the respondents from 2000 uptill now and petitioners were

TODAY

Gullab
Additional Registrar
Peshawar High Court
Abbottabad Bench
6-7-20h

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Examiner
Peshawar High Court
Abbottabad Bench
Authorized Under Section 25 Acts Ordinance

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entitled for their service from the year 2000 but due to the fault of respondents they were inducted into the service from the year 2003.

6. That the respondents moved an application before respondents that they are entitled for their salary/arrear from 10/04/2000 to 28/04/2003 but respondent heald no attention towards the grievance of the petitioners. Copy of application is attached as Annexure "J".
7. That service books of the petitioners were verified and fixed from the year 2000. Copies of extracts of service book are attached as Annexure "K".
8. That feeling aggrieved of the above, the petitioner has come this Honourable Court with the instant petition, inter-alia, on the following grounds:-

GROUNDS

- a. That the impugned act of respondents is illegal, unlawful, without lawful authority, arbitrary, perverse and is against the principle of natural justice and of no legal effect on the rights of petitioner.

TODAY

Additional Registrar
Peshawar High Court
Abbottabad Bench

6-7-2012
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Peshawar High Court
Abbottabad Bench
Registered under Sec. 25 Act 1908

[Signature]
AHC

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b. That, it is against the natural justice that the petitioners were constrained to fall into a long ordeal of litigation for their rights since 1998 and after all petitioners were succeeded on 14/06/2007 and once again petitioners were aggrieved by the act of the respondents for non verifying of their services from the Year 2000, and petitioners were again dragged into the litigation and after that an order was issued in favour of the petitioners on 15/05/2012 on the basis of order of this Honourable Court and in the order dated 15/05/2012 another un-logical para mentioned that they are not entitled for their salary since 10/04/2000 to 28/04/2003 and according to para No. 2 their salary may be fixed since 10/04/2000 instead of 28/04/2003. That the para No.1 is totally contradictory.

c. That the respondents ignored the fact that petitioners were fully entitled for the service since 2000 but their wrong discriminatory action petitioners were deprived from their legal right and they could not be in service since the year 2000.

TODAY

K. F.ullah
 Additional Registrar
 Peshawar High Court
 Abul Kalam Bench
 6-7-2013

Att

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 Additional Registrar
 Peshawar High Court
 Abul Kalam Bench
 Issued Under Section 75 Act of 1973

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d. That by the act of respondents, petitioners were not in service from the year 2000 to 2003 but according to the order dated 15/05/2012 if their salary was fixed from 10/04/2000 instead of from 28/04/2003 so they are fully entitled for their arrears/salary and they could be deprived from their legal right.

e. That act of respondents is against the vires of Constitution of Islamic Republic of Pakistan and petitioners are fully entitled for their back salary and the para No. 4 in the Note of the order dated 15/05/2012 is totally against the law, illegal, without jurisdiction and without lawful authority and is against the natural justice.

f. That the act of respondents is based on malafide, and discriminatory towards the petitioners.

g. There is no speedy, adequate and efficacious remedy available to the petitioners, except the instant writ petition.

h. That court fee stamp paper worth Rs. 500/- is attached.

FILED TODAY

K. J. W. J. W. J. W.
Additional Registrar
Federal High Court
Abbottabad Bench

6-7-2013

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26.6.13
Registrar
Abbottabad Bench
Authorized Under Sec 75 Act 67/1933

A. J. W. J. W.

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- i. That addresses of the parties given in the heading is correct.
- j. That the other points shall be urged at the time of arguments.


It is, therefore, humbly prayed that on acceptance of instant writ petition the act of respondents for non payment of their arrears/ salary from the year 2000 to 2003 may kindly be declared illegal, unlawful, without lawful authority, malafide, against the natural justice, capricious, corum non iudice, and respondents be kindly directed to release the salary /arrears of the petitioners from the year 10/04/2000 to 28/04/2003 with immediate effect. Any other relief deemed fit and proper in the circumstances of the case.

INTERIM RELIEF:

It is further prayed that to the extent of para No.1 of Note in order dated 15/05/2012 may kindly be suspended and salary /arrears of the petitioners from 10/04/2000 to 28/04/2003 may kindly be released forthwith.

Dated _____/2012

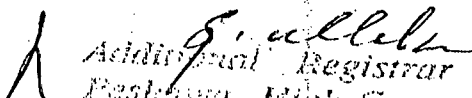
Through

.....PETITIONERS

 (RAHEELA MUGHAL)
 Advocate High court Abbottabad

VERIFICATION:

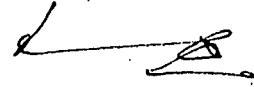

Verified that the contents of foregoing writ petition are true and correct to the best of my knowledge and belief and that nothing material has been concealed therein.

FILED TODAY


 Additional Registrar
 Peshawar High Court
 Abbottabad Bench.
 6-7-2012

Counted to be Filed
 26.6.13
 Registrar
 Abbottabad Bench
 Appointed Under Section 10(1)(b)

...PETITIONERS

133

AN JUDGMENT SHEET

IN THE PESHAWAR HIGH COURT,
ABBOTTABAD BENCH.

JUDICIAL DEPARTMENT

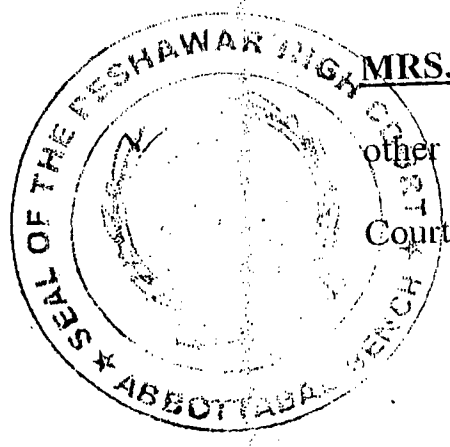
W.P No. 543-A of 2012

JUDGMENT

Date of hearing 13-06-2013.

Appellant(s)/Petitioner (s) Babar Elahi and others by Mrs. Rahela original Advocate

Respondent (s) Govt. K.P.K Etc by A.A G (Mr. Naveed Khan Sui)



MRS. IRSHAD QAISER, J:- Babar Elahi and three

other petitioners seek the Constitutional jurisdiction of this Court praying that;

“The act of respondents for nonpayment of their arrears/salary from the year 2000 to 2003 may kindly be declared illegal, unlawful, without lawful authority, malafide, against the natural justice, capricious, corum non judice, and respondents be kindly directed to release the salary/arrears of the petitioners form the year 10.04.2000 to 28.04.2003 with immediate effect.”

2. As per contents of the petition, petitioners filed writ petition No.205/2011 for declaration to verify the service of the petitioners with effect from 10.04.2000 to 2003. That on 29.03.2011, this Court directed the respondents to verify their service books according to law. That on 15.05.2012 EDO (respondent No4) issued order vide Endst No.5427-35 dated 15.05.2012 vide which the

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Peshawar High Court
Abbottabad Bench
Authorized Under Sec 75 Act 6 Ord 1973


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service/appointment of the petitioners were treated from 10.04.2000 on the ground that they are not entitled for arrear prior to 28.04.2003. That the petitioners were dragged into litigation by the respondents from year 2000 up till now and petitioners are entitled for their service from the year 2000 but due to their default the petitioners were inducted in to service from the year 2003. That service books of the petitioners were verified and fixed from the year 2000. Respondents have submitted their comments.

3. Arguments heard and record perused with the assistance of learned counsel for the parties.

4. In their comments the respondents have admitted the issuance of letter Endst. No.5427-35 dated 15.05.2012 and in response to para No.5 of writ petition they stated that in compliance with the judgment of this Court, the service of the petitioners were regularized with effect from 10.04.2000 except the salary due to the reason that they are not performing of duty during this period.

5. It appears from the record that on the basis of above letter the following entries were made in the service books of the petitioners "consequent" upon the judgment of the Peshawar High Court Abbottabad Bench dated 10.05.2011 issued vide Endst No.5427-35 dated 15.05.2012, the date of appointment is 10.04.2000 instead of 28.04.2003.


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 Peshawar High Court
 Abbottabad Bench
 Authorized Under Section 10 of the Act of 1973


 MKR
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6. Record shows that petitioners were constrained to fall in to long ordeal litigation for their right, since 1998 and after struggle, the respondents issued order dated 15.5.2012 on the basis of order of this Court. But that order is contradictory and confusing because in main order it is stated that their appointment be treated w.e.f 10.04.2000 while subsequently three paras in the shape of note were added. In para No.1 it is stated that they are not entitled for arrear prior to 28.04.2003 due to reason that they have not performed their duties w.e.f 10.04.2000 to 28.04.2003 while in Para No.2 it is mentioned that their salaries should be fixed w.e.f 10.04.2000 instead of 28.4.2003 on presumption basis.

7. If the date of appointment of petitioners are considered from 10.04.2010, their salary was also fixed from 10.04.2000 instead of from 28.04.2003, then they are fully entitled for their arrears/back salary and the act of respondents is against the viries of constitution. Thus, para No.1 of note of order dated 15.05.2012 is deleted being illegal, against the law and natural justice.

8. Keeping in view the circumstances stated hereinabove, the writ petition is admitted and allowed.

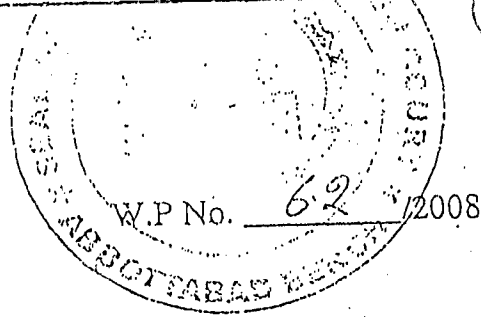
Announced:
13.06.2013

SD. JUDGE

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26.6.13
Prescribed by the Bench
Albion Bench
Recognized under Section 15 of the
Arbitration Act, 1996

*Attested
by me*



1. Muhammad Saeed Khan son of Sher Afzal Khan resident of Chiti Dhaki Haripur P.T.C, G.P.S Chiti Dhaki Haripur.
2. Muhammad Idrees son of Muhammad Miskeen resident Chiti Dhaki, PTC GPS Taru Dhanger Haripur.

... PETITIONERS

VERSUS

1. Govt. of NWFP through Secretary Education Schools & Literacy Peshawar.
2. Director Schools & Literacy Peshawar.
3. Executive District Officer (Schools & Literacy) Haripur.
4. Deputy District Officer (Schools & Literacy) Primary, Haripur.

... RESPONDENTS

WRIT PETITION UNDER ARTICLE 199 OF CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN FOR A DECLARATION TO THE EFFECT THAT PETITIONER HAVING SIMILAR CIRCUMSTANCES TO THE PTC TEACHER OF DISTRICT HARIPUR AND OTHER DISTRICTS OF NWFP APPOINTED /RE-INSTATED VIDE ORDER ENDST. NO. 10042-5 EB A&T. PTC COURTS DATED 18/05/2002 AS A CONSEQUENCE OF THE DECISION OF AUGUST SUPREME COURT OF PAKISTAN CR. NO. 2607/02 DATED 28/05/2002 ARE ENTITLED FOR ALL THE

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 NO 19/3/08
 19-3-08

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 Examiner 30.5.4
 Peshawar High Court
 Abbottabad Bench
 Authorized Under Sec 15 Acts Ordins

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"A"

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
JUDICIAL COMPLEX (OLD), KHYBER ROAD, PESHAWAR.

S.B

No.

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APPEAL No..... of 20

Zarin Khan

Appellant/Petitioner

Road

Versus

Court: CF RPR through Sup Edu Peshawar

RESPONDENT(S)




Notice to Appellant/Petitioner

Zarin Khan S/O Cml Marjan
PST Teacher posted at C/S Hamesh
Cml Baki Tehsil & Distt Bannu


Take notice that your appeal has been fixed for Preliminary hearing, replication, affidavit/counter affidavit/record/arguments/order before this Tribunal on 29/2/2021 at

You may, therefore, appear before the Tribunal on the said date and at the said place either personally or through an advocate for presentation of your case, failing which your appeal shall be liable to be dismissed in default.

Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

قیمت 50 روپے	103551			
ایڈوکیٹ: محمد کلاوڑ خان قاضی عبداللہ		پشاور بار ایسوسی ایشن، خیبر پختونخواہ		
بار کونسل ایسوسی ایشن نمبر: 2008-1261-18				
رابطہ نمبر: 0330-9187720				

بعدالت جناب: سر جسٹریٹ پیٹریل گھانا

منجانب: زیریں خان طارق صاحب	دعویٰ: سر جسٹریٹ پیٹریل
 <p>بنام: محمد کلاوڑ خان قاضی عبداللہ</p>	علت نمبر:
	مورخہ:
	جرم:
	تھانہ:

باعت تحریر آگہ

زیریں خان طارق صاحب
 محمد کلاوڑ خان قاضی عبداللہ
 محمد کلاوڑ خان قاضی عبداللہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کاروائی متعلقہ

آن مقام گھانا میں کیلئے محمد کلاوڑ خان قاضی عبداللہ کو وکیل مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا، نیز وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ برحلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق زیریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی، نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بھائی کے لئے اختیار ہوگا اور صاحب مقرر شدہ کو وہی جملہ مذکورہ بالا اختیارات حاصل ہوں گے اور ان کا سبب اختیار پر داخلہ منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ سند رہے

المرقوم: محمد کلاوڑ خان قاضی عبداللہ

مقام: گھانا

محمد کلاوڑ خان قاضی عبداللہ کے لیے منظور ہے۔

نوٹ: اس وکالت نامہ کی فوٹو کاپی ناقابل قبول ہوگی۔

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 12929/2020

Zareen Khan

-----APPELLANT

Versus

Govt of KPK and Others

-----RESPONDENTS

S. No	Description	Annexure	Pages
1	Comments		1-3
2	Affidavit		4
3	Authorities		5
4	Decided S-A 19/12		6-8
5	Appl. order		9
6			
7			

Zareen Khan
Deponent

①

BEFORE THE HONOURABLE SERVICE TRIBUNAL
KPK PESHAWAR

Service Appeal No. 12929/2020

Zahir Khan Pst 12 at G.P.S. Shambay
KAKKI BANNY

Appellant

VERSUS

Government of KPK through Secretary E&SE & Others

Joint Parawise reply on behalf of the Respondents No. 1 to 3.

Respectfully Sheweth:

PRELIMINARY OBJECTION ON APPEAL:

- 1- That service appeal of the appellant is not maintainable in its present form.
- 2- That the appellant has got no cause of action to lodge the instant appeal.
- 3- That the appellant is not entitled for the arrears/ back benefits as the appellant has not been appointed in the year 1999.
- 4- That the appellant has tried to conceal the material facts from this Honorable Tribunal as he has not performed a single day official duty of the said period before his appointment.
- 5- That since the appellant was not appointed in the year 1999, therefore the question of his back benefits etc would also not arise.
- 6- That the instant appeal filed by the appellant is extremely suffering from material as well as factual defects.
- 7- That the appellant is legally and lawfully bound to abide by the terms and conditions of the appointment order issued to him and thereafter, the appellant has made compliance of the said appointment letter.
- 8- That such like service appeals have been dismissed by this Honorable Service Tribunal.
- 9- That the appellant by filing the instant appeal is going to waste the precious time of this Honorable Tribunal as well as the Govt: Functionary body.
- 10- That the instant service appeal would definitely violate the terms and conditions of service/ appointment order of the appellant.
- 11- That the appeal of the appellant is badly barred by the Law and Limitation.

FACTS

- 1- That 1st para of the appeal is relates to official record of Advertisement 14 the year 1999 the R.No.3, however, the appellant was not appointed in the year 1999 as PTC Teacher by the Deptt.

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- 2- Incorrect: As per advertisement the terms and conditions vide No.16, in the order dated February 1999, 1st priority was to be given to elementary colleges diploma / Certificate holders and then AIOU and others for appointment of PST/ PTC. Copy of Advertisement has already been "Annexed as A" in the main service appeal.
- 3- That the instant para of the appeal pertains to the record of Apex Court verdicts, however, the appellant is not entitled to the relief as claimed by him in his service appeal. Since the appellant was not appointed to the post of PTC/PST in the year 1999, hence, the appellant's seniority would also not arise. Reference is made to appeal No. 191/2012 titled Farhatullah V/S Govt of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Peshawar announced by this Honorable Tribunal dated 19-08-2016, wherein, the same question of law and fact has been resolved by this Honorable Tribunal. (Attached as Annexure "A")
- 4- Correct: that the Respondent Department in reference of court decree and directions appointed the appellant to the post of PST in B-12, however, the terms and conditions of the said appointment order are very much clear and transparent as the appointment order of the appellant has been made and ordered with immediate effect. Anti-dating appointments are not possible to be made as per prevailing rules and policy of the Govt. According to clause/ condition No. 10 of the appointment order of the appellant it has been vividly mentioned that if the above terms and conditions of the appointment are acceptable to the appellant then he should assume the charge of the post and report to office within 15 days accordingly. (Attached as Annexure B)

However, this Honorable Service Tribunal has set aside numerous identical nature of appeals wherein, the appellants were seeking anti-dating seniority of their service after when their appointments had been made in compliance and reference of the court judgments. Since the appellant was not appointed in the year 1999, therefore, the question of his seniority would also not arise and even illegal in terms of the above made submissions by the Deptt.

3

appellant and appeal is altogether different and separate than that of the respondents No.5 to 7.

- 6- That the para pertains to the personal record of appellant, however, the appellant is not an aggrieved person and is not entitled to the relief claimed by him.

GROUND:

- (A) That incorrect and not admitted. The respondents are duty bound to act in accordance of rules and law and the material facts in field.
- (B) That the para is not admitted and is incorrect: the appellant is not legally and lawfully entitled to be granted back benefits cum seniority of his service after his appointment order in light of court directions. Again, on plain reading of all the courts decree and judgments no where it has been mentioned that the appellant be also granted / entitled the back benefits as well as seniority. The facts and circumstances of the present appellant and appeal is altogether different and separate than that of the respondents No.5 to 7
- (C) That incorrect: As explained in the above para.
- (D) That incorrect: That since the appellant was not appointed back in the year 1999 but was appointed in reference of below learned court decree in 2015, hence, question of his seniority cum financial benefits would not arise.
- (E) That no indiscrimination or ill treatment has ever been made or exercised with the appellant by the respondents.

It is therefore, humbly prayed that the para wise reply in response to service appeal of the appellant may be accepted and appeal of the appellant may kindly be set aside with heavy cost throughout.

Respondent No.1
Secretary
Elementary & Secondary Education
KPK Peshawar

Respondent No.2
Director
Elementary & Secondary Education
KPK Peshawar

Respondent No.3
District Education Officer
(Male) Bannu

AFFIDAVIT

(4)

I Mr. Zahid Ullah Khan Litigation Officer of the office of District Education Officer (Male) Bannu do hereby solemnly declare on oath that all the contents of the para wise comments/Reply in response to service appeal No. 12929 /2019 titled Zahid Khan VS Govt. of Khyber Pakhtunkhwa are true and correct to best of my knowledge and belief and that nothing has been kept concealed deliberately from this honorable tribunal.

Zahid
Deponent

Zahid
NAQIB-ULLAH KHAN
Advocate
Oath Commissioner
Distt: Court Bannu

AUTHORITY

5

I do here by authorized Zahid Ullah Khan Litigation Officer to submit the para wise comments before Honorable service tribunal Peshawar on the behalf of undersigned/respondent, in service appeal No. 12929/200 titled as Zareen Khan vs Govt of KPK.


District Education Officer

1
Male (Bannu)

19/9/2

Appeal No. 191 / 2012

Farhat Ullah, AT, Govt. High School Koti Sadat District Bannu

..... Appellant

Versus

1. Government of KPK through Secretary Elementary and Secondary Education Peshawar.
2. Director Elementary and Secondary Education Peshawar.
3. Executive District officer, District Bannu.
4. District co-ordination officer, District Bannu.
5. Departmental selection committee, Elementary and Secondary Education Peshawar.
6. Amir Sabir Shah S/O Amir Yousaf Shah, AT, Govt. High School Jan killa, Tehsil and District Bannu.
7. Asad Ullah Khan s/O Shams-ul-Islam, AT, Govt High School Bezin Khel, Tehsil and district Bannu.
8. Nisar Khan S/O Jehan Sardar, AT, Govt High School, Jan Kheh, Tehsil and district Bannu.
9. Muhammad Umar S/O Sher Bahadar, AT, Govt High School Bhangi Khan Khojerri, Tehsil and district Bannu.

..... Respondents

Appeal under section 4 of KPK Service Tribunal Act, 1974 whereby the appellant who possessed high merit As compared to respondents No.6 to 9 as revealed from merit list at annexure 'F' was ignored from appointment on Arabic teacher post and respondents No. 6 to 9 were appointed vide annexure 'A' and the appellant was also deprived from seniority over them.

Respectfully Shewith:

The appellant respectfully submits as under:

1. That the respondent No.2 had advertised Arabic teacher Posts and other vide annexure 'B'.
2. That the appellant with the following qualification had applied for appointment on Arabic post.
 - a. MA Islamivat

(7)

No	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
	19.08.2016	<p style="text-align: center;"><u>KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,</u> <u>PESHAWAR.</u></p> <p style="text-align: center;">APPEAL NO. 191/2012</p> <p style="text-align: center;">(Farhat Ullah-vs- Govt: of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Peshawar and others)</p> <p style="text-align: center;"><u>JUDGMENT</u></p> <p style="text-align: center;"><u>PIR BAKHSH SHAH, MEMBER:</u></p> <p style="text-align: center;">Counsel for the appellant (Mr. Aslam Khan Khattak, Advocate) and Mr. Usman Ghani, Senior GP for official respondents present.</p> <p>2. The following prayer has been made by the appellant in this appeal as:-</p> <p style="padding-left: 40px;">“It is therefore, prayed that on acceptance of appeal, the official respondents may be directed to issue the appointment order of appellant on at post from 05.04.1999 with all back benefits and also he may be declared senior to respondents No.6 to 9 in the seniority list of Arabic Teachers to meet the ends of justice”.</p> <p>3. The facts narrated by learned counsel for the appellant were that some posts of the Arabic Teacher were advertized by the official respondents as a result whereof appellant and private respondents No.6 to 9 applied for the same. That in the merit list, the appellant scored higher</p>

position than the private respondents but objection was raised on testimonial of the appellant for which reason he was not appointed. That finally, proved to be an invalid objection. That private respondents were appointed in the year 1999 whereas the appellant was finally appointed in the year 2011 on the order of the Hon'able High Court and thus the appellant suffered financially as well as in seniority, hence this appeal under Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974.

4. Arguments heard and record perused.

5. A careful perusal of the record reveals that the appellant, to seek the relief, went before the learned Civil Court which round of litigation culminated into the judgment dated 02.11.2010 of the Hon'able High Court, D.I Khan Bench vide which the respondents were directed to appoint the petitioner against the vacant post. Consequently, the appellant was appointed vide order dated 24.02.2011. The above situation clearly shows that at the relevant time the appellant was not a Civil Servant therefore, his prayer on this count cannot be treated to be from a Civil Servant and competent. Since the appellant was not appointed in the year 1999, therefore, the question of his seniority would also not arise. The Tribunal is of the considered view that there is no merit in this appeal, the same is, therefore, dismissed. Parties are left to bear their own cost. File be consigned to the record room.

Announced 19.08.2016
Edl-Pir Bakhtish Shah
Member
Edl-M. Aamir Nazir,
Member

Certified to be true copy
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

1200
06-10-16
06-10-16
06-10-16

APPOINTMENT ORDER

9
 1A in (X) D
 CTS

In compliance with the directions/Judgment of Hon: Civil Judge-I Bannu decision dated 28-03-2017 and Additional District Judge-II Bannu decision dated: 14 June, 2017 and execution proceeding under process with CJ-XI Bannu issued NBWA of the undersigned, the appointment orders of the below mentioned Male PST. candidates are hereby issued conditionally on the basis of denied 1999 quota in BPS mentioned against their names plus usual allowances as admissible under the existing rules/ policy at the schools noted against his name with effect from the date of taking over charge in the best interest of public service subject to the terms /conditions given below:

S.No.	Name	Father Name	U/Council	Place of posting	BPS	Remarks
1	Mhantaz Khan	Muqsood Jaham	Kakki-I	GPS Azghafar Kakki Bannu	12	Against E/P
2	Zareen Khan	Gul Merjan	Kakki-I	GPS Shabaz Kakki No1 Bannu.	12	-do-


TERMS & CONDITIONS

1. His/Their service will be considered regular but without pension & gratuity in term of Section-19 of NWFP, civil servant Act, 1973 as amended vide NWFP, civil servant (Amendment) Act, 2005. He will however be entitled to contributory provident Fund in such a manner and such rates may be prescribed by the Government.
2. This appointment order is clearly on conditional basis and will be finally decided after the Judgement of next Higher Court, if otherwise appeal of the Education Department accepted by the next Higher court.
3. His/Their services will be liable to termination on one month's notice from either side, in case of resignation without notice their/ his two months' pay/ allowances shall be forfeited to Govt.
4. The appointee should join his post within 15 days after obtaining proper age relaxation from the competent authority. The SDEO(M) Bannu should furnish necessary report to the effect that the candidate has joined the post or otherwise, after 15 days of the issuance of this order, failing which, his/ their order will be treated as cancelled.
5. His/Their services can be terminated at any time, in case his performance is found unsatisfactory during probationary period. In case of misconduct, he will be proceeded against under E&D Rules 2011 & the rules framed from time to time.
6. Charge should not be handed over if age of the candidate is below 18 years or above 35 years as per policy.
7. If the candidate is exceeding from the required age i.e. 35 years, he should obtain proper age relaxation from the competent authority and his pay may not be released till the completion of the relaxation process.
8. In case of fake certificates/ Degree or any other mistake in the said appointment order detected later on the undersigned reserves the right of amendment in the appointment order accordingly.
9. They will not claim the back benefits on the basis of 1999 rights and their inter seniority will be considered from the date of taking over charge under the rules.
10. They will produce Health & Fitness certificates from Medical Superintendent concerned before taking over charge.
11. If the above terms & Conditions are acceptable to them, He will receive the charge of the post at the mentioned school & report to Office within 15 days accordingly.
12. No TADA etc is allowed.

District Education Officer
 (Male) Bannu

Dated Bannu the 29/07/2017.

- Endst No 8886-92 /AE-I (M) Prv:
- Copy for information & necessary action to:-
1. Director Elementary & Secondary Edu: KPK Peshawur.
 2. Civil Judge No. XI District Bannu.
 3. SDEO (M) Bannu with the remarks that their pay may not be drawn until & unless his testimonials are not verified on OPSS from concerned Board/University.
 4. ASDEO(C) concerned.
 5. District Account officer, Bannu.
 6. Candidate concerned.


 District Education Officer
 (Male) Bannu 28/7

مقدمہ
 جرم
 تھانہ