

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

C.M. NO. \_\_\_\_\_/2022

IN

Service Appeal No.1678/2022

Parveen Begum

**V/S**

Govt of KPK & others

**I N D E X**

<b>S.NO.</b>	<b>DOCUMENTS</b>	<b>ANNEXURE</b>	<b>PAGE</b>
<b>1.</b>	Memo of Application with Affidavit	.....	<b>1</b>
<b>2.</b>	Copy of Additional Documents	<b>A</b>	<b>2- 39</b>

Dated: 19-12-2022

APPLICANT/ APPELLANT  
(PARVEEN BEGUM)

Through:

**NOOR MOHAMMAD KHATTAK**  
Advocate Supreme Court

①

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

C.M. NO. \_\_\_\_\_/2022

IN

Service Appeal No:1678/2022

Parveen Begum

**V/S**

Govt of KPK & others

**APPLICATION FOR PLACING ON FILE NECESSARY**  
**DOCUMENTS IN THE ABOVE TITLE SERVICE APPEAL.**

Respectfully Sheweth:

1. That the above title service appeal is pending adjudication before this Honourable Tribunal which has been fixed for hearing on 19-12-2022.
2. That there are some necessary documents that needs to be place on file for the just and fair decision in the above titled service appeal. Copy of Additional Documents are attached as Annexure ..... **A.**
3. That any other grounds and proof with regard to the additional documents would be raised at the time of argument with prior permission of this Honourable Tribunal.

It is, therefore, most humbly prayed that on acceptance of this application on behalf of the private respondent the additional documents may be placed on file, for just and proper decision of the above mentioned service appeal.

Dated: 19-12-2022

APPLICANT/ APPELLANT  
(PARVEEN BEGUM)

Through:

**NOOR MOHAMMAD KHATTAK**  
Advocate Supreme Court

**AFFIDAVIT**

I Mst. Parveen Begum, District Education Officer (Female) (BPS-19), E & SE Department, District Karak, do hereby solemnly affirm that the contents of this Application are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Court.

**DEPONENT**

(PARVEEN BEGUM)<sup>4A</sup> ✓  
DISTRICT EDUCATION OFFICER  
(FEMALE) KARAK.

No \_\_\_\_\_ / Dated 13 / 12 / 2022.

2

To

The worthy Secretary,  
Elementary & Secondary Education  
Khyber Pakhtunkhwa Peshawar.

SUBJECT: - **INQUIRY ON THE BASIS OF NOTIFICATION No SO  
(MC)E&SED/4-17/ 2022 /INQUIRY dated 02/12/2022.**

Respected Sir,

Written by Fanoos Jamal my substitute whose order has been suspended by the Honourable service Tribunal KPK Peshawar in its decision dated 28.November 2022.

It is hereby stated as under.

- a. The said letter No: 43-49 dated 01.12.2022, written by Fanoos Jamal so called DEO (Female) Karak is quite false, illegal and unauthorized because.
- b. Her transfer order was suspended by Honourable services Tribunal dated 28/November 2022.
- c. I had not handed over and charge of the office of the DEO (Female) Karak being on Medical leave.
- d. I arrived back my office of the DEO (Female) Karak on 29 and 30.11.2022.
- e. On 01.12.2022 when I reached, my office was locked and the keys were in the hands of Muhammad Sultan B&AO of this office and his relative Muhammad Rizwan J/Clerk some three out siders were also with them, Muhammad Sultan refused to open the lock and also threatened me and other staff not to touch the lock of the door. He and Muhammad Rizwan were grumbling and tried to harass me I took seat in the office of the Dy: DEO (Female) Karak.
- f. None has broken the lock but it is by Muhammad Sultan and Muhammad Rizwan. The report of Faanoos Jamal is quite wrong and quick action of Directorate transferring of Muhammad Tariq S/Clerk and Asad Dispatcher is illegal as Fanoos Jamal is not DEO (Female) Karak on 30.11.2022.

So, I request you to be kind enough to act upon court decision and let me to work also cancel the transfers of Muhammad Tariq and Asad Ulla and take action against Muhammad Sultan B&AO and Muhammad Rizwan J/Clerk for locking my office, keeping me in harassment and also against Fanoos Jamal who do not obey the decision of Services Tribunal.

Dated: 13/12/2022.

Yours Obediently

  
(PARVEEN BEGUM)  
(MC) DEO (FEMALE) BS-19  
KARAK.

Endst No: 5107-08

Copy forwarded to the;-

1. Honourable Chairman Service's Tribunal Khyber Pakhtunkhwa Peshawar with the request to kindly issue instructions to the Secretary E&SED KPK to obey the court orders.
2. Director Elementary & Secondary Education to take action against Muhammad Sultan B&AO and Muhammad Rizwan J/Clerk DEO (Female) Karak.

  
DISTRICT EDUCATION OFFICER  
FEMALE KARAK.

3

**TO BE SUBSTITUTED BEARING SAME NUMBER AND DATE**



**GOVERNMENT OF KHYBER PAKHTUNKHWA**  
ELEMENTARY AND SECONDARY EDUCATION DEPARTMENT  
Block-"A" Opposite MPA's Hostel, Civil Secretariat Peshawar  
Phone No. 091-9223588

Dated: 2<sup>nd</sup> December, 2022

**NOTIFICATION**

**NO.SO(MC)/ E&SED/4-17/2022/INQUIRY/:** The Competent Authority is pleased to constitute the following committee to conduct fact finding inquiry against Mst. Parveen Begum Ex-DEO (Female) Karak, now DEO (Female) Kohistan Upper and two other staff i.e Mr. Tariq (Senior Clerk) and Mr. Asad (Dispatcher), on their reported involvement in forceful breaking the lock of the DEO (F) office and taking away official record.

- |                              |                              |           |
|------------------------------|------------------------------|-----------|
| i. <b>Mr. Alamgir Khan,</b>  | Deputy Secretary (Dev) E&SED | Chairman. |
| ii. <b>Mst. Naheed Anjum</b> | Additional Director NMDs     | Member.   |

**TORs**

The inquiry committee shall inquire the following:-

1. Charge assumption/relinquishing reports, vide this department notification issued dated 20.10.2022.
2. Forceful breaking of the locks of the DEO (F) Office.
3. Taking of dispatch register and other important files.
4. Illegal occupation of the chair of the DEO (F) Office.

2. The enquiry committee shall submit report to the Competent Authority within one week time, positively.

**SECRETARY TO GOVT: OF KHYBER PAKHTUNKHWA  
E&SE DEPARTMENT**

**Endst: of even No. & Date :-**

Copy forwarded to the:

1. Director, E&SE Khyber Pakhtunkhwa, Peshawar.
2. PA to DS (Dev) E&SE Department
3. Additional Director NMDs, Directorate of E&SE
4. DEO (Female) Karak w.r.to her letter No. 43-49 }  
dated 01.12.2022.
5. PS to Secretary E&SE Department, Khyber Pakhtunkhwa.
6. Office order file.

alongwith relevant documents

*Naseer Abbas Khalil*  
02.12.22

**(NASEER ABBAS KHALIL)**  
SECTION OFFICER (Management Cadre)



4

GOVERNMENT OF KHYBER PAKHTUNKHWA  
LAW, PARLIAMENTARY AFFAIRS &  
HUMAN RIGHTS DEPARTMENT

No. ALO(OP-1)/LD/5-9/2022/LC  
DATED: PESH: THE 20<sup>th</sup> DEC, 2022

To: The Secretary,  
Government of Khyber Pakhtunkhwa,  
Elementary & Secondary Education Department

Attention: Section Officer (Management Cadre)

Subject: LEGAL OPINION

Dear Sir,

I am directed to refer to your Department's letter No. SO (MC) E&SED/4-16/2022/Deptt Appeal dated 02-12-2022 on the subject noted above and to state the Service Tribunal vide order dated 29-11-2022 has granted interim relief to the petitioner. The concluding Para reproduced in the letter under reference is as under:-

*"the operation of impugned order dated 20-10-2022 to the extent of appellant, shall remain suspended, if not acted upon earlier"*

2. Law Department is of the view that the order of the Tribunal *ibid* does not affect the actions taken in pursuance of the impugned Notification NO.SO (MC) E&SED/4-16/2022/P/17TC dated 20-10-2022 prior to 29-11-2022.

Yours Faithfully,

Assistant Law Officer (OP-1)

Endst: of even No. & date.

Copy is forwarded to the:-

1. PS to Secretary Law, Department.
2. Master File.

Assistant Law Officer (OP-1)

5

TO BE SUBSTITUTED BEARING SAME NUMBER AND DATE



GOVERNMENT OF KHYBER PAKHTUNKHWA  
ELEMENTARY AND SECONDARY EDUCATION DEPARTMENT  
Block-"A" Opposite MPA's Hostel, Civil Secretariat Peshawar

Dated: 2<sup>nd</sup> December, 2022

**NOTIFICATION**

**NO. SO(MCI) E&SED/4-17/2022/INQUIRY/:** The Competent Authority is pleased to constitute the following committee to conduct fact finding inquiry against Mst. Parveen Begum Ex-DEO (Female) Karak, now DEO (Female) Kohistan Upper and two other staff i.e. Mr. Tariq (Senior Clerk) and Mr. Asad (Dispatcher), on their reported involvement in forcible breaking the lock of the DEO (F) office and taking away official record.

- |                      |                              |           |
|----------------------|------------------------------|-----------|
| i. Mr. Alamgir Khan, | Deputy Secretary (Dev) E&SED | Chairman. |
| ii. Mst. Nahad Anjum | Additional Director NMDs     | Member.   |

**TORs**

The inquiry committee shall inquire the following:-

1. Charge assumption/relinquishing reports, vide this department notification issued dated 20-10-2022;
  2. Forceful breaking of the locks of the DEO (F) Office.
  3. Taking of dispatch register and other important files.
  4. Illegal occupation of the chair of the DEO (F) Office.
2. The enquiry committee shall submit report to the Competent Authority within one week time, positively.

SECRETARY TO GOVT. OF KHYBER PAKHTUNKHWA  
E&SE DEPARTMENT

Order of even No. & Date :-

Copy forwarded to the:

1. Director, E&SE Khyber Pakhtunkhwa, Peshawar.
  2. PA to DS (Dev) E&SE Department
  3. Additional Director NMDs, Directorate of E&SE, DEO (Female) Karak w.r to her letter No. 43-49 dated 01/12/2022.
  4. PO to Secretary, E&SE Department, Khyber Pakhtunkhwa
  5. Office order file
- along with relevant documents

(NASEER ABBAS KHALIL)  
SECTION OFFICER (Management Control)



(6)

**Directorate of Elementary and Secondary Education**  
**Khyber Pakhtunkhwa Peshawar**

No. 5252-53 / F. No. 2/Misc/Inquiry  
Peshawar the Dated: 02/12 /2022


To

Mst Parveen Begum  
Mst Fanos Jamal

Subject: **INQUIRY**

The Comptent Authority consitituted Inquiry Committee to conduct fact finding inquiry against you regarding charge assumption /relinquishing of the post of DEO Female Karak.

In this Regard you are directed to appear before the inquiry comraittee alongwith all relevant documents on Monday 05-12-2022 at 11:00 am at Committee Room of the Directorate of E&SE Khyber Pakhtunkhwa Peshawar.

  
Director  
Elementary & Secy: Education  
Khyber Pakhtunkhwa, Peshawar.

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

Copy forwarded for information to the: -

1. Mr. Ifikhar UI Ghani DEO Male Buner with the direction to insure his presence on the above venue date and time,
2. PA to Director E&SE Khyber Pakhtunkhwa Peshawar.

**Director**  
Elementary & Secy: Education  
Khyber Pakhtunkhwa, Peshawar.



7

**OFFICE OF THE DISTRICT EDUCATION OFFICER**  
**(FEMALE) KARAK.**

Address :- KDA Karak

Phone: 0927-291177

Email: emiskarak@yahoo.com

No. 503 /AE-I/E/ Leave

Dated Karak the 07/11/2022.

To

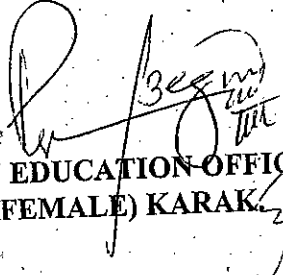
The Director,  
E&SE Department  
Khyber Pakhtunkhwa Peshawar.

Subject:- **REQUEST FOR SANCTION OF MEDICAL LEAVE.**

Memo:-

The enclosed leave account Performa duly signed by District Accounts Officer Karak Medical prescription. I Parveen Begum District Education Officer (Female) Karak w.e.f 28/10/2022 to 28.11.2022 (32days) on full pay is sent herewith for further proceeding please.

Encls:-

  
**DISTRICT EDUCATION OFFICER**  
**(FEMALE) KARAK.**

Endst: No            /

- Copy to the:-  
1. Deputy Commissioner Karak for Information Please.

**DISTRICT EDUCATION OFFICER**  
**(FEMALE) KARAK.**



(8)

**APPLICATION FOR LEAVE.**

**DETAILS.**

S.NO	Name /Designation/Office	Period Remarks.
1	Name and Designation	Parveen Begum DEO(Female) (Karak)
2	CNIC No.	14203-1481155-4
3	Substantive Basic Pay	Rs: 133140/-P.M
4	Leave applied for(Days)	Medical Leave W, e, f, 28.10.2022 to 28.11.2022. ( 32 days) on full pay.
5	Type of leave i.e. leave/etc	Medical Leave
6	Will the applicant be in Pakistan or Leaving for abroad?	In Pakistan
7	Exact date of availing	28.10.2022
8	Reason for leave	Medical Leave
9	Personal NO.	00302668
10	Previous Record	Covid-19 Medical/E Leave
11	Length of Service	(32 years)

\_\_\_\_\_  
**Signature of Applicant**  
**(PARVEEN BEGUM)**

Endst: No 50301  
Copy to the:-

Dated: 01-11-2022

**Remarks and recommendation of the Controlling Officer.**  
Certified that leave applied for is admissible under the Rules 1981 and necessary condition fulfilled.

Endst: No \_\_\_\_\_ /  
Copy to the:-

**Report of Audit Officer** \_\_\_\_\_

Muhammad Nadeem

MBBS, MCPS, FCPS

Assistant Professor  
Department of Medicine  
MTI/ LRH, Peshawar



9  
ڈاکٹر محمد نذیم  
اسٹنٹ پروفیسر  
میڈیکل ایف  
ایڈی ریڈنگ ہسپتال پشاور  
ماہر امراض شکر، ہائپر ایڈریٹیوٹیو  
مسٹر، بکر نالا برکات آبادی، سوسائٹی، پشاور

Patient Name: Parveen Begum Age: 52y Sex: F Date: 29/11/22

Clinical Record

Rx Fitness Certificate

It is stated that Parveen Begum is  
known case of HIN/DI/ Hypothyroid and on regular  
treatment for it with good compliance.

I have thoroughly examined her and  
now she is mentally and physically fit for  
continuing her services.

Dr. Muhammad Nadeem  
MBBS, FCPS (Medicine)  
Assistant Professor  
Department of Medicine, LRH, MTI

Institutional Based Practice, LRH, MTI.

Not for Medicolegal Purpose

پشاور کیڈمک: پرائیویٹ پریکٹس ایڈی ریڈنگ ہسپتال

Muhammad Nadeem

MBBS, MCPS, FCPS

Assistant Professor  
Department of Medicine  
MTI/ LRH, Peshawar



ڈاکٹر محمد نذیم

اسسٹنٹ پروفیسر

سینئر ٹیکنیشن

لیڈی ریڈنگ ہسپتال پشاور

ماہر امراض شکر، ہلڈیو، ہائپر ٹریگول

سید، بکر، کلاہران، ٹی، ای، ڈی، سرکی، ڈانچ

Patient Name: Larven Begum Age: 53 Yr Sex: F Date 24/11/22

Clinical Record

HTN / DM / Hypothyroid Rx

Received Foin for 5 Days.

Rec. LTR

Cl: Flank  
Flank Pain  
Vomiting

Pulse: 70/min

B.P. 150/100

Temp: 99°F

- inj. Cebac 2gm in BD  
SS — 14

- Cran-Berry Sacht  
SS — 14

- Tab Spadix  
SS — 14

- Tab. Naprox 500mg  
SS — 14

Act: CBC  
RBS  
Urine R/E  
U/C Abcd/Pelvis  
ECHO

پالی نیوٹریٹ  
این ڈی ایچ، ک، اے، اے

Bedrest for 05 Days.

Muhammad Nadeem  
MBBS, FCPS (Medicine)  
Assistant Professor  
Department of Medicine, MTI/ LRH

Institutional Based Practice, LRH, MTI.

Not for Medicolegal Purpose

پیشہ کیلک: پرائیویٹ پریکٹس لیڈی ریڈنگ ہسپتال

**Muhammad Nadeem**  
 MBBS, MCPS, FCPS  
 Assistant Professor  
 Department of Medicine  
 MTI/ LRH, Peshawar



ڈاکٹر محمد نادیف

اسٹنٹ پروفیسر  
 میڈیکل ہونٹ  
 ایڈی ریڈنگ ہسپتال پشاور  
 ایمرامراض شوگر، بلڈ پریشر، قلب  
 معدہ، جگر، کلیا، رتان، آئی بی، اور سرکری، قانچ

Patient Name: Parveen Begum Age: 52 Yrs Sex: ♀ Date: 12/11/22

Clinical Record

H/Tx / DM / Hypothyroid

C/O: Pain

Chronic symptoms

Backache

of BA

Systemic Exam - Unremarkable

P: 76/min

B.P: 140/80

T: 36.8°C

Abx:

CBC

RBS

Chit R/E + C/S

U/S KUB

X-ray L5 spine

Rx

Uti?

Cap Focin 500mg

1000 — 2 + 2

Cran Mass Sachet

1000 — 1 + 1

Tab Neoprox 500mg

1000 — 1 + 1

Tab Temilin 400mg

1000 — 1 + 1

باقی برائے مانی جبری لکھی۔

Adv - Physiotherapy

- Bed rest for 7 Days

Institutional Based Practice, LRH, MTI.

Not for Medical Legal Purpose

پشاور ایڈی ریڈنگ ہسپتال

Dr. Muhammad Nadeem

MBBS, MCPS, FCPS  
Assistant Professor  
Department of Medicine  
MTI/LRH, Peshawar



ڈاکٹر محمد نديم

اسسٹنٹ پروفیسر  
دبئی ڈیپارٹمنٹ آف میڈیسن  
ایچ ایچ ایس ایم ایچ ہسپتال پشاور  
سی ایم ایچ ایف سی

Patient Name: Bibi \_\_\_\_\_ Age: 52 yr Sex: F Date: 05/11/22

Clinical Record

HR 70/PM/100/90  
BP 150/90  
SpO2 97% (RA)  
Wt 65kg  
Ht 160cm  
Temp 37.5°C  
Pulse 70  
RR 18  
S1 S2  
Lungs clear  
Heart normal  
Abdomen soft  
No JVP  
No edema

Rx

OSA

Cardio-opium

2 weeks

Cap. Thyroxine 50mcg  
Tab. Sitogen 40 2/15/20  
Tab. Xanthine 200 2/15/20  
Cap. Co-Vitalin 20/15/5  
Cap. Osanti 20  
Cap. Lofexamine 20  
Cap. Zinnin 20

Institutional Based Practice, LRH, MTI

Not for Medicolegal Purpose

Dr. Muhammad Nadeem  
MBBS, MCPS (Medicine)  
Assistant Professor  
Dept. of Medicine, MTI/LRH

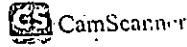
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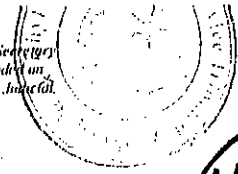


**ACCIDENT & EMERGENCY DEPARTMENT**  
MEDICAL TEACHING INSTITUTION PESHAWAR, KP Serial # 1198801  
Hayatabad Medical Complex

Patient : 00002358289      Perveen Bequm      51 Year/ Female  
Father's Name:      Date : 28-OCT-22 12:16  
Invoice #: KJT225139305      Receipt #: KJT2222552

Presenting Complaints	R. let to drug ward.	Remarks
<p>Has perineal abscess 7/7 ago. refused surgery.</p> <p>Past Medical History</p>	<p>low antibiotic.</p> <p>still raw &amp; febrile.</p> <p>On dry skin 28/10 suggested surgery but pt not willing</p>	
Investigations	<p>1) T&amp;S (C/S) in 10 ml</p> <p>1210</p> <p>2) Gf Broxa 2 ml</p> <p>1210</p>	
Diagnosis	<p>1) One week rest</p>	<p><i>[Signature]</i></p> <p>Specialist Registrar Surgical "A" Unit MTI/HMC Peshawar</p> <p>Stamp &amp; signature of prescriber</p>
Plan	Reason For Referral	





**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
PESHAWAR CAMP COURT D.I.KHAN.**

SCANNED  
KPST  
Peshawar

14

BEFORE: KALIM ARSHAD KHAN --- CHAIRMAN  
SALAH UD DIN --- MEMBER(J)

*Service Appeal No.137/2022*

Mst. Shamsud Bibi, SDEO (Female) Paharpur, Education  
Department, D.I.Khan.

.....(Appellant)

Versus

1. Government of Khyber Pakhtunkhwa, through Secretary Elementary & Secondary Education Department, Khyber Pakhtunkhwa Peshawar.
2. Chief Secretary, to government of Khyber Pakhtunkhwa Elementary & Secondary Education Department, Peshawar.
3. Secretary, Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.
4. Director Education, Department (E&SE) Khyber Pakhtunkhwa Peshawar.
5. District Education Officer (Female), Dera Ismail Khan.
6. District Education Officer (Female), Tank.
7. District Account Officer, D.I.Khan.
8. Mst. Sonia Nawaz, SDEO, (Female), Tank.

.....(Respondents)

Present:

Mr. Ahmad Ali,  
Advocate.....For appellant.

Mr. Muhammad Adeel Butt,  
Additional Advocate General.....For official respondents.

Mr. Noman Ali Bukhari,  
Advocate.....For private respondent No.8.

Date of Institution.....31.01.2022

Date of Hearing.....30.09.2022

Date of Decision.....30.09.2022

APPEAL UNDER SECTION 4 OF THE KHYBER  
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AIMED  
AGAINST THE IMPUGNED NOTIFICATION BEARING NO.  
SO (MC)/E&SED/4-16/2021/POSTING/TRANSFER/MC DATED  
12.01.2022 WHEREBY THE APPELLANT WAS

ATTESTED


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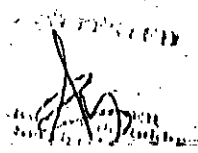
TRANSFERRED TO DISTRICT TANK, WHEREAS  
RESPONDENT NO.8 ON THE BASIS OF FAVOURITISM, WAS  
BROUGHT TO PAHARPUR, D.I.KHAN IN VIOLATION OF  
LAW, RULES AND POLICY IN VOGUE BY THE PROVINCIAL  
GOVERNMENT.

JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: Facts, to the extent necessary,  
are that the appellant is serving as Sub-Divisional Education Officer  
(SDEO) (Female) in the Education Department, Khyber Pakhtunkhwa and  
previously, she was posted as such at Munda, District Dir Lower vide  
notification dated 21.02.2019; that vide notification dated 09.08.2019, the  
petitioner was transferred from the post of SDEO(F) Munda Dir Lower to  
the post of SDEO(F) Tank; that thereafter on 07.10.2021, the appellant was  
transferred from the post of SDEO(F) Tank to the post of SDEO(F)  
Paharpur, District D.I.Khan; that, just after three months of transfer of the  
appellant to Paharpur, D.I.Khan, the respondents issued another impugned  
transfer notification dated 12.01.2022, vide which the appellant was  
transferred back to District Tank whereas private respondent No.8 was  
transferred in her place at Paharpur District D.I.Khan; that the appellant felt  
herself aggrieved from the order dated 12.01.2022 and filed departmental  
appeal, which was not responded and the appellant then filed this appeal in  
this Tribunal

02. On receipt of the appeal and its admission to full hearing, the  
respondents were summoned, who, on putting appearance, contested the  
appeal by filing reply/comments mainly on the grounds that under section  
10 of the Khyber Pakhtunkhwa Civil Servants Act, 1973, every civil  
servant was liable to serve anywhere within or outside the province; that the









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06. Learned counsel for private respondent No.8 submits that the instant appeal is not maintainable under Section-4 of the Service Tribunal Act 1971 on the ground that the statutory period of ninety days was not lapsed, hence premature which should be rejected. He further contended that the appellant has been treated in accordance with law and rules, therefore, the instant appeal is being devoid of merit might be dismissed.

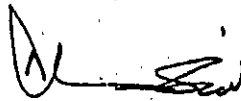
07. In order to streamline and regulate the postings and transfers of the Civil Servants, the Government of Khyber Pakhtunkhwa introduced a posting/transfer policy. Main conditions of the same relevant to the instant appeal are as under:-

*i. All the postings /transfers shall be strictly in public interest and shall not be abused/misused to victimize the Government servants.*

*iv. The normal tenure of posting shall be three years subject to the condition that for the officers /officials posted in unattractive areas, the tenure shall be two years and for hard areas the tenure shall be one year. The unattractive and hard areas will be notified by the Government.*

08. It is observed at the very outset that the reply of the official respondents has urged that the private respondent No.8 was transferred back on humanitarian grounds on acceptance of her departmental representation but neither such humanitarian ground was explained nor any public interest or exigency was stated in the reply of the respondents in transferring back the private respondent No.8.

09. The posting and transfer policy specifically fixes a normal tenure for the civil servants. In the case in hand it is two years but just in three months of the transfer of the appellant she was re-transferred to the previous place of posting without allowing her to complete normal tenure as per the Government's own decision found in the above policy.



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10. Tenure was originally created to give teachers academic freedom. Civil Servants do not have stability of tenure, particularly and especially in the Education Department where transfers and postings are made frequently at the whims and fancies of the executive head for political and other considerations, and not in the public interest; a fixed minimum tenure would not only enable Civil Servants to achieve their professional targets, but also help them function as effective instruments of public policy; repeated shuffling/transfer of officers is deleterious to good governance; minimum assured service tenure ensures efficient service delivery, and increased efficiency; and Civil Servants can also prioritize various social and economic measures intended to implement for the poor and marginalized sections of society.

11. In 2018 S C M R 1411 titled, "Khan Muhammad Versus Chief Secretary, Government of Balochistan Quetta and others", the august Supreme Court of Pakistan was pleased to have found as under:---

18. Under section 10 of the Act a civil servant cannot insist to be posted or transferred to a particular post but this does not mean that a civil servant can be made to serve under a subordinate. Moreover, while section 10 does not prescribe a minimum period during which a civil servant must serve at his post it does not mean that the Government without assigning any reason can move a civil servant from the place he was posted to after a month or subject the civil servant to repeated postings in a short period of time because this would amount to punishing him. Such postings also adversely affect the public interest and result in the wastage of scarce resources and constitute bad governance.

19. The Rules designate certain posts as 'tenure posts' (rule 22 read with Schedule IV of the Rules) and prescribe a period of three years for an incumbent to serve on such posts. Such prescribed tenure may therefore be categorized as the ideal duration for which a civil servant should serve at a particular post. The post of Divisional Director however is not a tenure post but the principle of serving for a particular duration at this post should be followed. In the present case the petitioner was posted for a little over a month when he was again posted. Any civil servant posted to a particular post requires some time to familiarize himself with the workings of the office and the

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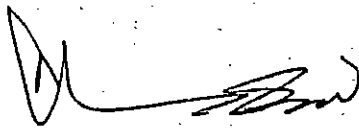
requirements of the post whereafter he will be best placed to  
acquit himself of the responsibilities of the post. However, a one  
month posting, as in the case of the petitioner, would not serve  
the interest of the people."

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12. The upshot of the above discussion is that impugned order dated  
07.10.2021 was not issued in public interest or exigencies of service and as  
such is not tenable in the eyes of law. Pre-mature transfer is clear violation  
of Clause I and IV of Posting and Transfer Policy notified by the provincial  
government. It is also violative of instructions circulated vide letter dated  
27.02.2013 pertaining to tenure in posting/transfer. Ordinary tenure for  
posting has been specified in the law or rules made there-under, such tenure  
must be respected and cannot be varied, except for compelling reasons. It  
should be recorded in writing and are judicially reviewable.

13. As a sequel to the above, the service appeal is allowed with the  
directions to the respondent-department to allow the appellant to continue  
on her present station of posting till completion of her normal tenure. The  
appeal is accepted in the above term. Costs shall follow the event. Consign.

14. Pronounced in open Court at Camp Court D.I.Khan and given  
under our hands and the seal of the Tribunal on this 30<sup>th</sup> day of  
September, 2022.




KALIM ARSHAD KHAN  
Chairman  
Camp Court D.I.Khan

Date of Presentation of Certificate 18/12/22

Number of Words 2100

Copying Fee 24/-

Urgent 4/-

  
SALAH UD DIN  
Member Judicial  
Camp Court D.I.Khan.

Certified to be true copy



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**DIRECTORATE OF ELEMENTARY & SECONDARY EDUCATION**  
**KHYBER PAKHTUNKHWA PESHAWAR.**  
Phone: 091-9225344 Email: ddadmin.es@ gmail.com

Office Order

Muhammad Sultan Superintendent office of the DEO (Female) Karak is hereby transferred/adjusted against vacant post of Superintendent at DEO (Female) Kohat on his own pay and BPS under disciplinary ground in the interest of public service with effect from the date of his taking over charge.

Note:

1. Charge report should be submitted to all concerned.
2. No TA/DA is allowed.

**DIRECTOR**  
Elementary & Secondary Education  
Khyber Pakhtunkhwa, Peshawar

Endst: No. 9273-78 (F.No.26 / A-23/MS/Kohat-II) Dated Peshawar the 16/4/2020.

Copy forwarded to the: -

1. PS to Secretary E&SE Department Khyber Pakhtunkhwa Peshawar.
2. District Education Officer (Female) Karak.
3. District Education Officer (Female) Kohat.
4. District Accounts Officer Concerned.
5. Officer concerned.
6. Master File.
7. PA to Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.

Assistant Director (Admin)  
Directorate of E&SE KPK, Peshawar

-21-

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

COC NO. 705 /2022  
IN  
Service Appeal No. 1678/2022

Mst. Parveen Begum, District Education Officer (Female) (BPS-19),  
E & SE Department, District Karak.

..... APPELLANT

**VERSUS**

- 1- The Chief Secretary Govt. of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
- 2- The Secretary, Elementary & Secondary Education, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
- 3- The Director, Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
- 4- Mst Fanoos Jamal, Deputy DEO (F) (BPS-18) District Khyber.

..... RESPONDENTS

**APPLICATION UNDER ARTICLE- 204 OF THE**  
**CONSTITUTION OF THE ISLAMIC REPUBLIC OF**  
**PAKISTAN, 1973 READ WITH SECTION 3 & 4 OF THE**  
**CONTEMPT OF COURT ORDINANCE, 2004 FOR**  
**INITIATING CONTEMPT OF COURT PROCEEDINGS**  
**AGAINST THE RESPONDENTS/CONTEMNORS**

**RESPECTFULLY SHEWETH:**

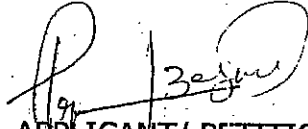
- 1- That the appellant is peaceful and law abiding citizen of Pakistan and is entitled for all the legal and fundamental rights guaranteed under the constitution of Islamic Republic of Pakistan, 1973.
- 2- That the appellant filed the Service Appeal No.1678/2022 before this Hon'ble Court along with an application for interim relief whereby the operation of impugned order dated 20-10-2022 was suspended with the following observation "***The operation of impugned order dated 20.10.2022 to the extent of the appellant, shall remain suspended, if not acted upon earlier.***" Copy of the order dated 28.11.2022 is attached as annexure.....A

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- 3- The applicant/Petitioner after obtaining the attested copy of the order dated 28.11.2022, submitted the said order before the respondents/contemnors which was not complied in its true spirit.
- 4- That the applicant/appellant time and again approached the respondents and produced order of Honorable Court, and requested for compliance, but they refused and in this way brought disregard to order of August court and thereby committed contempt of court.
- 5- That other grounds will be raised at the time of arguments with prior permission of this Hon'ble Court.

It is, therefore, respectfully prayed that by accepting this COC petition, the Contempt of Court proceeding may be initiated against the respondents, they may be awarded exemplary punishment and the order of this august court may be implemented in letter and spirit OR any other order deemed proper in the matter may be passed.


Dated: 07-12-2022

  
 APPLICANT/ PETITIONER  
**Mst Parveen Begum**


Through:

  
**NOOR MUHAMMAD KHATTAK**  
 ASC

  
**UMAR FAROOQ**

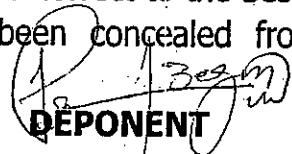
  
**WALEED ADNAN**

&

  
**MUHAMMAD AYUB**  
 ADVOCATES

**AFFIDAVIT**

I Mst. Parveen Begum, District Education Officer (Female) (BPS-19), E & SE Department, District Karak, do hereby solemnly affirm that the contents of this COC Petition are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Court.



  
**DEPONENT**

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FORM OF ORDER SHEET

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

C.O.C application No. 705/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	01/12/2022	<p>The C.O.C application of Mst. Parveen Begum submitted today by Mr. Noor Muhammad Khattak Advocate. Original file be requisitioned. It is fixed for hearing before Single Bench at Peshawar on <u>6/12/2022</u>. Notices be issued to appellant and her counsel.</p> <p>By the order of Chairman</p> <p> REGISTRAR</p>
	06 <sup>th</sup> Dec, 2022	<p>Junior to counsel for the petitioner present. Mr. Muhammad Adeel Butt, Addl: AG for respondents present.</p> <p>Respondents are directed through learned AAG to submit reply on the C.O.C application on 17.01.2023 before S.B.</p> <p></p> <p>(Kalim Arshad Khan) Chairman</p>

SCANNED  
KPST  
Peshawar





GOVERNMENT OF KHYBER PAKHTUNKHWA  
ESTABLISHMENT DEPARTMENT  
(JUDICIAL WING)

No. SO(Lit-I)E&AD/1-1/2020  
Dated: Peshawar, the 14.02.2022

To

1. The Senior Member Board of Revenue.
2. The Additional Chief Secretary, P&D Department.
3. All Secretaries to the Government of Khyber Pakhtunkhwa.
4. All the Commissioners, Khyber Pakhtunkhwa.
5. The Secretary, KP Public Service Commission, Peshawar.
6. All Heads of Attached Departments/ Autonomous Bodies in KP.
7. All the Deputy Commissioners, Khyber Pakhtunkhwa.

Subject: -

JUDGMENT AS TO DISCLOSURE OF DESIGNATION & NAME OF THE "COMPETENT AUTHORITY" WHILE ISSUING NOTIFICATIONS, ORDERS, OFFICE MEMORANDUMS, INSTRUCTIONS, LETTERS AND OTHER COMMUNICATIONS ETC.

I am directed to refer to the subject cited above and to state that the Hon'ble Supreme Court of Pakistan in its Judgment dated 30.12.2021 passed in the C.A No. 62-K of 2021 arising out of C.P No. 407-K of 2019, has passed certain orders/ given directions, the operative part whereof is reproduced as under:-

"For the reasons mentioned above, this petition is converted into an appeal and allowed and the impugned judgment of the Tribunal is set aside. We are also convinced that there is a need to put a stop to the use of the illusive and elusive term - the *competent authority* without disclosure of the competent authority's designation and name. Therefore, the governments of Sindh (petitioner No. 01) Baluchistan, Khyber Pakhtunkhwa, Punjab, the Government of Pakistan, Registrars of the Supreme Court and all High Courts, and through the Registrars of the High Court's all District and Sessions Courts, are required to issue requisite orders/ directions that they and their respective functionaries, semi-governments and statutory organizations whenever issuing notifications, orders, office memorandums, instructions, letters and other communications must disclose the designation and the name of the person issuing the same to ensure

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that it is by one who is legally authorized to do so, and which will ensure that such person remains accountable. Copies of this Judgment be sent to the Secretary, Establishment Division, Government of Pakistan, to the Chief Secretaries of the Provinces, to the head of the Islamabad Capital Territory, Registrars of the Supreme Court and all High Courts who are directed to issue requisite orders/ directions and to publish the same in their respective gazettes or ask the concerned government to do so. Compliance report be submitted for our consideration in chamber by or before 1 March 2022."

You are therefore, requested to comply with the orders/ directions contained in the said Judgment in letter & spirit in future.

Chief Secretary, Govt of  
Khyber Pakhtunkhwa

Ends: of even No. & Date.

Copy forwarded for information to the:-

1. Registrar, Supreme Court of Pakistan at Islamabad.
2. Deputy Registrar, Supreme Court of Pakistan M.R. Kayani Road, Karachi with reference to his letter No. C.A62-K of 2021 arising out of No. C.P 407-K of 2019 dated 26.01.2022.
3. Manager, Printing Press Peshawar for issuing it in the official gazette of Khyber Pakhtunkhwa.
4. All Additional Secretaries/ Deputy Secretaries in Establishment & Administration Department.
5. PS to Chief Secretary, Khyber Pakhtunkhwa.
6. All Section Officers/ Estate Officers in Establishment & Administration Department.
7. PS to Secretary Establishment Department, Khyber Pakhtunkhwa.
8. PS to Special Secretary (Estt), Establishment Department, Khyber Pakhtunkhwa.
9. PA to Additional Secretary (Judicial), Establishment Department.
10. PA to Deputy Secretary (Judicial), Establishment Department.
11. Master File.

(Mukaram Khan)  
Section Officer (Litigation-I)

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2022 S C M R 439

[Supreme Court of Pakistan]

Present: Qazi Faez Isa and Amin-ud-Din Khan, JJ

PROVINCE OF SINDH and others---Petitioners

Versus

SHAHZAD HUSSAIN TALPUR---Respondent

Civil Petition No. 407-K of 2019, decided on 30th December, 2021.

(Against the judgment dated 15.03.2019 passed by the Sindh Service Tribunal at Karachi in Service Appeal No. 815/2017)

**(a) Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974---**

---R. 4(1)---Sindh Public Service Commission (Functions) Rules, 1990, R. 3(1)(i)---Special Auditor, Cooperative Societies---Appointment, legality of---Special Auditor was required to be selected by the Provincial Public Service Commission ('the Commission')---Special Auditor was a grade 17 post and the Secretary, Cooperative Societies was not authorized to either select or appoint a person in Grade 17.

Perusal of the original file and documents pertaining to the appointment of the respondent as Special Auditor, Cooperative Societies showed only the relevant notification appointing the respondent; there is nothing therein regarding the number of persons who had applied for the position of Special Auditor, how many had participated in the test and interview, the results of such test and interview, and culminating in a seriatim listing of the applicants in the order of merit - the merit list. The respondent was pre-selected and appointed by the Secretary, Cooperative Societies and this was done without making him take any test and/or interview.

The Secretary issued the notification appointing the respondent by using the ubiquitous term competent authority, without disclosing the designation and name of the competent authority. Secretary also did not disclose that he himself was the competent authority in respect of appointments to a Grade 16 position. To enable himself to appoint the respondent, the Secretary illegally downgraded the position of Special Auditor from Grade 17 to Grade 16, and, to ensure that the nexus between him and the respondent went unnoticed the Secretary did not mention the full name of the respondent in the notification and left out the names shared between them - 'Mir' and 'Talpur'.

Special Auditor was required to be selected by the Provincial Public Service Commission ('the Commission'). Special Auditor was a Grade 17 post and the Secretary was not authorized to either select or appoint a person in Grade 17. In selecting and appointing the respondent as Special Auditor the Secretary had acted illegally. Respondent was not selected by the Commission yet he was appointed as Special Auditor, and, it would not make a difference even if it be accepted that the post of Special Auditor was in Grade 16 because selection of Grade 16 posts was also to be done by the Commission. Appointment of respondent as Special Auditor was patently illegal.

**(b) Civil service---**

---Appointment---Use of the term "competent authority" in notifications, orders, office memorandums, instructions, letters and other communications---Deprecated---Using the term 'competent authority' but without disclosing such person's designation and name is against public policy and also against the public interest since it facilitates illegalities to be committed and protects those committing them.

It is an individual who holds a particular position and by virtue of such position exercises power. Merely mentioning the competent authority without disclosing the designation and name of the person who is supposed to be the competent authority is utterly meaningless. Non-disclosure serves to obfuscate and enables illegalities to be committed.

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The use of vague and imprecise language, such as, the competent authority, in legal matters is an anathema and oftentimes results in avoidable disputes, which unnecessarily consume time and public resources. The use of accurate and precise language helps avoid disputes. Using the term the competent authority but without disclosing such person's designation and name is against public policy and also against the public interest since it facilitates illegalities to be committed and protects those committing them. Every functionary of the government, and everyone else paid out of the public exchequer, serves the people; positions of trust cannot be misused to appoint one's own or to illegally exercise power.

There is a need to put a stop to the use of the illusive and elusive term - the competent authority without disclosure of the competent authority's designation and name. Therefore, all the Provincial Governments, Registrars of the Supreme Court and all High Courts, and through the Registrars of the High Courts all District and Sessions courts, are required to issue requisite orders/directions that they and their respective functionaries, semi-government and statutory organizations whenever issuing notifications, orders, office memorandums, instructions, letters and other communications must disclose the designation and the name of the person issuing the same to ensure that it is by one who is legally authorized to do so, and which will ensure that such person remains accountable.

Saulat Rizvi, Additional Advocate-General, Sindh, Ghulam Rasool Mangi, Advocate-on-Record, Ali Gul Sanjrani, Deputy Secretary and Abdul Latif Qazi, Deputy Registrar for Petitioners.

Mukesh Kumar G. Karara, Advocate Supreme Court along with Respondent and M. Iqbal Ch., Advocate-on-Record (absent) for Respondent.

Date of hearing: 30th December, 2021.

#### JUDGMENT

**Qazi Faez Isa, J.** This petition has been filed challenging the judgment of the Sindh Service Tribunal at Karachi ('the Tribunal'), which allowed the respondent's appeal and set aside the order dismissing him from the position of Special Auditor in the 'Cooperation Department'. The learned Additional Advocate-General, Sindh ('AAG') says that the 'Cooperation Department' is another name for the Cooperative Department. However, he states that the Sindh Government Rules of Business, 1986 refers to the department as the Cooperative Department. The petitioners are well advised to refer to departments by the names mentioned in the said Rules, and not to cause needless confusion.

2. The learned AAG states that the respondent was terminated from service because he was illegally selected and appointed to the post of Special Auditor by the Secretary of the department. This post could only be filled-in by inviting applicants through advertisements which set out the eligibility criteria and testing their abilities/competence by the Sindh Public Service Commission ('the Commission'). The Commission would then recommend the candidate who had attained the highest marks for appointment. Referring to the Sindh Public Service Commission (Functions) Rules, 1990<sup>1</sup> ('the Commission's Rules') he states that the position of Special Auditor is a grade 17 position and as per the Commission's Rules the selection to a grade 17 position can only be done by the Commission. To support his contention that the position of Special Auditor is a grade 17 position the learned AAG has referred to the Budget Books of the two years preceding the respondent's appointment which show that Special Auditor is a grade 17 position. The learned AAG states that the respondent was appointed by Mr. Ijaz-ul-Haq Talpur ('the Secretary'). However, before appointing the respondent the Secretary downgraded the position of Special Auditor to a grade 16, which he did because a Secretary is authorised to make grade 16 appointments, as provided in the Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974<sup>2</sup> ('the Appointment Rules'). The learned AAG submits that, even if it be conceded that the position of Special Auditor was a grade 16 position then too selection to this post had to be made by the Commission in terms of Rule 3(1)(i) of the Commission's Rules.

3. The petitioners initially contended that the Secretary was the respondent's brother but in the absence of such proof the learned AAG withdrew this allegation. However, the learned AAG points out that the Secretary and the respondent resided together at the same address which was E-92, Block-

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II, Pakistan Employees Cooperative Housing Society, Karachi (as confirmed by their identity cards) and there was a close nexus between them. Therefore, the Secretary had a conflict of interest and should not have appointed the respondent, but he did not disclose his connection and resultant conflict, and did not obtain permission to appoint the respondent. He submits that the respondent was appointed vide notification dated 10 May 2013 ('the Notification') as Special Auditor and this was done by concealing the identities and the connection between the Secretary and the respondent. To appreciate this contention the Notification appointing the respondent is reproduced hereunder:

#### COOPERATION DEPARTMENT GOVERNMENT OF SINDH

Karachi dated the 10th May, 2013

#### NOTIFICATION

N.O. S.O. (C-II)1-112/2013. On the recommendation of the Departmental Selection Committee and with the approval of the competent authority, Mr. Shahzad Hussain son of Ghulam Rasool is hereby appointed as Special Auditor, Cooperative Societies in Cooperation Department (BS-16) i.e. Rs. 10000-800-34000 on regular basis with immediate effect.

On his appointment he is posted as Special Auditor, Cooperative Societies Hyderabad against an existing vacancy with immediate effect.

#### SECRETARY TO THE GOVERNMENT OF SINDH

The learned AAG says that the Notification refers to 'Shahzad Hussain', however, the respondent's name (or complete name) was 'Mir Shahzad Hussain Talpur', which was also the name under which he had filed the appeal before the Tribunal. He further submits that the Secretary himself was the designated competent authority in respect of making appointments to grade 16 positions but the Notification did not disclose this and the Secretary also did not disclose his name under his signature. Structuring the Notification in this manner, and by concealing the designation and name of the competent authority, enabled the Secretary to illegally appoint the respondent.

4. The learned AAG next contends that the respondent was dismissed from service on 10 February 2014 and the respondent belatedly filed departmental appeal on 2 November 2017. Therefore, since the departmental appeal was filed well beyond the prescribed thirty days period the Tribunal should have dismissed the appeal filed before it on this ground alone. However, the belated filing of the departmental appeal was condoned by categorizing the notification dismissing the respondent from service as a void order and that such a void order could be assailed at any time. The learned AAG submits that the order dismissing the respondent from service was passed in accordance with the law and could not be categorised as a void order. And, having entertained the appeal the Tribunal held that since in an identical case the same relief was granted it could not be denied to the respondent, which the learned AAG says was not correct because the referred case was in respect of lower grade employees who were not required to be selected by the Commission.

5. The learned Mr. Mukesh Kumar Karara represents the respondent and supports the impugned judgment. He states that the respondent and the Secretary were not brothers and it was a coincidence that they were living at the same address. He submits that the respondent met the requisite criteria mentioned in the advertisement issued by the Cooperative Department and he could not be penalized because of any alleged illegalities committed by the Department in appointing the respondent.

6. We have heard the learned counsel and with their assistance also examined the documents on record. We had directed the petitioners (vide order dated 20 December 2021) to produce the original file and documents pertaining to the appointment of the respondent to ascertain how he came to be appointed as Special Auditor. Such file/documents have been examined by us and the learned counsel for the respondent and contain only the Notification appointing the respondent. There is nothing therein regarding the number of persons who had applied for the position of Special Auditor, how many had participated in the test and interview, the results of such test and interview, and culminating in a seriatim listing of the applicants in the order of merit - the merit list. It is clear that the respondent was pre-selected and appointed by the Secretary and this was done without making him take any test and/or interview.

7. The Secretary issued the Notification dated 10 May 2013 appointing the respondent by using the ubiquitous term competent authority, without disclosing the designation and name of the competent authority. The Secretary also did not disclose that he himself was the competent authority in respect of appointments to a grade 16 position. To enable himself to appoint the respondent, the Secretary illegally downgraded the position of Special Auditor from grade 17 to grade 16. And, to ensure that the nexus between him and the respondent went unnoticed the Secretary did not mention the full name of the respondent in the Notification and left out the names shared between them - Mir and Talpur.

8. The respondent was terminated from service vide notification dated 10 February 2014, which is reproduced hereunder:

**COOPERATION DEPARTMENT GOVERNMENT OF SINDH**

Karachi dated the 10th February, 2014

**NOTIFICATION**

No. SO(C-II)1(16)/2008. With the approval of the competent authority the services of Mr. Shahzad Hussain, Special Auditor Cooperative Societies (BS-16) Hyderabad are hereby terminated with immediate effect on the grounds that the post of Special Auditor Cooperative Societies (BS-16) is to be filled through Sindh Public Service Commission and the above said post has not taken from the purview of Sindh Public Service Commission at the time of appointment of Mr. Shahzad Hussain by the Competent Authority i.e. Chief Minister Sindh.

(ALI AHMED LUND)

SECRETARY TO THE GOVERNMENT OF SINDH

The reason given for terminating the respondent from service was that only a person selected by the Commission could be appointed to the position of Special Auditor and that the Secretary was not the competent authority to appoint the respondent. Therefore, since the selection and the appointment of the respondent was illegal he was terminated from service.

9. To determine whether a Special Auditor could be selected by the Cooperative Department and whether the person selected could be appointed by the Secretary we need to consider the applicable law and rules. The Sindh Civil Servant Act, 1973<sup>3</sup> governs the appointment of those in 'the service of Pakistan in connection with the affairs of the Province of Sindh'.<sup>4</sup> Section 5 of the Sindh Civil Servants Act, 1973 states, that:

5. Appointments.---Appointments to a civil service or a civil post in connection with the affairs of the Province shall be made in the prescribed manner by Government or by a person authorised by it in that behalf.<sup>5</sup>

Rule 4 of the Appointment Rules,<sup>6</sup> made pursuant to the Sindh Civil Servants Act, 1973, prescribes, that:

4. (1) The authorities competent to make appointment to the various posts shall be as follows:

S.No.	Posts	Appointing Authority
6.	Posts sanctioned in Basic Scale-16	Secretary concerned.

10. The Sindh Public Service Commission Act, 1989<sup>7</sup> was enacted to establish the Sindh Public Service Commission. The functions of the Commission are stipulated in section 7, the relevant portion whereof, is reproduced hereunder:

7. Functions of the Commission.---The functions of the Commission shall be-

- (i) to conduct tests and examinations for recruitment for initial appointment to -
  - (a) such posts connected with the affairs of the Province of Sindh;

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Pursuant to the Sindh Public Service Commission Act, 1989 the Sindh Public Service Commission (Functions) Rules, 1990<sup>8</sup> were enacted, rule 3(1)(i) whereof stipulates, that:

3. (1) The Commission shall, subject to other provisions of these rules, conduct tests for initial recruitment to-

(i) civil posts connected with the affairs of the Province in basic pay scale 11 to 22 except those specified in the Schedule;

11. The abovementioned laws stipulate that in respect of higher grades it is the Commission which selects candidates, and does so after conducting requisite tests. A Special Auditor was required to be selected by the Commission. The respondent was not selected by the Commission yet he was appointed as Special Auditor. And, it would not make a difference even if it be accepted that the post of Special Auditor was in grade 16 because selection to grade 16 posts is also to be done by the Commission.

12. Special Auditor was a grade 17 post and the Secretary was not authorized to either select or appoint a person in grade 17. In selecting and appointing the respondent as Special Auditor the Secretary had acted illegally. Assuming, for the sake of argument alone, that the Secretary could have selected and appointed a Special Auditor it could only be after conducting the requisite departmental test/interview of all applicants, but this too was not done.

13. The appointment of the respondent as Special Auditor was patently illegal. The learned Mr. Mukesh Kumar Karara concedes that appointment to the post of Special Auditor was to be made after selection of the candidate by the Commission. In these circumstances it is not understandable how the Tribunal could categorise the respondent's termination order to be a void order. The Tribunal overlooked the relevant laws (mentioned above) and disregarded the statutory period within which the departmental appeal had to be filed by the respondent. The Tribunal's impugned judgment is clearly not sustainable and has to be set aside.

14. We are constrained to observe that the Secretary, in concealing his designation and name, and by not disclosing that he was the competent authority, succeeded in appointing the respondent. The Secretary issued the Notification which shielded himself in the anonymous cloak of the competent authority and one which also concealed his connection with the respondent.

15. Whenever the Constitution grants power to an individual it mentions the person's position/designation, for instance the President, the Prime Minister, the Chief Justice, the Governor, et cetera. The same also holds true with regard to Federal and provincial laws, including the cited laws and to the governments' rules of business. It is an individual who holds a particular position and by virtue of such position exercises power. Merely mentioning the competent authority without disclosing the designation and name of the person who is supposed to be the competent authority is utterly meaningless. Non-disclosure serves to obfuscate and enables illegalities to be committed. In this case the Secretary was not authorized to appoint the respondent but managed to do so by donning the competent authority cloak. We are not at all persuaded by the contention of the respondent's counsel that the respondent should not be penalized for the illegalities committed by the department. The respondent was illegally selected and appointed by the Secretary and his selection/appointment is not sustainable nor is it such a minor transgression that it could be condoned.

16. We may also observe that the use of vague and imprecise language, such as, the competent authority, in legal matters is an anathema and often times results in avoidable disputes, which unnecessarily consume time and public resources. The use of accurate and precise language helps avoid disputes. Using the term the competent authority but without disclosing such person's designation and name is against public policy and also against the public interest since it facilitates illegalities to be committed and protects those committing them. Every functionary of the government, and everyone else paid out of the public exchequer, serves the people of Pakistan; positions of trust cannot be misused to appoint one's own or to illegally exercise power.

17. For the reasons mentioned above, this petition is converted into an appeal and allowed and the impugned judgment of the Tribunal is set aside. We are also convinced that there is a need to put a

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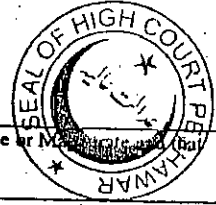
stop to the use of the illusive and elusive term - the competent authority without disclosure of the competent authority's designation and name. Therefore, the governments of Sindh (petitioner No. 1), Balochistan, Khyber Pakhtunkhwa, Punjab, the Government of Pakistan, Registrars of the Supreme Court and all High Courts, and through the Registrars of the High Courts all District and Sessions courts, are required to issue requisite orders/directions that they and their respective functionaries, semi-government and statutory organizations whenever issuing notifications, orders, office memorandums, instructions, letters and other communications must disclose the designation and the name of the person issuing the same to ensure that it is by one who is legally authorized to do so, and which will ensure that such person remains accountable. Copies of this judgment be sent to the Secretary, Establishment Division, Government of Pakistan, to the Chief Secretaries of the provinces, to the head of the Islamabad Capital Territory, Registrars of the Supreme Court and all High Courts who are directed to issue requisite orders/ directions and to publish the same in their respective gazettes or ask the concerned government to do so. Compliance report be submitted for our consideration in chamber by or before 1 March 2022.

MWA/P-3/SC

Appeal allowed.



PESHAWAR HIGH COURT, PESHAWAR.  
FORM "A"  
FORM OF ORDER SHEET.



Serial No of order or proceeding	Date of Order or Proceeding	Order or other proceedings with Signature of judge or Magistrate (Bar) of parties or counsel where necessary
1	2	3
	28.09.2022.	<p style="text-align: center;"><u>W.P.No.3508-P/2022.</u></p> <p><u>Present:-</u> Mr.Noor Muhammad Khattak, Advocate for the petitioners.</p> <p style="text-align: center;">=====</p> <p><u>S M ATTIQUE SHAH:-</u> Through instant writ petition, petitioners have approached to this court with the following prayer:-</p> <p>"1. An appropriate writ may kindly be issued to declare the impugned notification vide dated 22.08.2022 to the extent of the term "Competent Authority", as ineffective upon the rights of petitioners, without mandate of law, illegal, unlawful, unconstitutional, impracticable, invalid, void ab initio and ultra vires in light of the judgments cited as 2022 SCMR 439 narrated under the roof of grounds.</p> <p>2. Further, a writ of mandamus may also be kindly issued directing the respondents No.1, 2, 3, (Provincial Government) defined under Article 129 of the Constitution of Islamic Republic of Pakistan to act strictly in accordance with law while communicating the respondent No.05 to keep him bound for notifying/publishing the orders/directions contained in the judgment cited as 2022 SCMR 439 under proper authority in the official Gazette under Section 20-A of General Clauses Act to take a legal effect. "</p> <p>2. In essence, the petitioners are aggrieved from notification No.SOH-III/7-262/2022(Drug Inspector), issued by respondent No.4 being in violation of the judgment of the august Apex</p>

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Court rendered in *Province of Sindh and others Vs. Shahzad Hussain Talpur*, reported as (2022 SCMR 439).

3. Heard. Record perused.
4. Perusal of the ibid notification would reflect that the said notification has been issued pursuant to the judgment of the Khyber Pakhtunkhwa Services Tribunal dated 06.12.2021 in Service Appeal No.16578/2020. For ready reference, the said notification is reproduced below:-

**NOTIFICATION**

SOH-III/7-262/2022(Drug Inspector); In compliance of the Services Tribunal, Peshawar judgment dated 06.12.2021 in Service Appeal no. 16578/2020, and consequent upon the approval of competent authority, the posting/transfer orders of the following Chief Drug Inspector/Drug Inspectors/Drug Analyst is hereby made with immediate effect.

S. No.	Name of Officers & Designation	From	To	Remarks
1.	Syed Muhammad Asad Halimi Chief Drug Inspector BS-19	Chief Pharmacist (BP-19), KDA, Kohat	Chief Drug Inspector (BS-19), District D.I. Khan	Against the vacant post
2.	Tayyab Abbas Chief Drug Inspector BS-19	Chief Pharmacist (BS-19), Services Hospital, Peshawar	Chief Drug Inspector (BS-19), District Abbottabad	Against the vacant post
3.	Amin ul Haq Senior Drug Inspector (BS-18)	Already under report to DG, DC&PS on account of Disciplinary proceeding under E&D Rules, 2011		
4.	Ajif Hussain Analyst BS-18	Senior Pharmacist (BS-18), Services Hospital, Peshawar	Drug Analyst (BS-18), Drug Testing Laboratory (DTL), Peshawar	Against the vacant post
5.	Manzoor Ahmad Drug Inspector BS-17	Drug Inspector (BS-17) District Peshawar	Drug Inspector (BS-17) District Dir Lower	Against the vacant post
6.	Zia Ullah Drug Inspector BS-17	Drug Inspector (BS-17) District Dir Lower	Drug Inspector (BS-17) District Bannu	Against the vacant post
7.	Muhammad Shoab Khan Drug Inspector BS-17	Already under report to DG, DC&PS on account of Disciplinary proceeding under E&D Rules, 2011		
8.	Shahzada Mustata Anwar Drug Inspector BS-17	Waiting for posting at Directorate of Drug Control & Pharmacy Services, Khyber Pakhtunkhwa, Peshawar	Drug Inspector (BS-17) District Karak	Against the vacant post

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Secretary to Govt. of Khyber  
Pakhtunkhwa Health Department.

Ibid notification clearly reflects that the same is based upon the judgment of the Service Tribunal dated 06.12.2021 passed in Service Appeal No.16578/2020 of the petitioners. In fact the petitioners through instant writ petition under the guise of the ibid judgment of the august Apex Court, seek setting aside of the said notification being violative of the ibid judgment of the august Apex Court.

The matter of the impugned notification revolves around the posting/ transfers of the petitioners which squarely falls within the terms and condition of the service of the petitioners provided by Chapter II of the Civil Servants Act, 1973, which are indeed amenable to the jurisdiction of the Khyber Pakhtunkhwa Service Tribunal provided by section 4 of the Service Tribunal Act, 1974. The jurisdiction of this court in such matter is explicitly barred under the provisions of Article 212 (2) of the Constitution. *Miss Rukhsana Ijaz Vs. Secretary, Education, Punjab & others (1997 SCMR 167), Ayyaz Anjum Vs. Govt. of Punjab, Housing & Physical Planning Department through Secretary and others (1997 SCMR 169), Rafique Ahmad Chaudhry Vs. Ahmad Nawaz Malik & others (1997 SCMR 170), Secretary Education NWFP, Peshawar and 2 others Vs.*

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*Mustamir Khan & others (2005 SCMR 17) and Peer Muhammad Vs. Govt: of Baluchistan through Chief Secretary & others (2007 SCMR 54).*

5. The *ibid* view of the august Apex Court has further been affirmed in recent judgment rendered by the august Apex Court in *Chief Secretary, Govt: of Punjab Lahore and others Vs. M/s Shamim Usman's* reported in (2021 SCMR 1390), the relevant portion of the *ibid* judgment is reproduced below:-

*"The High Court had no jurisdiction to entertain any proceedings in respect of terms and conditions of service of a civil servant which could be adjudicated upon by the Service Tribunal. The High Court as a constitutional court should always be mindful of the jurisdictional exclusion contained under Article 212 of the Constitution. Any transgression of such constitutional limitation would render the order of the High Court void and illegal."*

Coming to the contention of the learned counsel for the petitioners that the impugned notification is liable to be set aside being in violation of the judgment of the august Apex Court reported in the case of *Province of Sindh Vs. Shehzad Hussain Talpur (2022 SCMR 439)*, the relevant portion of the *ibid* judgment is reproduced below:-

*"15. Whenever the Constitution grants power to an individual it mentions the person's position/designation, for instance the President, the Prime Minister, the Chief Justice, the Governor, et cetera. The same also holds true with regard to Federal and provincial laws,*

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including the cited laws and to the governments' rules of business. It is an individual who holds a particular position and by virtue of such position exercises power. Merely mentioning the competent authority without disclosing the designation and name of the person who is supposed to be the competent authority is utterly meaningless. Non-disclosure serves to obfuscate and enables illegalities to be committed. In this case the Secretary was not authorized to appoint the respondent but managed to do so by donning the competent authority cloak. We are not at all persuaded by the contention of the respondent's counsel that the respondent should not be penalized for the illegalities committed by the department. The respondent was illegally selected and appointed by the Secretary and his selection/appointment is not sustainable nor is it such a minor transgression that it could be condoned.

16. We may also observe that the use of vague and imprecise language, such as, the competent authority, in legal matters is an anathema and oftentimes results in avoidable disputes, which unnecessarily consume time and public resources. The use of accurate and precise language helps avoid disputes. Using the term the competent authority but without disclosing such person's designation and name is against public policy and also against the public interest since it facilitates illegalities to be committed and protects those committing them. Every functionary of the government, and everyone else paid out of the public exchequer, serves the people of Pakistan; positions of trust cannot be misused to appoint one's own or to illegally exercise power.

17. For the reasons mentioned above, this petition is converted into an appeal and allowed and the impugned judgment of the Tribunal is set aside. We are also convinced that there is a need to put a stop to the use of the illusive and elusive term - the competent authority without disclosure of the competent authority's designation and name. Therefore, the governments of Sindh (petitioner No. 1), Balochistan, Khyber Pakhtunkhwa, Punjab, the

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Government of Pakistan, Registrars of the Supreme Court and all High Courts, and through the Registrars of the High Courts all District and Sessions courts, are required to issue requisite orders/directions that they and their respective functionaries, semi-government and statutory organizations whenever issuing notifications, orders, office memorandums, instructions, letters and other communications must disclose the designation and the name of the person issuing the same to ensure that it is by one who is legally authorized to do so, and which will ensure that such person remains accountable. Copies of this judgment be sent to the Secretary, Establishment Division, Government of Pakistan, to the Chief Secretaries of the provinces, to the head of the Islamabad Capital Territory, Registrars of the Supreme Court and all High Courts who are directed to issue requisite orders/ directions and to publish the same in their respective gazettes or ask the concerned government to do so. Compliance report be submitted for our consideration in chamber by or before 1 March 2022."

Pursuant to the above judgment of the august Apex Court the worthy Chief Secretary, Government of Khyber Pakhtunkhwa has issued a notification No.SO(Lit-1)E&AD/1-1/2020 dated 14.02.2022 vide which compliance of the ibid judgment was sought in letter and spirit in future. However, due to the reasons best known to the respondents at the time of issuance of the impugned notification the ibid judgment of the august Apex Court was not complied with in letter and; spirit.

Under the provisions of Article 189 of the Constitution the decisions of the Supreme Court are binding on all other courts. For ready

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reference the same is reproduced below:-

*"Any decision of the Supreme Court shall, to the extent that it decides a question of law which is based upon or enunciates a principle of law, is binding on all other courts in Pakistan."*

Given that the decisions of the Supreme Court are binding upon all the stakeholders and; as earlier discussed the Government of Khyber Pakhturkhwa has already issued a notification qua the compliance of the ibid judgment of the august Apex Court in letter and; spirit, however, mere non-compliance of the ibid judgment of the august Apex Court would not confer jurisdiction upon this court in a matter which is squarely arising out of the terms and; conditions of the service of a civil servant. Undeniably the decisions of the august Apex Court are binding on each and; every organ of the state by virtue of the provisions of Articles 189 and; 190 of the Constitution. It is well settled that a question of law, pronounced or declared by august Apex Court in terms of Article 189 of the Constitution has binding effect on all functionaries both executive and; the judicial authorities. The superior courts, tribunals have obligation to implement and; adhere to the judgment of the Supreme Court rendered. *Moulvi Abdul Qadir & others Vs. Moulvi Abdul Wassay and others (2010 SCMR 1877).*

6. In view thereof the worthy Service

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Tribunal Khyber Pakhtunkhwa is very much clothed with the jurisdiction and; authority to implement the ibid decision of the august Apex Court in terms of Articles 189 and; 190 of the Constitution and; petitioners can validly agitate the same before the worthy Service Tribunal if they so wish and; desire.

7. For what has been discussed above, this petition, being bereft of any merit, is hereby dismissed in *limine*. However, respondents are directed to implement and; enforce the ibid judgment of august Apex Court in its letter and; spirit. Copy of instant judgment be sent to the worthy Chief Secretary for compliance.

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JUDGE

*[Signature]*  
JUDGE

Announced.  
Dt.28.09.2022.

RECEIVED TO BE TRUE  
 01 NOV 2022

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