

Appeal no. 11011/2020

Peer Muhammad vs Govt

15.01.2021

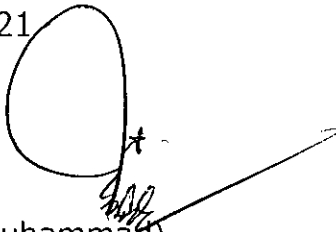
Appellant present through counsel.

Riaz Khan Paindakheil learned Assistant Advocate General alongwith Wahid Gul ADEO for official respondents No.1 to 3 present. Counsel for private respondent No.4 present.

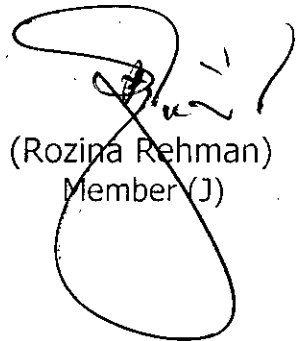
Vide detailed judgment of today of this Tribunal placed on file of service appeal No.11009/2020 titled Muhammad Zada Vs. Education Department, instant service appeal is accepted and the impugned notification in respect of posting transfer of the appellant, stands set aside. With no order as to costs. File be consigned to the record room.

ANNOUNCED.

15.01.2021



(Mian Muhammad)  
Member (E)



(Rozina Rehman)  
Member (J)

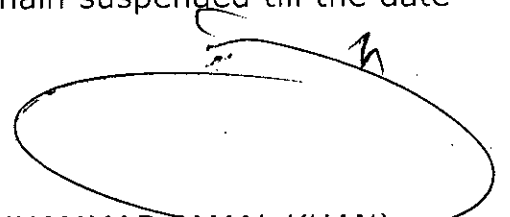
22.12.2020

Mr. Noor Muhammad Khattak, Advocate, for appellant is present. Mr. Riaz Ahmad Paindakheil, Assistant Advocate General, on behalf of official respondents No. 1 to 3 and Mr. Saif Ullah Khalil, Advocate, on behalf of private respondents No. 4, are also present.

Learned counsel representing appellant submitted that he has not prepared the brief and requested for adjournment. The learned Assistant Advocate General as well as learned counsel representing private respondent No. 4 stressed to address arguments to the extent as to whether status-quo has to remain in the field or else has to be vacated. Learned counsel for appellant submitted that he has not opened the file yet and cannot address arguments and again requested for adjournment. The case is adjourned to 12.01.2021 on which to come up for arguments before D.B. Time sought for submission of rejoinder, time allowed. Appellant is directed to submit rejoinder. The operation of impugned order shall remain suspended till the date fixed if not acted upon already.



(ATIQU-UR-REHMAN WAZIR)  
MEMBER (EXECUTIVE)



(MUHAMMAD JAMAL KHAN)  
MEMBER (JUDICIAL)

12.01.2021

Appellant present through counsel.

Riaz Khan Paindakheil learned Assistant Advocate General alongwith Ahmad Hussain Litigation Officer and Wahid Gul ADEO for official respondents No.1 to 3 present. Counsel for private respondents No.4 present.

Arguments heard. To come up for order on 15.01.2021 before D.B.



(Mian Muhammad)  
Member (E)



(Rozina Rehman)  
Member (J)

19.11.2020

Appellant in person and Addl; AG alongwith Abdul Wahid for official respondents No. 1 to 3 and junior counsel for private respondents No. 4 present.

Reply/comments on behalf of private respondent No.4 has been already submitted. Representative of official respondents No.1 to 3 submitted written reply/comments. The appeal is assigned to D.B for arguments. Appellant may submit rejoinder within a fortnight. If, so advised. In the meanwhile, the operation of the impugned order, to the extent of appellant, shall remain suspended if not acted upon

  
Chairman

03.12.2020

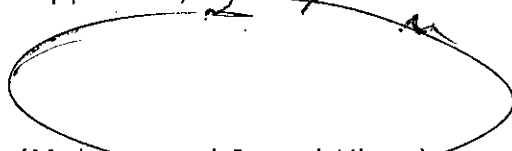
Due to COVID-19, case is adjourned to 22.12.2020 for the same as before.

  
Reader

19.10.2020

Appellant is present in person. Mr. Kabirullah Khattak, Additional Advocate General alongwith representative of the department Mr. Ahmad Hussain, ADEO for official respondents and private respondent No. 4 are also present.

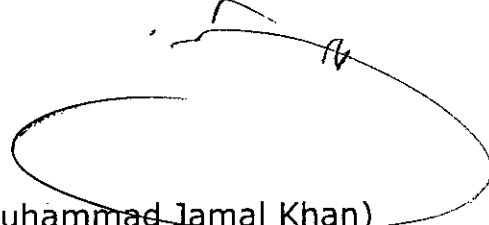
Private respondent No. 4 submitted para-wise reply on main appeal as well as reply on stay application which are placed on record. Representative of official respondents seeks time to furnish written reply/comments. Adjourned to 09.11.2020 on which to come up for written reply/comments on behalf of official respondents before S.B. In the meanwhile, the operation of impugned order, to the extent of appellant, shall remain suspended if not acted upon already.

  
(Muhammad Jamal Khan)  
Member (Judicial)

09.11.2020

Nemo for the appellant. Mr. Kabirullah Khattak, Additional Advocate General for official respondents No. 1 to 3 is present.

Learned Additional Advocate General requests for time to contact the respondents and furnish written reply/comments on the next date of hearing. Adjourned to 19.11.2020 on which date file to come up for written reply/comments on behalf of official respondents before S.B. In the meanwhile, the operation of impugned order, to the extent of appellant, shall remain suspended if not acted upon already.

  
(Muhammad Jamal Khan)  
Member (Judicial)

01.10.2020

Counsel for the appellant present.

Contends that the impugned transfer order of appellant, dated 11.08.2020, was withdrawn after the submission of departmental appeal. It was done through office order dated 14.09.2020. However, on 16.09.2020 the order dated 14.09.2020 was withdrawn from the date of issuance. In the circumstances of the case valuable rights accrued in favour of appellant upon issuance of office order dated 14.09.2020. On the other hand, the office order dated 16.09.2020 was issued without any notice to the appellant. It is also contended that the original impugned order dated 11.08.2020 was politically motivated. In that regard a note by a Member of National Assembly of Pakistan was referred to wherein recommendations for certain transfers/postings was made.

In view of the available record and arguments of learned counsel, instant appeal is admitted to regular hearing subject to all just exceptions. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents. To come up for written reply/comments on 19.10.2020 before S.B.

Alongwith the appeal, there is an application for suspension of operation of the impugned orders dated 11.08.2020 and 16.09.2020. Notice of the application be also given to the respondents for the date fixed. In the meanwhile, the operation of impugned order, to the extent of appellant, shall remain suspended if not acted upon already.

Appellant Deposited  
Security & Process Fee

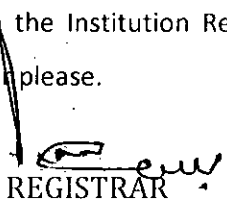
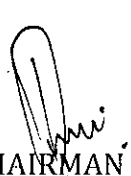
*[Handwritten signature]*  
01/10/20

*[Handwritten signature]*  
Chairman

Form- A  
FORM OF ORDER SHEET

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

Case No.- 11011 /2020

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	22/09/2020	<p>The appeal of Mr. Peer Muhammad presented today by Mr. Noor Muhammad Khattak Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p> <p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>01/10/20</u></p> <p style="text-align: right;"> CHAIRMAN</p>
2-		

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

**APPEAL NO. \_\_\_\_\_/2020**

**PEER MUHAMMAD**

**VS**

**EDUCATION DEPTT:**

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2	Stay application	.....	5.
3	MNA letter	<b>A</b>	6- 7.
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5	Judgment	<b>D</b>	10- 18.
6	Policy	<b>E</b>	19- 21.
7	Departmental appeal	<b>F</b>	22.
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**APPELLANT**

**THROUGH:**

  
**NOOR MOHAMMAD KHATTAK**  
**ADVOCATE**

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

Khyber Pakhtunkhwa  
Service Tribunal

APPEAL NO. 11011 /2020

Diary No. 10499

Date 22-9-2020

Mr. Peer Muhammad, Management Cadre, Presently posted as ASDEO  
Circle Wari, o/o SDEO (M) Wari, Dir Upper Under transfer/posted as ASDEO  
Circle Larjam, Dir Upper ..... **APPELLANT**

**VERSUS**

- 1- The Government of Khyber Pakhtunkhwa through Secretary E&SE Department, Khyber Pakhtunkhwa, Peshawar.
- 2- The Director E&SE Department, Khyber Pakhtunkhwa, Peshawar.
- 3- The District Education Officers Male & Female, District Dir Upper.
- 4- Mr. Muhammad Hanif, SST, GMS Gamdat under transfer/posted as ASDEO Circle Wari o/o SDEO (M) Wari, Dir upper.

..... **RESPONDENTS**

**APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED TRANSFER ORDERS DATED 11.8.2020 & 16.9.2020 WHEREBY HE HAS BEEN TRANSFERRED ON THE BASIS OF POLITICAL INTERVENTION AGAINST TEACHING CADRE POST AND AGAINST THE APPELLATE ORDER DATED 16.9.2020 WHEREBY THE DEPARTMENTAL APPEAL OF THE APPELLANT HAS BEEN REJECTED ON NO GOOD GROUNDS**

**PRAYER:** That on acceptance of this appeal the impugned orders dated 11.8.2020, 16.9.2020 and appellate order dated 16.9.2020 may very kindly be set aside and the respondents may kindly be directed not to transfer the appellant from the post of Assistant Sub-Divisional Education Officer Circle Wari O/O the District Education Officer (M), Dir Upper. Any other remedy which this august Tribunal deems fit that may also be awarded in favour of the appellant.

**R/SHEWETH:**  
**ON FACTS:**

- 1- That appellant is the employee of the respondent Department and is serving as Assistant Sub-Divisional Education Officer Circle Wari in the office of Sub-Divisional Education Officer (M), District Dir upper quite efficiently and up to the entire satisfaction of his superiors.

Filed to -  
Registrar  
22/9/2020



- 2- That astonishingly through political interference the appellant was transferred and posted against the teaching cadre post vide impugned Notification and order dated 11.8.2020. That it is very pertinent to mention that the private respondent who has been transferred vice the appellant is belonging to teaching cadre but inspite of that the respondents issued the impugned notification and order dated 11.8.2020. Copies of the MNA letter, impugned notification and order are attached as annexure ..... **A, B & C.**
- 3- That it is also very pertinent to mention that the private respondent has recently been promoted from the post of PSHT to Secondary School Teacher and junior most employee of the respondent Department but inspite of that the respondents posted them against the management cadre post.
- 4- That according to the recent judgment of the Peshawar High Court passed in w.p No. 3737/2019 Title Nisar Ahmad & others VS Govt of KPK & Others dated 22.10.2019 strongly deprecated the practice of posting of teaching cadre against the post of management cadre but inspite that the respondents issued the impugned Notification and order dated 11.8.2020. Copy of the judgment is attached as annexure ..... **D.**
- 5- That the impugned Notification and order dated 11.8.2020 are violative of clause I, II, III & IV of the transfer/posting policy of the provincial Government. Copy of the policy is attached as annexure ..... **E.**
- 6- That appellant feeling aggrieved from the impugned Notification and order dated 11-08-2020 submitted Departmental appeal before the appellate authority and where after filed Writ petition before the Peshawar High Court, Darul Qaza Bench at Swat and the said writ petition was disposed of with the direction to decide the Departmental appeal of the appellant one way or the other vide judgment dated 1.9.2020. Copies of the Departmental appeal and judgment are attached as annexure ..... **F and G.**
- 7- That in response the appellate authority accepted the Departmental appeal of the appellant and directed the respondent No.2 to cancel the impugned order dated 11.8.2020. That vide order dated 14.9.2020 the transfer order 11.8.2020 of the appellant was withdrawn by the respondent No.2 but astonishingly vide impugned appellate order dated 16.9.2020 the said cancellation order dated 14.9.2020 has been withdrawn and restored the original impugned transfer order dated 11.8.2020 by the respondent No.2. Copies of the

cancellation order and appellate order are attached as annexure ..... **H, I and J.**

- 8-** That appellant feeling aggrieved and having no other remedy but to file the instant writ petition on the following grounds amongst the others.

**GROUND:**

- A-** That the impugned Notification and orders dated 11-08-2020, 16.9.2020 issued by the respondent No.2 is against the law, facts, norms of natural justice and materials on the record hence not tenable and liable to be set aside.
- B-** That the appellant has not been treated by the respondent Department in accordance with law and rules on the subject noted above and as such the respondents violated Article 4 and 25 of the constitution of Islamic Republic of Pakistan 1973.
- C-** That the impugned Notification and order dated 11-08-2020 are against the clauses I, II, III & IV of the transfer/posting policy of the provincial Government of Khyber Pakhtunkhwa.
- D-** That the impugned Notification and orders of even date 11-08-2020 and 16.9.2020 are also violative of the Management Cadre Policy, therefore not tenable and liable to be set aside.
- E-** That it is pertinent to mention that the private respondents belongs to teaching cadre while the posts against they were posted are of management cadre but inspite of that the respondents posted the private respondents against the posts in question.
- F-** That the treatment meted out to the appellant is a clear violation of the Fundamental Rights of the appellant.
- G-** That the respondents acted in arbitrary and malafide manner by issuing the impugned Notification & orders dated 11-08-2020 and 16.9.2020 against the appellant.
- H-** That, the appellant has been discriminated by the respondents on the subject noted above and as such the respondents violated the Principle of Natural Justice.
- I-** That neither the impugned Notification & orders dated 11-08-2020 and 16.9.2020 have been issued in the public interest nor have the same been issued in exigencies of public service.

J- That the appellant seeks permission to advance other grounds and proofs at the time of hearing.

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

Dated: 17-9-2020

APPELLANT

**PEER MUHAMMAD**

Through:

  
**NOOR MOHAMMAD KHATTAK**

ADVOCATE

High Court Peshawar



**BEFORE THE FEDERAL SERVICE TRIBUNAL, ISLAMABAD**

**APPEAL No. \_\_\_\_\_/2020**

**PEER MUHAMMAD**

**VS**

**GOVT: OF KP:**

**APPLICATION FOR SUSPENSION OF OPERATION OF  
THE IMPUGNED ORDERS DATED 11.08.2020 &  
16.09.2020 TILL THE DISPOSAL OF THE ABOVE  
MENTIONED APPEAL**

**R/SHEWETH:**

- 1- That the above mentioned appeal along with this application has been filed by the appellant before this august Tribunal in which no date has been fixed so far.
- 2- That appellant filed the above mentioned appeal against the impugned orders dated 11.08.2020 & 16.09.2020 whereby the appellant has been transferred on the basis of Political Intervention against the Teaching cadre post.
- 3- That all the three ingredients necessary for the stay is in favor of the appellant.
- 4- That the impugned order dated 11.08.2020 & 16.09.2020 had been issued by the respondents in utter disregard of law and prevailing Rules.

It is therefore, most humbly prayed that on acceptance of this application the operation of the impugned orders dated 11.08.2020 & 16.09.2020 may very kindly be suspended till the disposal of the above mentioned service appeal.

Dated: 18/09/2020

**APPLICANT**

  
**PEER MUHAMMAD**

**THROUGH:**

  
**NOOR MOHAMMAD KHATTAK**

**&**

  
**MIR ZAMAN SAFI  
ADVOCATES**



SAHIBZADA SIRGHATULLAH

NA-05 Uper Dir

Date \_\_\_\_\_

Proposal Transfer/Posting

A - (6)

- X Shaukat Lodhan - Deputy DEO (M) upper Dir
- ) Abdul Aziz SST - ADEO (M) Primary upper Dir
- X ~~Pir Muhammad - SDEO (M) Wari Circle~~  
SST GMS Chaudhary
- Muhammad Hanif - A SDEO (M) Wari Circle
- Muhammad Iqbal -  
A DEO (F) RD to ASDEO Barawal
- ) Muhammad Zada -  
ADEO (M) transfer to GHS Kator upper Dir
- ) Muhammad Riaz SST GHS mola  
ADEO (F) Dir upper
- ) Sardar Khan - ADEO (Litigation)  
to GHS mola (GMS Chaudhary)

ATTACHED  
BY REQUEST

Suit # 412, Block-H, Parliament Lodges, Islamabad. Cell: 0313-8802230, 0343-8802230

SAHIBZADA SIRGHATULLAH  
Member National Assembly

Muhammad Iqbal

**ATTESTED**

1, Abdul Aziz SST GHS Seri Sultan Khel  
to

A DEO (M) Primary Est. Div U,

2, Muhammad Hanif SST GHS Gramdat

to

A S DEO Wari

Admin

proceeds

3, Feez Muhammad A S DEO Wari

to

A S DEO Elitigation DEO (M) Div U (vacant)

Amir

14/5/20

4, Muhammad Iqbal A DEO (F)

to A S DEO barawal

5, Muhammad Riaz SST GHS Molavi to

A DEO (F) P & D Div U,

6, Naseer Ahmad SST GHS Wari to

Secretary

A DEO DEO Div U,

7, Hazrat Wahab (Assistant), S DEO (F) Wari

to

S DEO (F) Lar Jan

8, Mahmood Khan Asst. DEO (F) to

S DEO (F) Wari

~~ATTESTED~~  
~~BY AMIR~~

9, Muhammad Zada A DEO (M) Div U to

ATTESTED

↓

Directorate of Elementary & Secondary Education

Khyber Pakhtunkhwa, Peshawar

No. 5003/F.No 32/Vol-4/ SST (M)/Transfer Cases

Dated Peshawar the 16/6/2020

O.P.S.S.

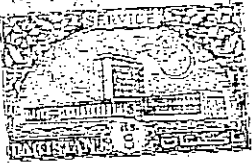
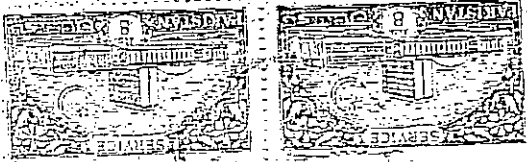
DESPATCHER  
Director (E&SE)  
KPK Peshawar

To

The District Education Officers,  
(M) Dir Upper.

Subject: - PROPOSAL FOR TRANSFER/POSTING  
Memo:

I am directed to the subject cited above and to enclose herewith a proposal bearing No.Nil dated 14-05-2020, for your perusal and to ask you to submit your report and apprise this office which of them belongs to Management Cadre and which pertains to teaching cadre, so as to proceed further into the matter as per rules please.



Deputy Director (Estab)  
Elementary & Secondary Education  
Khyber Pakhtunkhwa

Endst. No.

Copy of the above is to:-

1. PA to Director (E&SE) Local Directorate.

Deputy Director (Estab)  
Elementary & Secondary Education  
Khyber Pakhtunkhwa

ADRO

ATTESTED  
MAJID

ATTESTED

C - (9)

**DIRECTORATE OF ELEMENTARY & SECONDARY  
EDUCATION KHYBER PAKHTUNKHWA PESHAWAR**

**POSTING**

The Competent Authority is pleased to order transfer/posting of the following officers in their own pay scale, with immediate effect in the interest of public service.

#	Name & Designation	From	To (posted as)	Remarks
1	Mr. Abdul Aziz SST (T.C)	GHS Seri Sultan Khel	ADEO (Primary) at O/O DEO (M) Dir Upper	V#2
2	Muhammad Zada (T.C)	ADEO ((Primary)) at O/O DEO (M) Dir Upper	GHS Katan	V#1 under Administrative basis
3	Mr. Muhammad Hanif SST	GMS Gandat	ASDEO Circle Wari	Vice#5
4	Mr. Muhammad Iqbal (M.C)	ADEO (F) at O/O DEO (F) Dir Upper	ASDEO Circle Barwal.	AVP under Administrative basis
5	Mr. Peer Muhammad (M.C)	ASDEO Circle Wari	ASDEO Circle Larjam	AVP
6	Mr. Muhammad Riaz SST (T.C)	GHS Molavi	ADEO (F) at O/O DEO (F) Dir Upper	Vice#4
7	Mr. Naseer Ahmad SST (T.C)	GHS Wari	ADEO (Secondary) at O/O DEO (M) Dir Upper	Vice#8
8	Mr. Shahid Aziz SST (T.C)	ADEO (Secondary) at O/O DEO (M) Dir Upper	GHS Wari	Vice#7 under Administrative basis

**Note:**

1. Posting/Adjustment of Teaching Cadre Officers shall be considered as stop-gap arrangement till the arrival of Management Cadre officers.
2. The order of the above mentioned Teaching cadre officers will be effective subject to the condition that he will give an undertaking/affidavit on legal paper/stamp paper to DEO (M/F) Dir Upper to the effect, not to claim seniority of Management cadre.
3. Charge Report should be submitted to all concerned.
4. No TA/DA is allowed.
5. The terms & conditions mentioned in their appointment order as teaching cadre will remain intact.

**DIRECTOR**

Elementary & Secondary Education  
Khyber Pakhtunkhwa

Encls: No. 29471-75 F.NO. 32/Fol-47 ADEOs (M) Transfers Dated the Peshawar 11/2/2020

Copy forwarded to the:

1. District Education Officer (M/F) Dir Upper.
2. District Accounts Officer Dir Upper.
3. Officers Concerned.
4. Master Copy.

**ATTESTED**  
*[Signature]*

*[Signature]*  
Deputy Director (Estab)  
Elementary & Secondary Education  
Khyber Pakhtunkhwa

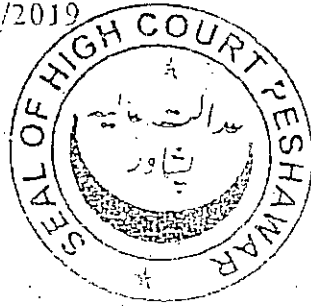
11/5/20

**ATTESTED**  
*[Signature]*



IN THE PESHAWAR HIGH COURT PESHAWAR

Writ Petition No. 3737P /2019



D-10

1. Nisar Muhammad  
DEO (M), Swabi.
2. Jehangir Khan,  
DEO (M), Charsadda.
3. Nawab Ali,  
DEO (M), Kolai Palas, Kohistan.
4. Qazi Tajamul  
DEO (M), Abbottabad.
5. Muhammad Tahir,  
DEO (M), Dir Upper.....

Petitioners

Versus

1. The Govt. of Khyber Pakhtunkhwa  
through Chief Secretary,  
Civil Secretariat, Peshawar.
2. The Secretary,  
Govt. of Khyber Pakhtunkhwa  
Elementary & Secondary Education Department,  
Civil Secretariat, Peshawar.
3. Zahid Muhammad  
DEO (M) on Acting Charge  
Directorate of Elementary & Secondary Education,  
G. T. Road, Peshawar.
4. Muhammad Azam Khan,  
DEO (M) on Acting Charge  
Directorate of Elementary & Secondary Education,  
G.T. Road, Peshawar.
5. Sheraz Ahmad,  
DEO (M) on Acting Charge  
Directorate of Elementary & Secondary Education,  
G.T. Road, Peshawar.
6. Iqbal Khan  
DEO (M) on Acting Charge  
Directorate of Elementary & Secondary Education,  
G.T. Road, Peshawar.

ATTESTED  
*[Signature]*

ATTESTED  
EXAMINER  
Peshawar High Court

FILED TODAY  
Deputy Registrar  
10 JUL 2019

ATTESTED  
*[Signature]*

7. Muhammad Riaz,  
DEO (M) on Acting Charge  
Directorate of Elementary & Secondary Education,  
G.T. Road, Peshawar.

Respondents

(11)

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

Respectfully Sheweth,

Facts giving rise to the present writ petition are as under:-

1. That all the Petitioners are the Officers of the Elementary & Secondary Education Department, Govt. of Khyber Pakhtunkhwa (Teaching Cadre) serving in BPS-19 (regular basis), having longstanding service in Education Department. (Seniority List Annex:-A).
2. That as per the Notification dated 01.05.2009 (Annex:-B), the posts of Executive District Officers/Additional Directors (BPS-19) were/are to be filled in through initial recruitment at the ratio of 40% from open market and 60% from amongst the teaching cadre having the qualification as mentioned in Column No.3.
3. That since the rules affected the interests of the Teaching Cadre in matters of posting to subject posts accordingly the Teaching Cadre officers filed Writ Petition No.2937/2009 which was disposed of vide order dated 18.11.2009 (Annex:-C) with certain directions which order was called in question by the Officers of the Teaching Cadre before the Apex Court in C.P. No.734 of 2010, but meanwhile vide Notification dated 07.04.2012 (Annex:-D) the Government amended the Notification dated 04.05.2009 *ibid* and thus made the Teaching Cadre Officers transferable to the Management Cadre. Accordingly, C.P. Pending before the august Supreme Court of Pakistan stood infructuous and disposed of accordingly vide order dated 09.04.2012 (Annex:-E).
4. That the Rules/Notification *ibid*, were amended vide Notification dated 03.07.2018 (Annex:-F), relevant portion of the amendment is as under:-

ATTESTED  
BY REGISTRAR

ATTESTED  
EXAMINER  
Peshawar High Court

FILED TODAY

DEPUTY REGISTRAR  
10 JUL 2019

ATTESTED

S#	Nomenclature of the post	Minimum qualification for initial recruitment or by transfer	Age limit	Method of Recruitment
1.	2	3	4	5
1.	-	-	-	-
2.	District Education Officer/Additional Director (BPS-19) (M&F)	---	---	By promotion, on the basis of seniority-cum-fitness from amongst the Deputy District Education Officers and Deputy Directors (M&F) with at least seven years service in BPS-18 or 12 years service in BPS-17 and above and having the qualified mid career Management Course.  Provided if no suitable Officer is available for promotion then by transfer of BPS-19 Officer.

12

5. That all the Petitioners have been serving against the posts of Management Cadre ever since their posting and have been performing their functions as such with full dedication in efficient manner and during such period they have never given any cause of complaint to their high-ups rather their efforts have been commended and appreciated. (Notifications dated 18.04.2013, 31.12.2012 in respect of Petitioners No.1, 2&4 are Annex:-G).
6. That Respondents No.3-7 were appointed as Deputy District Education Officers/Deputy Director (BPS-18) vide Notification dated 15.04.2014 (Annex:-H) and vide Notification dated 27.05.2019 (Annex:-I) they were promoted to the posts of District Education Officers/Additional Directors (BPS-19) on Acting Charge basis on account of dearth in their length of service required for regular promotion to the subject posts.
7. That Petitioners are senior Officers having been posted to the subject posts being eligible, experienced under the Rules, however, in violation of the law and Rules, the junior-most Officers i.e. Respondents No.3-7 are going to be posted against the posts of Petitioners as is evident from the Notification dated 31.05.2019 (Annex:-J) showing their actualization of promotion to the posts occupied by Petitioners.
8. That actions of the Respondents by disturbing the Petitioners by posting ineligible, junior Officers are highly illegal, mala fide and therefore, Petitioners being aggrieved of the same, having no other adequate and efficacious remedy, file this constitutional petition inter-alia on the following grounds:-

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*[Signature]*

ATTESTED

EXAMINER  
Peshawar High Court

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Deputy Registrar

10 JUL 2019

ATTESTED

*[Signature]*

Grounds:

- (13)
- A. That Respondents have not treated petitioner in accordance with law, rules and policy on subject and acted in violation of Article 4 of the Constitution of Islamic Republic of Pakistan, 1973 and unlawfully decided to disturb the Petitioners through adjustment of Respondents No.3-7 which is unjust, unfair and hence not sustainable in the eye of law.
- B. That Petitioners are regular officers in BPS-19 and have been posted to the subject posts as per the Rules. In presence of Petitioners, the adjustment of Respondents No.3-7 against the posts occupied by Petitioners is in utter violation of the law, based on mala fide intention and hence not sustainable under the law.
- C. That Respondent No.3-7 are not only junior officers but are also not eligible for promotion to BPS-19 having insufficient length of service in BPS-18 under the Rules whereas on the other hand Petitioners are regular officers in BPS-19 and serving against the subject posts since long without any complaint whatsoever, therefore the displacement of Petitioners through unlawful adjustment of Respondents is highly illegal, against the Public Policy and thus not tenable under the law.
- D. That even the acting charge appointment of Respondent No.3-7 is unlawful and is violative of the provisions of Rules 9 Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989. Firstly, there is no post vacant against which Respondent No.3-7 could be promoted as the posts are lawfully occupied by Petitioners and secondly, Respondent No.3-7 are ineligible having no required length of service under the Rules. Thus the decision of Respondents to adjust them in places of Petitioners is arbitrary and thus not maintainable under the law.
- E. That Petitioners are senior officers of the same Department having rendered longstanding service in the Department to the entire satisfaction of the high-ups. They have performed on the subject posts for long and have got long experience in the field while Respondent No.3-7 have got no parallel position at the expense of Petitioners, therefore their adjustment in

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places of Petitioners not legally a correct decision.

14

For the aforesaid reasons, it is therefore, humbly prayed that on acceptance of this writ petition, this Hon'ble Court may graciously be pleased to declare the decision of the Respondents to dislodge Petitioners from the posts occupied by them by adjusting Respondents No.3-7 there-against as without lawful authority and hence of no legal effect and this august Court may further be pleased to direct the Respondents to act in the matter in accordance with law and not to disturb Petitioners by unlawful adjusting Respondents No.3-7 against the posts occupied by Petitioners being senior regular officers in BPS-19.

Any other relief as deemed appropriate in the circumstances of case not specifically asked for, may also be granted to petitioner.

### Interim Relief

By way of interim relief, this Hon'ble Court may graciously be pleased to restrain the Respondent from unlawfully disturbing the Petitioners through illegal adjustment of junior and ineligible officers against the posts occupied by Petitioners till the final disposal of the instant writ petition.

Through

Petitioners

Khaled Rahmani  
Advocate,  
Supreme Court of Pakistan

Dated: 09/07/2019

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EXAMINER  
Peshawar High Court

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10 JUL 2019

ATTESTED  
4

CERTIFICATE

Certified on instruction that petitioner(s) has/have not previously moved this Hon'ble Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 regarding present matter.

B

Khaled Rahman  
Advocate, Peshawar

List of Books

1. The Constitution of the Islamic Republic of Pakistan, 1973.
2. Services Law.

NOTE

1. Three spare copies of the Writ Petition are enclosed in a separate file cover.
2. Memo of addresses is also attached.

Khaled Rahman  
Advocate, Peshawar

RECEIVED  
BY ADVOCATE

CERTIFIED TO BE TRUE COPY

EXAMINER  
Peshawar High Court, Peshawar  
Authorized Under Article 187 of  
The Quran-e-Sharif Order 1984

29 OCT 2019

FILED TODAY

10 JUL 2019

ADMITTED

(16)

**JUDGMENT SHEET**  
**PESHAWAR HIGH COURT, PESHAWAR**  
**(JUDICIAL DEPARTMENT)**

WP No. 3737-P/2019

**JUDGMENT.**

Date of hearing: 22.10.2019

Petitioner: Mr. Nisar Muhammad & Mr. Nisar Khalid Khan

Respondents: Mr. Nisar Muhammad & Mr. Nisar Khalid Khan - Respondents  
& Special Officer Ali Shah SOG

**WAOAR AHMAD SETH, CJ:** Petitioners, Nisar

Muhammad and others, through the instant Writ Petition, seek issuance of an appropriate writ declaring the decision of respondents to dislodge the petitioners from the posts occupied by them by adjusting respondents No. 3-7 thereagainst as without lawful authority and of no legal effect; hence, this Court may direct the respondents to act in the matter in accordance with law and not to disturb the petitioners by unlawful adjusting respondents No. 3-7 against the posts occupied by petitioners being senior regular officers in BPS-19.

2. In essence, grievance of the petitioners is that they are Officers of the Elementary & Secondary Education Department, Government of Khyber Pakhtunkhwa (Teaching

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EXAMINER  
Peshawar High Court

ATTESTED

P

(17)

Cadre) and serving against the posts of Management Cadre in BPS-19) since 2012-2013 while respondents No. 3 to 7 being juniors to them are going to be posted against the posts of petitioners as is evident from the Notification dated 31.05.2019; hence, the instant Writ Petition.

3. Respondents No. 1 & 2 have filed their comments and opposed the writ of petitioners.

4. Arguments heard and record perused.

5. Admittedly, petitioners belong to Teaching Cadre and have been posted against the post of Management Cadre as stopgap arrangement due to shortage of officers in Management Cadre, however, after filing Writ Petition No. 4274-P/2016 before this Court by Management Cadre, the same was disposed of vide order dated 11.01.2018 with direction to the respondents to finalize the case for making provision in the Rules with regard to promotions in the Management Cadre within three months with further direction to rationalize posting/transfer against Management Cadre posts in light of relevant rules/policy. In compliance thereof, the respondents have framed service rules for Management

**ATTESTED**  
EXAMINER  
Peshawar High Court

**ATTESTED**



Cadre and notified the same for promotion upto BPS-20 vide Notification dated 27.03.2019; hence, keeping in view the aforesaid Service Rules, the action of respondents for adjusting respondents No. 3 to 7 against the petitioners' post is in accordance with law and no writ can be issued in favour of petitioners.

18

6. Resultantly, the Writ Petition being without any merit is hereby dismissed.

ANNOUNCED.  
Dated: 22.10.2019

Chief Justice



Judge

=====

CERTIFIED TO BE TRUE COPY

EXAMINED  
Sachawar High Court Sachawar  
Authorised Officer Article 117 of  
The Constitution of India Order 1953

29 OCT 2019

*[Handwritten signature]*

www.scs[DB] Justice Waqar Ahmad Soth CJ & Justice Abdul Shakoor

No. 10257  
Date of Presentation of Application 23-10-19  
No of Pages 2  
Copying fee 30/-  
Total 30/-  
Date of Preparation of Copy 29-10-19  
Date of Delivery of copy 29-10-19  
Received By *[Signature]*

ATTESTED

*[Handwritten signature]*

ATTESTED

*[Handwritten signature]*



GOVERNMENT OF NWFP  
ESTABLISHMENT & ADMINISTRATION  
DEPARTMENT  
(Regulation Wing)

E-19

POSTING / TRANSFER POLICY OF THE PROVINCIAL GOVERNMENT

- i) All the posting/transfers shall be strictly in public interest and shall not be abused/misused to victimize the Government servants
- ii) All Government servants are prohibited to exert political, Administrative or any other pressures upon the posting/transfer authorities for seeking posing/transfers of their choice and against the public interest.
- iii) All contract Government employees appointed against specific posts, can not be posted against any other post.
- 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 the hard areas the tenure shall be one year. The unattractive and hard areas will be notified by the Government.
- v) { }
- vi) While making postings/transfer from settled areas to FATA and vice-versa, specific approval of Governor, NWFP needs to be obtained  
  
While making postings/transfers of officers/officials up to BS-17, from settled areas to FATA and vice-versa approval of the Chief Secretary NWFP needs to be obtained. Whereas, in case of posting/transfer of officers in BS-18 and above, from settled areas to FATA and vice versa, specific approval of the Governor NWFP shall be obtained.
- vi (a) All Officers/officials selected against Zone-I/FATA quota in the Provincial Services should compulsorily serve in FATA for atleast eighteen months in each grade. This should start from senior most scales/grades downwards in each scale/grade of each cadre.
- vii) Officers may be posted on executive/administrative posts in the Districts of their domicile except District Coordination Officers (D.C.Os) and DPOs/Superintendent of Police (SP). Similarly Deputy Superintendent of Police (DSP) shall not be posted at a place where the Police Station (Thaana) of his area/residence is situated.
- viii) No posting/transfers of the officer's/officials on detailment basis shall be made.
- ix) Regarding the posting of husband/wife, both in Provincial services, efforts where possible would be made to post such persons at one station subject to the public interest.
- x) All the posting/transferring authorities may facilitate the posting/transfer of the unmarried female government Servants at the station of the residence of their parents.

APPROVED  
BY AUTHORITY

Para-1(v) regarding months of March and July for posting/transfer and authorities for relaxation of ban deleted vide letter No. SOR-VI (E&AD) 1-4/2008/Vol-VI, dated 3-6-2008.

Consequently authorities competent under the NWFP Government Rules of Business, 1985, District Government Rules of Business 2001, Posting/Transfer Policy and other rules for the time being in force, allowed to make posting/transfer subject to observance of the policy and rules. Added vide Urdu circular letter No. SOR-VI(E&AD)1-4/2003, dated 21-09-2004

20

- xi) Officers/officials except DCOs and DPOs/SPs who are due to retire within one year may be posted on their option on posts in the Districts of their domicile and be allowed to serve there till the retirement  
 1 DCOs and DPOs who are due to retire in the near future may also be posted in the District of their domicile subject to the condition that such posting would be against non-administrative posts of equivalent scales;
- xii) In terms of Rule-17(1) and (2) read with Schedule-III of the NWFP Government Rules of Business 1985, transfer of officers shown in column 1 of the following table shall be made by the authorities shown against each officer in column 2 thereof:

Outside the Secretariat		
1.	Officers of the all Pakistan Unified Group i.e. DMG, PSP including Provincial Police Officers in BPS-18 and above.	Chief Secretary in consultation with Establishment Department and Department concerned with the approval of the Chief Minister.
2.	Other officers in BPS-17 and above to be posted against scheduled posts, or posts normally held by the APUG, PCS(EG) and PCS(SG).	-do-
3.	Heads of Attached Departments and other Officers in B-19 & above in all the Departments.	-do-
In the Secretariat		
1.	Secretaries	Chief Secretary with the approval of the Chief Minister.
2.	Other Officers of and above the rank of Section Officers: a) Within the Same Department b) Within the Secretariat from one Department to another.	Secretary of the Department concerned. Chief secretary/Secretary Establishment.
3.	Officials up to the rank of Superintendent: a) Within the same Department b) To and from an Attached Department c) Within the Secretariat from one Department to another	Secretary of the Department concerned. Secretary of the Dept in consultation with Head of Attached Department concerned. Secretary (Establishment)

ATTACHED  
 SECRETARY

- xiii) While considering posting/transfer proposals all the concerned authorities shall keep in mind the following:
- a) To ensure the posting of proper persons on proper posts, the Performance Evaluation Report/annual confidential reports, past and present record of service, performance on post held presently and in the past and general reputation with focus on the integrity of the concerned officers/officials be considered.
- b) Tenure on present post shall also be taken into consideration and the posting/transfers shall be in the best public interest.

1 Added vide Urdu circular letter No: SOR-VI (E&AD)/1-4/2005, dated 9-9-2005.

9

xiv) Government servants including District Govt. employees feeling aggrieved due to the orders of posting/transfer authorities may seek remedy from the next higher authority / the appointing authority as the case may be through an appeal to be submitted within seven days of the receipt of such orders. Such appeal shall be disposed of within fifteen days. The option of appeal against posting/ transfer orders could be exercised only in the following cases.

- i) Pre-mature posing/transfer or posting transfer in violation of the provisions of this policy.
- ii) Serious and grave personal (humanitarian) grounds.

2. To streamline the postings/transfers in the District Government and to remove any irritant/confusions in this regard the provision of Rule 25 of the North West Frontier Province District Government Rules of Business 2001 read with schedule - IV thereof is referred. As per schedule-IV the posting/transferring authorities for the officers/officials shown against each are as under:-

S.No.	Officers	Authority
1.	Posting of District Coordination Officer and Executive District Officer in a District.	Provincial Government.
2.	Posting of District Police Officer.	Provincial Government
3.	Other Officers in BPS-17 and above posted in the District.	Provincial Government
4.	Official in BPS-16 and below	Executive District Officer in consultation with District Coordination Officer.

3. As per Rule 25(2) of the Rules mentioned above the District Coordination Department shall consult the Government if it is proposed to:

- a) Transfer the holder of a tenure post before the completion of his tenure or extend the period of his tenure.
- b) Require an officer to hold charge of more than one post for a period exceeding two months.

4. I am further directed to request that the above noted policy may be strictly observed /implemented.

.....

All concerned are requested to ensure that tenures of the concerned officers/officials are invariably mentioned in summaries submitted to the Competent Authorities for Posting/Transfer.  
{Authority: Letter No. SOR-VI/E&AD/1-4/2003 dated 24-5-2003}.

.....

It has been decided by the Provincial Government that posting/transfer orders of all the officers up to BS-19 except Heads of Attached Departments irrespective of grades will be notified by the concerned Administrative Departments with prior approval of the Competent Authority obtained on the Summary. The Notifications/orders should be issued as per specimen given below for guidance.

All posting/transfer orders of BS-20 and above and Heads of Attached Departments (HAD) shall be issued by the Establishment Department and the Administrative Departments shall send approved Summaries to E&A Department for issuance of Notifications.

2

The Honorable Secretary E& SED,  
Khyber Pakhtunkhwa Peshawar.

*(Handwritten marks and initials)*

Subject: - APPEAL FOR WITHDRAWAL OF POSTINGS/TRANSFERS ORDER IN R/O ADEOs/ASDEOs (M&F) OFFICES DISTRICT DIR UPPER.

R/Sir

1. With great profound I would like to invite your kind attention to the postings/transfers of ADEOs/ASDEOs (M&F) Offices Dir Upper have been Issued vide office of Director E&SE Endst No: 29471-75/F: No: 32/Vol-4/ADEOs (M) Transfer Dated Peshawar the: 11/08/2020 (copy attached). In the instant order Serial No's 2,4 and 8 have been charged and transferred on administrative grounds, while before issuing orders no personal hearing etc have been made neither I was informed about the procedures, that what kinds of charges leveled against us.

2. If any charges are proved against us in any inquiry then why proper action has not been taken against the beneficiaries who have been appointed /promoted, which is yet not been initiated. As a matter of fact initial action is required against the beneficiaries and competent authority who are wholly responsible for such kinds of miss-use of powers or other negligence.

3. Before issuing our transfer orders the director E&SED forwarded a letter to the District Education Officer (M) Dir Upper vide No:5003/F: No: 32/Vol-4/Dated 16/06/2020, seeking information about postings/transfers of ADEOs proper identification of teaching and management cadres officers along with proper proposal/recommendation duly signed by local MNA Dir Upper on specific letter pad (copy attached).The present situation indicate that proposal/recommendations submitted by local MNA is wholly implemented and eventually we have charged and transferred on administrative grounds, which is denoting that the orders has been issued only on the political pressure of local MNA for ulterior motives.

4. One Muhammad Rizaz SST appointed through NTS on Sep ,2018 and still in a probation period and his appointment order has not yet been regularized ,posted as ADEO(P&D) against Muhammad Iqbal (MC)which is against policy, while another one namely luqman SST(IT) has also been posted as ADEO(S) which is technical one and not eligible for the post. so both the orders are against norms and rules and needs cancellation on merit. Moreover, Abdul Aziz appointed as ADEO(p) is also NTS appointee. It is pertinent to mention that one Muhammad Hanif SST has been adjusted as ASDEO against Pir Muhammad ASDEO (MC), which is clear violation of policy.

5. In view of the above quoted facts that our transfer orders have been issued on political influences having no legal status which is against the service Rules and therefore we are humbly requesting to please withdraw the aforementioned transfer orders and intact us on previous stations. Hoping that my request will be decided on merit according to the prescribed manners please

In view of the above quoted facts that my transfer orders have been issued on political influences having no legal status which is against the service Rules and therefore I am humbly requesting to please withdraw the aforementioned transfer orders and intact me on previous station/ position. I hope that my case will be decided on merit according to the prescribed manners please.

Thanks for yours kind anticipations.

Yours sincerely,

PIR MUHAMMAD, ASDEO Circle  
Ex-ASDEO(Wari Circle) Male Dir Upper

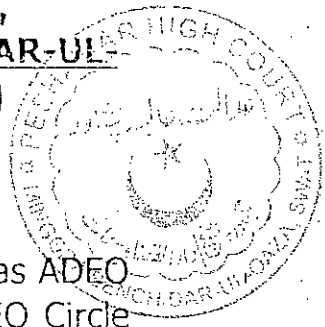
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18/8/2020  
Attested  
By Advocate

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BEFORE THE PESHAWAR HIGH COURT MINGORA BENCH DAR-UL-

QAZA AT SWAT

9-23



WRIT PETITION NO. 829-M/2020

- 1- Mr. Muhammad Iqbal, Management Cadre, Presently posted as ADEO (F), O/O DEO (F), Dir Upper Under transfer/posted as ASDEO Circle Barawal, Dir Upper. *R/o Katkad P.O Wari.*
  - 2- Mr. Peer Muhammad, Management Cadre, presently posted as ADEO Circle Wari under transfer/posted as ASDEO Circle Larjam. *Daskori Wari Dir Upper*
  - 3- Mr. Muhammad Zada, (Teaching Cadre) presently posted as ADEO (P) at the o/o DEO (M), Dir Upper under transfer to GHS Katan, Dir Upper. *Bibyawar. Dir Upper*
  - 4- Mr. Shahid Aziz, Teaching cadre, presently posted as ADEO (M) o/o DEO (M) Dir Upper under transfer/not yet posted, Dir Upper. *Shah Dir(U)*
- ..... PETITIONERS

**VERSUS**

- 1- The Government of Khyber Pakhtunkhwa through Secretary E&SE Department, Khyber Pakhtunkhwa, Peshawar.
  - 2- The Director E&SE Department, Khyber Pakhtunkhwa, Peshawar.
  - 3- The District Education Officers Male & Female, District Dir Upper.
  - 4- Mr. Muhammad Riaz, SST (T.C), NTS adhoc school based GHS Molavi under transfer/posted as ADEO (F) o/o DEO (F), Dir upper. *Tangai, Tehsil Wari Dir(U)*
  - 5- Mr. Muhammad Hanif, SST (T.C), GMS Gamdat, Dir Upper under transfer/posted as ASDEO circle Wari, Dir Upper. *Chapper P.O, Tehsil Wari Dir(U)*
  - 6- Mr. Abdul Aziz, SST (T.C), NTS 2017 GHS Serj Sultan Khel, Dir Upper under transfer/posted as ADEO (P) o/o DEO (M), Dir Upper. *Seri Sultan Khel Dir(U)*
  - 7- Mr. Hazrat Luqman, SST, IT NTS 2017 GHS Katan Bala under transfer/posted as ADEO (M) o/o DEO (M), upper Dir. *Distlower Tehsil Wari (U)*
- ..... RESPONDENTS

WRIT PETITION UNDER ARTICLE 199 OF THE CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN, 1973 AS AMENDED UP TO DATE

**ATTESTED**

R/SHEWETH:  
ON FACTS:

**ATTESTED**

Examiner  
Peshawar High Court Bench  
Mingora Dar-ul-Qaza, Swat.

**FILED TODAY**

20 AUG 2020

Additional Registrar

- 1- That petitioners are the bonafide resident of District Dir upper and belongs to respectable families. Copies of CNIC's are attached as annexure ..... A.
- 2- That lastly all the petitioners were posted against the management cadre posts mentioned above through different orders/notifications. That in response to the said Notifications/orders regarding their posting the petitioners submitted their arrival reports and started performing their duties quite efficiently and up to the entire satisfaction of their superiors. Copies of the posting orders/notifications of the petitioners are attached as annexure ..... B.



- 3- That astonishingly through political interference all the petitioners have been transferred and posted against the teaching / management cadre posts vide impugned Notification and order dated 11.8.2020. That it is very pertinent to mention that all the private respondents who were transferred vice the petitioners are belonging to teaching cadre but inspite of that the respondents issued the impugned notification and order dated 11.8.2020. Copies of the MNA letter, impugned notification and order are attached as annexure ..... **C, D & E.**
- 4- That it is also very pertinent to mention that all the private respondents have recently been appointed on adhoc and school based policy and as such under the transfer posting policy they are non transferable employees of the respondent Department but inspite of that the respondents posted them against the management cadre posts.
- 5- That according to the recent judgment of the Peshawar High Court passed in W.P No. 3737-P/2019 Title Nisar Ahmad & others VS Govt of KPK & Others order and judgment dated:22-10-2019 strongly deprecated the practice of posting of teaching cadre against the post of management cadre but inspite that the respondents issued the impugned Notification and order dated 11.8.2020. Copy of the judgment is attached as annexure ..... **F.**
- 6- That the impugned Notification and order dated 11.8.2020 are violative of clause I, II, III & IV of the transfer/posting policy of the provincial Government. Copy of the policy is attached as annexure ..... **G.**
- 7- That petitioners feeling aggrieved from the impugned Notification and order dated 11-08-2020 submitted Departmental appeals before the appellate authority but of no avail though the appellate authority is legally bound in light of clause-xiv of the transfer/posting policy of the provincial Government to dispose of the Departmental appeals of the petitioners within fifteen days but inspite of that the appellate authority i.e. respondent No.1 is not willing to dispose of the Departmental appeals of the petitioners. Copies of the Departmental appeals are attached as annexure ..... **H.**
- 8- That petitioners feeling aggrieved and having no other remedy but to file the instant writ petition on the following grounds amongst the others.

FILED TODAY

20 AUG 2020

Additional Registrar

ATTESTED

ATTESTED

Examiner  
Peshawar High Court Bench  
Mingora, Dir-ul-Qaza, Swat.

**GROUND:**

25

A- That the impugned Notification and order dated 11-08-2020 issued by the respondent No.2 is against the law, facts, norms of natural justice and materials on the record-hence not tenable and liable to be set aside.

B- That the petitioners has not been treated by the respondent Department in accordance with law and rules on the subject noted above and as such the respondents violated Article 4 and 25 of the constitution of Islamic Republic of Pakistan 1973.

C- That the impugned Notification and order dated 11-08-2020 are against the clauses I, II, III & IV of the transfer/posting policy of the provincial Government of Khyber Pakhtunkhwa.

D- That the impugned Notification and order of even date 11-08-2020 is also violative of the management cadre policy, therefore not tenable and liable to be set aside.

E- That it is pertinent to mention that the private respondents belongs to teaching cadre while the posts against they were posted are of management cadre but inspite of that the respondents posted the private respondents against the posts in question.

F- That the treatment meted out to the petitioners is a clear violation of the Fundamental Rights of the petitioner.

G- That the respondents acted in arbitrary and malafide manner by issuing the impugned Notification & order dated 11-08-2020 against the petitioners.

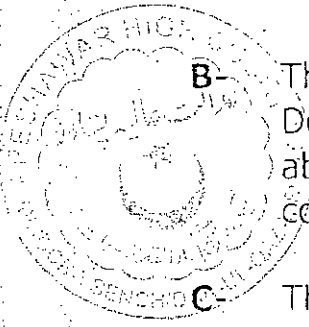
H- That according to Clause-XIV of the transfer/posting policy of the provincial Government the respondent No.1 is duty bound to dispose of the Departmental Appeal of the petitioners strictly within fifteen (15) days.

I- That, the petitioners has been discriminated by the respondents on the subject noted above and as such the respondents violated the Principle of Natural Justice.

J- That neither the impugned Notification & order dated 11-08-2020 have been issued in the public interest nor the same have been issued in exigencies of public service.

K- That the petitioners seeks permission to advance other grounds and proofs at the time of hearing.

It is therefore, most humbly prayed that on acceptance of this writ petition the inaction of the respondent No.1 by not



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FILED TODAY

20 AUG 2020

Additional Registrar

ATTESTED



26  
deciding/dispose of the Departmental appeals of the petitioners in light clause-xiv of the transfer/posting policy may be declared as illegal, unconstitutional and in effective upon the rights of the petitioner. That the respondent No.1 may please be directed to disposed of the Departmental appeals of the petitioners in light of Clause-XIV of the transfer/posting Policy of the Provincial Government. Any other remedy which this august Court deems fit that may also be awarded in favor of the petitioner.

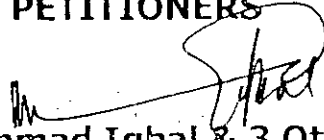
**INTERIM RELIEF:**

That in the mean while the operation of the impugned Notification and order dated 11-08-2020 may kindly be suspended till the disposal of the Departmental appeal of petitioners.

Dated: 18-8-2020




**PETITIONERS**

  
Muhammad Iqbal & 3 Others

**THROUGH:**

**NOOR MOHAMMAD KHATTAK**

  
**KAMRAN KHAN**

  
**UMER FAROOQ**

**&**  
**SHAHZULLAH YOUSAFZAI,**  
**ADVOCATES**  
**HIGH COURT PESHAWAR**

**VERIFICATION:**

It is verified that no other earlier writ petition was filed between the parties.

**FILED TODAY**

  
20 AUG 2020

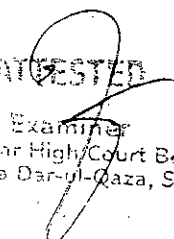
Additional Registrar

**LIST OF BOOKS:**

1. Constitution of Pakistan.
2. Services Laws Books.
3. Any other Case law as per need.

  
**DEPONENT**

**ATTESTED**

  
Examiner  
Peshawar High Court Bench  
Wingota Dar-ul-Qaza, Swat.

**ATTESTED**  

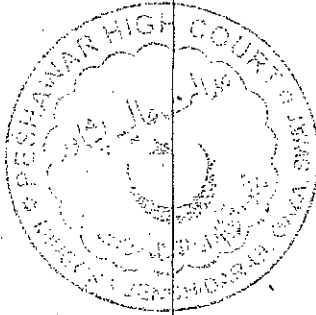

1

**PESHAWAR HIGH COURT, MINGORA BENCH (DAR-UL-QAZA), SWAT**

**FORM OF ORDER SHEET**

27

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

1	Date of Order or Proceedings	Order or other Proceedings with Signature of Judge and that of parties or counsel where necessary.
	2	3
	<p align="center">01-09-2020</p>	<p align="center"><u>W.P No. 829-M/2020 with Interim Relief</u></p> <p><b>Present:</b> <i>Mr. Noor Muhammad Khattak, Advocate for the petitioners.</i></p> <p align="center">*****</p> <p><b>WIQAR AHMAD, J.-</b> This order is directed to dispose of the petition filed by petitioners, under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, with the following prayer;</p> <p align="center">"It is therefore, most humbly prayed that on acceptance of this writ petition the inaction of the respondent No. 1 by not deciding/dispose of the departmental appeals of the petitioners in light of Clause-XIV of the Transfer/ Posting Policy may be declared as illegal, unconstitutional and ineffective upon the rights of the petitioners. That the respondent No. 1 may please be directed to dispose of the departmental appeals of the petitioners in light of Clause-XIV of the Transfer/Posting Policy of the Provincial Government. Any other remedy which this august Court deems fit that may also be awarded in favor of the petitioners."</p> <p>2. Learned counsel for petitioners at the outset requested that he would be satisfied, if respondent No. 1 is directed to decide departmental appeals of petitioners within fortnight.</p>

Abdul Saleem

(D.B)

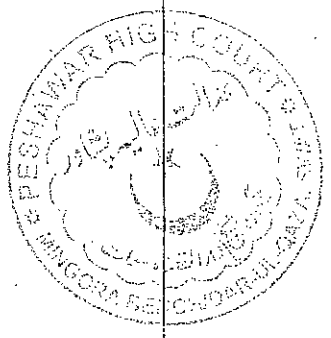
HON'BLE MR. JUSTICE IMTIAZ IBRAHIM  
 HON'BLE MR. JUSTICE WIQAR AHMAD

**ATTESTED**

**ATTESTED**

Examined  
 Peshawar High Court Bench  
 Mingora Dar-ul-Qaza, Swat.

28



3. Request of learned counsel for petitioners seems genuine. Respondent No. 1 i.e. Secretary E&SE Department, Khyber Pakhtunkhwa is therefore directed to decide departmental appeals of petitioners within a period of fourteen days positively, after receipt of order of this Court but strictly in accordance with law and rules.

4. The petition in hand is disposed of accordingly.

Announced  
Dt: 01.09.2020

*[Signature]*  
JUDGE

*[Signature]*  
JUDGE

S.No..... 62  
 Name of Applicant..... *[Signature]*  
 Date of Presentation of Applicant..... 10-09-2020  
 Date of Completion of Copies..... 10-09-2020  
 No of Copies..... 06  
 Urgent Fee.....  
 Fee Charged..... 024/-  
 Date of Delivery of Copies..... 10-09-2020

Certified to be true copy

*[Signature]*

EXAMINER  
 Peshawar High Court, Mingora/Der-ul-Qaza, Swat  
 Authorized Under Article 47 of Queen-e-Shahadat Order 1984

10/09/2020

Office  
02/09

ATTESTED

*[Signature]*



GOVERNMENT OF KHYBER PAKHTUNKHWA  
ELEMENTARY & SECONDARY EDUCATION DEPARTMENT  
No. SO(PE)E&SED/2-1/General Transfer/Posting /2020  
Dated Peshawar the 31.08.2020

H-29

To,

The Director,  
Elementary & Secondary Education,  
Khyber Pakhtunkhwa,  
Peshawar.

Subject: - APPEAL FOR WITHDRAWAL OF POSTINGS/TRANSFERS ORDER IN R/O ADEOs/ASDEOs (M/F) OFFICES DISTRICT DIR UPPER

Dear Sir,

I am directed to refer to the subject noted above and to intimate joint appeal of Mr. Shahid Aziz, SST GHS Kattan (B) Ex-ADEO (Secondary) Male Dir Upper, Muhammad Zada SST GHS Kattan (B) Ex-ADEO (Primary) Male Dir Upper, Muhammad Iqbal, ASDEO Brawal Ex-ADEO (P&D) Female Dir Upper and Peer Muhammad Ex-ASDEO Male Wari Circle Dir Upper, wherein they requested for withdrawal of transfer orders and restoration at their previous station/positions is accepted.

It is, therefore, directed to cancel the transfer orders of the above appellants immediately, and submit compliance report for perusal of the competent authority.

Yours faithfully,

Encl: as above:

Endst: No & date even

  
SECTION OFFICER (PRIMARY)

Copy forwarded to:-

1. The DEO (Male), District Dir Upper, for similar necessary action.
2. PS to Secretary, Elementary & Secondary Education Department, Peshawar.
3. PS to Spl: Secretary, E&SE Department, Peshawar.

**ATTESTED**

  
SECTION OFFICER (PRIMARY)



**DIRECTORATE OF ELEMENTARY & SECONDARY EDUCATION  
KHYBER PAKHTUNKHWA PESHAWAR**

30

OFFICE ORDER

The Competent Authority is pleased to withdraw the Transfer Order bearing No. 29471-73 dated 11-08-2020 in respect of the following officers in view of the Admin. Department letter No. SO (PE) E&SEED/2-1/General Posting/2020 dated 31-08-2020, in the best interest of public service.

Name of Officer	Previous Position
Mrs. Zohra SST GHS Kattan	ADEO (M) Secondary at G.S. DRO(M) Dir Upper
Mrs. Zohra SST SST GHS Kattan	ADEO (M) Primary at G.S. DRO(M) Dir Upper
Mrs. Zohra SST ASDEO Barawal	ASDEO (M) Circle Barawal Dir Upper
Mrs. Zohra SST ASDEO Laryam	ASDEO (M) Circle Wari Dir Upper

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

No. 32-4/ADEO 3 (M) Transfer

Dated Peshawar the 11/10/2020.

Copy of the above is to the -

1. Section Officer (Primary) w.r.t the letter No. SO (PE) E&SEED/2-1/General Posting/2020 dated 31-08-2020.
2. District Education Officer (M/F) Dir Upper
3. District Accounts officer Dir Upper.
4. Officer concerned
5. P.A to Director (E&SE) Khyber Pakhtunkhwa, Peshawar.
6. Master File.

Deputy Director (Estab)  
Elementary & Secondary Education  
Khyber Pakhtunkhwa Peshawar

9



**DIRECTORATE OF ELEMENTARY & SECONDARY  
EDUCATION KHYBER PAKHTUNKHWA PESHAWAR**

J. (31)

**OFFICE ORDER.**

The Competent Authority is pleased to withdraw the Transfer/Posting Order bearing No. 210-14 dated 14-09-2020 in the light of the Admin. Department letter No. SO (PE) E&SEED/2-1/General Transfer/Posting/2020 dated 16-09-2020, from the date of issuance, in the best interest of public service.

**DIRECTOR**


Elementary & Secondary Education  
Khyber Pakhtunkhwa Peshawar

Endst. No. 761-65/F. No. 32-4/ADEO's (M) Transfer.

Dated Peshawar the 16/9 2020.

Copy of the above is to the:-

1. Section Officer (Primary) w.r.t the letter No. SO (PE) E&SEED/2-1/General Transfer/Posting/2020 dated 16-08-2020,.
2. District Education Officer (M/F) Dir Upper
3. District Accounts officer Dir Upper.
4. Officer concerned.
5. PA to Director. (E&SE) Khyber Pakhtunkhwa, Peshawar.
6. Master File.

  
Deputy Director (Estab)  
Elementary & Secondary Education  
Khyber Pakhtunkhwa Peshawar

**ATTESTED**





**VAKALATNAMA**

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

\_\_\_\_\_ OF 2020

Peer Muhammad. (APPELLANT)  
(PLAINTIFF)  
(PETITIONER)

**VERSUS**

\_\_\_\_\_ (RESPONDENT)  
EDUCATION DEPTT: \_\_\_\_\_ (DEFENDANT)

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

Dated. \_\_\_\_/\_\_\_\_/2020

  
\_\_\_\_\_  
**CLIENT**

**ACCEPTED**  
**NOOR MOHAMMAD KHATTAK**

**KAMRAN KHAN**

  
**MIR ZAMAN SAFI**

**&**

**AFRASIAB KHAN WAZIR**  
**ADVOCATES**

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



**BEFORE THE HONOURABLE SERVICES TRIBUNAL KPK,**  
**PESHAWAR**

Appeal No. 11011 /2020

**Mr. Peer Muhammad**

**VERSUS**

**Government of Khyber Pakhtunkhwa & others**

S.No	Description	Annexure	Pages
1.	Written Reply		1 to 5
2.	Application Reply		6, 7
3.	Affidavit		8
4.	Copy of Order dated: 21/09/2020, Order dated: 28/09/2020 & Order dated: 23/09/2020.	A1, A2 & A3	9, 10 or 11
5.	Copy of Charge Report,	B1	12
6.	Wakalat Nama		13

**Dated: 19 /10/2020**

**Respondent No.4**

**THROUGH**

**SAIF ULLAH KHALIL (SR)**

**ZEESHAN KHALIL (JR)**

**Adv's, High Court Peshawar**



(1)

**BEFORE THE HONOURABLE SERVICES TRIBUNAL KPK,**  
**PESHAWAR**

**Appeal No. 11011/2020**

**Mr. Peer Muhammad**

**VERSUS**

**Government of Khyber Pakhtunkhwa & others**

**REPLY ON BEHALF OF RESPONDENT NO. 4**

**Respectfully Sheweth: -**

*Respondent No.4 submits as under:*

**LEGAL OBJECTION:**

1. *That appellant has got no cause of action and locus standi to file the instant appeal.*
2. *That the appeal of the appellant is false, frivolous and against the law and facts, hence liable for summary dismissal.*
3. *That the appeal of the appellant is hopelessly time barred.*
4. *That the appellant has concealed material facts from this Hon'ble Court.*
5. *That the appellant has not come to the court with clean hands.*
6. *That appellant is estopped by her own conduct to bring the instant appeal, in view of notification dated 21/09/2020 through which the appellant is adjusted on his own pay & grade & posted as SDEO Wari Dir Upper &*

(2)

vide his charge report for the same post dated: 28/09/2020 & vide his specimen signature as SDEO vide latter dated: 23/09/2020.

7. That the appellant is not an aggrieved person as he has already accepted his adjustment & transfer order dated: 21/09/2020.
8. That the appeal in hand is liable for summary dismissal with special cost.
9. That the impugned order dated: 11/08/2020 & thereafter 14/09/2020 & then 16/09/2020 has already been acted upon & the answering respondent has already got the charge of ASDEO Wari Dir Upper in compliance of the above orders, therefore the instant appeal has become infructuous & liable to be dismissed with cost.

### **FACTUAL OBJECTION:**

1. Para no. 1 of the appeal is subject to proof. Furthermore the appellant has already been adjusted as SDEO vide order dated: 21/09/2020 on his own pay & grade & he has also got charge of the said post & performing his duties as SDEO since 28/09/2020.

**(Copy of Order dated: 21/09/2020, Order dated: 28/09/2020 & Order dated: 23/09/2020 are Annex A1, A2 & A3 respectively)**

2. Para no.2 of the appeal is incorrect, hence denied. Transfer order dated: 11/08/2020 was purely made on merits & seniority cum fitness which was later on withdrawn on 14/09/2020 through political influence but again restored on 16/09/2020 & through the above order the answering respondent was posted as ASDEO Wari Dir Upper & he took charge of the same & performing his duties since then. After the above orders the appellant was adjusted on his own pay & grade as SDEO & posted at Wari

(3)

Dir Upper vide order dated: 21/09/2020 & also submitted his specimen signature to the competent authority on 23/09/2020 as such his appeal has become infructuous & liable to be dismissed with cost throughout as the appellant concealed all those facts from this Hon'ble Tribunal & illegally & unlawfully got a stay order on 01/10/2020 through concealment of the above facts from this Hon'ble Tribunal, as such not entitle for any relief.

**(Copy of Charge Report is Annex B1)**

3. Para no.3 of the appeal is incorrect, hence denied. Adjustment of the answering respondent to the said post is made on merits & has also took charge of the said post & has acted upon the posting transfer order, as such the appeal is liable to be dismissed with cost.
4. Para no.4 of the appeal is subject to proof.
5. Para no.5 of the appeal is incorrect, hence denied. The detailed reply is given above.
6. Para no.6 of the appeal is incorrect, hence denied. The detailed reply is given above. Furthermore the same is subject to proof.
7. Para no.7 of the appeal is correct the extent of cancelation of the order dated: 11/08/2020, but the same was restored vide order dated: 16/09/2020.
8. Para no.8 of the appeal is incorrect, hence denied.

**GROUNDS**

- A. Para A of the grounds is incorrect, hence denied. All the orders have been made in accordance with & the same have already been acted upon, hence can't be set aside because the appellant is estopped by his own conduct to

(4)

file the instant appeal, keeping in view the Principle of Approbate & Reprobate & Principle of Locus Poenitentiae.

- B.** Para B of the grounds is incorrect, hence denied. The entire process has been made in accordance with law & rules by the department.
- C.** Para C of the grounds is incorrect, hence denied. The detailed reply is given above.
- D.** Para D of the grounds is incorrect, hence denied. The detailed reply is given above.
- E.** Para E of the grounds is incorrect, hence denied. The answering respondent is eligible for the said adjustment being in manager cadre.
- F.** Para F of the grounds is incorrect, hence denied. Adjustment or transfer can't be claimed as fundamental right of the appellant.
- G.** Para G of the grounds is incorrect, hence denied. The detailed reply is given above.
- H.** Para H of the grounds is incorrect, hence denied. No discrimination has been made between the appellant & the answering respondent & it is the prerogative of the department to transfer a person throughout the province & the employee is bound to obey the same order.
- I.** Para I of the grounds is incorrect, hence denied. All the above notification have been made in the large interest of public.
- J.** Para J of the grounds is incorrect, hence denied. The answering respondent also seek permission for additional points at the time of arguments.

(5)

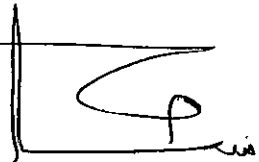
*It is most humbly prayed that the appeal of the appellant being against the law & facts, rules & keeping in view the above replies may very kindly be dismissed with cost.*



**Respondent No.4**

**Dated: 19 /10/2020**

**through**



**Saifullah Khalil (SR)  
Zeeshan khalil (JR)  
Adv's, Peshawar High Court**

**Verification:**

*Verified on oath that the contents of the written reply are true, correct and to the best of my knowledge & nothing has been concealed from this Hon'ble Tribunal.*



**Deponent**

(6)

**BEFORE THE HONOURABLE SERVICES TRIBUNAL KPK,**  
**PESHAWAR**

**Appeal No. 11011 /2020**

**Mr. Peer Muhammad**

**VERSUS**

**Government of Khyber Pakhtunkhwa & others**

**REPLY ON BEHALF OF RESPONDENT NO. 4**

**Respectfully Sheweth:-**

*Respondents no. 4 submits as under:*

**LEGAL OBJECTION:**

*All the legal objection taken in the written reply may very kindly be considered and deemed as the part and parcel of the instant appeal.*

**FACTUAL OBJECTION:**

1. *Para no. 1 needs no reply.*
2. *Para no. 2 is incorrect hence denied. The impugned orders have been purely made on merits & in the interest of the public at large.*
3. *Para no. 3 is incorrect, hence denied. None of the 3 ingredients is necessary for temporary injunction leans in favour of the appellant but the same is in favour of the answering respondent as the impugned orders have already been acted upon.*
4. *Para no. 4 is incorrect, hence denied. The detailed reply is given above,*

(7)

*It is therefore most humbly prayed that the application may very kindly be dismissed with cost.*

Through

**Respondent No. 4**



**Saifullah Khalil (SR)**  
**Zeeshan Khalil (JR)**  
**Adv's, Peshawar High Court**

***Affidavit:***

*Declare on oath that the contents of reply are true, correct and to the best of my knowledge & belief & nothing has been concealed from this Hon'ble Court.*

  
**Deponent**

(8)

**BEFORE THE HONOURABLE SERVICES TRIBUNAL KPK,**  
**PESHAWAR**

**Appeal No. 11011/2020**

**Mr. Peer Muhammad**

**VERSUS**

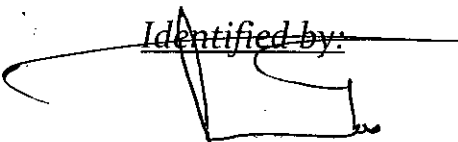
**Government of Khyber Pakhtunkhwa & others**

**AFFIDAVIT**


I, Muhammad Hanif, SST, GMS Gambat under transfer/posted as ASDEO Circle Wari O/O SDEO (M) Wari Dir Upper, do hereby solemnly affirm and declare on oath that the contents of the Written Reply are true, correct & to the best of my knowledge & nothing has been concealed from this Hon'ble Court.

  
**DEPONENT**

Identified by:

  
Saifullah Khalil  
Advocate, High Court  
Peshawar



  
19-10-2020





(9)

Annex A 1

GOVERNMENT OF KHYBER PAKHTUNKHWA  
ELEMENTARY & SECONDARY EDUCATION  
DEPARTMENT

Dated Peshawar the September 21, 2020

NOTIFICATION

NO.SO(SM)E&SED/7-1/2020/Posting/Transfer/MC:- In continuation of this department notification of even number dated 08.09.2020 Mr. Pir Muhammad ASDEO (M) (BS-16) Wari Dir Upper (Management Cadre) is hereby transferred and posted as SDEO (M) BS-17 Wari Dir Upper in OPS as stopgap arrangement against vacant post, in the public interest with immediate effect.

2. No TA/DA is allowed.

Endst: of even No. & Date

SECRETARY

Copy forwarded to the:

1. Accountant General, Khyber Pakhtunkhwa Peshawar.
2. Director, E&SE Khyber Pakhtunkhwa, Peshawar.
3. District Education Officers (Male), Concerned.
4. District Accounts Officers. (Male), Concerned.
5. PS to Minister E&SE Department, Khyber Pakhtunkhwa.
6. PS to Secretary E&SE Department, Khyber Pakhtunkhwa.
7. PS to Special Secretary E&SE Department, Khyber Pakhtunkhwa.
8. PA to Additional Secretary (Estab) E&SE Department.
9. PA to Deputy Secretary (Admn) E&SE Department.
10. Director, EMIS E&SE Department.
11. Officers concerned.
12. Master file.

(MUJEEB UR REHMAN)  
SECTION OFFICER (SCHOOLS MALE)


Attested

# CHARGE REPORT

(10) Annex A2

In compliance with Government of Khyber Pakhtunkhwa Elementary & Secondary Education Department Notification No. SO(SM)E&SED/7-1/2020/posting/Transfer/MC:- In continuation of this department notification of even number dated 08-09-2020 Mr. Pir Muhammad ASDEO (M) (BS-16) Wari Dir Upper (Management Cadre) is hereby transferred and posted as SDEO (M) (BS-17) Wari Dir Upper in OPS as stopgap arrangement against vacant post dated Peshawar the September-21-2020.

I Pir Muhammad Khan took over the charge of my Post as Sub-Divisional Education Officer (BPS-17), (Male) Wari District Dir Upper today on 22.09.2020 (F.N).

  
(Pir Muhammad Khan)  
Sub-Divisional Education Officer  
Male Wari Dir Upper

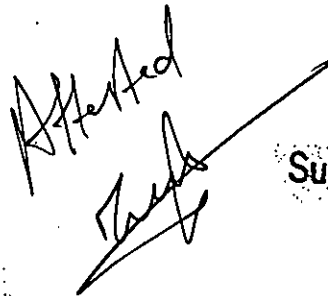
OFFICE OF THE SUB-DIVISIONAL EDUCATION OFFICER WARI DIR UPPER.


No. 7458-131

Dated 28/09/2020

Copy to the:-

- 01- PS to Secretary (E&SE) Khyber Pakhtunkhwa Peshawar.
- 02- PA to Director (E&SE) Khyber Pakhtunkhwa Peshawar.
- 03- District Education Officer (M) Dir Upper.
- 04- District Accounts Officer Dir Upper.
- 05- Official concerned.
- 06- Office file.



  
Sub-Divisional Education Officer,  
Male Wari Dir Upper

**SPECIMEN SIGNATURES**

Mr. Pir Muhammad Khan ASDEO (Male) Wari BPS-16 has been declared as Drawing Disbursing Officer for the Office of the Sub-Divisional Education Officer (Male) Wari vide Secretary E&SE, KP Peshawar Vide Notification : No. SO (M) E&SED/7-1/2020/ posting/Transfer/MC:- dated Peshawar the September- 21,2020.

My specimen signatures are as under.

01.

02.

03.

ATTESTED BY



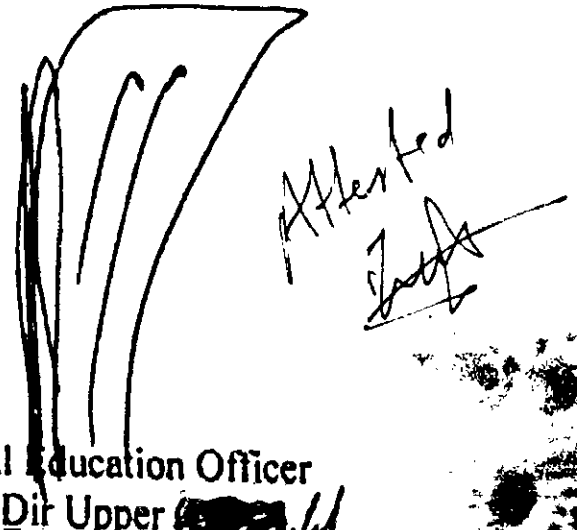
A.S.D.E.O  
MALE WARI

**OFFICE OF THE SUB-DIVISIONAL EDUCATION OFFICER MALE WARI DIR UPPER.**

Endst: No. 7443-57 / Dated SDEO(M) Wari the: 23/09 /2020.

Copy forwarded to the:-

01. District Accounts Officer Dir Upper.
02. District Education Officer (Male) Dir Upper.
03. Manager NBP Dir & Wari.
04. Manager UBL Wari & Sahib Abad.
05. Manager HBL Akhagram & Darora.
06. Manager BOK Wari.
07. Manager Nadra Office Wari.



Attested  
[Signature]

Sub-Divisional Education Officer  
(Male) Wari Dir Upper

(12)

Annex B1


**CHARGE ASSUMPTION REPORT**

In Pursuance of the order bearing Endost NO 2947.75 F.NO 32/vol.4/ADEOs (M) Transfer dated the Peshwar 11.08.2020 officer the Director Elementary & Secondary Education KPK Peshwar I **Muhammad Hanif** assumed the charge of my duty as **ASDEO (M) circle Wari Dir Upper** today on **13.08.2020 AM**.



Muhammad Hanif  
ASDEO (M) Circle Wari Dir Upper

Certified that the above mentioned officer has taken over the charge of his duty at the office of the undersigned on 13.08.2020.




Sub Divisional Education officer  
(M) Wari Dir Upper

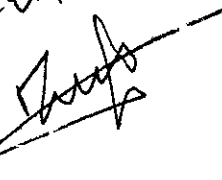
Dated 13/08/2016

Copy to:

1. Director Elementary & Secondary Education KPK Peshwar
2. District Education officer (S&E) Male Dir Upper
3. District Account Officer Dir Upper



Sub Divisional Education officer  
(M) Wari Dir Upper

Attended  


(13)

50	6:047			
ایڈویٹ: سیف اللہ - حلیل اسٹریٹ		پشاور بار ایسوسی ایشن، خیبر پختونخواہ		
بار کونسل ایسوسی ایشن نمبر: 7499-10-15				
رابطہ نمبر: 0313-5941431				

بعدالت جناب: سرپرست ایڈووکیٹ پشاور

منجانب: <b>صنول المیہ عمر 4-</b>	دعویٰ: <b>اصل</b>
 بنام گورنمنٹ آف وائٹ واٹر پیکاجنگ کارپوریشن	علت نمبر:
	مورخہ:
	جرم:
	تھانہ:

**باعث تحریر آنکہ**

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

آن مقام کے سنا اور لکھیے۔ **حلیل اسٹریٹ** کے درمیان **حلیل اسٹریٹ** کے درمیان مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کمال اختیار ہوگا، نیز وکیل صاحب کو راضی نامہ کرنے و تقریر ثالث و فیصلہ بر حلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق زریں 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 کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا اور صاحب مقرر شدہ کو وہی جملہ مذکورہ اختیارات حاصل ہوں گے اور اس کا ساختہ پر داختم منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانبہ 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: **19-10-2024**  
**PESHAWAR BAR ASSOCIATION**  
**KHYBER PAKHTUNKHWA**

مقام **پشاور** کے لیے منظور ہے۔

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

**BEFORE THE HONORABLE KHYBER PAKHATUNKHWA SERVICE  
TRIBUNAL PESHAWAR.**

Service Appeal No: 11009/2020

**Peer Muhammad SST/ADEO Dir Upper.....Appellant.**

**VERSUS**

Secretary (E&SE) Department, Khyber Pakhtunkhwa & others.....Respondents

**JOINT PARAWISE COMMENTS FOR & ON BEHALF OF RESPONDENTS No: 1-3.**

Respectfully Sheweth:-

The Respondents submit as under:-

**Preliminary Objections.**

- 1 That the Appellant has got no cause of action/locus standi.
- 2 That the instant Service Appeal is badly time barred.
- 3 That the Appellant has concealed material facts from this Honorable Tribunal in the instant service appeal.
- 4 That the instant Service Appeal is based on mala-fide intentions.
- 5 That the Appellant has not come to this Honorable Tribunal with clean hands.
- 6 That the Appellant is not entitled for the relief he has sought from this Honorable Tribunal.
- 7 That the instant Service Appeal is against the prevailing law & rules.
- 8 That the instant Appeal is based on mala fide intentions just to put extra pressure on the Respondents for gaining illegal service benefits as the appellant is basically working against the SST B-16 (TC) post in the Respondent Department.
- 9 That the instant Service Appeal is not maintainable in its present form as the impugned orders & Notifications dated 11-08-2020 & 16-09-2020 are legally competent.
- 10 That the instant Service Appeal is bad for mis-joinder & non-joinder of the necessary parties.

11 That the instant Service Appeal is barred by law.

12 That no Departmental Appeal has been filed against above mentioned orders/Notification by the appellant to the Respondent Department, hence, got final.

### ON FACTS.

- 1 That Para-1 is incorrect & denied on the grounds that the appellant is working against the SST B-16 in the Respondent Department.
2. That Para-2 is also incorrect & denied as the appellant has been reverted to his original post of SST B-16 post vide Notification dated 11-08-2020 by the competent authority, hence, the plea of the appellant is liable to be rejected **.(Copy of the Notification dated 11-08-2020 is Ann-A).**
- 3 That Para-3 is incorrect hence denied.
- 4 That Para-4 is also incorrect & denied as the competent authority has got powers & jurisdiction to transfer & post a civil servant under section 10 of civil servants Act 1973 wherever his services are required, hence, the claim of the appellant is without any legal force & justification.
- 5 That Para-5 is incorrect & denied on the grounds that the act of the Respondent Department with regard to the impugned Notification dated 11-08-2020 is within legal sphere as cited above.
- 6 That Para-6 is correct to the extent of the impugned Notification dated 11-08-2020, whereby, the appellant has been transfer & posted against his original post of SST B-16 (TC),whereas, rest of para is relates to the record of the Honorable Peshawar High Court Peshawar in W.P No. 829/2020 case titled Muhammad Iqbal etc Vs Government of KPK & others decided vide Judgment dated 01-09-2020 with the directions to the Respondent Department for the disposal of the pending Departmental Appeal against the impugned order dated 11-08-2020. **.(Copy of the Judgment dated 01-09-2020 is Ann-B).**
- 7 That Para-7 is correct that in compliance of the Judgment dated 01-09-2020 of the Honorable Court the impugned order dated 11-08-2020 has been withdrawn vide office order dated 14-09-2020 by the Respondent Department, however the same order dated 14-09-2020 has been withdrawn vide office order dated 16-09-2020 by restoring the impugned order dated 11-08-2020 by the competent authority dully actualized by the appellant vide order dated 22-09-2020.**(Copies of the order dated 14-09-2020, 16-09-2020, 22-09-2020 & charge report dated 22-09-2020 are Ann-C, D , E & F).**
- 8 That Para-8 is also incorrect & denied on the grounds that agitated in the fore going paras of the present reply, hence, needs no further comments, however, the Respondents further submit on the following grounds inter alia:-

**ON GROUNDS.**

- A. **Incorrect & not admitted.** The appellant has been treated as per law & rules by the Respondent Department vide orders dated 11-08-2020 & 16-09-2020 in the instant case, hence, the stance of the appellant is baseless & liable to be rejected.
- B. **Incorrect & not admitted.** The appellant has been treated as per law, rules & policy by the Respondent Department in the instant case as mentioned in reply to ground-A.
- C. **Incorrect & not admitted.** The statement of the appellant is without any cogent reason & justification on the grounds as agitated in the foregoing paras of the present reply by the Respondents, hence, the plea of the appellant is without any justification.
- D. **Incorrect & not admitted.** The stand of the appellant is without any cogent reason & legal justification & liable to be rejected.
- E. **Incorrect & not admitted.** The plea of the appellant is without legal justification & liable to be rejected as the appellant has been treated as per law, rules & policy by the Respondent Department in the instant case, hence, the stance of the appellant is baseless & liable to be rejected.
- F. **Incorrect & not admitted.** The plea of the appellant is without legal justification & liable to be rejected as the appellant has been treated as per law, rules & policy by the Respondent Department in the instant case, hence, the stance of the appellant is baseless & liable to be rejected.
- G. **Incorrect & not admitted.** The stand of the appellant is without any cogent reason & legal justification & liable to be rejected.
- H. **Incorrect & not admitted.** The plea of the appellant is without legal justification & liable to be rejected as the appellant has been treated as per law, rules & policy by the Respondent Department in the instant case, hence, the stance of the appellant is baseless & liable to be rejected.
- I. **Incorrect & not admitted.** The plea of the appellant is without legal justification & liable to be rejected.
- J. **Legal.** However, the Respondents also seek leave of this Honorable Tribunal to submit additional grounds, record & case law at the time of arguments on the date fixed.



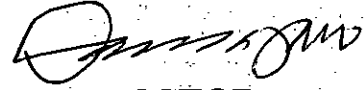
In view of the above made submissions, it is most humbly requested that this Honorable Tribunal may very graciously be pleased to dismiss the instant Service Appeal in favor of the Respondents in the interest of justice.

Dated 13/11/2020



**SECRETARY.**

E&SE Department Khyber  
Pakhtunkhwa, Peshawar.  
(Respondent No: 1)



**DIRECTOR**  
E&SE Department Khyber  
Pakhtunkhwa, Peshawar.  
(Respondents No: 2 & 3)

**AFFIDAVIT**

**I, Hayat Khan Asstt: Director (Litigation-II)** E&SE Department Khyber Pakhtunkhwa, do hereby solemnly affirm & declare on oath that the contents of the instant Parawise Comments are true & correct to the best of my knowledge & belief.



**Deponent**

A

(1)

9

**DIRECTORATE OF ELEMENTARY & SECONDARY  
EDUCATION KHYBER PAKHTUNKHWA PESHAWAR**

NOTIFICATION

The Competent Authority is pleased to order transfer/posting of the following in their own pay scale, with immediate effect in the interest of public service.

#	Name & Designation	From	To (posting us)	Remarks
1	Mr Abdul Aziz SST (T.C)	GHS Seri Sultan Khat	ADEO (Primary) at O/O DEO (M) Dir Upper	V#2
2	Muhammad Zaid (T.C)	ADEO (Primary) at O/O DEO (M) Dir Upper	GHS Katan	V#1 under Administrative basis
3	Mr. Muhammad Hanif SST	GMS Gandat	ASDEO Circle Wari	Vice#5
4	Mr. Muhammad Iqbal (M.C)	ADEO (F) at O/O DEO (F) Dir Upper	ASDEO Circle Normal.	AVP under Administrative basis
5	Mr. Peer Muhammad (M.C)	ASDEO Circle Wari	ASDEO Circle Larjam	AVP
6	Mr. Muhammad Riaz SST (T.C)	GHS Malawi	ADEO (F) at O/O DEO (F) Dir Upper	Vice#4
7	Mr. Muzeeb Ahmad SST (T.C)	GHS Wari	ADEO (Secondary) at O/O DEO (M) Dir Upper	Vice#8
8	Mr. Shahid Aziz SST (T.C)	ADEO (Secondary) at O/O DEO (M) Dir Upper	GHS Wari	Vice#7 under Administrative basis

Date:

1. Posting/Adjustment of Teaching Cadre Officers shall be considered as stop-gap arrangement till the arrival of Management Cadre officers.
2. The order of the above mentioned Teaching cadre officers will be effective subject to the condition that he will give an undertaking/affidavit on legal paper/stamp paper to DEO (M/F) Dir Upper to the effect, not to claim seniority of Management cadre.
3. Charge Report should be submitted in all concerned.
4. No TAF/DA is allowed.
5. The terms & conditions mentioned in their appointment order as teaching cadre will remain intact.

DIRECTOR  
Elementary & Secondary Education,  
Khyber Pakhtunkhwa

Form No. \_\_\_\_\_ F.A. No. \_\_\_\_\_ ADNOs (M) Transfers Listed the Peshawar 11/2/2010

Copy forwarded to the:

1. District Education Officer (M/F) Dir Upper.
2. District Accounts Officer Dir Upper
3. Officers Concerned.
4. Master Copy.

Deputy Director (Estab)  
Elementary & Secondary Education  
Khyber Pakhtunkhwa

11/8/2010

RECEIVED  
11/8/2010  
OFFICE OF THE DEPUTY DIRECTOR

Annex B -

(2)

PESHAWAR HIGH COURT, MINGORA BENCH (DAR-UL-QAZA), SWAT

FORM OF ORDER SHEET

18

Court of .....

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

1	Date of Order or Proceedings	Order or other Proceedings with Signature of Judge and that of parties or counsel where necessary.
	2	3
	01-09-2020	<p><u>W.P No. 329-M/2020 with Interim Relief</u></p> <p>Present: <i>Mr. Noor Muhammad Khattak, Advocate for the petitioners.</i></p> <p>*****</p> <p><u>WIQAR AHMAD, J.-</u> This order is directed to dispose of the petition filed by petitioners, under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, with the following prayer:</p> <p>"It is therefore, most humbly prayed that on acceptance of this writ petition the inaction of the respondent No. 1 by not deciding/dispose of the departmental appeals of the petitioners in light of Clause-XIV of the Transfer/ Posting Policy may be declared as illegal, unconstitutional and ineffective upon the rights of the petitioners. That the respondent No. 1 may please be directed to dispose of the departmental appeals of the petitioners in light of Clause-XIV of the Transfer/Posting Policy of the Provincial Government. Any other remedy which this august Court deems fit that may also be awarded in favor of the petitioners."</p> <p>2. Learned counsel for petitioners at the outset requested that he would be satisfied, if respondent No. 1 is directed to decide departmental appeals of petitioners within fortnight.</p>

ATTESTED

HON'BLE MR. JUSTICE IHTIQA IERAMIN  
HON'BLE MR. JUSTICE WIQAR AHMAD

ATTESTED

Examined  
Peshawar High Court Bench  
Mingora Dar-ul-Qaza, Swat.

Handwritten mark

3. Request of learned counsel for petitioners seems genuine. Respondent No. 1 i.e. Secretary E&SE Department, Khyber Pakhtunkhwa is therefore directed to decide departmental appeals of petitioners within a period of fourteen days positively, after receipt of order of this Court but strictly in accordance with law and rules.

4. The petition in hand is disposed of accordingly.

Announced  
Dt: 01.09.2020

JUDGE

JUDGE

5. No. 62  
 Name of Applicant Waliullah  
 Date of Presentation of Applicant 10-09-2020  
 Date of Completion of Copies 10-09-2020  
 No. of Copies 5  
 Urgent Fee 0241-11  
 Fee Charged 0241-11  
 Date of Delivery of Copies 10-09-2020

Certified to be a true copy

*[Signature]*  
 10/09/2020  
 Hon'ble Mr. Justice Iftikhar Ahmad  
 Hon'ble Mr. Justice Wajid Ahmad  
 Khyber Pakhtunkhwa High Court, Peshawar  
 Approved Under Article 17 of Constitution of Pakistan

07/16  
02/09

*[Handwritten mark]*

Annex - 4

(4)

DIRECTORATE OF ELEMENTARY & SECONDARY  
EDUCATION KHYBER PAKHTUNKHWA PESHAWAR

OFFICE ORDER.

The Competent Authority is pleased to withdraw the Transfer/Posting Order bearing No. 210-14 dated 14-09-2020 in the light of the Admin. Department letter No. SO (PE) E&SEED/2-1/General Transfer/Posting/2020 dated 16-09-2020, from the date of issuance, in the best interest of public service.

DIRECTOR

Elementary & Secondary Education  
Khyber Pakhtunkhwa Peshawar

Encls. No. 7 c1-65 F. No 32-4/ ADEO's (M) Transfer.

Dated Peshawar the 1/12/2020.

Copy of the above is to the:-

1. Section Officer (Primary) w.r.t the letter No. SO (PE) E&SEED/2-1/General Transfer/Posting/2020 dated 16-08-2020.
2. District Education Officer (M/F) Dir Upper
3. District Accounts officer Dir Upper.
4. Officer concerned.
5. PA to Director (E&SE) Khyber Pakhtunkhwa, Peshawar.
6. Master File.

Deputy Director (Estab)

Elementary & Secondary Education  
Khyber Pakhtunkhwa Peshawar

ATTESTED

**DIRECTORATE OF ELEMENTARY & SECONDARY  
EDUCATION KHYBER PAKHTUNKHWA PESHAWAR**

21

**OFFICE ORDER.**

The Competent Authority is pleased to withdraw the transfer/Posting Order bearing No. 29471-75 dated 11-08-2020 in respect of the following officers in the light of the Admin. Department letter No. SO (PE) E&SEED/2-1/General transfer/Posting/2020 dated 31-08-2020, in the best interest of public service.

SN	Name Designation	Previous Position
1	Mr. Shahid Aziz SST GHS Kattan	ADEO (M) Secondary at o/o DEO(M) Dir Upper.
2	Mr. Muhammad Zada SST SST GHS Kattan	ADEO (M) Primary at o/o DEO(M) Dir Upper.
3	Mr. Muhammad Iqbal ASDEO Barawal	ASDEO (M) Circle barawal Dir Upper.
4	Mr. Peer Muhammad ASDEO Larjam	ASDEO (M) Circle Wari Dir Upper.

**DIRECTOR**

Elementary & Secondary Education  
Khyber Pakhtunkhwa Peshawar

Endst: No. 710 /F. No. 32-4/ ADEO's (M) Transfer.

Dated Peshawar the 14/05/2020.

Copy of the above is to the:-

- Section Officer (Primary) w.r.t the letter No. SO (PE) E&SEED/2-1/General Transfer/Posting/2020 dated 31-08-2020.
- District Education Officer (M/F) Dir Upper
- District Accounts officer Dir Upper.
- Officer concerned.
- PA to Director (E&SE) Khyber Pakhtunkhwa, Peshawar.
- Master File.

Deputy Director (Estab)  
Elementary & Secondary Education  
Khyber Pakhtunkhwa Peshawar

Annexure E



OFFICE OF THE  
DISTRICT EDUCATION OFFICER MALE DIR  
PH NO. 09-34-881400 FAX-09-34-3804 E-mail: male.dir@punjab.gov.pk

OFFICE ORDER

Mr. Shahid AZIZ Ex- ADEO(S) under transfer to G. S. Kattan (Bak) Dir Upper  
merit post of SS-7 BPS-16 is exists in the school, he is hereby posted/adjusted at  
Govt. High School Rehankal against vacant post of Head Master post only for the purpose  
of regularisation and scale in the interest of public service. All further orders  
will be issued in the interest of public service.

- 1. No. 142-95-80/DEO (U) Dir. G/SB/D/CD- (U) dt. 14/11/2010
- 2. Copy to the
- 3. District Accounts Officer, Dir Upper
- 4. Director, GHS Rehankal, Dir
- 5. Officials concerned.

DISTRICT EDUCATION OFFICER  
MALE DIR UPPER

DISTRICT EDUCATION OFFICER  
MALE DIR UPPER

3. Pay Scale type: PE 331

4. BPS: 16

Sl. No.	Wage Type	Description	Amount
1	Bi Pay		62450
2			
3			
4			
5			
6			
7			
8			
9			
10			

Annex F  
(7)

Charge Report

Certified that Mr, Shahid Aziz SST took over charge as SST at GHS  
Rehankot on 22-09-2020 under Endst 193 95 No.01/DEO (M)Dir (U)SEB Dated  
Dir (U) the 27/09/2020 is only for purpose of pay.

Ent no: 590 Dated: 22/9/20

Head Master  
Govt High School Rehankot  
District Dir  
GHS Rehankot  
District

Shahid Aziz SST  
22/9/2020