

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR.

Khyber Pakhtunkhwa
Service Tribunal

Service Appeal No: 1644/2022

Diary No. 4486

Dated 21/3/2023

Sajid Awais, SST (Bio, Chem) GHSS Mandori District KohatAppellant.

VERSUS

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

JOINT PARAWISE COMMENTS FOR & ON BEHALF OF THE 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 to file the instant appeal.
2. That the instant Service Appeal is badly time-barred.
3. That the appellant has concealed material facts from this Honorable Tribunal.
4. That the instant service appeal is against the relevant provisions of law.
5. That the appellant has filed the instant appeal on mala-fide intentions.
6. That the appellant has not come to this Honorable Tribunal with clean hands.
7. That the instant appeal is liable to be dismissed for mis joinder & non-joinder of the necessary parties to the present appeal.
8. That the appellant is estopped by his own conduct to file the instant appeal.
9. That the instant Service Appeal is not maintainable in its present form.
10. That the impugned Notifications/orders dated 20-10-2022 is legally competent.
11. That the appellant has been treated as per law, rules & relevant policy by the Department.
12. That no Departmental appeal has been filed by the appellant against the Notification dated 20-10-2022.
13. That the competent authority has got jurisdiction to transfer & post a regular Civil Servant U/S-10 of Civil Servants Act 1973.

14. That the post of the appellant is a Provincial Cadre Teaching Cadre in the Department.

ON FACTS.

- 1 That Para-1 pertains to record & subject to proof.
- 2 That Para-2 is also pertains to record & subject to proof.
- 3 That Para-3 is correct that vide Notification dated 19-12-2018 the Respondent No.4 was appointed as SST in BPS-16 on school based policy & was adjusted at GCHS Kohat against the vacant post of SST by the Department upon the rejection of the application of the appellant vide order dated 10-06-2022 by the DEO (M) Kohat on the grounds that there is only one SST Teacher available in shape of the appellant for students at GHS Mandori Kohat , hence, he can be adjusted GCHS Kohat. **(Copies of the order dated 27-08-2022 & 20-10-2022 are Annexure-A & B).**
- 4 That Para-4 is correct, hence, to the extent of the Notification dated 27-08-2022 of the Respondent Department.
- 5 That Para-5 pertains to the residential record of the appellant.
- 6 That Para-6 is correct that the appeal/application of the appellant for his adjustment at GCHS Kohat against the SST post was rejected by the competent authority vide order dated 20-10-2022 on legal grounds.
- 7 That Para-7 is correct, that vide Notification dated 20-10-2022, the Departmental appeal against the order dated 27-08-2022 has been rejected by the competent authority.
- 8 That Para-8 is also incorrect & misleading. Therefore, the appeal in hand is liable to be dismissed on the following grounds inter alia:-


GROUND.


- A. **Incorrect & not admitted.** The impugned order dated 22-10-2022 is within legal sphere & liable to be maintained in favor of the Respondent Department.
- B. **Incorrect & not admitted,** hence needs no further comments as reply to this grounds has been given in ground A.
- C. **Incorrect & not admitted.** The stand of the appellant is illegal as the competent authority has got jurisdiction under Section-10 of Civil Servants Act-1973.
- D. **Incorrect & not admitted.** Hence needs no further comments as reply to this grounds has been given in ground C.

- E. **Incorrect & not admitted.** The appellant has been treated as per Law, Rules & policy by the Department vide Notification dated 20-10-2022 in the titled case.
- F. **Incorrect & not admitted.** 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 maintain the order dated 20-10-2022 & dismiss the instant Service Appeal in favor of the Respondents in the interest of justice.

Dated ___/ ___/2023.


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

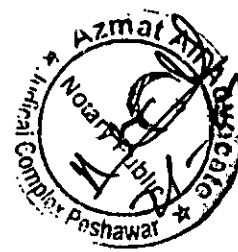

DIRECTOR
E&SE Department Khyber
Pakhtunkhwa, Peshawar.
(Respondents No: 2 & 3)

AFFIDAVIT

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


Deponent

ATTESTED



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18

-16- "F"



OFFICE OF THE DISTRICT
EDUCATION OFFICER (MALE)
KOHAT
Ph & Fax : 0922-9260294

NOTIFICATION

The competent authority is pleased to adjust the following SST(s) in schools noted against each on vacant posts of SST(s) on stop gap arrangement till the arrival of regular incumbent with immediate effect.

S.No	Name and Designation	From	To	Remarks
1.	Mr. Muhammad Abid SST (B/C)	GHS Darmalak Kohat	GHS Kohat	A.V.P
2.	Mr. Muhammad Mohsin SST (G)	GHSS Dhoda Kohat	GHS Kohat	A.V.P

District Education Officer
(Male) Kohat

Endst. No. 4518-24 Dated Kohat the 27/08/2022

Copy of the above is forwarded to the -:

1. PA to Director (E & SE) Department KPK, Peshawar with regard his directions on 26/08/2022.
2. District Comptroller of Accounts, Kohat.
3. District Mentoring Officer, Kohat.
4. DEMIS local section, Kohat.
5. Principal / Headmaster concerned.
6. Official concerned.
7. Office Copy.

Dy. District Education Officer
(Male) Kohat
27/08/22

ATTESTED

OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) KOHAT

No: 6663 / Transfer file SST/Estab Dated Kohat the 27/11/2022

To

Mr. Sajid Awais SST (Bio/Chem)
Govt Higher Secondary School Mandoori
Kohat

Subject: REQUEST FOR TRANSFER

Reference your application on the subject cited above and Writ Petition No. 3664-P/2022 Peshawar High Court Peshawar with pray That on acceptance of this writ petition the inaction of the respondent by not deciding the representation of the appellant through speaking order may very kindly be declare as illegal, unconstitutional, void and ineffective upon the right of the petitioner. That the respondents may please further be directed the departmental appeal of the petitioner strictly in accordance with law.

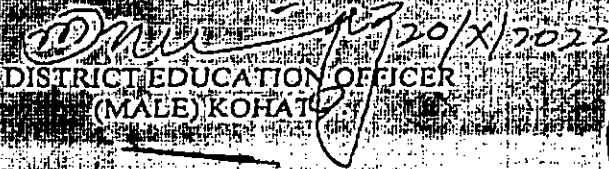
The Honourable Peshawar High Court Peshawar is pleased to treat the writ petition as representation to the Respondent No: 3 District Education Officer (Male) Kohat with directions to decide the appeal within a period of 03 days from today to which the former did not press this petition any more.

Your applications for transfer from Govt Higher Secondary School Mandoori Kohat to GCHS Kohat received to this office on 11/06/2022 vide Dairy No. 2275.

The post availability certificate granted by the Principal Govt Comp High School Kohat with the remarks that "an SST (B/C) is likely to become vacant in near future and the undersigned has no objection if the applicant has transferred to this school as and when the post becomes vacant".

While processing your case a delegation of elders containing PTC members of village Mandoori visited the office of the undersigned and expressed their concerns/reservations over the transfer of you i.e. Mr. Sajid Awais SST (Bio Chem), further more they also submitted a written application duly signed by all of them, which contains that there is only SST Bio Chem teacher i.e. you Mr. Sajid Awais available for teaching of science subject at secondary level in the said school and in case of transfer of the said teacher without providing any suitable substitute, the students of 9th & 10th class will badly suffer. They made a robust request for denying the transfer of any teacher from GHSS Mandoori Kohat without providing the suitable substitute. In addition, they also warned of the dire consequences in case their reservations/concerns are not addressed and stated that they will held responsible the office of the District Education officer (Male) Kohat for the same.

Keeping in view the above stated facts, ground realities and available official record pertaining to your application for your transfer GHSS Mandoori Kohat to Govt Comp High School Kohat, is found devoid of merit and material substance, Hence the same is hereby regretted in larger interest of all stakeholders.


DISTRICT EDUCATION OFFICER
(MALE) KOHAT

Encls No: 1

- Copy forwarded to the:-
1. Addl Registrar, Peshawar High Court Peshawar w/r to the judgment/order sheet dated 18.10.2022 in WP No. 3664-P/2022
 2. Addl Advocate General Mr. Muhammad Inam Yousafzai, Office of Advocate General Khyber Pakhtunkhwa Peshawar High Court Peshawar.
 3. PA to Secretary to Government of Khyber Pakhtunkhwa Elementary & Secondary Education Peshawar.
 4. PA to Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.
 5. Office Copy.


DISTRICT EDUCATION OFFICER
(MALE) KOHAT