Service Appeal No.3306/2020 titled "Amjad Ali Vs. District Education Officer, (Male) Buner at Daggar and other".

Kalim Arshad Khan, Chairman:

27th Feb, 2023

1. Learned counsel for the appellant Mr. Riaz Khan Paindakhel, learned Assistant Advocate General for respondents present.

2. The appellant was appointed in pursuance of the judgment dated 30.05.2018 passed in Writ Petition No.284-M/2015 of Hon'ble Peshawar High Court, Mingora Bench (Dar-ul-Qaza), Swat. The learned counsel submits that after passage of the judgment of the august Peshawar High Court, the appellant filed Review Petition No.34-M/2018 regarding seniority. The review petition was decided on 28.09.2018 with the direction to the respondents to prepare a joint seniority list according to law, rules and procedure and this direction was considered as part & parcel of the judgment dated 30.05.2018 passed in Writ Petition No.284-M of 2015. The appellant then filed a C.O.C No.103-M of 2018 which was decided on 16.12.2019, wherein, the learned counsel had requested the Hon'ble Peshawar High Court Mingora Bench (Dar-ul-Qaza), Swat to treat the C.O.C as departmental representation but instead, the Hon'ble Peshawar High Court allowed the appellant to file departmental appeal before the authorities. It was then the departmental appeal was filed by the appellant with the prayer that the appointment order of the appellant might be modified and considered to have been made on 17.05.2014 giving him antedated seniority. This is the prayer in this appeal also. Although, the

modification of the appointment order is not the domain of this Tribunal yet the seniority issue could be seen and resolved by the Tribunal. When asked about the seniority list, learned counsel submitted that seniority list has not been provided to the appellant despite his requests. There is nobody present on behalf of the respondents. The learned Assistant Advocate General is present in the Court. It is thus directed through the learned AAG that respondents shall prepare seniority list strictly in accordance with Section-8 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 read with Rule-17 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1989, if not already prepared and a copy of the same be handed over to the appellant within 10 days. The appellant is at liberty to challenge the list if that is not in accordance with the above provisions of Act and Rules. The appeal is disposed of accordingly. Consign

3. *Pronounced in open Court Peshawar under our hands and seal of the Tribunal on this 27th day of February, 2023.*

(Rozina Rehman)
Member (J)

(Kalim Arshad Khan)
Chairman

12.01.2023 Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney for the respondents present.

Learned counsel for the appellant again sought time for preparation of arguments. Last opportunity given. To come up for arguments on 27.02.2023 before the D.B.

(Mian Muhammad)
Member (E)

(Salah-Ud-Din)
Member (J)

31st Oct., 2022 Mr. Ubaid Shah, Assistant to learned counsel for the appellant present. Mr. Muhammad Adeel Butt, Addl. AG for the respondents present.

Request for adjournment was made due to non-availability of learned senior counsel for the appellant. Last chance is given to the appellant to ensure attendance of his learned counsel, failing which the appeal will be decided on the basis of available record without the arguments. To come up for arguments on 29.11.2022 before the D.B.

(Fareeha Paul)
Member (E)

(Kalim Arshad Khan)
Chairman

29.11.2022 Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney for the respondents present.

Learned counsel for the appellant requested for adjournment on the ground that he has not made preparation for arguments. Adjourned. To come up for arguments on 12.01.2023 before D.B.

(Mian Muhammad)
Member (E)

(Salah-ud-Din)
Member (J)

23.08.2021

Clerk of learned counsel for the appellant present. Mr. Muhammad Rashid, DDA for respondents present.

Clerk of counsel for the appellant requested for adjournment on the ground that learned counsel for the appellant is out of station. Adjourned. To come up for rejoinder as well as arguments before the D.B on 13.12.2021.

(MIAN MUHAMMAD)
Member(E)

(SALAH-UD-DIN)
Member(J)

13.12.21

DB is on Tour case to come up for the same on Dated 11-4-22

Reader

11-4-2022

Proper DB not available the case is adjourned to 22-8-22

Reader

22.08.2022

Mr. Abdul Majeed Advocate, junior of learned counsel for the appellant present. Mr. Ubaid Ur Rehman ADEO alongwith Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present.

File to come up alongwith connected Service Appeal No. 3299/2020 titled "Muhammad Israr Vs. Government of Khyber Pakhtunkhwa" on 31.10.2022 before the D.B.

(Rozina Rehman)
Member(J)

(Salah-Ud-Din)
Member(J)

18.11.2020 Junior to counsel for the appellant and Addl; AG for respondents present.

Learned AAG seeks time to furnish reply/comments. He is required to contact the respondents and facilitate the submission of reply/comments on 07.01.2021, as a last chance.

Chairman

07.01.2021 Junior to the senior counsel is present for appellant. Mr. Kabirullah Khattak, Additional Advocate General and Mr. Iftikhar-ul-Ghani, DEO (Male), for the respondents are also present.

Representative of the department submitted written reply on behalf of respondents which is placed on record. File to come up for rejoinder and arguments on 27.04.2021 before D.B.

(MUHAMMAD JAMAL KHAN)
MEMBER (JUDICIAL)

27.04.2021 Due to demise of the Worthy Chairman, the Tribunal is non-functional, therefore, case is adjourned to 23.08.2021 for the same as before.

Reader

18.06.2020 Counsel for the appellant and Addl. AG for respondents present. Security and process fee not deposited. Learned counsel for the appellant submitted an application for extension of time to deposit security and process fee. Appellant is directed to deposit security and process fee within seven(7) days, thereafter notices be issued to the respondents for written reply/comments on 04.08.202 before S.B.

Appellant Deposited
Security & Process Fee

Member

04.08.2020 Junior counsel for the appellant and Mr. Kabirullah Khattak, Additional AG for the respondents present.

Learned Additional AG seeks time to contact the respondents and furnish the requisite reply/comments. Adjourned to 28.09.2020 on which date reply/comments shall positively be furnished.

(MIAN MUHAMMAD)
MEMBER(E)

28.09.2020 Junior to counsel for the appellant and Addl. AG for the respondents present.

Learned AAG again seeks time to contact the respondents and furnish the requisite reply/comments. Adjourned to 18.11.2020 on which date the reply/comments shall be submitted without fail.

Chairman

08.05.2020 Learned counsel for the appellant present. Preliminary arguments heard.

It was contended by the learned counsel for the appellant that the respondent department published advertisement for the recruitment of Drawing Master etc. teacher. It was further contended that the appellant applied for the same and after interview, the appellant was shown entitled to be appointed as DM as per merit list but later on, the appellant was not appointed as DM on the ground that Drawing Master Degree obtained by him from the concerned university is not recognized. It was further contended that the appellant file writ petition against the respondent department for directing the respondent department to appoint the appellant as DM. It was further contended the writ petition of the appellant was accepted and the respondent department was directed to appoint the appellant against the post of DM immediately without further waste of time as the appellant has been languishing before the different courts of law for his lawful entitlement since long vide judgment dated 30.05.2018. It was further contended that the appellant also filed review petition before the Worthy Peshawar High Court for correction of consolidated judgment dated 30.05.2018 with further direction to respondent department to prepare joint seniority list. It was further contended that review petition was also accepted vide judgment dated 26.09.2018. It was further contended that the appellant was appointed by the respondent department on the basis of judgment of Worthy High Court but w.e.f the date of taking over charge vide order dated 26.11.2018. It was further contended that the appellant filed contempt of court application against the respondents on the ground mentioned in the contempt of court application but the contempt of court application was dismissed by the Worthy Peshawar High Court however it was observed that the petition is however at liberty to filed departmental representation before the respective authority in respect of their grievances and also to approach the Khyber Pakhtunkhwa Service Tribunal. It was further observed that this order shall not be hindrance in his way in any of the proceedings either before the departmental appeal or Khyber Pakhtunkhwa Service Tribunal vide judgment dated 16.12.2019. It was further contended that the appellant filed departmental appeal before the respondent department on 19.12.2019 for his antedated appointment with effect from the date when other categories of the teacher mentioned in the advertisement dated 05.01.2014 was appointed but the same was not responded hence the

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 3306 /2020

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	22/04/2020	The appeal of Amjad Ali submitted today by Mr. Akhtar Ilyas, Advocate may be entered in the Institution Register and put up to the Learned Member for proper order please. REGISTRAR
2-		This case is entrusted to S. Bench for preliminary hearing to be put up on 06-05-2020 MEMBER
	06.05.2020	Nemo for the appellant. Adjourn. To come up for preliminary hearing on 06.05.2020 before S.B. Member

present service appeal on 22.04.2020. It was further contended that the respondent department appointed other category of teacher mentioned in the advertisement dated 05.01.2014. In the year 2015 while the appellant was appointed on 26.11.2018 for no fault of the appellant as the writ petition of the appellant was accepted and the Worthy High Court directed the respondents to appoint the appellant as D.M and the objection of the respondent department for which the appellant was not appointed was rejected/overruled. It was further contended that similar employee also filed service appeal for antedate appointment which was also allowed by this Tribunal through common judgment and the respondent department was directed to prepare their seniority list according to law vide judgment dated 07.11.2016, therefore the appellant was discriminated and the respondent department is bound to pass an order for antedated appointment of the appellant from the date when the other category of the teacher mentioned in the advertisement date d05.01.2014 were appointed in the year 2015.

Points raised by the learned counsel, need consideration. The appeal is admitted to regular hearing subject to all just legal objections including the issue of limitation. The appellant is directed to deposit security and process fee within 10 days, thereafter notices be issued to the respondents for reply/comments. To come up for written reply/comments on 18.06.2020 before S.B

(M. AMIN KHN KUNDI)
(MEMBER-J)

Before The Service Tribunal, Peshawar.

Amjad Ali VS Edu.

Application for extention of time to depisite Security Fee.

Sheweth,

1. That the titled case is pending disposal in this Honible court and is fixed for reply.
2. That the appllant has not deposited the process fee due to the pendemic disease of covid-19; the appllant wants to deposit the same within 4 days positively.
3. That there is no legal impeadment rather it would be in the intrst of justic to extend the same.

It is, therefor, prayd that the time may kindly be extended for deposition of the process fee.

Applicant

Akhtar Ilyas

8/6/2020

BEFORE KPK SERVICE TRIBUNAL PESHAWAR

S.A No. 3306 /2020

Amjad Ali

Versus

District Education officer &1 Other

INDEX

S#	Description Of The Documents	Annex	Pages
1.	Service Appeal Along Affidavit	•	1-3
2.	Copy Of Advertisement Dated 05-01-2014	A	4
3.	Copy Of WP No 284-M/2015	B	5-23
4.	Copy Of Rev. Petition No 34-M/2018	C	24-31
5.	Office Order Dated 26-11-2018	D	32-34
6.	COC No.103-M/2018	E	35-44
7.	Copy Of Departmental Appeal	F	45-48
8.	Service Appeal No. 51/2014	G	49-54
9.	*Vakalat Nama*		55

Amjad
Appellant

Through

Ilyas

AKHTAR ILYAS
ADVOCATE HIGH COURT
24-THE MALL BEHIND HONGKONG
RESTAURANT, PESHAWAR CANTT.
CELL: 03339417974

Dated: 20/03 /2020

BEFORE KPK SERVICE TRIBUNAL PESHAWAR

S.A No. 3306 /2020

Amjad Ali S/O Said Qamar
Drawing Master, (BPS-15),
GHS, Nawakalay, Distt Buner.

..... Appellant

Versus

1. District Education officer (Male) Buner at Daggar.
2. Director E&SE KPK, Education Directorate, GT Road Peshawar

..... Respondents

APPEAL U/S 4 OF KP SERVICE TRIBUNALS ACT, 1974 FOR TREATING THE APPOINTMENT OF APPELLANT W.E.F 17-05-2014 AND GIVING HIM ANTE-DATED SENIORITY.

Sheweth!

1. That in response to the advertisement floated by Respondent No.1 on 05-01-2014 in daily AAJ in respect of different categories of post including DM; the applicant being qualified on all fours applied against the post of drawing master; successfully qualified the initial process of recruitment i.e. NTS (**Copy of advertisement is attached as Annexure 'A'**).

2. That as per direction of respondent No.1, the applicant amongst others was directed to submit attested copies of his certified degrees, which was complied with and the NTs authorities recommended the appellant for appointment as Drawing master.

3. That Respondent No.1 refused appointment order on the pretext that the Honorable Peshawar High Court has passed injunctive order due to which the official respondents were unable to proceed further in the case.

4. That on the application of appellant, he was impleaded as petitioner and, thereafter the appellant and other aspirants were called on for interview on 13-03-2015. After qualifying the same the Respondent No.1 issued the tentative merit list of 41 candidates including the appellant but to the dismay of the appellant, he was again refused the appointment on the ground that he obtained Intergrade Drawing Examination (IGDE) from Haider Abad and the same is not recognized and he was declared ineligible for appointment against the post of DM.

5. That the appellant was constrained to put a challenge to the stated action on the part of respondent No.1 in W.P. No.284-M/2015. The Honorable High Court was gracious enough to allow the writ Petition on 30-05-2018. (**Copy of WP No.284-M/2015 and order thereon dated 30-05-2018 are collectively attached as annexure 'B'**).

6. That as the issue of antedated seniority was not part and parcel of the stated Writ Petition; the appellant filed Review Petition No.34-M/2018 in the Writ Petition No.284-M2015.

The same was allowed vide order dated 26-09-2018. (**Copy of Revision Petition along order thereon is attached as Annexure 'C'**).

7. That pursuant to the clear cut and unambiguous directions of the Honorable Court, the appellant along with others were appointed as Drawing masters (DMS) vide order dated 26-11-2018 but with immediate effect. (**Copy of order is attached as Annexure 'D'**).

8. That as there was no fault on the part of the appellant and was qualified on all fours on the date of advertisement i.e. 05-01-2014. The non-appointment at that juncture was on the part of Respondent No.1 and under the law, respondent No.1 was under legal obligation to give effect to the appointment of the appellant from the date when other similarly placed candidates were appointed under the one and the same advertisement.

9. That the appellant along with other filed Contempt of Court Petition for the full implementation of the order dated 30-05-2018. The Honorable High Court was gracious enough to dispose off the Contempt Petition No.103-M/2018 vide order dated 16-12-2019 (**Copy of the Contempt of Court Petition and order dated 16-12-2019 is attached as Annexure 'E'**), whereby the appellant was directed to file department appeal and then approach to the Service Tribunal.

10. That on the direction of honorable High Court, the appellant filed departmental appeal on 19-12-2019 to respondent No.2 (**Copy of the departmental appeal is attached as annexure 'F'**), which has not been responded within statutory period.

11. That feeling mortally aggrieved, the appellant approached this Honorable Tribunal, inter alia, on the following grounds:

GROUNDS:

A. That the appellant has not been treated in accordance with law, which goes against the provisions contained in **Articles 4 and 27 of the Constitution of Pakistan, 1973.**

B. That the appellant has been discriminated which is sheer violation of **Article 25** of the Constitution.

C. That by treating the appointment order f the appellant by the respondents with immediate effect is illegal, unlawful and goes contrary to the policy on the subject.

D. That the respondents have penalized the appellant for their own wrongs **(which cannot be attributed to the appellant)**, thus, needs interference by the August Tribunal.

E. That it is settled by now that similar person should be treated alike but astonishingly, the respondents have used/applied two different yardsticks for the same in one bench.

F. That pursuant to the decision of the Hon'ble High Court, the appellant had filed a departmental appeal but the Appellate Authority (Respondent No.1) has not decided the same within the statutory period which goes contrary to the settled law of the land.

G. That it is a matter of record that the appellant was qualified on all fours; he applied/submitted all the required documents/academic credentials well within time; the appellant was not issued with appointment order; the same action on the part of respondents was assailed before the High Court which was allowed by the Hon'ble court. This **Hon'ble Tribunal** has also rendered decisions regarding the same issue, i.e. when there is no fault on the part of the appellant, his appointment should be considered from the date on which the others employees applied against the same advertisement but this very Golden principle has not been acknowledged by the respondent department. **(Copy of the judgement passed in SA No.5/2014 is attached as annexure 'G')**

H. That the appellant seeks leave of the Hon'ble Court to urge additional grounds at the time of arguments.

PRAYER:

In view of the foregoing facts, it is, therefore, most humbly prayed that the appointment order of the appellant may be treated with effect from 17-05-2014; and giving him ante-dated seniority.

Any other remedy to which the appellant is found fit in law, justice and equity may also be granted.

Amjad
Appellant

Through

AKHTAR ILYAS
ADVOCATE HIGH COURT
24-THE MALL BEHIND HONGKONG
RESTAURANT, PESHAWAR CANTT.
CELL: 03339417974

AFFIDAVIT

It is hereby verified and declared on oath that the contents of above Service Appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.

KHALID MAHMOOD ADVOCATE PESHAWAR HIGH COURT ATTESTED NOTARY PUBLIC

17-3-2016

Amjad
Deponent

47 (A)

Daily Aaj dated 5-1-2014

عمر کی حد	قابلیت	آسامی	نمبر شمار
18 تا 35 سال	بی اے، بی ایس سی یا مساوی قابلیت کسی بھی تسلیم شدہ یونیورسٹی سے بمعہ سی ٹی سرٹیفکیٹ یا دو سالہ ایسوسی ایٹ ڈگری ان ایجوکیشن کسی بھی تسلیم شدہ یونیورسٹی سے یا 18 (اٹھارہ) ماہ کا ڈپلومہ ان ایجوکیشن	سی ٹی BPS-15	1
18 تا 35 سال	بی اے، بی ایس سی کسی بھی تسلیم شدہ یونیورسٹی سے بمعہ ایک سالہ ڈرائنگ ماسٹر کورس سرٹیفکیٹ	ڈی ایم BPS-15	2
18 تا 35 سال	بی اے، بی ایس سی یا مساوی قابلیت کسی بھی تسلیم شدہ یونیورسٹی سے بمعہ ایک سالہ جونیئر ڈپلومہ ان فزیکل ایجوکیشن کورس یا آرمی سے مساوی سرٹیفکیٹ یا دیگر مساوی قابلیت	پی ای ٹی BPS-15	3
20 تا 35 سال	ایس ایس سی (سیکنڈ ڈویژن) کسی بھی تسلیم شدہ بورڈ سے بمعہ شہادۃ العالیہ فی العلوم العربیہ والاسلامیہ کسی مستند تنظیمۃ الوفاق المدارس یا دارالعلوم سیدو شریف سوات، دارالعلوم چار باغ سوات، دارالعلوم چترال، دارالعلوم دروش چترال، اور کوئی دیگر دارالعلوم جو گورنمنٹ کے زیر انتظام اور اس کا نوٹیفیکیشن حکومت نے وقتاً فوقتاً جاری کیا ہو یا کسی بھی تسلیم شدہ یونیورسٹی سے عربی میں سیکنڈ کلاس ماسٹر ڈگری	اے ٹی BPS-15	4
20 تا 35 سال	ایس ایس سی (سیکنڈ ڈویژن) کسی بھی تسلیم شدہ بورڈ سے بمعہ شہادۃ العالیہ فی العلوم العربیہ والاسلامیہ کسی مستند تنظیمۃ الوفاق المدارس یا دارالعلوم سیدو شریف سوات، دارالعلوم چار باغ سوات، دارالعلوم چترال اور کوئی دیگر دارالعلوم جو گورنمنٹ کے زیر انتظام اور اس کا نوٹیفیکیشن حکومت نے وقتاً فوقتاً جاری کیا ہو یا سیکنڈ ڈویژن ایم اے اسلامیات کسی بھی تسلیم شدہ یونیورسٹی سے	ٹی ٹی BPS-15	5
18 تا 35 سال	انٹرمیڈیٹ بمعہ حفظ القرآن اور سند قرات کسی بھی منظور شدہ ادارے سے	قاری BPS-12	6
18 تا 35 سال	انٹرمیڈیٹ یا مساوی سرٹیفکیٹ کسی بھی تسلیم شدہ بورڈ سے بمعہ پرائمری سکول ٹیچر سرٹیفکیٹ از ڈپلومہ ان ایجوکیشن، کسی مستند ادارے سے ایس ایس سی (سیکنڈ ڈویژن) کسی بھی منظور شدہ بورڈ سے بمعہ 2 سالہ ایسوسی ایٹ ڈگری ان ایجوکیشن کسی بھی تسلیم شدہ یونیورسٹی سے	پی ایس ٹی (BPS-12)	7

سلیکشن کریٹیریا (Selection Criteria)

اخبار آج :- 5/1/014

اساتذہ کے سلیکشن کریٹیریا درج ذیل ہیں کل 200 نمبرات کی تقسیم اس طرح کی جائے گی۔

1) سکریننگ ٹیسٹ بذریعہ NTS=100 نمبر ب) تعلیمی قابلیت=100 نمبر جس کی مزید تقسیم اس طرح ہوگی۔

کل نمبر	تعلیمی قابلیت
حاصل کردہ نمبر x 20 تقسیم کل نمبر	ایس ایس سی
حاصل کردہ نمبر x 20 تقسیم کل نمبر	ایف اے/ایف ایس سی
حاصل کردہ نمبر x 20 تقسیم کل نمبر	بی اے/بی ایس سی
حاصل کردہ نمبر x 15 تقسیم کل نمبر	ایم اے/ایم ایس سی
حاصل کردہ نمبر x 15 تقسیم کل نمبر	بی ایڈ/ایم اے ایجوکیشن
حاصل کردہ نمبر x 5 تقسیم کل نمبر	ایم ایڈ/ایم اے ایجوکیشن
حاصل کردہ نمبر x 5 تقسیم کل نمبر	ایم فل/پی ایچ ڈی

نوٹ 1:- ہر سکول کی آسامی کیلئے علیحدہ علیحدہ میرٹ لسٹ مرتب کی جائیگی جس میں امیدواروں کے NTS کے حاصل کردہ نمبر اور تعلیمی قابلیت کے نمبروں کو جمع کیا جائے گا۔ 2) ہر امیدوار سے NTS فی درخواست فارم 300 روپے چارج کیا جائے گا، اگر ایک امیدوار پانچ سکولوں کے لئے درخواست دے گا تو اس سے صرف 1200 روپے ہی NTS چارج کرے گا، جو کہ امیدوار خود برداشت کریں گے۔

عمومی شرائط ..... 1) تمام امیدواروں کے ڈومیسائل اور شناختی کارڈ میں مستقل سکونت ضلع بونیر کا ہونا چاہیے ورنہ درخواست پر غور نہیں کیا جائے گا۔ جبکہ پی ایس ٹی پوسٹوں کیلئے جس سکول میں آسامی خالی ہے امیدوار کا اسی یونین کونسل کا مستقل باشندہ ہونا ضروری ہے اگر اسی یونین کونسل میں امیدوار موجود نہ ہوں تو وہ آسامی ملحقہ یونین کونسل کے امیدواروں کو زیر غور لایا جائے گا۔ 2) تمام تقرریاں خالصتاً عارضی بنیادوں پر Adhoc کنٹریکٹ پر ایک سال کیلئے ہوں گی 3) اہل امیدواروں کی موجودگی کی صورت میں کسی کو بھی Age relaxation نہیں دیا جائے گا۔ 4) انٹرویو کے وقت اصلی تعلیمی اسناد بمعہ اصل شناختی کارڈ لانا لازمی ہے، اور ٹیسٹ کے دن صرف اصل شناختی کارڈ لانا ہوگا۔ 5) میرٹ پر آنے والے امیدواروں کی اسناد متعلقہ ادارے سے تصدیق کرائی جائیں گی جس کے تمام اخراجات امیدوار کو برداشت کرنے ہوں گے۔ 5) انٹرویو کیلئے آنے والے امیدواروں کو کوئی ٹی اے ڈی اے نہیں دیا جائے گا 7) صرف مقررہ وقت کے اندر موصول ہونے والی درخواستوں پر غور کیا جائیگا۔ 8) زیر دستخطی کو اختیار حاصل ہے کہ وہ کوئی وجہ بتائے بغیر کسی بھی وقت کلی یا جزوی طور پر انٹرویو منسوخ کردے۔ 9) اگر اس اشتہار کے بعد حکومت وقت کی طرف سے بھرتی کے طریقہ کار میں تبدیلی کی گئی تو سلیکشن کمیٹی اس کے مطابق عمل کرنے کی پابند ہوگی۔ 10) محکمہ ایلیمنٹری اینڈ سیکنڈری ایجوکیشن کو اختیار حاصل ہوگا کہ وہ تمام خالی آسامیوں یا اس سے کم پر امیدوار بھرتی کرے 11) تمام تقرریاں حکومت خیبر پختونخوا کے مقرر کردہ قوانین وضع کردہ طریقہ کار کے مطابق خالصتاً میرٹ کی بنیاد پر ہوں گی 12) تمام تعلیمی اسناد صرف گورنمنٹ کے تسلیم شدہ اداروں کی قابل قبول ہونگی 13) اگر کسی امیدوار کی اسناد جعلی پائے گئے تو اس کے خلاف قانونی چارہ جوئی کی جائے گی اور آئندہ کیلئے اسے سرکاری ملازمت کیلئے نااہل تصور کیا جائے گا۔ 14) نامکمل فارم یا معلومات کی صورت میں درخواست فارم خود بخود منسوخ تصور کیا جائے گا جس کے لئے کوئی اپیل منظور نہیں کی جائے گی 15) انٹرویو کیلئے الگ شیڈول جاری کیا جائے گا 16) تمام تقرریاں متعلقہ اضلاع کے ڈومیسائل کی بنیاد پر ہوں گی اگر اس ضلع میں امیدوار دستیاب نہ ہوں تو قریبی ضلع کے امیدوار سے میرٹ کی بنیاد پر تقرریاں کی جائے گی۔ 17) امیدوار کو اسی سکول میں سروس کرنا ہوگی جس میں اس کی تقرری عمل میں لائی جائے گی جو کہ ناقابل تبادلہ ہوگی۔ 18) ایک امیدوار بیک وقت 5 سکولوں میں خالی آسامیوں کیلئے درخواست دے سکتا ہے 19) درخواست دینے کا طریقہ کار NTS کے ویب سائٹ پر موجود ہے۔ 20) متعلقہ اضلاع کے خالی آسامیوں کی تفصیل سکول وائز درخواست فارم کے ساتھ NTS کے ویب سائٹ پر دی گئی ہیں اور ہر سکول کو اپنا کوڈ دیا گیا ہے۔

ناظم: (سلطان محمود میاں) ڈسٹرکٹ ایجوکیشن آفیسر
محکمہ ایلیمنٹری اینڈ سیکنڈری ایجوکیشن ضلع بونیر

Also available on www.khyberpakhtunkhwa.gov.pk INF(P)60

ATTESTED TO BE TRUE COPY

(1)

5
(B)

BEFORE THE PESHAWAR HIGH COURT, BENCH AT MINGORA, SWAT

Writ petition No. 284-M of 2015

1) Gul Rahim Shah S/O Hussain Shah R/O Palosa Sora Tehsil Daggar District Bunir.
2) Syed Nasib Zar S/O Mian Bakh Zar R/O Sanigram Tehsil Daggar District Bunir.
3) Amjad Ali S/O Said Qamar R/O Sanigram Tehsil Daggar District Bunir.
4) Muhammad Zaman S/O Sher Rahman R/O Chingali Tehsil Daggar District Bunir.
5) Haji Muhammad S/O Nazir R/O Shal Bandai Tehsil Daggar District Bunir.
6) Faiz Muhammad Khan S/O Said Muhammad Khan R/O Shal Bandai Tehl Daggar District Bunir.
7) Sher Muhammad S/O Abdul Hamid R/O Topai Tehsil Daggar District Bunir.
8) Farooq Ali S/O Miran Said R/O Daggar Kalay District Bunir.
9) Khan Nawab S/O Abdul Wakil Khan R/O Mandav Post Office Nagrai Tehsil Daggar District Bunir.
10) Amir Amjad S/O Amir Abdullah R/O Bashkata Tehsil Daggar District Bunir.
11) Yamin S/O Said Ghani R/O China Tehsil Daggar District Bunir.
12) Muhamamd Israr S/O Gul Zarin Shah R/O Kandao Patay Nawagay Tehsil Daggar District Bunir .
13) Nasib Zada S/O Amir Said R/O Village Nawagai Tehsil Daggar District Bunir.
14) Abdul Salam S/o Shah Karim Khan R/o Village Nagrai, Tehsil Mandand, District Buner
15) Bakht Wali Khan S/o Yaqoob Khan R/o Village Kandar, Tehsil Mandand, District Buner

...Petitioners

Vide HDB/court order Dated 25/09/2019 Petitioners Impleaded. ←

Versus

(1) Government Through Secretary Elementary & Secondary Education, Khyber Pakhtunkhwa

(2) Director Elementary & Secondary Education, Khyber Pakhtunkhwa

(3) District Education Officer (M) District Bunir;

FILED TODAY
Additional Registrar
06 MAY 2015

63

JUDGMENT SHEET

IN THE PESHAWAR HIGH COURT,
MINGORA BENCH (DAR-UL-QAZA), SWAT
(Judicial Department)

W.P. No. 284-M/2015

Gul Rahim Shah & others

V/S

Govt: of KPK through Secretary E & S Education & others

JUDGMENT

Date of hearing: **30.05.2018**

Petitioners:- (Gul Rahim Shah & others) by Mr. Shams-ul-Hadi, Advocate.

Respondents:- (Govt: of KPK through Secretary E&S Education & others) by Mr. Rahim Shah, Astt: Advocate General alongwith EDO concerned in person.

MOHAMMAD IBRAHIM KHAN, J.- Vide our detailed judgment in connected writ petition bearing No. 213-M of 2014 titled as *"Mst. Bibi Fatima & another V/S Government of KPK through Secretary Home & Tribal Affairs Peshawar & others"*, this writ petition is allowed and the Respondents are directed to consider the Petitioners for appointment against the posts of D.M being similarly placed persons subject to their eligibility qua merit position strictly within the legal parameters and in view

of the rules and regulations governing the subject-matter therein.

Announced
Dt: 30.05.2018

JUDGE

JUDGE

Office
14/06/2018

Nawab (D.B.) Hon'ble Mr. Justice Muhammad Ghazanfar Khan
Hon'ble Mr. Justice Mohammad Ibrahim Khan

8

JUDGMENT SHEET

IN THE PESHAWAR HIGH COURT,
MINGORA BENCH (DAR-UL-QAZA), SWAT
(*Judicial Department*)

I. W.P. No. 213-M/2014

Mst. Bibi Fatima & another

V/S

Govt: of KPK through Secretary
Home & Tribal Affairs Peshawar
& others

II. W.P. No. 291-M/2014

Sardar Ali & others

V/S

Govt: of KPK through Secretary
Home & Tribal Affairs Peshawar
& others

III. W.P. No. 284-M/2015

Gul Rahim Shah & others

V/S

Govt: of KPK through Secretary E
& S Education & others

IV. W.P. No. 171-M of 2016

Subhanullah & others

V/S

Govt: of KPK through Secretary
Home & Tribal Affairs Peshawar
& others

V. W.P. No. 193-M/2017

Jan Muhammad Khan

V/S

District Education Officer (Male)
Malakand & others

Nawab (D.B.) Hon'ble Mr. Justice Muhammad Ghazanfar Khan
Hon'ble Mr. Justice Mohammad Ibrahim Khan

(9)

VI. W.P. No. 256-M/2017

Faisal Nadeem

V/S

Govt: of KPK through Chief Secretary, Peshawar & others

ONSOLIDATED JUDGMENT

Date of hearing: **30.05.2018**

Petitioners:- (Mst. Bibi Fatima & another) by Mr. Akhtar Munir Khan, Advocate.

Respondents:- (Govt: of KPK through Secretary Home & Tribal Affairs Peshawar & others) by Mr. Rahim Shah, Astt: Advocate General alongwith EDOs concerned in person.

MOHAMMAD IBRAHIM KHAN, J.- By this singled-out judgment, it is hereby proposed to dispose of W.P. No. 213-M/2014, 291-M/2014, 284-M/2015, 171-M/2016, 193-M/2017 and 256-M/2017, as common question of law and facts are involved in all these connected writ petitions.

2. Before delivering any findings in respect of the grievances of all these Petitioners, it would be in the fitness of things to render brief facts of each writ petition separately in order to inculcate the contention of each Petitioner in individual capacity. The Petitioners

of writ petition No. 213-M/2014 have mainly averred in their petition that in response to the advertisement floated by the answering Respondent No. 8 i.e. District Education Officer (Male) Elementary & Secondary Education District Dir Upper in daily *''Aaj''* dated 02.09.2008 in respect of different categories of posts including D.M, the Petitioners being considering themselves qualified applied against the said posts. The Petitioners have successfully qualified the initial process of recruitment in shape of tests & interviews but they have been denied the benefit of appointments simply on the pretext that their DM certificates obtained from Hydarabad Jamshoro Sindh University and Sarhad University are not equivalent to DM certificate meant for the post of DM. It has further been mentioned in their petition that similarly placed persons like present Petitioners earlier approached this Hon'ble Court and their writ petitions were allowed and the degrees obtained by them from the above-referred Universities were declared valid in field subject

to its verification from the concerned Universities. Likewise, the prayer of the Petitioners of W.P. No. 291-M/2014 is also identical to the effect that they have been denied the appointments against the posts of DM that their DM certificates received from Sindh & Sarhad Universities are not eligible for the proposed recruitments being invalid. In this writ petition too there is also a reference of previous verdicts of this Hon'ble Court wherein degrees obtained from the above-mentioned Universities have been declared valid in field subject to its verification from the concerned Universities. In the same breath, the Petitioners of W.P. No. 284-M of 2015 have come up with a similar prayer that upon appearance in the recruitment process through NTS, the top ten candidates were directed to submit the attested copies of their certificates/degrees with other relevant documents, but in spite recommendation of the NTS authorities, the Respondent No. 3 i.e. District Education Officer (M) District Buner refused to appoint the Petitioners on the ground

(12)

that writ petition No. 148 of 2011 with connected writ petitions bearing No. 531-M & 409-M of 2012, which have now been decided by this Hon'ble Court wherein the then Hon'ble Divisional Bench vide order dated 21.02.2014 passed an injunctive order, due to which the official Respondents were unable to proceed further in case of present Petitioners. Thus, the Petitioners approached this Hon'ble Court by filing applications bearing No. 716,717,718 of 2014 in writ petitions No. 409, 531-M of 2012 & 402 of 2011 for their impleadment as Petitioners. The said applications were allowed vide order dated 04.12.2014 and the then applicants were impleaded as Petitioners. Thereafter, the newly impleaded Petitioners and Petitioners of above-referred connected matters were called for interview on 13.03.2015. After appearance in the interview alongwith other aspirants the Respondent No. 3 issued the impugned tentative merit list of 41 candidates but the present Petitioners were again refused the concession of appointments on the pretext

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

(13)

that their certificates obtained from Inter Grade Drawing Examination Hyder Abad (IGDE) are not recognized, thereby they are not eligible for appointments against the posts of DM. Likewise, the prayer of Petitioners of W.P. No. 171-M of 2016 is also similar in nature to the effect that upon completion of initial recruitment process through NTS they have been denied the concession of appointments on the sole ground that they had obtained their DM certificates from Hyderabad Karachi. These Petitioners in their petition have also given reference of previous verdicts of the Hon'ble superior Courts wherein similarly placed persons like Petitioners have been compensated by way of their appointment against the posts of D.M. The upcoming next two connected writ petitions bearing No. 193-M of 2017 preferred by Petitioner Jan Muhammad and writ petition bearing No. 256-M of 2017 presented by Petitioner Faisal Nadeem are somehow inter related with each other in a sense that if the former Petitioner Jan Muhammad Khan gets

(14)

favourable decision in his favour from this Court then the Petitioner Faisal Nadeem of the latter petition will not be able to get the benefit of appointment being lower in merit as compared to Petitioner of the former petition Jan Muhammad Khan against the post of D.M.

3. In all these connected matters, the Respondents were put on notice to submit their para-wise comments, who accordingly rendered the same in each petition separately. But their replies/comments in all these identical matters are somewhat similar, wherein claims of all these Petitioners are discarded on the grounds that most of the Petitioners were lower in merit as compared to those appointed candidates through this Hon'ble Court judgment dated 20.06.2013 with further clarification that in the *ibid* judgment rendered by the Hon'ble Peshawar High Court Mingora Bench (Dar-ul-Qaza) Swat there is direction to the effect that *''if the case of Petitioners is at par with those who have already been benefited or considered by the Respondents being similarly placed*

(15)

persons then the Respondents are directed to redress the grievances of the Petitioners subject to their eligibility strictly in accordance with law''. It has further been clarified by the answering Respondents in their comments that the judgment rendered by this Hon'ble Court dated 28.06.2012 has been assailed before the Hon'ble Supreme Court of Pakistan which was decided in favour of the Petitioners on 19.06.2013. According to the direction of this Hon'ble Court in judgment dated 20.03.2014 a committee was constituted to consider the cases of Petitioners. The said committee scrutinized the merit position of the Petitioners of W.P. No. 352-M of 2013 and found that their merit position is less than those appointed in the light of judgment of the Hon'ble Supreme Court of Pakistan. It has further been clarified in the comments by the answering Respondents that the certificates obtained by the Petitioners are not equivalent to the DM certificates meant for DM posts, as the certificates of some of the Petitioners contained 600 marks while the DM

(16)

certificates of elementary colleges bears 1000 marks. In some of the writ petitions the comments so furnished by the answering Respondents were duly replicated by the Petitioners through filing of rejoinders.

4. Having heard arguments of learned counsel appearing on behalf of each Petitioner, learned Astt: Advocate General for the official Respondents and EDOs concerned, available record of each petition was delved deep into with their valuable assistance.

5. In view of the above divergent claims of the parties, the only point emerged for consideration of this Court as to whether the degrees of DM certificates obtained by the Petitioners from Hayder Abad Jamshoro Sindh University and Sarhad University are not eligible for the proposed recruitment of DM posts being invalid or this issue had already been settled by the Hon'ble superior Courts through their esteem verdicts wherein similarly placed persons like Petitioners of all these

(17)

connected writ petitions have been compensated and their decrees obtained from the above-referred Universities were declared valid to be permissible in field subject to its verification from the concerned Universities. It would be more appropriate to give references of the esteem verdicts delivered by this Court in respect of the issue in question. The first judgment to be referred in this regard was delivered in W.P. No. 2759/2009 decided on 20.6.2012 wherein while placing reliance on W.P. No. 2366 of 2009 decided on 01.06.2010 by describing facts the following conclusion has been drawn:-

> ***"In wake of above facts and legal aspect of the case, we allow this writ petition in terms of prayer contained therein."***

Similarly there is another judgment rendered in W.P. No. 2093 of 2007 titled as *"Khaista Rehman & others V/S EDO & others"* wherein on 28.06.2012 alongwith other identical matters the following view has been formulated:-

18

" *6. The main grievances of all the Petitioners in the present case that all the Petitioners had submitted their requisite qualification alongwith certificate of Drawing Master before the Respondent for their appointment. After test and interview, the merit list was prepared by the Respondent concerned wherein the Petitioners were declared higher in merit but later on instead of appointment of Petitioners, the other candidates were appointed on the ground that the Drawing Master Certificate obtained by the Petitioners from Institutions situated in Jamshoru and Karachi are not equivalent to the certificate which was prerequisite for the post of Drawing Master. Counsel for the Petitioners referred to the recruitment policy. He also referred to the advertisement published on 11.02.2007 in which the required qualification was F.A/F.Sc with certificate of Drawing Master from any recognized institution. According to the recruitment policy as well as said publication Petitioners on the patch- Petitioners have been deprived on lame excuse on the ground of delaying tactics regarding verification of D.M.*

(19)

certificate obtained by the Petitioners. It was also pointed out that respondent in subsequent appointment had also appointed other candidates who had obtained DM certificates from the same Institutions whereas, Petitioners have been deprived though they have also qualified from the same Institutions, hence act of Respondents is discriminatory and is utter violation of Article 25 of the Constitution. Instead of Petitioners who were at better pedestal in the merit list, the other candidates who were below at the merit list as compared to the Petitioners have been appointed which apparently shows the malafide on the part of Respondents. After thrashing the entire record, we have come to the conclusion that Petitioners have wrongly been deprived for appointment against the post of D.M which requires interference by this Court.

In the light of above discussion, facts and circumstances of the case, all the writ petitions are allowed and Respondents are directed to appoint the Petitioners against the said post positively.

The above referred judgment of this Court alongwith other identical matters were

(20)

assailed before the Hon'ble Supreme Court of Pakistan through Civil Petitions No. 456-P/12 to 11-P/2013 and 19-P & 20-P of 2013 wherein on 21.06.2013 in view of consent of the then learned Law officer to the effect that the said Respondent shall also be appointed in due course after his papers were found in order. All the petitions were found meritless and thereby dismissed.

There are more verdicts of this Court with regard to the issue in question, as delivered in W.P. No. 352-M of 2013 on 20.03.2014 wherein in view of the dictum of august Supreme Court of Pakistan, if the case of Petitioners is at par with those who have already been benefited or considered by the Respondents being similarly placed persons then the Respondents were directed to redress the grievances of the Petitioners subject to their eligibility strictly in accordance with law. Likewise, in more recent past there is esteem verdict authored by His Lordship Mr. Justice Rooh-ul-Amin delivered in W.P. No. 2004-P of

(21)

2016 decided on 19.01.2017 wherein after giving references of previous verdicts in this behalf the following opinion has been formed with caution of warning to the Respondents:-

> *" In light of the judgments of the august Supreme Court and this Court, referred above, we allow this petition and issue a writ to the Respondents to consider the Petitioner against the post of D.M."*

6. In the light of above-referred glimpses of the esteem verdicts of the Hon'ble Supreme Court of Pakistan as well as this Hon'ble Court there is no denial of the fact that the Petitioners of all these connected writ petitions with the exception of writ petition bearing No. 256-M of 2017 are similarly placed persons as like Petitioners of *ibid* verdicts of the Hon'ble superior Courts who have been compensated in respect of their appointment against the posts of D.M as their degrees obtained from the Universities concerned were declared valid subject to their verification.

22

7. Even otherwise, the learned Astt: Advocate General appearing on behalf of the official Respondents and EDOs concerned are conciliatory to the effect that if the Petitioners are found eligible in merit position amongst all other aspirants then he will have no objection if they are appointed against the requisite posts of D.M irrespective of the degrees being obtained by them from the Universities of Jamshoro Sindh and Sarhad.

8. In view of what has been discussed above coupled with consensus arrived at in between learned A.A.G appearing on behalf of the official Respondents and EDOs concerned, all these connected writ petitions bearing No. 213-M, 291-M of 2014, 284-M of 2015, 171-M of 2016 and 193-M of 2017 are allowed and the Respondents are directed to consider the Petitioners of all the above-referred petitions for appointment against the posts of D.M being similarly placed persons subject to their eligibility qua merit position strictly within the legal parameters and in view of the rules and

(23)

regulations governing the subject-matter therein. Needless to mention that the connected writ petition bearing No. 256-M of 2017 is hereby dismissed having become infructuous, as the fate of Petitioner of the said writ petition by the name of Faisal Nadeem was dependant upon the outcome of W.P. No. 193-M of 2017 being lower in merit, which has already been allowed alongwith other connected matters.

9. Before parting with this judgment, it would not be out of place to mention here that the Respondents are directed to redress the grievances of all these Petitioners with regard to their appointments against the posts of DM immediately without further waste of time as they have been languishing before different Courts of law for their lawful entitlement since long.

Announced
Dt: 30.05.2018

JUDGE

Certified to be true copy

JUDGE

EXAMINER
Peshawar High Court, Mingora/Dar-ul-Qaza, Swat
Authorized Under Article 87 of the Qanun-e-Shahadat Order, 1984

Nawab (D.B.) Hon'ble Mr. Justice Muhammad Ghazanfar Khan
Hon'ble Mr. Justice Mohammad Ibrahim Khan

24
C

BEFORE THE PESHWAR HIGH COURT, MINGORA BENCH.

Review Petition No. 34-M of 2018

In

W.P No.284-M/2015 clubbed with W.P 213-M/2014

PESHAWAR HIGH COURT
MINGORA BENCH-DAR-UL-QAZA SWAT

1. Gul Rahim Shah S/O Hussain Shah R/O Palosa Tehsil Daggar District Bunir.
2. Syed Nasib Zar S/O Mian Bakht Zar R/O Sanigram Tehsil Daggar District Bunir.
3. Amjad Ali S/O Said Qamar R/O Sanigram Tehsil Daggar District Bunir.
4. Muhammad Zaman S/O Sher Zaman R/O Chingali Tehsil Daggar District Bunir.
5. Haji Muhammad S/O Nasir R/O Shal Bandai Tehsil Daggar District Bunir.
6. Faiz Muhammad Khan S/O Said Muhammad Khan R/O Shalbandai Tehsil Daggar District Bunir.
7. Sher Muhammad S/O Abdul Hamid R/O Topai Tehsil Daggar District Bunir.
8. Farooq Ali S/O Miran Said R/O Daggar Kalay District Bunir.
9. Khan Nawab S/O Abdul Wakil Khan R/O Mandav Post Office Nagrai, Tehsil Daggar, District Buner.
10. Amir Amjad S/O Amir Abdullah R/O Bashkata Tehsil Daggar, District Buner.
11. Yamin S/O Said Ghani R/O China Tehsil Daggar, District Bunir.
12. Muhammad Israr S/O Gul Zarin Shah R/O Kandao Patay Nawagay Tehsil Daggar, District Bunir.
13. Nasib Zada S/O Amir Said R/O village Nawagai Tehsil Daggar , District Bunir.
14. Abdul Salam S/O Shah Karim Khan R/O Village Nagrai Tehsil Mandand , District Bunir.
15. Bakht Wali Khan S/O Yaqoob Khan R/O Village Kandar, Tehsil Mandand, District Bunir.
16. Yasmin Bibi D/O Abdul Matin R/O Village Topdara , Tehsil Daggar, District Bunir.

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

FILED TODAY
28 JUN 2018
Additional Registrar

(25)

(2)

17. Said Bahar S/o Said Ghushal R/o village Shelbandi District Buner.
18. Abdul Sattar S/o Abdul Manan - R/o Chanar District Buner

(Petitioners No.16 to 18 had been impleaded as petitioners vide order dated 25.09.2017) ..... Petitioners

Versus

1. Government through Secretary Elementary & Secondary Education , Khyber Pakhtunkhwa. Peshawar.
2. Director Elementary & Secondary Education, Khyber Pakhtunkhwa.
3. District Education Officer (M) District Bunir. .....**Respondents.**

Review Petition ***UNDER SECTION 114 READWITH ORDER-XLVII OF CODE OF CIVIL PROCEDURE 1908*** **for correction/revisiting of consolidated judgments dated: 30 /05 /2018 passed in W.P Nos.284-M/2015 &213-M/2014**

Respectfully Sheweth:

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

FACTS:

1. That initially the petitioners filed Writ petition No.284 -M/2015 before this august court, which was clubbed with other writ petitions, as the identical issue was involved in all the cases.

2. That on the date fixed for final hearing, the cases were decided by this august court through consolidated judgment dated:30.05.2018 on the analogy of another Writ petition No.148-P/2011 and such like other cases as an identical matter was decided by this august court.(Copies of Judgments are annexure-A)

FILED TODAY
28 JUN 2018
Additional Registrar

(96)

(3)

3. That counsel for petitioners brought in kind notice of this august court the judgment dated:12.02.2015 in W.P No.148-P/2011, wherein respondents were directed to prepare a joint seniority list, as mentioned in these terms. **" 9. For what has been discussed above, all the three writ petitions are allowed and the respondents are directed to appoint the petitioners against the posts applied for by the petitioners from 26.02.2011 without any financial backs benefits, except petitioner Khan Zeb who has already been appointed. They are further directed to prepare a joint seniority list in this regard according to law, rules and procedure.**

4. That while deciding titled writ petitions vide order dated 30.-05-2018 this Honorable Court allowed the writ petition in the same manner but inadvertently the directions about the joint seniority list have not been mentioned in the last Para of ibid judgment.

5. That there is not legal bar for correction, revisiting and reviewing the judgment dated 30-05-2018 and this honorable court has got jurisdiction to review the same.

In view of the above, on acceptance of this review petition, the judgment under review dated: 30.05.2018, passed in writ petitions Nos.284-M/2015 and 213-M/2014, may kindly be reviewed to the extent of addition in the last Para of the judgment ibid, ***the directions to respondents to prepare a joint seniority list.***

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

Petitioners

Through

Dated: 28/06/2018

Shams-ul-Hadi

Advocate.

FILED TODAY
28 JUN 2018
Additional Registrar

(27)

BEFORE THE PESHWAR HIGH COURT MINGORA BENCH. (4)

Review Petition No. 34-M of 2018

In

W.P No.284-M/2015.

Gul Rahim Shah & others ..... Petitioners

Versus

Government of KPK & others..... Respondents

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

CERTIFICATE

It is certified that as per instructions of my clients/petitioners, no such like other review petition has earlier been filed in the High Court on this matter.

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

Petitioners

Through

Shams-ul-Hadi

Advocate.

Dated: 28/06/2018

FILED TODAY
28 JUN 2018
Additional Registrar

(28)

6

BEFORE THE PESHAWAR HIGH COURT (MINGORA BENCH).

Review Petition No. 34-M of 2018

In

W.P No.284-M/2015 clubbed with W.P 213-M/2014

Gul Rahim Shah & others ..... Petitioners

Versus

Government of KPK & others..... Respondents

PESHAWAR HIGH COURT MINGORA BENCH/DAR-UL-QAZA SWAT

FILED TODAY
28 JUN 2018
Additional Registrar

ADDRESSES OF THE PARTIES

PETITIONER:

1. Gul Rahim Shah S/O Hussain Shah R/O Palosa Tehsil Daggar District Bunir.
2. Syed Nasib Zar S/O Mian Bakht Zar R/O Sanigram Tehsil Daggar District Bunir.
3. Amjad Ali S/O Said Qamar R/O Sanigram Tehsil Daggar District Bunir.
4. Muhammad Zaman S/O Sher Rahman R/O Chingali Tehsil Daggar District Bunir.
5. Haji Muhammad S/O Nasir R/O Shal Bandai Tehsil Daggar District Bunir.
6. Faiz Muhammad Khan S/O Said Muhammad Khan R/O Shalbandai Tehsil Daggar District Bunir.
7. Sher Muhammad S/O Abdul Hamid R/O Topai Tehsil Daggar District Bunir.
8. Farooq Ali S/O Miran Said R/O Daggar Kalay District Bunir.
9. Khan Nawab S/O Abdul Wakil Khan R/O Mandav Post Office Nagrai, Tehsil Daggar, District Buner.
10. Amir Amjad S/O Amir Abdullah R/O Bashkata Tehsil Daggar, District Buner.
11. Yamin S/O Said Ghani R/O China Tehsil Daggar, District Bunir.

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

29

7

12. Muhammad Israr S/O Gul Zarin Shah R/O Kandao Patay Nawagay Tehsil Daggar, District Bunir.
13. Nasib Zada S/O Amir Said R/O village Nawagai Tehsil Daggar , District Bunir.
14. Abdul Salam S/O Shah Karim Khan R/O Village Nagrai Tehsil Mandand , District Bunir.
15. Bakht Wali Khan S/O Yaqoob Khan R/O Village Kandar, Tehsil Mandand, District Bunir.
16. Yasmin Bibi D/O Abdul Matin R/O Village Topdara , Tehsil Daggar, District Bunir.
17. Said Bahar S/o Said Ghushal. R/o Shalbandi Tehsil Gagra Dist Bunir.
18. Abdul Sattar S/o Abdul Manan. R/o Chanar Tehsil Gagra Dist Bunir.

Cell No. 0348: 1972383.

CNIC No. 15101-8834683-1.

Shamsulhadi

Respondents

1. Government through Secretary Elementary & Secondary Education , Khyber Pakhtunkhwa. Peshawar.
2. Director Elementary & Secondary Education, Khyber Pakhtunkhwa. Peshawar.
3. District Education Officer (M) District Bunir.

Through

Dated: 28/06/2018

Shams-ul-Hadi

Advocate

FILED TODAY
28 JUN 2018
Additional Registrar

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

39

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

FORM OF ORDER SHEET

Court of .....

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

	Date of Order or Proceedings	Order or other Proceedings with Signature of Judge and that of parties or counsel where necessary.
	26-09-2018	***Rev.Pett: No. 34-M/2018*** ***In W.P No. 284-M/2015*** ***Present:*** *Mr. Shams-ul-Hadi, Advocate for the petitioners.* *Malik Akhtar Hussain Awan, A.A.G for the official respondents.* ****** ***MUHAMMAD GHAZANFAR KHAN, J.-*** Through this Review Petition, learned counsel for the Petitioners seeks insertion of ***"issuance of direction to the respondents to prepare a joint seniority list in this regard according to law, rules and procedure"*** in the order of this Court dated 30.05.2018 passed in Writ Petition No. 284-M of 2015. The learned A.A.G present in the Court has got no objection. So, this Review Petition is allowed and the respondents are directed to prepare a joint seniority list in this regard according to law, rules and procedure. This amendment may be read part & parcel of the order of this Court dated 30.05.2018 passed in W.P No. 284-M of 2015. ***C.M No. 1172-M/2018*** Through this C.M, learned counsel for the petitioners seeks impleadment to array the applicant

PESHAWAR HIGH COURT MINGORA SWAT عدالت عالیہ پشاور

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

namely Sardar Ali s/o Ambali Jan r/o Village Baidamai Tehshil Wari District Dir Upper as petitioner and DEO (M) Dir Upper as respondent in the titled Review Petition.

As the reasons advanced in the application seem to be genuine, therefore this application is allowed and the office is directed to implead the above names in their respective panels with red ink.

Announced
Dt: 26.09.2018

JUDGE

JUDGE

Certified to be true copy

17-02-2020

EXAMINER
Peshawar High Court, Mingora/Dar-ul-Qaza, Swat
Authorized Under Article 87 of Qanoon-e-Shahadat Order,1984

S.No 08
Name of Applicant Khurshid Khan
Date of Presentation of Applicant 17-02-2020
Date of Completion of Copies do
No of Copies 08-P
Urgent Fee —
Fee Charged 16/-
Date of Delivery of Copies 17-02-2020

Qtia 2/10

OFFICE OF THE DISTRICT EDUCATION OFFICER
(MALE) DISTRICT BUNER
PHONE & FAX NO. 0939-510468
EMAIL: edobuner@gmail.com

OFFICE ORDER.

In the light of the judgement passed by Peshawar High Court Mingora Bench Darul Qaza Swat in writ petition No. 284-M / 2015 of Gul Rahim Shah & others dated 30-05-2018 vs Secretary Elementary & Secondary Education & Others. The following candidates are hereby appointed against the vacant post of Drawing Masters BPS-15 Rs. (16120-1330-56020) plus usual allowances as admissible under the rules on regular basis under the existing policy of the Provincial Government, in Teaching Cadre , on the terms and condition given below, with effect from the date of taking over charge in the best interest of public service.

S.#	*Name*	*Father Name*	*D.O.B*	*Score*	*School where Posted*	*Remarks*
1	Khan Nawab	Abdul Wakil Khan	01/02/1982	132.09	GMS Karorai	A.V.P
2	Said Naseeb Zar	Mian Bakht Zar	22/03/1979	121.23	GHS Elai	A.V.P
3	Gul Rahim Shah	Hussain Shah	10/07/1983	110.86	GMS Shargashay	A.V.P
4	Farooq Ali	Miran Said	03/04/1985	106.23	GHSS Batara	A.V.P
5	Amjad Ali	Said Qamar	13/04/1985	102.85	GHS Nawakalay	A.V.P
6	Haji Muhammad	Nazir	28/08/1982	97.2	GMS Wakil Abad	A.V.P
7	Faiz Muhammad	Said Muhammad Khan	04/04/1979	96.97	GMS Bangiray	A.V.P
8	Muhammad Israr	Gul Zarin Shah	10/05/1982	93.91	GMS Wach Khuwar Kawga	A.V.P
9	Abdus Salam	Shah Karim Khan	03/04/1982	92.54	GMS Damnair	A.V.P
10	Abdus Satar	Abdul Manan	04/02/1979	87.85	GHS Batai	A.V.P
11	Said Bahar	Said Khushal	22/04/1991	86.63	GMS Baimpur	A.V.P
12	Nasib Zada	Amir Said	16/04/1988	86.08	GHSS Bagh	A.V.P
13	Bakht Wali Khan	Yaqoob Khan	04/03/1980	81.63	GHS Jaba Amazi.	A.V.P
14	Muhammad Zaman	Sher Aman	05/04/1984	80.68	GMS Batkanai.	A.V.P

ATTESTED TO BE
TRUE COPY

(44)
33

TERMS & CONDITIONS.

1. *NO TA/DA etc is allowed.*
2. *Charge reports should be submitted to all concerned in duplicate.*
3. *Their services will be considered on regular basis but they will be on probation for a period of one year, extendalbe to another year.*
4. *They should not be handed over charge if their age exceeds 35 years with 3 years automatic relaxation fro Malakand Division or below 18 years of age.*
5. *Appointment is subject to the condition that the certificates, Degree /documents must be verified from the concerned authorities by the office of DEO, if any one found producing bogus/ forge/fake Certificates/Degrees will be reported to the law enforcing agencies for further action.*
6. *Their services are liable to termination on one month's prior notice from either side. In case of resignation without notice their one-month pay/allowances will be forfeited to the Government .*
7. *Pay will not be drawn until and unless a certificate to this effect is issued by DEO, that their certificates/Degrees are verified.*
8. *They should join their post within 30 days of the issuance of this notification. In case of failure to join their post within 30 days of the issuance of this notification, their appointment will expire automatically and no subsequent appeal etc shall be entertained.*
9. *Health and Age Certificate should be produced from the Medical Superintendent concerned before taking over charge*
10. *Before handing over charge, they will sign an agreement with the department, otherwise this order will not be valid.*
11. ***Their appointment is subject to the condition of final judgement of the Supreme Court of Pakistan where CPLA has already been lodged.***
12. *They will be governed by such rules and regulations as may be issued from time to time by the Govt.*
13. *Their services will be terminated at any time, in case their performance is found unsatisfactory during their contract period. In case of misconduct, they will be proceeded under the rules framed from time to time.*
14. *Before handing over charge Principals/Head Masters concerned will check their documents, if they have not acquired the required qulifications, they may not be handed over charge.*

ATTESTED TO BE
TRUE COPY

(42)

15. *Medical Certificate should be signed positively by District Education Officer (M) Buner.*

(34)

16. *Errors and omissions will be acceptable with in the specified period.*

(BAKHT ZADA)
DISTRICT EDUCATION OFFICER (M)
DISTRICT BUNER.

Endst: No. 5369-78 */ Dated* 26/11 */2018.*

Copy forwarded for information and necessary action to the: -

1. *Registrar Peshawar High Court Mingora Bench Darul Qaza Swat.*
2. *Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.*
3. *Deputy Commissioner Buner.*
4. *District Nazim Buner.*
5. *District Monitoring officer Buner.*
6. *District Accounts Officer Buner.*
7. *Medical Superintendent DHQ Hospital Buner.*
8. *Deputy District Education officer Male Buner.*
9. *Principals / Head Masters Concerned.*
10. *Officials Concerned.*

DISTRICT EDUCATION OFFICER (M)
DISTRICT BUNER

Rizwanullah s/c

ATTESTED TO BE TRUE COPY

43
35
E

IN THE PESHAWAR HIGH COURT, MINGORA BENCH.

C.O.C No. 103-m/2018

In

W.P. No.171-m/2016.

PESHAWAR HIGH COURT
عدالت عالیہ پشاور
MINGORA BENCH/DAR-UL-QAZA, SWAT
دارالقضاء سوات

1. Gul Rahim Shah S/o Hussain Shah
   R/o Palosa Tehsil Daggar District Bunir.
2. Syed Nasib Zar S/o Mian Bakht Zar
   R/o Sonigram Bunir. Tehsil Dagar
3. Amjad Ali S/o Syed Qamber
   R/o Sonigram Bunir. Tehsil Dagar.
4. Muhammad Zaman S/o Sher ~~Be~~Aman
   R/o Chinglai Bunir. Tehsil Dagar District Buner.
5. Haji Muhammad S/o Nasir Shal Bandi Tehsil Dagar
6. Faiz Muhammad Khan S/o Said Muhammad Khan Shal Bandi Tehsil Dagar
7. Said Bahar S/o Said Khushal
   Rs/o Shalbandy Bunir.
8. Sher Muhammad s/o Abdul Hamid
   R/o Topi Chagharzy Bunir.
9. Farooq Ali S/o Mian Said
   R/o Daggar Bunir.
10. Khan Nawab S/o Abdul Wakil Khan
    R/o Mandaw Narai Bunir.
11. Amir Amjad S/o Amir Abdullah
    R/o Bajkata Buner.
12. Yamin S/o Said Ghani
    R/o Village Cheena Bunir.
13. Muhammad Israr S/o Gul Zarin Shah
    R/o Kandaw paty Nawagy Bunir.
14. Nasi Zada S/o Amir Said
    R/o Nawagy Bunir.
15. Abdul Salam S/o Shah Karim Khan
    R/o Nagrai Bunir.
16. Bakht Wali Khan S/o Yaqoob Khan
    R/o Kandar Tehsil Mandanr Bunir.
17. Yasmin Bi Bi D/o Abdul Matin
    Village Topdara Bunir.
18. Abdul sattar S/o Abdul Manan
    R/o Channar Bunir.....(Petitioners)

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

FILED TODAY
10 SEP 2018
Additional Registrar

VERSUS

Bakht Zada

District Education Officer, (Male), Bunir..... .....(Respondent)

44
36

PESHAWAR HIGH COURT
عدالت عالیہ پشاور
MINGORA BENCH/DAR-UL-QAZA, SWAT

PETITION UNDER ARTICLE 204 FOR CONTEMPT OF COURT IN WRIT PETITION NO. 284-M/2015 FOR IMPLEMENTATION OF THE JUDGMENT DATED: 30/05/2018 PASSED BY PESHAWAR HIGH COURT, MINGORA BENCH IN CONNECTION OF TITLED WRIT PETITION.

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

Respectfully Sheweth:

Brief facts giving rise to the instant petition are as under:

FACTS:

1. That initially the petitioner along with others filed the titled writ petition before this august court which was clubbed with other such like petitions and as such through consolidated judgment dated:30.05.2018 all the petitions were allowed.(Copy of judgment dated:30.05.2018 is attached)

2. That through consolidated judgment the respondent was directed to appoint the petitioners and such like others against the post of DM subject to their eligibility qua merit position but till date the judgment has not been implemented to the extent of appointment of petitioners rather other colleagues of the petitioners were appointed through office appointment

TODAY
EP/2018
nal Registrar

order dated:14.07.2018.(Copies of appointment order dated:14.07.2018 is attached)

3. That still there are so many posts of DM lying vacant and the petitioners have the right of appointment according to judgment of this august court dated:30.05.2018 and merit list as well but till date the judgment of this august court has not been implemented which clearly showing the ill intention of the respondents.

That being aggrieved the petitioner prefers this petition on the following grounds amongst others inter alia:

GROUNDS:

A. That the non implementation of the judgment of this august Court by the respondents especially respondent is arbitrary, mechanical and without showing any obedience and respect to the pronouncement of this august Court.

B. That despite of clear directions of this august court to appoint the petitioners according to merit position but till date the respondent have not complied with the specific directions of this august court which has involved the respondents in willful disobedience of the directions of this august Court and as such have and is committing the contempt.

It is, therefore, humbly prayed that on acceptance of this petition, the respondents may kindly be directed to implement the order dated: **30/05/2018** of this august Court passed in connection of Writ Petition

PESHAWAR HIGH COURT * عدالت عالیہ پشاور * MINGORA BENCH/DAR-UL-QAZA, SWAT

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

FILED TODAY
10 SEP 2018
Additional Registrar

46
38

Nos.284/2015 in latter and spirit and proceedings may also kindly be initiated against the respondent for contempt of Court.

Petitioners

Through

Shams ul Hadi

Advocate.

PESHAWAR HIGH COURT
عدالت عالیہ پشاور
MINGORA BENCH/DAR-UL-QAZA, SWAT
مینگورہ بنچ/دارالقضاء سوات

Certificate:

Certified that no such like petition has earlier been filed by the petitioner in the matter before this august court.

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

FILED TODAY
10 SEP 2018
Additional Registrar

(47)
39

15

BEFORE THE PESHAWAR HIGH COURT MINGORA BENCH (DARUL QAZA SWAT)

COC No. 103-M /2018
In
W.P No. 284-M of 2015

PESHAWAR HIGH COURT * عدالت عالیہ پشاور * MINGORA BENCH/DAR-UL-QAZA, SWAT

Gul Rahim Shah & others.....Petitioners

VERSUS

Bakht Zada & others .....Respondents

AFFIDAVIT

I, Said Naseeb Zar S/O Mian Bakht Zar R/o Sanny Gram, Tehsil Daggar, District Buner, do hereby solemnly affirm and declare on oath that all the contents of COC are true and correct to the best of my knowledge and belief and that nothing has been kept concealed from this Honorable Court.

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

DEPONENT

Said Naseeb Zar
(Petitioner No. 2)
CNIC: 15101-0395832-7

FILED TODAY
10 SEP 2018
Additional Registrar

S.No. 3182
Certified that the above was verified on Solemn affirmation before me on this 6 th day of Sep 2018 by Said Naseeb Zar S/o Mian Bakht Zar R/o Buner who was identified by [illegible] Who is personally known to me.

ADDL REGISTRAR
Peshawar High Court
Mingora Bench/Dar-ul-Qaza, Swat.
06/09/18

6

IN THE PESHAWAR HIGH COURT, MINGORA BENCH.

C.O.C No. 103-M /2018

In

W.P. No.284-m/2015.

Gul Rahim Shah and others.....(Petitioners)

VERSUS

Bakht Zada

District Education Officer,(M) Bunir..... .....(Respondent)

ADDRESSES OF THE PARTIES

PETITIONERS:

1. Gul Rahim Shah S/o Hussain Shah
   R/o Palosa Tehsil Daggar District Bunir.
2. Syed Nasib Zar S/o Mian Bakht Zar
   R/o Sonigram Bunir. Tehsil Dagar.
3. Amjad Ali S/o Syed Qamber
   R/o Sonigram Bunir. Tehsil Dagar.
4. Muhammad Zaman S/o Sher Rehman
   R/o Chinglai Bunir. Tehsil Dagar.
5. Haji Muhammad S/o Nasir Shal bandai Tehsil Daggar.
6. Faiz Muhammad Khan S/o Said Muhammad Khan Shal bandai Teh Daggar.
7. Said Bahar S/o Said Khushal
   Rs/o Shalbandy Bunir. Tehsil Daggar.
8. Sher Muhammad s/o Abdul Hamid Topai Teh Daggar.
   R/o Topi Chagharzy Bunir.
9. Farooq Ali S/o Mian Said
   R/o Daggar [illegible] kalay District Bunir.
10. Khan Nawab S/o Abdul Wakil Khan
    R/o Mandaw Narai Bunir. Tehsil Daggar District Bunir.
11. Amir Amjad S/o Amir Abdullah
    R/o Bajkata Buner. Tehsil Daggar District Bunir.
12. Yamin S/o Said Ghani
    R/o Village Cheena Bunir. Tehsil Daggar District Bunir.
13. Muhammad Israr S/o Gul Zarin Shah

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

FILED TODAY
10 SEP 2018
Additional Registrar

(41)

7.

R/o Kandaw paty Nawagy Bunir. Tehsil Daggar District Bunir.

14. Nasi Zada S/o Amir Said

R/o Nawagy Bunir. Tehsil Daggar District Bunir.

15. Abdul Salam S/o Shah Karim Khan

R/o Nagrai Bunir. Tehsil mandand District Bunir.

16. Bakht Wali Khan S/o Yaqoob Khan

R/o Kandar Tehsil Mandanr District Bunir.

17. Yasmin Bi Bi D/o Abdul Matin

Village Topdara Bunir. Tehsil Dagar.

18. Abdul sattar S/o Abdul Manan

R/o Channar Bunir Tehsil Dagar.

PESHAWAR HIGH COURT MINGORA BENCH/DAR-UL-QAZA, SWAT

Cell No. 0348:1972383: NIC: 15101-0395832-7

RESPONDENT:

Bakht Zada

District Education Officer, (Male), Bunir.

ATTESTED

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

Petitioners

Through

Shams ul Hadi
Advocate

FILED TODAY

10 SEP 2018

Additional Registrar

42

JUDGMENT SHEET

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

COC No. 103-M/2018
In W.P. No. 171-M/2016

JUDGMENT

Date of hearing: **16.12.2019**

Petitioners: - (Gul Rahim Shah & others) by Mr. Shams-ul-Hadi, Advocate.

Respondent: - (Bakht Zada & others) by Mr. Wilayat Ali Khan A.A.G.

WIQAR AHMAD, J.- This order is directed to dispose of COC petition No. 103-M of 2018 filed by the petitioners under Article 204 of the Constitution of Islamic Republic of Pakistan 1973 for initiation of contempt of Court proceedings against respondent in view of non-compliance of this Court order dated 30.05.2018 passed in W.P. No. 284-M of 2015.

2. We have heard arguments of learned counsel for the petitioner and learned Adll: A.G. for the official respondent and perused the record.

3. Perusal of record reveals that the petitioners have brought the instant petition for initiation of proceedings of contempt of Court against respondent. The judgment violation of which was

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

being alleged in the petition was disposed with the following concluding Para;

> ***"Before parting with this judgment, it would not be out of place to mention here that the respondents are directed to redress the grievances of all these petitioners with regard to their appointments against the posts of DM immediately without further waste of time as they have been languishing before different Courts of law for their lawful entitlement since long."***

A review of the said judgment was filed which was disposed with the following observations;

> ***"The learned A.A.G present in the Court has no objection. So, this Review Petition is allowed and the respondents are directed to prepare joint seniority list in this regard according to law, rules and procedure. This amendment may be read as part & parcel of the order of this Court dated 30.05.2018 passed in W.P. No. 284-M of 2015."***

The petitioners have admittedly been appointed. Learned counsel for petitioners felt aggrieved of wrong fixation of seniority of the petitioners. He seeks antedated seniority from the date wherein similar other employees, according to the learned counsel for the petitioners, had been appointed. Perusal of order passed by this Court nowhere shows that this Court had directed the respondents to appoint the petitioners with effect from any particular date. The orders of this Court had duly been complied with. The instant COC petition is found to be non-maintainable, same is accordingly dismissed. The learned counsel for the petitioners at conclusion of his arguments requested that the instant

PESHAWAR HIGH COURT عدالت عالیہ پشاور MINGORA BENCH/DAR-UL-QAZA, SWAT

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

petition may be sent to the departmental authorities to be treated as a representation. The instant petition has been filed for initiation of contempt of Court and is not a proper petition, to be treated as a departmental representation. The petitioners are however at liberty to file departmental representation before the respective authorities in respect of their grievance and also to approach the Khyber Pakhtunkhwa Service Tribunal, if need be. This order shall not be a hindrance in their way in any of the proceedings either before the departmental authorities or Khyber Pakhtunkhwa Service Tribunal.

Announced
Dt: 16.12.2019

JUDGE

JUDGE

Certified to be true copy

17-02-2020

EXAMINER
Peshawar High Court, Mingora/Dar-ul-Qaza, Swat
Authorized Under Article 87 of Qanoon-e-Shahadat Oder.19

S.No 10
Name of Applicant Khurshid Khan
Date of Presentation of Applicant 17-02-2020
Date of Completion of Copies 20
No of Copies 10
Urgent Fee —
Fee Charged 20/-
Date of Delivery of Copies 17-02-2020

13/01/2020

Naveb (D.B.) Hon'ble Mr. Justice Syed Arshad Ali
Hon'ble Mr. Justice Waqar Ahmad

Annex (F)
(45)

To,

The Director E&SE KPK
Peshawar

Subject: **Departmental Appeal / Representation for treating the appointment of the appellant w.e.f 17.05.2014 and giving him antedated seniority.**

Respected Sir,

With due respect and reverence, it is submitted.

1. That in response to the advertisement floated by District Education Officer (M) Buner dated 05.01.2014 in Daily AAJ in respect of different categories of post including DM; the applicant being qualified on all fours applied against the post of drawing master; successfully qualified the initial process of recruitment i.e. NTS. **(Copy of advertisement in attached as Annexure "A").**

2. That as per direction of District Education officer (male) Buner, the applicant amongst other was directed to submit attested copies of his certificates / degrees, which was complied with and the NTS authorities recommended the appellant for appointment as Drawing master.

ATTESTED TO BE TRUE COPY

3. That the DEO (Male) Buner refused appointment order on the pretext that the Hon'ble Peshawar high Court has passed injunctive order vide order dated 21.02.2014 in W.P. No. 148 of 2011 with W. P. No. 531-M and 509-M/2011 due to which the official respondents were unable to proceed further in the case.

4. That on the application of the appellant, he was impleaded as petitioner and, thereafter the appellant and other aspirants were called on for interview on 13.03.2014. After qualifying the same the DEO (M) issued the tentative merit list of 41 candidates including the appellant but to the dismay of the appellant he was again refused the appointment on the ground that he obtained Intergrade Drawing Examination (IGDE) from Haider Abad and the same is not recognized and he was declared ineligible for appointment against the post of DM.

5. That the appellant was constrained to put a challenge to the stated action on the part of DEO (M) in W. P. No. 284-M/2015. The Hon'ble High Court was gracious enough to allow the writ petition on 30.05.2018. **(Copy of order is annexed "B").**

6. That as the issue of antedated seniority was not part and parcel of the stated Writ Petition, the appellant filed Review Petition No. 34-M/2018 in Writ Petition no. 284-M/2015. The same was allowed vide order dated

ATTESTED TO BE
TRUE COPY

26.09.2018. **(Copy of order is attached as Annexure "C").**

7. That pursuant to the clear cut and unambiguous directions of the Hon'ble High Court, the appellant along with others were appointed as Drawing masters (DMs) vide order dated 26.11.2018. **(Copy of order is attached as Annexure "D").**

8. That as there was no fault on the part of the appellant and he was qualified on all fours on the date of advertisement i.e. **05.01.2014**. The non appointment at that juncture was on the part of education officials i.e. District Education Officer and under the law, the DEO (M) was under legal obligation to give effect to the appointment of the appellant from the date when other similarly placed candidates were appointed under the one and the same advertisement.

9. That the appellant along with other filed contempt of court petition for the full implementation of the order dated 30.05.2018. The Hon'ble high Court was gracious enough to dispose off the contempt petition No. 103-M/2018 vide order dated 16.12.2019. **(Copy of the Order dated 16.12.2019 is attached as Annexure "E"),** whereby the appellant was directed to file department appeal and then approach to the Service Tribunal.

10. That as per law and policy on the subject, the appellant was entitled to be appointed w.e.f 17.05.2014

ATTESTED TO BE TRUE COPY

and the appellant was appointed with immediate effect i.e. 26.11.2018 which is a sheer discrimination on the part of DEO (M) Buner, which goes contrary to Article 25 and 27 of the Constitution of Pakistan, 1973, hence are liable to be struck down.

11. That it is settled by now that alike should be treated alike but the DEO (M) Buner has used two yardsticks for one and the same batch..

Prayer:

It is, therefore, most humbly prayed that appointment order of the appellant may kindly be modified; his appointment be considered w.e.f 17.05.2014 and giving him antedated seniority.

Appellant

Amjad Ali S/O Said Qamar
GM, GHSS Nawakalay
Distt Buner

Dated: 19-12-2019

ATTESTED TO BE TRUE COPY

28. Annex G

(49)

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR

Service Appeal No. 51 /2014

KHAISTA REHMAN S/O FATEH REHMAN
DM, GMS, MALYANO BANDA, DISTRICT LOWER DIR

APPELLANT

VERSUS

1. DISTRICT EDUCATION OFFICER (MALE) DIR LOWER
2. DISTRICT COORDINATION OFFICER, DIR LOWER
3. DIRECTOR (SCHOOL & LITERACY) KHYBER PAKHTUNKHWA, PESHAWAR
4. SECRETARY FINANCE, GOVT OF KHYBER PAKHTUNKHWA, PESHAWAR

RESPONDENTS

Appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 for grant of Arrears and Seniority to the appellant from the date of application i.e. 22/08/2007 for the post or alternatively, from the date of decision of the Hon'ble Peshawar High Court, Peshawar dated June 28, 2012 till June 19, 2013

Respectfully submitted as under.

Brief facts of the case are as follows.

13/1/2014

ATTESTED

Khyber Pakhtunkhwa Service Tribunal, Peshawar

That the appellant got appointed with the respondents as DM, BPS-15 vide office order dated 20.06.2013.
(Appointment order is appended herewith as Annexure "A").

The appointment of the appellant was the result of the Writ Petition No. 2093/ 2007 titled "Khaista Rehman and Others Vs EDO & Others where the Divisional Bench of Hon'ble Peshawar High Court, Dar Ul – Qaza at

29

(50)

ngs.	Order or other proceedings with signature of Judge or Magistrate and that of parties where necessary.
2	3

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

CAMP COURT SWAT

1. Appeal No. 51/2014, Khaista Rahman,
2. Appeal No. 52/2014, Muhammad Ishaq,
3. Appeal No. 53/2014, Rehman Said,
4. Appeal No. 54/2014, Mst. Noorsheeda,
5. Appeal No. 55/2014, Mst. Fatima Bibi,
6. Appeal No. 56/2014, Mst. Rabia Bibi,
7. Appeal No. 57/2014, Mst. Salma Bibi,
8. Appeal No. 58/2014, Mst. Mehnaz,
9. Appeal No. 59/2014, Mst. Nuzhat Ali,
10. Appeal No. 60/2014, Mst. Thaoheed Begum,
11. Appeal No. 61/2014, Mst. Hemayat Shaheen,
12. Appeal No. 62/2014, Mst. Faryal Bano,
13. Appeal No. 63/2014, Mst. Farah Naz,
14. Appeal No. 64/2014, Mst. Zahida Begum,
15. Appeal No. 65/2014, Mst. Farzana Tabasum,
16. Appeal No. 66/2014, Mst. Farida Bibi,
17. Appeal No. 67/2014, Mst. Farhana Bibi,
18. Appeal No. 68/2014, Mst. Gul Naz Begum
19. Appeal No. 69/2014, Mst. Ghazala Shams
20. Appeal No. 70/2014, Mst. Nagina Bibi,
21. Appeal No. 71/2014, Mst. Rabia Sultan,
22. Appeal No. 72/2014, Mst. Hina Sumbal,
23. Appeal No. 73/2014, Mst. Sujaat Bibi,
24. Appeal No. 84/2014, Atta Ullah,
25. Appeal No. 85/2014, Sherin Zada,
26. Appeal No. 86/2014, Ghulam Hazrat,

ATTESTED

Khyber Pakhtunkhwa Service Tribunal, Peshawar

27. *Appeal No. 87/2014, Shahid Mahmood,*
28. Appeal No. 88/2014, *Ikram Ullah,*
29. Appeal No. 89/2014, Hafiz Ul Haq,
30. Appeal No. 90/2014, Gul Rasool Khan,

Versus District Education Officer(Male) Dir Lower & 3 others.

JUDGMENT

07.11.2016

MUHAMMAD AZIM KHAN AFRIDI, CHAIRMAN:-

Counsel for the appellant and Mr. Muhammad Zubair, Senior Government Pleader alongwith Mr. Fayazud Din, ADO for respondents present.

2. This judgment shall dispose of the instant service appeals No. 51/2014 as well as connected service appeals No. 52/2014 to 73/2014 and service appeals No. 84/2014 to 90/2014 as identical questions of facts and law are involved therein.

3. Brief facts of the afore-stated cases are that the appellants were declined appointments against posts advertised by the respondents constraining them to prefer Writ Petitions No. 1896, 2093 of 2007, 294 of 2008, 3402 of 2009, 3620 and 4378 of 2010, 159 and 2288 of 2011 before the august Peshawar High Court, Mingora Bench (Dar-ul-Qaza) Swat which were allowed vide worthy judgment dated 28.06.2012 and respondents were directed to appoint the appellants against the said posts. The said worthy Judgment of the Hon'ble High Court was challenged before the august Supreme Court of Pakistan in Civil Petitions No. 456-P of 2012, 7-P to 11-P of 2013 and 19-P & 20-P of 2013. The said appeals were dismissed vide worthy judgment of the apex court dated 21.06.2013 as the appellants were appointed and their

appointments orders were produced before the august Supreme Court of Pakistan. There-after Review Petitions were preferred by certain petitioners in the said Writ Petitions before the Peshawar High Court, Mingora Bench (Dar-ul-Qaza) Swat which was allowed vide worthy judgment dated 22.10.2013 and the petitioners seeking relief were allowed to be considered as appointees from the dates when other candidates were appointed, without any financial benefits.

4. Learned counsel for the appellants has argued that the appellants are also entitled to similar treatment as extended to similarly placed employees by the Hon'ble High Court in Review Petition No. 7-M/2012 in Writ Petition No. 3620/2012(D).

5. In support of his stance he placed reliance on case-laws reported as 2009-SCMR-1 (Supreme Court of Pakistan), 1998-SCMR-2472 (Supreme Court of Pakistan) and 1999-SCMR-988 (Supreme Court of Pakistan).

6. Learned Senior Government Pleader has argued that the appellants are not entitled to the relief claimed as they have not preferred any Review Petition against the judgment and appointment orders before the Hon'ble High Court.

7. We have heard arguments of learned counsel for the parties and perused the record.

8. The august Supreme Court of Pakistan in the reported cases referred to above, had ruled that if a Tribunal or the Supreme Court decides a point of law relating to the terms and conditions of a civil

servant who litigated, and there were other civil servants, who may not have taken any legal proceedings, in such a case, the dictates of justice and rule of good governance demand that the benefit of the said decision be extended to other civil servants also, who may, not be parties to that litigation, instead of compelling them to approach the Tribunal or any other legal forum.

9. Though the appellants have not preferred any review petition before the Hon'ble High Court but in view of the case-laws as discussed above, appellants are entitled to the benefits of the decision of the Hon'ble High Court as they are similarly placed civil servants.

10. In view of the above, we hold that the appellants are entitled to be considered as appointees with effect from the dates when other similarly placed candidates were appointed. The appellants would however not be entitled to any financial back benefits. The respondent-department is to prepare their seniority list according to rules. The appeals are accepted in the above terms, leaving the parties to bear their own costs. File be consigned to the record room.

Announced
07.11.2016

Sd/- M. Azim Khan Afridi,
Chairman

Sd/- Abdul Latif,
Member

Certified to be true copy

Date of Presentation: 15-11-16
Number of Words: 2000
Copying Fee: 12-0
Urgent: 2-0
Total: 14-0
Name of Co...
Date of C... 15-11-16
Date of D... 15-11-16

33

(54)

OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) DIR LOWER.

OFFICE ORDER

Consequent upon the verdict of Khyber Pakhtunkhwa Service Tribunal Peshawar vide Service Appeal No,51,52 & 53,84,86,87,88 & 89/2014 dated 7/11/2016,the following D.Ms appointed vide No,9968-75 dated 20/6/2013 are hereby placed at the seniority after the appointees of order No,3864-79 dated 22/8/2007 without financial benefits.

1.Mohammad ishaq D.M GMS Ganjla
2.Khaistsa Rahman D.M GHS Katan
3.Rahman Said D.M GMS Tango Manz
4.Attaullah D.M GHS Munjai
5.Shahid Mehmood D.M GMS Qandaray
6.Ghulam Hazrat DM GHS Shamshi Khan
7.Ikramullah D.M GHS Bajam Makhai
8.Hafizul Haq D.M GMS Gumbat Talash

Note;-Necessary entries to this effect shoud be made in their Service Books accordingly.

(Hafiz Dr.Mohammad Ibrahim)
District Education Officer
(Male) Dir lower.

Endst;No, 235-40 / Dated Timergara the 11/01/2017

Copy forwarded to;-

1. The Registrar Khyber Pakhtunkhwa Service Trbunal Peshawar.
2. The Director (E&SE) KPK Peshawar.
3. The District Accounts Officer Dir Lower.
4. The Deputy District Officer(M) Local office.
5. The Principals/Headmasters concerned.
6. The Teachers concerned.

District Education Officer
(Male) Dir lower.

(58)

VAKALAT NAMA

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

SA NO._____/2020

_____

Amjad Ali _____ (Appellant)
(Petitioner)
(Plaintiff)

VERSUS

DEO(M) Bunr and others _____ (Respondent)
(Defendant)

I/We, Appellant _____

Do hereby appoint and constitute Mr. **Akhtar Ilyas** Advocate High Court & Mr. **Changaiz Khan** 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 costs.

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. The Advocate/Counsel is also at liberty to leave my/our case at any stage of the proceedings, if his any fee left unpaid or is outstanding against me/us.

Dated 20/3/2020

Amjad
(CLIENT)

15101-6709849-1

ACCEPTED

Akhtar Ilyas
Advocate High Court.

Changaiz Khan
Advocate Peshawar

Dated: 20.3.2020

OFFICE:
Off. 24-The Mall, Behind Hong Kong Restaurant,
Peshawar Cantt.
Cell # 0333-9417974

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 3306/2020

Amjid Ali ----------Appellant.

VERSUS

District Education Officer (Male) Buner & Others ----------Respondents.

INDEX

S.No.	Description of Documents	Annexure	Page No.
1	Para wise comments	—	1-2
2	Affidavit	—	3

DEPONENT
CNIC No.15101-0882586-3

BEFORE THE KHYBER PUKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No. 3306/2020

Amjid Ali **Appellant**

Versus

1. District Education Officer Male District Buner _____ **Respondents**
2. Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar

Written Reply/Para wise Comments for & on behalf of Respondents No. 1 & 2

Respectfully Sheweth

Preliminary Objections.

1. The Appellant has no cause of action/locus standi to file the instant appeal.
2. The instant appeal is badly time barred.
3. The Appellant has concealed the material facts from this honourable Tribunal, hence liable to be dismissed.
4. The Appellant has not come to this honourable Tribunal with clean hands.
5. The Appellant has filed the instant appeal just to pressurise the respondents.
6. The appellant has filed the instant appeal on malafide motives.
7. The instant appeal is against the prevailing law and rules.
8. The appellant has been estopped by his conduct to file the appeal.

Facts

1. Agreed.
2. Agreed.
3. Correct, to the extent that the Respondent No 1, DEO (M) Buner, has not considered the appellant for appointment due to his DM Certificate is from in Hyderabad and also there were some writ petitions pending before the Honorable Court of Dar ul Qaza Mingora bench Swat. Therefore the matter was sub-judiced in the Honorable court.
4. Correct, to the extent that the Respondent No 1, DEO (M) Buner, has not appointed the appellant due to his DM Certificate obtained from Inspector of Drawing Grade Examination for Sindh Directorate of school's Education Hyderabad by securing 536 marks out of 600 for six subjects. Whereas Director of Curriculum Teacher Education Khyber Pakhtunkhwa Abbottabad in reply to letter No.3410/DD(TRG) dated 22-04-2014, sent for seeking validity of certificate mentioned has 1200 marks for 10 compulsory subjects, hence not equivalent to the attained degree of the appellant.
5. Correct, to the extent that the appellant had filed a writ petition No. 284-M/2015, in the Honorable Court of Dar ul Qaza Mingora bench Swat, which was decided on 30/05/2018. In the light of the decision of the above mentioned writ petition, the petitioners were appointed on 26/11/2018. Operative part of the court judgment is reproduced here, as;

   "Before parting with this judgment, it would not be out of place to mention here that the respondents are directed to redress the grievances of all these petitioners with regard to their appointments against the post of DM immediately without further waste of time as they have been languishing before different courts of law for their lawful entitlement since long."

(2)

As there are nothing mentioned about the date of appointments in the decision of Honorable Court of Dar ul Qaza Mingora bench Swat. Therefore, the Respondent No.1 DEO Buner has appointed the petitioners with immediate effect, i.e. 26/11/2018, as compliance to the order of Honorable court.

6. Correct, to the extent that the Honorable court has directed the Respondents to prepare a joint seniority in accordance to law, rule and procedure, in Review petition No. 34-M/2018 in Writ Petition No. 284-M/2015, which is under process.
7. Correct, as already explained in para No. 5 of the facts.
8. Incorrect, to the extent that the cases of the petitioners were not of the same nature as other appointed candidates because of the issues in their requisite qualifications.
9. Legal.
10. Correct, to the extent that the Respondent No. 2, Director Elementary and Secondary Education Khyber Pakhtunkhwa Peshawar, has not honored the appeal of the appellant because the appeal of the appellant was not justified in accordance to law, rule and procedure.
11. Incorrect, the appellants are not aggrieved from the said order of the Respondent No.1 DEO Buner. The appellants are not entitled for the said benefit.

Grounds.

A. Incorrect and denied, the appellants are treated in accordance with law, rule and policy.
B. Incorrect and denied, the respondents have not violated the mentioned article.
C. The appointment order dated 26/11/2018, issued by the Respondent in accordance with judgment of the Honorable court of Darul Qaza Swat with immediate effect in accordance with law, rule and policy.
D. Already explained in para No. 3 of the facts.
E. Already explained in para No. 3 of the facts.
F. Incorrect and denied, the appeal of the appellant was not justified in accordance with the rules and policies; therefore, the Competent Authority was not honored.
G. Legal, however, operative part of the court judgment Service appeal No. 5 is reproduced here: "In view of the above, we hold that the appellants are entitled to be considered as appointees with effect from the dates when other similarly placed candidates were appointed. **The appellants would however not be entitled to any financial back benefit. The respondent department is to prepare their seniority list according to rules.** The appeals are accepted in the above terms, leaving the parties to bear their own costs. File be consigned to the record room."
H. The Respondent also seek the permission of the Honorable court of service tribunal any advance proof at the time of arguments.

It is therefore humbly prayed that keeping in view the above said, submission, the service appeal in hand may very graciously be dismissed.

Director
Elementary & Secondary Education
Khyber Pakhtunkhwa Peshawar

Director
Elementary and secondary Education
Khyber Pakhtunkhwa

10/10/2020

DISTRICT EDUCATION OFFICER
MALE BUNER

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

(3)

Service Appeal No. 3306/2020

Amjid Ali -- ----------Appellant.

VERSUS

District Education Officer (Male) Buner & Others ----------Respondents.

AFFIDAVIT

I Ubidur Rahman ADEO (litigation) office of the District Education officer (Male) Buner do hereby solemnly affirms & state on oath that the whole contents of the reply are true & correct to the best of my knowledge & belief & nothing has been concealed from this August Court.

DEFONENT
15101-0882586-3