

BEFORE THE HONORABLE SERVICE TRIBUNAL,
KHYBER PAKHTUNKHWA

Implementation Petition No. _____ /2023

In line and with reference to

Service Appeal No. 76 of 2022

Muhammad Noor Sultan


VS.

Government of Khyber Pakhtunkhwa through
Secretary Education, Peshawar and other.


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Yours Humble Petitioner


(Muhammad Noor
Sultan)

Through Counsel


Khalid Mahmood
Advocate High Court

Dated: 3/4/2023

(1)

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

Implementation Petition No. _____/2023

In line and with reference to

Service Appeal No. 76 of 2022

Muhammad Noor Sultan, Sub Divisional Education
Officer (male) Tehsil Paharpur, District D.I.Khan.

Petitioner

V E R S U S

1. **Government of Khyber Pakhtunkhwa** through, Chief Secretary Khyber Pakhtunkhwa, Peshawar.
2. Chief Secretary to Govt Of Khyber Pakhtunkhwa Peshawar,
3. Secretary to Govt of Khyber Pakhtunkhwa Elementary & Secretary Education Department , Peshawar.
4. **Director**, Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.
5. **District Education Officer** Dera Ismail Khan, Education.
6. **District Education Officer** Battagram, Education.
7. **District Account Officer**, D.I.Khan.
8. **Muhammad Zareef SDEO (Male)** Alai Battagram

Respondents

APPLICATION FOR IMPLEMENTATION OF
JUDGMENT DATED: 05.07.2022 PASSED
BY THIS HON'BLE TRIBUNAL IN SERVICE
APPEAL NO.76/2022, WHEREBY, THE
APPEAL OF PETITIONER WAS ACCEPTED
AND THE IMPUGNED NOTIFICATION
DATED: 04.01.2022 REGARDING
TRANSFER AND POSTING OF PETITIONER

WAS DECLARED ILLEGAL AND INVALID,
CONSEQUENTLY STANDS SET ASIDE AND
CANCELLED.

PRAYERS

On acceptance of this implementation
Petition this Hon'ble Tribunal may please
be directed the respondents to fully and
effusively make compliance of the
Judgment dated 05.07.2022 of this
Honourable Tribunal in true letter & spirit
without any further delay.

Respectfully Sheweth,
Concise Facts

Attached
31/

1. That the petitioner filed service Appeal No. 76 of 2022 before this Honourable Tribunal with the prayer that on acceptance of present service appeal and by setting aside notification bearing no SO(MC)E&SED/4-16/2021/posting/transfer/MC dated 04.01.2022, the impugned transfer of appellant from the post for SDEO (male) Paharpur to the post of Male Alai Battagram, may graciously be cancelled and as result thereof the posting of appellant as SDEO (male) Paharpur, D.I.khan, may graciously be restored. On fixation of the case, after having hear the appellant/petitioner at great length vide judgment dated: 05.07.2022 passed by this Hon'ble Tribunal, the impugned Notification dated 04.01.2022 was setaside/cancelled and thereby appeal of the petitioner was accepted. Copy of Notification dated 03.01.2022, Copy of Notification dated 04.01.2022, Judgment dated 05.07.2022

and Service appeal No 76 of 2022 of this Hon'ble Tribunal are annexed herewith as Annexure A,B,C & D.

2. That It is manifest that Judgement of this Hon'ble Tribunal passed on 05.07.2022 but in utter disregard and violation of Judgement of this Honble Tribunal as well as posting/transfer policy of the Government of Khyber Pakhtunkhwa, the respondent / Secretary Education, Peshawar has issued another Notification dated: 27.03.2023, whereby the respondent No 8 muhammad Zareef was posted to SDEO (male), Tehsil Paharpur District DIKhan. Copy of impuged Notification dated: 27.03.2023 is enclosed as Annexure E.
3. that it is far-fetched to mention here that despite clear and well explained judgment in favour of petitioner, the respondents/Department without any lawful reason have lurk in hesitation to fully implement the judgment of this Hon'ble Court, rather violated the essence and validation of the judgment whereas the law prohibit them to do as such, but the department/ respondents in careless manner, flatly denying the judgment of this Tribunal and in respect of which, they may be dealt with in accordance with law viz to comply with the subject judgment.
4. That it is pertinent to mention that Muhammad Zareef respondent No 8 has been transferred back to Tehsil Paharpur District DIKhan. on the basis of favoritism, was brought back to Paharpur DIKhan.
5. That after passing the judgments dated 05.07.2022 by this Hon'ble Tribunal, issued subsequent another Notification dated 27.03.2023 to post the respondent at Tehsil Paharpur District DIKhan.
6. That the judgment dated 05.07.2022 in *service appeal*, the Department / respondents have not complied so far in true essence and spirit, despite various resorts of petitioner to the Secretary Education, Peshawar / Competent authority.

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rather issued impugned Notification dated: 27.03.2023 by posting the respondent No 8 to Paharpur DIKhan in utter disregard of the judgment of this Hon'ble therefore, the petitioner approaches this Honourable Tribunal for implementation of judgment dated 05.07.2022 on inter-alia the following grounds.

GROUNDS

- a. That the Judgment dated 05.07.2022 in the subject service Appeal is self-contained wherein was specifically stated that *"We are thus constrained to allow this appeal and as a result consequent, set aside the impugned order dated 04.01.2022 restoring the order dated 03.01.2022. The official respondents may, however again transfer the appellatant after completion of his normal tenure"* but direction of this Hon'ble Tribunal has not yet been fully and wholly implemented.
- b. That the judgment dated 05.07.2022 in the main service appeal of this Tribunal is self-explanatory, simple and clear and it did not require any further interpretation. But respondents tactfully, illegally and unlawfully twisted the same on technical grounds to smash the essence of judgment in order to sabotage the rights of petitioner. As, *Quoties in verbis nulla est ambiguitas, ibi nulla exposition contra verba fienda est* which means "so long as there is no ambiguity in the words, there should be no interpretation contrary to the words" therefore, respondents have no lawful authority to go beyond the specific verdict of the ibid judgment.
- c. That the scheme of the law is that in one proceeding the court/Tribunal determines the liability of a party and the corresponding right of the other party and incorporates them in the judgment/order and in another

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proceeding it executes the said order /judgment, i.e. at the instance of one party specifically enforces the liability against the other. There can be no execution or specific enforcement of a liability without a previous determination of the liability by a Court and incorporated in a formal document called judgment. In the instant matter, the liability and corresponding rights of the parties have rightly been determined and after passing the judgment, the respondents/department have not in entirety honoured the decision of this Hon'ble Tribunal which act of respondents is nullity in the eye of law.

FILED

d. That the successive transfers of the petitioner to various stations within a span of one and half year are against the posting/transfer policy of the Provincial Government, which indicated that a Government servant should not be transferred, in ordinary circumstances, prior to completion of a period of three years at one place of posting. In this backdrop, the wisdom may also be derived from the judgment of Hon'ble Supreme Court 2011 P L C (C.S.) 935 (Supreme Court of Pakistan), whereby it is held that:-

----- S. 30 (3) ----- Constitution of Pakistan
Art.212(3)--Successive Transfer -- Respondent was patwari who was transferred to three stations within a span of eight month--- Service Tribunal accepted appeal filed by respondent patwari and set aside his transfer orders --- Validity --- Successive transfer of respondent to three stations within a span of eight months were against posting/transfer policy of Provincial Government, which indicated that a government servant should not be transferred in ordinary circumstances, prior to completion of a period of three years at one place of posting --- Transfer

(8)

order of respondent was passed during ban period, prematurely under political influence, as copy of the same was sent to private secretary to Provincial Minister for Revenue --- Tenure of posting of and officer or official of Government to a District Government was provided in S.30(3) of North-West Frontier Province Local Government Ordinance, 2001, as three years but any officer could be transferred earlier due to exigency of service or in public interest to an individual grievance and no substantial question of law of public importance was involved warrant interference by Supreme Court under Art.212(3) of the Constitution---Supreme Court did not find any illegality or infirmity in the Judgment passed by Service Tribunal so as to justify interference by Supreme Court under Art.221(3) of the Constitution---Petition was dismissed.

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- e. That the respondent /department without any lawful reason willfully not implementing the order of this Hon'ble, albeit, in doing so, this Tribunal while exercising its jurisdiction may deal with the matter with iron hands because the matter of honour and integrity or order of Court.
- f. That it may not be out of place to mention here that order/Judgment or any Court or court shall be implemented/executed by the Tribunal concerned in its true essence and its implementation by the department / authority concerned is the moral duty of that authority to obey it accordingly. For the sake of harmony amongst the functionaries of the state, it is imperative for all concerned to fully honour the order/judgment of competent Court/Court. In such view of the matter, denial of respondents to effusively implement the

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Judgment passed in service appeal is beyond the settled parameters of jurisprudence.

- g. That it is imperative to highlight that the respondents, in sheer violation of Rules and policy in vogue by the Government of Khyber Pakhtunkhwa, have posted the respondent No 8 to Tehsil Paharpur DIKhan who were not obliged to do so for the reason the petitioner has not completed the normal tenure of service at the incumbent position. In fact, the petitioner has no political legs to stand upon to make her transfer and posting according to her wish and whims, that's why, exploited at the hands of respondent despite having decision in her favour.
- h. That as no ambiguity in the judgment passed by this Hon'ble Tribunal and all the material aspect relating to the tenure and transfer policy in the light of provision in the Rules & Policy in vogue and judgment of apex Court were discussed properly. When this being the position in the judgment passed by this Tribunal, again posted the respondent to Tehsil Paharpur DIKhan and that too by not completing the normal tenure i.e. three years by the petitioner, respondents are highly unjust and unwarranted under the law.
- i. That Counsel of the petitioner may please be allowed to raise additional grounds at the time of arguments.

It is therefore, humbly prayed that respondents may please be directed to make fully and effusively compliance of the Judgment dated 05.07.2022 of this Honourable Tribunal in true essence & spirit without any further delay.

Alleged

M. Sultan
Yours humble Petitioner
Through Counsel

Dated: 3/4/2023

Khalid Mahmood

Khalid Mahmood
Advocate High court.

AFFIDAVIT

I, **Muhammad Noor Sultan**, Sub Divisional Education Officer (male), Education Department, D.I.Khan, the petitioner, do hereby solemnly affirm and declare on oath that all the Para-wise contents of this **Petition** have been prepared under my instruction and all its Para-wise contents are correct and true to the best of my knowledge & belief. I further solemnly affirm and declare that no part of above petition is false and nothing material has been deliberately concealed.

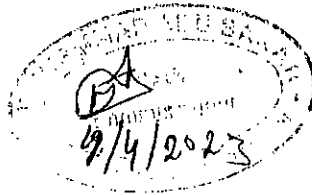
Khalid Mahmood

Identified by Counsel:

Khalid Mahmood
Advocate High Court

M. Sultan
Deponent

12103-1489981-7



(9)

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

Implementation Petition No. _____ /2023

In line and with reference to

Service Appeal No. 76 of 2022

Muhammad Noor Sultan

VS.

Government of Khyber Pakhtunkhwa through
Secretary Education, Peshawar and other.

**APPLICATION WITH THE REQUEST TO SUSPEND
THE OPERATION OF IMPUGNED NOTIFICATION
DATED 27.3.2023, WHEREBY, THE RESPONDENT
WAS POSTED AS SDEO (MALE) TEHSIL PAHARPUR
IN UTTER DISREGARD OF THE SPIRIT AND
ESSENCE OF THE JUDGMENT DATED 05.07.2022
RENDERED BY THIS HON'BLE TRIBUNAL TILL
DECISION OF THE IMPLEMENTATION PETITION**


Respectfully Sheweth.

1. That a implementation petition is being filed before this Tribunal and the grounds of same may please be considered as an integral part of the subject petition.
2. That the petitioner has not yet completed her ordinary tenure of the service and posting of respondent No 8 through impugned Notification is based on malafide and is due to the political victimization, and also there are no compelling circumstances for the impugned posting of respondent before completion of ordinary tenure of petitioner rather the respondents in defiance of the judgment of this Tribunal, issued the said Notification.
3. That posting of respondent No 8 to the Tehsil Paharpur District DIKhan is the outcome of political influence and the same was only to oblige the political figures of the area. Petitioner is having no political backing that's why he is victimize at the hands of

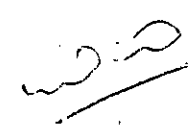
respondent. Thus, grant of interim relief as prayed for would be in the best interest of justice. In this respect, the Hon'ble Peshawar High Court, Peshawar has already granted interim relief in the C.M No.95-P/with C.M No.50-P/2023 is attached herewith.

It is, therefore, humbly prayed that on acceptance of the present petition for suspension of impugned Notification as prayed for, the respondent may please be directed to suspend the operation of impugned Notification dated: 27.3.2023 till decision of the subject petition, and in the meanwhile, status quo may please be ordered to be maintained.

Yours Humble Petition



Muhammad Noor Sultan
Through Counsel

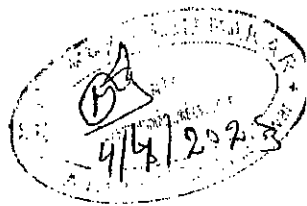
Dated: 3/4 /2023



Khalid Mahmood,
Advocate High Court.

AFFIDAVIT

I. **Muhammad Noor Sultan**, Sub Divisional Education Officer (male), Education Department, D.I.Khan, the petitioner, do hereby solemnly affirm and declare on oath that all the Para-wise contents of this **Petition** have been prepared under my instruction and all its Para-wise contents are correct and true to the best of my knowledge & belief. I further solemnly affirm and declare that no part of above petition is false and nothing material has been deliberately concealed.


Identified by Counsel:
Khalid Mahmood
Advocate High Court




Deponent
12/03-148888/7

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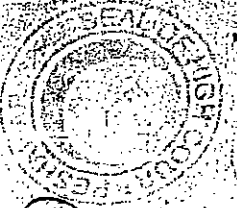
(11)

PESHAWAR HIGH COURT, PESHAWAR,

FORM OF ORDER SHEET

Date of order of proceedings	Order & other proceedings with signature of judge
1	2
17.01.2023	<p>CM No 95-P/2023, with CM 50-P/2023 in COC No 480-P/2022 in Writ Petition No 1987-P/2021</p> <p>Present: M/S Erum Gul and Mobina Masood, Petitioners-applicants in person.</p> <p>Mr Muhammad Sohail, AAG, For the officials of Provincial Government</p> <p>*****</p> <p>The CM No 95-P/2023 has been moved for the suspension of the impugned notification / order bearing No SO(II)c(4)/GS/22/7390-93/W-E dated 10.01.2023 issued by the Governor Khyber Pakhtunkhwa / Chancellor Gomal University D.I.Khan.</p> <p>2. Since the impugned notification has been issued in the existence of the status quo order dated 10.01.2023 by this court in CM No 50-P/2023 therefore the impugned order and all the proceedings initiated or conducted thereunder are hereby suspended / stayed.</p> <p>3. Once again, the Principal Secretary to the worthy Governor Khyber Pakhtunkhwa be put on notice to apprise us that what were the compelling circumstances to issue the impugned notification despite status quo order by this court. Adjourned to 24th instant.</p> <p style="text-align: right;">CHIEF JUSTICE</p> <p style="text-align: right;">JUDGE</p>

Alleged



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Page No.	1
Date	10.01.2013
Subject	Case No. 55-P/2013, MHA, C.I. No. P/2013, M. C.C.C. No. 001/P/10-Z/117-K, Section 10, 1997-P/2011

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Present: M/S. Ejaz Gul and Yehina Masood,
petitioners-applicants in person;

Mr. Muhammad Sobhat, AAG,
for the officials of Provincial Govt.

versus:

The C.A. No. 25-P/2013, was removed for the suspension of the impugned notification / order bearing No. SO(1144)PO/2012-7750-91/W-11 dated 10.01.2013 issued by the Governor (Higher Education) / Chancellor (General University Education), D.I. Khan.

2. Since the impugned notification has been issued in the existence of the status quo order dated 10.01.2013 by this court in Case No. 50-P/2013 therefore, the impugned order and all the proceedings initiated or conducted thereafter are hereby suspended / stayed.

3. Once again, the Principal Secretary to the worthy Governor (Higher Education) be put on

ADJUTANT
EXAMINER

Date of Presentation of Appeal on 12/11/2023
 No. of Pages 1
 Copyright Fee 26-00
 Date of Preparation of Copy 12/11/2023
 Date of Delivery of Copy 12/11/2023

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 HON. JUDGE
 17 JAN 2023

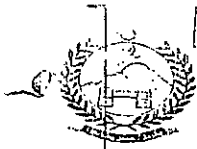
CHIEF JUSTICE
 JUDGE

notice to apprise us that what were the compelling
 circumstances to issue the impugned notification
 despite status quo order by this court. Adjourned to
 24th instant.



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To be substituted for the notification bearing the same number and date

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

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Anex A

Dated Peshawar the, January 03rd, 2022

CORRIGENDUM

No.SO(MC) E&SED/4-16/2021/POSTING/TRANSFERS: In partial modification of this Department's Notification of even number dated 30-12-2021 & 31-12-2021, the Competent Authority is pleased to order the posting / transfers of the following teachers / officers of Elementary & Secondary Education, Khyber Pakhtunkhwa with immediate effect, in the public interest:-

Sr. No	Name & designation	From	To
1.	Mr. Rehmat Khan (TC BS-17)	Assistant Director, E&SE Khyber Pakhtunkhwa.	Assistant Director, MAs E&SE Khyber Pakhtunkhwa (Vice No-2)
2.	Muhammad Ashraf (TC BS-17)	Assistant Director, MAs E&SE Khyber Pakhtunkhwa	SDEO (Male) Mirali North Waziristan (AVP)
3.	Dr Abdul Qayyum Khan (MC BS-17)	Under transfer as SDEO (Male) Miranshah North Waziristan.	Assistant Director, MAs E&SE Khyber Pakhtunkhwa (Vice No-4)
4.	Mr Matiullah Khan (MC BS-17)	Assistant Director, MAs E&SE Khyber Pakhtunkhwa.	SDEC (Male) Miranshah North Waziristan (Vice No-3)
5.	Muhammad Wajhuddin (TC BS-17)	Monitoring Officer, E&SE Department, KP.	Assistant Director, MAs E&SE Khyber Pakhtunkhwa (AVP).
6.	Mr. Nisar Ahmad (MC BS-17)	Under transfer as SDEO (Male) Kalkot Dir Upper	SDEO (Male) Rustam, Mardan (Vice No-9)
7.	Mr. Wisal Muhammad (MC BS-17)	Under transfer as SDEO (Male) Garhi Kapura Mardan.	SDEO (Male) Tangi Charsadda (AVP).
8.	Muhammad Noor Sultan (MC BS-17)	Under transfer as SDEO (Male) Beitani Lakki Marwal	SDEO (Male) Pharpur Di Khan (AVP)
9.	Hafiz Fazli Akbar (MC BS-17)	Under transfer as SDEO (Male) Rustam Mardan	Services placed at the disposal of Directorate of E&SE KP for further adjustment against the vacant post of AD (BS-17).
10.	Mr. Sultan Muhammad (MC BS-17)	Under transfer as SDEO (Male) Orakzai Lower	SDEO (Male) Ghari Kapura Mardan (Vice No-7)

Handwritten notes and signatures on the left side of the table, including 'Ali', 'Wajhuddin', and 'Sultan Muhammad'.

SECRETARY TO GOVT: OF KHYBER PAKHTUNKHWA
E&SE DEPARTMENT

Endst: of Even No & date

Copy forwarded for information to the:-

1. Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. Director E&SE Khyber Pakhtunkhwa Peshawar.
3. District Education Officers (Male) concerned.
4. District Accounts Officers concerned.
5. Director EMIS, E&SE Department with the request to upload the posting/ transfer notification on the official website of the department.
6. PS to Minister for E&SE Department, Khyber Pakhtunkhwa.
7. PS to Secretary, E&SE Department, Khyber Pakhtunkhwa.
8. Officers concerned.
9. Master file.

Handwritten signature and date: 2/1/2022
(HAFFEEZ UR REHMAN SHAH)
SECTION OFFICER (Management Cadre)



GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY AND SECONDARY EDUCATION DEPARTMENT
Block-"A" Opposite MPA's Hostel, Civil Secretariat Peshawar
Phone No. 091-9223988

Anex (B) (14)

Dated Peshawar the January 04th, 2022

NOTIFICATION

NO. SO(MC)E&SED/4-16/2021/POSTING/TRANSFER/MS: In partial modification of this Department's Notifications of even number dated 30-12-2021 and 03-01-2022, the Competent Authority is pleased to order the posting/transfer of the following Officers of Elementary & Secondary Education, Khyber Pakhtunkhwa with immediate effect, in the public interest. -

Sr. No	Name & designation	From	To
1	Muhammad Zareef (MC BS-17)	SDEO (Male) Alai Battagram	SDEO (Male) Pharpur Di Khan
2	Muhammad Noor Sultan (MC BS-17)	SDEO (Male) Pharpur Di Khan	SDEO (Male) Alai Battagram

SECRETARY TO GOVT: OF KHYBER PAKHTUNKHWA
E&SE DEPARTMENT

Ends: of even No. & date:

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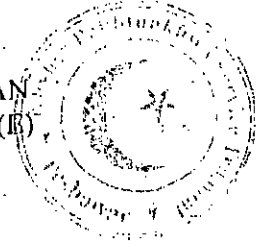
1. Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. Director, E&SE Khyber Pakhtunkhwa, Peshawar.
3. District Education Officer (Female) Battagram and Di Khan
4. Director EMIS, E&SE Department with the request to upload the same on the official website of the department.
5. District Accounts Officers Battagram and Di Khan.
6. PS to Secretary, E&SE Department, Khyber Pakhtunkhwa.
7. Officers concerned.
8. Master file.

(HAFEEZ-UR-REHMAN SHAH)
SECTION OFFICER (Management Cadre)

Service Appeal No 76/2022 titled "Muhammad Noor Sultan, vs Government of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa and others", heard on 01.07.2022 by Division Bench comprising Kalim Arshad Khan, Chairman, and Mian Muhammad, Member Executive, Khyber Pakhtunkhwa Service Tribunal, Camp Court (Dera Ismail Khan) and decided on 05.07.2022 at Peshawar.

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.**

**BEFORE: KALIM ARSHAD KHAN --- CHAIRMAN
MIAN MUHAMMAD --- MEMBER (R)**



Service Appeal No.76/2022

**Muhammad Noor Sultan, Sub-Divisional Education Officer, Tehsil
Paharur, District D.I.Khan:**

.....(*Appellant*)

Versus

1. **Government of Khyber Pakhtunkhwa, through Chief Secretary, Khyber Pakhtunkhwa, Peshawar.**
2. **Chief Secretary to Government of Khyber Pakhtunkhwa, Elementary & Secondary Education Department, Peshawar. (as written in the appeal twice).**
3. **Secretary to Government of Khyber Pakhtunkhwa Elementary & Secondary Education Department, Peshawar.**
4. **Director, Elementary & Secondary Education Department, Peshawar.**
5. **District Education Officer (M), Dera Ismail Khan.**
6. **District Education Officer (M), Battagram.**
7. **District Accounts Officer, D.I.Khan.**
8. **Muhammad Zarcof, Sub-Divisional Education Officer (M), Alai Battagram.**

.....(*Respondents*)

Present:

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

Mr. Anwar Awar,
Advocate.....For respondent No.8

Mr. Muhammad Adeel Butt,
Additional Advocate General

Mr. Farhaj Sikandar,
District AttorneyFor official respondents.

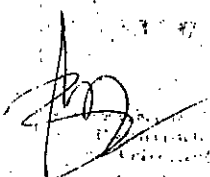

Date of Institution.....24.01.2022
Date of Hearing.....01.07.2022
Date of Decision.....05.07.2022

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE NOTIFICATION BEARING NO. SO(MC) E&SED/4-16/2021/POSTING/TRANSFER/MC DATED 04.01.2022 ISSUED BY THE RESPONDENT NO.3.

JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: The appellant is aggrieved of notification NO. SO(MC)E&SED/4-16 /2021/ Posting/ Transfer/MC dated 04.01.2022 issued by the Secretary to Government of Khyber Pakhtunkhwa E&SE Peshawar by way of which earlier notifications dated 30.12.2021 and 03.01.2022 were modified and the appellant was transferred to the post of SDEO (M) Alai Battagram.

2. Facts surrounding the appeal are that on 15.09.2021, the appellant was transferred from the post of SDEO (M) Daraban to the post of SDEO(M) Paharur. After three months, the appellant was transferred to the post of SDEO(M) Bettani Lakki Marwat from where, on 03.01.2022, he was again transferred to the post of SDEO(M) Paharpur, where he assumed the charge of his post on the same day but on the very next date i.e on 04.01.2022, his notification of transfer, issued on 03.01.2022, was modified and he was, instead, transferred and posted as SDEO(M) Alai Battagram. Aggrieved of order dated 04.01.2022 he filed departmental appeal on 05.01.2022, and awaiting ninety days statutory period, when no reply was received from the respondents, he filed the instant appeal.



05/7/22

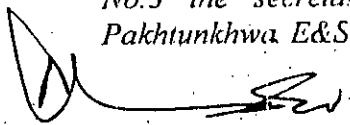
3. On receipt of the appeal and its admission to full hearing, the respondents were summoned, who on putting appearance contested the appeal by filing written reply, raising therein numerous legal and factual objections. The defence setup was a total denial of the claim of the appellant.

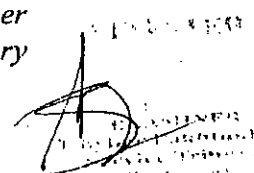
4. We have heard learned counsel for the appellant, learned Additional Advocate General for the official respondents and learned counsel for private respondent No.8.

5. Learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned AAG controverted the same by supporting the impugned order(s).

6. It is in the reply of the official respondents, that on acceptance of the representation of private respondent No.8, he was transferred as SDEO (M), Ghazni Kheil Lakki Marwat vide notification dated 15.11.2021 which was withdrawn because respondent No.8 had been declared as Returning Officer Allai Battagram during the Local Government Election 2021 phase-11. It is further stated in the comments at para-6 and 7 read as under:

"6. Appellant filed representation before the respondent No.3 the secretary to the Government of Khyber Pakhtunkhwa E&S3 Department. The worthy Secretary

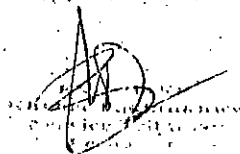

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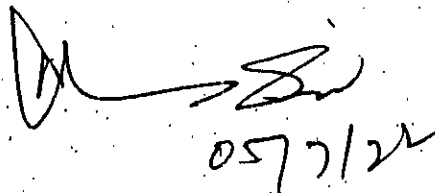

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KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
CAMP COURT
DERA ISMAIL KHAN

E&SE Department was pleased to call the appellant for personal hearing on 17.01.2022 after personal hearing of appellant the respondent No.3 was pleased to dismiss the appeal of the appellant being devoid of merit. It is further added that the private respondent No.8 appeal dated 10.12.2021 regarding his restoration as SDEO(M) Ghazni Khail, District Lakki Marwat was in process but in the mean while the post of SDEO(M) Ghazni Khail was filled with new incumbent named Mr. Abdul Qadeer Shah. Therefore, the respondent No.3 was pleased to transfer the private respondent to the post of SDEO(M) Paharpur D.I.Khan vide Notification dated 04.01.2022 being Senior Management Cadre Officer of this department.

"7. The appellant got promotion to the post of SDEO BS-17 vide notification dated 30.12.2021 and he was posted as SDEO Bhetanni District Lakki Marwat but after three days appellant got transfer to the post of SDEO(M) Paharpur D.I.Khan. This transferred order of the appellant was not justified in eye of law; therefore, competent authority has been pleased to the transfer the appellant to post of SDEO(M) Allai District Battagram. The service appeal of the appellant is an exercise in futility. Further proceedings in this regard would bear no fruit. It is, therefore, requested to this Hon'ble Tribunal to dismiss the service appeal of the appellant with cost.

7. When confronted with the situation as to what prompted the official respondents or what was the public interest involved in cancellation of the order issued on 03.01.2022 just after one day, the representative of the respondents as well as the learned AAG could not explain the situation. Therefore, it is found that impugned order is in utter violation of Clause (i) and (iv) the posting/transfer policy of the provincial government wherein it is contained that a government servant would complete normal tenure at a station it is also against the interest of public service.




05/7/22

Service Appeal No76/2022 (titled "Muhammad Noor Sultan vs Government of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa and others", Khyber) on 01.07.2022 by Division Bench comprising Kalim Arshad Khan, Chairman, and Mian Muhammad, Member Executive, Khyber Pakhtunkhwa Service Tribunal, Camp Court Dera Ismail Khan, decided on 5.7.22 at Peshawar.

8. We are thus constrained to allow this appeal and as a resultant consequence, set aside the impugned order dated 04.01.2022 restoring the order dated 03.01.2022. The official respondents may, however, again transfer the appellant after completion of his normal tenure. Cost shall follow the event. As regards to private respondent No.8, the department may adjust him at a nearer station if his request is found genuine. Cost shall follow the event. Consign.

9. Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 05th day of July, 2022.



SD/-
KALIM ARSHAD KHAN
Chairman
Camp court D.I.Khan

SD/-
MIAN MUHAMMAD
Member Executive
Camp court D.I.Khan

05/07/22

Secretary of State
2000
22/-
22/-
29-7-22
11-8-22

SD/-
KALIM ARSHAD KHAN
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Amce (D)

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

Service Appeal No. 76 of 2022

Muhammad Noor Sultan, Sub-Divisional Education Officer, Tehsil
Paharpur, District D.I.Khan. **APPELLANT**

VERSUS

1. **Government of Khyber Pakhtunkhwa**, through Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
2. **Chief Secretary to Govt of Khyber Pakhtunkhwa**, Elementary & Secondary Education Department, Peshawar.
3. **Secretary to Govt of Khyber Pakhtunkhwa**, Elementary & Secondary Education Department, Peshawar.
4. **Director**, Elementary & Secondary Education Department, Peshawar.
5. **District Education Officer**, Dera Ismail Khan.
6. **District Education Officer**, Battagram.
7. **District Accounts Officer**, D.I.Khan.
8. **Muhammad Zareef**, Sub-Divisional Education Officer (Male) Alai Battagram.

RESPONDENTS

**SERVICE APPEAL UNDER SECTION 4 OF THE K.P.
SERVICE TRIBUNALS ACT, 1974, AGAINST THE
NOTIFICATION BEARING NO. SO(MC) E&SED/ 4-
16/2021/ POSTING/ TRANSFER/ MC DATED
04.01.2022 ISSUED BY THE RESPONDENT No.3.**

PRAYER:

On acceptance of present Service Appeal and by
setting aside Notification bearing No. SO(MC)

Amce

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E&SED/ 4-16/2021/Posting/ Transfer/MC dated 04.01.2022, the impugned transfer of appellant from the post of SDEO (Male) Paharpur to the post of SDEO (Male) Alai Battagram, may graciously be cancelled and as result thereof the posting of appellant as SDEO (Male) Paharpur, D.I.Khan, may graciously be restored.

Respectfully Sheweth,

1. That the appellant is serving in the Education Department in Management Cadre BPS-17; and addresses of parties as given above are correct & sufficient for the purpose of service.
2. That vide Notification No.SO (SM)E&SED/7-1/2021/PT/G/MC dated 15.09.2021 (**Annexure A**) the appellant was transferred from SDEO (M) Daraban to SDEO (M) Paharpur, and thereafter, vide Notification No.SO(MC)E&SED/4-16/2021/Posting/Transfer/MC dated 30.12.2021 (**Annexure B**) he stood posted as SDEO (M) Bettani Lakki Marwat and his name appears at serial No.2 of the Notification.
3. That vide corrigendum No.SO(MC)E&SED/4-16/2021/Posting/Transfer/MC dated 03.01.2022 (**Annexure C**), the petitioner stood again transferred from SDEO Bettani Lakki Marwat to SDEO (M) Paharpur, D.I.Khan. Accordingly, petitioner assumed the charge of the post vide Certificate of Transfer of Charge dated 03.01.2022. Copy of the Charge Report dated 03.01.2022 of the petitioner is enclosed as **Annexure D**.

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4. That the respondent No.8 who was previously posted as SDEO D.I.Khan (serial No.35) vide Notification dated 29.10.2018 (Annexure E) upon completion of his normal tenure stood transferred from SDEO (M) D.I.Khan to SDEO (M) Alai Battagram (serial No.21) vide Notification dated 07.10.2021 (Annexure F).
5. That respondent No.8 just after the transfer of appellant to SDEO (M) Paharpur, D.I.Khan, vide Notification dated 03.01.2022 (Annexure C) got himself transferred from Battagram to Paharpur, D.I.Khan, vide Notification SO(MC) E&SED/ 4-16/2021/ Posting/ Transfer/ MC dated 04.01.2022 (Annexure G) at the cost of rights of appellant and just with in 24 hours of the transfer order of appellant.

In this way, the transfer of appellant was overturned within 24 hours of his arrival/charge report, just due to the fact that respondent No.8 is having blessings of the political figures and he after his transfer out from D.I.Khan on 07.10.2021 come back to D.I.Khan on 04.01.2022, and hence, a great injustice has been done to the appellant.

6. That discontented with his transfer on the basis of favouritism and nepotism vide Notification SO(MC) E&SED/ 4-16/2021/ Posting/ Transfer/ MC dated 04.01.2022, the appellant preferred a Departmental Representation/Review to the respondent No.2 and 3 on 05.01.2022. Copies of the Review Petitions/ Departmental Representations to the respondents No.2 and 3 are respectively enclosed as Annexure H & I.
7. That till date no response of the Departmental Review/Appeal has been received to the appellant; therefore, the appellant has been left with no option but to file present service appeal before this

Alai Battagram

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Honourable Tribunal for cancellation of his transfer dated 04.01.2022 on, inter alia, the following grounds:

GROUND:

- i. That the impugned Notification SO(MC) E&SED/ 4-16/2021/ Posting/ Transfer/ MC dated 04.01.2022 is the outcome of malafide, result of political victimization, without jurisdiction, without lawful authority and having no binding effect upon rights of appellant.
- ii. That appellant has been made a rolling stone by official respondents just because of the fact that he is not having any political backing.

Firstly, the appellant was transferred from Daraban to Paharpur vide Notification dated 15.09.2021, then within 3½ months, he stood transferred to Lakki Marwat vide Notification dated 30.12.2021.

Secondly, the petitioner vide Notification dated 03.01.2022 transferred from Lakki Marwat to D.I.Khan i.e. after 04 days of earlier transfer.

Thirdly, just within one day of his transfer and taking over the charge as SDEO Paharpur, D.I.Khan, once again stood transferred to Battagram.

As against this, the respondent No.3 was transferred from D.I.Khan to Battagram after about three years i.e. completion of his normal tenure, and now he has get his posting at D.I.Khan at the cost of rights of appellant. Hence, appellant cannot be made a rolling stone for the benefits of respondent No.8

- iii. That the impugned transfer Notification is not in the public interest rather in the interest of respondent No.8 only; hence, a great, great injustice is being done to the appellant.
- iv. That the impugned office order has been issued to oblige the political figures of the area and therefore, the same is having no legal sanctity and not worth to be maintained.
- v. That public officers and public functionaries are bound to obey the law, rules, procedure and being a public servant they are required to serve the public and it is not in their duties to bow before the politicians. Impugned office is therefore nullity in the eyes of law and, rights of appellant are required to be protected from the influence of political figures.
- vi. That it has been held by the superior courts that when the ordinary tenure for a posting has been specified in the law or rules made thereunder, such tenure must be respected and cannot be varied except for compelling reasons, which should be recorded in writing and are judicially reviewable. On this score too the impugned transfer notification is liable to be cancelled.
- vii. That the appellant has not yet completed his ordinary tenure of the service and his transfer through the impugned notification is based on malafide and is due to the political victimization, based on favouritism and also there are no compelling circumstances for the impugned transfer of appellant before completion of his ordinary tenure.
- viii. That under the Khyber Pakhtunkhwa Posting & Transfer Policy normal tenure of service is three years and transfer in the

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violation of such policy is simply to be recalled. Reliance is placed on 2001 PLC (CS) 172.


- ix. That the counsel for appellant may be allowed to raise additional grounds at the time of arguments.

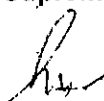
It is therefore, humbly prayed that the present service appeal may graciously be allowed as prayed for and thereby the impugned transfer of appellant may kindly be cancelled and as result thereof the posting of appellant as SDEO (M) Paharpur, D.I.Khan, may kindly be restored.

Yours Humble Appellant


(Muhammad Noor Sultan)
Through Counsel

Dt. 22 01.2022



Ahmad Ali
Advocate Supreme Court


Miss Shumaila Awan
Advocate High Court, D.I.Khan.

VERIFICATION: I, the appellant, on this day of January-2022, herein mentioned above, do hereby verify that all the contents of this appeal are true & correct and also that it is the first appeal on the subject matter and no such appeal has earlier been filed.


Appellant

AFFIDAVIT: I, the appellant; do hereby solemnly affirm and declare on oath that all the Para-wise contents of above **Service Appeal** are true & correct to the best of my knowledge, belief and information; and that, nothing has been deliberately concealed from this Honourable Tribunal.


Identified by Counsel:
Ahmad Ali ASC.


Deponent

12103-1489991-7



GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION
DEPARTMENT

Dated: 27th March, 2023

NOTIFICATION

NO.SO/MCJE&SED/4-16/Posting/Transfer/2023: Mr. Muhammad Zareef, SDEO (Male) Tank is hereby transferred and posted as SDEO (Male) Paharpur District D.I.Khan, against the vacant post, with immediate effect, in the best public interest.

SECRETARY TO GOVT. OF KHYBER PAKHTUNKHWA
E&SE DEPARTMENT

Endst: of oven No.& date:

Copy forwarded for information to the:-

1. Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. Director, E&SE Khyber Pakhtunkhwa, Peshawar.
3. District Accounts Officers D.I.Khan, Tank.
4. District Education Officer (Male) D.I.Khan, Tank.
5. Director EMIS, E&SE Department with the request to upload the same on the official website of the department.
6. PS to Secretary, E&SE Department, Khyber Pakhtunkhwa.
7. Officer concerned.
8. Master file.

Page 1/1
3/1

111 / 27/3/2023
(IMRAN ZAMAN)
SECTION OFFICER (Management Cadre)

KHALID MEHMOOD

Advocate

bc-15-5415

Date of Issue: October 2020

Valid upto: October 2023

Secretary
KF Bar Council



ADVOCATE

وکالت نامہ

27

کورٹ
فیس

حساب سرحدیں بشمول جسٹس کوٹاہ اور بعدالت

منجانب محمد نور سلطان
نام مگوانہ کونسل
Khan and Sons
Plantation Pakistan

تفصیل دعویٰ یا جرم 76/2023
Khan and Sons

باعث تحریر آنکہ

مقدمہ مندرجہ بالا اثبات میں اپنی طرف واسطہ بیروی وجواب دہی برائے قومی ایف پی مقدمہ
فائل نمبر 76/2023

کو حسب ذیل شرائط پر وکیل مقرر کیا ہے کہ میں پیشی پر خود یا ذرا بذریعہ دو برو عدالت حاضر ہوتا ہوں گا اور ہر وقت پکارے جانے مقدمہ وکیل صاحب
موصوف کو اطلاع دے کر حاضر عدالت کروں گا اگر پیشی پر منظر حاضر نہ ہو اور مقدمہ بیروی غیر حاضری کی وجہ سے کسی طور برے خلاف ہو گیا تو صاحب
موصوف اس کے کسی طرح ذمہ دار نہ ہوں گے نیز وکیل صاحب موصوف صدر مقام پکھری کے علاوہ یا پکھری کے اوقات سے پہلے یا پیچھے یا بروز تعطیل
بیروی کرنے کے ذمہ دار نہ ہوں گے اور مقدمہ صدر مقام پکھری کے علاوہ اور جب ساعت ہونے یا بروز تعطیل یا پکھری کے اوقات کے آگے یا پیچھے پیش ہونے
پر منظر کوئی نقصان پہنچے تو اس کے ذمہ دار یا ایسے واسطے کسی معاوضہ کے ادا کرنے یا نکت نہ دہیں کرنے کے بھی صاحب موصوف ذمہ دار نہ ہوں گے جب
کو کل ساختہ پر واختہ صاحب موصوف مثل کردہ ذات خود منظور قبول ہو گا اور صاحب موصوف کو عرض دہنی یا جواب دہی یا درخواست اجراء اسمائے ذگری
نظر ثانی اپیل گمانی و ہر قسم درخواست ہر قسم کے بیان دینے اور پر ثانی یا راضی نامہ و فیصلہ برخط کرنے اجازت دہنی کا بھی اختیار ہو گا اور بصورت مقرر ہونے
تاریخ پیشی مقدمہ مرکز بیرون از پکھری صدر بیروی مقدمہ مرکز نظر ثانی اپیل و گمانی و برآمدگی مقدمہ یا ہنسوقی ذگری یک طرفہ یا درخواست حکم انتہائی یا تفرقی
یا گرفتاری قبل از فیصلہ اجراء ذگری بھی صاحب موصوف کو بشرط ادائیگی علیحدہ ضمانت بیروی کا اختیار ہو گا اور تمام ساختہ پر واختہ صاحب موصوف مثل کردہ
از خود منظور و قبول ہو گا اور بصورت ضرورت صاحب موصوف کو یہ بھی اختیار ہو کہ مقدمہ مرکز یا اس کے کسی جزوی کارروائی یا بصورت درخواست نظر ثانی
اپیل گمانی یا دیگر معاملہ و قدم مذکورہ کسی دوسرے وکیل یا بیرو مشرک کو اپنے بجائے یا اپنے ہمراہ مقرر کریں اور ایسے مشیر قانون کو بھی ہر امر میں دہی اور ویسے
اختیارات حاصل ہوں گے جیسے صاحب موصوف کو حاصل ہیں اور دوران مقدمہ میں جو کچھ ہر جائز اتواء ہونے کا وہ صاحب موصوف کا حق ہو گا مگر
صاحب موصوف کو پوری فیس تاریخ پیشی سے پہلے ادا نہ کروں گا تو صاحب موصوف کو پورا اختیار ہو گا کہ مقدمہ کی پردی نہ کریں اور ایسی صورت
میں میرا کوئی مطالبہ کسی قسم کا صاحب موصوف کے برخلاف نہیں ہوگا

لہذا وکالت نامہ لکھ دیا ہے تاکہ ضرور ہے
مورخہ 3 ماہ اپریل 2023
مضمون وکالت نامہ سن لیا ہے اور اچھی طرح سمجھ لیا ہے اور منظور ہے

Accepted
03364332001

محمد نور سلطان
Pittmea
N. Pakistan
12103-1489991-7
63415-9240885

حصن کا بیرو منظور اور ان کی ضرورت ایک بالقابل جاننا کہ فی ما سائل خان خون: 714812