

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

MISC: APPLICATION No. 257/2023

IN
S.A No. 01/2022

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 4932

Dated 19/4/2023

Mst Saina.....Applicant

Versus

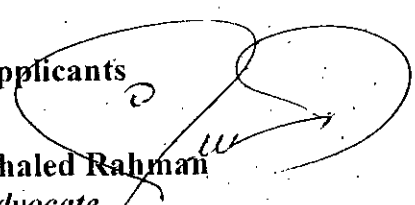
Dr. Salma SamiRespondent

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Through

Applicants


Khaled Rahman
Advocate,
Supreme Court of Pakistan

Dated: 19/04/2023

3-D, Haroon Mansion
Khyber Bazar, Peshawar
Off: Tel: 091-2592458
Cell # 0345-9337312

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

MISC: APPLICATION No. 257 /2023

IN

S.A No. 01/2022

Mst Saima,
Principal, GGHS, Mologo Peshawar..... Applicant

VERSUS

1. Dr. Salma Sami
Principal GGHS, Irrigation Colony,
Warsak Road, Peshawar.
2. The Chief Secretary
Govt. of Khyber Pakhtunkhwa
Civil Secretariat, Peshawar.
3. The Secretary
Education Officer (Female)
Khyber Pakhtunkhwa, Peshawar
4. The Secretary
Elementary & Secondary Education
Civil Secretariat, Peshawar.
5. Ms. Noshaba
Principal GGHS Irrigation Colony,
Warsak Road, Peshawar.
6. Ms. Tahira Naz
Principal GGHS, Gulabda,
Jumrud Khyber..... Respondent

Application U/S 12(2) CPC for setting aside the Judgment/Order of this Hon'ble Tribunal dated 13.03.2023 passed in Service Appeal No.01/2022 being procured by Respondent on the basis of misrepresentation and fraud.

Respectfully Sheweth,

Facts giving rise to the present application are as under:-

1. That Respondent No.1 had filed Service Appeal No.01/2022 (Annex:-A) before this Hon'ble Tribunal by assailing the posting/transfer order dated 20.12.2021 (Annex:-B) which was admitted to full hearing. Replies were sought from the Respondents, which were accordingly submitted (Annex:-C).

2. That applicant is the senior-most Officer of the Department in Grade-18, who vide Notification dated 12.08.2022 (*Annex:-D*) was transferred from GGSS Mian Gujjar Peshawar to GGSS Malogo Peshawar, against the vacant post of Principal (BPS-18) with immediate effect, in the public interest. Applicant complied with the order and submitted Charge Report.
3. That during pendency of Service Appeal No.01.2022 of Respondent No.1 before this Hon'ble Tribunal she was inadvertently/mistakenly transferred from GGSS Irrigation Colony to GGSS Malogo/at the place of applicant, vide Notification dated 14.09.2022 (*Annex:-E*), where Respondent No.1 approached for charge assumption but she was apprised that the subject post had already been occupied/filled by applicant.
4. That the Respondent No.1 deliberately failed to bring material facts into the Notice of the Hon'ble Tribunal in that the applicant being necessary party was not arrayed in the panel of Respondents. Respondent No.1 knew that the post has already been filled by the applicant vide applications (*Annex:-F*) and obtained the impugned judgment/order dated 13.03.2023 (*Annex:-G*) of this Hon'ble Tribunal and took unlawful directions by suppressing the material facts to actualize the transfer order dated 14.09.2022 and place Respondent No.1 at the place of posting of applicant.
5. That the element of misrepresentation and fraud on the part Respondent No.1 is quite apparent on the face of the record and she was supposed to bring into the notice of the Hon'ble Tribunal the updated position on the subject matter but failed to do so. Moreover, requirements of Rule-6 of the Khyber Pakhtunkhwa Service Tribunal Rules, 1974 have not been complied with.

For the aforesaid reasons, it is therefore respectfully prayed, that on acceptance of this application, this Hon'ble Tribunal may kindly be pleased to recall the impugned judgment/order dated 13.03.2023 and by restoring Appeal of Respondent No.1 and decide the same on merits after adverting the stance of the applicant and providing her opportunity of defence.

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

Through

Applicant


Khaled Rahman

Advocate,

Supreme Court of Pakistan

Dated: 19/04/2023

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

MISC: APPLICATION No. _____/2023

IN

S.A No.01/2022

Mst Saima..... Applicant

Versus

Dr.Salma Sami Respondent

AFFIDAVIT

I, MstSaima, Principal, GGHSS, Mologo Peshawar, do hereby solemnly affirm and declare on oath that the contents of this Application are true and correct to the best of my knowledge, and nothing has been concealed from this Hon'ble Court.

Deponent

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

MISC: APPLICATION No. _____/2023

IN

S.A No.01/2022

Mst Saima..... Applicant

Versus

Dr. Salma Respondents

Application for suspending the operation of the impugned judgment dated 13.03.2023 till the final disposal of the main application.

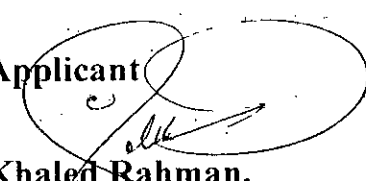
Respectfully Sheweth,

1. That the above titled application is being filed today which is yet to be fixed for hearing.
2. That the judgment called in question was obtained by misrepresentation and without hearing applicant.
3. That the facts alleged and grounds taken in the body of main Application may kindly be as an integral part of this application, which make out an excellent prima facie case in favour of the applicant.
4. That the balance of convenience also lies in favour of applicant and in case the impugned Judgment is not suspended the applicant will suffer irreparable loss.

It is, therefore, humbly prayed that on acceptance of this application, the operation of the impugned judgment dated 13.03.2023 may graciously be suspended till the final disposal of the appeal.

Through

Applicant


Khaled Rahman,
Advocate,
Supreme Court of Pakistan

Dated: 19 / 04/ 2023

Affidavit

Verified that the contents of this application are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.

Deponent

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Amie A

BEFORE THE KHYBER PAKHTUNKHUWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No: 01 /2021

Dr. Salma Sami principal GGHS, Irrigation Colony, Warsak Road, Peshawar.

.....Appellant

VERSUS

- 1. The Government of Khyber Pakhtunkhwa through chief Secretary, Civil Secretariat, Peshawar
- ② The Section Officer (School Female) Khyber Pakhtunkhwa, Peshawar.
- 3. The Elementary & Secondary Education through Secretary Education, Civil Secretariat, Peshawar.
- 4. Principal GGHS Mst. Noshaba, Irrigation Colony, Warsak Road, Peshawar
- 5. Principal Tahira Naz GGHS Gulabad Jamrud Khyber

.....Respondents

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE TRANSFER ORDER OF THE APPELLANT, WHEREBY SHE HAS BEEN TRANSFERRED, POSTED ILLEGALLY AND UNLAWFULLY.

RESPECTFULLY SHEWETH:

Facts giving this present service appeal are as under;

That the appellant is appointed/posted against the vacant post (BPS-18) on dated 08.02.2021 as a principal GGHS Nodeh District Nowshera vide notification NO SO. (S/F) E&SE 4- 6-2021,

A

but the post was not available in District Nowshera subsequently posted/adjusted as principal (BPS-19) GGHS Irrigation Colony, Peshawar.

Copy of the dated 08.02.2021 order is attached as annexure "A"

2. That the respondent No. 1 to 3 vested too much time of the appellant in procedure for appointment in (BS-18) but the appellant continued her struggle for (BPS-18) and the respondent NO. 1 ignoring, but finally the appellant approached to provincial Mohtasib Khyber Pakhtunkhwa against the respondent No. 1 attitude, the then respondent No. 1 issue order of appointment to appellant against the vacant post (BS-18) vide notification NO. SO(S/F) E&SE 04.16.2021 in district Nowshera. **(Application and order is attached as annexure B)**
3. That the appellant taken over the charge against the vacant post as a principle (BPS-19) GGHS, irrigation Colony, Peshawar on dated 13th July 2021.
4. That the respondent No. 1 & 2 after five month issued another order dated 14th December 2021 vide notification No. SO(S/F) E&SED 04.16.2021 against the appellant to adjust respondent No. 4 and the appellant transfer/posted against the vacant post (BPS-18) as a principal GGHS Gulabad Jamrud Khyber, but the said post is yet not vacant because the said post is already

occupied by Mst. Tahiranaz as a principal (BPS-18) in GGHS Gulabad Jamrud Khyber.

Copy of the order is attached as annexure "C"

5. That the respondent No. 4 moved an application to respondent No. 1 & 2 for non availability of post for serial No. 2 in notification No. SO(S/F) E&SED / 04.16/2021 and the respondent No. 4 also mentioned vacant four posts in Peshawar which is already vacant for (BPS-19).
(Copy of application is attached herewith as annexure "D")

6. That the respondent No. 1 & 2 illegally, wrongfully and unlawfully issued order against the appellant from District Peshawar to District Charsadda GGHS Matta Palangzai instead of GGHS Gulabad Jamrud District Khyber which is against the law and policy of service Act.
Copies of order is attached as annexure "E")

7. That the appellant suit departmental appeal on dated 16.12.2021 but respondent ignored the application of the appellant and continue his order, the appellant also attached her husband posting/service certificate in Peshawar but in vain, then the appellant having no other remedy left, but to approach this Hon'ble court via instant service appeal, on the following grounds;
(Copy of Service Certificate & department Application are attached as annexure F & G)

GROUND:

- A. That the appellant is permanent resident of Peshawar by domicile and her husband is also Professor of BPS-20 in IER Peshawar permanently, so the transfer of the appellant

against the service rules and policy Act from district Peshawar to Charsadda.

- B. That the appellant did not fulfill/complete the tenure of the 3 years from the first appointment order in GGHS irrigation colony Peshawar, it is also against the law and rules of Service Act.
- C. That the respondent No. 4 give four option in her application of the vacant post in Peshawar which required for the eligibility of (BPS-19) and the said four mention posts are also vacant from long time in Peshawar without any posted and the respondent NO. 4 according to law should be transfer/posted in these vacant post instead of GGHS irrigation Colony, Peshawar.
- D. That the appellant is a female gender which not possible to travel in daily routine 60 km in public transport with so many problems like security, transport unavailability etc.
- E. That the respondent No. 1 & 2 bionomically transferring/posting the appellant from one place to another without any legally, lawfully reason which is clearly violation of the service Policy & Rules.
- F. That any other grounds will be furnished at the time of final arguments with the prior permission of this honorable tribunal

For the aforesaid reason, it is therefore, respectfully prayed, that on acceptance of this service appeal, this Hon'ble tribunal may kindly be please to declare the impugned

order dated 20.12.2021 is illegal, unlawful coram-non judice, malafide of no legal effect and also ineffective on the rights of the appellant, further the respondent No. 1 & 2 may be directed to act in the matter in accordance with law and allow the appellant to perform her duty in Peshawar.

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

INTERIM RELIEF:

By way of interim relief, the operation of the impugned order dated 20.12.2021 may kindly be suspended, till the decision of the present petition.

Appellant

Through


Muhammad Israr Khattak

Advocate High Court

Peshawar

BEFORE THE KHYBER PAKHTUNKHUWA SERVICE
TRIBUNAL PESHAWAR

Service Appeal No: _____ /2020

Dr. Salma Sami principal GGHS, Irrigation Colony
.....Appellant

V E R S U S

The Government of Khyber Pakhtunkhwa through
chief Secretary & others

.....Respondents

AFFIDAVIT

I, Dr. Salma Sami W/o Hafiz Muhammad Inamullah
R/o Lahori Gate, Flat No. 85, Mohallah Umara
farooq Sheikh Abad Peshawar, (appellant) do
hereby solemnly verify and declare on oath that all
the contents of the subject service appeal are true
and correct to the best of my knowledge and belief
and nothing has been concealed from this
Honourable Court.

Handwritten signature and date: 23-12-20

Handwritten signature: Salma

DEPONENT

16202-6959804-6



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Annex B

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

Dated Peshawar the December 20th, 2021

NOTIFICATION

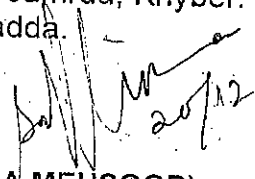
NO. SO(SF)E&SED/4-16/2021/POSTING/TRANSFER/TC: In partial modification of this Department's Notification of even number dated 14-12-2021, the place of posting of Dr. Salma Sami Principal (BS-18) may be read as GGHS Matta Palangzai District Charsadda instead of GGHS Gulabad Jamrud District Khyber.

**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 Officer (Female) Peshawar, Swabi & Khyber.
4. District Accounts Officer Swabi & Khyber.
5. Director EMIS, E&SE Department with the request to upload the same on the official website of the department.
6. Section Officer (Litigation-II), E&SE Department, Khyber Pakhtunkhwa.
7. PS to Secretary, E&SE Department, Khyber Pakhtunkhwa.
8. Mst. Tahira Naz Afridi Principals, GGHS Gulabad Jamrud, Khyber.
9. Principals, GGHS Matta Palangzai District Charsadda.
10. Officer concerned.


(SAMIRA MEHSOOD)
SECTION OFFICER (SCHOOLS FEMALE)


SECTION OFFICER (SCHOOLS FEMALE)

B

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Amit C²

BEFORE THE HON'BLE SERVICE TRIBUNAL KHYBER PAKHTOONKHW A PESHAWAR.

S.A NO. 01/2022

DR.Salma Sami Principal GGHS, Irrigation Colony; Warsak Road, Peshawar...**APPELLANT**

VERSUS

The Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar & Others.

.....**RESPONDENTS**

PARAWISE COMMENTS FOR & ON BEHALF OF THE RECONDENTS 01 TO 03

RESPECTFULLY SHEWETH:

The respondents most humbly submits as under:

Preliminary objections:

1. That the appellant has got no cause of action to file the instant appeal.
2. That the instant appeal is filed with malafide intentions.
3. That the appellant has not come to this august tribunal with clean hands.
4. That the appellant has no locus standi to file the instant appeal.
5. That Appellant is estopped by his own conduct to approach this Hon'able Tribunal.
6. That no vested right of the appellant has been infringed nor any provisions of the Constitution have been violated, therefore, the instant Service Appeal is not maintainable in the circumstances.
7. That the instant appeal is based on mala-fide intention just to put pressure on the Respondents for the grant of illegal and even unauthorized service benefits.
8. The present appeal has been filed to entangle the Department unnecessarily in litigation and to waste the precious time of the respondents as well as of this Hon'able Tribunal.
9. That the present appeal is against the relevant provision of law and rules.
10. That in the instant Service Appeal the Appellant has suppressed material facts from this Honorable Tribunal which are sin-qua-non for the just and fair disposal of the case.
11. That this Honourable Tribunal has got no jurisdiction to entertain the present appeal.
12. The appeal of the appellant is time barred.

ON FACTS:

1. Relates to the Service record of the appellant.
2. Pertains to service record of the appellant.
3. Pertains to service record of the appellant.
4. That the transfer notification dated 14-12-2021 (**Annex-A**) was issued in compliance to the order of Honourable Khyber Pakhtunkhwa Service Tribunal, Peshawar announced on 25-06-2021 in Service Appeal No. 10297/2020. The operative part in said case judgment is as under:

"In light of the above, the respondents are directed to transfer the appellant to Govt. Girls High School Irrigation Colony Warsak Road Peshawar within a

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period of one week of receipt of copy of this order."(copy of the order is attached as Annex-B)

5. That consequent upon the notification dated: 14-12-2021 it was found that the post of Principal GGHS Gulababad Jamrud, Khyber to which the appellant was transferred, was already occupied by Respondent No. 5.
6. Incorrect, hence denied. The competent authority have the prerogative to place the services of civil servant anywhere in the province. That Respondent No. 5 who already occupied the post of Principal GGHS Gulababad Jamrud, Khyber to which the appellant was transferred vide notification dated 14-12-2021, Respondent No. 5 requested to clear the position on her original position which is not against law. Hence, the appellant was posted against the vacant post of Principal (BS-18) GGHS Matta Palanzai District Charsadda vide notification dated: 20-12-2021 (Annex-C).

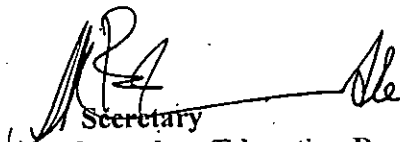
7. Pertains to record. However, detail reply is given I Para 4 to 6 above.

REPLY ON GROUNDS:

- A. Pertains to record. As explained in Para 6 ibid.
- B. Already discussed in Para No. 4. Further, as per Posting Transfer Policy (Annex-D) the tenure for posting is 02 years as under:
"iv. The normal tenure of posting shall be three years subject to the condition that for the officers /officials posted in unattractive areas, the tenure shall be two years and for hard areas the tenure shall be one year. The unattractive and hard areas will be notified by the Government."
- C. Already explained in comments at Para No. 5.
- D. That being civil servant, the appellant is required to serve in the place of posting anywhere in the province. Detail reply is given above.
- E. Incorrect, hence denied. Already explained in facts.
- F. That the respondents be allowed to raise additional grounds during arguments.

Prayer:

In view of above, legal and factual position, it is humbly prayed that the subject appeal, being devoid of merits against law / facts & rules, may please be dismissed with cost throughout.


Secretary
Elementary & Secondary Education Department
Khyber Pakhtunkhwa



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

Dated Peshawar the December 14th, 2021

NOTIFICATION

NO. SO(SF)E&SED/4-16/2021/POSTING/TRANSFER/TC: The Competent Authority, in light of the Judgment of the Khyber Pakhtunkhwa Service Tribunal Peshawar dated 25-06-2021 in Service Appeal No-10297/2020, is pleased to order the following posting/transfer, with immediate effect, in the public interest: -

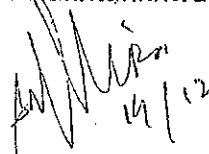
Sr. No	Name & designation	From	To
1.	Mst. Noshaba, Principal (BS-19)	GGHS Kernal Sher Khan Swabi.	Principal GGHS, Irrigation Colony, Warsak Road Peshawar (Vice No-2)
2.	Dr. Salina Sami, Principal (BS-18)	GGHS, Irrigation Colony, Warsak Road Peshawar.	Principal GGHS Gulabad Jamrud, Khyber against the vacant post.

SECRETARY TO GOVT. OF KHYBER PAKHTUNKHWA
E&SE DEPARTMENT

Endst: of even No.& date:

Copy forwarded for information to the: -

1. Registrar Khyber Pakhtunkhwa Service Tribunal, Peshawar.
2. Accountant General, Khyber Pakhtunkhwa, Peshawar.
3. Director, E&SE Khyber Pakhtunkhwa, Peshawar.
4. District Education Officer (Female) Peshawar, Swabi & Khyber.
5. District Accounts Officer Swabi & Khyber.
6. Director EMIS, E&SE Department with the request to upload the same on the official website of the department.
7. Section Officer (Litigation-II), E&SE Department, Khyber Pakhtunkhwa.
8. PS to Minister for E&SE, Khyber Pakhtunkhwa.
9. PS to Secretary, E&SE Department, Khyber Pakhtunkhwa.
10. Principal concerned.
10. Master file.


(SAMIRA MEHSOOD)
SECTION OFFICER (SCHOOLS FEMALE)


ATTESTED

- 16 -

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR

Service Appeal No. 10297/2020

Date of Institution ... 26.08.2020

Ms. Noshaba, Principal (BPS-19) GGHSS, KSK, Swabi.
... (Appellant)

VERSUS

The Government of Khyber Pakhtunkhwa through Chief Secretary
Khyber Pakhtunkhwa, Peshawar and another.
... (Respondents)

MR. MUHAMMAD MOHAY-UD-DIN,
Advocate

For appellant.

MR. MUHAMMAD ADEEL BUTT,
Additional Advocate General

For respondents.

MR. SALAH-UD-DIN

MEMBER (JUDICIAL)

MR. ATIQU-UR-REHMAN WAZIR

MEMBER (EXECUTIVE)

ORDER

25.06.2021

SALAH-UD-DIN, MEMBER:- The appellant was serving as
AS (General) BS-18 in GGCHSS Peshawar, however upon her promotion
to BS-19, vide Notification dated 18.12.2019, the appellant was posted
as Principal GGCHSS Kernal Sheer Killay Swabi. The appellant assumed
the charge as Principal GGCHSS-KSK Swabi, however being permanent
resident of District Peshawar, the appellant challenged her transfer
order by way of filing of departmental appeal, alleging therein that as
she is unmarried, therefore, in light of Posting/Transfer Policy of
Provincial Government, the respondents were required to have posted
the appellant in District Peshawar. The departmental appeal of the

appellant was not responded to by the appellate Authority, therefore, she filed the instant Service Appeal.

2. At the very outset, learned Additional Advocate General stated at the bar that upon consulting the concerned Additional Secretary, he has been informed that the post of Principal is laying vacant in Government Girls High School Irrigation Colony Warsak Road Peshawar and that he is having no objection on transfer of the appellant to the said school. In this respect, statement of learned Additional Advocate General recorded and placed on file.

3. Learned counsel for the appellant stated at the bar that the appeal may be disposed of in light of statement of learned Additional Advocate General recorded before the Tribunal today. In this respect, statement of learned counsel for the appellant recorded and placed on file.

4. In light of the above, the respondents are directed to transfer the appellant to Government Girls High School Irrigation Colony Warsak Road Peshawar within a period of one week of receipt of copy of this order. The appeal in hand is disposed of accordingly. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED

25.06.2021

**(SALAH-UD-DIN)
MEMBER (JUDICIAL)**

**(ATIQ-UR-REHMAN WAZIR)
MEMBER (EXECUTIVE)**



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

Dated Peshawar the December 20th, 2021

NOTIFICATION

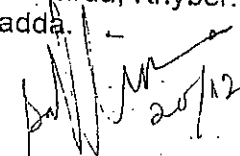
NO. SO(SF)E&SED/4-16/2021/POSTING/TRANSFER/TC: In partial modification of this Department's Notification of even number dated 14-12-2021, the place of posting of Dr. Salma Sami Principal (BS-18) may be read as GGHS Matta Palangzai District Charsadda instead of GGHS Gulabad Jamrud District Khyber.


SECRETARY TO GOVT: OF KHYBER PAKHTUNKHWA
E&SE DEPARTMENT

Endst: 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) Peshawar, Swabi & Khyber.
4. District Accounts Officer Swabi & Khyber.
5. Director EMIS, E&SE Department with the request to upload the same on the official website of the department.
6. Section Officer (Litigation-II), E&SE Department, Khyber Pakhtunkhwa.
7. PS to Secretary, E&SE Department, Khyber Pakhtunkhwa.
8. Mst. Tahira Naz Afridi Principals, GGHS Gulabad Jamrud, Khyber.
9. Principals, GGHS Matta Palangzai District Charsadda.
10. Officer concerned.


(SAMIRA MEHSOOD)
SECTION OFFICER (SCHOOLS FEMALE)


ATTESTED

Posting and Transfer

Statutory Provision.

Section 10 of the NWFP Civil Servants Act, 1973.

Posting and Transfer. Every civil servant shall be liable to serve anywhere within or outside the Province, in any post under the Federal Government, or any Provincial Government or Local authority, or a Corporation or body set up or established by any such Government:-

Provided that nothing contained in this section shall apply to a civil servant recruited specifically to serve in a particular area or region;

Provided further that, where a civil servant is required to serve in a post outside a service or cadre, his terms and conditions of service as to his pay shall not be less favourable than those to which he would have been entitled if he had not been so required to serve.

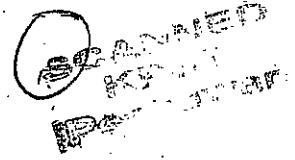
Posting/transfer policy of the Provincial Government.

- i) All the posting/transfers shall be strictly in public interest and shall not be abused/misused to victimize the Government servants
- ii) All Government servants are prohibited to exert political, Administrative or any other pressures upon the posting/transfer authorities for seeking posing/transfers of their choice and against the public interest.
- iii) All contract Government employees appointed against specific posts, can not be posted against any other post.
- iv) Existing tenure of posting/transfer of three (03) years for settled areas and two (02) years for unattractive/hard areas shall be reduced to two (02) years for settled areas, 01½ years for unattractive areas and one year for hard areas.
- v) ⁷⁹[]

⁷⁹ Para-1(v) regarding months of March and July for posting/transfer and authorities for relaxation of ban deleted vide letter No: SOR-VI (E&AD) 1-4/2008/Vol-VI, dated 3-6-2008. Consequently authorities competent under the NWFP Government Rules of Business, 1985, District Government Rules of Business 2001, Posting/Transfer Policy and other rules for the time being in force, allowed to make Posting/Transfer subject to observance of the policy and rules.

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



Service Appeal No. 1/2022

Dr. Salama Sami

VS

Govt of KP etc

.....

REPLY ON BEHALF OF RESPONDENT NO.4

.....

RESPECTFULLY SHEWETH:

Preliminary Objections:

1. The appellant has no locus standi and cause of action.
2. The appellant has not come with clean hands.
3. The appeal is time barred.
4. The appeal is not maintainable.
5. The appeal is bad for non-joinder and misjoinder of parties.
6. That according to Section-10 of the Civil Servant Act 1973 the appellant is bound to do his duty anywhere in the Province.
7. That the appellant was transferred for the reason smooth running of the deptt: it is pertinent to mentioned here but the appellant agitate the transfer order for their ulterior motives.
8. That the appellant not facing any hardship on that transferred because the Charsadda and Peshawar are nearby district, so the appellant failed to make out any hardship case which is necessary in case of transferred.

FACTS:

1. Denied for want of knowledge.
2. Denied for want of knowledge.
3. Correct to the extent of taking charge. The appellant was posted against the post of Principal (BPs-19) in own pay scale for the purpose of stop gape arrangement. Posting transfer in own pay scale is also not permissible in the eye of law.



- 4. Incorrect. The appellant was posted against the post of Principal (BPs-19) in own pay scale for the purpose of stop gape arrangement. Posting transfer in own pay scale is also not permissible in the eye of law. The appellant is not an aggrieved person but he want to do his duty on his own choice of station. Which is violation of Section-10 of the Civil Servant Act 1973. Moreover, the respondent no.4 was adjusted against the post on the direction of the Hon'able service Tribunal vide judgment dated 25.06.2021. **copy attached as annexure-R.**
- 5. Incorrect and misconceived. The application filed by the respondent no.4 for the reason the salary of the respondent no.4 was stopped. Moreover the charge was handed over to the responded no.4 on 01.01.2022 properly and the salary of the respondent was released but thereafter the Hon'able Service Tribunal suspended the transfer order of the respondent no.4. due to which the salary of the appellant was again stopped. **Coppy attached as annexure-R-1.**
- 6. Incorrect. The appellant was transferred from the post due to judgment of Hon'ble Service Tribunal Peshawar.
- 7. Denied for want of knowledge.


GROUNDS:

- A. Incorrect. The impugned order is according to law, facts, norms of justice and material on the record, hence not liable to be set aside.
- B. Incorrect and misconceived. The appellant has been treated according to law and rules by the respondent Department on the subject and as such the respondent did not violated Article-4 and-25 of the Constitution of Pakistan as according Section-10 of the Civil Servant Act 1973 the appellant is bound to serve anywhere in Province in public interest. Moreover there is no legal right created against the post appellant adjusted because it is for the purpose of stop gape arrangement.
- C. Incorrect. Hence denied. Already explained. Moreover the appellant being junior Bps-18 official has no right to adjusted against the post of BPs-19 in light of superior court judgment.
- D. Incorrect. The order has been issued in public interest. Moreover according Section-10 of the Civil Servant Act


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1973 the appellant is bound to serve anywhere in Province.

- E. Incorrect. The appellant was transferred from the post due to judgment of Hon'ble Service Tribunal Peshawar.
- F. The respondent also requested to furnished any other ground at the time of arguments.

It is, therefore, most humbly prayed that the appeal in hand may be dismissed with cost through out merit less and devoid of any legal footing.


Respondent No.4

Through:


(SYED NOMAN ALI BUKHARI)
ADVOCATE, PESHAWAR.

AFFIDAVIT

It is affirmed and declared that the contents of reply are true and correct to the best of my knowledge and belief.


DEPONENT



- 23 Account D

GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION DEPARTMENT
BLOCK A OPPOSITE MPA.S HOSTEL, CIVIL SECRETARIAT PESHAWAR
PHONE NO 091-9223588

Dated Peshawar August 12th, 2022

NOTIFICATION

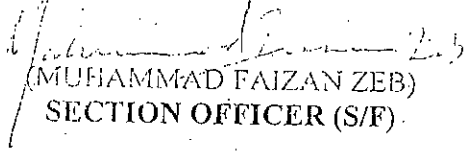
NO.SO(S/F)E&SED/4-16/2022/Posting/Transfer/36: Mst. Saima Principal (BS-18) is hereby transferred from GGHSS.Mian Gujjar Peshawar and posted at GGHSS Mologo Peshawar, against the vacant post of Principal (BS-18) with immediate effect, in the public interest.

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

Endst: of even No.& date:

Copy forwarded to the:

1. Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. District Education Officer (Female) Peshawar.
3. District Account Office Peshawar.
4. Director EMIS, E&SE Department for uploading at official website at the earliest.
5. PS to Secretary, E&SE Department.
6. Officers concerned.
7. Office order file.


(MUHAMMAD FAIZAN ZEB)
SECTION OFFICER (S/F)

11/11/22

D



GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION DEPARTMENT
BLOCK A OPPOSITE MPAS HOSTEL, CIVIL SECRETARIAT PESHAWAR
PHONE NO 091-9223588

24
Dated Peshawar, September 14th, 2022

NOTIFICATION

NO.SO(S/F)E&SED/4-16/2022/Posting/Transfer/51: Upon their promotion vide notification
No.SO(S/F)E&SED/2-3/2022/Promotion dated:20.04.2022 the following Teaching Cadre (BS-19)
Officers are hereby posted against the post mentioned against each.

Sr. #	Name/ Designation	Present Posting	To	Remarks
1	Mst. Attia Bano	GGHSS Dhamtor Abbottabad	GGHSS Sherwan Abbottabad	AVP of Principal (BS-19)
2	Mst. Tahira Tabassum	GGHSS Shahdand Baba Mardan	GGHSS Jalala Mardan	AVP of Principal (BS-19)
3	Mst. Salma Kalsoom	GGHSS Lahor Swabi	GGHS Panjpir Swabi	Vice Sr. No.12
4	Mst. Noreen Afzal	RPDC (Female) Peshawar	GGHS Prang Charsadda	AVP of Principal (BS-19)
5	Mst. Azra Begum	RPDC Malakand	RPDC Malakand	Against Sr. No.45
6	Mst. Gul E Rana	GGHSS Jogiwara Peshawar	GGHS KSK Swabi	AVP of Principal (BS-19)
7	Mst. Alia Iqbal	GGHSS Chamkani Peshawar	Shakar Dara Kohat	AVP of Principal (BS-19)
8	Mst. Ambareen Fatima	GGHSS No.2 D.I Khan	GGHSS Jandola Tank	AVP of Principal (BS-19)
9	Mst. Nusrat Parveen	GGCMHSS No.6 D.I Khan	GGHSS Karak No.1	AVP of Principal (BS-19)
10	Mst. Salima	GGHSS Toru Mardan	GGHSS Palai Malakand	AVP of Principal (BS-19)
11	Mst. Shabana Rehman	GGHS No.1 Lakki Marwat	GGHSS No.1 Serai Nurang Lakki Marwat	Vice Sr. No. 42
12	Mst. Zubaida Bibi	GGHSS Panjpir Swabi	GGHS Zaida Swabi	AVP of Principal (BS-19)
13	Mst. Fareeda Sabeen	GGHSS University Town Peshawar	GGHSS Matta Palanzai Charsadda	AVP of Principal (BS-19)
14	Mst. Shaheen Shehriaz	GGHS Takhti Nasrati Karak	GGHS Chokara Karak	AVP of Principal (BS-19)



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ELEMENTARY & SECONDARY EDUCATION DEPARTMENT
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15	Mst. Gul F Rana Sidiq	GGHSS Peshawar BSD	GGHSS No.1 Hangu	AVP of Principal (BS-19)
16	Mst. Saeeda Tabassum	GGHSS Kotha Swabi	GGHSS Shewa Swabi	AVP of Principal (BS-19)
17	Mst. Bibi Amina	GGHSS Parkho Dheri Mardan	GGHSS Hathian Mardan.	AVP of Principal (BS-19)
18	Mst. Banaras Begum	GGHSS Akora, Khattak Nowshera	GGHSS Totakan Malakand	AVP of Principal (BS-19)
19	Mst. Yasmin Ara Bibi	GGHSS Shahdand Baba Mardan	GGHSS Rustam Mardan	AVP of Principal (BS-19)
20	Mst. Shamila Tabassum	GGHSS Naivala D.J Khan	GGHSS Ismaili Mama Khel Bannu	AVP of Principal (BS-19)
21	Mst. Jamila Begum	GGHSS Matkani Malakand	GGHSS Dheri Alladand Malakand	AVP of Principal (BS-19)
22	Mst. Shaista Kanwal	GGHSS Jungle Khel Kohat	GGHSS Gumbat Kohat	AVP of Principal (BS-19)
23	Mst. Irshad Begum	GGHSS No.4 Bannu City	GGHSS Bilayar Khan Bannu	AVP of Principal (BS-19)
24	Mst. Farrah Deba	GGHSS Lahore Swabi	GGHSS Kalukhan Swabi	AVP of Principal (BS-19)
25	Mst. Farzana Yasmin	GGHSS Jungle Khel Kohat	GGHSS Qamar Zaman Mandeew Bannu.	AVP of Principal (BS-19)
26	Mst. Shaista Gul	GGHSS University Town Peshawar	GGHSS Mandani Charsadda	AVP of Principal (BS-19)
27	Mst. Romaisa Sadia	GGHSS Sahibzada Umar Khan Shahced Peshawar	GGHSS Tenkal Peshawar	AVP of Principal (BS-19)
28	Mst. Farhana	RPDC Swabi	GGHSS Kunda Swabi	AVP of Principal (BS-19)
29	Mst. Sadaf Rehana Malik	GGHSS Comprehensive Abbottabad	GGHSS Siri Kot Haripur	AVP of Principal (BS-19)
30	Mst. Syeda Tayyaba	GGHSS Comprehensive Abbottabad	GGHSS Kot NajibUllah Haripur	AVP of Principal (BS-19)
31	Mst. Shagufta Khanam	GGHSS BSD Peshawar	GGHSS Titter Khel Lakki Murwat	AVP of Principal (BS-19)
32	Mst. Iffat Begum	GGHSS Sahibzada Umar Khan Shahced Peshawar	RPDC Peshawar	AVP of Principal (BS-19)



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ELEMENTARY & SECONDARY EDUCATION DEPARTMENT
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33	Mst. Sughra Sadaf	DPD Peshawar	GGHSS Irrigation Colony Peshawar.	Vice Sr.44
34	Mst. Nusrat Hussain	GGHSS Garhi Habibullah Manshra	GGHSS Thathi Khurd Manshra -	Vice Sr. No. 41
35	Mst. Samia Danish	DC/TE Abbottabad	GGHSS Balakot	AVP of Principal (BS-19)
36	Mst. Roshan Ara	GGHSS Ningolai Swat	GGHSS Matta Swat	AVP of Principal (BS-19)
37	Mst. Ishrat Jabeen	GGHSS BSD Peshawar	GGHSS Jamrud Khyber	Vice Sr. No.43
38	Mst. Robina Farooq	GGHSS Dhamtor Abbottabad	GGHSS KTS Sector No. 2 Haripur	AVP of Principal (BS-19)
39	Mst. Zeb Jehan	GGHSS Chankani Peshawar	GGHSS Saidu No. 1 Swat	AVP of Principal (BS-19)
40	Mst. Shela Nauman	GGHSS University Town Peshawar	GGHSS Koper Malakand	AVP of Principal (BS-19)

CONSEQUENTIAL POSTING

41	Mst. Fehmida Malik, Principal (BS-18) working against the post of (BS-19) in OPS	GGHSS Thathi Khurd Manshra	GGHSS Darband Manshra	AVP of Principal (BS-18)
42	Mst. Shabana Noreen, (BS-18)	GGHSS Serai Naurang Lakki Marwat.	GGHSS No. 06 D.I Khan	Vice Sr. No. 09
43	Najma Niaz, Principal (BS-18)	GGHSS Jamrud Khyber	DPD Peshawar	Vice Sr. No.33
44	Dr. Salma Sami Principal (BS-18)	GGHSS Irrigation Colony	GGHSS Malogi, Peshawar	AVP of Principal (BS-18)
45	Dr. Dil Ara Begum Principal (BS-19)	Instructor (BS-19), RPDC Malakand (Female)	RPDC (Female) Malakand (BS-20)	Against Vacant Post of Principal (BS-20) in OPS



GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION DEPARTMENT
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- 27

SECRETARY TO GOVT. OF KHYBER PAKHTUNKHWA
E&SE DEPARTMENT

Endst: of even No. & date:

Copy forwarded to the:

1. Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. CSO to Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
3. Director, E&SE, Khyber Pakhtunkhwa, Peshawar.
4. District Education Officer (Female) concerned.
5. District Account Officer, concerned.
6. Director EMIS, E&SE Department for uploading at official website at the earliest.
7. PS to Minister for E&SE Department, Khyber Pakhtunkhwa.
8. PS to Secretary, E&SE Department.
9. PA to Additional Secretary, E&SE Department.
10. Officers/Officials Concerned.
11. Office order file.

Muhammad Faizan Zeb
(MUIHAMMAD FAIZAN ZEB)
SECTION OFFICER (S/F)

To

O. 2 B
Amit F
The Secretary
Elementary and Secondary Education
Department KPK.

Subject:- **Transfer Consequential/Posting.**

Reference your good office order NO.SO(SF)E&SED/4-16/2022/Posting/Transfer/51: Dated Peshawar, September 14th, 2022

I have been transferred to GGHSS Malogo, Peshawar on the post of Principal (BS-18) I reported my arrival in the respective school here I have been aware that the post has already been occupied/ Filled by Mst, Saima Principal (BS-18 vide your notification NO.SO(SF)E&SED/4-16/2022/Posting/Transfer/ 36: Dated Peshawar August 12th, 2022: (her office order DDO Ship copy annexed as reference)

Therefore it is requested kindly adjust me on my present post i.e. in GGHSS Malogo Peshawar.

Salma
Yours Sincerely, 15/9/22

Encls
As above

Dr, Salma Sami (Principal)
GGHS Irrigation Colony Peshawar.

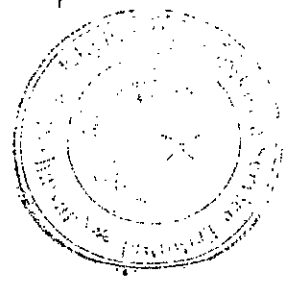
Secretary Diary

No: - 2927 -
Dt: 15/9/2022

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Amir G



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No: 01/12021

Dr. Salma Sami principal GGHS, Irrigation Colony, Warsak Road, Peshawar

.....Appellant

V E R S U S

1. The Government of Khyber Pakhtunkhwa through chief Secretary, Civil Secretariat, Peshawar
 2. The ~~Secretary~~ ~~Education~~ Section Officer (School Female) Khyber Pakhtunkhwa, Peshawar.
 3. The Elementary & Secondary Education through Secretary Education, Civil Secretariat, Peshawar.
 4. Principal GGHS Mst. Noshaba, Irrigation Colony, Warsak Road, Peshawar
 5. Principal Tahira Naz GGHS Gulabad Jamrud Khyber
-Respondents

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE TRANSFER ORDER OF THE APPELLANT, WHEREBY SHE HAS BEEN TRANSFERRED, POSTED ILLEGALLY AND UNLAWFULLY.

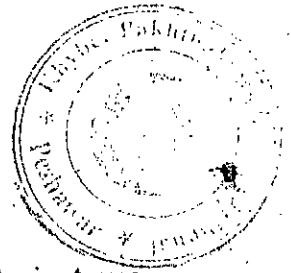
RESPECTFULLY SHEWETH:

Facts giving this present service appeal are as under;

1. That the appellant is appointed/posted against the vacant post (BPS-18) on dated 08.02.2021 as a principal GGHS Nodeh District Nowhsara vide notification NO-SO. (S/F) E&SE 4-16-2021,

Submitted to the file copy
NEET
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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08.02.2023

Learned counsel for the appellant present. Mr. Uzair Azam Khan, Additional Advocate General for the official respondents and Private Respondent No. 5 in person present.

SCANNED
KFST
Peshawar

Mrs. Rozina Rehman, Learned Member (J) is on leave today, therefore, case is adjourned to 13.03.2023 for arguments before the D.B.

(FAREEHA PAUL)
Member (E)

13th March, 2023

Learned counsel for the appellant present. Mr. Fazal Shah Mohmand, Additional Advocate General for official respondent. No. 1 to 3 and learned counsel for private respondent No. 4 present.

2. The record reflects that one Mst. Sughra Sadaf had submitted an application for her impleadment in this appeal on the strength of Transfer Notification dated 14.09.2022, copy annexed with the application. In the said Notification, the appellant was shown to have been transferred against vacant post of Principal (BPS-18) at GGHSS Malogi Peshawar. When confronted with the situation, learned counsel for the appellant submits that if a direction is given to the respondents that posting/transfer Notification issued 14.09.2022 should be actualized, he would not press this appeal. Order accordingly. Consign.

3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 13th day of March, 2023.*

Entered in the record
Khyber Pakhtunkhwa
Shariat Tribunal
Peshawar

(Salah Ud Din)
Member (Judicial)

(Kalim Arshad Khan)
Chairman

WAKALAT NAMA

IN THE COURT OF KP Service Tribunal Peshawar

Mst. Salma

Appellant(s)/Petitioner(s)

VERSUS

Dr. Salma Sami

Respondent(s)

I/We Applicant do hereby appoint **Mr. Khaled Rehman**, Advocate, Supreme Court, **Mr. Muhammad Amin Ayub & Muhammad Ghazanfar Ali**, Advocates in the above mentioned case, to do all or any of the following acts, deeds and things.

1. To appear, act and plead for me/us in the above mentioned case in this Court/Tribunal in which the same may be tried or heard and any other proceedings arising out of or connected therewith.
2. To sign, verify and file or withdraw all proceedings, petitions, appeals, affidavits and applications for compromise or withdrawal or for submission to arbitration of the said case, or any other documents, as may be deemed necessary or advisable by them for the conduct, prosecution or defence of the said case at all its stages.
3. To receive payment of, and issue receipts for, all moneys that may be or become due and payable to us during the course of proceedings.

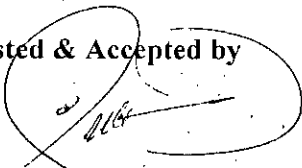
AND hereby agree:-

- a. That the Advocate(s) shall be entitled to withdraw from the prosecution of the said case if the whole or any part of the agreed fee remains unpaid.

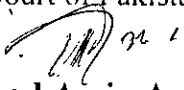
In witness whereof I/We have signed this Wakalat Nama hereunder, the contents of which have been read/explained to me/us and fully understood by me/us this _____

Attested & Accepted by


Signature of Executants


Khaled Rahman,
Advocate,
Supreme Court of Pakistan

&


Muhammad Amin Ayub
Advocate, High Court

&


Muhammad Ghazanfar Ali
Advocate, High Court

4-B, Haroon Mansion
Khyber Bazar, Peshawar
Off: Tel: 091-2592458