Next Date of Hearing 3005-2023

# BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No.4996/2021

Mst.Muhsina, S.T.T. GGHS Malik Abad (Gadoon),District Swabi.. Appellan

### **VERSUS**

1. District Education Officer (Female) Swabi.

24 July 20

2. Deputy Director (Female) Elementary and Secondary Education, Khyber Pakhtunkhwa, Peshawar.

- 3. Director Elementary and Secondary Education, Khyber Pakhtunkhwa, Peshawar.

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DISTRICT EDUCAT

(FEMALTE) SWAB District Edugation Officer

tfemále) Swall

### BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No.4996/2021 Mst.Muhsina, S.T.T. GGHS Malik Abad (Gadoon), District Swabi.. **Appellant** 

### VERSUS

- 1. District Education Officer (Female) Swabi.
- 2. Deputy Director (Female) Elementary and Secondary Education, Khyber Pakhtunkhwa, Peshawar.
- 3. Director Elementary and Secondary Education, Khyber Pakhtunkhwa, Peshawar.

# Compliance of order sheet dated 1.04.2023 with concise statement.

### Respectfully Sheweth,

In compliance of the order sheet, of the Honourable Service Tribunal Peshawar dated 10/04/2023 in Service appeal number 4996/2021, wherein the respondents were directed to produce all the documents, which must include the minutes of DPC of the year, 2013, copies of all the educational testimonial of the appellant etc;. The same are hereby produced/placed on file for just and fair disposal of the appeal with concise statement as under.

1. That in DPC meeting, the total TT (F) posts BPS-15 duly verified by the DAO, Swabi were 96, wherein 1/3 share reserved for promotion of Senior TT posts BPS-16 were 32. The appellant was placed at Scrial Number 50 of the seniority list prepared for TT BPS-15 posts at the time of DPC, which is not disputed at all. Up to serial number 50 (which was the seniority number of the appellant only nine (09) TT BPS-15 were considered suitable for promotion to the post of senior TT (BPS-16) on regular basis with immediate effect, one was deferred, due to documents not available and forty (40) including the appellant at last serial number fifty (50) were "Not considered for promotion as not having required qualifications for post." All the TTs (BPS-15) cases for the purpose of promotion to Senior TT (BPS-16) were discussed and the number of Female TTs cleared for promotion was 18 while number of Female TTs deferred for promotion was 02. Thus at the first time it is beyond the shadow of any doubt the appellant was superseded by the Departmental Selection Committee (DPC), she did not file any departmental appeal against this decision. The appellant for the first time entered, the SSC equivalence certificate issued by the IBCC Islamabad, obtained 464 marks out of 900 with 2<sup>nd</sup> division on 19/07/2016. Thus she brought her SSC 2<sup>nd</sup> division IBCC certificate into the notice of the respondents on 19/07/2016 which is clear from the first page of the Service Book annexed with all aducational testimonial of this statement. She was promoted to STT BPS-16 in the next available DPC dated 23/02/2017 accordingly. In the light of judgment passed in SA No.734/2019 dated 07/10/2021 by this Honourable sce Service Tribunal Peshawar, "it is undisputed that IBCC qualification is

equivalent to BISE qualification but such qualification is not required as

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per appointment and promotion Rules 13/11/2012, therefore, undue favour is done to the appellant, hence the order of promotion dated 23/02/2017 is also liable to be set aside, thus the appellant is not entitled for grant of relief prayed for. The authentication of Madrassa and approved mode of Education for the purpose of recognition of final deeni sanad is also placed on record. There is no fundamental right with regard to the posting, transfer or promotion as such. Same is reported in 2009 SCMR 6. Moreover, it is a well settled principle of interpretation of notification and or an executive order that the same can operate prospectively and not retrospectively. Same is reported in PLD 1997 SC 315. No one can claim any benefit after lapse of five years. Same is reported in 2015 PLC (C.S) 1285. DPC Minutes 2013, Judgment CP No. 511-P of 2013 dated 05/10/2020, Judgment in SA No. 7145/2021 dated 01/11/2022,dated 15/11/2017, 03/10/2022, HEC letter, judgment dated 14/11/2018 & Judgment in SA No. 734/2019 dated 07/10/2021annexed as A, B, C, D, E, F, G & H.

2. That the appellant was SSC 3<sup>rd</sup> division with Shahadatul Alamiya while the eligibility criteria for promotion to the post of STT BPS-16, prescribed two qualifications, second class SSC from a recognized Board with Shahadatul Alamiya from a recognized Board/Government run Daraul Uloom, wherein candidate has both these qualifications, he/she can be held eligible for promotion to the post of STT BPS-16, otherwise he/she cannot be considered for promotion for lacking the basic eligibility criteria. Reliance in placed on judgment PHCP dated 15/11/2017. SSC & FA Certificates, Deeni Asnaad & Service Book annexed as I, J & K.

In view of stated submission it is earnestly requested that the service appeal may very graciously be dismissed with special compensatory cost in favour respondents.

DISTRICT EDUCATOR OF VICER
(FEMALE) SVASI

District Edization Of Female I Swah

# Affidavit

I Sofia Tabassum District Education Officer (Female) Swabi do hereby solemnly affirm and declare on oath that the contents of the concise statement alongwith para-wise comments submitted by respondents is true and correct to the best of my knowledge and belief and nothing has been concealed from this Honourable Tribunal.

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DISTRICT EDUCATION OF RICER
(FEMALE) SMAB)

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39	39	Tasrul Jehan	GGHS Parmoli	11/05/1981	Considered suitable for promotion to the post of Senior AT (BPS-16) on regular basis with immediate effect.
40	40	Samin Begum	GGMS, Saproona	01/01/1978	Not Considered for promotion, as not having required qualifications for post.
41	41	, Fatma	GGHS Adina	04/06/1973	Considered suitable for promotion to the post of Senior AT (BPS-16) on regular basis with immediate effect.
42	42	Shaheen Begum	GGHS KSK	20/11/1973	Considered suitable for promotion to the post of Senior AT (BPS-16) on regular basis with immediate effect.
43	43	Rahat Yasmin	GGHS Kaddi	31/01/1978	Considered suitable for promotion to the post of Senior AT (BPS-16) on regular basis with immediate effect.
44	44	Farah Seema	GGHS Zaida	21/11/1978	Considered suitable for promotion to the post of Senior AT (BPS-16) on regular basis with immediate effect.
45	45	Mushfiq Begum	GGMS Rafiq Abad	02/02/198 0	Considered suitable for promotion to the post of Senior AT (BPS-16) on regular basis with immediate effect.
46	46	Anwar Zia	GGMS Marghuz	01/03/1981	Considered suitable for promotion to the post of Senior AT (BPS-16) on regular basis with immediate effect.
47	.47	Bibi Shaista	GGMS Ambar	04/04/1982	Considered suitable for promotion to the post of Senior AT (BPS-16) on regular basis with immediate effect.
48	48	Nusrat Hayat	GGMS Shera Ghund	10/03/1983	Considered suitable for promotion to the post of Senior AT (BPS-16) on regular basis with immediate effect.
49	49	Maryam Rauf	GGHS Dagai gadon	25/03/1986	Considered suitable for promotion to the post of Senior AT (BPS-16) on regular basis with immediate effect.
50	50	Rabia Ali	GGMS Takail	08/03/198 8	Considered suitable for promotion to the post of Senior AT (BPS-16) on regular basis with immediate effect.
51	51	Lubna	GGMS Mathra Dagai	01/02/1982	Considered suitable for promotion to the post of Senior AT (BPS-16) on regular basis with immediate effect.
52	52	Sajia Jamal	GGMS Tordher	18/10/1979	Considered suitable for promotion to the post of Senior AT (BPS-16) on regular basis with immediate effect.

Number of Female ATs cleared for promotion

Number of Female ATs cleared for promotion

02

### ITEM NO.5 PROMOTION OF TT (FEMALE) FROM BS-15 TO SENIOR TT **BPS-16 ON REGULAR BASIS**

The case of promotion of TT (Female) from BPS-15 to Senior TT BPS-16 against upgraded posts was considered and the DPC recommended as under:

Total No. of TT (F) Posts duly verified by the DAO	96
1/3 share of Senior TT Posts	32
Share of promotion 100 %	32
Net to be promoted	32
Proposed for promotion	32 <sub>pisteri</sub>

S.#	S.L. No	Name of Official	Place of Posting	Date of Birth	Remarks
1	1	Ijazia Bibi	GGHS Sarwar Shah Kote	03/05/1960	Not Considered for promotion, as not having required qualifications for post.
2	2	Nami Begum	GGHSS Kalu Khan	01/06/1960	Not Considered for promotion, as not having required qualifications for post.
3	3	Meher Afzoon	GGHSS Lahor	09/03/1955	Not Considered for promotion, as not having required qualifications for post.



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	4		GGHS Turlandi	31/12/1900	Not Considered for promotion, as not having required qualifications for post.
;	5				Not Considered for promotion, as not having required qualifications for post.
		Calaban	GGHS Zaida		Not Considered for promotion, as not
5	6	Gohar	GGHS Zalaa		having required qualifications for post. Not Considered for promotion, as not
7 .	7		Ismaila	01/01/1961	having required qualifications for post. Not Considered for promotion, as not
3	8	Parven	GGHS KSK	15/06/1904	having required qualifications for post.
,	9	Ghazal Yasmin	GGHS Dobian	18/02/1968	Not Considered for promotion, as not having required qualifications for post.
10.	10	Shamsun	GGMS Shera	06/03/1968	Not Considered for promotion, as not having required qualifications for post.
		Nehar Rozia	Ghund GGMS Mathra	02/05/1969	Not Considered for promotion, as not having required qualifications for post.
11	11	Begum	Dagai	02/03/1909	Not Considered for promotion, as not
12	12	Shahida Gul	GGMS P.Hemlet	25/05/1966	having required qualifications for post.  Not Considered for promotion, as not
13	13	Sabeha Khanum	GGHS Beka	01/01/1973	having required qualifications for post.  Not Considered for promotion, as not
14	14	Anwar Begum	GGHS Shahmansoor	15/12/1970	having required qualifications for post.
15	15	Alia Anjum	GGHS Maneri Bala	08/10/1972	Deferred, documents not available.
16	16	Nabeela	GGHS Yar Hussain	04/04/1974	Not Considered for promotion, as not having required qualifications for post.
17	17	Riasat	GGHS Kalu	15/08/1969	Not Considered for promotion, as not having required qualifications for post.
	-/	Naz Shahana	Dher	, ,	Considered suitable for promotion to the post of Senior TT (BPS-16) on regular basis with
18	18	Tabassum	GGHS Kaddi	15/01/1973	immediate effect
19	19	Samia Gul	GGHSS Topi ;	12/06/1967	Not Considered for promotion, as not having required qualifications for post.  Not Considered for promotion, as not
20	20	Fehmida Begum	GGHS Jalsai	10/04/1974	Laving required qualifications for post-
21	21	Shaheen Akhtar	GGMS · · Tordher	04/01/1955	Not Considered for promotion, as not having required qualifications for post.  Not Considered for promotion, as not
22	22	Sadaqat	GGHS Tordher	14/04/1963	having required qualifications for post.
23	23	Momin Taj	GGHS Kabgani	09/05/1975	Not Considered for promotion, as not having required qualifications for post.  Not Considered for promotion, as not
24.	24	Zakia Haider	GGHS Adina	16/05/1972	having required qualifications for post.
25	25	Zeenat Begum	GGHS Tarakai	16/04/1964	Not Considered for promotion, as not having required qualifications for post.
26	26	Basmina	GGHS Maini	10/06/1969	Not Considered for promotion, as not having required qualifications for post.
<del>-</del>	27	Salma.	GGHS Kunda	14/04/1972	Not Considered for promotion, as not having required qualifications for post.
27	+	Nureen Sharafat	GGMS	01/10/1976	Not Considered for promotion, as not
28	28	Begum	Roshan Pura	01/10/19/0	having required qualifications for post.  Considered suitable for promotion to the post
29	29	Nusrat Bibi	GGHS Manki	26/02/1976	of Senior TT (BPS-16) on regular basis with immediate effect.
30	30	Nazia	GGMS Kula Dhand	01/04/1976	Considered suitable for promotion to the post of Senior TT (BPS-16) on regular basis with immediate effect.
31	31	Rukhsana Parveen	GGMS Panj Pir	12/02/1971	Not Considered for promotion, as not having required qualifications for post
32	32	Aafia	GGHS Panj Pir	01/08/1973	Not Considered for promotion, as not having required qualifications for post
33	33	Fozia Nafees	GGMS Bazargi	06/07/1968	Considered suitable for promotion to the post of Senior TT (BPS-16) on regular basis with immediate effect.
1	34	Shehnaz Begum	GGCMHS Swabi	01/12/1970	Not Considered for promotion, as not having required qualifications for pos
34	34				
34 035	35	Sarwat Shehnaz	GGMs Jamal Abad	01/01/1972	Not Considered for promotion, as not having required qualifications for post Considered suitable for promotion to the pos

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37	37		GGMS Sheikh Jana	20/08/1973	Considered suitable for promotion to the post of Senior TT (BPS-16) on regular basis with immediate effect
38	38	Minhaz Begum	GGHS Dagai	05/10/1975	Considered suitable for promotion to the post of Senior TT (BPS-16) on regular basis with immediate effect
 39	39	Shaheen Begum	GGCMHS Swabi	01/04/1978	Not Considered for promotion, as not having required qualifications for post
10	40	Zakia Dibi	GGHS Yaqoobi	20/12/1972	Considered suitable for promotion to the post of Senior TT (BPS-16) on regular basis with immediate effect
<b>41</b> .	41	Waqarun	GGHSS Kalabat	01/04/1968	Not Considered for promotion, as not having required qualifications for post.
 12	42	Nisa Meraj Begum	GGHS Permoli	01/01/1967	Not Considered for promotion, as not having required qualifications for post.
43	43	Musarrat Shaheen	GGMS Kunda	01/01/1960	Not Considered for promotion, as not having required qualifications for post.
14	44	Falak Naz	GGHS Jehangira	01/01/1969	Not Considered for promotion, as not having required qualifications for post.
15	45	Nasira .	GGHS Marghuz	12/12/1972	Not Considered for promotion, as not having required qualifications for post.
,6 46	46	Yasmin	GGMS	06/01/1975	Not Considered for promotion, as not having required qualifications for post.
	<u>'</u>	Begum Ayeha	Saproona GGMS		Not Considered for promotion, as not
47	47	Rafiq	Daulat	27/11/1977	having required qualifications for post.  Considered suitable for promotion to the post
48	48	Zahira Begum	GGMS-Hund	04/02/1982	of Senior TI (BPS-16) on regular basis with immediate effect
49	49	Uzma Nosheen	GGHS Bamkhel	13/04/1984	Not Considered for promotion, as not having required qualifications for post.
50	50	Mohsina	GGHS Utla	01/07/1984	Not Considered for promotion, as not having required qualifications for post
51	51	Shazia Gul	GGMS Lahor	13/01/1974	Not Considered for promotion, as not having required qualifications for post.
52	52	Zar Sanga	GGHSS Shewa	04/04/1976	Not Considered for promotion, as not having required qualifications for post.
53	53	Yasınin Sultana	GGHS Dodher	04/04/1974	Considered suitable for promotion to the post of Senior TT (BPS-16) on regular basis with immediate effect
<u></u> 54	54	Mehnaz	GGMS Gani Chatra	10/03/1984	Considered suitable for promotion to the post of Senior TT (BPS-16) on regular basis with immediate effect
55	55	Saleema Ali	GGMS Takail	18/04/1987	Considered suitable for promotion to the post of Senior, TT (BPS-16) on regular basis with immediate effect
56	56	Huma	GGMS	14/05/1972	Not Considered for promotion, as not having required qualifications for pos
		Gul Sacedun	Marghuz GGMS Juma	01/01/1975	Deferred, documents not available.
<i>57</i> 58	57	Nisa Humaira	Khan Garhi GGHS M/Khel	25/05/1976	Considered suitable for promotion to the pos of Senior TT (BPS-16) on regular basis with
	-	Shamim	Zaida GGHS Sard	27/12/1979	immediate effect  Considered suitable for promotion to the post of Senior TT (BPS-16) on regular basis with
59	59	Bano	China GGMS Saidu		immediate effect  Not Considered for promotion, as not
60	60	Tasleem Khan	Dher	20/04/1980	having required qualifications for pos Considered suitable for promotion to the pos
61	61	Sumaira	GGHS Shamroz Abad	02/05/1981	of Senior TT (BPS-16) on regular basis with immediate effect
62	62	Najma Bibi	GGMS Mia Dher	25/04/1983	Considered suitable for promotion to the pos of Senior TT (BPS-16) on regular basis with immediate effect
63	63	Sima Gul	GGHS Pabaini	02/08/1986	muting required qualifications jet poo
194	64	Nadia Gul	GGMS Ambar	17/12/1988	Not Considered for promotion, as not having required qualifications for pos
65 65	65	Samia Naz	GGMS Maneri bala	02/02/1974	Not Considered for promotion, as not having required qualifications for pos
66	66	Shaista begum	GGHS Zarobi	17/05/1974	Considered suitable for promotion to the pos of Senior TT (BPS-16) on regular basis with immediate effect

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67	67	Nazish Begum	GGMS Dhandoka	01/02/1984	Considered suitable for promotion to the post of Senior TT (BPS-16) on regular basis with immediate effect

Number of Female TTs cleared for promotion

= 18

Number of Female TTs deferred for promotion

3. The meeting ended with a sote of thanks to and from the chair.

Muhammad Rafiq Khattak Director Elementary & Secondary Education Khyber Pakhtynkhwa

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Zuhra Begum
Deputy Director
Elementary & Secondary Education
Khyber Pakhtunkhwa

Deputy Secretary

Elementary & Secondary Education

Khyber Pakhtunkhwa

Samina Ghani District Education Officer Female Swabi

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Annexuse-B

# IN THE SUPREME COURT OF PAKISTAN (APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE GULZAR AHMED, HCJ

MR. JUSTICE FAISAL ARAB MR. JUSTICE IJAZ UL AHSAN

CIVIL PETITION NO. 511-P OF 2013

(On appeal against the judgment dated 12.05.2013 passed by Peshawar High Court, Peshawar in Writ Pelition No. 3647/2010)

Government of KPK through Chief Secretary, Peshawar etc

...Petitioner(s)

#### **VERSUS**

Zia ul Haq and others

...Respondent(s)

For the Petitioner(s):

Barrister Qasim Wadood, Addl. A.G. KPK Mr. Hamid Saleem, Law Officer, PSC KP

Mr. Mchtab Gul, Law Officer, PSC KP

For the Respondents:

Mr. Zia ur Rohman Tajik, ASC

(For respondent No. 1)

Nemo

(For respondent Nos. 2-5)

Date of hearing:

05.10.2020

#### ORDER

GULZAR AHMED, CJ. An advertisement was published on 22.04.2009 for making appointment of District Public Prosecutor (BS-17). Respondent No. 1 (the respondent) applied for the said post. Test and interview was field but his name was not shown in the merit list. The respondent filed writ petition in the Peshawar High Court, Peshawar and through the impugned judgment dated 12.06.2013 the petitioners were directed to give two additional marks to the respondent for his additional qualification and thereafter to prepare the merit list.

2. Learned Additional Advocate General has contended that the two additional marks could have been granted to the

Assistant Registrar Supreme Court of Pakistan Peshawar.

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# Directorate of Elementary and Secondary Education Khyber Pakhtunkhwa



## MINUTES OF THE MEETING OF DEPARTMENTAL PROMOTION COMMITTEE

- 1. PROMOTION OF CT (FEMALE) FROM BS-15 TO SENIOR CT BPS-16 ON REGULAR BASIS
- 2.PROMOTION OF DM (FEMALE) FROM BS-15 TO SENIOR DM BPS-16 ON REGULAR BASIS
- 3. PROMOTION OF PET (FEMALE) FROM BS-15 TO SENIOR PET BPS-16 ON REGULAR BASIS
- 4. PROMOTION OF AT (FEMALE) FROM BS-15 TO SENIOR AT BPS-16 ON REGULAR BASIS
- 5. PROMOTION OF TT (FEMALE) FROM BS-15 TO SENIOR TT BPS-16 ON REGULAR BASIS

(Female)



District Sawabi

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In Chair



# Directorate of Elementary and Secondary Education Khyber Pakhtunkhwa Peshawar

PH No. 091-9210389, 9210938, 9210437,9210957, 9210468 Fax 091-9210936,0800-33857 E-mail rafiq\_kk851@yahoo.com

# MINUTES OF THE MEETING OF DEPARTMENTAL PROMOTION COMMITTEE HELD ON 20.02.2013 AT 9:30 AM IN OFFICE OF THE DIRECTOR (E&SE) KHYBER PAKHTUN KHWA PESHAWAR.

A meeting of the Departmental Promotion Committee was held on 20-02-2013 at 9:30 AM under the Chairmanship of Director Elementary & Secondary Education Khyber Pakhtunkhwa to discuss the promotion cases of Female ,CT B-15 to Senior CT B-16, DM B-15 to Senior DM B-16, PET B-15 to Senior PET B-16 AT B-15 to Senior AT B-16 and TT-15 to Senior TT B-16, of the Elementary & Secondary Education Department. The following attended the meeting:

1. Muhammad Rafiq Khattak

> Director Elementary & Secondary Education Khyber Pakhtunkhwa

2. **Deputy Secretary**Elementary & Secondary
Education Khyber
Pakhtunkhwa

4. **Samina Ghani**District Education Officer
Female Swabi

District (4) Septimen

2. The meeting started with recitation from the Holy Quran. The Chair welcomed the participants. The following items were considered by the DPC and the decisions recorded are reflected against each item:

# <u>ITEM NO.1</u> <u>PROMOTION OF CT (FEMALE) FROM BS-15 TO SENIOR CT BPS-16 ON REGULAR BASIS</u>

The case of promotion of CT (Female) from BPS-15 to Senior CT BPS-16 against upgraded posts was considered and the DPC recommended as under:

Total No. of CT(F) Posts duly verified by the DAO	294
1/3 share of Senior CT Posts	98
Share of promotion 100%	98
Net to be Promoted	98
Proposed for promotion	98

(10)

respondent had the respondent declared his additional qualification in his application for the said post. However, the respondent did not declare his additional qualification and, therefore, the additional marks were not granted to him.

- 3. On the other hand, learned counsel for the respondent contends that the respondent had additional qualification of M.A. Political Science but he did not mention such additional qualification in his application for the reason that he did not had in his hand the degree. He further contends that subsequently the respondent obtained the marks-sheet as well as the degree of M/Political Science and filed the same in the Public Service Commission for considering him for being appointed to the post he has applied. Learned counsel in support of his submissions has relied upon the judgments of this Court reported as Habibus Rehman Vs. Government of Pakistan (1979 SCMR 121) and Jahanzaib Malik Vs. Balochistan Public Procurement Regulators Authority (2018 SCMR 414).
- disclose his additional qualification in his application, which he submitted before the Public Service Commission for being appointed as District Public Prosecutor (BS-17). It is the claim of the respondent that he filed the result as well as the degree of his additional qualification of MA Political Science with the Public Service Commission in November, 2009. Learned counsel however, has failed to point out any document which may show that the respondent has submitted the documents of his additional qualification in the Public Service Commission.
- 5. In any case, we note that the respondent's marks-sheet, which he has filed with CMA No. 908-P/2020 at page 18.

As sistant Registrar Supreme Court of Paklatan Peshawar.

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shows that the respondent has appeared in Master of Arts in Political Science Final Annual Examination 2006. It also shows that it was issued on 29.08.2009. However, the photo copy of the degree which is at page 13 of the said CMA shows that respond not has appeared in the annual examination of 2006 and obtained Master in Arts degree in Political Science and such degree was issued to the respondent on 30.08.2009.

- We are not at all satisfied with the reply of the learned counsel for the respondent for the reason that way back in the examination of 2006, he is said to have passed MA Political Science but when he put up the application against the advertisement, he did not mention his additional qualification of MA Political Science. No reason has been given by the learned counsel for the respondent as to why the respondent did  $\boldsymbol{n}^{-\epsilon}$ mention his additional qualification except that the respondent del not possess the documents of his additional qualification. Wherea the factum of additional qualification was known to the respondent, he ought to have mentioned the same in his application form submitted to the KP Public Service Commission but he did not and came up with this additional qualification who. the process of appointment was on the verge of completion. In our. view, the KP Public Service Commission was justified in not showing the name of the respondent on the merit list for which respondent himself is to be blamed and no one else.
- 7. The two judgments referred above by the learned counsel for the respondents are distinguishable from the facts and circumstances of the present case for the reason that one is in respect of domicile and in the other the candidate had declared his qualification while applying for the post and merely on obtaining

ATTESTED

Assistant Rogistrar

Supreme Court of Pakistan

Peshawar.

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the degree subsequently, the Court held that he will not be debarred from being considered for appointment. The present case where the respondent himself did not at all mention about his additional qualification in the application, he cannot be allowed to take up the plea that he got copy of the marks-sheet and degree subsequently and thus was entitled to grant of additional marks. Looking from this langel, we find that the impugned judgment suffers from illegality in that it did not give material weight to the fact that the respondent has not at all mentioned about his additional qualification in his application submitted to the KPK Public Service Commission. Had he mentioned about his qualification, his case would have been covered by the latter mentioned judgment.

For the forgoing reasons, this petition is converted into appeal and allowed and the impugned judgment is set aside.

### CMA No. 730-P/2013

Since, the main petition has been converted into appeal and allowed, this CMA has become infructous and is



Sd- Gulzar Ahmed, HCJ Sd- Faisal Arab, J Sd- Ijaz ul Ahsan, J

Certified to be true conv

Peshawar.

<u>Peshawar, the</u> 5th of October, 2020 Approved For Reporting

Annexure

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 7/45 /2021

Diary No. 6874

Mr. Said Ul Islam, CT (BPS-15), GHS Anbar, District Swabi....

APPELLANT

### **VERSUS**

1- The Secretary Elementary & Secondary Education Department, Khyber Pakhtunkhwa Peshawar.

2- The Secretary Establishment Department, Khyber Pakhtunkhwa, Peshawar.

3- The Secretary Finance Department; Khyber Pakhtunkhwa, Peshawar.

4- The Director Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.

5- The District Education Officer, (Male) District Swabi.

.....RESPONDENTS

UNDER SECTION 4 THE KHYBER PAKHTUNKWA SERVICE TRIBUNAL ACT, 1974 AGAINST INACTION **RESPONDENTS** OF THE CONSIDERING THE APPELLANT FOR PROMOTION TO THE POST OF S.S.T (BPS-16) ON THE BASIS HAVING BACHELOR DEGREE IN 3RD DIVISION AND AGAINST THE SERVICE RULES NOTIFIED ON 24.7.2014 WHEREBY THE CONDITION OF BACHELOR 2ND DIVISION HAS BEEN INSERTED IN SERIAL NO.1B, COLUMN NO.3(i) OF THE TABLE AND AGAINST NOT TAKING **ACTION** DEPARTMENTAL APPEAL OF **APPELLANT** 

**STATUTORY PERIOD OF NINTY DAYS** 

PRAYER:

That on acceptance of this appeal the impugned service Rules dated 24.7.2014 may kindly be modified to the extent that the condition of Second Division/Class be deleted/expunged from Column No.3 (i), serial No.1B of the table and the respondents may kindly be directed to consider the appellant for promotion to the post of Secondary School Teacher (BPS-16) from the date when his Colleagues and junior colleagues were promoted with all consequential back benefits including seniority. Any other remedy which this august Tribunal deems fit that may also be awarded in favour of the appellant.

# R/SHEWETH: ON FACTS:

Brief facts giving rise on the present appeal are as under the sum of the sum

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Re-submitted to -day

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### BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

Service Appeal No. 7145/2021

Date of Institution... 08.07.2021

Date of Decision ... 01.11.2022



Said Ul Islam, CT (BPS-15), GHS Anbar, District Swabi.

... (Appellant)

The Secretary Elementary & Secondary Education Department, Khyber Pakhtunkhwa Peshawar and 04 others.

(Respondents)

MR. MUNFAT ALI,

Advocate

For appellant.

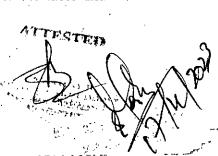
MR. ASIF MASOOD ALI SHAH, Deputy District Attorney

For respondents.

SALAH-UD-DIN MIAN MUHAMMAD MEMBER (JUDICIAL) MEMBER (EXECUTIVE)

JUDGMENT:

SALAII-UD-DIN, MEMBER:- The appellant has filed the instant appeal under Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, against the inaction of the respondents by not considering the appellant for promotion to the post of S.S.T (BPS-16) on the basis of having bachelor degree in 3<sup>rd</sup> Division and against the service rules notified on 24.07.2014 whereby the condition of bachelor 2<sup>nd</sup> division has been inserted in serial No. 1B, column No. 3(i) of the table and





against not taking action on departmental appeal of appellant within statutory period of ninety days.

- are that the appellant has challenged the Notification No. SO(PE)4-5/SSRC/meeting/2013/Teaching Cadre dated 24<sup>th</sup> July, 2014 to the extent, whereby Second Class Bachelor Degree from a recognized University has been mentioned as first requirement for initial recruitment as well as promotion to the post of Secondary School Teacher (BPS-16). The appellant has alleged that as he has obtained Master Degree, therefore, he was eligible to have been considered and promoted to the post of SST (BPS-16) particularly, when other colleagues of the appellant have been granted the same relief by honourable Peshawar High Court, Peshawar. The appellant filed departmental appeal, however the same was not responded within the statutory period, hence the appellant filed the instant appeal for redressal of his grievance.
- 3. Notices were issued to the respondents, who submitted their parawise comments, wherein they denied the contentions raised by the appellant in his appeal.
- 4. Learned counsel for the appellant has argued that the impugned Notification dated 24.07.2014 to the extent of requirement of Second Class Bachelor Degree for promotion to the post of SST (BPS-16) is in violation of rights of the appellant guaranteed under Articles 4 & 25 of the Constitution of Islamic Republic of Pakistan, 1973. He next argued that the appellant was though having 3<sup>rd</sup> Division Bachelor Degree, however he has later on obtained Master Degree, therefore, he

Service Tribung

(16)

that he had passed Bachelor Degree in 3<sup>rd</sup> Division. He further argued that as other colleagues of the appellant had been granted the same relief through judgments dated 28.01.2016 and 05.04.2016 passed by honourable Peshawar High Court in Writ Petition No. 73-B/2014 and Wirt Petition No. 1041-A/2015 respectively, therefore, the appellant being similarly placed employee was also entitled to the same relief. He next argued that the Establishment department has issued Notification dated 15.12.2011 whereby amendment has been made in PMS Rules, 2007 by providing that a candidate who had obtained 3<sup>rd</sup> Division Bachelor Degree will be eligible for examination in case where he/she has obtained a higher Division in Master Degree.

Conversely, learned Deputy District Attorney for the respondents has contended that Second Class Bachelor Degree from a recognized university is first requirement for promotion to the post of SST (BPS-16), while the appellant has obtained Bachelor Degree in 3<sup>rd</sup> Division, therefore, he is not at all eligible for promotion to the post of SST (BPS-16). He next contended that passing of Bachelor examination in 2<sup>rd</sup> Division was introduced through the impugned Notification for the purpose of enhancing quality of education, therefore, the appellant cannot claim that the same has violated his rights provided under Articles 4 & 25 of constitution of Islamic Republic of Pakistan. He further argued that the appellant has not put forward any legal and justified reason, which could be considered for declaring the condition of requirement of Second Class Bachelor Degree for promotion to the

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concerned post as ultra vires. He also argued that judgments dated 04.06.2015, 08.12.2015 and 05.04.2016 rendered by honourable Peshawar High Court, Peshawar are of no benefit to the appellant in view of order dated 06.04.2022 passed by August apex court in Civil Appeal No. 2039 of 2019 and Civil Petitions No. 91-P and 92-P of 2016, whereby judgment dated 13.02.2017 passed by honourable Peshawar High Court, granting similar relief to petitioners in Writ Petition No. 559-A/2016, has been set-aside. In the last, he argued that this Tribunal has already decided the issue in question, wherein same relief as sought by the appellant in the instant appeal, has been denied by this Tribunal through its judgment dated 14.09.2022 passed in Service Appeal bearing No. 8647/2016 titled "Wisal Muhammad Versus Secretary Elementary & Secondary Education Department, Khyber Pakhtunkhwa Peshawar and four others", therefore, the appeal in hand is liable to be dismissed.

- 6. We have heard the arguments of learned counsel for the appellant as well as learned Assistant Advocate General for the respondents and have perused the record.
- 7. Keeping in view the respective arguments of both the sides a perusal of the record would show that it is main contention of the appellant that as some of his colleagues having 3<sup>rd</sup> Division Bachelor Degrees have been granted promotion in light of various judgments of honourable Peshawar High Court, Peshawar, therefore, the appellant being similarly placed employee is also entitled to the said relief. In this respect, reliance has been placed on judgment dated 05.04.2016 rendered

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in Writ Petition No. 1041-A/2015 titled "Muhammad Baqi Versus Government of Khyber Pakhtunkhwa through Secretary (Elementary & Secondary Education), Peshawar and two others". We have gone through the afore-mentioned judgment and have observed that while accepting the Writ Petition, reference has been made to judgment dated 04.06.2015 rendered by honourable Peshawar High Court in Writ Petition No. 58-B/2014 titled "Waris Khan Versus Government of Khyber Pakhtunkhwa and 05 others". August apex court in its order dated 06.04.2022, passed in Civil Appeal No. 2039 of 2019 and Civil Petitions No. 91-P and 92-P of 2016, has observed as below:-

We note that Civil Petition No.92-P/2016 has been filed against a judgment of the Peshawar High Court dated 08.12.2015 in Writ Petition No. 87-B/2014 titled "Mst. Yasmin Vs. Government of Khyber Pakhtunkhwa etc" and Civil Petition No. 91-P/2016 against a judgment of the Peshawar High Court dated 04.06,2015 in Writ Petition No. 58-B/2014 titled "Waris Khan Vs. Govt. of Khyber Pakhtunkhwa and 05 others". We have also been informed that the judgment in the case titled "Muhammad Baqi Vs. Government Khyber Pakhtunkhwa Sccretary (Elementary & Secondary Education), Peshawar and 02 others" which has been relied upon by the Peshawar High Court in the impugned judgment was challenged before this Court but was dismissed on account of limitation and was not decided on merits.

5. Civil Petitions No. 91-P and 92-P/2016 have been filed beyond the period of limitation. The applications for condonation of delay (C.M.As.No.149-P and 151-P/2016) do not disclose any sufficient cause that may



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constitute basis within the contemplation of the 1908 , for condonation Limitation | Act, delay. Consequently, the applications for condonation of delay are dismissed. The petitions are dismissed as barred by time. It is, however, clarified that the judgment dated 08.12.2015 rendered in Writ Petition No. 87-B/2014 titled "Mst. Yasmin Vs. Government of Khyber Pakhtunkhwa etc.", judgment 04.06.2015 rendered in Writ Petition No. 58-B/2014 titled "Waris Khan Vs. Govt. of Khyber Pakhtunkhwa and 05others" and the judgment dated 05.04.2016 rendered in Writ Petition No. 1041-A/2015 titled "Muhammad Bagi Vs. Government of Khyber Pakhtunkhwa through Secretary (Elementary & Secondary Education), Peshawar and 02 shall not be used as precedent in any other case." (Emphasis provided)

- 8. In view of the above observations, rendered by August Apex court in its order dated 06.04.2022, the judgments of the honourable Peshawar High Court, Peshawar, relied upon by learned counsel for the appellant are of no avail to the appellant. Similarly, through the same order dated 06.04.2022 passed by August Apex court, judgment dated 13.02.2017 passed by honourable Peshawar High Court in Writ Petition No. 559-Λ/2016, whereby similarly placed 3<sup>rd</sup> Division Bachelor Degree holders were held entitled to promotion to the post of SST, has been set-aside.
- 9. Furthermore, the requirement of 2<sup>nd</sup> Division/Class Bachelor Degree for promotion to the post of Secondary School Teacher (BPS-16) is not person specific and would be applicable for promotion

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as well as initial recruitment to the post of SST (BPS-16) across the board. No allegation of any mala-fide has been raised by the appellant in his appeal and it is a settled proposition that the Government is entitled to make service rules in the interest of expediency of service and to remove any anomaly in service rules, which in the absence of demonstrable mala-fide could not be assailed. August Supreme Court of Pakistan in its judgment reported as 2004 SCMR 1427 has graciously held as below:-

"The government is always empowered to change the promotion policy and the domain of the government to prescribe the qualification for a particular post through amendment in the relevant rules, is not challengeable. This is also a settled law that notwithstanding fulfillment of the required qualification and other conditions containing the rules, the promotion cannot be claimed as a vested right."

10. Consequent upon the above discussion, the appeal in hand being devoid of merit stands dismissed. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED

01.11.2022

(SALAH-UD-DIN)

MEMBER (JUDICIAL)

(MIAN MUHAMMAD)

MEMBER (EXECUTIVE)

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Annexuse -

JUDGMENT SHEET IN THE PESHAWAR HIGH COURT PESHAWAR JUDICIAL DEPARTMENT

## Writ Petition No. 1316-P/2017.

Roheen Naz.... vs...DEO (Female), etc.

### JUDGMENT

Date of hearing: 15,11.2017

Petitioner(s): By Mr.Khushdil Khan, advocate.

Respondent(s): By Mr. Waqar Ahmad Khan, AAG



IJAZ ANWAR, J. - Through the instant writ petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, the petitioner, Roheen Naz, holding the post of Senior Theology Teacher (STT) BPS-16, claiming promotion to the post of Secondary School Teacher SST BPS-16 on the strength of Government Notification dated 13.11.2012. According to the petitioner, she is holding the prescribed minimum qualification as mentioned in the rules albeit, she is not considered on the ground that she has 3rd Division in Bachelor Degree.

2. This Court has sought the comments of the respondents No.1 to 3 on 19.05.2017, however, the comments were not filed. Today, the learned counsel for the petitioner insisted that the instant case can be decided without even asking



for the comments, as according to him, in the rules as reproduced in para-3 of his petition, the prescribed qualification for the post of Secondary School Teacher (BPS-16) is mentioned as 2<sup>nd</sup> Class Bachelor Degree or Bachelor's/Master's Degree in Education, therefore, the petitioner having M.A. in Education, as such, despite her Bachelor Degree in 3<sup>rd</sup> Division, still she will be considered as eligible in accordance with these rules.

- 3. The learned AAG present in court was put to notice, as prima facie, whatever the learned counsel has argued was sound good to reason. The learned AAG sought some time to consult the record and the rules referred by the petitioner. This case was taken up after a while and the learned AAG produced Notification dated 24,7.2014, whereby the rules referred by the petitioner has since been amended.
- 4. The rules notified on 24.07.2014 prescribed the following minimum qualification for the post of Secondary School Teacher (BPS-16):-

-	
Secondary School Teacher (BPS16)	i.At least second Class Bachelor Degree from a recognized University on need basis from the following groups with two subject;
	a)Chemistry, Botany or Zoology or
,	b)Physics, Maths, "A" or "B" or Statistics;
1	c)Humanities and other equivalent groups at degree level with English as Compulsory subject, and
ge.	ii.Bachelor of Education or Master of Education (Industrial Art or Business Education) or M.A.Education or equivalent

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- Since the case of the petitioner was based on complete misconception regarding the rules, therefore, after examining the amended rules, we find that the eligibility criteria for promotion to the post of Secondary School Teacher (BPS-16) prescribed two qualifications i. at least 2<sup>nd</sup> Class Bachelor Degree from the recognized University, which the petitioner is lacking and Bachelor Degree in Education etc, thus, where candidate has both these qualifications, he/she can be held eligible for the promotion to the post of Secondary School Teacher (BPS-16), otherwise he/she cannot be considered for promotion for lacking the basic eligibility criteria.
- 6. In view of the above, since the petitioner is lacking the prescribed qualification, therefore, cannot be considered for promotion.

7. For the aforesaid reasons, this petition having no merit is accordingly dismissed.

CHIER JUSTICE

JUDGE

office 17/11/17

> Announced. McCd: 15.11.2017.

> > (DB of Hon'ble Mr. Justice Yohya Afridi, HCJ and Hon'ble Mr. Justice Ijaz Anwar).

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Annexme-E



### PESHAWAR HIGH COURT, PESHAWAR Form "A"

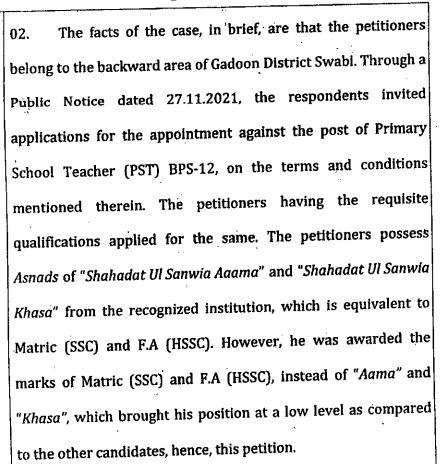
## ORDER SHEET

=	Order or othe	r Proceedings with Signature of Judge or that of parties or counsel where	
Date of Order or Proceedings	Order or othe	necessary	
1		2	
03.10.2022	W.P No.37	13-P/2022.	
	Present:	Syed Niaz Abid Shah, Advocate, for the petitionery	11/1/
		*********	
	SHAKEEL	AHMAD. L. By means of this constitutional petition	155
	filed unde	r Article 199 of the Constitution of Islamic Republic of	
	Pakistan,	1973, the petitioners have sought the following relief:-	
	appr	view of the above, it is respectfully prayed that opposite writs may kindly be issued to the wing effect:-	
^	jouo i.	That the impugned final merit list of PST (Male) union council Gabasnal and disabled persons dated 21.09.2022, issued by respondent No.3 may kindly be declared up to the extent of petitioners, illegal, against the law and of no legal effect being ineffective upon the rights of petitioners.	
	íi.	That the respondents No.3 may kindly be directed to modify the impugned final merit list by considering the IBC exam of "Khasa" and "Aama" with the score of the petitioners in the final merit list which are equivalent to Matric (SSC) and F.A (HSSC), as their marks in Khasa and Aama are higher than SSC and HSCC qualification, therefore, IBCC Khasa and Aama marks may kindly be considered instead of BISE marks of SSC and HSSC.	
	ili.	That the petitioners are otherwise fit/eligible to be appointed on PST (Male) posts reserved for disabled persons and u/c Gabasnai, therefore, the respondent No.3 may kindly be directed to appoint the petitioners while considering their marks of IBCC equivalence certificate of Khasa and Aama with their overall score.	
	tv.	Any other favourable relief which this Hon'ble Court deems fit under the circumstances of the case may also graciously be granted in favour of the petitioners."	

ATTESTED EXAMINER Peshawar High Court

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- 03. Arguments heard and record perused.
- O4. It appears from the record that by means of an advertisement in the newspaper dated 27.11.2021, respondent No.3 invited applications for appointment against the post of Primary School Teacher (PST) BPS-12 to be filled through open competition, on the terms and conditions mentioned therein. It is pertinent to mention here that the petitioner possesses Asnads namely, "Shahadat Ul Sanwia Aaama", which is equivalent to SSC and "Shahadat Ul Sanwia Khasa" equivalent to HSSC duly issued by Wafaq Ul Madaris. The only contention of the learned counsel for the petitioners is that he deserves the marks of "Shahadat Ul

EXAIVATER Peshawar High Court



Sanwia Agama" and "Shahadat Ul Sanwia Khasa", instead of SSC and HSSC. However, when we asked the learned counsel for the petitioners to show us any statutory rule or policy of the government, whereby after issuance of equivalency certificate, he could be awarded the marks of his Asnads namely, "Shahadat Ul Sanwia Aaama" and "Shahadat Ul Sanwia Khasa", but he could not show us any rule or policy, in support of his contention. It is observed that the similarly placed candidates were also awarded the marks on the basis of equivalency certificate and no candidate was given marks of "Shahadat Ul Sanwia Aaama" and "Shahadat Ul Sanwia Khasa". We find that he has already been given his due marks as per his equivalency certificate. The learned counsel for the petitioner could not point out any illegality or irregularity in the processes of awarding the marks, calling for interference.

For what has been discussed hereinabove, this petition, being bereft of any merit, is hereby dismissed in limine.

Announced:

IUDGE

Hon bie Mr. Justice Syed Arshad Ali

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Annexuse B

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(13)

HER EDUCATION COMMISSION

Islamabad, Phone: +92-51-90400900,90400912,90400917,90400913.

Fax: +92-51-90400902,URL: http://www.hec.gov.pk

(Academics)

No.8-16/HEC/A&A/2009

September 2009

(Kor)

The Executive District Officer, Elementary & Secy: Education, Mardan.

Subject:

Authentication of Madrassas.

Dear Sir,

With reference to your letter No. 6730/Deceased File.AE-IV dated August 22, 2009 on the subject subject, it is informed that as per decision of the Equivalence Committee, the Higher Education Commission recognizes the final Sanad "Shahadatul Almiya Fil Uloomal Arabia wai Islamia" held from following Approved Wafaq, Tanzeem, Rabit-ul-Madaris and five individual Madaris in prescribed manner as equivalent to M.A Arabic/Islamic Studies. The equivalence has been granted specifically for the purpose of teaching Arabic and Islamic Studies in Colleges and Universities and for pursuing higher studies. For employment in fields other than teaching, however, such Sanad holders are required to qualify in two additional elective subjects other than Arabic and Islamic Studies at the B.A level from a University. Further, they would also have to qualify in the compulsory subjects of Pakistan Studies and Islamic Studies at the B.A level:

Names of Wafaq/Tanzeem & Rabit-ul-Madaris

- 1. Wafaq-ul-Madaris Al-Arabia, Markazi Office Gordon Town, Sher Shah Road, Multan.
- 2. Tanzeem-ul-Madaris Alhe Sunnat, Jamia Naeemia, Ghari Shaho, Lahore
- 3. Wafaq-ul-Madaris
  Al-Salfia, Hajiabad Post Code 38600, Faisaalabad.
- 4. Wafaq-ul-Madaris Shia, Jamia-al-Muntazar, H. Block, Model Town, Lahore.
- 5. Rabita-ul-Madaris Al Islamia Mansoora Road, Lahore.

### A. Names of five Individual Madaris/Institutions:

- 1. Jamia Islamia Minhaj-ul-Quran, 366 Model Town, Labore.
- 2. Jamia Talcemat-e-Islamia, Sargodha Road, Faisalabad.
- 3. Jamia Ashrafia, Feroz Pura Road, Lahore.
- 4. Darul Uloom Mohammadia Ghousia Bhera Distt. Sargodha.
- 5. Darual Uloom, Korangi Greek, Karachi.

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District Education Officer
(Male) Swabl.

District Education Officer
Male Swabl

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The approved mode of education for the purpose of recognition of final Deeni Sanad is as

Middle School Certificate involving 8-year of study is entrance requirement for:

Shahadatul Sanvia Aama: 2-year of study Shahadatul Sanvia Khasa: 2-year of study Shahadatul Alia: 2-year of study Shahadatul Almiya: 2-year of study

The sanad Shahadatul Alia awarded by any Religious Institution is NOT recognized as equivalent to any academic degree but is mandatory requirement for admission in Shahadatul Almiya and for recognition of the same.

Please note the Shahadat ul Sanvia Ama and Shahadat ul Saniva Asnads are considered as equivalent to Matric and Intermediate by the Inter Board Committee of Chairman (IBCC),-Ministry of Education, Islamabad with certain conditions.(www.ibcc.edu.pk).

Kinldy note that Deeni Asnad attached with your above letter are NOT validated/recognized by the Higher Education Commission/Government of Pakistan.

Further, you are requested to ask Mr. Latif Ur Rehman to apply for equivalence on E-02 proforma alongwith all relevant documents for the purpose. The proforma for equivalence of Deeni Asnad is enclosed for your information and necessary action.

Yours faithfully.

(Syed Asim Hussain) Assistant Director (A&A) For Advisor Academics

Encl: <u>As Above</u>

District Education Officer

District Education Officer Male Swabi

Annexu

Annexure-Cg
Annexure-C

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# PESHAWAR HIGH COURT PESHAWAR ORDER SHEET

<u></u> -	TABLE OHER I	
Date of Order	Order and the	•
or Proceedings	Order or other Proceedings with Signature of Judge or that of	7
1	parties or counsel where necessary	
<del></del>	2	<b>-</b>
		-
14.11.2018	COC No. 176 D/2010 to 1770 21 000 000	
	COC No. 176-P/2018 in WP No. 961-P/2013.	]
	Present: Mr. Fazal Shah Mohmand, advocate for	
	the petitioners.	
	the pendoners,	,
1		
	Mr. Wiqar Ahmad Khan, AAG alongwith	
i ·	Wisal Muhammad Khan, Litigation	
	Talenta Aminai Distriction	
	Officer, DEO (M), Charsadda.	ľ
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·		
	WAQAR AHMAD SETH, CJ:- This contempt	
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<b>'</b>	petition is directed by the petitioners Ikramullah and	
	Provide as an estate of the petitioners intamidial and	
1	Khalid Iqbal for initiation of contempt of Court	
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, ·	proceedings against respondents for flouting the	
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	judgment of this Court dated 11.1.2018, whereby	
	Judgment of the boat said it.i.2010, whilefully	
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j	respondents were directed to treat the petitioner alike	( ~ len
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	athem and also recent than made for the initial to the	
	others and also award them marks for obtaining higher	
	ļ.	strict Education
1	education, if they obtained degrees from the recognized	(Molysphus V
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	institution with further direction to verify their	
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	testimonial within a period of thirty days.	
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	2. Perusal of record would depict that petitioners	
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	applied for the post of Arabic Teacher, with the	TANK TO THE TANK T
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requisite qualification of Secondary School Certificate

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District Education Officer Usia Swabi



& Degree in Shahadatul Alamiya or Second Class Master Degree in Arabic, and as per their testimonial they have been given the said marks as per criteria. Petitioners alleged that they have to their credit Shahadatul Khasa, Shahadatul Alia Fil Uloom Arabic wal Islamia, but haven't given the marks of their testimonial. Upon direction of this Court, the documents of petitioners were referred by the respondents for equivalency, and as per report of Director Research & Development BISE, Peshawar, Shahadatul Sanvia, Amma is equivalent to SSC (Arts Group) subject to pass three compulsory subject i.c. English, Urdu & Pakistan Studies at SSC level, while Shahadatul Sanvia Khasa, is equivalent to HSSC (Humanities group) subject to pass of three compulsory subjects including English, Urdu & Pakistan Studies at HSSC level, whereas as per HEC, Equivalence & Accreditation Committee decision dated 6.2.2017, Shahadatul Alia fil Uloomal Arabia wal Islamia is recognizable as equivalent to 14- years Bachelor (Pass)

degree subject to qualifying compulsory subjects viz.

District Education Officer Micle Sarobi

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English & Pakistan Studies at Bachelor (Pass) level from AIOU or any other chartered university subject to award of equivalence of Sanvia Amma & Sanvia Khasa by IBCC as Matric & Intermediate, respectively, and as such petitioners were not given the marks of their additional qualification on the basis quoted above. The private respondents, as per record are equipped with additional qualification i.e. FA/FSc, BA/BSc, MA/MSc and have rightly been awarded the additional marks by the respondents, therefore, keeping in view the facts and circumstances of the case, petitioners have failed to make out a case for initiation of contempt of Court proceedings against respondents, which is hereby dismissed as such. Show cause notice issued to respondents is hereby recalled.

Chief Justice

Judge

Wistrict Education Officer

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Annexure 4

Annexure-I

# BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR AT CAMP COURT SWAT.

Service Appeal No. 734/2019

Date of Institution ...

28.05.2019

Date of Decision ...

07.10.2021



Saidul Ibrar S/O Fazal Karim Ex-PST Government Primary School Mirzaki Cheenglai, R/O Village Cheenglai, District Buner. ... (Appellant)

### **VERSUS**

District Eduction Officer (M) Buner and five others.

(Respondents)

MR. MUSHTAQ AHMAD KHAN Advocate

For Appellant

MR. RIAZ KHAN PAINDAKHEIL, Assistant Advocate General

For official respondents No. 1 to 5

MR. MUHAMMAD IKRAM KHAN Advocate

For private respondent No.6

ROZINA REHMAN ATIQ-UR-REHMAN WAZIR

MEMBER (JUDICIAL)
MEMBER (EXECUTIVE)

JUDGMENT

ATIQ-UR-REHMAN WAZIR MEMBER (E):-

Brief facts of the case are

that the appellant was appointed as Primary School Teacher (PST) vide order dated 28-02-2019 and the appellant assumed the charge of his duty. Appointment order of the appellant was withdrawn vide order dated 09-03-2019 and respondent No. 6 was appointed in his place. Feeling aggrieved, the appellant filed departmental appeal, which was rejected vide order dated 10-05-2019, hence the instant service appeal

District Education Officer

with prayers that the impugned orders dated 09-03-2019 and 10-05-2019 may be set aside and the appellant may be re-instated in service with all back benefits.

02. Learned counsel for the appellant has contended that the impugned orders are against law, rules and natural justice as the appellant was appointed by the competent authority after observance of due process of law, but while withdrawing his appointment order, no chance of defense was offered to the appellant to clarify his stance and it is a well settled legal proposition that any irregularity, whatsoever, if committed by the appointing authority itself, appointee could not be harmed or damaged. Reliance was placed on 2009 SCMR 663; that the principles of Audi alturm partum has grossly been violated and on this score alone, the impugned orders are liable to be set at naught. Reliance was placed on 2011 PLC (C.S) 1651; that the appellant has been removed from service through an alien procedure which is not known to law and rule applicable to the civil servants; that the impugned order of withdrawal of the appointment order of the appellant and appointment of respondents No. 6 in his place is illegal and result of mala fide on part of the respondents; that the appellant could not be removed from service as he had neither obtained such appointment through fraudulent means nor through any misrepresentation, rather the respondents had appointed the appellant after approval and recommendation of the departmental selection committee; that legal procedure was not adopted, which resulted into refusal of chance to defend his cause, which is contrary to the norms of natural justice; that the appellant has not been treated in accordance with law applicable to the civil servants, hence the impugned orders are against the spirit of prevailing law and rules; that duration of obtaining secondary and higher secondary qualification as well as inter board co-ordination committee (IBCC) qualification in respect of respondent No. 6 are at the same time duration, which was required to be verified by the appellate committee as to how respondent No. 6 had obtained such qualifications at one time; that respondent No. 6 applied to post on BISE qualification and accordingly his merit position was low than the

District Education Officer

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appellant but after conclusion of the whole process, the IBCC qualifications were considered at a belated stage by the respondents, which is violation of clause-8 of the advertisement, which provides that no changes would be admissible in documents after cutoff date.

- O3. Learned Assistant Advocate General for official respondents has contended that the appellant was appointed against the post of PST vide order dated 28-02-2019 and he took over charge and performed his duty in GPS Mirzakai for only three days; that after declaration of result and selection of candidates, respondent No. 6 submitted an appeal that he is also holding qualification of IBCC exam of "Shahadat-us-Sanwia Khassa" and "Shahadat-us-Sanwia Aama", therefore IBCC equivalent marks may be considered in his favor instead of Board of Intermediate and Secondary Education (BISE) marks; that on BISE marks the merit score of respondents No. 6 was 102.06 but after consideration of his IBCC equivalent marks, his score raised to 107.06, hence the score of respondent No. 6 stood higher than the appellant whose score was 106.28 and he was the last candidate, hence appointment of the appellant was withdrawn and respondent No. 6 was appointed in his place; that the appellant has been treated in accordance with law and his appointment order was withdrawn due to lower marks than respondent No. 6.
- O4. Learned counsel for respondent No. 6 has contended that as per clause-6 of terms and condition of the appointment order dated 28-02-2019, it has been very clearly mentioned that if any meritorious candidate is deprived of appointment by this order, the appointment order of the lowest candidate in merit shall be withdrawn on acceptance of the appeal and adjustment order will be reviewed accordingly as per merit; that the appointment order of the appellant was withdrawn by the competent authority after hearing the appeal of respondent No. 6, who had higher marks than the appellant, but due to non consideration of equivalency certificate issued by IBCC at the time of appointment, respondent No. 6 was placed low in merit position and when his IBCC marks were considered, the merit position raised and he was

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considered for appointment in place of the appellant; that it is undisputed that IBCC qualification are equivalent to BISE qualification, hence calculating marks of respondent No 6 on such qualification is not illegal.

- 05. We have heard learned counsel for the parties and have perused the record;
- Récord reveals that District Education Officer Buner advertized posts of 06. PST with prescribed qualification of Bachelor Degree, but with no mention of any equivalent qualification. Besides other, the appellant as well as respondent No. 6 applied for the post. Appellant was the last selected candidate in order of merit amongst the selected candidates obtaining 106.28 marks, whereas respondent No  $\,6\,$ being the leftover candidate had obtained 102.06. Respondent No. 6 submitted an appeal to the appellate committee requesting therein that the he is also holding qualification of IBCC exam of "Khassa" and "Aama" and his marks in Khassa and Aama are higher than SSC and FA qualification, therefore IBCC Aama and Khassa marks may be considered instead of Board of intermediate and secondary education(BISE) marks. The appellate committee considered his request and his marks were re-calculated based on his IBCC qualification, which raised his marks to 107.06, thus the appointment letter of the appellant being the last candidate in order of merit in the selected candidates was withdrawn and respondent No. 6 was appointed in his place.
- We have observed that in the first place, there is no mention of any equivalent qualification in the advertisement made for the purpose, but equivalent qualifications in respect of respondent No 6 were considered for calculation of his merit and that too after issuance of appointment order to the appellant, which was not warranted. It is undisputed that IBCC qualifications are equivalent to BISE. qualifications, but such qualifications were not required as per advertisement, hence calculation of his merit on such documents would be illegal. Had the intention of concerned department been to appoint candidates having qualification equivalent to

District Education Officer



IBCC, it would have stipulated the same in the advertisement, but non-mentioning of such fact in the advertisement meant that only those candidates were required who had (specific) qualification as laid down in the advertisement and deviation from the dictates published in the advertisement amounts to illegality. Reliance is placed on 2014 PLC (C.S) 39 and PLJ 2014 Lahore 670. Respondent No-6 initially applied on SSC, HSSC and Bachelor degree, but was not selected due to his low merit position, which necessitated him to submit his IBCC qualifications to the appellate committee, whereas the appellate committee re-considered his marks based on equivalent qualification, which raised his merit position and the appellant, who was already appointed and who had also assumed his duty, was removed which procedure is nowhere mentioned in the service rules and which also is negation of their own terms and conditions published in the advertisement. It was also noted that both the qualification of SSC, FA and equivalent IBCC qualifications were obtained by respondent No. 6 in the same time period, which could not attract attention of the appellate committee to verify such point, but which certainly creates doubts, as to how one can get equivalent qualification in the same time period, but now it would be futile to dig out such issue, as the respondent No. 6 has also developed vested rights over the post, upon which he served for two and half years and he also shall not suffer for fudge of the respondents. It is otherwise a question of common sense that qualification of Khassa and Aama are not specific for the subject post and mere its equivalency with SSC and FA does not mean that it can be taken interchangeably when it was not specifically required as prescribed qualification. Placed on record is an advertisement, through which the subject recruitments were held, Clause-8 of the advertisement provides that no changes would be admissible in educational documents after the cutoff date, but documents of respondent No. 6 were changed even after announcement of result and issuance of appointment orders. Placed on record is another advertisement for District Abbottabad, which clearly mentions in its terms and condition that no marks will be considered for qualification of Khassa and Aama, which means that the marks considered for respondent No. 6 on account of

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such qualification was not in accordance with their own terms and conditions framed for such recruitment and when prescribed procedure is not followed by the concerned authority, the civil servant could not be blamed for what was to be performed and done by the competent authority, rather competent authority should be held responsible and liable for the lapses on their part. Reliance is placed on 2004 SCMR 303. We have also noted that appointment order of the appellant was neither illegal nor contrary to any provision of law nor issued by an incompetent authority, in a situation, respondents had no authority to withdraw such appointment arbitrarily. Reliance is placed on 2011 MLD 1494 and PLJ 2013 Peshawar 132(DB). It is a well settled law that before withdrawal of such order, appointing authority must adopt proper course to hold a full-fledged inquiry, which however was not done in case of the appellant. Reliance is placed on 1993 SCMR 603. In the present case the appellant applied for the post concerned, was selected, appointed and order was communicated to the appellant, in consequence whereof he joined duty, such order of appointment, which had taken legal effect, was not amenable to withdrawal. Reliance Is placed on 2011 PLC (CS) 1651.

08. We are of the considered opinion that the appellant has not been treated in accordance with law as he was deprived of his rights accrued to him by considering irrelevant marks of respondent No. 6, thus injustice was done to the appellant, hence the impugned order dated 09-03-2019 is liable to be set aside. On the other hand, the same principles as discussed above, would equally be required to be applied in favor of respondent No. 6, as he has already developed vested rights over such post and to deprive him of his post, would be contrary to the principles already laid down in case of the appellant as discussed above, hence in order to meet the ends of justice, the instant appeal is accepted, impugned orders dated 09-03-2019 and 10-05-2019 stands set aside and appointment order dated 28-02-2019 in respect of the appellant is hereby restored with all back benefits. Appointment

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hence respondents are further directed that respondent No.6 shall be adjusted upon occurrence of vacancy. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED 07.10.2021

> (ROZINA REHMAN) MEMBER (J) CAMP COURT SWAT

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(ATIQ UR REHMAN WAZIR) MEMBER (E) CAMP COURT SWAT

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District Education Officer
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Annexuse -1

PESHAWAR

DETAILED MARKS CERTIFICATE



Secondary School Certificate Examination 2002 (Annual) Session

Name:	Muhsina Ibrahim		c
Father's, Name:	Muhammad Ibrahim /	Roll No	76065

Subject	Marks	MARKS ÖBTAIŅED					
Subject	Maiks	The:/P-A	Prac/P-B	Total	in Words		
1. English	150	_	-	<b>/53</b>	Fifty-Three		
2. Urdu Combine	150	-		<b>√</b> 54	Fifty-Four		
3. Islamiyat (Comp)	75	42	-	42	Forty-Two		
4. Pakistan Studies	75	. 33	_	33	Thirty-Three		
5. New Riazi	100	44	-	44	Forty-Four		
6. G. Science	100	35	-	35	Thirty-Five		
7. Islamic Studies	100	60	_	60	Sixty Only		
8. Pushto	100	50	-	50	Fifty Only		

Total 850.

Three Hundred Seventy-One Only 371-D IS,PA,

Board of lister & Secondary Education Peshawar

Chécked By:

Dals: 23-06-2002

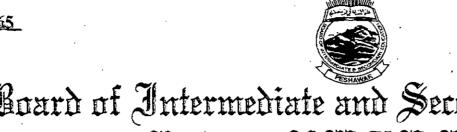
Note: Error / Ommission are excepted

Khaksar and BRAINS Software Enterprise (KBSoft)

Controller of Examinations

S.No. 243005

Rall No. 76065



## 

(Humanities Group)

This is to Certify that _	Muhsina Ibral	neem	Son / Daughter of _	Muhammad Ibraheem			
and a resident of	Swal	oi District		_has_passed	the Secondary	School Certificate	
Examination of the Boa	rd of Intermediate and Se	condary Educat	ion, Peshawar held ir	March/Apri	1, 2002 as a	Private	
candidate. He / She ob	tained <u>371</u> Marks ou	t of 850 and h	as been placed in Gr	ade <u>D</u> F	Representing	<u> Fair</u>	
The Candidate passed	in the following subjects:	_				•	
1. English	<ol><li>Islamiyat</li></ol>	u ,	5. Mathematics		7. Islamic Stud	lies	
2. Urdu	<ol><li>Pakistan Studies</li></ol>		6. General Scien	ce	8. Pashto		
Date of birth according	to admission form	May 1, 198	84				
		-	<u> </u>			Ì	
	-	•		•			
` <b>/</b>					1		

This certificate is issued without alteration or

Siri Bard



Of Chairman Government of Pakistan Islamabad

# Equivalence Certificate

Certified that Mir./	∕ <b>∰</b> द	MOHSINA IBRAHIM	s/d of Mr	MUHAMMAD	•
•		has qualification	Statedet He.S	Sanwia Asmma/SSC in three additi	onal subjects.
nate of office	VE-53-12-69	BISE, Peshawar/Wafa	q-ul-Madaris.	2000-2000-2000-2000-2000-2000-2000-200	
of Country and/or	Examining Body		<u>.</u>		
·	<b>W</b> hich is con	sidered equivalent to Secondi	ary School Certificate of	Pakistan	•
	Group: A				
Narks obtained:				$\mathcal{O}$	
In Figures	464	out of 900 (51.55°			
n Words	Four Hundred	Sixty Four-only			
Ref	IBEC (%0) P/2-	2/2015 (64)			* (V
Bate	11-08-2015	-		Muran. : 19 (ramzan Achakzai	
		No.		Secretary	$C_{t,q}$
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## BOARD OF INTERMEDIATE AND SECONDARY EDUCATION MARDAN

Khyber Pakhtunkhwa (Pakistan)

56101 Reg No: 174309-B/PVT-2011

094331 S.No.MB.



### PROVISIONAL AND DETAILED MARKS CERTIFICATE INTERMEDIATE (ANNUAL) EXAMINATION -

HUMANITIES (Part-II')

MOHSINA IBRAHIM	<u> </u>	Son/Daughter of MUHAMMAD IBRAHIM								
of Institution/District SWAR has secured the marks sho month of APRIL/M	wn against ea	ach subj	ect in P	the High	er Sed		School Examination held in the			
Marks Obtained										
Subjects	Marks	Pan	t-l Prest	Part Theory	-II Pract	Total	Marks in Words			
English	200	51	/	28		79	Seventy-Nine			
Urdu ·	200	49		59		108	One Hundred Eight			
Islamic Education	50	26		***********************		26	Twenty-Six			
Pakistan Studies	50			27		27	Twenty-Seven			
Islamic History	200	36		35		71	Seventy-One			
Islamic Studies	200	75		·· 66		141	One Hundred Forty-One			
Arabic	200	86	***	- 77		163	One Hundred Sixty-Three			
12	stal: 1100			<b></b>		615-C	Six Hundred Fifteen Only			
;		•		Damai	dea :		i i			

Prepared by

Checked by

Date of Declaration of Result: 19-07-2012

Date of Issue:

Note: Errors/Omissions are excepted. Any mistake in above particulars must be intimated within 30 days after declaration of result.

Hemais: Swall

BISE, Mardan

Controller of Examinations

Will Brake



Of Chairman Government of Pakistan

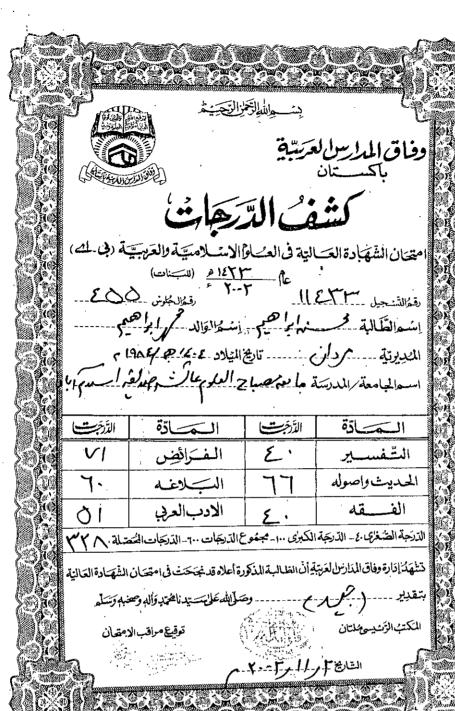
Islamabad

## Equivalence Certificate

Certified that M	r./ <b>M</b> s	MOHSINA IBRAHIM	s/d of Mr	MU	AMMAD IRRAHIM
date of birth	01-05-1984	has qu	Alification <u>Spanson</u>	-Us Seewie Klasse#ISSC in	three additional subjects.
of Country and/	or Examining Be	ndy BISE, Mardan/Wafaq	ul-Madaris.	in year	2801-2802
<b>W</b> h	ich is considered	equivalent to Higher Se	ondary School Ci	ertificate of Pakisl	an
	Group: <u>H</u>	umanities	•		
Marks obtained:		•			•
In Figures	699	out of 110(63.54%)		<b>N</b>	
In Words	Six Hundred & N	inety Nine only			
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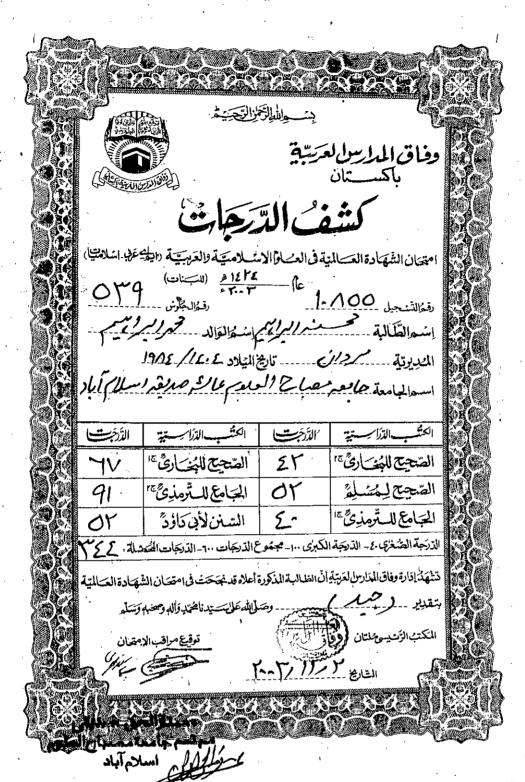
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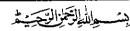


الحمد لله رب العلمين. والصلوة والسلام على خات والان بياء والمرسلين، وعلى اله وصعبه أجمعين. امّا بعد، فإنّ رئاسة وف أق المرارك العربيم بباكستان، تشهد بأن الط البة عسنه المراهيم بنت عمد الراهيم المولودة في عام يعني م قد أتمت دراسة الثانوية العامة في علم علم العلى عامة لمه العلم الماد ويخدت في الامت حان النها أللنعقد تحت إشراف وفاق المدارس العربية باكستان في شعبًا ١٤٦٠ بعرود ٢٠٠٠ بتقدير رجيد، ورئيس الوف اق إذ يمنحه الهذه النبي المنتقوى الله تعالى وهيسال الله عزّوج لل ان يسلك بها سبيل العالمات العاملات

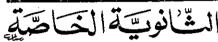
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الدَّرَجَات ٢٠/ ٣٢٤

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Persamel No. 00 285568

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old NIC 130-84-93627/

District Control

(For use in Police Department only): KI: Passed Shahadatal Alia from nifegul maderis multan (fabistan) under Roll No 11432 obtained Marks 328/600 and placed in Crade (C) Result declared on 2-11-2002 II: - Passed Showhadatail Hafizul Duran from Mifagine Modaras Multon (Pakistan) under Roll No: 1192254 obtowned marks 100/100 and Passed in Egrade (A) Result declaration 12.12.1999. recebyld Phick MI: Passed Sharkardatal Hama from wifague Madaris Multari Verification Roll No. ( Pakistan ) under Roll No 35348 obtained marks 349/600 and Plased in Grade (C) Result declared on 22-12-2000. Left Thumb Impression IV Passed Shahadatal KHaser from wifagul Madaris Mullan (Pakistan) under Roll No 15642 obtained marks 432/600 and Placed in Carodo (A) Result declaration 01-12-2001. Passed Shahadatal Alamica from wir fagut Madary's Multan Qualificationalistant y under Roll Ma 10855 Qualification obtained marks 344/8000 and Plassel in Creache (C) Resent declared on 2-11-2003. English VI :- Passed SSC Exam: be from BilsE. Peshacear under Roll No: 76065 obtained marks 371/850 and flared in Grade (5) Result declored on 29-6-2002. B.L. or B.A. Pushto District Officer Females Pleases All Symptomation parsed InTermidiate (Annual) Examination Unibessan. 2013 Under Rall No. 56101 Rey No. 174304-81 DUT-2011 2 abland Philosophys 615 Creande, Talas memble Training School Final examination 2000 , obtand 615/1100-for B,1,3. E, Mardon SSC Quallance Certificate 15 sued by 1BCC Islamabad. She publications up 64 marles out of 900 v Finger Privil Placed in 2nd Division Drill Instruction Cady \$(Female) Swabi 19/7/20/ LA equallance Certificate Issue by 1BCC Dlamabad She obtain Court Duties 539 Marks out of 1100 & in and Division. Roserve Duties District Edu. ाधितवा

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2.	Race: (Aghan)
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3.	Residence: Village a Plo Crabasni Chadoon: Teh: & Diste.
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3.	Left hand thumb and Finger impression of (Non-Gazetted) officer:  Little Finger:  Ring Finger:  Fore Finger:
	Left hand thumb and Finger impression of (Non-Gazetted) officer:  Ring Finger:  Middle Finger:  Fore Finger:
	Left hand thumb and Finger impression of (Non-Gazetted) officer:  Little Finger:  Ring Finger:  Fore Finger:
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Name of post	Whether substantive or officiating and whether permanent or temporary.	3 If officiating, state (i) substantive appointment, or (ii) whether service counts for pension under Art. 371 C.S.R.	Pay in substantive post	Additional Pay for officiating	Other emolurnent falling	Date ol	Signature of
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