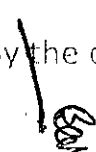


FORM OF ORDERSHEET

Court of _____

Misc. application No. 270/2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	02/05/2023	<p>The Misc. application in Implementation Petition no. 223/2023 received today by registered post through Mr. Khalid Mahmood Advocate. It is fixed for hearing before Single Bench at Peshawar on _____ : Original file be requisitioned.</p> <p>By the order of Chairman  REGISTRAR</p>

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

CM No /2023

in

Implementation Petition No. 223 /2023

In line and with reference to

Service Appeal No. 76 of 2022

Muhammad Noor Sultan VS Govt KPK etc

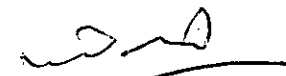
Application for early hearing in above titled CM

Respectfully sheweth,

Appellant through Counsel submits as under:


1. That above titled CM is being filed in implementation petition No. 223/2023 which is fixed before this Honorable Tribunal on 18.05.2023.
2. That the above titled CM is filed for suspension of impugned notification dated 10.04.2023.
3. If CM is not fixed for hearing as earlier, then appellant will suffer irreparable loss.

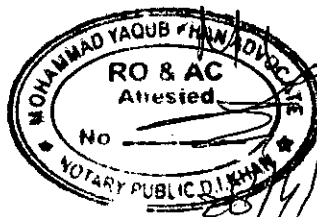
It is therefore requested that above titled CM may be fixed as early as possible to meet the ends of justice.


Appellant through Counsel
Khalid Mahmood Advocate
Stationed at DIKhan

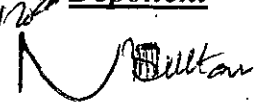
AFFIDAVIT

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


Identified by Counsel:
Khalid Mahmood
Advocate High Court



Deponent


12103-1489991-7

BEFORE THE HONORABLE SERVICE TRIBUNAL,
KHYBER PAKHTUNKHWA

Misc Application # 270/2023
CM No _____/2023

in

Implementation Petition No. 223 /2023

In line and with reference to


Service Appeal No. 76 of 2022

Muhammad Noor Sultan VS Govt KPK etc

INDEX

S No.	Description of Documents	Annexure	Page Number
1.	Copy of Grounds of CM alongwith affidavit.	---	1-4
2.	Copy of Notification dated 03.01.2022, Copy of Notification dated 04.01.2022 and Copy of posting/transfer policy	A, B & C	5-9
3.	Copy of notification dated 17.02.2023	D	10-11
4.	Copy of Impugned Notification dated 27.03.2023	E	12
5.	Copy of notification dated 05.04.2023	F	13
6.	Copy of impugned notification dated 10.04.2023	G	14
7.	Copy of order dated 17.01.2023 of Peshawar High Court in C.M No.95-P/ with C.M No.50-P/2023	H	15-17
8.	Copies of election commission's notification, Judgement of Supreme Court of Pakistan regarding transfers/postings by caretaker Govt and orders of Peshawar High Court	I, J & K	18-25
9.	Vakalatnama		

Yours Humble Petitioner


(Muhammad Noor
Sultan)
Through Counsel


Khalid Mahmood
Advocate High Court

Dated: 26/4/2023

(1)

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

CM No _____ /2023

in

Implementation Petition No. 223 /2023

In line and with reference to

Service Appeal No. 76 of 2022

Muhammad Noor Sultan

VS.

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

**APPLICATION WITH THE REQUEST TO SUSPEND
THE OPERATION OF IMPUGNED NOTIFICATION
DATED 10.04.2023, WHEREBY, THE RESPONDENT
WAS POSTED AS SDEO (MALE) TEHSIL PAHARPUR
AND APPELLANT WAS POSTED AS SDEO (MALE)
D.I.KHAN IN UTTER DISREGARD OF THE SPIRIT
AND ESSENCE OF THE JUDGMENT DATED
05.07.2022 RENDERED BY THIS HON'BLE
TRIBUNAL TILL DECISION OF THE
IMPLEMENTATION PETITION**

Respectfully Sheweth,

1. That a implementation petition is filed before this Tribunal and fixed for hearing on 18.05.2023 before this Honorable Tribunal at Peshawar and the grounds of the CM may please be considered as an integral part of the subject petition.
2. That the petitioner was posted as SDEO (Male) Paharpur on 03.01.2022 and very next day on 04.01.2022 was transferred to Alai District Battagram and the petitioner filed service Appeal No. 76 of 2022 before this Honorable Tribunal with the prayer that on acceptance of present service appeal and by setting aside notification bearing no SO(MC)E&SED/4-16/2021/posting/transfer/MC dated 04.01.2022, the impugned transfer of appellant from the post for SDEO (male) Paharpur to the post of Male Alai Battagram, may graciously be cancelled and as result thereof the posting of appellant as SDEO (male)

Paharpur, D.I.khan, may graciously be restored. On fixation of the case, after having hear the appellant/petitioner at great length vide judgment dated: 05.07.2022 passed by this Hon'ble Tribunal, the impugned Notification dated 04.01.2022 was setaside/cancelled and thereby appeal of the petitioner was accepted. The relevant para No 8 of Judgement dated 05.07.2022 is reproduced as under:

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

Copy of Notification dated 03.01.2022, Copy of Notification dated 04.01.2022, and copy of posting/transfer policy of the provincial government are annexed herewith as Annexure A,B&C.

Handwritten signature or initials on the left margin.

3. That the petitioner has not yet completed her ordinary tenure of the service and posting of respondent No 8 through impugned Notification is based on malafide and is due to the political victimization, and also there are no compelling circumstances for the impugned posting of respondent before completion of ordinary tenure of petitioner rather the respondents in defiance of the judgment of this Tribunal, issued the said Notification.
4. That after announcement of judgement, respondent no 8 Zareef Khan was posted as SDEO (male) from Alai Battagram to Tank DIKhan vide notification dated 17.02.2023. Copy of the said notification is annexed as Annexure D.
5. That after one and half month (1.1/2), the respondent no 8 (zareef Khan) was posted as SDEO (Male) Paharpur vide notification dated 27.03.2023. Copy of the same is Annexed as Annexure E.
6. That on 04.04.2023, appellant filed execution/implementation petition No 223/2023 with CM for suspension of operation of notification dated 27.03.2023 before this Honorable Tribunal which was fixed for 10.04.2023.


- 7. That on 05.04.2023, the notification dated 27.03.2023 was partially modified and respondent no 8 (Zareef Khan) was posted as SDEO (male) Daraban D.I.Khan instead of Paharpur vide notification dated 05.04.2023. Copy of the same is Annexed as **Annexure F**.
- 8. That on 10.04.2023, the representative of respondents stated before the tribunal that the notification dated 27.03.2023 was modified and respondent no 8 (zareef Khan) was posted as SDEO (Male) Daraban vide notification dated 05.04.2023, and subsequently the date fixed i.e. 10.04.2023 was adjourned to 18.05.2023 before this Honorable Tribunal at Principal Seat Peshawar.
- 9. That astonishingly on the same day i.e. 10.04.2023 respondent no 08 (Zareef Khan) was reposted as SDEO (Male) Paharpur DIKhan in place of appellant vide impugned notification dated 10.04.2023. Copy of the same is Annexed as **Annexure G**.
- 10. That posting of respondent No 8 to the Tehsil Paharpur District DIKhan is the outcome of political influence and the same was only to oblige the political figures of the area. Petitioner is having no political backing that's why he is victimize at the hands of respondent. Thus, grant of interim relief as prayed for would be in the best interest of justice. In this respect, the Hon'ble Peshawar High Court, Peshawar has already granted interim relief in the C.M No.95-P/ with C.M No.50-P/2023 is attached herewith as **Annexure H**.
- 11. That it is pertinent to mention here that all these postings/transfers are without approval of election commission of Pakistan as well as against the judgement of Honorable Supreme Court of Pakistan. Copies of election commission's notification and judgement of Supreme Court of Pakistan regarding transfers/postings by caretaker Govt and orders of Peshawar High Court are annexed as **Annexure I,J&K**.

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It is, therefore, humbly prayed that on acceptance of the present CM for suspension of impugned Notification as prayed for, the respondent may please be directed to suspend the operation of impugned Notification dated: 10.04.2023 till decision of the

subject petition, and in the meanwhile, status quo may please be ordered to be maintained.

Yours Humble Petition



Muhammad Noor Sultan
Through Counsel

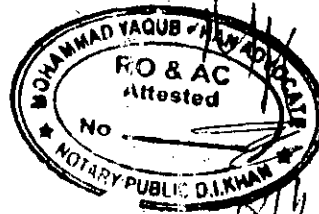
Dated: 24/4 /2023


Khalid Mahmood,
Advocate High Court.


AFFIDAVIT

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


Identified by Counsel:
Khalid Mahmood
Advocate High Court



Deponent


17-103-1489991-7

(S) — A/R (A)

Better Copy.

**GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY AND SECONDARY EDUCATION DEPARTMENT,
CIVIL SECRETARIAT PESHAWAR.**

Dated Peshawar the January 03rd, 2022.

CORRIGENDUM:-

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

S#	Name & Designation	From	To
1	Mr. Rehmat Khan TC BS-17	Assistant Director, E&SE Khyber Pakhtunkhwa.	Assistant Director, MAS E&SE Khyber Pakhtunkhwa (Vice No. 2).
2	Muhammad Ashraf TC BS-17	Assistant Director, MAs E&SE Khyber Pakhtunkhwa.	SDEO (Male) Mirali North Waziristan (AVP)
3	Dr. Abdul Qayyum Khan TC BS-17	Under transfer as SDEO (Male) Miransha North Waziristan	Assistant Director, MAS E&SE Khyber Pakhtunkhwa (Vice No. 4).
4	Mr. Matiullah Khan TC BS-17	Assistant Director, MAs E&SE Khyber Pakhtunkhwa.	SDEO (Male) Miranshah North Waziristan (AVP)
5	Muhammad Wajhuddin TC BS-17	Monitoring Officer, E&SE Khyber Pakhtunkhwa.	Assistant Director, MAs E&SE Khyber Pakhtunkhwa (AVP)
6	Mr. Nisar Ahmad TC BS-17	Under Transfer as SDEO (Male) Kalkot Dir Upper.	SDEO (Male) Rustam, Mardan Vice -09.
7	Mr. Wisal Muhammad MC BS-17	Under Transfer as SDEO (Male) Garhi Kapura Mardan.	SDEO (Male) Tangi Charsada (AVP)
8	Muhammad Noor Sultan MC BS-17	Under Transfer as SDEO (Male), Bettani Lakki Marwat.	SDEO (Male) DIKhan. (AVP)
9	Hafiz Fazil Akbar MC BS-17	Under Transfer as SDEO (Male) Rustam Mardan	Service placed at the disposal of Directorate of E&SE KP for further adjustment against the vacant post of AD (BS-17).

A/R

**Secretary to Govt. of Khyber Pakhtunkhwa
E&SE Department.**

Endst; of even NO. & Date.

Copy forwarded for information to the:-

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

**Hafeez Ur Rehman Shah
Section Officer (Management Cadre).**

M. A. ANWAR
Section Officer
District



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

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

13 5
Annex A

CORRIGENDUM

Dated Peshawar the, January 03rd, 2022

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

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

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SECRETARY TO GOVT: OF KHYBER PAKHTUNKHWA
E&SE DEPARTMENT

Encl: of Even No & date

Copy forwarded for information to the:-

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

(Signature)
21/1/2022
(HAFEZ UR REHMAN SHAH)
SECTION OFFICER (Management Cadres)

Handwritten notes at the bottom left.

Dated Peshawar the January 04th, 2022

NOTIFICATION

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

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

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

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) Battagram and DI Khan
4. Director EMIS, E&SE Department with the request to upload the same on the official website of the department.
5. District Accounts Officers Battagram and DI Khan.
6. PS to Secretary, E&SE Department, Khyber Pakhtunkhwa.
7. Officers concerned.
8. Master file.

(Handwritten signature)
4/1/2022
**(HARBEZ-UR-REHMAN SHAH)
SECTION OFFICER (Management Cadre)**

(Handwritten signature)

Amf (C)

7



GOVERNMENT OF NWFP
ESTABLISHMENT & ADMINISTRATION
DEPARTMENT
(Regulation Wing)

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 posting/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) 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 the hard areas the tenure shall be one year. The unattractive and hard areas will be notified by the Government.

(v) While making postings/transfer from settled areas to FATA and vice-versa, specific approval of Governor, NWFP needs to be obtained.

(vi) While making postings/transfers of officers/officials up to BS-17, from settled areas to FATA and vice-versa approval of the Chief Secretary NWFP needs to be obtained. Whereas, in case of posting/transfer of officers in BS-13 and above, from settled areas to FATA and vice versa, specific approval of the Governor, NWFP shall be obtained.

(vi) (a) All Officers/officials selected against Zone-I/FATA quota in the Provincial Services should compulsorily serve in FATA for atleast eighteen months in each grade. This should start from senior most scales/grades downwards in each scale/grade of each cadre.

(vii) Officers may be posted on executive/administrative posts in the Districts of their domicile except District Coordination Officers (D.C.Os) or DPOs/Superintendent of Police (SP). Similarly Deputy Superintendent of Police (D.S.P) shall not be posted at a place where the Police Station (Thaana) of his area/residence is situated.

(viii) No posting/transfers of the officer's/officials on detailment basis shall be made.

(ix) Regarding the posting of husband/wife, both in Provincial services, efforts where possible would be made to post such persons at one station subject to the public interest.

(x) All the posting/transferring authorities may facilitate the posting/transfer of the unmarried female government servants at the station of the residence of their parents.

ATTESTED

to be the Advocate

Par: 1(v) regarding months of March and July for posting/transfer and authorities to relaxion of ban deleted vide letter No. SOR-VI (E&A) 1-4/2003/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/transfers subject to observance of the policy and rules. Added vide Urdu circular letter No. SOR-VI (E&A) 1-4/2003, dated 21-09-2004

(2)

- xi) Officers/officials, except DCOs and DPOs/SPs who are due to retire within one year may be posted on their option on posts in the Districts of their domicile and be allowed to serve there till the retirement.
DCOs and DPOs who are due to retire in the near future may also be posted in the District of their domicile subject to the condition that such posting would be against non-administrative posts of equivalent scales.
- xii) In terms of Rule 17(1) and (2) read with Schedule III of the NWFP Government Rules of Business, 1985, transfer of officers shown in column 1 of the following table shall be made by the authorities shown against each officer in column 2 thereof:

Outside the Secretariat	
1. Officers of the all Pakistan Unified Group i.e. DMG, PSP including Provincial Police Officers in BPS-18 and above.	Chief Secretary in consultation with Establishment Department and Department concerned with the approval of the Chief Minister.
Other officers in BPS-17 and above to be posted against scheduled posts, or posts normally held by the APUG, PCS(EG) and PCS(SG).	-do-
Heads of Attached Departments and other Officers in B-19 & above in all the Departments.	-do-
In the Secretariat	
1. Secretaries	Chief Secretary with the approval of the Chief Minister
2. Other Officers of and above the rank of Section Officers: a) Within the Same Department. b) Within the Secretariat from one Department to another.	Secretary of the Department concerned. Chief secretary/Secretary Establishment.
3. Officials up to the rank of Superintendent: a) Within the same Department b) To and from an Attached Department c) Within the Secretariat from one Department to another	Secretary of the Department concerned. Secretary of the Dept in consultation with Head of Attached Department concerned. Secretary (Establishment)

xiii) While considering posting/transfer proposals all the concerned authorities shall keep in mind the following:

- a) To ensure the posting of proper persons on proper posts, the Performance Evaluation Report/annual confidential reports, past and present record of service, performance on post held presently and in the past and general reputation with focus on the integrity of the concerned officers/officials be considered.
- b) Tenure on present post shall also be taken into consideration and the posting/transfers shall be in the best public interest.

Added vide Urdu circular letter No. SOR-VI (E&AD)/1-4/2005, dated 9-9-2005.

ATTESTED
to be true copy
Advocate

x.v)

Government servants including District Govt. employees feeling aggrieved due to the orders of posting/transfer authorities may seek remedy from the next higher authority / the appointing authority as the case may be through an appeal to be submitted within seven days of the receipt of such orders. Such appeal shall be disposed of within fifteen days. The option of appeal against posting/transfer orders could be exercised only in the following cases.

- i) Pre-mature posting/transfer or posting/transfer in violation of the provisions of this policy.
- ii) Serious and grave personal (humanitarian) grounds.

To streamline the postings/transfers in the District Government and to remove any irritant/confusions in this regard the provision of Rule 25 of the North West Frontier Province District Government Rules of Business 2001 read with schedule - IV thereof is referred. As per schedule IV the posting/transferring authorities for the officers/officials shown against each are as under:-

S.No.	Officers	Authority
1.	Posting of District Coordination Officer and Executive District Officer in a District.	Provincial Government.
2.	Posting of District Police Officer.	Provincial Government
3.	Other Officers in BPS-17 and above posted in the District.	Provincial Government
4.	Official in BPS-16 and below	Executive District Officer in consultation with District Coordination Officer.

3. As per Rule 25(2) of the Rules mentioned above the District Coordination Department shall consult the Government if it is proposed to:

- a) Transfer the holder of a tenure post before the completion of his tenure or extend the period of his tenure.
- b) Require an officer to hold charge of more than one post for a period exceeding two months.

4. I am further directed to request that the above noted policy may be strictly observed /implemented.

All concerned are requested to ensure that tenures of the concerned officers/officials are invariably mentioned in summaries submitted to the Competent Authorities for Posting/Transfer.

(Authority: Letter No. SOR-VI/E&AD/1-4/2003.dated 24-6-2003)

It has been decided by the Provincial Government that posting/transfer orders of all the officers up to ES-19 except Heads of Attached Departments irrespective of grades will be notified by the concerned Administrative Departments with prior approval of the Competent Authority obtained on the Summary. The Notifications/orders should be issued as per specimen given below for guidance.

All posting/transfer orders of BS-20 and above and Heads of Attached Departments (HAD) shall be issued by the Establishment Department and the Administrative Departments shall send approved Summaries to E&A Department for issuance of Notifications.

ATTESTED



Zaviy Khan out 9 no 24

**GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION
DEPARTMENT**

Amir (D)
(10)

NOTIFICATION

Dated: 17th February, 2023

NO SO(MC)E&SED/2-3/2022/Promotion/MC(BS17to18)ACB: In pursuance of this Department's Notification of even number dated 12.12.2022, and subsequent approval from the Election Commission of Pakistan vide their letter No. F.3(1)/2023-Eis dated 10.02.2023, the following posting/adjustment of officers of the Management Cadre are hereby ordered, in the public interest, with immediate effect:-

S#	Name of Officer	From	To	Remarks
1	Aamir-ur-Rehman	SDEO (M) Hasanzai Torghar	Deputy DEO (Male) Battagram	Vice S.No. 22
2	Luqman Haqim	SDEO(M) Kohat	Deputy DEO (Male) Karak	Vice S.No.18
3	Malak Khan	SDEO(M) Tank	Deputy DEO (Male) South Waziristan	Vice S.No.15
4	Shahid Hussain	Deputy DEO (M) Lower Chitral in OPS	Deputy DEO (Male) Lower Chitral	Against the already Occupied Post
5	Dilawar Khan	SDEO(M) Lachi Kohat	Deputy DEO (Male) North Waziristan	Vice S.No.19
6	Muqaddas Khan	Deputy DEO (M) Upper Chitral in OPS	Deputy DEO (Male) Upper Chitral	Against the already Occupied Post
7	Abdul Hamid	SDEO (M) Pary Thall Hangu	Deputy DEO (Male) Kohat	Vice S.No.16
8	Kiram Shah	SDEO (M) Babozai Swat	Deputy DEO (Male) Swat Upper	Vice S.No.25
9	Maroof Khan	SDEO (M) Darban Mansehra	Deputy DEO (Male) Mansehra	Vice S.No.17
10	Naseer Ahmad	Deputy DEO (M) Abbottabad in OPS	Deputy DEO (Male) Abbottabad	Against the already Occupied Post
11	Ghulam Habib	SDEO (M) Samar Bagh Dir Lower	Deputy DEO (Male) Bajaur	Vice S.No.20
12	Mehboob Ellahi	SDEO (M) Drosh Lower Chitral	Deputy DEO (Male) Dir Lower	A.V.P
13	Muhammad Farooq	SDEO (M) Karak	Deputy DEO (Male) Orakzai	Vice S.No.14
Consequential Posting/ Transfer				
14	Zahid Khan TC BS-18	Deputy DEO (Male) Orakzai	Principal (BS-17) GHS Spin South Waziristan	A.V.P
15	Khyal Muhammad TC BS-17	Deputy DEO (Male) South Waziristan	HM (BS-17) GHS Shakai South Waziristan	A.V.P
16	Qaisar Khan MC BS-17	Deputy DEO (Male) Kohat in OPS	SDEO (Male) Lachi Circle Kohat	Vice S.No.5
17	Shams Ur Rahman MC BS-17	Deputy DEO (Male) Mansehra in OPS	SDEO (Male) Balakot Mansehra	Services of Mr. Ghulam Jilani (MC BS-16) are place at the disposal of DEO (M) Mansehra for further posting

Amir

Amir
17.02.23



GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION

DEPARTMENT

No.	Name	Designation	Location	Remarks
18	Muhammad Hussain MC BS-17	Deputy DEO (Male) Karak in OPS	SDEO (Male) Karak	V S No 13
19	Said Muhammad TC BS-17	Deputy DEO (Male) North Waziristan in OPS	SS (Islamiyat) GHSS Eidak North Waziristan	A / P
20	Sher Nawab TC BS-18	Deputy DEO (M) Bajaur	Principal GHS Ghazi Baba Bajaur.	A / P
21	Saleh Muhammad MC BS-17	SDEO (M) Chakaiser	SDEO (M) Babozai Swat	A / P
22	Mr Gul Bad Shah TC BS-18	Deputy DEO (Male) Battagram	Principal (BS-18) GHS Bana Allai Battagram	A / P
23	Wali Ur Rehman MC BS-17	SDEO (Male) Kalkot Dir Upper	SDEO (Male) Allai Battagram	V S No 24
24	Zarif Khan MC BS-17	SDEO (Male) Allai Battagram	SDEO Tank	V S No 3
25	Nazr Ul Islam Bacha TC BS-17	Deputy DEO Swat Upper in OPS	SS (Islamiyat) BS-17 GHSS Kabal Swat	A / P
26	Mr. Shandi Gul TC BS-17	SDEO (M) Landi Kotal Khyber	SS (Pashto) GHSS Paindi Cheena Khyber	A / P
27	Mr. Raees Khan MC BS-17	Asst. Director, E&SE Peshawar	SDEO (M) Landi Kotal Khyber	V S No 25
28	Sardar Irshad Ali MC BS-17	Awaiting Posting	SDEO (M) Darban Mansehra	V S No 9
29	Mr. Misri Khan MC BS-18	Awaiting Posting	Deputy Director P&D-II, Directorate of E&SE Peshawar	V S No 30
30	Abdul Shakoor TC BS-17	Deputy Director P&D-II, in OPS Directorate of E&SE Peshawar	SS (Urdu) GHSS Dhera (Alpuri) Shangla	A / P

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. Director EMIS, E&SE Department with the request to upload the same on the official website of the department.
4. Section Officer (Schools Male/Female) E&SE Department.
5. District Education Officer (Male) Concerned.
6. District Accounts Officer Concerned.
7. PS to Secretary, E&SE Department, Khyber Pakhtunkhwa.
8. Master file.

(NASEER ABBAS KHALIL)
SECTION OFFICER (Management Cadre)



GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION
DEPARTMENT

Dated: 27th March, 2023

NOTIFICATION

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

SECRETARY TO GOVT. OF KHYBER PAKHTUNKHWA
E&SE DEPARTMENT

Endst: of even No.& date;

Copy forwarded for information to the:-

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

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



GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION
DEPARTMENT

114 (F)

Dated: 5th April, 2023

NOTIFICATION

NO.SO(MC)E&SED/4-16/Posting/Transfer/2023: In partial modification of this Department's notification of even number dated 27-03-2023, the place of posting in respect of Mr. Muhammad Zarcof may be read as SDEO (Male) Daraband, D.I.Khan instead of Paharpur.

2- Consequent upon above, Mr. Habib Ullah, SDEO (Male) Daraband, D.I.Khan is hereby transferred and posted as SDEO (Male) Tank in the best public interest.

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

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

Approved
W

111 / 5-4-2023

(IMRAN ZAMAN)
SECTION OFFICER (Management Cadre)

Ali (14)



GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION
DEPARTMENT

Dated: 10th April, 2023

CS CamScanner

NOTIFICATION

NO.SO(MC)E&SED/4-10/2022/Posting/Transfer/MC: The following posting/ transfer are hereby ordered with immediate effect, in the best public interest: -

Sr#	Name & Designation	From	To	Remarks
1	Muhammad Noor Sultan MC BS-17	SDEO (Male) Paharpur	SDEO (Male) D.I.Khan	V.S.No.2 on his personal consent in the E.P No.22/233 in SA # 78/22
2	Dr. Abdul Hafeez, MC BS-17	SDEO (Male) D.I.Khan	SDEO (Male) Daraband D.I.Khan	V.S.No.3
3	Muhammad Zareef MC BS-17	SDEO (Male) Daraband D.I.Khan	SDEO (Male) Paharpur	V.S.No.1

SECRETARY TO GOVT: OF KHYBER PAKHTUNKHWA
E&SE DEPARTMENT

Ends: of even No. & date:

Copy forwarded for information to the: -

1. Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. Director, E&SE Khyber Pakhtunkhwa, Peshawar.
3. Director EMIS, E&SE Department with the request to upload the same on the official website of the department.
4. District Education Officers (Male) Concerned.
5. District Accounts Officers Peshawar.
6. Additional Director General (Election-1) Election Commission of Pakistan, Islamabad
7. PS to Advisor to Chief Minister for E&SE Khyber Pakhtunkhwa.
8. PS to Secretary, E&SE Department, Khyber Pakhtunkhwa.
9. Master file.

11/4/23
10-4-23
(IMRAN ZAMAN)
SECTION OF FICER (Management Cadre)

Ali

Better Copy

15

Amir (H)

PESHAWAR HIGH COURT, PESHAWAR

FORM OF ORDER SHEET

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

Alleged

Masood

PESHAWAR HIGH COURT
 FORM OF ORDER SHEET

16



Date of Order Proceeding	Order No.
17.01.2023	CRING-95-P/2023 with C.M. No. 50-P/2023 in C.O.C No. 480-P/2023 in Petition No. 1287-P/2021

Present: M/s. E. in Gul and Mobina Masood, petitioners-applicants in person.
 Mr. Muhammed Sahail, AAG, for the officials of Provincial Govt.

Alger

Alger

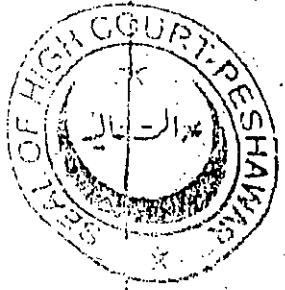
The C.M. No. 95-P/2023 has been moved for the suspension of the impugned notification / order bearing No. 50 (114) / 01 / 2023 dated 10.01.2023 issued by the Governor Khyber Pakhtunkhwa / Chancellor Ghosal University, D.I. Khan.

Alger

2. Since the impugned notification has been issued in the existence of the status quo order dated 10.01.2023 by this court in C.O.C. No. 50-P/2023 therefore, the impugned order and all the proceedings initiated or conducted thereunder are hereby suspended / stayed.

3. Once again, the Principal Secretary to the worthy Governor Khyber Pakhtunkhwa be put on

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



CHIEF JUSTICE

JUDGE

VERIFIED TO BE TRUE COPY

EXAMINER
High Court, Peshawar
Authorized Under Article 175
of the Constitution of Pakistan

17 JAN 2023

Mentel

60551

Date of Presentation of Application 17/1/2023
 No of Pages 1
 Copying fee 200/-
 Total 200/-
 Date of Preparation of Copy 17/1/2023
 Date of Delivery of Copy 17/1/2023
 Amount Paid 200/-

Handwritten notes in Urdu script, including 'Alikhan' and other illegible text.

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ELECTION COMMISSION OF PAKISTAN
NOTIFICATION

Islamabad the 22nd January, 2023

F.No.2(1)/2023-Cord.- WHEREAS, the Provincial Assemblies of Punjab and Khyber Pakhtunkhwa under Article 112 of the Constitution of the Islamic Republic of Pakistan stand dissolved on 14th and 18th January, 2023 respectively.

AND WHEREAS, the Election Commission of Pakistan is mandated with the constitutional duty to organize and conduct elections in terms of Article 218(3) of the Constitution and to make such arrangements as are necessary to ensure that the elections are conducted honestly, justly, fairly and in accordance with the law and that corrupt practices are guarded against;

AND WHEREAS, it has become imperative that the Election Commission shall take all necessary steps under the Constitution and prevalent law for smooth conduct of General Elections to the Provincial Assemblies of Punjab and Khyber Pakhtunkhwa.

NOW THEREFORE, in exercise of the powers conferred upon it under Articles 218(3), 220 of the Constitution of the Islamic Republic of Pakistan, Sections 4, 5, 8(c) read with Section 230 of the Elections Act, 2017 and as supported by the Workers' Party case through Akhtar Hussain Advocate, General Secretary and 6 others Versus Federal of Pakistan and 2 others reported in PLD 2012 SC 631, and all the other powers enabling it in that behalf, the Election Commission of Pakistan, to ensure transparent election and to provide a level playing field for all contesting candidates and political parties, hereby directs the Caretaker Governments of Punjab and Khyber Pakhtunkhwa -

- (a) To assist the Election Commission to hold elections in accordance with law as provided under section 230(1)(b) of the Elections Act, 2017.
- (b) To ensure the compliance of all the notifications, directives and the provisions as laid down in Section 230 of the Act *ibid*
- (c) Not to post or transfer any public official after the issuance of this notification within and to / from Punjab & Khyber Pakhtunkhwa without prior approval in writing of the Election Commission as laid down in Clause 2(f) of Section 230 of the Elections Act, 2017
- (d) Ensure that all kinds of recruitments in any Ministry, Division, Department or Institution under the Provincial Governments and Local Governments of Punjab and Khyber Pakhtunkhwa are banned with immediate effect, except recruitments by the Provincial Public Service Commissions and those government organizations where test / interviews have already been conducted before this day
- (e) Not to announce / execute any kind of Development Schemes in Punjab and Khyber Pakhtunkhwa Provinces except those which are ongoing and approved before the issuance of this notification. Moreover, the Provincial Governments and Local Governments of Punjab and Khyber Pakhtunkhwa shall not issue tenders of such schemes till culmination of General Elections of both Assemblies.

Contd Page-2

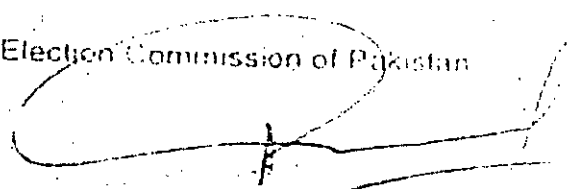
A. H. Khan
Secretary

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- (f) All development funds relating to Local Government institutions of Punjab and Khyber Pakhtunkhwa and Cantonment Boards falling in the jurisdiction of Punjab and Khyber Pakhtunkhwa shall stand frozen with immediate effect till announcement of results of the said General Elections.
- (g) To ensure immediate termination of services of all heads of the institutions appointed on political basis and to send their lists to the Commission forthwith.
- (h) To ensure vacation of the government residential facilities from Ex-Chief Ministers and their advisors, Ex-Provincial Ministers and Ex-Members of the Provincial Assemblies of Punjab and Khyber Pakhtunkhwa, besides ensuring withdrawal of official vehicles from them. Furthermore, the dignitaries shall be provided security / protocol as per their entitlement and any extra deployment of security / protocol be withdrawn from them forthwith.
- (i) The Caretaker Governments shall perform their functions and attend to day-to-day matters which are necessary to run the affairs of the Provinces in accordance with law.
- (j) The Chief Minister or a Minister or any other member of Caretaker Governments shall, within three days from the date of assumption of office, submit to the Commission, a statement of assets and liabilities including assets and liabilities of his spouse and dependent children as on the preceding 30th day of June on Form B.

This issues with the approval of Election Commission of Pakistan



(Omar Hamid Khan)
Secretary
Election Commission of Pakistan

Attested


Attested


P L D 2021 Supreme Court 313

Present: Gulzar Ahmed, C.J., Faisal Arab and Ijaz ul Ahsan, JJ

GOVERNMENT OF BALOCHISTAN through Secretary Services and General Administration Department and others---Appellants

Versus

ABDUL RAUF and others---Respondents

Civil Appeals Nos.433 to 438 and 596 of 2020, decided on 14th October, 2020.

(Against the judgment dated 03.01.2020 passed by the High Court of Balochistan, Quetta in C.Ps. Nos. 48, 363, 401, 401, 656, 678 and 1173 of 2019).

Constitution of Pakistan---

---Art. 224 (1A)---Caretaker Government/Cabinet, powers of---Scope---Caretaker Government/Cabinet could not take policy decisions and permanent measures including recruitments, making appointments, transfers and postings of Government servants during the limited period that it held office.

In the present case, the process of recruitment may have been initiated by way of publication of advertisement before the Caretaker Government was put in place. However, all material steps including processing of applications, tests (if any) interviews (if any) and recommendations by the Recruitment Committee were taken during the Caretaker Government and the elected Government was practically presented with a fait accompli. The mandate of a Caretaker Government was to hold the mantle in the interregnum when the term of the sitting Government had expired and the new Government was yet to take charge. A caretaker Government was empowered only to carry out day to day affairs of the State with the help of available machinery/ resources/manpower. It could not take policy decisions and permanent measures including recruitments, making appointments, transfers and postings of Government Servants. It must leave such matters to the elected Government which took charge as a result of elections.

Khawaja Muhammad Asif v. Federation of Pakistan and others 2013 SCMR 1205 ref.

Decisions having far reaching consequences should only be taken by the elected government having the mandate to perform such functions as were required of it in exercise of powers conferred by the Constitution.

Nemat Ullah and others v. Chairman Governing Body, Worker Welfare Board/Secretary to Government of KPK, Labour Department and others 2016 SCMR 1299 ref.

Even otherwise, in the present case, there was no record whatsoever of any process of recruitment having been transparently conducted with a view to make merit-based appointments. The recommendations made by the Committee had ex facie been made arbitrarily and were neither based upon any test results nor interviews. There was not an iota of evidence available on the record that any test or interview was conducted or transparent and proper merit list was prepared showing marks obtained by each candidate in the NTS test or interview.

In the interest of being just and fair the Supreme Court directed that it would be appropriate if all those candidates who filed applications pursuant to the advertised posts

were allowed to appear in fresh tests to be conducted by NTS. Appeals were allowed with further relevant directions.

Arbab M. Tahir, A.G. Balochistan, Ayaz Khan Swati, Addl. A.G., Balochistan for Appellants (in all cases).

Sardar Ahmed Haleem, Advocate Supreme Court for Respondents (in C.A. No. 433 of 2020).

Amanullah Kanrani, Advocate Supreme Court for Respondents (in C.As. Nos. 435-438 of 2020).

Kamran Murtaza, Senior Advocate Supreme Court for Respondents (in C.A. No. 596 of 2020) (via video-links from Quetta).

Syed Rifaqat H. Shah, Advocate-on-Record for Respondents (in C.As. Nos. 433, 435-438 and 596 of 2020).

Nemo for Respondents (in C.A. 434 of 2020).

Date of hearing: 25th September, 2020.

JUDGMENT

File No. 433/2020
IJAZ UL AHSAN, J.---Through this common judgment, we intend to decide Civil Appeals Nos. 433, 434, 435, 436, 437, 438 and 596 of 2020 as they arise out of a single consolidated judgment of the High Court of Balochistan, Quetta dated 03.01.2020.

2. Briefly stated the facts necessary for disposal of these appeal are that in response to advertisements published in daily newspapers "Daily Mashriq dated 17.05.2017" and "Daily Express Century dated 18.02.2018" inviting applications for different posts on divisional quota basis, the Respondents filed applications. They alleged that tests and interviews were conducted by a Selection/Recruitment Committee which had been constituted by the Government of Balochistan under the Chairmanship of Director General Mines and Minerals Department, Government of Balochistan. After the applications had been processed the Committee through minutes of meetings held on 11.07.2018 and 12.07.2018 made recommendations for appointment of the Respondents against the respective posts for which they had filed applications. However, the department neither announced the results on the recommendations of the Committee nor published the merit list as required by the Recruitment Policy, 2009. Instead the entire process was scrapped and the posts were re-advertized. The Respondents were aggrieved of the inaction of the department and approached the Balochistan High Court through the constitutional petition. They sought relief to the effect that the department may be directed to produce the merit list and issue appointment letters accordingly. It was also prayed that the department may be restrained from undertaking the recruitment process afresh. The constitutional petition was allowed and the Appellants were directed to issue appointment letters to the Respondents after due verification of the credentials. The Government of Balochistan was aggrieved of such order and approached this Court by way of a civil petition for leave to appeal.

3. Leave to appeal was granted vide order dated 01.04.2020 which is reproduced below:

"Learned Additional Advocate General, Balochistan contends that advertisements were published on 17.05.2017 and 18.02.2018 for different posts by the Director General Mines and Minerals Department, Government of Balochistan. He contends that though the Departmental Recruitment Committee was constituted but actually, no transparent process whatsoever for making appointments was undertaken by the said Committee and even the minutes of the meeting dated 11 and 12.07.2018 are not in accordance with law, for that, no test and interview of any of the candidate was undertaken, as there is no record of such test and interview. He contends that no merit list was prepared and there is no existence of merit list on the record. He contends that as per guidelines issued, under Para-5 of letter dated 15.03.2016, captioned, "the Observance of the Recruitment Policy, 1991 (Appointment, Promotion and Transfer) Rules, 2009 and Specific Quotas Fixed for Appointment Against Initial Recruitment". If a merit list is prepared, the same is required to be published but there is no publication of such merit list. He contends that as there was no transparent recruitment process and there was even no conclusion of the recruitment process.

thus, no right accrued to the respondents for being appointed and in this manner, the petitioners were justified to re-advertise the posts. He contends that the recruitment process was to be completed within 120 days, with extension of 60 days, but the recruitment process was never completed even though 420 days had expired and thus, the whole process of recruitment itself had become infructuous, as per the policy.

2. The contentions raised by the learned AAG require consideration. Leave to appeal is granted to consider, inter alia, the same. The appeal shall be heard on the available record but the parties are allowed to file additional documents within a period of one month. As the matter relates to service, office is directed to fix the same expeditiously, preferably, after three months".

4. The learned Advocate General Balochistan has argued that the alleged process of test and interview was purportedly conducted during the period when a Caretaker Government was in place. There was a bar on fresh recruitments imposed by the Election Commission of Pakistan and the recruitment exercise was altogether illegal. He maintains that the constitution of the Committee and the alleged process was in itself illegal in so far as a Caretaker Government is not empowered to undertake any permanent steps other than day to day running of the Government. In this context he had relied upon *Khawaja Muhammad Asif v. Federation of Pakistan and others* (2013 SCMR 1205) where this Court has categorically held that the mandate of a Caretaker Government does not go beyond running day to day affairs till such time that duly elected Government takes charge. He has vehemently argued that no process either of testing or interview took place. There is neither record of testing or interview and the nominations were made without a transparent process on the whims of the Committee. He maintains that the alleged minutes of meetings of the illegally constituted Recruitment Committee dated 11 and 12.07.2018 are a sham as the recommendations made were neither based upon ability nor merit. Even otherwise, the recommendations of the Committee carry no legal validity or value. He finally submits that the Balochistan High Court fell in grave error in holding that the Committee held tests and interviews in a fair and transparent manner and prepared a merit list on the basis of marks obtaining by the candidates in test and interview. He points out that the said finding is clearly and patently contrary to the record as there is no material anywhere in the record that may even remotely support such finding.

Atk. 23/1

5. The learned counsel for the Respondents on the other hand submits that initially there may have been a ban but the same was lifted by the Election Commission of Pakistan. The tests and interviews were conducted by a duly constituted Committee which recommended appointments and the new Government which came into place scrapped the process to accommodate their own cronies which action was ex facie illegal and unsupported by law. He further points out that by reason of completion of the process and recommendations made by the Committee a vested right had accrued in favour of the Respondents which cannot be taken away without lawful reason. The impugned judgment of the Balochistan High Court proceeds on correct appreciation of the legal principles on the subject in view of the fact that there was no justified or plausible reason for cancellation of recommendations of the Committee and re-advertisement of the same posts.

6. We have heard the learned Advocate General Balochistan as well as the learned counsel for the Respondents at considerable length. With their assistance we also scanned the record.

7. There is no denial of the fact that the process of recruitment may have been initiated by way of publication of advertisement before the Caretaker Government was put in place. However, all material steps including processing of applications, tests (if any) interviews (if any) and recommendations by the Recruitment Committee were taken during the Caretaker Government and the elected Government was practically presented with a fait accompli. The mandate of a Caretaker Government is to hold the mantle in the interregnum when the term of the sitting Government has expired and the new Government is yet to take charge. A caretaker Government is empowered only to carry out day to day affairs of the State with the help of available machinery/resources/ manpower. It cannot take policy decisions and permanent measures including recruitments, making appointments, transfers and postings of Government Servants. It must leave such matters to the elected Government which takes charge as a result of elections. It was in this context that in a case reported, as *Khawaja Muhammad Asif v. Federation of Pakistan and others* (supra) held that a Caretaker Government/Cabinet has to confine itself to running day to day administration of the State and to take decisions required for orderly running the affairs of the State. However, decisions having far reaching consequences should only be taken by the elected government having the

mandate to perform such functions as are required of it in exercise of powers conferred by the Constitution. The above principle was reiterated in a later judgment of this Court reported in the case Nemat Ullah and others v. Chairman Governing Body, Worker Welfare Board, Secretary to Government of KPK, Labour Department and others (2016 SCMR 1299).

8. A perusal of the aforementioned judgments and the ratio of the same clearly settle the law that a Caretaker Government/Cabinet lacks the power to make appointments, transfers and postings during the limited period that it holds office. Therefore, we are in no manner of doubt that the refusal of the Appellants to implement the recommendations of the Recruitment Committee constituted by the Caretaker Government had legal backing and lawful justification. Consequently, the finding of the Balochistan High Court that the recommendations of the Committee were legally sound and valid and should have been implemented is not based upon or supported by legal principles settled by this Court. Further, the learned High Court misdirected itself in holding that by reason of appearing in written tests and interviews a vested right had accrued in favour of the Respondents. In the first instance, we are not convinced that any tests or interviews were held and even if the same had been held, no vested right to appointment accrues unless a merit list is displayed and appointment letters are issued. The Government can always stop or abandon the process or initiate a fresh one if there are valid reasons or justification to support such action. In the instant case, such valid reasons and justification were amply available.

9. We have also noticed that there is no record whatsoever of any process of recruitment having been transparently conducted with a view to make merit based appointments. The recommendations made by the Committee had ex facie been made arbitrarily and were neither based upon any test results nor interviews. The learned Advocate General Balochistan has categorically stated that no test let alone an impartial and transparent test in the form of NTS was ever conducted and there is no record of any candidate appearing in such test or a merit list having been prepared in order to test the ability of each candidate. Further, the entire process was completed with unholy haste in a matter of only ten days and vacancies in excess of about 600 posts were recommended to be filled without any process having been followed. This haste speaks volumes about the validity, credibility and genuineness of the process and its underlying intent, motive and purpose.

10. Despite the arguments of the learned counsel for the respondents that tests and interviews were conducted, there is not an iota of evidence available on the record that any test or interview was conducted or transparent and proper merit list was prepared showing marks obtained by each candidate in the NTS test or interview.

11. We further find that the recommendations made by the Committee are clearly and patently illegal as the Committee itself was illegally constituted for a purpose which was beyond the mandate of the Caretaker Government. We have asked the learned Advocate General Balochistan if tests and interviews are conducted for all grades. He has candidly conceded that tests and interviews are not conducted for employment against grades 1 to 6. However, all posts in grade 7 upwards are filled by the process of testing and interview in accordance with the Recruitment Policy of 2009. In this view of the matter, the learned Advocate General has conceded that he would not object if those already appointed to posts against grades 1 to 6 are not disturbed. However, he maintains that those who are required to undergo the process of testing and interview must go through the same in order to ensure that the most competent, qualified and able candidates fill the available posts.

12. We notice that the Respondents had filed applications for appointments against posts advertised on 17.05.2017 and 18.02.2018 in daily 'Mashriq' and daily 'Express'. It also

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appears that pursuant to the advertisement published in daily Jang on 16.02.2019 a number of applications have been received against the advertised posts. However, the process was stopped pursuant to the judgment of the High Court. We are therefore of the opinion that in the interest of being just and fair it would be appropriate if all those candidates who filed applications pursuant to advertisements dated 17.05.2017, 18.02.2018 and 16.02.2019 are allowed to appear in fresh tests to be conducted by NTS. Further, interviews must be conducted by competent and impartial Committee(s) and on the basis of marks scored in NTS tests and interviews, merit list/lists must be prepared for appointments against various posts strictly and purely on merit. The process must be fair and transparent and provide a level playing field to all candidates with a view that the best amongst the lot are selected. The learned Advocate General Balochistan submits that an effort is being made to fill these posts through the Balochistan Public Service Commission ("BPSC"). In case, the BPSC undertakes the exercise the same shall also be conducted in the same manner of impartial testing and interviews and preparation of a merit list which shall be displayed publicly as well as on the website of the Government of Balochistan as well as that of BPSC. On the basis of such merit list recommendations can be made to the Government for appointments against all available posts. We are sanguine that the aforesaid exercise shall be completed as expeditiously as possible and preferably within a period of three months. The merit lists prepared as a result of testing and interviews shall be placed before us for our examination in Chambers.

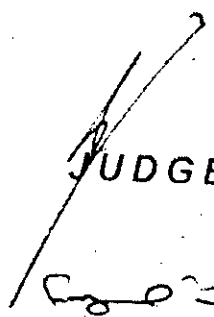
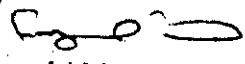
13. For the reasons recorded above, these appeals are accordingly allowed. The impugned judgment of the Balochistan High Court dated 03.01.2020 is set aside.

MWA/G-16/SC Appeals allowe

Attorney
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Annex (K)
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PESHAWAR HIGH COURT,
ABBOTTABAD BENCH
FORM 'A'
FORM OF ORDER SHEET

Date of Order or Proceedings	ORDER OR PROCEEDINGS WITH SIGNATURE OF JUDGE/JUDGES
1	2
04.04.2023	<p>WP No. 440-A/2023</p> <p>Present:- Mr. Muhammad Asjad, Advocate for petitioner.</p> <p style="text-align: center;">***</p> <p>Learned counsel while relied on judgment of Hon'ble Supreme Court of Pakistan, reported in PLD 2021 SC 313 and contended that Caretaker set up has no authority for making order of transfers and repatriation etc. Let notice of this petition be issued to respondents for (4.05.2023).</p> <p><u>Interim Relief:</u></p> <p>Notice for the date fixed. Till then, the impugned order shall remain suspended.</p> <p style="text-align: right;"> JUDGE</p> <p style="text-align: right;"> JUDGE</p>

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KHALID MEHMOOD

Advocate

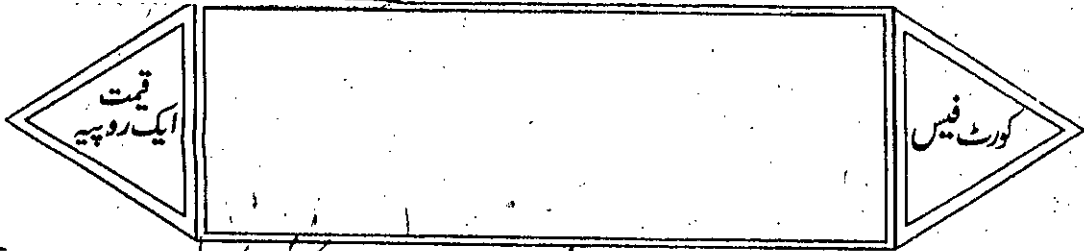
bc 15-5415

Date of issue: November 2022

valid upto: November 2025

Secretary
Bar Council

وکالت نامہ



بعدالت جناب سید شکیل حسین شاہ
منجانب سید شکیل حسین شاہ
گھر لوہڑا مارن، بنام گورنمنٹ ہسپتال
دعویٰ یا جرم CM No 223/2023
تفصیل دعویٰ یا جرم

باعث تحریر آنکہ

مقدمہ مندرجہ بالا عنوان میں اپنی طرف واسطے ہر وی وجوہاً یہی برائے پیشی یا تصفیہ مقدمہ مقام گورنمنٹ ہسپتال

کوحسب ذیل شرائط پر وکیل مقرر کیا ہے، کہ میں ہر پیشی پر خود بذریعہ اختیار خاص رو بروعدالت حاضر ہونا ہوں گا۔ اور ہر وقت پکارے جانے مقدمہ وکیل صاحب موصوف کو اطلاع دیکر حاضر عدالت کروں گا، اگر پیشی پر منظر حاضر نہ ہوں اور مقدمہ میری غیر حاضری کی وجہ سے کسی طور پر میرے برخلاف ہو گیا۔ تو صاحب موصوف اسکے کسی طرح ذمہ دار نہ ہوں گے، نیز وکیل صاحب موصوف صدر مقام بکھری کے علاوہ کسی جگہ یا بکھری کے اوقات سے پہلے یا پیچھے یا بروڈ حتمیل ہر وی کرنے کے ذمہ دار نہ ہوں گے۔ نیز وکیل صاحب موصوف صدر مقام بکھری کے علاوہ کسی جگہ یا بکھری کے اوقات سے پہلے یا پیچھے یا بروڈ حتمیل ہر وی کرنے کے ذمہ دار نہ ہوں گے۔ اور مقدمہ صدر بکھری کے علاوہ اور جگہ سماعت ہونے یا بروڈ حتمیل یا بکھری کے اوقات کے آگے پیچھے پیش ہونے پر منظر کو کوئی نقصان پہنچے تو اس کے ذمہ دار یا اس کے واسطے کسی معاوضہ کے ادا کرنے یا عیناً نہ واپس کرنے کے بھی موصوف ذمہ دار نہ ہوں گے۔ مجھ کو کل ساختہ پروڈ اخط صاحب موصوف مل کر وہ ذات خود منظور قبول ہوگا۔ اور صاحب موصوف کو عرضی دعویٰ یا جواب دعویٰ یا درخواست اجراء کے ذمہ داری نظر ثانی اپیل گرانٹی و ہر قسم درخواست پر تعلقہ تصدیق کرنے کا بھی اختیار ہوگا۔ اور کسی حکم یا ڈگری کرانے اور ہر قسم کاروبار وصول کرنے اور رسید دینے اور داخل کرنے اور ہر قسم کے بیان دینے اور اس پر حاشی یا راضی نامہ لکھنے پر حلف کرنے، اقبال دعویٰ کا بھی اختیار ہوگا۔ اور بصورت مقرر ہونے تاریخ پیش مقدمہ مذکورہ بیرون از بکھری صدر ہر وی مقدمہ مذکورہ نظر ثانی و اپیل و گرانٹی و ہر قسم مقدمہ یا منسوخی ڈگری یا درخواست حکم انتہائی یا ترقی یا گرفتاری مل۔ ذیل اجراء کے ذمہ بھی صاحب موصوف کو بشرط ادا اسکی طبعاً معائنہ ہر وی کا اختیار ہوگا اور تمام ساختہ پروڈ اخط صاحب موصوف مل کر وہ ذات خود منظور قبول ہوگا۔ اور بصورت ضرورت صاحب موصوف کو یہ بھی اختیار ہوگا کہ مقدمہ مذکورہ یا اسکے کسی جزو کی کارروائی یا بصورت درخواست نظر ثانی اپیل یا گرانٹی یا دیگر معاملہ مقدمہ مذکورہ کسی دوسرے وکیل یا ہر سزا کو اپنے بجائے یا اپنے ہمراہ مقرر کریں۔ اور ایسے شیرکانوں کو بھی ہر امر میں وہی اور اپنے اختیارات حاصل ہوں گے، جیسے صاحب موصوف کو حاصل ہیں، اور دوران مقدمہ میں جو کچھ ہر جانہ التواء پڑے گا، وہ صاحب موصوف کا حق ہوگا۔ مگر صاحب موصوف کو چوری نہیں تاریخ پیشی سے پہلے ادا نہ کروں گا۔ تو صاحب موصوف کو پورا اختیار ہوگا کہ وہ مقدمہ کی ہر وی نہ کریں اور ایسی صورت میں میرا کوئی مطالبہ کسی قسم کا صاحب موصوف کے برخلاف نہیں ہوگا۔

مورہ 26 مارچ 2023ء

مضمون وکالت نامہ سن لیا ہے۔ اور اچھی طرح سمجھ لیا ہے اور منظور ہے۔

العبد العبد العبد

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