



20.03.2023

Appellant present through counsel.

Asif Masood Ali Shah learned Deputy District Attorney for respondents present.

Former made a request for adjournment in order to prepare the brief. Adjourned. To come up for arguments on 05.06.2023 before D.B. Parcha/Peshi given to the parties.


(Muhammad Akbar Khan)
Member (E)


(Rozina Rehman)
Member (J)

31.08.2022

Bench is incomplete, therefore, case is adjourned to 10.11.2022 for the same as before.



Reader


10.11.2022

Junior to counsel for the appellant present.

Mr. Muhammad Adeel Butt, learned Additional Advocate General for the respondents present.

Former requested for adjournment due to engagement of learned senior counsel for the appellant in Hon'ble Peshawar High Court, Adjourned. To come up for arguments on 09.01.2023 before the D.B.


(Fareeha Paul)
Member (E)


(Rozina Rehman)
Member (J)

09.01.2023

Counsel for the appellant present. Mr. Muhammad Riaz Khan Paindakhel, Assistant Advocate General for the respondents present.

Learned Member Executive (Miss Fareeha Paul) left the court at 12.00 Noon in order to attend a meeting in the Law Department, Government of Khyber Pakhtunkhwa, therefore, this case is adjourned to 20.03.2023 for arguments before the D.B.


(ROZINA REHMAN)
Member (J)

SCANNED
KPST
Peshawar

14.12.2021


Learned counsel for the appellant present. Mr. Noor Zaman Khattak, District Attorney alongwith Mr. Obaid Ur Rehman, ADEO for respondents present.

Representative of the respondents submitted written reply/comments which is placed on file. A copy of the same is also handed over to the learned counsel for the appellant. Adjournd. To come up for arguments on 28.03.2022 before D.B.


(MIAN MUHAMMAD)
MEMBER (E)

28-3-2022


Proper DB not available
the case is adjournd to
come up for the same as
before on 4-7-2022

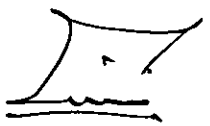

Riaz Ahmed

04.07.2022

Learned counsel for the appellant present. Mr. Riaz Ahmed Paindakhel, Assistant Advocate General for the respondents present.


Learned counsel for the appellant requested for adjournment on the ground that he has not made preparation for arguments. Adjournd. To come up for arguments on 31.08.2022 before the D.B.


(Mian Muhammad)
Member (E)


(Salah-ud-Din)
Member (J)

12.07.2021

Learned Addl. A.G be reminded about the omission and for submission of reply/comments within extended time of 10 days.


Chairman

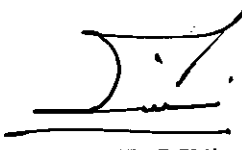
Stipulated period passed reply not submitted.

15.09.2021

Mr. Noor Muhammad Khattak, Advocate for the appellant present. Mr. Iftikhar Ghani, DEO alongwith Mr. Kabirullah Khattak Additional Advocate General for the respondents present.

Learned counsel for the appellant requested that instead of District Education Officer (M) Buner, District Education Officer (M) Peshawar has been inadvertently arrayed as respondent No.3, therefore, necessary correction be made in the title of appeal. Request seems genuine, therefore, allowed. Office is directed to make necessary correction in this respect in the title of appeal as well as relevant record accordingly. Respondent No. 3 be summoned and to come up for reply/comments on behalf of respondent No.3 as well as arguments before the D.B on 14.12.2021.


(ATIQ UR REHMAN WAZIR)
MEMBER (EXECUTIVE)


(SALAH UD DIN)
MEMBER (JUDICIAL)

03.02.2021

Counsel for the appellant present.

Requests for adjournment in order to further prepare the brief. Adjourned to 25.05.2021 for hearing before S.B.


Chairman

25.05.2021

Counsel for the appellant present. Preliminary arguments

heard.

The grievance of the appellant relates to a dispute of promotion to the post of SST on the basis of seniority-cum-fitness. As argued on behalf of the appellant, his promotion has been withheld due to certain dispute with reference to the Degree of a particular University despite the fact that judgment dated 21.11.2019 of Honourable Peshawar High Court in Writ Petition No. 5463-P/2019 has been announced in favour of the appellant.

Subject to all legal objections available to the respondents, this appeal is admitted for regular hearing. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for submission of written reply/comments in office within 10 days of the receipt of notices, positively. If the written reply/comments are not submitted within the stipulated time, the office is required to submit the file with a report of non-compliance. File to come up for arguments on 15.09.2021 before the D.B.

Appellant Deposited
Security & Process Fee

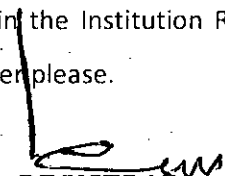
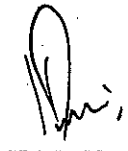


Chairman

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 11550 /2020

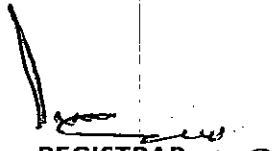
S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	05/10/2020	<p>The appeal of Mr. Yousaf Khan resubmitted today by Mr. Noor Muhammad Khattak Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-	16.11.2020	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>16/11/2020</u></p> <p style="text-align: right;"> CHAIRMAN</p> <p>Due to third day of mourning the demise of Honourable Chief Justice, Peshawar High Court, the members of the Bar are not appearing before the courts today. The matter is, therefore, adjourned to 03.02.2021 before S.B.</p> <p style="text-align: right;"> Chairman</p>

The appeal of Mr. Yousaf Khan PSHT GPS Sher Ali District Buner received today i.e. on 08.09.2020 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Copy of Writ Petition in respect of appellant mentioned in the memo of appeal is not attached with the appeal which may be placed on it.
- 2- Annexures-B, C and G of the appeal are illegible which may be replaced by legible/better one.

No. 2648 /S.T,

Dt. 09/09 /2020


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Noor Muhammad Khattak Adv. Pesh.

Note:

*All objections have been removed,
hence re submitted today dated 05/10/2020.*

05/10/2020

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. 11550 / 2020

YOUSAF KHAN

VS

EDUCATION DEPTT:

INDEX

S.NO.	DOCUMENTS	ANNEXURE	PAGE
1	Memo of appeal	1- 3.
2	Educational Testimonials	A	4- 5.
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5	Judgment	E	10- 19.
6	COC Judgment <i>& Rules</i>	F	20- 28.
7	Vakalat nama	29.

APPELLANT

THROUGH:

A
NOOR MOHAMMAD KHATTAK
ADVOCATE

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

APPEAL NO. _____/2020

Mr. Yousaf Khan, PSHT (BPS-15),
GPS Sher Ali, Tehsil Gagra, District Buner.....**APPELLANT**

VERSUS

- 1- The Secretary (E&SE) Department, Khyber Pakhtunkhwa, Peshawar.
- 2- The Director (E&SE) Department, Khyber Pakhtunkhwa, Peshawar.
- 3- The District Education Officer (M), District Peshawar.

.....**RESPONDENTS**

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 S.S.T (BPS-16) WITH EFFECT FROM THE DATE WHEN HIS OTHER COLLEAGUES WERE PROMOTED AND AGAINST NO ACTION TAKEN ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS

PRAYER:

That on acceptance of this appeal the respondents may very kindly be directed to consider the appellant for promotion to the post of SST (BPS-16) with all back benefits w.e.f. the date when his colleagues were promoted. Any other remedy which this august remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

R/SHEWETH:

ON FACTS:

- 1- That appellant is the employee of the respondent Department and is serving as PSHT (BPS-15) at GPS Sher Ali, Tehsil Gagra, District Buner quite efficiently and up to the entire satisfaction of his superiors.
- 2- That the appellant is the Bachelor Degree Holder which he has got from the Al-Khair University, AJK. Copies of the Educational testimonials are attached as annexure.....**A.**

- 3- That the appellant was eligible for promotion to the post of SST (BPS-16) but the respondents declined promotion to the appellant on the reason that the Al-Khair University from which the appellant acquired the said degree is not recognized and the degree got from the aforementioned university is not acceptable while the other employees of the respondent Department were promoted to the post of SST (BPS-16) on the basis of Degrees acquired from Al-Khair University vide different Notifications. Copies of the Notifications are attached as annexure.....**B & C.**
- 4- That appellant feeling aggrieved filed Departmental appeal followed by writ petition No. 2766-P/2017 before the Peshawar High Court, Peshawar which was allowed by the Honorable High Court vide its judgment dated 11.09.2017 with the view that **"In light of ratio of the judgment (supra), if the certificate/Degrees of the petitioners from Al-Khair University have not been obtained in between the period from 30.04.2009 to 16.10.2011, then the same shall be considered as valid for all intents and purposes by the respondents"**. Copies of the Departmental appeal & Judgment is attached as annexure.....**D & E.**
- 5- That after obtaining attested copy of the judgment dated 11.09.2017 the appellant submitted the same before the respondents but the respondents were not willing to implement the judgment passed by the Honorable Peshawar High Court, Peshawar. That then after the appellant was filed COC No.5463-P/2019 which was disposed of with the directions to approach the proper forum vide order/judgment dated 21.11.2019. Copy of the order/judgment is attached as annexure..... **F.**
- 6- That under the principle of consistency the appellant is fully entitle for promotion to the post of SST (BPS-16) but the respondents are not willing to do so. That appellant feeling aggrieved and having no other remedy but to file the instant service appeal on the following grounds amongst the others.

GROUND:

- A- That the inaction of the respondents by not promoting the appellant to the post of SST (BPS-16) is against the law, facts, norms of natural justice and materials on the record, hence not tenable.

- B- That the appellant has not been treated by the respondent Department in accordance with law and rules on the subject noted above and as such the respondent violated Article-4 and 25 of the Constitution of Islamic Republic of Pakistan, 1973.
- C- That the respondents acted in arbitrary and malafide manner not promoting the appellant to the post of SST (BPS16) w.e.f the date when his other colleagues were promoted.
- D- That the action and inaction of the respondents is discriminatory by promoting the other colleagues of the appellant to the post of SST (BPS-16) and ignoring the appellant from the said promotion.
- E- That in light of the service rules of the respondent Department the appellant is fully entitled for promotion to the post of SST (BPS-16) but despite of that the respondents are not willing to promote the appellant. Copy of the service rules is attached as annexure.....G.
- F- That by not promoting the appellant to the post of SST (BPS-16) is violative of Article-38(e) of the Constitution of Islamic Republic of Pakistan, 1973.
- G- That the inaction of the respondents by not promoting the appellant to the post of SST (BPS-16) is the clear violation of Section-9 of the Khyber Pakhtunkhwa Civil Servant Act, 1973 read with Rule-7 of the Appointment, Promotion and Transfer Rules, 1989.
- H- That under the principle of consistency the appellant is fully entitle for the promotion to the post of SST (BPS-16) but the respondents ignored repeated requests of the appellant for promotion.
- I- That appellant seeks permission to advance other grounds and proofs at the time of hearing.

It is therefore, most humbly prayed that the appeal of appellant may be accepted as prayed for.

APPELLANT


YOUSAF KHAN

THROUGH:


NOOR MOHAMMAD KHATTAK

&


MIR ZAMAN SAFI
ADVOCATES

الجامعة الإسلامية
التحريرية

University of Peshawar (Pakistan)

Session ANNUAL 2003

YOUSAF KHAN SON of HAMEED

and a student of DISTRICT BUNER

having passed the prescribed examination held in JUNE 2003

is this day admitted by the University of Peshawar to the Degree of

Bachelor of Arts

in SECOND Division

The Examination was taken as a whole / in parts



Mustafa
[Signature]

[Signature]
Registrar

[Signature]
Crafter
LOISE

[Signature]
Countersigned
Vice-Chancellor

Serial No 090389

Registration No. 96-PS-8635

Roll No. 91718

Result declared on

Book No. 196

Serial No. 19542

AL-KHAIR UNIVERSITY (AJK)



DETAILED MARKS CERTIFICATE

This is to certify that Yousaf Khan
 Son/Daughter of Hameed
 Registration No. AUBN(E) 823-2014 Roll No. 17031
 has passed Bachelor of Education Annual/Supplementary Examination
 held in August 20 15 in 1st Division and obtained 771 marks.

The Marks obtained in each subject are given below:-

Papers	SUBJECTS	Marks Obtained	Maximum Marks
ED-501	Perspectives of Education	61	100
ED-502	School Organization & Class Management	56	100
ED-503	Human Growth & Education	70	100
ED-504	Curriculum & Instructions	53	100
ED-505	Islamiyat, Pakistan Studies & Kashmir Studies	57	100
ED-506	English (Compulsory)	44	100
ED-507	Teaching Strategies	48	100
ED-508	Teaching of Islamiyat	75	100
ED-511	Teaching of Pakistan Studies	63	100
ED-509-A	One Week Workshop	81	100
ED-509-B	Four Week Teaching for Writing & Delivering 40 Lessons to Classes 6-10 According to Selections/ Choice of Group	80	100
ED-510	Two Final Lessons Per Student	83	100
TOTAL :		771	1200

Note: This DMC is issued, errors and omissions excepted, as a NOTICE only. An entry appearing in it does not in itself confer any right or privilege independently to the grant of a proper Certificate / Degree which will be issued under the Regulations in due course.

Bhimber, the 14th November, 2015.

Prepared by.....

Checked by.....

DY. CONTROLLER OF EXAMINATIONS
for
CONTROLLER OF EXAMINATIONS



**Directorate of Elementary and Secondary Education
Khyber Pakhtunkhwa Peshawar**

PH No. 091-9225340-9225341,

9225338, 9225339

Fax 091-9225345

E-mail: rafiq_kk851@yahoo.com

Notification

Consequent upon the recommendations of the Departmental Promotion Committee and in pursuance of the Government of Khyber Pakhtunkhwa Elementary and Secondary Education Notification NoSO(PE)/4-5/SSRC/Mueing/2013/Teaching Cadre dated 24th July 2014, the following SGTs/CTs, SDMs/DMs, SAs/As, STs/TS, Senior Clerks/Clerks, PSHTs/SPSTs/PSTs are hereby promoted to the post of SST (Bio-Chem), SST (Phy-Maths), SST (General) noted against each BFS-16 (Rs. 18910-1520-64510) plus usual allowances as admissible under the rules on regular basis under the existing policy of the Provincial Government, on the terms and condition given below with immediate effect and further they will be posted by the District Education Officer concerned.

SST (General)

PROMOTION OF SPST/PSHT TO SST (General) BFS-16

Total No. of SST General (F) Posts vacant/Posts	35
25% share of initial recruitment	08
25% share for promotion	09
20% share of promotion of SPST/PSHT	08
Already promoted in previous DPC	02
Posts available for promotion	06
Promoted through this order	01

S.No.	SIL No.	Name of Officer & Present (Current) Post	Date of Birth	Date of Appointment Regular/PSST	Qualification	Remarks
	43	Sirsoom CGPS Dilwana Bacha Zinnat	12-05-1969	31-01-2000	MA/B.Ed	Services placed on the disposal of DEO (F) Bunner for further posting against SST (General) post.

Terms and conditions:-

- She has passed BA from Aligarh University. She was deferred for promotion to the post of SST General (BFS-16) in previous DPC for want of verification of degree from HEC. Now considered for promotion in pursuance of judgement of Peshawar High Court Peshawar dated 11.09.2017 in a writ Petition No 766-P/2017 with CM No 1773-P/2017. She is promoted conditionally subject to the judgement of Supreme Court in CPLA.
- She would be on probation for a period of one year extendable for another one year.
- She will be governed by such rules and regulations as may be issued from time to time by the Govt.
- Her services can be terminated at any time, in case their performance is found unsatisfactory during probationary period. In case of misconduct, they shall be proceeded under the rules framed from time to time.
- Charge sheet should be submitted to all concerned.
- Her Inter-caste seniority on lower post will remain intact.
- No TA/DA is allowed for joining his duty.
- She will give an undertaking to be recorded in their service book to the effect that if any over payment is made to him/her this order will be recovered and if he/she is wrongly promoted he/she will be reversed.
- Before handing over charge once again her document may be checked if she has not the required relevant qualifications as per rules, she may not be handed over charge of the post.

(Muhammad Rafiq Khattak)

Director

Elementary and Secondary Education

Khyber Pakhtunkhwa Peshawar

Ends: No. / File No. 2/Promotion SST-B-16 Dated Peshawar the 20/10/2017.

Copy forwarded for information and necessary action to the:-

1. Accountant General Khyber Pakhtunkhwa Peshawar.
2. District Education Officer concerned
3. District Accounts Officer concerned
4. Official Concerned.
5. PS to the Secretary to Govt. Khyber Pakhtunkhwa, E&SE Department.
6. PA to the Director E&SE Khyber Pakhtunkhwa, Peshawar.
7. M/FILE

Dy: Director (E&S)

Elementary and Secondary Education
Khyber Pakhtunkhwa Peshawar

/Nand/

[Handwritten signatures and notes at the bottom of the page, including 'Nand', 'M/FILE', and other illegible marks.]

NOTIFIED
 12/28

S.No	S.T. No. & Present Place of Posting	Name of Official	Date of Birth	Date of Appointment as Regular PST	Qualification	Remarks
1	148	Raida Begum GOPS Kundu	02-10-1966	07-8-1985	BA/B.Ed	Services placed at the disposal of DEO (F) Swabi for further posting against SST (General) post.

II. PROMOTION OF PHT/SPST/PST TO SST (General) PPS-16.

Total No. of SST General (F) Posts vacant Posts	25% share initial recruitment	25% share for promotion	20% share of promotion of PHT/SPST/PST	Posts available for promotion	Promoted through this order
20	05	05	04	01	01

S.No	S.T. No. & Present Place of Posting	Name of Official	Date of Birth	Date of Appointment as Regular SST	Qualification	Remarks
5	40	Zulda GCHSS Kalabal	05-05-1961	01-11-1995	BA/M.Ed	Services placed at the disposal of DEO (F) Swabi for further posting against SST (General) post.
6	50	Rahana Kausar GCHSS Gort Munara	15-04-1972	23-06-1997	BA/M.Ed	do

I. PROMOTION OF SCT/CT TO SST (General) PPS-16.

Total No. of SST General (F) Posts vacant Posts	25% share initial recruitment	25% share for promotion	20% share of promotion of SCT/CT	Already Promoted as SST General	Posts available for promotion	Promoted through this order
20	05	05	07	04	02	02

Notification
 Consequent upon the recommendations of the Departmental Promotion Committee and in pursuance of the Government of Khyber Pakhtunkhwa Teaching Cadre Secondary Education Notification NoSO(TE)/4-S/SSHC/Rec/2013/Teaching Senior (M) dated 21st July, 2014, the following SCTs/CTs, SDAs/DAs, SATs/ATs, STTs/TTs, Clerks/Guards, PHTs/SPSTs/PSTs are hereby promoted to the post of SST (General) (M) on regular basis under the existing rules, 1970 (15-20-6430) plus usual allowances as admissible under the rules on regular basis given below Officer policy of the Provincial Government, on the terms and conditions given below Officer immediate effect and further they will be posted by the District Education Officer concerned.

Directorate of Elementary and Secondary Education
 Khyber Pakhtunkhwa
 P.O. Box 111, Peshawar
 P.T. No. 091-9-253310-253311
 Fax 091-9-253315
 E-mail: rtd@k8871@yahoo.com



SSTs (F) Swabi

SSTs (F) Swabi 2

Terms and conditions:-

1. They would be on probation for a period of one year extendable for another one year.
2. They will be governed by such rules and regulations as may be issued from time to time by the Govt.
3. Their services can be terminated at any time, in case their performance is found unsatisfactory during probationary period. In case of misconduct, they shall be proceeded under the rules framed from time to time.
4. Charge report should be submitted to all concerned.
5. Their Inter-Se seniority on lower post will remain intact.
6. No TA/DA is allowed for joining his duty.
7. They will give an under taking to be recorded in their service book to the effect that if any over payment is made to him in light this order will be recovered and if he/she is wrongly promoted he/She will be reversed.
8. They will be governed by such rules and regulations as may be issued from time to time by the Govt.
9. Before handing over charge once again their document may be checked if they have not the required relevant qualifications as per rules, they may not be handed over charge of the post.

(Muhammad Rafiq Khattak)

Director

Elementary and Secondary Education
Khyber Pakhtunkhwa Peshawar.

2851-55
Endst: No. / File No.2/Promotion SST B-16: Dated Peshawar the 13/10/2017.

Copy forwarded for information and necessary action to the:-

1. Accountant General Khyber Pakhtunkhwa Peshawar.
2. District Education Officer concerned
3. District Accounts Officer concerned
4. Official Concerned.
5. PS to the Secretary to Govt: Khyber Pakhtunkhwa E&SE Department.
6. PA to the Director E&SE Khyber Pakhtunkhwa, Peshawar.
7. M/File

[Signature]
13/10/17
Dy: Director (Estab)

Elementary and Secondary Education
Khyber Pakhtunkhwa Peshawar

MAILED
[Signature]

To,
The Director E&S Education KPK,
Peshawar

D-9

Subject: Appeal for promotion to SST Gen in the light of decision of Peshawar High Court, partially implemented on the part of other Petitioners/colleagues and not implemented on the part of petitioner which is discriminatory.

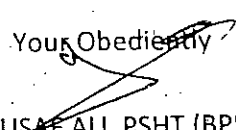
Respected Sir,

1. Being PSHT (BPS-15) performing my duty in GPS Sher Ali, Tehsil Gagra District Buner, That I have the honor to bring it in your kind notice that:-
2. That petitioner and some other female petitioners of District Swabi have been differed to promotion of SST (G) due to acquiring BA Degree from Al-Khair Campus University AJK.
3. That the Honorable Peshawar High Court in its judgment dated 12.09.2017 has declared the degree of BA acquired from Al-Khair Campus University as valid for promotion.
4. That E&SE Department KPK & HEC have neither filed any appeal against the above said judgment and nor challenged the same in the Honorable Supreme Court of Pakistan.
5. That E&SE Department is binding to implement the judgment passed by the Honorable High Court.
6. That in light of the High Court judgment working papers & minutes have been prepared by the Education Department, and the orders of promotion of Female Teachers have been issued by the Female Section on the same Al-Khair degree on 16.10.2017 but the petitioner has been ignored from the said promotion.
7. That un-fortunately the order of promotion has not issued of the petitioner inspite of already duly signed minutes & working papers by Male Section. Male Section of E&SE Department totally ignored the petitioner which is discriminatory.

It is therefore, most humbly requested that on acceptance of this Departmental appeal the petitioner may very kindly be considered for promotion to the post of SST (G) w.e. from the date when his other colleagues were promoted with all back benefits.

Dated: 12.09.2017.

Your Obediently


YOUSAF ALI, PSHT (BPS-15),
GPS Sher Ali, Tehsil Gagra, District Buner



BEFORE THE PESHAWAR HIGH COURT, PESHAWAR

E-10

C.M.No. 1695 P/2017

IN

W.P.No.2766-P/2017



Maqsad Hayat & others.....Petitioners

VS

Govt. of KPK, through Secretary, E&SE,
& others.....Respondents

APPLICATION FOR IMPLEADMENT
OF THE APPLICANT AS NECESSARY
PARTY IN THE PANEL OF
PETITIONERS

Respectfully Sheweth

1. That the above title Writ Petition is pending in this Hon'ble court which is fixed for hearing on 12.09.2017.
2. That the Writ Petitioners of the main petition challenged the illegal denial of respondents for not recognizing the degrees of petitioners from Al-Khair University which is also the case of present applicants/ petitioners. (Copies of the degrees of BA, B.Ed etc of the applicants from Al-Khair University are Annexure "A").

FILED
Deputy Registrar

23 AUG 2017

wp2766-17-Maqsad-hayat-vs-govt-cm1695:17

ATTESTED
EXAMINER
Peshawar High Court
20 SEP 2017

3. That the case of the applicants/ petitioners is similar to that of main Writ Petitioners & thus it is in the interest of justice that the applicants may please be impleaded as arrayed in the penal of petitioners as necessary party. (Copies of the relevant documents are attached as annexure-B).

It is, therefore, prayed by accepting the instant application the applicants may please be impleaded as necessary party in the penal of petitioners in the above titled writ petition.

Applicants:

- 1) Muhammad Islam s/o Amir Khan R/o Village Totali, Tehsil Khado Khel, Daggar, Buner
- 2) Abdullah Khan s/o Muhammad Khan R/o Village Totali, Tehsil Khado Khel, Daggar, Buner
- 3) Aurangzeb s/o Sher Afzal Khan R/o Hujra Katar Kaiyari, Deewana Baba Gagra, Buner.
- 4) Yousaf Khan s/o Hameed (late) R/o Hujra Katar Kaiyari, Deewana Baba Gagra, Buner.
- 5) Muhammad Zahir Shah s/o Abdul Shakoor R/o Mohallah Kambo Khel Jor, Tehsil Daggar District Buner.
- 6) Zahid Shah s/o Hamesh Gul R/o Mohallah Akazai, Nawagai, Tehsil Daggar District Buner.

FILED TODAY
Deputy Registrar

23 AUG 2017

ATTESTED
EXAMINER
Peshawar High Court
20 SEP 2017

3

12

- 7) Ibrahim Shah s/o Maghfoor Shah R/o Akazai Nawagai Tehsil Daggar District Buner.
- 8) Faqir Muhammad s/o Pir Ahmad R/o Pak Bang P.O. Nagrai; Tehsil Daggar District Buner.
- 9) Sharif Ullah s/o Muhammad Roshan R/o Village Kooz Gogand Tehsil Daggar District Buner.
- 10) Rehmat Shah s/o Hassan Shah R/o Village Nawagai, Akazai Tehsil Daggar District Buner.
- 11) Nazir Shah s/o Maroof Shah R/o Village Khanano Dheri, P.O. Nawagai, Daggar District Buner.
- 12) Mst. Shaheen w/o Malikzada R/o Village Nawagai Tehsil Daggar District Buner.

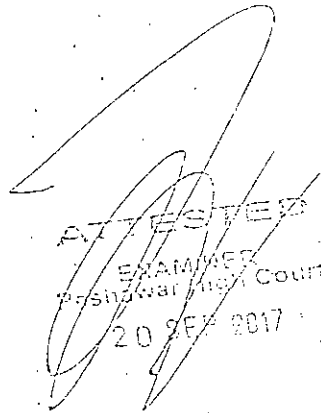
Through



Barrister Kamran Qaisar
Advocate, High Court
Peshawar

FILED TODAY
Deputy Registrar

23 AUG 2017

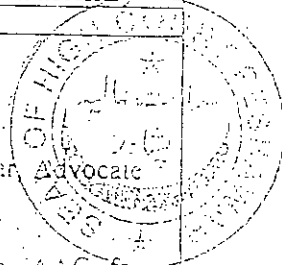


ATTESTED
EXAMINER
Peshawar High Court
20 SEP 2017

FORM "A"
FORM OF ORDER SHEET

13

Date of order or proceedings	Order or other proceedings with signature of Judge or Magistrate and that of parties or counsel where necessary
2.	3.
16.08.2017	<p><u>WP No. 2766-P/2017 with I.R.</u></p> <p><u>Present:</u> Barrister Kamran Qaisar, Advocate for petitioners.</p> <p>Mr. Rab Nawaz Khan, AAG for respondents.</p> <p>*****</p> <p>Latter seeks further time to file the requisite comments on behalf of respondents No.3 to 6. Allowed. May do so within a fortnight.</p> <p>Adjourned to 12.9.2017.</p> <p><u>CM No.1613-P/2017.</u></p> <p>Applicant (Raida Begum) has sought her impleadment in the writ petition through instant CM in the panel of petitioners, having same grievance against the respondents, which is duly supported by an affidavit. Thus, instant CM is allowed and the applicant is impleaded in the panel of petitioners as petitioner No.7. Office is directed to make necessary entry in this regard in memo of writ petition with red ink.</p>



ATTESTED
EXAMINER
Hyderabad High Court
10 SEP 2017

14

CM No.1615-P/2017.

Applicants have filed this CM for correction in-prayer to the extent that Senior Subject Teacher be read as Secondary School Teacher being a typographical mistake. The CM is duly supported by an affidavit. Hence, the same is allowed, accordingly.

CM No.1614-P/2017.

Applicants have filed instant CM for correction / rectification of names / designations of respondents No.3 to 6, which is duly supported by an affidavit. Hence, instant CM is allowed as prayed for and office is directed to make necessary entries in this regard in the heading of petition with red ink.

[Handwritten signature]

JUDGE

[Handwritten signature]

JUDGE

CERTIFIED TO BE TRUE COPY

IN WITNESS WHEREOF, the undersigned, District Judge, has signed and affixed his official seal at the Court, Peshawar, this 28th day of September 2017.

28 SEP 2017

①

⑤

BEFORE THE PESHAWAR HIGH COURT, PESHAWAR

W.P.No. 2766 P/2017

1. Maqsad Hayat S/o Umar Hayat, Certified Teacher
District Peshawar.
2. Zubada Khatoon W/o Alam Zeb SCT District Swabi.
3. Haseena Sultan W/o Asghar Khan SST District Swabi.
4. Rehana Kausar W/o Sultān Akbar SET District Mardan.
5. Hayat Gul S/o Rehman Gul Senior Drawing Master
District Buner.
6. Sabroon W/o Naseeb Gul SCT District Buner.

.....Petitioners

VERSUS

- 1) Government of Khyber Pakhtunkhwa, through
Secretary, Elementary & Secondary Education, Civil
Secretariat, Peshawar.
- 2) Director Education, Government of Khyber
Pakhtunkhwa, Peshawar.
- 3) District Education Officer District Peshawar.
- 4) District Education Officer District Mardan.
- 5) District Education Officer District Swabi.
- 6) District Education Officer District Buner.
- 7) Higher Education Commission of Pakistan, Islamabad.

.....Respondents

FILED TODAY

Deputy Registrar

06 JUL 2017

WP2766-2017-Maqsad-Hayat-VS-Govt-KP-Full

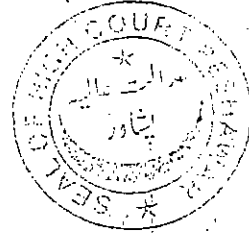
ATTESTED
EXAMINER
PESHAWAR HIGH COURT
11 SEP 2017

ATTESTED

IN THE PESHAWAR HIGH COURT,
PESHAWAR,
[Judicial Department],

16

Writ Petition No. 2766-P/2017
With C.M. No. 1793-P/2017



Date of hearing:- 12.09.2017

Petitioner(s):- Magsad Hayat and others
by Barrister Kamran Qaisar.

Respondent (s):- Govt of Khyber Pakhtunkhwa through Secretary
Elementary and Secondary Education, Peshawar
and others
by Mr. Rab Nawaz Khan, AAG.

JUDGMENT

ROOH-UL-AMIN KHAN, J:- Through C.M. No. 1793-P/2017, applicants Farman Ullah and four others, seeks their impleadment in the panel of the petitioners in main writ petition No. 2766-P/2017, on the ground of their grievance being at par with the grievance of the petitioners of the writ petition. The application is supported by an affidavit. Learned AAG representing the respondents has no objection on its acceptance, hence, the same is allowed and the applicants are arrayed as petitioners in main writ petition. Office is directed for making necessary entry in the memo of writ petition.

2. By invoking the constitutional jurisdiction of this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, (the Constitution), the petitioners, have asked for issuance of the following writ:-

has been done

ATTESTED
EXAMINER
Peshawar High Court

ATTESTED

i) To direct the respondents to accept/treat their educational certificates obtained from Al-Khair University, as valid; and

ii) To direct the respondents not to treat their educational certificates/degrees obtained from Al-Khair University as hindrance/obstacle in the way of their promotions."

3. As per averments in the writ petition, the petitioners are serving in Education Department on various positions i.e. CTs, SETs and DMs etc. They besides having obtained the qualifications of M.A, BA and BSc etc from various University, have obtained Certificates/degrees of BA, M.Ed, B.Ed, etc from Al-Khair University. Their grievance is that they were eligible to promotions as SSTs, but on refusal of the respondents to recognize their degrees/certificates from Al-Khair University as valid, refused them promotion; hence, the action of the respondents being against the law and justice is liable to be struck down.

4. Respondents have filed their para-wise comments wherein they have averred that as per letter dated 13.04.2015, issued by the Higher Education Commission (HEC) Al-Khair University has failed to register itself with HEC, as such it cannot offer Associate Degree in Education (ADE). They further averred that during scrutiny of the educational testimonials of the petitioners, these were found obtained from Al-Khair University, hence, could not be considered as valid.

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 Rajasthan High Court
 15 SEP 2017

ATTESTED

5. At the very outset, when learned counsel for the petitioners was confronted with the relief of the petitioners in respect of promotion and was asked whether this Court can issue a writ in the matters of promotion in its constitutional jurisdiction, his response was in the negative and requested that he would not press the aforesaid relief, however, stressed that the Certificates/Degrees obtained by the petitioners from Al-Khair University being genuine be declared as valid for all intent and purposes.

6. Having heard the arguments of learned counsel for the parties, the controversy with regard to the educational Certificates/Degrees issued by the Al-Khair University, crop up in Writ Petition No.4540-P/2015 before this Court, which was decided on 17.05.2017, in the following way:-

"The petitioner at his credit has the qualification of Master Degree in Economics with Associate Degree in Education from Al-Khair University (AJK). The objection of the respondents was that the Associate Degree in Education (ADE) from Al-Khair University is not recognized by the Higher Education Commission, holds no ground because the Higher Education Commission had through a letter dated 05.11.2013 given a target period i.e. 30.04.2009 to 16.10.2011 and in between that period, the degrees/transcripts awarded by the Al-Khair University in that period were not recognized."

7. In light of ratio of the judgment (supra), if the Certificates/Degrees of the petitioners from Al-Khair University have not been obtained in between the period from 30.04.2009 to 16.10.2011, then the same shall be.

ATTESTED
EXAMINER
Pashtun High Court
14 SEP 2017

ATTESTED

considered as valid for all intents and purposes by the respondents.

(19)

8. This petition is disposed of accordingly, in light of the above observations.

Announced:

11.09.2017
Suez Appeal P.S.

JUSTICE
Rooq-ul-Amin Khan

JUSTICE
MUHAMMAD YOUNIS THAHEEM



CERTIFIED TO BE TRUE COPY
S. M. J. Khan, Registrar
Peshawar High Court, Peshawar
Under Article 17 of
The Court of Judicature (Punjab) Order 1964
13 SEP 2017

ATTESTED

No. 6558
Date of Presentation of Application 15/9/17
No of Pages 5
Copying fee
Urgent Fee
Total 30.00
Date of Preparation of Copy 16/9/17
Date Given For Delivery 16/9/17
Date of Delivery of Copy 18-09-17
Received By

PESHAWAR HIGH COURT, PESHAWAR

FORM OF ORDER SHEET

F- (8) (10) (20)

Date of Order of Proceedings	Order or other Proceedings with Signature of Judge.
1	2
<p>ORDER 21.11.2019</p>	<p><u>Writ Petition No.5463-P/2019</u></p> <p>Present: Mr. Hayat Khan, Advocate for Maqсад Hayat, petitioner.</p> <p>*****</p> <p><u>QAISER RASHID KHAN, J.</u>-The petitioner, through the instant writ petition, has asked for the issuance of an appropriate writ seeking directions to the respondents to promote him according to the law and in the light of the judgment of this court dated 12.09.2017, passed in Writ Petition No.2766-P/2017.</p> <p>2. The gist of the arguments of the learned counsel for the petitioner is that refusing promotion to the petitioner on account of his degree from Al-Khair University (AJK) is nothing but a sheer example of violation of the judgment supra.</p> <p>3. Arguments heard and the available record perused.</p> <p>4. Since the petitioner is admittedly a civil servant and the relief, he is seeking from this court through the instant petition exclusively falls within the terms and</p>

MAINTAINED
MAINT

conditions of service, therefore, this court in view of the explicit bar contained under Article 212(2) of the Constitution of the Islamic Republic of Pakistan, 1973 cannot step in such like matters.

Accordingly, this writ petition being not maintainable is dismissed in limine.

While parting with this order, we have been informed that the petitioner has already filed his departmental appeal before the competent authority. Accordingly, we direct the said authority to decide the same in accordance with law, whereafter, the petitioner may have recourse for the redressal of his grievance before the proper forum.

Announced.
21. 11. 2019


SENIOR PUISNE JUDGE


JUDGE

(Fayaz)

(D.B.) Justice Qaiser Rashid Khan & Justice Abdul Shakoor

GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION DEPARTMENT

Peshawar, dated the 24th July, 2014.



NOTIFICATION

No.SO(PE)4-5/SSRC/Meeting/2013/Teaching Cadre In pursuance of the provisions contained in sub rule (2) of rule 3 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, the Elementary and Secondary Education Department in consultation with the Establishment Department and the Finance Department hereby directs that in this Department's Notifications No.SO(G)S&LD/1-28/2003/Vol-II dated, 09-04-2004, Notification No.SO(G)S&L/1-69/06/Vol-1/DPE/LIB dated, 13-11-2007, and Notification No.SO(PE)4-5/SSRC/Meeting/2012/Teaching Cadre, dated, 13-11-2012, the following further amendments shall be made, namely:

AMENDMENTS

In the Appendix,-

(i) Serial No. 1 shall be renumbered as 1B and before Serial No. 1B, as so renumbered, the following new entries shall be inserted in respective columns, namely:

1	2	3	4	5
1.	Subject Specialist (BPS-17)	i. At least second class Master's Degree or four years BS Degree in the relevant subject; and ii. Bachelor of Education or Master's Education (Industrial Art or Business Education) or M.A Education equivalent qualification from recognized University.	23 to 35 years	(a) Fifty per cent by promotion, on the basis of seniority-cum-fitness, for the relevant subject from amongst the Secondary School Teachers (BPS-16), with at least five years service as such and having qualification mentioned in column No. 3. Note: If no suitable candidate is available in the relevant subject the post falling in the promotion quota shall be filled by initial

23

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1A	Director Physical Education (BPS-17)	At least second class Master's Degree in Physical Education from a recognized University.	22-35 years	<p>recruitment; and</p> <p>(b) fifty percent by initial recruitment.</p> <p>(a) Fifty percent by promotion, on the basis of seniority-cum-fitness, from amongst Senior Physical Education Teachers (BPS-16), with at least five years service as Senior Physical Education Teacher and Physical Education Teacher and having qualification mentioned in column No. 3:</p> <p>Provided that if no suitable person is available from amongst Senior Physical Education Teachers for promotion, the post shall be filled by promotion, on the basis of seniority-cum-fitness, from amongst the Physical Education Teachers, with at least five years service as such and having qualification mentioned in column No. 3;</p> <p>Note:- If no suitable candidate is available in the relevant cadres of the above teachers, the post falling in their promotion quota shall be filled by initial recruitment.</p> <p>(b) fifty percent by initial recruitment.</p>
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(ii) against Serial No. 1B, as so retained, for the existing entries, the following shall be substituted, in the following columns, namely:

1	2	3	4	5
"1B.	Secondary School Teacher (BPS-16)	<p>I. At least second class Bachelor Degree's from a recognized University on need basis from the following groups with two subject.</p> <p>(a) (Chemistry, Botany, or Zoology), Or (b) (Physics, Maths "A" or "B" or Statistics) Or (c) Mathematics and other equivalent groups at degree level with English as compulsory subject;</p> <p>and</p> <p>II. Bachelor of Education or Master of Education (Industrial Art or Business Education) or MA Education or equivalent qualifications from a recognized University.</p>	21 to 35 years.	<p>1. Seventy Five per cent by promotion, on the basis of seniority-cum-fitness, from the district concerned in the following manner:</p> <p>(a) forty per cent from amongst the Senior Certified Teachers (BPS-17) with at least five years service as Senior Certified Teacher and Certified Teacher and having qualification mentioned in column No.3:</p> <p>Provided that if no suitable candidate is available from amongst Senior Certified Teachers for promotion, then the post shall be filled by promotion, on the basis of seniority-cum-fitness, from amongst Certified Teachers, with at least five years service as such and having qualification mentioned in column No. 3;</p> <p>(b) four per cent from amongst the Senior Drawing Masters (BPS-18) with at least five years service as Senior Drawing Masters and Drawing Masters and having qualification mentioned in column No.3:-</p>

Provided that if no suitable candidate is available from amongst Senior Drawing Masters for promotion then the post shall be filled by promotion, on the basis of seniority-cum-fitness, from amongst Drawing Masters with at least five years service as such and having qualification mentioned in column No. 3:

(c) four per cent from amongst the Senior Arabic Teachers (HPS-16), with at least five years service as Senior Arabic Teachers and Arabic Teachers, and having qualification mentioned in column No. 3:

Provided that if no suitable candidate is available from amongst Senior Arabic Teachers for promotion then the post shall be filled by promotion, on the basis of seniority-cum-fitness, from Arabic Teachers with at least five years service as such and having qualification mentioned in column No. 3:

(d) four per cent from amongst the Senior Theology Teachers (BPS-16), with at least five years service as Senior Theology Teachers and Theology Teachers and having qualification mentioned in column No. 3:

M A



(76)

M.A.

(5)

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Provided that if no suitable candidate is available from amongst Senior Theology Teachers for promotion then the post shall be filled by promotion on the basis of seniority-cum-fitness, from amongst Theology Teachers with at least five years service as such and having qualification mentioned in column No. 3;

(c) three per cent from amongst the Senior Qaris (BPS-16), with at least five years service as Senior Qari and Qari and having qualification mentioned in column No. 3;

Provided that if no suitable candidate is available from amongst the Senior Qaris then the post shall be filled by promotion, on the basis of seniority-cum-fitness, from Qaris with at least five years service as such and having qualification mentioned in column No. 3;

(d) twenty per cent from amongst the Primary School Head Teachers (BPS-14), with at least seven years service as Primary School Head Teachers and Senior Primary School Teachers and Primary School Teachers and having qualification mentioned in column No. 3;

Provided that if no suitable candidate is available from amongst

(15)

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Primary School Head Teachers for promotion then the post shall be filled by promotion, on the basis of seniority-cum-fitness, from amongst Senior Primary School Teachers with at least seven years service as Senior Primary School Teachers and Primary School Teachers and having qualification mentioned in column No.3:

Provided further that if no suitable candidate is available from amongst Senior Primary School Teachers for promotion then the post shall be filled from amongst Primary School Teachers with at least seven years service as such and having qualification mentioned in column No. 3; and

(ii) twenty Five percent by initial recruitment.

Note:

- I. If no suitable candidate is available in the relevant cadre of the above teachers, the post falling in their promotion quota shall be filled by initial recruitment.
- II. Posts of General SST and SSTs-1 Science and SST-2 Science shall be filled by promotion or initial recruitment, each on need basis separately."

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(8)

SECRETARY TO GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION DEPARTMENT

Endst : of even No & date:

1. The Secretary to Government of Khyber Pakhtunkhwa, Establishment and Administration Department Peshawar.
2. The Secretary to Government of Khyber Pakhtunkhwa, Finance Department Peshawar.
3. The Secretary to Government of Khyber Pakhtunkhwa, Law Department Peshawar.
4. The Secretary Khyber Pakhtunkhwa, Public Service Commission Peshawar.
5. The Accountant General-Khyber Pakhtunkhwa Peshawar.
6. The Director, Elementary and Secondary Education Department Khyber Pakhtunkhwa Peshawar.
7. The Director of Education (FATA) Peshawar.
8. The Director, Curriculum and Teacher Education Khyber Pakhtunkhwa Abbottabad.
9. The Director, (PITE) Khyber Pakhtunkhwa Peshawar.
10. The Director, ESRU Elementary and Secondary Education Department Khyber Pakhtunkhwa Peshawar.
11. Manager Government Printing Press Khyber Pakhtunkhwa Peshawar.
12. The Deputy Director, EMIS (S&SE) Department Khyber Pakhtunkhwa Peshawar.
13. All District Education Officer (M&F) in Khyber Pakhtunkhwa.
14. All District Account Officer in Khyber Pakhtunkhwa.
15. All Agency Education Officer in FATA.
16. All Agency Account Officer in FATA.
17. PS to Governor Khyber Pakhtunkhwa. Peshawar.
18. PS to Chief Minister Khyber Pakhtunkhwa. Peshawar.
19. PS to Chief Secretary Khyber Pakhtunkhwa. Peshawar.
20. PS to Minister E&SE Khyber Pakhtunkhwa. Peshawar.
21. PS to Secretary E&SE Khyber Pakhtunkhwa. Peshawar.
22. Master file

ATTESTED

(ZAMIN KHAN MOMAND)
SECTION OFFICER (PRIMARY)

VAKALATNAMA

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

_____ OF 2020

Jousaf Ali

(APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

Education Deptt.

(RESPONDENT)
(DEFENDANT)

I/We *Jousaf Ali*

Do hereby appoint and constitute **NOOR MOHAMMAD KHATTAK, Advocate, Peshawar** to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate Counsel on my/our cost. I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter.

Dated. ____/____/2020

[Signature]

CLIENT

ACCEPTED
NOOR MOHAMMAD KHATTAK

KAMRAN KHAN

MIR ZAMAN SAFI

&

AFRASIAB KHAN WAZIR
ADVOCATES

OFFICE:

Flat No.4, 2nd Floor, Juma Khan
Plaza, near FATA Secretariat,
Warsak Road, Peshawar.
Mobile No.0345-9383141

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 11550/2020

Yousaf Khan PSHT District Buner ----- Appellant

VERSUS

- 1- The Secretary (E &SE) Department, Khyber Pukhtunkhwa, Peshawar
- 2- The Director (E &SE) Department, Khyber Pukhtunkhwa, Peshawar
- 3- The District Education Officer (M), District Buner

----- Respondents

INDEX

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3	Judgment of the Peshawar High Court Peshawar Dated 20-03-2018	A	5-33
4	Judgment of the Supreme Court of Pakistan Dated 05-04-2021	B	34-41


DEPONENT

CNIC No.15101-0882586-3

BEFORE THE KHYBER PUKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

SERVICE APPEAL NO. 11550/2020

Mr. YOUSAF KHAN PSHT(BPS-15) _____ Appellant

Versus

- 1- The Secretary (E &SE) Department, Khyber Pakhtunkhwa, Peshawar**
- 2- The Director (E &SE) Department, Khyber Pakhtunkhwa, Peshawar**
- 3- The District Education Officer (M), District Buner**

_____ Respondents

Written Para wise Comments on behalf of Respondents No. 1, 2 & 3.

Respectfully Sheweth!

Preliminary Objections:

1. The Appellant has no cause of action/locus standi to file the instant appeal.
2. The instant appeal is badly time barred.
3. The Appellant has concealed the material facts from this honorable Tribunal, hence liable to be dismissed.
4. The Appellant has not come to this honorable Tribunal with clean hands.
5. The Appellant has filed the instant appeal just to pressurize the respondents.
6. The appellant has filed the instant appeal on mala fide motives.
7. The instant appeal is against the prevailing law and rules.
8. The appellant has been estopped by his conduct to file the appeal.
9. That the appeal is bad for mis-joinder and non-joinder of necessary and proper parties.

Facts:

1. Pertains to record. It is mandatory for any government servant to perform his duty up to the entire satisfaction of his superiors. Here the matter is something else, related with his initial qualification, such that, BA, which is from Al-Khair University AJK. The BA degree of the petitioner has already been declared illegal, unverified and unrecognized and as such the same is not valid for the purpose of seeking employment in any of the government department/ institution vide the Honorable Peshawar high court Peshawar judgment passed in writ petition No 470-M of 2016, dated 20 March 2018. Judgment annexed as A.
2. That the appellant himself confesses that he has passed BA examination from Al-Khair University Azad Kashmir under registration number AUBN (E) 823-2014. Under this registration number the said college has been declared illegal, unverified and unrecognized and as such, the same is not valid for the purpose of seeking employment in any of the government department/ institution. For detail, the relevant paras of the judgment annexed as A, para-15 and 18 are self-explanatory.
3. Incorrect, hence denied. The appellant is not eligible for promotion to the post of SST BPS-16. The appellant himself confesses that he has passed BA examination from Al-Khair University Azad Kashmir under registration number AUBN (E) 823-2014. Under this registration number the said college has been declared illegal, unverified and unrecognized and as such, the same are not valid for the purpose of seeking employment in any of the government department/ institution. Furthermore, the government has the exclusive domain whether any particular

qualification would be considered sufficient for promotion for any particular grade to higher grade and the government is vested with exclusive domain to change the policy from time to time and nobody could claim any vested right in that policy. It was further held that the promotion of a Civil Servant is relatable to specific qualification and the government can exercise its discretion for future to provide that a particular qualification would not be considered sufficient for promotion so long as it did not violate the principles of equity before law. Same is reported in 1998 PLC (CS) 1112. It is otherwise held that court of law has no jurisdiction to add or subtract to the clear words of a statute. Reliance is placed on PLD 2017, Supreme Court 105 and 2017 SCMR 1427.

4. That the appeal is badly time barred and the judgment he claims has no relevance to the instant service appeal, because the judgment annexed as A with the comments is fresh and a mother judgment. The judgment of the supreme court of Pakistan dated 05-04-2021 is annexed as B is also clear about the matter regarding Al-Khair University.
5. That the judgment in WP. No 470-M/2016 dated 26.03.2018 is very much clear that the appellant is not entitled at all for the relief he asked.
6. Incorrect, hence denied. As discussed in length above, the appellant is not entitled for promotion at all. He is not an aggrieved person at all, therefore, the appellant has no cause of action to file the instant appeal and the appeal in hand is liable to be dismissed inter-alia amongst the following grounds:-

Grounds:

- A. Incorrect, hence strongly denied. The inaction of the respondents by not promoting the appellant to the SST (BPS-16) is in accordance with the law, facts, and norms of natural justice and tenable in view of the material available on record.
- B. Incorrect, hence denied. The appellant has been treated by the respondent department in accordance with law and rules on the subject noted above and as such the violation of article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973, cannot arise.
- C. Incorrect, hence denied. As stated earlier, the respondents acted in bona-fide manner by not promoting the appellant to the post of SST (BPS-16) due to his BA from an unrecognized Institution.
- D. Incorrect, hence denied. All those employees were promoted who obtained BA degrees from a recognized institution. All those were not appointed or promoted who obtained BA degrees from an unrecognized institution, thus the question of discrimination cannot arise.
- E. Incorrect, hence denied. The initial qualification required for recruitment as well as promotion to the post of SST is bachelor degree in second Division with B.Ed. from a recognized University/ institution. But case of the appellant is quite different; his BA degree is from an unrecognized institution.
- F. Incorrect, hence denied. The respondents have no authority to promote an unqualified person, hence the violation of the Article 38-(e) of the Constitution of the Islamic Republic of Pakistan 1973, is out of question.
- G. Incorrect, hence denied. The inaction of the respondents by not promoting the appellant to the post of SST (BPS- 16) is not violation of section 9 of the KPK Civil servants Act 1973, read

with rule 7 of the KP Appointments, Promotion and Transfer rules 1989. Actually, the inaction of respondents by not promoting the appellant to the post of SST (BPS- 16) is in accordance with section 9 of the KPK Civil servants Act 1973, read with rule 7 of the KP Appointments, Promotion and Transfer Rules 1989.

- H. Incorrect, hence denied. The appellant is not entitled for promotion due to BA from an unrecognized Institution.
- I. That the respondents seek permission to raise/ argue other grounds on the day of hearing of this case.

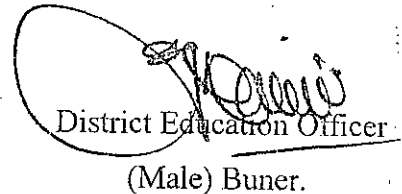
In view of the above stated submission, it is prayed that the appeal may very graciously be dismissed in favor of the respondent with cost.



Director

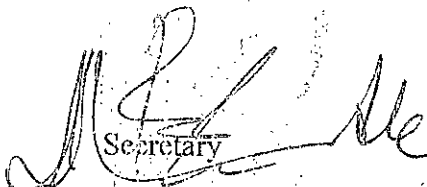
Elementary and Secondary Education
Khyber Pakhtunkhwa Peshawar.

Director
Elementary & Secondary Education
Khyber Pakhtunkhwa Peshawar



District Education Officer

(Male) Buner.



Secretary

Elementary and Secondary Education

Khyber Pakhtunkhwa Peshawar.

SECRETARY
Elementary and Secondary Educa
Govt. of Khyber Pakhtunkhwa

BEFORE THE KHYBER PUKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

SERVICE APPEAL NO. 11550/2020

Mr. Yousaf Khan PSHT (BPS-15) _____ Appellant

Versus

- 1- The Secretary (E &SE) Department, Khyber Pukhtunkhwa, Peshawar
- 2- The Director (E &SE) Department, Khyber Pukhtunkhwa, Peshawar
- 3- The District Education Officer (M), District Buner

_____ Respondents

AFFIDAVIT

I, Ubaid ur Rahman, ADEO (Litigation), District Education Office (Male) Buner, do hereby solemnly affirms & state on oath that the whole contents of the reply are true & correct to the best of my knowledge & belief & nothing has been concealed from this Hon'ble Tribunal.

Deponent
15101-0882586-3

2766-P/2017, as all are the outcomes of Al-Khair University, AJ&K.

2. In essence the case of petitioner is that, pursuant to the advertisement for the post of CT, DM, PET, AT, TT & PST, petitioner being eligible & fit qualified and after test was placed at serial No.3 of the merit list for GNS Borshat Kuzkum for the post of PST with 108.15 marks but the official respondents in total violation of the law / rules have appointed private respondents, having degree from Al-Khair University, AJ&K, which are illegal / unlawful and hasn't been verified, hence the instant writ petition.

WP No. 355-M/2016.

Petitioner of the instant case, applied for the post of PST and after codal formalities secured 84.89% marks and was placed at serial No. 39. That some candidates did not appear and petitioner was placed at 28 of merit position, but respondents in utter violation of rules have appointed respondents No. 6 & 7 having degrees from Al-Khair University, hence the instant writ petition.

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WP No. 471 & 472-M/2016.

Petitioners of the instant writ petition applied for the post of PST and after NTS declared successful but the official respondents in total violation of the law / rules have appointed private respondents, possessing fake and fabricated degrees from Al-Khair University, AJ&K, which hasn't been verified.

WP No. 1088 & 1317-F/2017.

Petitioners of the instant writ petition applied for the advertised posts of CT etc and after test through NTS, secured meritorious position but respondents have refused appointment on the ground of verification of degrees, so obtained by the petitioners from Al-Khair University, hence the instant writ petition.

WP No. 192-M/2016.

Petitioners of the instant petition applied for the advertised post of CT and PST. Petitioners No.1 to 3 applied for CT while petitioners No.4 to 6 applied for PST and have secured meritorious position, but vide impugned appointment orders dated 17.3.2016 & 25.3.2016; petitioners have not been selected despite their merit position on the ground of possessing degree from Al-Khair University, Swat Campus, hence the instant writ petition.

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Poonchur High Court

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WP No. 683-M/2016.

Petitioner applied for the post of PST and secured 85.40 marks in the schools applied for, but vide impugned appointment order dated 13.4.2015, petitioner was refused appointment on the ground of degree obtained from Al-Khair University, Muzaffarabad, hence the instant writ petition.

COC No. 35 & 36-M/2017 in WP No. 379 & 280-M/2016.

Through this contempt petition, petitioner's wants initiation of contempt proceedings against respondents for flouting the judgment of this Court in WP No. 190-M/2017.

WP No. 190-M/2017.

Petitioner of the instant writ petition applied for the post of PST through NTS and got 7th position in the merit list. On 24.2.2017 interview was conducted and petitioner was placed at 13th position by respondents and as such deprived from appointment as petitioner obtained his Master's degree from Al-Khair, University, Bhimber, hence the instant writ petition.

WP No. 216-M/2017.

Petitioners of the instant writ petition applied for the posts, so advertised by the respondents and after going through NTS, they were declared successful, but were offered

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24/02/2017

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appointment for want of verification of their degrees, which have been obtained from Al-Khair University.

WP No. 195-M/2017.

Petitioners of the instant writ petition applied for the advertised post of PST and after test through NTS, declared successful, but were excluded from on the pretext of having BS & ADE degrees from Al-Khair University, hence the instant writ petition.

WP No. 2321-P/2017.

Petitioner of the instant petition, applied for the post of SST and declared by the NTS authorities, but respondents have refused appointments on the ground of having B.Ed from Al-Khair University, hence the instant writ petition.

WP No. 3914-P/2017.

Petitioners of this writ petition have obtained their respective degrees from Al-Khair University and on the basis of same, most of the petitioners are serving in different departments / education department. That petitioners have applied to respondents No.1 to 4 for attestation of their testimonials, but they bluntly refused on the pretext of obtaining degrees from Al-Khair University, hence the instant writ petition.

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WP No. 4533 & 4690-P/2017.

Petitioner applied for the post of PST and declared successful by NTS, and secured 108.05 marks, but was deferred by respondent No.3 on the ground of B.A/M.A degree from Al-Khair University, hence the instant writ petition.

WP No. 243 & 282-M of 2017.

Petitioner of the instant case applied for the advertised post of PST in Districts Shangha / Swat and after going through NTS, secured meritorious position, but respondents have excluded the marks of MA of the plea of Al-Khair University and thereby appointed private respondents, hence the instant writ petition.

WP No. 294 & 295-M/2017.

Petitioners of the instant petition applied for the advertised post of Arabic Teacher / Qaria and after conducting test by NTS authorities stood 1st & 3rd of the merit list of Arabic Teacher / Qaria, but were deferred appointment by respondents on the p.ca of BA degree from Al-Khair University, hence the instant writ petition.

WP No. 310-M/2017.

Petitioner of the instant case applied for the post of PST in union council Saamozai Tehsil Barikot, Swat and applied for

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POST OFFICE
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all schools including GPS Nimogran and after going through the NTS, secured meritorious position, however petitioner was shown to have applied for four schools for which he submitted application for correction, but of no avail and on issuing the impugned appointment notification, petitioner was deprived from appointment with the remarks that the Associate Degree in Education (ADE) of petitioner is obtained from Al-Khair University, hence the instant writ petition.

WP No. 346, 406 & 494-M/2017.

Petitioners of the instant writ petition have applied for the advertised post of PST, CT and SST and after going through the test conducted by NTS, declared successful but their appointment orders have been withheld by the respondents on the plea of verification of their ADE, so obtained from Al-Khair University, hence the instant writ petition.

WP No. 1318, 1473, 2138, 2147, 2149, 2169 & 2215-P/2017.

Petitioners of the instant petitions applied for the advertised posts and after getting meritorious marks, their appointment orders were withheld by respondents on the plea of verification of degree from Al-Khair, University, hence the writ petitions.

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 Pashawar Education Board
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WP No. 69-M/2017, 456 & 698-M/2016.

Petitioners of the quoted writ petitions applied for the advertised posts of PST / DM / GP and after securing meritorious position, got appointed as such and thereafter they took over the charge of the posts and joined their duties, and since their till date petitioners have performed their duties, but on 27.8.2015 / 22.11.2016 / 23.12.2016, their appointment orders were withdrawn, hence the instant writ petitions.

WP No. 239, 240, 368 & 372-M/2017.

Petitioners of the instant writ petitions in pursuance to the advertisement applied for their respective posts and after codal formalities declared successful and appointed as such and since their appointment till date they are performing the duties, but respondents have withheld their salaries and refused to extend their tenure of contract on the basis of verification of degrees, so obtained by them from Al-Khair University, vide impugned orders dated 15.5.2017 & 18.5.2017 in WP No. 372 & 368-M/2017, respective, hence the instant writ petitions.

WP No. 4640-M/2017, 617-M/2016 & 697-M/2017.

Grievance of the petitioners of the instant writ petitions are that, they have rendered spotless and unblemished services and now are eligible for promotion to the post of SST, but

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20 FEB 2017

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respondents are denying the same on the pretext of having degrees from Al-Khair University, hence the instant writ petition.

COC No. 577-P of 2017 in WP No. 2766-P/2017.

Through the contempt petition in hand, petitioners wants initiation of contempt proceedings against respondents for flouting the judgment of this Court whereby they were directed that if the certificates / degrees of the petitioners from Al-Khair University have not been obtained in between the period from 30.4.2009 to 16.10.2011, then the same shall be considered as valid for all intents and purposes by the respondents, hence the petition.

3. We have heard learned counsel for the parties and available record gone through.

4. The controversy involved in all the writ petitions is that the degrees, diplomas and certificates obtained from Al-Khair University, AJ&K, its campuses in Pakistan and the affiliated institutions, with the said university, are valid & recognized for the purpose of obtaining job / employment in any of the Government institution or not. In order to dilate upon the issue it would be imperative to go through the judgment of apex Court in this respect. In the case of Muji Nasir

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BOARD OF HIGH SCHOOL

Meenmoed versus Mian Imran Masood and others reported

in PLD-2010 SC-1089, it has been held as under:-

(a) Representation of the People Act (LXXXV of 1976)---

---S. 99(cc)---Bachelor's degree---Recognition---Higher Education Commission, role of---Scope---Degree which is not recognized by Higher Education Commission is worthless like a piece of paper and such degree cannot be equated to that of a "Degree" because every degree is subject to recognition which provides sanctity to a degree---Degree which is not recognized by Higher Education Commission cannot be declared as a valid "degree"--- Words "Bachelor's degree" as used in section 99(cc) Representation of the People Act, 1976, means a degree which is valid one and recognized by Higher Education Commission---Question of recognition does fall within the jurisdictional domain of Higher Education Commission--- Validation of a degree depends upon its recognition--- Higher Education Commission is not an alien entity in such like matters."

5. In the above cited judgment the apex Court also dilated upon the role of Higher Education Commission, established under the Ordinance, 2002 in terms that "Powers and functions of Higher Education Commission---Scope--- Higher Education Commission may determine equivalence and recognition of degrees, diplomas and certificates awarded not only by institutions within the country but, as well as the institutions functioning abroad," and as such the parameters, powers and functions of the Higher Education Commission, in this background are narrated below;

6. The Commission has been established under the Higher Education Commission Ordinance, 2002 (hereinafter

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referred to as the "Ordinance of 2002". The said legislative enactment was published in the official gazette on 11.09.2002. Section 2(h) defines "Institutions" as meaning any university or other degree awarding institution that offers higher education or is involved in research and development activities. "Degree Awarding Institution" is defined in section 2(e) as meaning an institution imparting higher education and awarding a degree of its own. Likewise, "University" is defined in section 2(m) as meaning a university established or incorporated under any law for the time being in force. The Commission has been established under section 4 and its composition is provided under section 5. Section 10 describes the functions and powers of the Commission. The powers vested in the Commission are expansive and, inter alia, include the formulation of policies, guiding principles and priorities for higher education institutions for the promotion of the socio-economic development of the country. It also includes the evaluation of the performance of institutions and prescribing the conditions under which institutions, including those that are not part of the State educational system, may be opened and operated. Clause (d) of subsection (1) of section 10 is relevant to the facts and circumstances of the instant case. Clause (o) of section 10(1)

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explicitly empowers the Commission to determine the equivalence and recognition of degrees, diplomas and certificates awarded by institutions within the country and abroad. Likewise, clause (5) empowers the Commission, as a regulator, to develop guidelines and facilitate the implementation of a system of evaluation of the performance of faculty members and institutions. Clause (x) vests the jurisdiction in the Commission to collect information and statistics on higher education and institutions as it may deem fit and may cause it to be published. Lastly, clause (y) empowers the Commission to perform other such functions consistent with the provisions of this Ordinance as may be prescribed or as may be incidental or consequential to the discharging of the functions described in section 10. Accreditation of institutions offering higher education is also an important function entrusted to be performed by the Commission.

7. The Ordinance of 2002, when read as a whole, unambiguously shows that the legislature has intended to establish the Commission as the exclusive regulatory authority relating to higher education and the educational institutions which offer programs relating thereto. The powers vested in the Commission and its jurisdiction extends to the whole of

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Pakistan. It is important to note that the legislative enactments under which institutions are established are subject to the regulatory framework contemplated under the Ordinance of 2002. There is no force in the argument that since the statute or charter which has established an institution has explicitly empowered it to open campuses or grant affiliations, therefore, provisions of the Ordinance of 2002 will not be attracted. The charter or statute which creates a juridical person does not render the latter immune or exempt it from the regulatory regime which is contemplated under the Ordinance of 2002. The latter enactment has established a regulatory authority and has equipped it with expansive powers and jurisdiction to achieve the objects and purposes for promulgation thereof. The Commission is the sole and exclusive regulatory authority of higher education, the institutions established under any law and all matters related therewith. No institution can claim to have unfettered power on the basis of the statute or law which has created it to open campuses or grant affiliations. The statutes which establish judicial or statutory persons are subservient to and are governed for the purposes of being regulated under the provisions of the Ordinance of 2002. Be it as it may, no educational institution, whether established in Pakistan or

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should not lawfully open campuses or grant affiliations to other educational institutions without the express approval of the Commission. The latter is the sole regulatory body to evaluate the institutions and monitor their performance so as to ensure that quality education is offered to the public. The Commission, therefore, has been mandated to make certain that the educational institutions offering higher education meet the prescribed guidelines and criteria. The object and purpose is obviously to guarantee quality education.

Record suggests that Al-Farooq University is a chartered university and is established through an Act passed by the Assembly of State of Azad Jammu & Kashmir on 9th May 1994 vide Act XXVIII of 1994 and according to its section 1(2); it extends to the whole of Azad Jammu and Kashmir and according to Chapter -2 para-1 the university shall be opened to all persons of either sex of whatever religion, race, creed, colour of domicile, who are academically qualified for admission to the courses of study offered by the university and no such person shall be denied the privilege on the ground only of sex, religion, creed, race, class, colour or domicile. In Chapter-II para-5, the powers and functions of the said university has been defined, being an autonomous body, a full-

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Pashtoon Agency
26 MAR 201

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fledged university in all respect with the powers to admit and
 examine internal and external students and to confer or award
 degrees, diplomas, certificates and other academic distinctions
 on and to the persons, who have passed his examination under
 prescribed condition. Section-5 (IV) of the Act further says that
 to affiliate itself or associate with other institutions of the Azad
 Jammu and Kashmir, Pakistan or any other country and to
 establish campuses offices / campuses, faculties in Azad Jammu
 & Kashmir, Pakistan or abroad. In the comments so filed by Al-
 Khair University respondent No.7, in the instant writ petition
 no document whatsoever has been enclosed showing that the
 campuses at Pakistan of Al-Khair University, AJ&K or its
 affiliated institutions is given recognition, affiliation by the
 concerned, as per law of the land nor anything is on record
 showing that the degrees, diplomas or certificates issued by the
 Al-Khair University AJ&K to the students at different
 institutions at Pakistan and specially Khyber Pakhtunkhwa have
 been verified, validated or recognized by the Competent
 Authority i.e Higher Education Commission or for that matter
 Authorities under the University authority under Act of 2016.

9. Record is further suggestive that initially Al-Khair
 University AJ&K was advised by Higher Education

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 PESHAWAR HIGH
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Commission vide its letter dated 16.3.2009 to stop all new admission in its academic program immediately and no degree issued by Al-Khair University would be recognized by the Commission of any student admitted into any program after 30th April, 2009 in campuses / affiliated institution in Pakistan but subsequently, Higher Education Commission in its letter dated 17.10.2011, allowed Al-Khair University to launch degree program in the departments of Management Sciences, Computer Sciences, Pakistan Studies, Islamic Studies, Education and Urdu. The subsequent letter dated 17.10.2011 reads as under:

**SUBJECT: INSPECTION OF AL-KHAIR UNIVERSITY
BHIMBER, AJ&K**

Dear Sir,

With reference to your letter No. AU-1(7)GA/2010 dated 19th September, 2011 and on the recommendation of the Inspection Committee the competent authority has been pleased to allow the Al-Khair University, Bhimber to launch degree programs in the Department of Management Sciences, Computer Sciences, Pakistan Studies, Islamic Studies, Education and Urdu subject to availability of required faculty with the following terms and conditions;

1. On campus operation at Bhimber is allowed.
2. No campuses in AJ&K and Pakistan shall be allowed.
3. No affiliation in AJ&K and Pakistan shall be permitted.
4. The university will be required to submit on judicial paper duly notarized and registered in Court of law they will operate only on campus at Bhimber
5. University will not institute any legal proceedings against the HEC in A.J&K and Pakistan.

ATTESTED
 JUDGE
 Jammu & Kashmir High Court
 26 MAR 2018

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**SUBJECT: INSPECTION OF AL-KHAIR UNIVERSITY
BHIMBER, AJ&K.**

Dear Sir,

With reference to your letter No. AU-1(7)GA/2010 dated 29th September, 2011 and on the recommendation of the Inspection Committee the competent authority has been pleased to allow the Al-Khair University, Bhimber to launch degree programs in the Department of Management Sciences, Computer Sciences, Pakistan Studies, Islamic Studies, Education and Urdu subject to availability of required faculty with the following terms and conditions;

1. On campus operation at Bhimber is allowed.
2. No campuses in AJ&K and Pakistan shall be allowed.
3. No affiliates in AJ&K and Pakistan shall be permitted.
4. The university will be required to submit on judicial paper duly notarized and registered in Court of law they will operate only on campus at Bhimber.
5. University will not initiate any legal proceedings against the HEC in AJ&K and Pakistan.

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Peshawar High Court
26 MAR 2015

10. The above quoted letter would clearly show that only operation at Bhimber campus was allowed and specifically no other campus in AJ&K and Pakistan was allowed to operate, impart education or issue the degrees / certificates. In addition to this even affiliation in AJ&K and Pakistan was not permitted. There is another letter dated 18.10.2012 issued by the Higher Education Commission, which reads as under:-

Subject: VERIFICATION OF B.ED. DEGREES ISSUED BY AL-KHAIR UNIVERSITY.

"With reference to your letter No. ST/SZ/35769/2012 dated 17.10.2012 on the subject cited above. It is to inform that the Al-Khair University, Bhimber, AJ&K is a chartered university in private sector. The Higher Education Commission does not recognize the degrees of the studies admitted during the period of 30.4.2009 to 16.10.2011. However, the degrees / transcripts issued by the Al-Khair University through its main campus from the date of its commencement in 1994 and onward (except of the above said period) are validated / recognized by the higher Education Commission."

11. Yet another letter dated 24.9.2014 was addressed to the Al-Khair University by the Higher Education Commission, whereby University was allowed to offer admissions only at its Bhimber campus. Respondent No.7 / Al-Khair university have enclosed No.Objection Certificate dated 21.8.1997 issued by Government of Khyber Pakhtunkhwa Education Department which reads "The Government of Khyber Pakhtunkhwa has no objection to the functioning of academic / constituent institutions of the Al-Khair University (Al-K.U) in the

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Territorial Jurisdiction of NWFP now Khyber Pakhtunkhwa.

The said no objection certificate issued by the Education Department under no circumstances could be termed as affiliation or recognition of the A&K Al-Khair University in the Province of Khyber Pakhtunkhwa, as well. Alongwith the comments of respondent No.7, they have not enclosed other document showing that their campuses are affiliated institutions and recognized, validated by the Higher Education Commission.

12. We have before us CM No. 1442-M/2017 an application for submission of documents by HEC / respondent No.6, alongwith documents 65 in numbers, which are dated 16.10.2017 with the subject of verification status of DMCs by Higher Education Commission, these verifications are by name and clearly shows the words that "HEC does not attest degrees / DMCs of those students who studied in un recognized / illegal colleges / campuses of Al-Khair University A&K". We have before us the guidelines for the establishment of a new university or an institution of Higher Education and according to which following procedure is supposed to be adopted for the particular purpose.

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Rule 2.2 reads Completion of legal formalities.

2.2.1. The first step in connection with the establishment of a new university or an institution of higher education is the fulfillment of legal formalities and registration by the sponsoring body under the relevant regulations of the Companies Ordinance, Societies Registration Act / Trust Act as a Corporation / Society or a Trust constituted. This formality is not required in case the institution is desired to be established by the public sector.

2.3. Submission of feasibility report.

2.3.1. Following the completion of preliminary legal requirements, the authorized representative of the sponsors / shall submit a comprehensive feasibility report in accordance with the General Institutional Requirements Proforma (Form PU-01) along with a non-refundable bank draft / pay order of Rs. 20000/- in the name of the Higher Education Commission as a fee for the evaluation of the feasibility report. An application shall be considered only when the fee is credited to the account of the HEC and the agency has fulfilled all the formalities. The application shall be made to the Controller HEC along with five copies of the Feasibility Report including the soft copy.

2.4. Scrutiny.

2.4.1. On the basis of the documents submitted by an institution, the HEC will determine whether or not there is a prima facie case for further consideration the application. The applicant institution will be informed accordingly. If the commission finds that there is a prima facie case for further consideration, the feasibility report shall be thoroughly scrutinized by a panel appointed by the HEC. The panel will assess the application and may ask for additional information or recommended the case for preliminary inspection of the institution.

2.5 Site inspection.

2.5.1. If the HEC finds that the institutions has made a good case after the clearance of the feasibility report, the HEC shall appoint an Inspection Committee which will conduct a preliminary site-visit /

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inspection of the institution for physical verification of the infrastructure and available facilities with evidence and for satisfying itself and that the institution has the ability and capacity to run the academic programs. An inspection fee of Rs. 30000/- shall be charge which will be payable in advance through a non refundable bank draft / pay order in the name of the HEC by the institution concerned. The visit will require meeting with administrators, teaching staff, students and support services staff. A visit to the library and other learning resources will also be conducted.

2.6 Recommendation for grant of charter.

2.6.1. The Inspection Committee will report its findings to the HEC. In case of satisfactory report of inspection, the draft charter based on the model charter of the HEC as enclosed in this document will be vetted by the HEC. After consideration of the draft charter vis-à-vis provisions of HE, 1962, the HEC will recommend the case for grant of Charter to the Federal Government or the Provincial Government, as the case may be.

2.7 Grant of charter.

2.7.1. Charter will be granted subject to the permission by the parliament / president of Pakistan or in provincial territory / governor of a province, as the case may be.

3.1 Criteria and requirements for the establishments of a new university or an institution of Higher Education.

3.1. Institutions normally apply to the jurisdiction Government where they are situated. In case the institution is located in the federal territory, the application shall be made to the HEC. In case an institution is based in a provincial territory, the application shall be addressed to the concerned Provincial Education Department. The Chancellor's Committee in its first meeting held on May 11, 2004 necessitated that each Provincial Government will follow the Cabinet Criteria for evaluation and grant of charter. In case of grant of provincial charter, the HEC is usually consulted by the Provincial Government. For this purpose, the clearance by the HEC shall help in facilitating the grant of charter.

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Punjab High Court

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3.2.1. The organizational, legal, financial and other related formalities and requirements, including the submission of a feasibility reports are outlined in the general institutional requirements proforma and space norms as a Forms PU-01 and PU-02 and P.I-02. These guidelines pertain to registration, availability of infrastructure and adequate financial resources, proposed program of study, development of academic program, teaching staff, admission criteria, fee structure, quality assurance mechanism, student supervision, assessment and examination etc. The main points of the criteria and requirements are highlighted for information of the entrepreneurs.

4.2. Legal and procedural.

- i). That the sponsoring body should be a Society / Trust or a Foundation registered / constituted under the relevant regulations of Companies ordinance / Trust Act / Societies Regulations Act. This shall not be required in case the institution is in the public sector;
- ii). A copy of the registration deed alongwith a memorandum of association will be supplied to examine the objectives and criteria of the members. A brief profile of each member of management should also be provided.
- iii). That the sponsoring body / institution shall apply to the HEC and submit 5 copies of the feasibility report / corporate plan including the soft copy keeping in view the General Institutional Requirements Proforma as per Form FI-01.

4.3 Institutional and academic.

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- ii.
- iii.
- iv.
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- xiii.
- xiv.
- xv.

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 Boardwar High Court
 20 MAR 2018

xvi. *The permission granted shall be restricted to a specified place and a particular course / degree. No sub campus, branch or outpost shall be established or franchised without the prior approval, of the HEC.*

4.6 Monitoring.

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- ii.
- iii.
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- v.

vi. *The HEC would be the competent authority to grant accreditation, validate course and syllabus of the university / institution, which shall be subject to quality standards set by the HEC. The accreditation will be withdrawn if found that the institution is unable to satisfactorily demonstrate its ability and commitment to achieve and maintain national academic standards.*

vii. *The university / institute shall be liable to provide to the representatives of the HEC, the Pakistan Engineering Council, Pakistan Medical and Dental Council or other similar relevant organization for visitation to enable them to verify that the university / institute is maintaining appropriate academic standards.*

13. After evaluating the above parameters and requirements according of the law of the land, the main campus of the University of Al-Khair, which is at Elinsber AJ&K is the only campus verified and recognize, the degrees / diplomas / certificates for the purpose of getting jobs in Pakistan. The HEC of Pakistan is the regulator of said university. According to the comments of the respondent No.6, the HEC, when it came to the notice of the HEC that Al-Khair University, have extended its academic operations in Pakistan and had granted affiliation

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to other institutions besides opening franchised campuses, record suggests that all these have been done without obtaining approval / NOCs from the HEC and as such these institutions have no legal authority to impart education. According to the comments so filed by respondent No.6, all these institutions and affiliated campuses are with poor quality of teaching, weak assessment and evaluation system, non declaration of results and award of low quality of education, which has become a regular feature and never been addressed by the sponsors of the university despite warned in the past.

14. The Higher Education Commission being regulator of Higher Education sector in Pakistan in both public and private sectors under sub-section (i) of section 10 of the Ordinance, 2002 have the authority to recommend chartered to award degrees. The Al-Khair university failed to remove the deficiencies after which Higher Education Commission vide its letter dated 20.5.2016 once again stop further intake of students, even at Bhimber campus, in its Ms / M.Phil / PhD Program from fall 2016. We have before us number of notices / press clipping attached with the comments of respondent No.6, wherein the HEC time and again issued public alerts through newspapers in respect of non recognition of Al-Khair

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 Peshawar High Court
 26 MAR 2010

University situated at Blumber with effect from fall 2016, onwards. Learned counsel for respondent No.6 produced letter dated 26.2.2018, issued by Higher Education Commission, which reads as under:-

Subject: VERIFICATION OF DETAILED MARKS CERTIFICATE OF ILLEGAL COLLEGES OF AL-KHAIR IN THE KPNC.

"It is informed that Al-Khair University, AJ&K, in total violation of its own law has extended its operations for and while in Pakistan and AJ&K by opening franchised campuses and illegal affiliated institutions. Complaints about Al-Khair University regarding poor quality of teaching, weak assessment and evaluation system, non declaration of results and award of low quality degrees etc. became a regular feature and never been redressed by sponsors of the University despite repeated reminders. The reports have also been received regarding sale of degrees. In this backdrop, the Higher Education Commission has banned the academic operations of the Al-Khair University with effect from Fall-2016 and suspended its degree attestation. It is worthy mentioning here that all the writ petitions filed in this regard by Al-Khair University have been dismissed by the Honourable Islamabad High Court.

2. Further, as per Federal Cabinet Criteria Guidelines, 2002, the private sector institutions / universities are not empowered to affiliate institutions, whereas the university has violated its own charter provisions as well as criteria of this Commission. Moreover, following illegal colleges of Al-Khair University (AIK) were established at Khyber Pakhtunkhwa (Khyber Pakhtunkhwa) which were not permitted by HEC and are illegally operated:-

- i. Duggar Education College, Buner.
- ii. Ahsar Postgraduate College, Kohat.
- iii. Hitech Degree College Peshawar.
- iv. College of Global Technologies, Swat.
- v. Jinnah Institute of IT & Management Sciences, DI Khan.
- vi. IER, Peshawar.
- vii. Institute of Education and Research, Swabi.
- viii. Institute of Education and Research, Kohat.
- ix. College of Business Administration, Abbottabad.
- x. Iqra Institute of Management, Education, Computer Science, DI Khan.
- xi. Institute of Education and Research, Karnal.
- xii. Institute of Education and Research, Peshawar.
- xiii. College of Management & Engineering, Peshawar.

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by the law to make certain things as indicated in above paragraphs.

16. In addition to this we have before us the comments of Higher Education Regularity Authority HERA, and the submission of learned AAG in the bench, which says that HERA issued public notices which were circulated in all daily newspapers regarding the mandatory registration of the private educational institutions in Khyber Pakhtunkhwa, despite of that Al-Khair University Campus and its affiliated colleges failed to get registration. According to the Khyber Pakhtunkhwa, Higher Education Regularity Authority Ordinance 2001, section-2(m) & 6 (1) "Registration with authority is mandatory under the law" till date any of the campus or affiliated institution in Khyber Pakhtunkhwa has not even requested for registration with HERA.

17. Before parting with the judgment it is also observed that the lawful competent authorities have not performed their duties in accordance with the law and due to their negligence the respondent No.7 has committed the offence of cheating the public at large as defined under section-9(ix) of the National Accountability Ordinance, 1999. Moreover, the youth and specially the degree holders of all those campuses of

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respondent No.7 and their affiliated institutions are entitled to claim their expenses as well as damages. In this respect, as well.

18. In view of the above it is held that the degrees, diplomas and certificates obtained from the Al-Khair University AJ&K Campuses and affiliated institutions in Khyber Pakhtunkhwa are illegal, unverified and unrecognized and as such the same are not valid for the purpose of seeking employment in any of the Government Department / Institution.

Therefore, all those who have been appointed and are still in service on the basis of said degrees etc are given two years time to get the equivalent qualification from any recognized institution. The degrees / diploma / certificates obtained from institutions like under registration No. AJMP i.e. College of Professional Studies Muzaffarabad AJ&K, AJR i.e. College of Global Technologies Rawalpindi, AJAE i.e. Al-Khair University Muzaffarabad AJ&K, College of Computer & Management Sciences Muzaffarabad, AUPR i.e. College of Education Palandri AJ&K, AUKOT i.e. College of Professional Studies Kotli, AJ&K, AUMC Al-Khair University Main Campus & AUR (IT) (CS) (IT) i.e. Rawalpindi (College of Global Technologies Rawalpindi) are referred to Higher Education Commission for verification, but within a period of

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one month. If the above said institutions /campuses are also not recognized one, their degrees / diplomas are also held not entitled for the purpose of getting jobs in Pakistan, thus the instant writ petition as well as connected writ petitions bearing No. 355, 471 & 472-M of 2016 are disposed of, while rest of the writ petitions including contempt petitions are dismissed; with no order as to cost.

Announced,
20th March, 2018.

[Signature]
JUDGE
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JUDGE

Chief Just. DJ, Mr. Justice Waqar Ahmad Seth & Justice Nis. Muzammat

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Examiners
Mr. Farhan
Mr. Farhan
Mr. Farhan
Order 1984
MAR 2018

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE UMAR ATA BANDIAL
MR. JUSTICE SAJJAD ALI SHAH
MR. JUSTICE AMIN-UD-DIN KHAN

ALR
Civil Petitions Nos. 1925, 1975 and 1976 of 2020.
(Against the consolidated judgment dated 30.1.2021
passed by the Islamabad High Court in ICA 265/2017,
2232/2019 & 3255/19)

Yasir Nawaz & others	Petitioner (In CP 1925 of 2020)
Al-Khair University Chr. Registrar	Petitioner (In CP 1975-76 of 2020)

Versus:

Higher Education Commission & Respondents (petitioners)
others.

For the Petitioner(s) : Mr. Munawar Iqbal Duggal, ASC
(In CP 1925/2020)

For the Petitioner(s) : Malik Noor Muhammad Awan, ASC
(In CP 1975-76 of 2020)

For the Respondent(s) : N.R.

Date of Hearing : 05.04.2021

ORDER

Sajjad Ali Shah, J.- The petitioners herein seek leave of this Court against a common judgment of the Islamabad High Court whereby their petitions/appeals seeking *inter alia*, an order directing the High Education Commission (HEC) to attest the degrees of the students enrolled in Al-Khair University or its affiliated colleges, were dismissed.

2. Briefly, Al-Khair University (hereinafter referred as 'the University') which is a private educational institution created through the Al-Khair University, Azad Jammu and Kashmir Act, 1994 with its

principal campus in Bhimber, Azad Jammu & Kashmir, is imparting education in different disciplines with its mandate to affiliate itself or associate other institutions. In this pursuit, the University entered into correspondence with HEC to seek recognition. It appears that certain correspondence was also exchanged between the HEC and the University and ultimately the University was allowed to admit students at University's principal seat viz. Bhimber that too in respect of specific degree programs. However, in gross violation of the permission, the University extended its operation far and wide in Pakistan and Azad Jammu & Kashmir by opening un-authorized franchise campuses and unlawfully affiliated various institutions. It appears that HEC received various complaints regarding imparting of poor quality of teaching, weak assessment and evaluation system, non-declaration of results and award of low quality degrees by the University and its affiliated institutions. The concerns were duly communicated to the University but the complaints were never redressed. Consequently, the academic operation of the University was suspended by the HEC from 2009 to 2011. It appears that thereafter the University was inspected in September and October 2011 and consequently was allowed to admit students at University's principal seat viz. Bhimber only and that too for few degree programs viz. Management Sciences, Computer Sciences, Pakistan Studies, Islamic Studies, Education and Urdu. However, the imparting of studies in the allowed discipline was specifically prohibited through other campuses or affiliated institutions. It appears that the University, against the specific directions of the HEC, started operation through affiliated colleges and advertised admissions in M.S./M. Phil & PhD programs compelling the HEC to advise the University to revoke the advertisement and refrain

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from conducting MS/M. Phil & PhD distancing learning degree programs. At this juncture, the University and/or its affiliated institutions/elected students resorted to approach the Court and obtained interim orders notwithstanding the fact that HEC kept reminding the University that it was allowed imparting of education at its principal campus at Bhimber, that too for specified disciplines but the University and its so-called affiliated institutions, in clear breach of such directions, kept on admitting students in the disciplines which were never approved by the HEC. The record reflects that the petition filed by the University was disposed of with the directions to HEC to inspect the University. Consequently, in compliance of the orders, the inspection was carried out and deficiencies were pointed out in the operation of the University and due to grave discrepancies, irregularities and mismanagement found in the academic operations of the University, its further intake w.e.f. fall, 2015 was stopped at all levels. It appears that instead of taking corrective measures, the University again approached the Islamabad High Court by challenging the decision of HEC and the Islamabad High Court, after hearing the parties, dismissed the petition by declaring that *"any affiliation granted by the petitioner University to an educational institution or any opening of its campuses would remain illegal unless approved by the Commission"*.

3. It appears that the HEC in order to resolve this outstanding issue and to protect the future of the students, devised a policy whereby it recognized the degrees of all students enrolled upto April 30, 2009 including the graduates studied at affiliated colleges/campuses and further directed that no degree of students enrolled during the ban period i.e. April 30, 2009 to October 17, 2011

shall be recognized. It was further decided that students enrolled and studied upto October 17, 2011 at affiliated colleges/campuses of the University other than the main campus at Bhamber in violation of the directions of the HEC would be required to appear in a comprehensive examination for recognition of their award. This decision again was challenged before the Peshawar High Court without any success and the Court, while dismissing the petition, upheld the decision of the HEC.

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4. It appears that this very decision taken by the HEC on 31.8.2018 setting a principle for recognition of the students who were enrolled and had studied after October 17, 2011 at affiliated colleges/campuses of the University, A&K in violation of the Commission's directions and were required to appear in a comprehensive exam for recognition of their award, in consequence also directed the University to deposit certain amount as the estimated cost of the test (letter dated 13.4.2019 at page 57). This letter has been questioned by the University for want of jurisdiction. Based on this background, learned counsel for the petitioners-students has contended that the petitioners have completed their various degrees from the affiliated colleges/institutions and the HEC, all of a sudden, disaffiliated such colleges/institutions leaving petitioners-students without any remedy, resultantly it would be highly unfair to the students that their degrees are not recognized due to no fault of theirs. It was next contended that the petitioners have completed their degrees during the period when interim orders remained in effect and consequently the benefit of such injunctive order is to fall in favour of the petitioners. It was further contended that HEC was bound to issue the parents/students any alert in any newspaper regarding the status

of affiliated colleges of the University. It was lastly submitted that in all fairness, the decision of the HEC should be prospective and, therefore, necessary directions be imparted for recognition of the degrees of the petitioners who have already completed their degrees in different faculties.

5. Likewise, the learned counsel petitioner-University contends that HEC has no authority whatsoever over the petitioner-University inasmuch as the petitioner-University is a chartered University with its principal campus in Azad Jammu & Kashmir. Consequently HEC as to attest all foreign qualifications and the directions to deposit huge sum against the amount for recognition of the degrees/mark-sheet awards, is not only illegal but without jurisdiction.

6. We have heard the learned counsel for the respective parties and have perused the record. It appears that HEC never granted any permission to the University to affiliate colleges/institutions in Pakistan nor had it assured recognition of the degrees by the institutions/colleges affiliated by the University in AJ&K. The only letter issued by the HEC whereby the University was assured recognition of their degrees was vide letter dated October 17, 2011 which provided as follows:

"With reference to your letter No. AU-I(7)GA/2010 dated 19th September, 2011 and on the recommendation of the Inspection Committee the competent authority has been pleased to allow the Al-Khair University, Bamber to launch degree programmes in the Departments of Management Sciences, Computer Sciences, Pakistan Studies, Islamic Studies, Education and Urdu subject to availability of required faculty with the following terms and conditions:

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- o On campus operation at Bhimber is allowed.
 - o No campuses in AJ&K and Pakistan shall be allowed.
 - o No affiliation in AJ&K and Pakistan shall be permitted.
 - o The University will be required to submit on judicial paper duly notarized and registered in Court of Law they will operate only on campus at Bhimber.
 - o University will not initiate any legal proceedings against the HEC in AJ&K and Pakistan.

7. The letter specifically prohibits any campus in AJ&K and Pakistan. It further prohibits affiliation of colleges/institutions of AJ&K and Pakistan. In the circumstances, as per such letter, HEC cannot be burdened to recognize the degrees/awards conferred by the colleges/campuses whose education imparting qualities/capacity was never examined by the HEC. If any one is to be blamed for playing havoc with the career of the students, it is either the University or its affiliated institutions. In our opinion, HEC has already taken a sympathetic approach and has shown grace by providing a mechanism to recognize the degrees/mark sheets/Awards granted by such institutions/colleges after testing the educational achievements of their students in the relevant disciplines and such decision, in our opinion, does not require any interference. The record further reflects that the HEC has issued sufficient alerts regarding the status of the institutions/colleges claiming affiliation with the University and, therefore, this plea has also not impressed us. As to the submission regarding interim orders, it is suffice to observe that the interim order is always of a limited duration which legally does not control the final adjudication and, therefore, would not create any right in cases where the main action and/or the relief is found frivolous or is turned down.

unless for reasons specified, a protection is extended. In all other cases, the interim order is merged into the final order and loses its efficacy and operation instantly. Any other meaning would amount to reversing the verdict. Reference can be made to the case of Federation of Pakistan vs. Pervez Musharraf (PLD 2016 SC 570). Consequently, the submission is of no consequence.

8. As to the point raised on behalf of the University that HEC has no jurisdiction for directing the University to reimburse the expenses incurred and consequent demand estimating cost of testing in the sum of Rs.8060500/- @ Rs.700/- per student, suffice it to observe that by requesting the HEC to recognize the degrees/mark sheets/Awards granted by the University or its affiliated institutions to its students itself amount to submitting to the jurisdiction of HEC. The submission to the jurisdiction of HEC is not without any reason because the degree which is not recognized by the Higher Education Commission would be worthless like a piece of paper which could not be equated to that of a degree because every degree awarded by the Institution within the country or the Institution functioning abroad is subject to recognition which provides sanctity to a degree. Reference can be made to the judgment of this Court in the case of Nasir Mehmood vs. Inran Masood (PLD 2010 SC 1622). Consequently the University cannot be allowed to take two different stances at the same breath. The stance of the University in the circumstances, challenging the demand, appears to be totally frivolous.

9. Beside, the decision taken by the HEC is a policy one, and by now it is settled law in various jurisdictions that Courts should generally refrain from interfering in policy decisions taken by statutory bodies and authorities tasked with running the affairs of educational

HEC must

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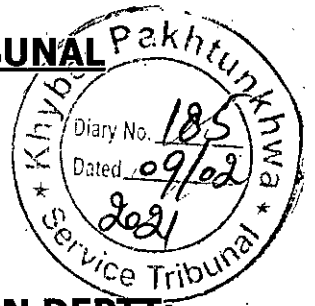
institutions and students, like the F.E.C. The rationale for the same is that matters of an academic nature necessitate the need for technical and professional expertise which may only be attained as a result of specialization and the experience of working with and in educational institutions. Courts are neither equipped with such expertise, nor do they possess the relevant experience that would allow for interference in such matters. However, it does not mean that the Courts would not step in at the request of the parties to ensure and ascertain whether or not minimum requirements of natural justice and principles of law have been complied with and whether a case of grave injustice has been made out. Also in cases where a principle of law has to be interpreted, applied or enforced with reference to or connected with education, the Courts would not hesitate in stepping in. Reference can readily be made to the cases of Muhammad Tulas vs. Bahauddin Zakariya University (2005 SCMR 961), Noor Muhammad Khan Marwat vs. Vice-Chancellor (PLD 2001 SC 319) and Maharashtra State Board vs. Paritosh Bhupeshkumar Sheth and others (AIR 1984 SC 1543).

10. For these reasons, we had, after conclusion of the hearing, announced dismissal of these petitions by declining the leave to appeal.

Sd/- J
Sd/- J
Sd/- J

Islamabad
05.04.2021
Not Approved For Reporting

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR



APPEAL NO. 11550 /2020

YOUSAF KHAN

VS

EDUCATION DEPTT:

APPLICATION FOR CORRECTION OF ADDRESS OF THE
RESPONDENT NO.3 IN THE ABOVE TITLED APPEAL

R/SHEWETH:

- 1- That the appellant filed the abovementioned appeal which is pending adjudication before this August Tribunal and is fixed for hearing on dated 25.05.2021.
- 2- That there is certain mistake in the address of the respondent No.3, mistakenly copied and pasted in the subject appeal which is subject to correction, as correct address is as under:-
"Correct Address of Respondent No:3"
- 3- The District Education Officer, (male) District Buner.

It is therefore most humbly requested that the above correct address of the respondent may very kindly be inserted in the array of respondents.

APPLICANT

YOUSAF KHAN

THROUGH:

AFRASIAB KHAN WAZIR
ADVOCATE