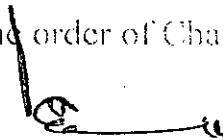


FORM OF ORDER SHEET

Court of _____

Case No. - 1002/2023


S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	05/05/2023	<p>The appeal of Mr. Muhammad Irshad resubmitted today by Mr. Babar Hayat Khan Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on <u>16/05/23</u>.</p> <p>By the order of Chairman</p>  <p>REGISTRAR</p>

The appeal of Mr. Muhammad Irshad SDEO Post Office Azeem Kala Khandar Khandar Khankhel received today i.e. on 03.05.2023 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Address of respondent no.3 is incomplete which may be completed according to the Khyber Pakhtunkhwa Service Tribunal rules 1974.
- 2- Annexures E & N of the appeal are illegible which may be replaced by legible/better one.

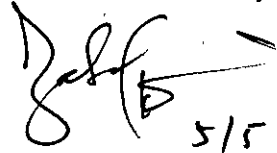
No. 1323 /S.T.

Dt. 4/5 /2023.


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Babar Hyat Khan Adv.
High Court Peshawar.

Complete address of respondent no.3 has been provided. Annexure 'N' has been replaced where necessary changes have been made to the other. Kindly process and resubmitted. As the matter pertains to posting and transfer hence requested to be put before honorable Tribunal.


5/5

BEFORE THE KHYBER PAKHTUNKHVA, SERVICES TRIBUNAL

Service Appeal No. 1002/2023

With Interim Relief

Muhammad Irshad.

Appellant

Versus

Govt of KP & others

Respondents

I N D E X

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6.	Copy of the Order of Election Commission	"B"	14-16
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8.	Copy of the impugned notification dated 14.03.2023	"E"	21-22
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Through


Appellant.

Dated: 02.05.2023
Court

BABAR HAYAT KHAN
Advocate High

0333-972-7007

①

BEFORE THE KHYBER PAKHTUNKHWA, SERVICES TRIBUNAL

Service Appeal No. 1002/2023
With Interim Relief

Muhammad Irshad S/O Niaz Khan (Sub-Divisional
Education Officer) R/O Aimal Kala, PO Azeem Kala,
Khandar Khankhel, Tehsil Domel, District Bannu.

..... Appellant

Versus

1. Government of Khyber Pakhtunkhwa through Chief
Secretary, Civil Secretariate, Peshawar
2. Secretary Elementary and Secondary Education,
Civil Secretariate, Peshawar.
3. Mr. Riaz Khan, (Management Cadre) (BS-17), SDEO, (Male)
Bannu, District Education Office (Male)
outside Miryan gate Bannu.
4. Section Officer (Management Cadre), Elementary
and Secondary Education, Civil Secretariate,
Peshawar.

..... Respondents

**SERVICE APPEAL U/S 4 OF THE KPK
SERVICE TRIBUNAL ACT, 1974 AGAINST
THE IMPUGNED NOTIFICATION
BEARING NO. SO(MC)E&SED/4-
16/2022/Posting/ Transfer/MC/: DATED
14.03.2023, WHEREBY THE APPELLANT
HAS BEEN ILLEGALLY TRANSFERRED
WITHOUT OBSERVING THE RULES /
REGULATIONS / POLICY**

Respectfully Sheweth:

2

Compendium of facts out of which the present constitutional petition arises are as under:

1. That after dissolution of the Provincial Assembly of Khyber Pakhtunkhwa on 18.01.2023, the Care Taker Chief Minister was appointed as provided under Article 224 clause (1A) of the constitution of Pakistan through the Order of the Governor dated 21.01.2023. (Copy of the Order of the Governor is attached as Annexure A)
2. That consequently on the very next day i.e. 22.01.2023, the Election Commission of Pakistan issued notification / Order through which a complete ban was imposed upon Government of Khyber Pakhtunkhwa and Punjab related to all kinds of Posting, Transfer inter alia developmental projects etc. (Copy of the notification / order dated 22.01.2023 is attached as Annexure B)
3. That the appellant priorly was first posted at Sarai Nowrang District Iakki marwat vide notification dated 07.10.2021, as Sub-Divisional Education Officer (MC) and without completing the normal tenure under the policy/rules, he was again transferred on 02.11.2022 to Sub-Division Bannu. Copies of the notifications are attached as Annexure C & D respectively

4. That appellant has been working with utmost honesty and dedication on every posting station but for no good reason, he has been made a rolling stone in order to favour the blue eyed and once again vide impugned notification 14.03.2023 after time span of 4 months approximately, despite the fact that there has been a complete ban on posting / transfer on Government of Khyber Pakhtunkhwa and in utter violation of the article 224 of the constitution. Copy of the impugned notification is attached as Annexure E

5. That it is pertinent to re-assert here, that the present government of Khyber Pakhtunkhwa is a care-taker government and under article 224 of the constitution 1973 and as per dictum laid down by Supreme Court in 2021 PLC (CS) 519, the Care-taker government could not take policy decisions and permanent measures including recruitments, making appointments, transfers and posting of government servant during the limited period that it held office but in the instant case vide impugned notification dated 14.03.2023 the Care-taker government has not only completely disregarded the constitution of Pakistan, but also the clear orders of respondent no. 2 and established dictum of the Supreme Court of Pakistan. (Copy of the reported Judgment is attached as Annexure F)

6. That being aggrieved from the impugned notification dated 14.03.2023, the appellant has filed a department appeal with respondent no. 1 on 15.03.2023 which has been duly acknowledged on 17.03.2023. (Copy of Departmental Appeal is attached as Annexure G)
7. That the appellant also file writ petition against the impugned notification which was disposed of with the direction to decide the pending departmental appeal within seven days positively & consequently the appellant resubmitted another departmental appeal. (Copy of the writ petition, order and departmental appeal are attached as Annexure H & I)
8. That the departmental appeal was finally regretted/dismissed vide order dated 17.04.2023 without justifying any reason nor providing any opportunity to the appellant to be heard in person hence this service appeal inter alia, on the following grounds; (Copy of the Order 17.04.2023 is attached as Annexure J)

GROUND S:

- A. That as per article 224(1A) of the constitution 1973, where the powers of Care taker Government have been discussed that the Care taker Government /

- Cabinet could not take policy decisions and permanent measures including recruitments, making appointments, transfer and posting of government servants during limited period where it held the office but in the impugned notification the said powers have been exercised which are beyond the mandate provided by the Constitution of Pakistan.
- B. That the impugned transfer/adjustment notification dated 14.03.2023 whereby appellant has been transferred is illegal, without lawful authority, coram non iudice, void ab initio and of no legal effect upon the rights of the appellant, therefore liable to be declared as illegal.
- C. That the impugned notification dated 14.03.2023 issued by the respondents by completely disregarding the Constitution of Pakistan, Orders of the Election Commissioner and established dictum of the apex Court.
- D. The impugned notification is against the law, rules and judgments of this honourable Court endorsed by establishment department vide notification dated 08.02.2019 wherein it has been held that all those teachers belonging to the teaching cadre shall be posted in the education institutions to teach the students according to their qualification while those belong to administrative cadre shall only hold the posted related to administration but in present

④

case the appellant belonging from Management Cadre has been transferred to a far-flung Hilly Area while the Teaching Cadre Officers have been adjusted in the adjacent or same districts, without assigning any reason which clearly shows the political victimization of the Care Taker Government. (Copy of the judgment and notification is attached as Annexure K & L)

E. That the impugned notification is also in blatant violation of the Transfer policy of the provincial government wherein it has been clearly mentioned that normal tenure of posting shall be three years but the appellant has been transferred twice in the time span of 16/17 months hence this ground alone is suffice to set aside the impugned notification. (Copy of the Posting/transfer policy is attached as Annexure M)

F. That the appellant has been transferred / posted vide serial no. 4 of the impugned notification from SDEO (male) Bannu to SDEO Bakand, District Lower Kohistan against the vacant post but actually the post of SDEO bakand is already filled vide notification dated 07.10.2022 and the present incumbent Mr. Muhammad nawaz working as SDEO bakand, District Lower Kohistan which clearly establishes that the impugned notification is the result of political pressure of Care Taker Government.

(7)

(Copy of the notification dated 07.10.2022 is attached as Annexure N)

- G. That the impugned notification has already been withdrawn to the extent of Serial No. 3 & 14 vide notification dated 17.03.2023 in respect of Mst. Sonia Nawaz and Sobia Tabassum on reasons best known to them which is yet another ground for setting aside the impugned notification completely. (Copy of the notification dated 17.03.2023 is attached as Annexure O)
- H. That the appellant may also take any other ground(s) with the permission of this honorable Court at the time of arguments.

It is, therefore, prayed that on acceptance of this Service Appeal, **the impugned notification bearing No. SO(MC)E&SED/4-16/2022/Posting/Transfer/MC/ dated 14.03.2023** and any other notification on the basis such may very kindly be declared as illegal, unlawful, void ab initio, coram non iudice, ineffective upon the rights of the appellant and may very kindly be set aside to the extent of the appellant.

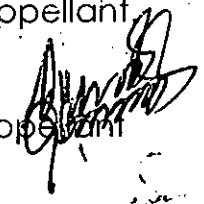
The Respondents may very kindly be directed to allow the appellant to serve on the present posting Sub-Division Bannu till the completion of his

8

normal tenure as per posting transfer policy of
Khyber Pakhtunkhwa.

Any other relief which this honourable Court
thinks appropriate in favour of the appellant may
also be granted in favour of the appellant.

Through

Appellant


Dated: 02.05.2023
Court

BABAR HAYAT KHAN
Advocate High

0333-9727-007
&

Court

TAZA KHAN ORAKZAI
Advocate High

9

BEFORE THE KHYBER PAKHTUNKHVA, SERVICES TRIBUNAL

Service Appeal No. _____/2023

With Interim Relief

Muhammad Irshad..... Appellant

Versus

Govt of KP & others Respondents

AFFIDAVIT

I, Muhammad Irshad S/O Niaz Khan (Sub-Divisional Education Officer) R/O Aimal Kala, PO Azeem Kala, Khandar Khankhel, Tehsil Domel, District Bannu, do hereby solemnly affirm and declare on oath that the contents of the accompanying **Service Appeal** are true and correct to the best of my knowledge and belief and nothing has been kept concealed from this Hon'ble Court.


DEPONENT

CNIC #:11101-6968144-5

Identified by:

BABAR HAYAT KHAN
Advocate, High Court

BEFORE THE KHYBER PAKHTUNKHWA, SERVICES TRIBUNAL

Service Appeal No. _____/2023

With Interim Relief

Muhammad Irshad. Appellant

Versus

Govt of KP & others Respondents

ADDRESSES OF THE PARTIES

PETITIONERS:

Muhammad Irshad S/O Niaz Khan (Sub-Divisional Education Officer) R/O Aimal Kala, PO Azeem Kala, Khandar Khankhel, Tehsil Domel, District Bannu

RESPONDENTS:

1. Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariate, Peshawar
2. Secretary Elementary and Secondary Education, Civil Secretariate, Peshawar.
3. Mr. Riaz Khan (Management Cadre) (BS-17), SDEO, (Serial No. 02) Elementary and Secondary Education, Civil Secretariate, Peshawar
4. Section Officer (Management Cadre). Elementary and Secondary Education. Civil Secretariate, Peshawar.

Through


Appellant

Dated: 02.05.2023
Court

BABAR HAYAT KHAN
Advocate High

0333-972-7007

2. That this application may be read as an integral part

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

(11)

In Re:

Service Appeal No. _____/2023

Muhammad Irshad. Applicant

Versus

Govt of KP & others.

Respondents

**APPLICATION FOR GRANT OF INTERIM
RELIEF SUSPENDING THE IMPUGNED
NOTIFICATION NO. SO(M.C)E&SED/4-
16/2022/Posting/ Transfer/IAC/: dated
14.03.2023 TO THE EXTENT OF
APPLICANT AND ANY OTHER
ORDER/NOTIFICATION OF TRANSFER ON
THE BASIS OF SUCH**

Respectfully Sheweth:

1. That the captioned case is sub-judice before this Honourable Tribunal.
2. That this application may be read as an integral part of the main service appeal.

3. That on the face of it, the applicant has got a strong arguable case and are sanguine about its success. (12)
4. That the balance of inconvenience tilts in favour of grant of interim relief.
5. That if the interim relief is not granted, the applicant would sustain an irreparable loss to his service, not redeemable otherwise.

It is, therefore, prayed that on acceptance of this application, the interim relief as prayed for in the heading of the petition may be granted till final disposal of the case.


Petitioner

Through

Dated: 02.05.2023

BABAR HAYAT KHAN
Advocate, Peshawar

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

12-A

In Re:

Service Appeal No. _____/2023

Muhammad Irshad **Applicant**

Versus

Govt of KP & others **Respondents**

AFFIDAVIT

I, Muhammad Irshad S/O Niaz Khan (Sub-Divisional Education Officer) R/O Aimal Kala, PO Azeem Kala, Khandar Khankhel, Tehsil Domel, District Bannu, do hereby solemnly affirm and declare on oath that the contents of the accompanying **application** are true and correct to the best of my knowledge and belief and that nothing has been kept concealed from this Honourable Court.



Identified By:

DEPONENT
CNIC #: 11101-6968144-5

BABAR HAYAT KHAN
Advocate, Peshawar

(13)

ANNEXURE

Haji Ghulam Ali
Governor's House
Khyber Pakhtunkhwa Peshawar

Governor

ORDER

Subject: APPOINTMENT OF THE CARETAKER CHIEF MINISTER, KHYBER PAKHTUNKHWA IN TERMS OF CLAUSE (1A) OF THE ARTICLE 224 OF THE CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN 1973.

WHEREAS, the Governor Khyber Pakhtunkhwa, on the advice of the Chief Minister of Khyber Pakhtunkhwa, dissolved the Provincial Assembly and the Cabinet of Khyber Pakhtunkhwa on 18th January, 2023 at 0915 hours under Clause (1) of Article 112 of the Constitution of Islamic Republic of Pakistan 1973.

2. WHEREAS, in terms of Article 224(1A) of the Constitution, Mr. Mahmood Khan, the outgoing Chief Minister, Khyber Pakhtunkhwa and Mr. Akram Khan Durrani, the Leader of the Opposition in the Outgoing Assembly of Khyber Pakhtunkhwa, were requested to hold consultation with the Governor Khyber Pakhtunkhwa for the appointment of Caretaker Chief Minister.

3. WHEREAS, Mr. Mahmood Khan, the outgoing Chief Minister, Khyber Pakhtunkhwa and Mr. Akram Khan Durrani, Leader of the Opposition in the Outgoing Assembly of Khyber Pakhtunkhwa, have informed me on 20th January, 2023 through a Note dated 20th January, 2023 that they have agreed to nominate Mr. M. Azam Khan to be appointed as the Caretaker Chief Minister, Khyber Pakhtunkhwa.

4. AND NOW THEREFORE, I, HAJI GHULAM ALI, the Governor, Khyber Pakhtunkhwa, hereby appoint Mr. M. Azam Khan, as the Caretaker Chief Minister Khyber Pakhtunkhwa, in terms of Clause (1A) of the Article 224 of the Constitution of Islamic Republic of Pakistan 1973.

Further necessary action may be taken for notification and administering oath to the Caretaker Chief Minister by the Governor Khyber Pakhtunkhwa.

ATTESTED

(Haji Ghulam Ali)
Governor Khyber Pakhtunkhwa

21/01/23

No. PSG-1(2)/2023

dated 21st January, 2023

Copy to;

1. The Chief Secretary, Khyber Pakhtunkhwa.
2. Mr. Mahmood Khan, the outgoing Chief Minister, Khyber Pakhtunkhwa.
3. Mr. Akram Khan Durrani, the Leader of the Opposition in the Outgoing Provincial Assembly of Khyber Pakhtunkhwa.

(14)

ELECTION COMMISSION OF PAKISTAN
NOTIFICATION

ANNEXURE
" B "

Islamabad the 22nd January, 2023

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

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

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

NOW THEREFORE, in exercise of the powers conferred upon it under Articles 218(3), 220 of the Constitution of the Islamic Republic of Pakistan, Sections 4, 5, 8(c) read with Section 230 of the Elections Act, 2017 and as supported by the Workers' Party case through Akhtar Hussain Advocate, General Secretary and 6 others Versus Federal of Pakistan and 2 others reported in PLD.2012 SC 681, and all the other powers enabling it in that behalf, the Election Commission of Pakistan, to ensure transparent election and to provide a level playing field for all contesting candidates and political parties, hereby directs the Caretaker Governments of Punjab and Khyber Pakhtunkhwa:-

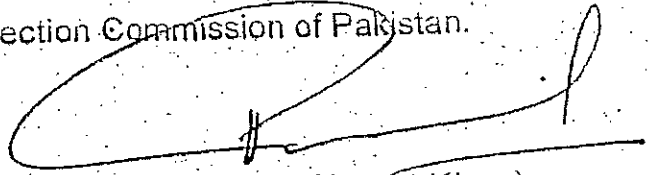
- (a) To assist the Election Commission to hold elections in accordance with law as provided under section 230(1)(b) of the Elections Act, 2017.
- (b) To ensure the compliance of all the notifications, directives and the provisions as laid down in Section 230 of the Act *ibid*.
- (c) Not to post or transfer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

Contd...Page-2

ATTACHED

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

This issues with the approval of Election Commission of Pakistan.



(Omar Hamid Khan)
Secretary

Election Commission of Pakistan

ATTESTED

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Copy forwarded for information to the:

- (1) Secretary to the President, Aiwan-e-Sadr, Islamabad.
- (2) Secretary to the Prime Minister, Prime Minister's Secretariat, Islamabad.
- (3) Secretary, Ministry of Parliamentary Affairs, Govt. of Pakistan, Islamabad.
- (4) Secretary, Ministry of Interior, Government of Pakistan, Islamabad.
- (5) Secretary, Ministry of Planning, Development and Reforms, Government of Pakistan, Islamabad. (for implementation and Circulation to all relevant Departments)
- (6) Secretary, Senate Secretariat, Islamabad.
- (7) Secretary, National Assembly of Pakistan, Islamabad.
- (8) Secretary, Ministry of Defence, Government of Pakistan, Rawalpindi.
- (9) Secretary, Establishment Division, Government of Pakistan, Islamabad. (for implementation and Circulation to all concerned)
- (10) Principal Secretary to the Governor, Punjab, Lahore.
- (11) Principal Secretary to Chief Minister of Punjab, Lahore.
- (12) Chief Secretary, Government of Punjab, Lahore.
- (13) Chief Secretary, Government of Khyber Pakhtunkhwa, Peshawar. } For implementation and Circulation to all subordinate Departments
- (14) Registrar, Supreme Court of Pakistan, Islamabad.
- (15) Registrar, Lahore High Court, Lahore.
- (16) Registrar, Peshawar High Court, Peshawar.
- (17) Provincial Election Commissioner Punjab, Lahore.
- (18) Provincial Election Commissioner Khyber Pakhtunkhwa, Peshawar.
- (19) Inspector General of Police, Punjab, Lahore.
- (20) Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.

II. Copy also forwarded to the:

- (1) Director General (Law)
- (2) Director General (IT- Policy & Planning)
- (3) Additional Director General (Training)
- (4) Additional Director General (GSI)
- (5) Additional Director General (Elections-II)
- (6) Principal Staff Officer to Hon'ble CEC
- (7) Director to Hon'ble CEC
- (8) Director (Elector Rolls)
- (9) Director (MIS)
- (10) Director (Political Finance)
- (11) Director (MCO)
- (12) Deputy Director (Budget)
- (13) Deputy Director (Election-I & II)
- (14) Deputy Director (Conf.)
- (15) Deputy Director (Political Finance)
- (16) Deputy Director (Training)
- (17) Deputy Director (Web)
- (18) Deputy Director (Law)
- (19) PS to Hon'ble Members - I, II, III & IV.
- (20) Staff Officer to Secretary
- (21) Assistant Director (Monitoring)
- (22) PS to Additional Secretary (Admn)
- (23) JPA to Special Secretary (ECP)

ECP Secretariat, Islamabad.

ATTESTED

(Signature)
 (Shahid Iqbal)
 Additional Director-General
 (Elections)



ELEMENTARY AND SECONDARY EDUCATION DEPARTMENT
Block-"A" Opposite MPA's Hostel, Civil Secretariat Peshawar
Phone No. 091-9223511

15 ANNEXURE C

Dated Peshawar the October, 07 2021

NOTIFICATION

NO.SO(SYDE&SED/7-1/2021/PT/G/MC) : The Competent Authority is pleased to order the transfer of the following Officers of Management Cadre of Elementary & Secondary Education Department, in the best public interest, with immediate effect:-

S#	Name & Designation	From	To
1.	Mr. Fida Muhammad (MC)	SDEO (Male) Town-III Peshawar	SDEO (Male) Charsadda vice S.No. 03.
2.	Mr. Irshad Khan (MC)	SDEO (Male) Town-IV Peshawar	SDEO (Male) Shabqadaqr, Charsadda vice S.No. 04.
3.	Mr. Shamsul Islam (MC)	SDEO (Male) Charsadda	SDEO (Male) Mardan vice S.No. 07.
4.	Mr. Ahmed Ullah (MC)	SDEO (Male) Shabqadaqr, Charsadda	SDEO (Male) Takhi Bhai, Mardan vice S.No. 08.
5.	Mr. Sajad Rasheed (MC)	ASDEO (Male) Peshawar.	SDEO (Male) Town-III Peshawar in OPS vice S.No. 01
6.	Mr. Abdul Halm (MC)	ASDEO(M) Alpurai Shangla	SDEO (Male) Town-IV Peshawar in OPS vice S No. 02
7.	Mr. Muhammad Anwar (MC)	SDEO (Male) Mardan	SDEO (Male) Dargai, Malakand vice S.No. 09.
8.	Mr. Syed Ikram (MC)	SDEO (Male) Takht Bhai, Mardan	SDEO (Male) Batkhela, Malakand vice S.No. 10.
9.	Mr. Keramat Shah (MC)	SDEO (Male) Dargai, Malakand	SDEO (Male) Babozai, Swat vice S.No. 11.
10.	Mr. Ghulam Sarwar (MC)	SDEO (Male) Batkhela, Malakand	SDEO (Male) Matla, Swat vice S. No. 14.
11.	Mr. Muhammad Azam (MC)	SDEO (Male) Babozai, Swat	SDEO (Male) Mandan, Buner vice S No. 29.
12.	Mr. Muhammad Zahid SS (English) (MC)	SDEO (Male) Charbagh, Swat	SDEO (M) Alpurai Shangla against the vacant post.
13.	Mr. Tahir Khan (MC)	SDEO (Male) Khal, Dir Lower	SDEO (Male) Charbagh, Swat vice S.No. 12
14.	Mr. Bakht Zada (MC)	SDEO (Male) Blambat, Dir Lower	SDEO (Male) Dir Upper vice S No 15
15.	Mr. Imtiaz Ahmed (MC)	SDEO (Male) Dir Upper	SDEO (Male) Khal, Dir Lower S No.13
16.	Mr. Muqadas (MC)	SDEO (Male) Turkho Mulkho Chitral	SDEO (Male) Blambat, Dir Lower vice S.No. 14
17.	Mr. Luqman Hakeem (MC)	SDEO (Male) Takht e Nasrati, Karak	SDEO (Male) Kohat vice No 18.
18.	Mr. Abdul Hamid (MC)	SDEO (Male) Kohat	SDEO (Male) Tall, Hangu vice S.No. 19
19.	Mr. Muhammad Tariq (MC)	SDEO (Male) Tall, Hangu	SDEO (Male) Bannu vice S.No. 35
20.	Mr. Malik Khan (MC)	SDEO (Male) Tank	SDEO (Male) Kulachi D.I.Khan vice S.No. 23



ELEMENTARY AND SECONDARY EDUCATION DEPARTMENT
Block-"A" Opposite MPA's Hostel, Civil Secretariat Peshawar
(Phone No. 011-9221533)

18

21.	Mr. Muhammad Zarif (MC)	SDEO (Male) D.I.Khan	SDEO (Male) Alai Battagram vice S.No. 27.
22.	Mr. Khalid Naeem (MC)	SDEO (Male) Prova D.I.Khan	SDEO (Male) Kohistan Lower vice S.No. 24
23.	Mr. Abdul Hafeez (MC)	SDEO (Male) Kulachi D.I.Khan	SDEO (Male) Tank vice S.No. 20.
24.	Mr. Muhammad Nawab SST (TC)	SDEO (Male) Kohistan Lower	SDEO (M) Kandian Kohistan Upper in OPS against the vacant post.
25.	Mr. Saleh Muhammad (MC)	SDEO (Male) Mandan, Buner	SDEO (M) Chakesar Shangla against the vacant post
26.	Mr. Saeed Mehmood (MC)	SDEO (Male) Gagara, Buner	SDEO (Male) Matrung Shangla against the vacant post.
27.	Mr. Chanzeb Khan (MC)	SDEO (Male) Alai Battagram	SDEO (Male) Baffa Mansehra vice S No. 31
28.	Mr. Ameer Rehman (MC)	SDEO (Male) Mansehra	SDEO (Male) Lal Qilla District Dir Lower against the vacant post.
29.	Mr. Muhammad Ajmal (MC)	SDEO (Male) Oghi Mansehra	SDEO (Male) Lora Abbottabad vice S.No. 39
30.	Mr. Shafiq Ur Rehman (MC)	SDEO (Male) Darband, Mansehra	SDEO (Male) Lower Tanawal Abbottabad vice S.No. 40
31.	Mr. Abdus Samad (MC)	SDEO (Male) Baffa, Mansehra	SDEO (Male) Havelian Abbottabad vice S.No. 38
32.	Mr. Ishfaq Jadoon (MC)	SDEO (Male) Haripur	SDEO (Male) Mansehra vice S.NO.28.
33.	Mr. Fazle Qadir (MC)	SDEO (Male) Khan Pur, Haripur	SDEO (Male) Oghi Mansehra vice S.No. 29.
34.	Mr. Muhammad Rehman Shah (MC)	SDEO (Male) Bakka Khel Bannu	SDEO (Male) Lakki Marwat vice S.No. 36.
35.	Mr. Muhammad Irshad (MC)	SDEO (Male) Bannu	SDEO (Male) Sarai Naurang, Lakki vice S.No. 37.
36.	Mr. Qadir Shah (MC)	SDEO (Male) Lakki Marwat	SDEO (Male) Takht e Nasrati, Karak vice S.No. 37
37.	Mr. Abdur Rehman Rashid (MC)	SDEO (Male) Sarai Naurang, Lakki	SDEO (Male) Bakka-Khel-Bannu vice S.No.34.
38.	Mr. Sardar Abdul Qayum (MC)	SDEO (Male) Havelian Abbottabad	SDEO (Male) Haripur vice S.No. 32.
39.	Mr. Naseer Ahmad (MC)	SDEO (Male) Lora Abbottabad	SDEO (Male) Khan Pur, Haripur vice S No. 33
40.	Mr. Maroof Khan (MC)	SDEO (Male) Lower Tanawal Abbottabad	SDEO (Male) Darband, Mansehra vice S.No. 30
41.	Mr. Sardar Ali (TC BS-16)	ASDEO (M) Balara Buner.	SDEO (Male) Gagara, Buner in OPS vice S.No.26.
42.	Mr. Altaf Hussain (MC)	SDEO (M) Kabal District Swat	SDEO (M) Tehsil Thana Baizai District Malskand against the vacant post.
43.	Syed Kamal Shah (MC)	ASDEO (Primary) Buner	SDEO (M) Daggar District Buner in OPS against the vacant post

SECRETARY TO GOVT OF KHYBER PAKHTUNKHWA
E&SE DEPARTMENT

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EDUCATION DEPARTMENT
Block-"A" Opposite MPA's Hostel, Civil Secretariat Peshawar
Phone No. 691-9223533

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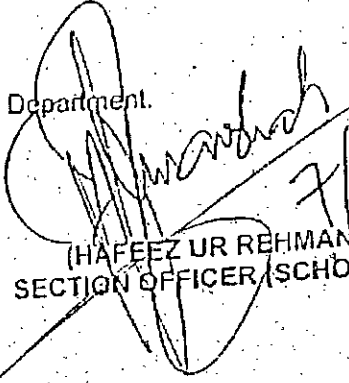
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Ends: of even No. & Date

Copy forwarded to the:

1. Accountant General, Khyber Pakhtunkhwa Peshawar.
2. Director, E&SE Khyber Pakhtunkhwa, Peshawar.
3. District Education Officer (Male) concerned.
4. District Account Officers, Concerned.
5. Director, EMIS E&SE Department.
6. PS to Minister for E&SE Department.
7. PS to Secretary E&SE Department.
8. PA to Deputy Secretary (Admn) E&SE Department.
9. Officers concerned.
10. Office order file.


(HAFEEZ UR REHMAN SHAH)
SECTION OFFICER (SCHOOLS MALE)

ATTESTER



GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY AND SECONDARY EDUCATION DEPARTMENT
Block-"A" Opposite NPA's Hotel, Civil Secretariat Peshawar

ANNEXURE
"D"

Dated Peshawar 2nd November, 2022

NOTIFICATION

NO.SO(MC)E&SED/4-16/2022/Posting/Transfer/Ch: The following posting/transfers are hereby ordered with immediate effect, in the best public interest:

Sr. No	Name of officer	From	TO	Remarks
1.	Ms. Bibi Haleema Sadiq (MC BS-15 a.c.b)	Deputy DEO (Female) Karak	Deputy DEO (Female) Bannu	Vice S.No.2
2.	Ms. Nadia Begum (MC BS-17)	Deputy DEO (Female) Bannu in OPS	Deputy DEO (Female) Karak in OPS	Vice S.No.1
3.	Mr. Riaz Khan (MC BS-17)	SDEO (Male) Lachi, Kohat	Deputy DEO (Male) Bannu in OPS	Vice S.No.6
4.	Mr. Tariq Khan (MC BS-17)	SDEO (Male) Bannu	SDEO (Male) Serai Naurang, Lakki Marwat	Vice S.No.5
5.	Mr. Arshad Khan (MC BS-17)	SDEO (Male) Serai Naurang, Lakki Marwat	SDEO (Male) Bannu	Vice S.No.4
6.	Mr. Dilawar Khan (MC BS-17)	Deputy DEO (Male) Bannu in OPS	SDEO (Male) Lachi, Kohat	Vice S.No.3

2. Compliance report may be submitted to this office within seven days positively.

SECRETARY TO THE GOVT. OF KHYBER PAKHTUNKHWA
E&SE DEPARTMENT

Ends of even No. & date:

Copy forwarded for information to the:-

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

(NASEER ABBAS KHALIL)
SECTION OFFICER (Management Cell)

Better Copy

GOVT OF KHYBER PAKHUNKHWA
ELEMENTARY AND SECONDARY EDUCATION
DEPARTMENT

Dated 14th March 2023

NOTIFICATION

No. SO (MC) E&SE D/4-4-16/2022 posting/transfer/MC:

The following posting are hereby ordered to with immediate effect in the best public interest:-

Sr No	Name of officer	From	To	Remarks
1.	Muhammad Tariq (MC) BS-17	SDEO Sarai Norang Lakki Marwat	Deputy DEO Male Bannu in OPS	VS No. 2
2.	Riaz Khan (MC) BS-17	Deputy DEO Male Bannu in OPS	SDEO Male Bannu	VS No. 4
3.	Mst Sonia Nawaz (MC) BS-17	SDEO (Female) Tank	SDEO Female D. I Khanq	VS No 14
4.	Muhammad Irshad (MC) BS-17	SDEO (Male) Bannu	SDEO Male Bankad Lower Kohistan	AVP
5.	Mati Ullah (MC) BS-17	SDEO Miran Shah District North Waziristan	SDEO (Male) Kalda Bannu	VS No 5
6.	Waheed Ullah Shah (MC) BS-17	SDEO (Male) Kakki bannu.	SDEO Sarai Norang Lakki Marwat	VS No 15
7.	Bakhtiar Khan (TC) BS-17	Headmaster GHS Banti Kala Umerzai Bannu	SDEO (Male) Bhitani Lakki Marwat	VS No 10
8.	Mst Tahir Un Nisa BS-17 (MC)	SDEO (Female) Bannu	Services placed at the disposal of directorate	
9.	Mst Zafran Begum (MC) BS-16	ADEO (F) Bannu	SDEO (F) Bannu in OPS	VS No 8
10.	Mr Abdul Hameed SST (Bio/Chemist)	Working as SDEO (M) Bhitini Lakki Marwat in OPS	Services placed at the disposal of directorate	
11.	Mst Basmin Begum (MC) BS-17	SDEO (F) Mandar Bunir	SDEO (F) Tangi District Charsadda	AVP
12.	Mr Tahir Ibrar (TC) BS-17	SS (Economics) GGHS Landiwah lakki Marwat	SDEO (M) Sub Division Wazir Bannu	VS No. 17
13.	Fatima Ali (TC) BS-17	SST (G) GGHS Malana Upper Kurram	SDEO (F) Upper Kurram	AVP
14.	Subia Tabassum (MC) BS-17	SDEO (F) D.I Khan	SDEO (F) Tank	VS No 3



GOVERNMENT OF KHYBER PAKHTUNKHWA
 ELEMENTARY & SECONDARY EDUCATION
 DEPARTMENT

(19)

ANNEXURE E

Dated 14th March 2023

PUBLICATION

NO SO(MC)F&S/D4-16/2022/Posting/Transfer/ACE: The following posting/transfer are hereby ordered with immediate effect, in the best public interest.

Sr. No	Name of officer	FROM	TO	Remarks
1.	Muhammad Tariq (MC) BS-17	SDEO Seraik Hangu Lakki Marwat	Deputy D.O (Male) Bannu in OPS	V.S No 2
2.	Riaz Khan (MC) BS-17	Deputy D.O (Male) Bannu in OPS	D.O (Male) Bannu	V.S No 4
3.	Mst. Sonia Nawaz (MC) BS-17	SDEO (Female) Tank	SDEO (Female) DIKHAH	V.S No 14
4.	Muhammad Irshad (MC) BS-17	SDEO (Male) Bannu	SDEO (Male) Bannu Lower Kohistan	AVP
5.	Matiullah Khan (MC) BS-17	SDEO Miranshah District North Waziristan	SDEO (Male) Kakki Bannu	V.S No 5
6.	Waheed Ullah Shah (MC) BS-17	SDEO (Male) Kakki Bannu	SDEO Seraik Hangu Lakki Marwat	V.S No 15
7.	Bakhtiar Khan (TC) BS-17	Head Master GHS Balhi Kala Umerzai Bannu	SDEO (Male) Bhattani Lakki Marwat	V.S No 10
8.	Mst. Tahirun Nisa BS-17 MC	SDEO (Female) Bannu	Services Placed at the disposal of Directorate	
9.	Mst Zafran Begum BS-16 MC	ADEO (F) Bannu	SEDO (Female) Bannu in OPS	V.S No 8
10.	Mr. Abdul Hameed SST (Bio/Chem)	Working as SDEO (Male) Bhattani Lakki Marwat in OPS	Services Placed at the disposal of Directorate	
11.	Mst. Basmin Begum MC-BS-17	SDEO (Female) Mandran Buner	SDEO (Female) Tangi District Charsadda	AVP
12.	Mr. Tahir Ibrar TC (BS-17)	SS (Economics) GHSS Landiwah Lakki Marwat	SDEO (Male) Sub- Division Wazir Bannu	V.S No 17
13.	Fatima Ali TC BS-17	SST (G) GGHS Malana Upper Kurram	SDEO (Female) Upper Kurram	AVP
14.	Sobia Tabassum MC BS-17	SDEO (Female) DIKHAH	SDEO (Female) Tank	V.S No 3

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

16. Tariq Khan MC BS-17	SDEO (M) Bera Naurang	Services Placed at the disposal of Directorate	
16. LIDA KHAN TC BS-16	SDEO (Male) Razmak in North Waziristan in OPS	Services placed at the disposal of DEO (M) North Waziristan	
17. Ilam Din MC BS-17	SDEO (M) SD Wazir Bannu	SDEO (Male) Razmak	V.S.No. 16
18. Muhammad Hussain MC BS-17	SDEO (M) Kohat Gumbat Circle	SDEO (Male) FR Kohat	AVP
19. Awal Rehman TC BS-17	SST (Bs-17) GCMHS Chokara Karak	SDEO (M) Kohat Gumbat Circle	V.S.No. 18

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

Endst. of even No. & date:

Copy forwarded for information to the: -

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

11/17/2013
(IMRAN ZAMAN)

SECTION OFFICER (Management Cadre)

ATTESTED

2021 P L C (C.S.) 519

[Supreme Court of Pakistan]

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

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

Versus

ABDUL RAUF and 6 others

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

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

Constitution of Pakistan---

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

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

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

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

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

Even otherwise, in the present case, there was no record whatsoever
of any process of recruitment having been transparently conducted with a
view to make merit-based appointments. The recommendations made by

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ANNEXUR "F"

ATTESTED

the Committee had ex facie been made arbitrarily and were neither based upon any test results nor interviews. There was not an iota of evidence available on the record that any test or interview was conducted or transparent and proper merit list was prepared showing marks obtained by each candidate in the NTS test or interview. [p. 525] D & E

In the interest of being just and fair the Supreme Court directed that it would be appropriate if all those candidates who filed applications pursuant to the advertised posts were allowed to appear in fresh tests to be conducted by NTS. Appeals were allowed with further relevant directions. [p. 526] F

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

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

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

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

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

Nemo for Respondents (in C.A. No. 434 of 2020).

Date of hearing: 25th September, 2020.

JUDGMENT

IJAZ UL AHSAN, J.---Through this common judgment, we intend to decide Civil Appeals Nos. 433, 434, 435, 436, 437, 438 and 596 of 2020 as they arise out of a single consolidated judgment of the High Court of Balochistan, Quetta dated 03.01.2020.

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

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accordingly. It was also prayed that the department may be restrained from undertaking the recruitment process afresh. The constitutional petition was allowed and the Appellants were directed to issue appointment letters to the Respondents after due verification of the credentials. The Government of Balochistan was aggrieved of such order and approached this Court by way of a civil petition for leave to appeal.

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

"Learned Additional Advocate General, Balochistan contends that advertisements were published on 17.05.2017 and 18.02.2018 for different posts by the Director General Mines and Minerals Department, Government of Balochistan. He contends that though the Departmental Recruitment Committee was constituted but actually, no transparent process whatsoever for making appointments was undertaken by the said Committee and even the minutes of the meeting dated 11 and 12.07.2018 are not in accordance with law, for that, no test and interview of any of the candidate was undertaken, as there is no record of such test and interview. He contends that no merit list was prepared and there is no existence of merit list on the record. He contends that as per guidelines issued under Para-5 of letter dated 15.03.2016, captioned, "the Observance of the Recruitment Policy, 1991 (Appointment, Promotion and Transfer) Rules, 2009 and Specific Quotas Fixed for Appointment Against Initial Recruitment". If a merit list is prepared, the same is required to be published but there is no publication of such merit list. He contends that as there was no transparent recruitment process and there was even no conclusion of the recruitment process, thus, no right accrued to the respondents for being appointed and in this manner, the petitioners were justified to re-advertise the posts. He contends that the recruitment process was to be completed within 120 days, with extension of 60 days, but the recruitment process was never completed even though 420 days had expired and thus, the whole process of recruitment itself had become infructuous, as per the policy.

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

4. The learned Advocate General Balochistan has argued that the alleged process of test and interview was purportedly conducted during the period when a Caretaker Government was in place. There was a bar on fresh recruitments imposed by the Election Commission of Pakistan and the recruitment exercise was altogether illegal. He maintains that the constitution of the Committee and the alleged process was in itself illegal

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

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

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

7. There is no denial of the fact that the process of recruitment may have been initiated by way of publication of advertisement before the Caretaker Government was put in place. However, all material steps including processing of applications, tests (if any) interviews (if any) and recommendations by the Recruitment Committee were taken during the Caretaker Government and the elected Government was practically presented with a fait accompli. The mandate of a Caretaker Government is to hold the mantle in the interregnum when the term of the sitting Government has expired and the new Government is yet to take charge, A

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caretaker Government is empowered only to carry out day to day affairs of the State with the help of available machinery/resources/ manpower. It cannot take policy decisions and permanent measures including recruitments, making appointments, transfers and postings of Government Servants. It must leave such matters to the elected Government which takes charge as a result of elections. It was in this context that in a case reported as *Khawaja Muhammad Asif v. Federation of Pakistan and others* (supra) held that a Caretaker Government/Cabinet has to confine itself to running day to day administration of the State and to take decisions required for orderly running the affairs of the State. However, decisions having far reaching consequences should only be taken by the elected government having the mandate to perform such functions as are required of it in exercise of powers conferred by the Constitution. The above principle was reiterated in a later judgment of this Court reported in the case *Nemat Ullah and others v. Chairman Governing Body, Worker Welfare Board/ Secretary to Government of KPK, Labour Department and others* (2016 SCMR 1299).

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

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

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process having been followed. This haste speaks volumes about the validity, credibility and genuineness of the process and its underlying intent, motive and purpose.

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

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

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

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and preferably within a period of three months. The merit lists prepared as a result of testing and interviews shall be placed before us for our examination in Chambers.

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

MWA/G-16/SC

Appeals allowed.

ATTESTED

The Chief Secretary,
Khyber Pakhtunkhwa, Peshawar.

TELEPHONE BRANCH
CHIEF SECRETARY
GOVERNMENT OF PAKISTAN
PESHAWAR

Annexure 1



30

Subject:

DEPARTMENTAL REPRESENTATION / APPEAL AGAINST THE IMPUGNED NOTIFICATION DATED 14-03-2023, WHEREBY THE APPELLANT HAS BEEN TRANSFERRED/ ADJUSTED FROM SUB-DIVISION DISTRICT BANNU TO SUB-DIVISION BANKAD DISTRICT LOWER KOHISTAN WITHOUT COMPLETING THE NORMAL TENURE.

Respected Sir,

Compendium of facts out of which the present Representation /Appeal arises as under.

FACTS:

1. That the appellant belongs to District Bannu and serving as SDEO BPS-17 in E&SE Department since 26/09/2018.
2. That the appellant firstly transferred from Sub Division District Bannu to Sub Division Sarai Nowrang District Lakki Marwat on completion of tenure base vide the Notification dated 07-10-2021 which has been complied with (Transfer Order is as Annex-A).
3. That the appellant was then transferred / adjusted at Sub-Division Bannu, District Bannu from Sub Division Sarai Nowrang District Lakki Marwat without completing the normal tenure vide Notification dated 02-11-2022. (Annex-B)
4. That the appellant transfer/ adjusted again after 4 months without completion the normal tenure vide impugned Notification dated 14-03-2023 from Sub Division Bannu, District Bannu to Sub Division Bakand, District Lower Kohistan without assigning any solid reason and ground. (Annex-C)
5. That the impugned transferred / adjustment Notification is against law, rules and natural justice on the grounds inter-alia as follow

GROUND:

- A. That the impugned transfer/ adjustment Notification dated 14-03-2023 whereby appellant has been transferred vide serial No. 4 of the impugned Notification dated 14-03-2023 is illegal, without lawful authority, without jurisdiction, void ab-initio of no legal effect and ineffective upon the rights of the appellant, therefore liable to be set aside.
- B. That the impugned Notification 14-03-2023, is in sheer violation of Apex court reported judgment 2021 PLC (C.S) 519, which has barred the care taker government from posting/ transfer and only can runs the day to day affairs of the Government (Judgment Annx-D _____).
- C. That the impugned Notification dated 14-03-2023 where the appellant has been transfer from one place to another place without completing the normal tenure and

ATTACHED

violating the rules and regulations by respondent department clearly established the mala fide on behalf of the respondent department.

- D. That the impugned Notification 14-03-2023 is against law, rules and PHC judgment in various Writ Petitions endorsed by Establishment, Department vide Notification No so (E-1/E & AD/0-BB/2019 dated 8 February. 2019 as the teaching cadre officers at Sr. No.07,12,13,19 has been posted at management cadre posts in the same and adjacent district and whereby the appellant has been posted/ transferred in far-off hilly area without any solid reason and grounds being management cadre officer that shows Political victimization of care taker Government. (Judgement and Notification Annx-E)
- E. That the impugned Notification dated 14/03/2023 is issued in haste and without approval of Competent Authority on the direction of political pressure as it is full of ambiguity. At serial No.1 of the impugned Notification Mr. Muhammad Tariq SDEO Sarai Nawarang lucky Marwat has been posted as Deputy District Education officer in his own pay scale but his posting as SDEO male Sarai Nawarang dated 2/11/2022, he did not assume charge as a SDEO Sarai Nawarang. It is also astonishing that the same officer in the same impugned Notification dated 14/03/2023 shown at serial 15 as a SDEO Sarai Nawarang Lucky Marwat and placed on disposal of Directorate of Elementary and secondary Deptt. which clearly shows mala fide on the part of Respondent Department.
- F. That the impugned Notification dated 14-03-2023 is full of errors and omissions. The appellant has been transferred/posted vide serial No. 4 of the impugned Notification from SDEO Male Bannu, District Bannu to SDEO Bakand, District Lower Kohistan against vacant post but actually the post of SDEO Bakand, District Lower Kohistan is already filled vide notification dated 07-10-2022 and the present incumbent Mr. Muhammad Nawab, working as SDEO Bakand, District Lower Kohistan which clearly shows that the impugned notification dated 14-03-2023 is the result of political pressure of care taker government.

PRAYER:

It is therefore prayed that on acceptance of this representation / appeal the impugned Notification dated 14-03-2023 may be declared as illegal, without lawful authority, without jurisdiction vide ab-intio and of no legal effect and the same may be laid to rest and the appellant may be retained at his own pervious station SDEO Male Bannu.

Date: 15/03/2023.

APPELLANT

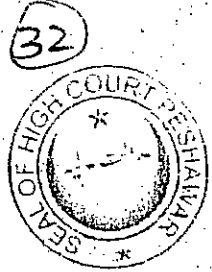
MR. MUHAMMAD IRSHAD (Management Cadre)
SDEO (MALE) BANNU

Cell No = 03359800702

ATTESTED

31

Annexure "H"



BEFORE THE PESHAWAR HIGH COURT, PESHAWAR

Writ Petition No. _____/2023
With Interim Relief

Muhammad Irshad S/O Niaz Khan R/O House No.
167, Street -7, Sector J-1, Phase 2, Hayatabad
Peshawar.

.....Petitioner

Versus

1. Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariate, Peshawar
2. Chief Election Commissioner of Pakistan through its Secretary, Election Commission.
3. Secretary Elementary and Secondary Education, Civil Secretariate, Peshawar.
4. Director, Elementary and Secondary Education, Civil Secretariate, Peshawar
5. Mr. Riaz Khan (Management Cadre) (BS-17), SDEO, (Serial No. 02) Elementary and Secondary Education, Civil Secretariate, Peshawar
6. Section Officer (Management Cadre), Elementary and Secondary Education, Civil Secretariate, Peshawar.

..... Respondents

**WRIT PETITION UNDER ARTICLE 199
READ WITH 189 AND 224 OF THE
CONSTITUTION OF THE ISLAMIC
REPUBLIC OF PAKISTAN, 1973**

ATTESIA
EXAMINER
Peshawar High Court

(24)

(2)

(33)

Respectfully Sheweth:

Compendium of facts out of which the present constitutional petition arises are as under:

1. That after dissolution of the Provincial Assembly of Khyber Pakhtunkhwa on 18.01.2023, the Care Taker Chief Minister was appointed as provided under Article 224 clause (1A) of the constitution of Pakistan through the Order of the Governor dated 21.01.2023. (Copy of the Order of the Governor is attached as Annexure A)
2. That consequently on the very next day i.e. 22.01.2023, the respondent no. 2 issued notification / Order through which a complete ban was imposed upon Government of Khyber Pakhtunkhwa and Punjab related to all kinds of Posting, Transfer inter alia developmental projects etc. (Copy of the notification / order dated 22.01.2023 is attached as Annexure B)
3. That the petitioner is a law-abiding citizen of Pakistan and was first posted at Sarai Nowrang District lakki marwat vide notification dated 07.10.2021 as Sub-Divisional Education Officer (MC) and without completing the normal tenure under the policy/rules,

ATTORNEY
EXAMINER
Peshawar High Court

he was again transferred on 02.11.2022 to Sub-Division Bannu. Copies of the notifications are attached as Annexure C & D respectively

4. That petitioner has been working with utmost honesty and dedication on every posting station but for no good reason, he has been made a rolling stone in order to favour the blue eyed and once again vide impugned notification 14.03.2023 after time span of 4 months approximately, despite the fact that there has been a complete ban on posting / transfer on Government of Khyber Pakhtunkhwa and in utter violation of the article 224 of the constitution. Copy of the impugned notification is attached as Annexure E
5. That it is pertinent to re-assert here, that the present government of Khyber Pakhtunkhwa is a care-taker government and under article 224 of the constitution 1973 and as per dictum laid down by Supreme Court in 2021 PLC (CS) 519, the Care-taker government could not take policy decisions and permanent measures including recruitments, making appointments, transfers and posting of government servant during the limited period that it held office but in the instant case vide impugned notification dated 14.03.2023 the Care-taker government has

ATTESTED
BANNU
Peshawar High Court

not only completely disregarded the constitution of Pakistan, but also the clear orders of respondent no. 2 and established dictum of the Supreme Court of Pakistan. (Copy of the reported Judgment is attached as Annexure F)

6. That being aggrieved from the impugned notification dated 14.03.2023, the petitioner has filed a department appeal with respondent no. 1 on 15.03.2023 which has been duly acknowledged on 17.03.2023. Copy of Departmental Appeal is attached as Annexure G
7. That petitioner being aggrieved from the action and inaction of the respondents and impugned notification 14.03.2023 in blatant violations of the law/Orders and having no other adequate remedy, now approaches this Honourable Court, inter alia, on the following grounds:

GROUND S:

- A. That as per article 224(1A) of the constitution 1973, where the powers of Care taker Government have been discussed that the Care taker Government / Cabinet could not take policy decisions and permanent measures including recruitments, making appointments, transfer and posting of government

ATTENDED
EXAMINER
Peshawar High Court

servants during limited period where it held the office but in the impugned notification the said powers have been exercised which are beyond the mandate provided by the Constitution of Pakistan.

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B. That the impugned transfer/adjustment notification dated 14.03.2023 whereby petitioner has been transferred is illegal, without lawful authority, coram non iudice, void ab initio and of no legal effect upon the rights of the petitioner, therefore liable to be declared as illegal.

C. That the impugned notification dated 14.03.2023 issued by the respondents by completely disregarding the Constitution of Pakistan, Orders of the Election Commissioner and established dictum of the apex Court.

D. The impugned notification is against the law, rules and judgments of this honourable Court endorsed by establishment department vide notification dated 08.02.2019 wherein it has been held that all those teachers belonging to the teaching cadre shall be posted in the education institutions to teach the students according to their qualification while those belong to administrative cadre shall only hold the posted related to administration but in present case the petitioner belonging from Management

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EXAMINER
Peshawar High Court

(37)

Cadre has been transferred to a far-flung Hilly Area while the Teaching Cadre Officers have been adjusted in the adjacent or same districts, without assigning any reason which clearly shows the political victimization of the Care Taker Government. (Copy of the judgment and notification is attached as Annexure H & I)

E. That the impugned notification is also in blatant violation of the Transfer policy of the provincial government wherein it has been clearly mentioned that normal tenure of posting shall be three years but the petitioner has been transferred twice in the time span of 16/17 months hence this ground alone is suffice to set aside the impugned notification. (Copy of the Posting/transfer policy is attached as Annexure J)

F. That the petitioner has been transferred / posted vide serial no. 4 of the impugned notification from SDEO (male) Bannu to SDEO Bakand, District Lower Kohistan against the vacant post but actually the post of SDEO bakand is already filled vide notification dated 07.10.2022 and the present incumbent Mr. Muhammad nawaz working as SDEO bakand, District Lower Kohistan which clearly establishes that the impugned notification is the result of political pressure of Care Taker Government.

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EXAMINER
Peshawar High Court

(Copy of the notification dated 07.10.2022 is attached as Annexure K)

(S)

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- G. That the impugned notification has already been withdrawn to the extent of Serial No. 3 & 14 vide notification dated 17.03.2023 in respect of Mst. Sonia Nawaz and Sobia Tabassum on reasons best known to them which is yet another ground for setting aside the impugned notification completely. (Copy of the notification dated 17.03.2023 is attached as Annexure L)
- H. That the petitioner may also take any other ground(s) with the permission of this honorable Court at the time of arguments.

It is, therefore, prayed that on acceptance of this Writ Petition, ***the impugned notification bearing No. SO(MC)E&SED/4-16/2022/Posting/Transfer/MC/ dated 14.03.2023*** may very kindly be declared as illegal, unlawful, void ab initio, coram non iudice, ineffective upon the rights of the petitioner and may very kindly be set aside.

The Respondents may very kindly be directed to allow the petitioner to serve on the present posting till the completion of his normal tenure as per posting transfer policy of Khyber Pakhtunkhwa.

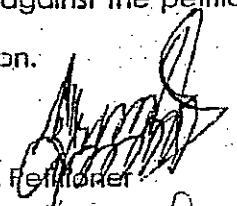
Any other relief which this honourable Court thinks appropriate in favour of the petitioner may also be granted in favour of the petitioner.

INTERIM RELIEF:

ATTEST
EXAMINER
Peshawar High Court

(39)

In the meanwhile, it is prayed that operation of the impugned notification dated 14.03.2023 may very kindly be suspended to the extent of petitioner (Serial No. 4) for the reason that his destined post is already occupied vide notification dated 07.10.2022 and not to disturb the petitioner from his existing post or to take any adverse action against the petitioner till the final disposal of this petition.

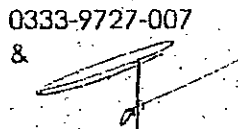

Petitioner

Through

Dated: 20.03.2023
Court

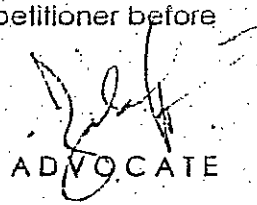

BABAR HAYAT KHAN
Advocate High Court

0333-9727-007
&

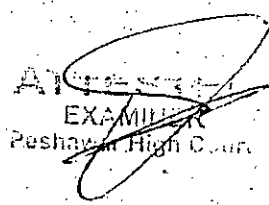

TAZA KHAN ORAKZAI
Advocate High Court

CERTIFICATE:

As per instructions of my client, certified that no such like Writ Petition has earlier been filed by the petitioner before this Honourable Court.


ADVOCATE

LIST OF BOOKS:


EXAMINER
Peshawar High Court

98

9 40

BEFORE THE PESHAWAR HIGH COURT, PESHAWAR

Writ Petition No. _____/2023
With Interim Relief

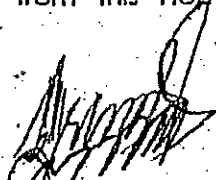
Muhammad Irshad..... Petitioner

Versus

Govt of KP & others..... Respondents

AFFIDAVIT

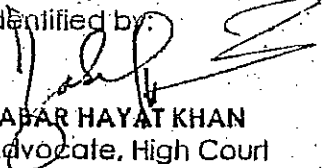
I, Muhammad Irshad S/O Niaz ~~Fand~~ R/O House No. 167,
Street 7, Sector J-1, Phase 2, Hayatabad Peshawar, do
hereby solemnly affirm and declare on oath that the
contents of the accompanying Writ Petition are true and
correct to the best of my knowledge and belief and
nothing has been kept concealed from this Hon'ble
Court.




DEPONENT
CNIC #: 11101-6968144-5

03359800702

Identified by:


BABAR HAYAT KHAN
Advocate, High Court

CERTIFIED TO BE TRUE COPY
Peshawar High Court, Peshawar
19 APR 2023

No. <u>34078</u> Certified that the above was verified on solemn affirmation before me in office, this <u>29</u> day of <u>MARCH</u> , 2023 By <u>Muhammad Irshad</u> s/o <u>Niaz Fand</u> do <u>Peshawar</u> who was identified by <u>Babar Hayat Khan</u> Who is personally known to me:  Oath Commissioner Peshawar, FATA

Judgment Sheet
PESHAWAR HIGH COURT, PESHAWAR.
(JUDICIAL DEPARTMENT)

W.P.No.1102-P/2023

JUDGMENT

Date of hearing — 28.03.2023.
Petitioner by — Mr. Babar Hayat Khan,
Advocate.
Respondents by — Mr. Danyal Khan Chamkani, AAG.

=====

S M ATTIQUE SHAH, J:- Through this petition,
filed under Article 199 of the Constitution of Islamic
Republic of Pakistan, 1973, petitioner seeks the
following relief:-

It is, therefore, prayed that on
acceptance of this writ petition, the
impugned Notification bearing
No.SO(MC)E&sed/4-16/2022/ Posting/
Transfer/MC dated 14.03.2023 may very
kindly be declared as illegal, unlawful,
void ab initio, coram non iudice,
ineffective upon the rights of the
petitioner and may very kindly be set
aside.

The respondents may very kindly be
directed to allow the petitioner to serve
on the present posting till the completion
of his normal tenure as per posting
transfer policy of Khyber Pakthunkhwa.
Any other relief which this honourable
Court thinks appropriate in favour of the
petitioner may also be granted in favour
of the petitioner.



ATTORNEY
EXAMINER
Peshawar High Court

2. In essence the petitioner is aggrieved from the impugned Notification bearing No.SO(MC)E&sed/4-16/2022/ Posting/ Transfer/ MC dated 14.03.2023 vide which he was transferred from the post of SDEO (Male), Bannu to SDEO (Male) Bankad Lower Kohistan.

3. Heard. Record perused.

4. Undeniably, the petitioner is a civil servant and the impugned Notification falls within the terms and conditions of his service which is not amenable to the jurisdiction of this court under Article 199 of the Constitution in view of the bar of Article 212 of the Constitution. However, keeping in view the peculiar facts and circumstances of instant petition, respondent No.1 is directed to decide the departmental representation/appeal of the petitioner within seven days positively after receipt of copy of instant judgment.

In view thereof, instant writ petition is disposed of.

Announced
28.03.2023

HON'BLE MR.JUSTICE ISHTIAQ IBRAHIM &
HON'BLE MR.JUSTICE S.M.ATTIQUE SHAH
(Shahid Ali Court Secretary)

JUDGE

JUDGE

CERTIFIED TRUE COPY

Reshwar at High Court, Peshawar
Authorized Under Act No. 19 of 1999
19 APR 2023

To

The Chief Secretary,
Khyber Pakhtunkhwa, Peshawar.

43

Subject: **RE-SUBMISSION OF DEPARTMENTAL REPRESENTATION / APPEAL AGAINST THE IMPUGNED NOTIFICATION DATED 14-03-2023, WHEREBY THE APPELLANT HAS BEEN TRANSFERRED/ ADJUSTED FROM DISTRICT BANNU TO BANKAD LOWER KOHISTAN WITHOUT COMPLETING THE NORMAL TENURE.**

Respected Sir,

Compendium of facts out of which be present representation / appeal arises as under.

FACTS:

1. That the appellant belongs to District Bannu and serving as SDEO BPS-17 in E&SE Department since 26/09/2018.
2. That the appellant firstly transferred from District Bannu to Lakki Marwat on completion of tenure base vide the notification dated 07-10-2021 which has been complied with (Transfer Order is as Annex-A).
3. That the appellant was then transferred / adjusted at Bannu from District Lakki without completing the normal tenure vide notification dated 02-11-2022. (Annx-B)
4. That the appellant transfer/ adjusted again after 4 months without completion the normal tenure vide impugned notification dated 14-03-2023 from District Bannu to District Lower Kohistan without assigning any solid reason and ground. (Annx-C)
5. That the appellant has first submitted departmental appeal on 17.03.2023 via diary no. 1096 in your esteemed office.
6. That the appellant filed writ petition 1102/2023 which has been disposed off via order dated 28.03.2023 with the direction to your kindness to decide the appeal of the appellant within 7 days positively.
7. That the impugned transferred / adjustment notification is against law, rules and natural justice on the grounds inter-alia as follow

GROUND:

- A. That the impugned transfer/ adjustment notification dated 14-03-2023 whereby appellant has been transferred void serial no 4 of the impugned notification dated 14-03-2023 is illegal, without lawful authority, without jurisdiction, void ab-initio of no legal effect and ineffective upon the rights of the appellant, therefore liable to be set aside.
- B. That the impugned notification 14-03-2023, is in sheer violation of Apex court reported judgment 2021 PLC (C.S) 519, which has barred the care taker government from posting/ transfer and only can runs the day to day affairs of the Government (Judgment Annx-D _____);
- C. That the impugned notification dated 14-03-2023 where the appellant has been transfer from one place to another place without completing the normal tenure and violating the

rules and regulations by respondent department clearly established the mala fide on behalf of the respondent department. (94)

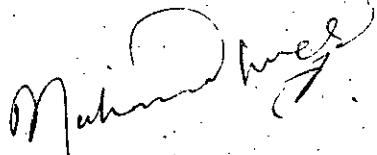
- D. That the impugned notification 14-03-2023 is against law, rules and PHC judgment in WP no 2937/2009 endorsed by Establishment Department vide notification no so (E-1/enad/0-BB2019 dated 8 February 2019 as the teaching cadre officers at Sr. No.07,12,13,19. has been posted at management cadre posts in adjacent district and whereby the appellant has been posted/ transferred in far-off hilly area's without any solid reason and grounds being management cadre officer that shows Political victimization of care taker Government. Judgement and notification (Annx-E)
- E. That the impugned Notification dated 14/03/2023 is issued in haste and without approval of Competent Authority on the direction of political pressure as it is full of ambiguity. At serial No1 of the impugned Notification Mr. Muhammad Tariq SDEO Sarai Nawarang lucky Marwat has been posted as Deputy District Education officer in his own pay scale but his posting as SDEO male Sarai Nawarang dated 2/11/2022 did not assume charge as a SDEO Sarai Nawarang. It is also astonishing that the same officer in the same impugned Notification dated 14/03/2023 shown at serial 15 as a SDEO Sarai Nawarang lucky marwat and place on disposal of Directorate of Elementary and secondary Deptt which clearly shows mala fide on the part of Respondent Department.

PRAYER:

It is therefore prayed that on acceptance of this representation / appeal the impugned notification dated 14-03-2023 may be declared as illegal, without lawful authority, without jurisdiction vide ab-intio and of no legal effect and the same may be laid to rest and the appellant may be retained at his own pervious station SDEO Male Bannu.

Date: 31 / 03 /2023.

APPELLANT


MR. MUHAMMAD IRSHAD
SDEO (MALE) BANNU



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

45

No: SO (MC)E&SED/4-16/2023/dept. Appeal/Irshad.
Dated: 17th April 2023

To:

Muhammad Irshad.
SDEO (Male) Thall Hangu.

Subject: - DEPARTMENTAL APPEAL AGAINST THE NOTIFICATION DATED 14.03.2023 IN W.P.NO.1102-P/2023 DATED 28.03.2023

I am directed to refer to subject appeal, and to state that the subject order has been issued under Section-10 of Civil Servants Act 1973, therefore your appeal has been examined and regretted by the Competent Authority.

Naseer
(NASEER ABBAS KHALIL)
SECTION OFFICER (Management Cadre)

Copy for information to the: -

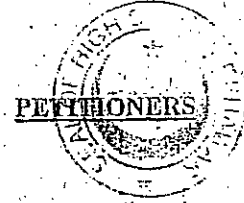
1. Deputy Secretary (Estab) E&SE Department.
2. Section Officer (Lit-II) E&SE Department.
3. PS to Secretary E&SE Department, Khyber Pakhtunkhwa.

Naseer
SECTION OFFICER (Management Cadre)

30 ANNEXURE 'K' 46
BEFORE THE HON'BLE PESHAWAR HIGH COURT, PESHAWAR.

In Re: W.P No ___-P/2019

1. Iftikhar Khan s/o Tahir Khan
r/o Technical College, Pajaggi, Tehsil and District Peshawar.
2. Muhammad Ajmal s/o Muhammad Zada
r/o Dir Bala Town, Tehsil and District Upper Dir.



VERSUS

1. Government of Khyber Pakhtunkhwa
through Chief Secretary,
Civil Secretariat Peshawar.
2. Secretary,
Elementary and Secondary Education Department,
Government of Khyber Pakhtunkhwa,
Peshawar.
3. Director,
Elementary and Secondary Education Department,
Government of Khyber Pakhtunkhwa,
Peshawar.
4. Secretary,
Establishment Department,
Government of Khyber Pakhtunkhwa,
Peshawar.
5. Special Secretary,
Elementary and Secondary Education Department,
Government of Khyber Pakhtunkhwa,
Peshawar.
6. Chief Minister
Province of Khyber Pakhtunkhwa.
7. Idrées Azam
Principle
8. Muhammad Taljir
Principle Government Higher Secondary School
Gandi Gar.

RESPONDENTS

PETITION UNDER ARTICLE 199 OF THE CONSTITUTION
OF ISLAMIC REPUBLIC OF PAKISTAN, 1973.

Respectfully Sheweth:

Brief facts, leading to the instant writ petition are as under:

1. That the petitioners are domiciliary of District Peshawar and Dir Upper respectively and are bonafide residents of province of Khyber Pakhtunkhwa. Copies of CNICs of petitioners are enclosed as "A".

ATTESTED

ATTESTED
EXAMINER
PESHAWAR HIGH COURT

2. That in pursuance of National Education Policy, 2009 the Elementary and Secondary Education Department separated management cadre from teaching cadre vide Notification dated 04.05.2009 with nomenclature as follows:

- District Education Officer E&SE (DEO BPS-19);
- Deputy Director Education Officer E&SE (DDEO BPS-18);
- Sub-Divisional Education Officer E&SE (SDEO BPS-17); and
- Assistant District Education Officer/Assistant Sub-Divisional Education Officer E&SE (ASDEO/ADEO BPS-16).

Consequently, this Hon'ble Court while disposing off WP No.2937/2009 directed the Chief Secretary, Khyber Pakhtunkhwa and other official respondents to implement the Government Policy with full force ensuring that teaching cadre be posted in educational institutions to teach the students while those belonging to administrative cadre shall hold the post relating to administration. Attested copy of Judgment/Order passed in WP No. 2937/2009 dated 18.11.2009 is enclosed as "B".

3. That despite the Notification dated 04.05.2009 separating teaching cadre and management cadre of employees of Elementary and Secondary Education Department, followed by Judgment/Order dated 18.11.2009 passed by this Hon'ble Court, the respondent No.2/Secretary Elementary and Secondary Education Department vide Notification dated 07.04.2012 amended the earlier Notification making employees of Management cadre transferable to Teaching cadre and vice versa. The said Notification dated 07.04.2012 was challenged before this Hon'ble Court through WP.No. 3663/2012 titled "*Sultan Muhammad versus Government of Khyber Pakhtunkhwa etc*". The said writ petition was allowed vide Judgment/Order dated 08.05.2013 whereby the impugned Notification dated 07.04.2012 was set at naught being in contravention of main policy/statute. Attested copy of WP No. 3663/2012 alongwith Judgment/Order dated 08.05.2013 are enclosed as "C".

4. That despite clear Judgments of this Hon'ble Court the official respondents again due to political interference and pressure transferred a number of officers from Teaching cadre to the positions of Management cadre vide Notification dated 26.09.2016, thus depriving the officers of Management cadre from their due promotions in the Management cadre. The aggrieved officers of Management cadre were therefore constrained to approach this Hon'ble Court through WP No. 4274/2016, interalia, against the filling of posts of SDEO from employee other than of management cadre and for issuance of restraining orders not

to post anyone out of teaching cadre in presence of employees of management cadre and for setting aside the impugned Notification dated 26.09.2016 relating to transfer of officers of teaching cadre to management cadre.

That in response to pre admission notice issued, respondent No.3/Director Elementary and Secondary Education Department (Muhammad Rafique Khitab) appeared before the Hon'ble Court and stated at the bar that the transfer of teaching cadre employees to management cadre posts was a stop gap arrangement as rules with regard to promotions of Management cadre has been recommended to Provincial Government. Consequently writ petition was disposed off in light of the statement of respondent No.3 /Director Elementary and Secondary Education Department with directions to finalize the rules of promotion for Management cadre within three months with further directions to rationalize posting/transfer against management cadre posts. Attested copies of WP No.4274/2016 alongwith Comments and Judgment/Order dated 11.01.2018 are "D" to "D/2" respectively.

5. That despite the Judgments/Orders passed by this Hon'ble Court, no action was taken by the official respondents in compliance of said Judgment/Order, therefore COC No.335/2018 was moved, however, on 12.08.2018 when the said COC was taken up the Special Secretary Elementary and Secondary Education Department apprised the Court that not only the service structure but rules for promotion for Management cadre have already been prepared and sent for approval to the Chief Secretary with further assurance that the needful would be done in a week time. Hence on the said statement of Special Secretary, the COC was disposed off with observation that if needful is not done in the given time (one week) the law would take its course. Attested copy of the COC No.335/2018 alongwith Order dated 12.08.2018 are enclosed as "E".
6. That in further compliance of the Judgments/Orders of this Hon'ble Court, the official respondents vide Notification dated 08.02.2019 categorically decided as follows:

I am directed to refer to the subject cited above and to say that the competent authority has observed that certain Teaching cadre officers are posted out of their cadre since long. Moreover, some teachers/professors are seeking requisition from different Departments for posting against managerial or administrative posts, hindering deliverance of quality based education to the students. Consequently, competent authority, has desired to invite your attention towards the following Judgment of Peshawar High Court, Peshawar (in WP No.2937/2009):-

33

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"As the Provincial Government has taken a firm decisions that all those teachers belonging to teaching cadre shall be posted in the Education Institution to teach the students according to their qualifications while those belonging to administrative cadre shall only hold the posts relating to administration. Therefore, the petitioners must deliver according to the policy of the befitting to hold administrative posts, because they are getting benefits, but the students are suffering thus, they shall go their respective places, where they are required to do the job."

Copy of the Notification dated 08.02.2019 is enclosed as "F".

7. That despite such clear position whereby strict restraint against transfer of Teaching cadre officers to Management cadre posts, the Respondent No.2 again in absolute disregard of law, Judgments of this Hon'ble Court and Notification dated 08.02.2019 upon sheer political influence and Chief Ministers pressure transferred teachers belonging to Teaching cadre to Management/administrative cadre vide Notification dated 08.03.2019. Bare perusal of the impugned Notification would confirm that respondent No.7 has been transferred as District Education Officer (Male) Peshawar while respondent No. 8 has been posted/transferred as District Education Officer Upper Dir despite the fact that both are principles in Teaching cadre. Copy of the Notification dated 08.03.2019 whereby scores of Teaching cadre Officers in BPS-18 and 19 have been transferred to administrative/Management cadre is enclosed as "G".
8. That the impugned transfers of respondent No.7 and 8 besides being in absolute disregard of law, Judgments of this Hon'ble Court and Notification dated 08.02.2019, is also a sheer violation of Khyber Pakhtunkhwa Posting/Transfer Policy which clearly forbids the transfer of employees of Teaching Department to the district of their domicile and that too on administrative posts. Copy of updated Posting/Transfer Policy is enclosed as "H".
9. That the impugned Notification is a blatant violation of law being issued in absolute disregard of law, Judgments of this Hon'ble Court and Notification dated 08.02.2019, a clear contempt of Order and Authority of Orders of this Hon'ble Court besides. Thus the petitioners whose children/youth is deprived of quality education despite Constitutional guarantee have no alternate muchless adequate remedy available are constrained to approach this Hon'ble Court in its extra ordinary jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 on the following grounds amongst other:

(26) (50)

GROUNDS:

- A. That the impugned actions/inactions of respondents including impugned Notification dated 08.03.2019 whereby Teaching Cadre staff have been posted against Management/administrative cadre posts is bad in law and facts both repeated verdicts of this Hon'ble Court and a blatant contempt of Order and authority of this Hon'ble Court besides. Consequently not only the impugned Notification merits to be set aside but the respondents are liable to be punished for their contumacious and contemptuous acts as well.
- B. That once it has been settled by the National Education Policy, 2009 followed by Judgments/Orders of this Hon'ble Court passed in WP No. 2937/2009 dated 18.11.2009, WP No. 3663/2012 dated 08.05.2013, WP No. 4274/2016 dated 11.01.2018 and Notification dated 08.02.2019 all clearly prohibiting the transfer of teaching cadre staff against management/administration cadre posts. Then the impugned Notification issued to the contrary is indeed against the mandate of Article 201 of Constitution of Islamic Republic of Pakistan, 1973 being contemptuous besides. Hence merits to be set aside.
- C. That under Article 25-A of Constitution of Islamic Republic of Pakistan, 1973 parting education is a fundamental right of citizens/their children. The impugned Notification would indeed hinder the deliverance of quality based education to the students who ultimately would be deprived of the teaching staff who have been transferred to management/administration cadre through impugned Notification.
- D. That it remains a settled law that when a law requires a thing to be done in a particular manner, it should be done in a same manner and not any other way.
- E. That the impugned transfer of principles belonging to Teaching cadre/respondent No.7 and 8 to the management/administrative posts and that too at their home districts is otherwise against the mandate/Rule No. xi-A of Posting/Transfer Policy of Khyber Pakhtunkhwa.
- F. That it has been held and settled by this august Court that the management/administration posts are to be filled through transfer/posting of persons from management/administration cadre and any posting from teaching cadre to the management/administration cadre is illegal, unlawful, in absolute disregard of law, Judgments of this Hon'ble Court and Notification dated 08.02.2019. Hence liable to be setaside/recalled.
- G. That other point shall be urged at the time of hearing with the prior permission of this Hon'ble Court

(51)

It is therefore prayed that on acceptance on instant writ petition this Hon'ble Court may be pleased to:

- A. Declare that the impugned Notification dated 08.03.2019 is illegal, without lawful authority, having been issued in absolute disregard of law, Judgments/Orders passed by this Hon'ble Court in WP No. 2937/2009 dated 18.11.2009, WP No. 3663/2012 dated 08.05.2013, WP No. 4274/2016 dated 11.01.2018 and Notification dated 08.02.2019 and thus liable to be struck down/quashed.
- B. Further Declare that any/all transfers/postings of Respondent No. 7 and 8/Teaching cadre staff to the management/administration cadre posts within their home districts is illegal, unlawful, in absolute disregard of law, Judgments/Orders passed by this Hon'ble Court and Notification dated 08.02.2019 and thus merits to be setaside/quashed.
- C. Direct the respondents to follow and comply with the Judgment of this Hon'ble Court passed in WP No. 2937/2009 dated 18.11.2009, WP No. 3663/2012 dated 08.05.2013, WP No. 4274/2016 dated 11.01.2018 and Notification dated 08.02.2019 issued in pursuance thereof.
- D. Direct the respondents to act in accordance with law by transferring/posting/promotion officers of management cadre to the posts of District Education Officer.
- E. Restrain the respondents from taking any action/s in violation of law as well as Government Policy duly notified vide Notification dated 08.02.2019.
- F. Any other relief appropriate in law but not specifically asked for, may also granted.

INTERIM RELIEF:

Till the final disposal of the instant Writ Petition, the impugned Notification dated 08.03.2019 and posting/transfer of respondent No.7 and 8 (Principals in Teaching cadre) to management cadre posts may kindly be suspended.

through

Petitioners

Amir Javed
Advocate,
Supreme Court of Pakistan

&
Mohsin Kamran Siddiq
Advocate High Court

CERTIFICATE

Certified that no other Writ Petition on the subject matter has earlier been filed in this Hon'ble Court by/on behalf of the petitioners.

52

BEFORE THE HON'BLE PESHAWAR HIGH COURT, PESHAWAR

In Re: W.P No. ___-P/2019

Iftikhar Khan etc VERSUS Government of Khyber Pakhtunkhwa etc.

AFFIDAVIT

I, Iftikhar Khan s/o ~~Lajpat~~ Khan r/o Technical College, Pajaggi, Tehsil and District Peshawar do hereby solemnly affirm and declare on oath that contents of the accompanied Writ Petition are true and correct to the best my knowledge and belief.

ATTESTED

Identified By

Mohsin Kamran Siddiq
Advocate High Court

Deponent

17301-0583145-5
0300 9597094

COPIED TO VENTURE COPY
10 MAY 2019

02889

17 Mar 19

Lajan ulwan

17 Tehsil Pajaggi Dist Peshawar

Mohsin Kamran Siddiq

17/3/2019

Peshawar

Nadeem Verifical

(53)

JUDGMENT SHEET
PESHAWAR HIGH COURT, PESHAWAR
(JUDICIAL DEPARTMENT)

WP No. 1775-P/2019

JUDGMENT.

Date of hearing: 22.10.2019

Petitioner: Ifikhar Khan

by: Mr. Amir Javed - Advocate

Respondents: By: Syed Qaiser Ali Shah O.G.

WAOAR AHMAD SETH, CJ:- Petitioners,

Ifikhar Khan and another, through the instant Writ Petition,

seek issuance of an appropriate writ declaring the impugned

Notification dated 08.03.2019, whereby respondents No. 7 &

8 belong to Teaching Cadre have been transferred/posted to

Management Cadre/Administrative Cadre, is illegal, without

lawful authority, having been issued in absolute disregard of

law, judgments/orders passed by this Hon'ble Court in Writ

Petition No. 2937/2009 dated 18.11.2019, Writ Petition No.

3663/2012 dated 08.05.2013, Writ Petition No. 4274/2016

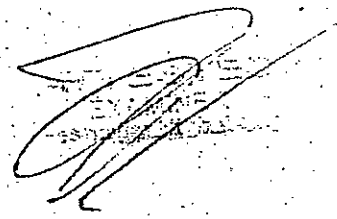
dated 11.01.2018 and Notification dated 08.02.2019; thus,

liable to be struck down/quashed. They further seek issuance

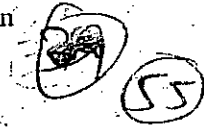
of an appropriate writ declaring that any/all transfers/postings
of respondents No. 7 and 8/Teaching cadre staff to the
Management/Administrative Cadre posts within their home
Districts is illegal, unlawful, in absolute disregard of law,
judgments/orders passed by this Hon'ble Court and
Notification dated 08.02.2019; thus, merits to be set
aside/quashed with further direction to the respondents to
follow and comply with the judgment of this Hon'ble Court
passed in Writ Petition No. 2937/2009 dated 18.11.2009, Writ
Petition No. 3663/2012 dated 08.05.2013, Writ Petition No.
4274/2016 dated 11.01.2018 and Notification dated
08.02.2019 issued in pursuance thereof and also issued
direction to the respondents to act in accordance with law by
transferring/posting/promotion officers of Management Cadre
to the posts of District Education Officer and to restrain the
respondents from taking any action/s in violation of law as



ATTESTED




well as Government Policy duly notified vide Notification dated 08.02.2019.

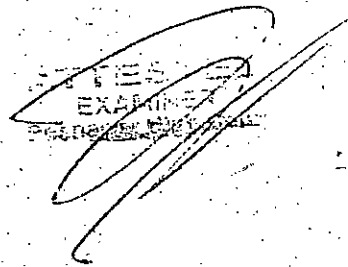


2. Arguments heard and record perused.

3. Perusal of the record would reveal that in pursuance of National Education Policy, 2009, the Elementary & Secondary Education Department separated Management Cadre from Teaching Cadre vide Notification dated 04.05.2009 and recently, in view of judgment of this Court dated 11.01.2018 rendered in Writ Petition No. 4274-P/2016, respondents have also framed service rules for Management Cadre duly notified vide Notification dated 27.03.2019, but in spite of that, respondents No. 7 & 8, who belong to Teaching Cadre, have been adjusted in Management Cadre vide impugned Notification, which is illegal, unlawful and in absolute disregard of law; thus, the same is liable to be struck

 down/quashed.

ATTESTED




4. Resultantly, the Writ Petition is allowed and the impugned Notification dated - 08.03.2019, whereby respondents No. 7 & 8 have been transferred from Teaching Cadre to Management Cadre, is set aside with direction to the concerned respondent (s) to strictly observe the law/policy by not adjusting the teaching cadre staff in management cadre

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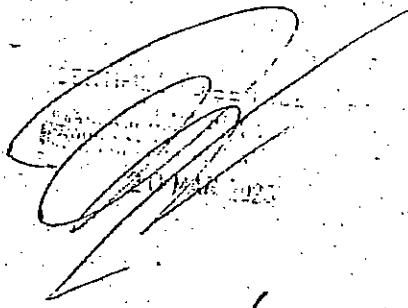
(56)

ANNOUNCED.
Dated: 22.10.2019


Chief Justice


Judge

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ATTESTED

Nowab Shah BCS (DB) Justice Waqar Ahmad Seth CJ & Justice Abid Shakoor J

76/29
 Date of Presentation: 20/3/2023
 No of Pages: 11/8
 Copying: 4/6
 Date of Disposal: 20/3/2023
 Date of Delivery of: 20/3/2023
 Name of Re: Jawad Khan



Annexure L

GOVERNMENT OF
KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT



NO SO (E-1)/E&AD/O-611/2010
Dated Peshawar, the February 8, 2010

To

- 1) The Secretary to Government of Khyber Pakhtunkhwa, Higher Education Department
- 2) The Secretary to Government of Khyber Pakhtunkhwa, E&SE Department.
- 3) The Secretary to Government of Khyber Pakhtunkhwa, Industries Department.

SUBJECT: - REQUISITIONING OF SERVICES.

Dear Sir,

I am directed to refer to the subject cited above and to say that the competent authority has observed that certain Teaching cadre officers are posted out of their cadre since long. Moreover, some teachers/professors are seeking requisitions from different Departments for posting against managerial or administrative posts, hindering deliverance of quality based education to the students. Consequently, competent authority has desired to invite your attention towards the following judgment of Peshawar High Court Peshawar (in WP No. 2937/2009) (Copy enclosed):-

"As the Provincial Government has taken a firm decisions that all those teachers belonging to teaching cadre shall be posted in the Education Institution to teach the students according to their qualifications while those belonging to administrative cadre shall only hold the posts relating to administration. Therefore, the petitioners must deliver according to the policy of the Government and because they are highly qualified teachers, it is not befitting to hold administrative posts, because they are getting benefits, but the students are suffering thus, they shall go their respective places, where they are required to do the job.

2. In view of the above, the competent authority has desired that the above mentioned judgment of the PHC be implemented, in letter and spirit, under intimation to this Department, for perusal of Competent Authority.

ATTESTED

Yours faithfully,

7c

(SHIYAZ AHMAD)
SECTION OFFICER (ESIL I)

NO.SOR-II (E&AD) 1-1/85(VOL-II)
Dated Peshawar the 15th February 2003.

ANNEXURE "JM"

58

Subject: POSTING /TRANSFER POLICY OF THE PROVINCIAL GOVERNMENT.

I am directed to refer to the subject noted above and to say that in supersession of all policy instructions issued in this behalf, the competent authority has approved the following posting Transfer Policy:

i. All the postings /transfers shall be strictly in public interest and shall not be abused /mis-used to victimize the Government servants.

ii. All Government servants are prohibited to exert political, Administrative or any other pressures upon the posting /transfer authorities for seeking posting /transfers of their choice and against the public interest.

iii. All contract Government employees, appointed against specific posts, cannot be posted against any other post.

iv. The normal tenure of posting shall be three years subject to the condition that for the officers /officials posted in unattractive areas, the tenure shall be two years and for hard areas the tenure shall be one year. The unattractive and hard areas will be notified by the Government.

v. Months of March and July are fixed for posting /transfer of the officers /officials excluding the officers in B-19 and above in the Province. Posting /transfer in Education and Health Departments shall be made in March while the remaining Departments shall make posting /transfers in July. There shall be a ban on posting /transfers throughout the year excluding the aforesaid two months. However, there shall be no restriction in cases where posting /transfer of Government employees become inevitable in other months due to promotion /retirement /creation of new posts /return from long leave /involvement in

ATTESTED

disciplinary proceedings and adjustment of surplus staff for which specific relaxation shall be obtained from the Chief Minister.

(43)
(59)

- vi. While making postings transfers from settled areas to FATA and vice versa specific approval of the Governor, NWFP needs to be obtained.
- vii. Officers may be posted on executive administrative posts in the Districts of their domicile except District Coordination Officers (D.C.Os) and Superintendent of Police (SP). Similarly Deputy Superintendent of Police (DSP) shall not be posted at a place where the Police Station (Thana) of his area/resident is situated.
- viii. No postings transfers of the officers officials on detailment basis shall be made.
- ix. Regarding the posting of husband/wife, both in Provincial services, efforts where possible would be made to post such persons at one station and this will be subject to the public interest.
- x. All the posting transferring authorities may facilitate the postings transfers of the unmarried female Government Servants at the station of the residence of their parents.
- xi. Officers officials except DCOs and SPs who are due to retire within one year may be posted on their option, on posts in the Districts of their domicile and be allowed to serve their till the retirement.
- xii. In terms of Rules-17 (1) and (2) read Schedule-III of the Government of NWFP Rules of Business 1985, transfer of officers shown in column I of the following table shall be made by the authorities shown against.

ATTESTED

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Outside the Secretariat

i. Officers of the all Pakistan Unified Group i.e DMG, PSP including Provincial Police Officers in BPS-18 and above.

ii. Other officers in BPS-17 and above to be posted against schedule posts, or posts normally held by the APUG, PCS (EG) and PCS (SG).

iii. Head of Attached Departments and other Officers in B-19 & above in all Departments.

In the Secretariat:

iv. Secretaries.

v. Other Officers of and above the rank of Section Officers:-

- a. Within the Same Department.
- b. Within the Secretariat from one Department to another.

vi. Officials upto the rank of Superintendent:-

- a. Within the same Department.
- b. To and from an Attached Department.

Chief Secretary in consultation with the Establishment Department and the Department concerned with the approval of the Chief Minister.

--do--

--do--

Chief Secretary with the approval of Chief Minister.

Secretary of the Department concerned.
Chief Secretary/Secretary Establishment.

Secretary of the Department concerned.
Secretary of the Department in consultation

APR 2000

e. Within the Secretariat from one Department to another.

with Head of Attached Department concerned. Secretary (Establishment)

(61)

(61)

~~ATTENTION~~

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

a. To ensure the posting of proper persons on proper posts, the annual confidential reports, past and present record of service, performance on post held presently and in the past and general reputation with focus on the integrity of the concerned officers/officials be considered.

b. Tenure on present post shall also be taken into consideration and the posting/transfers shall be in the best public interest.

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



i) pre-mature posting/transfer or posting/transfer in violation of the provisions of this policy.

ii) Serious and grave personal (humanitarian) grounds.

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

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

ATTESTED

4.	Official in BPS-16 and below.	Executive District Officer in consultation with District Coordination Officer.	 
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As per Rule 25(2) of the Rules above the District Coordination Department shall consult the Government if it is proposed to :

- a. transfer the holder of a tenure post before the completion of his tenure or extend the period of his tenure; and
- b. require an officer to hold charge of more than one post for a period exceeding two months.

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

ATTESTED

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NOTIFICATION
E&SE/D-16/2022/PT/MC: The following posting / transfers are hereby
as mentioned against each, with immediate effect, as a stop gap arrangement
on temporary basis, till arrival of the regular officers, in the best public interest

Sr. No	Name of officer	From	To
1.	Mr. Muhammad Sadia (SST BS-16)	GHS Sazin	SDEO (IA) Dacca. Upper Kohistan
2.	Mr. Muhammad Nawab (SST BS-16)	GMS Serto Kiyal	SDEO (M) Bankal Lower Kohistan Vice. S.No.3.
3.	Sardar Irshad Ali MC BS-17	SDEO (M) Panirai Lower Kohistan	SDEO (M) Kolai Palas

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

Subject: of even No. & date:

Forwarded for information to the: -

- Accountant General, Khyber Pakhtunkhwa, Peshawar.
- Director, E&SE Khyber Pakhtunkhwa, Peshawar
- District Education Officers (U/L) Upper/Lower Kohistan.
- District Accounts Officers (U/L) Lower Kohistan.
- Director EMIS, E&SE Department with the request to upload the same on
the official website of the department.
- PS to Minister E&SE Department, Khyber Pakhtunkhwa.
- PS to Secretary, E&SE Department, Khyber Pakhtunkhwa.
- Officers concerned.
- Master file.

Naseer
07-10-22

(NASEER ABBAS KHALIL)
SECTION OFFICER (Management Cadre)



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ANNEXURE "O"

GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION
DEPARTMENT

Dated Peshawar 17th March, 2023

NOTIFICATION

IO. SO(MC)E&SED/4-16/2022/Posting/Transfer/MC: This Department's Notification of even number dated 14-03-2023 to the extent of Sr. No-3 and Sr.No14 regarding posting / transfer in respect of Mst. Sonia Nawaz and Mst. Sobia Tabassum is hereby withdrawn/cancel ab-initio. Rest of the order shall remain intact.

SECRETARY TO THE GOVT. OF KHYBER PAKHTUNKHWA
E&SE DEPARTMENT

Endst: of even No. & date:

Copy forwarded for information to the: -

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

11/17/2023
(IMRAN ZAMAN)

SECTION OFFICER (Management Cadre)

66

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR CAMP COURT D.I.KHAN.**

SCANNED
KPST
Peshawar

BEFORE: KALIM ARSHAD KHAN --- CHAIRMAN
SALAH UDDIN --- MEMBER(J)

Service Appeal No.137/2022

Mst. Shamshad Bibi, SDEO (Female) Paharpur, Education Department, D.I.Khan.

.....(Appellant)

Versus

1. Government of Khyber Pakhtunkhwa, through Secretary Elementary & Secondary Education Department, Khyber Pakhtunkhwa Peshawar.
2. Chief Secretary, to government of Khyber Pakhtunkhwa Elementary & Secondary Education Department, Peshawar.
3. Secretary, Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.
4. Director Education, Department (E&SE) Khyber Pakhtunkhwa Peshawar.
5. District Education Officer (Female), Dera Ismail Khan.
6. District Education Officer (Female), Tank.
7. District Account Officer, D.I.Khan.
8. Mst. Sonia Nawaz, SDEO, (Female), Tank.

.....(Respondents)

Present:

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

Mr. Muhammad Adool Butt,
Additional Advocate General.....For official respondents.

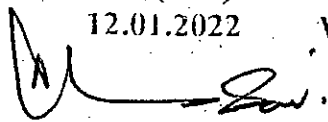
Mr. Noman Ali Bukhari,
Advocate.....For private respondent No.8

Date of Institution.....31.01.2022

Date of Hearing.....30.09.2022

Date of Decision.....30.09.2022

APPEAL UNDER SECTION 4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AIMED
AGAINST THE IMPUGNED NOTIFICATION BEARING NO.
SO (MC)/E&SED/4-16/2021/POSTING/TRANSFER/MC DATED
12.01.2022 WHEREBY THE APPELLANT WAS

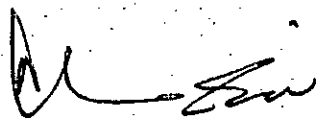


TRANSFERRED TO DISTRICT TANK, WHEREAS RESPONDENT NO.8 ON THE BASIS OF FAVOURITISM, WAS BROUGHT TO PAHARPUR, D.I.KHAN IN VIOLATION OF LAW, RULES AND POLICY IN VOGUE BY THE PROVINCIAL GOVERNMENT.

JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: Facts, to the extent necessary, are that the appellant is serving as Sub-Divisional Education Officer (SDEO) (Female) in the Education Department, Khyber Pakhtunkhwa and previously, she was posted as such at Munda, District Dir Lower vide notification dated 21.02.2019; that vide notification dated 09.08.2019, the petitioner was transferred from the post of SDEO(F) Munda Dir Lower to the post of SDEO(F) Tank; that thereafter on 07.10.2021, the appellant was transferred from the post of SDEO(F) Tank to the post of SDEO(F) Paharpur, District D.I.Khan; that, just after three months of transfer of the appellant to Paharpur, D.I.Khan, the respondents issued another impugned transfer notification dated 12.01.2022, vide which the appellant was transferred back to District Tank whereas private respondent No.8 was transferred in her place at Paharpur District D.I.Khan; that the appellant felt herself aggrieved from the order dated 12.01.2022 and filed departmental appeal, which was not responded and the appellant then filed this appeal in this Tribunal.

02. On receipt of the appeal and its admission to full hearing, the respondents were summoned, who, on putting appearance, contested the appeal by filing reply/comments mainly on the grounds that under section 10 of the Khyber Pakhtunkhwa Civil Servants Act, 1973; every civil servant was liable to serve anywhere within or outside the province; that the



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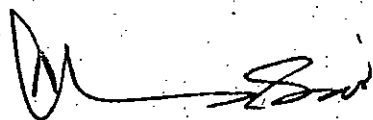
impugned order was acted upon, therefore, the appeal had rendered infructuous; that the private respondent No.8 was posted back to Paharpur on acceptance of her representation and totally on humanitarian grounds.

The defence setup was a total denial of the claim of the appellant.

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

04. Learned counsel for the appellant argued that the appellant was transferred back to the District Tank and consequent thereof respondent No.8, on the basis of favoritism, was brought back to the Paharpur D.I.Khan is against the law, rules and regulations framed there-under, thus is not maintainable and is liable to be declared void ab-initio. Learned counsel further argued that the impugned transfer order is pre-mature and against the posting/transfer policy of the Provincial Government. He contended that the impugned order is based on malafide and is due to the political victimization. At the end he requested that the impugned order is set aside the appellant might be allowed to complete her normal tenure as per policy.

05. Learned Additional Advocate General contradicted the arguments of learned counsel for the appellant and raised preliminary objection on the maintainability of the service appeal under Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974. He further argued that as per Section-10 of the Khyber Pakhtunkhwa Civil Servants Act, 1973, every civil servant shall be liable to serve anywhere within or outside the province. He requested that the appeal might be dismissed with cost.



(69)

06. Learned counsel for private respondent No.8 submits that the instant appeal is not maintainable under Section-4 of the Service Tribunal Act 1974 on the ground that the statutory period of ninety days was not lapsed, hence premature which should be rejected. He further contended that the appellant has been treated in accordance with law and rules, therefore, the instant appeal is being devoid of merit might be dismissed.

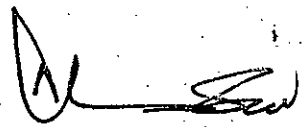
07. In order to streamline and regulate the postings and transfers of the Civil Servants, the Government of Khyber Pakhtunkhwa introduced a posting/transfer policy. Main conditions of the same relevant to the instant appeal are as under:-

i. All the postings /transfers shall be strictly in public interest and shall not be abused/misused to victimize the Government servants.

iv. The normal tenure of posting shall be three years subject to the condition that for the officers /officials posted in unattractive areas, the tenure shall be two years and for hard areas the tenure shall be one year. The unattractive and hard areas will be notified by the Government.

08. It is observed at the very outset that the reply of the official respondents has urged that the private respondent No.8 was transferred back on humanitarian grounds on acceptance of her departmental representation but neither such humanitarian ground was explained nor any public interest or exigency was stated in the reply of the respondents in transferring back the private respondent No.8.

09. The posting and transfer policy specifically fixes a normal tenure for the civil servants. In the case in hand it is two years but just in three months of the transfer of the appellant she was re-transferred to the previous place of posting without allowing her to complete normal tenure as per the Government's own decision found in the above policy.

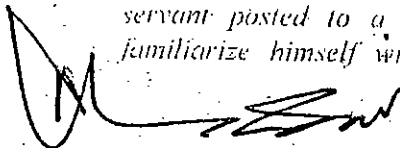


10. Tenure was originally created to give teachers academic freedom. Civil Servants do not have stability of tenure, particularly and especially in the Education Department where transfers and postings are made frequently at the whims and fancies of the executive head for political and other considerations, and not in the public interest; a fixed minimum tenure would not only enable Civil Servants to achieve their professional targets, but also help them function as effective instruments of public policy; repeated shuffling/transfer of officers is deleterious to good governance; minimum assured service tenure ensures efficient service delivery, and increased efficiency; and Civil Servants can also prioritize various social and economic measures intended to implement for the poor and marginalized sections of society.

11. In 2018 S C M R 1411 titled "Khan Muhammad Versus Chief Secretary, Government of Balochistan Quetta and others", the august Supreme Court of Pakistan was pleased to have found as under:---

18. *Under section 10 of the Act a civil servant cannot insist to be posted or transferred to a particular post but this does not mean that a civil servant can be made to serve under a subordinate. Moreover, while section 10 does not prescribe a minimum period during which a civil servant must serve at his post it does not mean that the Government without assigning any reason can move a civil servant from the place he was posted to after a month or subject the civil servant to repeated postings in a short period of time because this would amount to punishing him. Such postings also adversely affect the public interest and result in the wastage of scarce resources and constitute bad governance.*

19. *The Rules designate certain posts as 'tenure posts' (rule 22 read with Schedule IV of the Rules) and prescribe a period of three years for an incumbent to serve on such posts. Such prescribed tenure may therefore be categorized as the ideal duration for which a civil servant should serve at a particular post. The post of Divisional Director however is not a tenure post but the principle of serving for a particular duration at this post should be followed. In the present case the petitioner was posted for a little over a month when he was again posted. Any civil servant posted to a particular post requires some time to familiarize himself with the workings of the office and the*



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requirements of the post whereafter he will be best placed to acquit himself of the responsibilities of the post. However, a one month pasting, as in the case of the petitioner, would not serve the interest of the people."

12. The upshot of the above discussion is that impugned order dated 07.10.2021 was not issued in public interest or exigencies of service and as such is not tenable in the eyes of law. Pre-mature transfer is clear violation of Clause I and IV of Posting and Transfer Policy notified by the provincial government. It is also violative of instructions circulated vide letter dated 27.02.2013 pertaining to tenure in posting/transfer. Ordinary tenure for posting has been specified in the law or rules made there-under, such tenure must be respected and cannot be varied, except for compelling reasons. It should be recorded in writing and are judicially reviewable.

13. As a sequel to the above, the service appeal is allowed with the directions to the respondent-department to allow the appellant to continue on her present station of posting till completion of her normal tenure. The appeal is accepted in the above term. Costs shall follow the event. Consign.

14. *Pronounced in open Court at Camp Court D.I.Khan and given under our hands and the seal of the Tribunal on this 30th day of September, 2022.*



KALIM ARSHAD KHAN
Chairman
Camp Court D.I.Khan



SALAH UD DIN
Member Judicial
Camp Court D.I.Khan.

POWER OF ATTORNEY

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

CASE NATURE Service Appeal No. _____ of 2023

(72)

Muhammad Irshad [Plaintiff(s)
[Appellant(s)
[Petitioner(s)
[Complainant(s)

Versus

Govt of KP & OTHERS [Defendant(s)
[Respondent(s)
[Accused(s)
[Judgment Debtor

I/We Muhammad Irshad (Appellant)
the above named Appellant

hereby appoint and constitute **BABAR HAYAT KHAN** LL.M, Advocate as Counsel
(for Peshawar) in the above mentioned case, to do all or any of the following
acts, deeds and things.

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

AND HEREBY AGREE:

- a. To ratify whatever the said Advocate(s) may do in the proceedings.
- b. Not to hold the Advocate(s), responsible if the said case be proceeded ex-parte or dismissed in default in consequences of their absence from the Court/Tribunal when it is called for hearing.
- c. That the Advocate(s) shall be entitled to withdraw from the prosecution of the said case, if the whole or any part of the agreed fees remains unpaid.

In witness whereof, I/We have signed this Power of Attorney/Wakalatnama herein under, the contents of which have been read / explained to me and fully understood by me this day of 02.05.2023 at Peshawar.

Signature of the executant/s

Attested /Accepted subject to the term regarding payment of fee.

BABAR HAYAT KHAN
LL.M, Advocate High Court BC-13-4242
+92-300-1891-007
Chambers: 13-B, 2nd Floor, Haroon Mansion,
Khyber Bazar, Near BRT Station, Peshawar