

Original

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

Service Appeal No: 2005/2023

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 5667

Dated 30/5/2023

Muhammad Uzair Ali, Management Cadre (BS-19) District Khyber.....Appellant

VERSUS

Government of Khyber Pakhtunkhwa through the Chief Secretary &
others.....Respondents

INDEX

S/#	Description of document	Annexure	Pages No.
1	Joint Para Wise Comments along with affidavit	-	1-5
2	Copy of the Notifications dated 04-05-2009	A	6-8
3	Copy of the advertisement & appointment order dated 24-02-2011	B & C	9-12
4	Copy of the Notification dated 31-10-2011	D	13
5	Copy of the Notification dated 28-12-2012	E	14
6	Copy of the Notification dated 30-09-2013	F	15
7	Copies of the judgments dated 12-09-2013 & 23-04-2015	G & H	16-26
8	Authority letter		27

[Signature]
Assistant Director (Lit: II)
E&SE Khyber Pakhtunkhwa,
Peshawar

BEFORE THE HONORABLE KHYBER PAKHATUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No: 2005/2029

Muhammad Uzair Ali, Management Cadre (BS-19) District Khyber.....Appellant

VERSUS

Government of Khyber Pakhtunkhwa through the Chief Secretary & others.....Respondents

JOINT PARAWISE COMMENTS ON BEHALF OF RESPONDENTS No: 1-4.

Respectfully Sheweth:-

The Respondents No.1-4 submit as under: -

Preliminary Objections.

- 1 That the Appellant has got no cause of action/locus standi to file the titled appeal against the Respondent Department.
- 2 That the appellant is not an aggrieved person within the meaning of Article-212 of the constitution of Islamic Republic of Pakistan,1973 as the final seniority list of the DEO/Additional Directors (BS-19) MC has not been notified by the competent authority/worthy Chief Secretary Khyber Pakhtunkhwa, this fact has also been admitted by the appellant in Para No.10 of the facts of the instant appeal.
- 3 That the instant appeal is badly time barred under law of limitation Act 1908.
- 4 That the Appellant has concealed material facts from this Honorable Tribunal in the titled appeal.
- 5 That the appeal in hand is premature and is liable to be dismissed as final seniority list of DEOs/Additional Directors BS-19 (MC) has not been notified yet rather it will be issued after the approval of competent authority/worthy Chief Secretary Govt: of Khyber Pakhtunkhwa Peshawar.
- 6 That the instant Appeal is based on mala-fide intentions as the matter in issue has already been adjudicated vide judgments dated 12-09-2013 & 23-04-2015 in W.P No. 2049-P/2014 case titled Ghulam Qasim Khan VS Govt; of KPK & others by the Honorable Peshawar High Court Peshawar.

ON FACTS.

- 1 That Para-1 pertains to the service record against the initial appointment of the appellant as Lecture in Political Science in BS-17 upon the recommendations of Khyber Pakhtunkhwa public Service Commission vide Notification dated 22-10-1995 in the Higher Education Department.

- 2 That Para-2 needs no comments being pertains to the Notification dated 04-05-2009 of the then Government of Khyber Pakhtunkhwa, whereby, Management Cadre was separated from the Teaching Cadre in pursuance of the National Education Policy, 2009. **(Copy of the Notification dated 04-05-2009 is Annexure-A).**
- 3 That Para-3 is correct that in pursuance of the advertisement No. 05/2009 of the Respondent Department dated 04-06-2009, the appellant applied for the post of DEO/EDO (BS-19) MC & after proper recommendation of the KPPSC, he was appointed as EDO/DEO (M) Mardan vide Notification dated 24.02.2011. **(Copy of Advertisement & appointment order are attached as Annexure-B & C)**
- 4 That Para-4 pertains to the appointment of appellant as Associate Professor (BS-19) in Political Science vide Notification dated 21-06-2011 in the Higher Education Department, hence needs no comments.
- 5 That Para-5 is correct to the extent of filling of an application dated 20-07-2011 to the Respondent No.2 for reliving the appellant from the post of EDO/DEO (M) (BS-19) for taking over charge against the post of Associate Professor (BS-19) in the Higher Education Department Khyber Pakhtunkhwa which was allowed vide Notification No. SO(S/M)4-8/2011/reliving/Muhanmad Uzair Ali dated 31-10-2011. However, the matter pertaining to retaining of Lien against the DEO (M) post in E&SE Department was not mentioned in the cited Notification. **(Copy of the Notification dated 31-10-2011 is attached as Annx-D).**
- 6 That Para-6 is correct to that nomenclature from Executive District Officer to the District Education Officer BS-19 (MC) was changed vide Notification dated 28-12-2012. **(Copy of the Notification dated 28-12-2012 is attached as Annexure-E)**
- 7 That Para-7 is correct to the extent that the services of the appellant were recalled vide letter dated 16-09-2013 from Higher Education Department to the E&SE Department Khyber Pakhtunkhwa Peshawar as District Education Officer (M) in BS-19 MC which was allowed vide Notification dated 30-09-2013. **(Copy of the Notification dated 30-09-2013 is attached as Annexure-F)**
- 8 That Para-8 is against the factual position that the final seniority list of the DEO /Additional Directors (BS-19) MC has not been notified till date except the tentative seniority list dated 21-10-2022 which has been impugned by the appellant before this learned Bench in violation of Section-4 of KPK Service Tribunal Act, 1974 on the material grounds of being premature appeal as final seniority of the appellant's cadre has no been issued by the Department. Furthermore, instead of filing appeal before this learned Bench against the tentative seniority list, the appellant was required to have waited for the final seniority list of DEO /Additional Directors (BS-19) MC, hence, the instant appeal of the appellant is premature in nature & is liable to be rejected in favor of the Department.
- 9 That Para-9 is correct to the extent of notifying the seniority list of the DEOs/Additional Directors (BS-19) MC on dated 08-05-2012, wherein, the name of appellant was missing due to his taking over charge against the post of Associate Professor (BS-19) in Higher Education Department in compliance of the Notification dated 31-10-2011 of the Secretary E&SED, wherein, retaining of lieu against the DEO (M) post in E&SE Department was not mentioned, meaning thereby, the appellant was not on the actual strength of the E&SE Department at time of notifying the said seniority.

- 10 That Para-10 is correct to the extent that final seniority of the DEOs/Additional Directors (BS-19) MC has not been issued by the Department due to the fact that different departmental Appeals of the MC officers against the said seniority are pending to decide and to finalize the seniority in question in accordance with the prevailing law/rules in vogue.
- 11 That reply to para-11 has been given the preceding paras.
- 12 That Para-12 is correct to the extent that tentative seniority list of the DEOs/Additional Directors (BS-19) MC dated 21-10-2012 has been issued by the Department, where against, different departmental appeals of the Officers concerned are pending before the competent authority for disposal in accordance with the prevailing law/rules & to issue final seniority list of DEOs/Additional Directors (BS-19) MC.
- 13 That Para-13 pertains to the self-made analysis/scrutiny regarding his seniority position in the inter-se-merit of the DEOs/Additional Directors (BS-19) MC, issued by the KPPSC. It is reiterated that the seniority in question has neither been finalized nor issued by the Department, hence, assertions of the appellant for placing his name at due place in the final seniority list is premature & is liable to be dismissed in favor of the Department.
- 14 That Para-14 is incorrect as no final seniority list of the officers in BS-19 (MC) has yet been notified by the Department, meaning thereby, the appellant is not an aggrieved person within the meaning of Section-4 of the Service Tribunal Act, 1974, hence the plea of the appellant is illegal & liable to be rejected.
- 15 That Para-15 is also incorrect & denied on the grounds that the act of the Department with regard to the tentative seniority list as stood on 12-10-2021 is legally competent & even in compliance of the letters dated 05-07-2018 & 13-07-2018 of the Respondent No.2. Furthermore, the issue under reference has already been adjudicated vide judgments dated 12-09-2013 in W.P No. 362/2013 & judgment dated 23-04-2015 in W.P No. 2049-P/2014 case titled Ghulam Qasim Khan VS Govt; of KPK & others passed by the Honorable Peshawar High Court Peshawar, hence, the titled appeal has been filed in violation of Sections-11 & 12 of CPC 1908 by the appellant. (Copies of the judgments dated 12-09-2013 & 23-04-2015 are attached as Annexure-G&H.).
- 16 That Para-16 is correct to the extent of the advertisement/corrigendum dated 21-06-2009 in the daily "Mashriq" Peshawar regarding allocation of quota at a ratio of 40% from the open market & 60% for the candidates from teaching cadre for the appointment of the EDOs, DOs & DDOs in the Department.
- 17 That Para-17 is correct to the extent that SDEOs (BS-17) & DDEO (BS-18) who have been subsequently recircuited through KPPSC in the Management Cadre & promoted to the next scale on the basis of their inter-se-seniority, issued by the KPPSC, however, so far as, the contention of the appellant regarding the inter-se-seniority of the DEOs/Additional Directors (BS-19) MC concerned, the same has not been finalized by the Department. Moreover, appeal against the tentative seniority can not be entertained by this Honorable Tribunal under the relevant provision of law/legal bar.
- 18 That Para-18 is also denied on the grounds that no appeal is admissible under the rules to impugn the tentative seniority list before any court of law.

19 That Para-19 is incorrect as the appellant is not an aggrieved person within the meaning of Article-212 of the constitution of 1973 as no final seniority list of the cadre of the appellant has been notified by the Department till date, hence the appeal in hand is premature & liable to be dismissed on the following grounds inter alia:-

ON GROUNDS.

- A **Incorrect & not admitted.** The appellant has been treated as per law, rules & policy by the Respondent Department in the tentative seniority list dated 12-10-2021 pertaining to the DEOs/Additional Directors (BS-19) MC) in the respondent Department, hence, the stand of the appellant is baseless & liable to be rejected.
- B **Incorrect & not admitted.** The act of the Department is within legal sphere & even in accordance with the provision of section-8 of civil servants Act-1973 read with Rules-17 of APT Rules of 1989 & even in compliance of Articles 4 & 25 of the constitution of 1973.
- C **Incorrect & not admitted.** The statement of the appellant is without any cogent reason & legal justification; hence, the stand of the appellant is baseless & liable to be rejected.
- D **Incorrect & not admitted.** The appellant has not been discriminated by the Department in the titled case by placing him at S.No. 5 in the tentative seniority list as stood on 12-10-2021 of the DEOs/Additional Directors (BS-19) MC in the Department.
- E **Incorrect & not admitted.** The plea of the appellant is without justification & liable to be rejected in favor of the Department.
- F **Incorrect & not admitted.** The act of the Department with regard to the final seniority list dated 12-10-2021 is in accordance with the provision of Article-38 (e) of the constitution of 1973.
- G **Legal.** However, the Respondents also seek leave of this Honorable Tribunal to submit additional grounds, record & case law at the time of arguments on the date fixed.

PRAYER:

Therefore, in view of the above made submissions, it is most humbly requested that this Honorable Tribunal may very graciously be pleased to dismiss the instant Service Appeal in favor of the Respondents in the interest of justice.

Dated ___/___/2023.



DIRECTOR
E&SE Department Khyber
Pakhtunkhwa, Peshawar.
(Respondent No: 4)



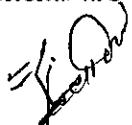
SECRETARY
Government of Khyber Pakhtunkhwa,
Establishment Department.
(Respondent No: 3)



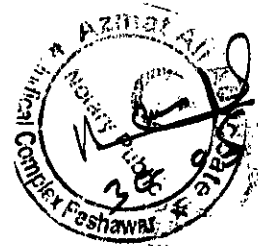
SECRETARY
E&SE Department Khyber
Pakhtunkhwa, Peshawar.
(Respondents No: 1 & 2)

AFFIDAVIT

I, *Dr. Hayat Khan Assistant Director (Lit-II) E&SE Khyber Pakhtunkhwa Peshawar,* do hereby solemnly affirm & declare on oath the contents of the instant Parawise Comments are true & correct to the best of my knowledge & belief.


Deponent

ATTESTED





GOVERNMENT OF NWFP
ELEMENTARY & SECONDARY
EDUCATION DEPARTMENT
Dated Peshawar the 04-05-2009

NOTIFICATION

No. SO(G)E&SE/1-76/08/M&T: In pursuance of the provision contained in sub-rule (2) of rule 3 of the North-west Frontier Province Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, and in supersession of this Department's Notification No.SOG/S&LD/1-28/2003/Vol.II dated: 9-4-2009, the Elementary & Secondary Education Department, in consultation with the Establishment Department and the Finance Department, hereby lays down the method of recruitment, qualification and other conditions specified in column 3 to 5 of the Appendix to the Notification which will be applicable to the posts of Schools Management Cadre in the Elementary and Secondary Education Department, as specified in column 2 of the said Appendix.

APPENDIX

S.NO	NOMENCLATURE OF POST	MINIMUM QUALIFICATION FOR INITIAL RECRUITMENT/TRANSFER	AGE LIMIT	METHOD OF RECRUITMENT
1.	2.	3.	4.	5.
1.	Director (Elementary & Secondary) and Director (Curriculum & Teacher Education) COMBINED.			By selection on merit from amongst Executive District Officer and Additional Directors (COMBINED), with at least seventeen year service in BPS-17 and above or twelve years service in BPS-19, as the case may be.
2.	Executive District Officers/ Additional Director in the Schools (COMBINED)	i. PHD in Education with at least seven years teaching/ administrative experience in Govt recognized educational institution/office; or ii. M.Phil in Education with at least nine years teaching /	35-50 years	By initial recruitment in the following manner: (a) Forty percent by initial recruitment from amongst open market; and (b) Sixty percent by initial recruitment from amongst the Teaching Cadre having the qualification as mentioned in Column No.3.

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-11-

Annex A-1-4

A-3

	office.		(b) Sixty percent by initial recruitment from amongst the Teaching Cadre, having the qualification as mentioned in Column No.3.
3.	Assistant District Officers	B.A/B.Sc in second division with B.Ed. and five years teaching/administrative experience in Govt recognized education institution /office.	25-35 years By initial recruitment

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SCHOOLS MANAGEMENT CADRE (WOMEN'S SECTION)

1.	District Officers/Deputy Director/Deputy Director Teacher Education and Curriculum.	i. Ph.D in Education and two years teaching/ administrative experience in Govt recognized educational institution/office; or ii. M.Phil in Education and three years teaching/ administrative experience in Govt recognized educational institution/office; or M.A/M.Sc in second Division with M.Ed/M.A (Education) / M.A (Education Planning and Management) or equivalent qualification with at least five years teaching /administrative experience in Govt recognized educational institution/office.	25-45 years	By initial recruitment in the following manner: (a) Forty percent by initial recruitment from amongst open market; and (b) Sixty percent by initial recruitment from amongst the Teaching Cadre having the qualification as mentioned in Column No.3.
2.	Deputy District Officers/Assistant Director.	M.A/M.Sc in second division with B.Ed and five years teaching /administrative experience in Govt recognized Educational institution/ office.	21-40 years	By initial recruitment in the following manner: (a) Forty percent by initial recruitment from amongst open market; and (b) Sixty percent by initial recruitment from amongst the Teaching Cadre having the qualification as mentioned in Column No.3.

Alfred
[Signature]

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-12-

Assistant District Officers	B.A/B.Sc in second division with B.Ed and five years teaching/administrative experience in Govt recognized education institution /office.	21-35 years	By initial recruitment
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SECRETARY TO GOVERNMENT OF NWFP
ELEMENTARY & SECONDARY
EDUCATION DEPARTMENT.

Endst No. SO(G)/E&SE/1-76/08/M&T. dated 04-05-2009

Copy is forwarded to:

1. All Administrative Secretaries to Government of NWFP.
2. Secretary to Governor, NWFP.
3. Secretary to Chief Minister, NWFP.
4. Chairman Public Service Commission, NWFP, Peshawar.
5. All Directors in Elementary & Secondary Education in NWFP.
6. All Executive District Officer E&S Education in NWFP.
7. Director Information with the request to give wide publicity.
8. The Manager, Govt. Printing Press Peshawar for publication in the next issue of Govt. Gazette.
9. PS to Minister for Elementary & Secondary Education NWFP, Peshawar.
10. PS to Secretary Elementary & Secondary Education NWFP, Peshawar.
11. PS to Additional Secretary E&S Education Department.
12. PA to Deputy Secretary E&S Education Department.
13. All Section Officer/Planning Officer, E&S Education Department, NWFP, Peshawar.

M. Ashraf
SECTION OFFICER (GENERAL)
5

Abdullah
3/5/09

9
Annex-13

N.W.F.P PUBLIC SERVICE COMMISSION, PESHAWAR
CORRIGENDUM
IN RESPECT OF ADVERTISEMENT NO.05/2009
ELEMENTARY AND SECONDARY EDUCATION DEPARTMENT PESHAWAR

1. The Allocation for 26 posts of Executive District Officer/Additional Director (BPS-19) at S.No.1 of Adv: No.5/2009 may be read as under;

Merit.

- a. Forty per cent (10 posts) for candidates from amongst open market and
b. Sixty per cent (15 posts) for candidates from amongst the teaching cadre.
2. The Allocation for 29 posts of Male District Officer/Deputy Director/Deputy Director Teacher Education and Curriculum (BPS-18) at S.No.3 of Adv: No.5/2009 may be read as Under:-

Merit.

- a. Forty per cent (12 posts) for candidates from amongst open market and
b. Sixty per cent (17 posts) for candidates from amongst the teaching cadre.
3. The Allocation for 24 posts of Female District Officer/Deputy Director/Deputy Director Teacher Education and Curriculum (BPS-18) at S.No.4 of Adv: No.5/2009 may be read as Under:-

Merit.

- a. Forty per cent (10 posts) for candidates from amongst open market and
b. Sixty per cent (14 posts) for candidates from amongst the teaching cadre.
4. The Allocation for 40 posts of Male District Officer/Deputy Director/Deputy Director Teacher Education and Curriculum (BPS-18) at S.No.5 of Adv: No.5/2009 may be read as Under:-

a)- Open Merit 40%.

Merit	Zone-1	Zone-2	Zone-3	Zone-4	Zone5	Total
4	3	3	2	2	2	16

a)- Teaching Cadre 40%.

Merit	Zone-1	Zone-2	Zone-3	Zone-4	Zone5	Total
6	4	4	4	3	3	24

5. The Allocation for 30 posts of Female District Officer/Deputy Director/Deputy Director Teacher Education and Curriculum (BPS-18) at S.No.6 of Adv: No.5/2009 may be read as Under:-

a)- Open Merit 40%.

Merit	Zone-1	Zone-2	Zone-3	Zone-4	Zone5	Total
3	2	2	2	2	3	12

a)- Teaching Cadre 40%.

Merit	Zone-1	Zone-2	Zone-3	Zone-4	Zone5	Total
5	3	3	3	2	2	18

6. The Eligibility for the 40 posts of Male Deputy District Officers/Assistant Director BPS-17 at S.No.5 of Advt: No. 5/2009 may be read as Male.
7. The Eligibility for the 30 posts of Female Deputy District Officers/Assistant Director BPS-17 at S.No.6 of Advt: No. 5/2009 may be read as Female.

Note: 1:- Separate Application Form Must be Submitted For Category (A) and (B) Under Each Serial as the case may be.

2:- The closing date shall remain the same i.e. 04.07.2009

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GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION
DEPARTMENT

-13-

Dated Peshawar the February 24, 2011

"B11"

Annex-1

NOTIFICATION

NO. SO/S/ME&SED/3-2/2011/EDOs/EMC (BS-19): Consequent upon the recommendations of Khyber Pakhtunkhwa public Service Commission Peshawar, the competent authority is pleased to appoint the following candidates against the post of Executive District Officers/Additional Directors (BS-19) (Rs.19680-970-39080) plus usual allowances as admissible under the rules on regular basis under the existing policy of the Provincial Government, in the Management Cadre in Elementary & Secondary Education Department on the terms and conditions given below with immediate effect :-

S. #	NAME WITH FATHER'S NAME AND ADDRESS
1.	Ghulam Qasim Khan S/O Abul Majced Khan, R/O Gillani Town, Street No. 2 Distt: D.I. Khan.
2.	Abdul Malik S/O Muhammad Mushtaq, R/O Muhalla Jamundan Wala Distt: D.I. Khan.
3.	Umar Khan S/O Muhammad Hassan, R/O Faizullah Colony, Near Degree College Tank City.
4.	Shamas Khan S/O Mir Ahmad Khan, R/O Village Salkatur, Gadoon P/O Kabgani Tehsil & Distt: Swabi.
5.	Abdus Salam S/O Hameed Ullah Jan, R/O Village Mozam, Tehsil & Distt: D.I. Khan.
6.	Siraj Mohammed S/O Muhammad Khan, R/O Village Towda, P/O Wahid Garhi Charsadda Road Peshawar.
7.	Muhammad Uzair Ali S/O Abdul Qayyum, R/O Village Tordher, Muhalla Saini Adda, Tehsil Lahor Distt: Swabi.
8.	Nazir Khan S/O Gul Piao Khan, R/O Yaghi Ghulam Khel, Muhalla Ghazali Public School, Khojaki Qilla Tehsil Takhte Nasrati Distt: Karak.
9.	Sahibzada Harid Mahmud S/O Mahmud-Ul-Hussan Akhtar, House No. 105/6-B, Nawaz Street Javed Town Gulbahar No. 4 Peshawar City.
10.	Bashir Hussain Shah S/O Taj Hussain Shah, Mohalla Malka Wala Village Darvesh Tehsil & Distt: Haripur.
11.	Muhammad Rafique S/O Niaz Khamim, House No. 84/1/TCK Karak City P/O Karak Tehsil & Distt: Karak.
12.	Feroz Hussain Shah S/O Sultan Ali Shah, Village & P/O Wanda Khaliq Shah Tehsil & Distt: D.I. Khan.
13.	Abdur Rashid S/O Ghulam Jaffar, P/O Muryali, Chah Mughal Wala Tehsil & Distt: D.I. Khan.
14.	Muhammad Ibrahim S/O Buzerg Jamher, Village Dantai Tehsil Samarbagh Distt: Dir Lower.
15.	Sultan Mahmood Mian S/O Muntaz, Village & P/O Deolia, Distt: Swat.
16.	Roz Wali Khan S/O Jannat Noor, Village & P/O Tatar Khel, Tehsil Takhte Nasrati Distt: Karak.
17.	Abdullah S/O Mir Azam, Village Jolagram, Muhalla Darvesh Khol, Tehsil Swat Ratozai Distt: Malakand Agy.
18.	Muhammad Riaz S/O Ghulam Khan, Village Sokar P/O Guli Bagh Tehsil & Distt: Manshra.
19.	Jehan Muhammad S/O Sultar Muhammad, Mohalla Dagi Khel Village Rashakai Tehsil & Distt: Nowshera.
20.	Gohar Ali Khan S/O Muhammad Ali Khan, Village Tarkha Distt: Nowshera.
21.	Haziq-ur-Rahman S/O Sarwar Jan, Village Ganderi Khattak, Tehsil & P/O Takhte Nasrati Distt: Karak.
22.	Zia-ud-Din S/O Ghulam Mohiy-ud-Din, Banozai Street Meena Khel Distt: Lakki Marwat.
23.	Ata Ullah Khan S/O Muhammad Nawaz Khan, Muhalla Meena Khel Tehsil & Distt: Lakki Marwat.

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Consequent upon the above, the following postings/transfers are hereby ordered, henceforth:

S. #	NAME OF RECOMMENDEES	PLACE OF POSTING	REMARKS
1.	Ghulam Qasim Khan S/O Abdul Majeed Khan	EDO (E&SE) Tank	
2.	Abdul Malik S/O Muhammad Mushtaq	EDO (E&SE) Lalki Marwat.	
3.	Umar Khan S/O Muhammad Hassan	EDO (E&SE) Manshra.	
4.	Shomas Khan S/O Mir Ahmad Khan	EDO (E&SE) Buner.	
5.	Abdus Salam S/O Hamood Ullah Jan	EDO (E&SE) Swabi.	already occupied by him
6.	Siraj Muhammad S/O Muhammad Khan	EDO (E&SE) Chitral.	
7.	Muhammad Uzair Ali S/O Abdul Qayyum	EDO (E&SE) Mardan	
8.	Nazir Khan S/O Gul Piao Khan	EDO (E&SE) Kohat.	
9.	Sahibzada Hamid Mehmood S/O Mehmood-ul-Hassan Akhtar	EDO (E&SE) Abbottabad.	
10.	Bashir Hussain Shah S/O Taj Hussain Shah	Add. Director P&D, Directorate of E&SE.	already occupied by him
11.	Muhammad Rafique S/O Niaz Khanim	Add. Director Establishment Directorate of E&SE.	
12.	Peroz Hussain Shah S/O Sultan Ali Shah	EDO (E&SE) D.I. Khan.	
13.	Abdur Rashid S/O Ghulam Jaffar	EDO (E&SE) Banau.	
14.	Muhammad Ibrahim S/O Buzurg Jamher	EDO (E&SE) Dir Lower.	already occupied by him
15.	Sultan Mahmood Mian S/O Mumtaz	EDO (E&SE) Swat.	
16.	Roz Wali Khan S/O Jannat Noor	EDO (E&SE) Nowshera.	already occupied by him
17.	Abdullah S/O Mir Azam	EDO (E&SE) Shangla.	
18.	Muhammad Riaz S/O Ghulam Khan	EDO (E&SE) Haripur.	
19.	Jehan Muhammad S/O Sultan Muhammad	EDO (E&SE) Hangu.	
20.	Gohar Ali Khan S/O Muhammad Ali Khan	EDO (E&SE) Peshawar.	
21.	Haziq-ur-Rahman S/O Sarwar Jer.	EDO (E&SE) Karak.	
22.	Zia-ud-Din S/O Ghulam Mohiy-ud-Din	EDO (E&SE) Dir Upper	
23.	Ata Ullah Khan S/O Muhammad Nawaz Khan	EDO (E&SE) Charsadda.	

3. The services of the present incumbents of teaching cadre are placed at the disposal of Director, E&SE for further posting.

TERMS & CONDITIONS:

- Their services will be considered regular but without Pension & Gratuity in terms of Section-19 of the NWFP Civil Servant Act, 1973 as amended vide NWFP Civil Servants (Amendment) Act, 2005. They will however be entitled to Contributory Provident Fund in such a manner and at such rates as prescribed by the Government.
- The Officers who are already in Government Service and working against pensionable posts on regular basis before 1st day of July 2001, without any service break, on application to Khyber Pakhtankhwa Public Service Commission through proper channel and selection by the Commission are appointed and allowed choice of option either to retain benefit of pension & gratuity as allowed to them under their previous terms of appointment or to avail the benefit of Contributory Provident Fund allowed to them under new appointment.

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Their services are liable to termination on one month's notice from either side. In case of resignation without notice, their one month's pay/allowances shall be forfeited to the Government.

-15-

The appointees should join their posts within 30-days of the issuance of this notification. The Director, Elementary & Secondary Education Khyber Pakhtunkhwa, Peshawar would furnish a certificate to the effect that the candidates have joined the posts otherwise, after one month of the issuance of this Notification, failing which their candidature will expire automatically and no subsequent appeal etc shall be entertained.

They would be on probation for a period of one year extendable for another one year as provided in NWFP Appointment Promotion and Transfer Rules 1989.

They will be governed by such rules and regulations as may be issued from time to time by the Government.

Their services can be terminated at any time, in case their performance is found unsatisfactory during probationary period. In case of misconduct, they will be proceeded against under the NWFP Removal from Service (Special Powers) Ordinance, 2000 and the Rules framed from time to time.

Charge report should be submitted to all concerned.

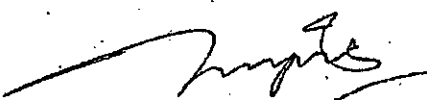
No TA/DA will be allowed to the appointees for joining their duty.

SECRETARY

ndst: of even number & date:

Copy forwarded to the:

1. PSO to Chief Minister, Khyber Pakhtunkhwa.
2. Accountant General, Khyber Pakhtunkhwa Peshawar.
3. Director, E&SE Khyber Pakhtunkhwa, Peshawar.
4. District Accounts Officers concerned.
5. Executive District Officer E&SE concerned.
6. Director Recruitment, Khyber Pakhtunkhwa, Public Service Commission, Peshawar.
7. Manager Government Printing Press, Khyber Pakhtunkhwa, Peshawar.
8. PS to Minister E&SE, Khyber Pakhtunkhwa.
9. PS to Chief Secretary, Khyber Pakhtunkhwa.
10. PS to Secretary, E&SE, Department, Khyber Pakhtunkhwa.
11. PA to Additional Secretary, E&SE, Deptt.
12. PA to Deputy Secretary (Admn), E&SE Deptt.
13. Officers concerned.
14. Office order file.


(MUJEEB-UR-REHMAN)
SECTION OFFICER (SCHOOLS/MALE)

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GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION
DEPARTMENT

Dated Peshavar the October 31, 2011

NOTIFICATION

NO.SO(S/M) 4-8/2011/Relieving/ Muhammad Uzair Ali: Consequent upon his appointment as Associate Professor (BS-19) in Govt. of Khyber Pakhtunkhwa Higher Education, Archives & Libraries Department vide notification dated 21-06-2011, the Competent Authority is pleased to relieve Mr. Muhammad Uzair Ali, Executive District Officer (BS-19) E&SE Management Cadre (OSD) w.e.f. 19-07-2011 (A.N). He will clear all liabilities if pending against him.

2. No TA/DA will be paid by this Department.

SECRETARY

Endst: of even No. & date.

Copy forwarded for information and further necessary action to the:

1. Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. Director E&SE Khyber Pakhtunkhwa, Peshawar.
3. District Accounts Officer concerned.
4. Incharge EMISE E&SE Department.
5. PS to Secretary E&SE Department, Khyber Pakhtunkhwa.
6. PS to Secretary, Higher Education Department, Khyber Pakhtunkhwa.
7. Officer concerned.
8. Office order File.


(MUJEEB-UR-REHMAN)
SECTION OFFICER (SCHOOLS/MALE)


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GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION
DEPARTMENT

-21-

Annex-E

Dated Peshawar the December 28, 2012

NOTIFICATION

NO.S015/MJE/SED/1-2/2012/Management Cadre: In pursuance of the Khyber Pakhtunkhwa Local Government Act, 2012 (Khyber Pakhtunkhwa Act No. VIII of 2012) and Govt of Khyber Pakhtunkhwa, Establishment & Administration Department Notification No.S0(6-f)/ERAD/1-49/2012 dated 27-12-2012, the positions in Elementary & Secondary Education Department at District level are reorganized as under w.e.f January 1st 2013:-

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Sl. No.	EXISTING POSITIONS	REORGANIZED/REDESIGNATED POSITIONS
1.	Executive District Officer (E&S) (BS-19)	District Education Officer Male (BS-19)
2.	Nil	District Education Officer Female (BS-19)
3.	District Officer (E&S) Male (BS-18)	Deputy District Education Officer Male (BS-18)
4.	District Officer (E&S) Female (BS-18)	Deputy District Education Officer (BS-18) Female
5.	Deputy District Officer (E&S) Male (BS-17)	Sub Divisional Education Officer Male (BS-17)
6.	Deputy District Officer (E&S) Female (BS-17)	Sub Divisional Education Officer Female (BS-17)

2. The District setup of Elementary & Secondary Education shall stand segregated from Local Government Institutions established under the Khyber Pakhtunkhwa Local Government Ordinance, 2001 (Khyber Pakhtunkhwa Act No.XIV of 2011) and shall realign with Elementary & Secondary Education Department at provincial level under the Act.

3. Deputy District Education Officers (Female) BS-18 are assigned the additional charge of the post of District Education Officer (Female) BS-19 as a stop gap arrangement till posting/appointment of regular District Education Officer (Female) BS-19.

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DDE/M/F
DD/F...
28/12/2012

SECRETARY
E&S EDUCATION DEPARTMENT

Copy of (even No. & Date)

- 1. Chief Secretary, Govt of Punjab, Sindh, Balochistan and Gilgit Baltistan.
- 2. Additional Chief Secretary, P&D Khyber Pakhtunkhwa
- 3. Senior Member Board of Revenue, Khyber Pakhtunkhwa.
- 4. Additional Chief Secretary FATA Secretariat.
- 5. Secretary to Governor, Khyber Pakhtunkhwa.
- 6. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
- 7. All Divisional Commissioners in Khyber Pakhtunkhwa.
- 8. Accountant General, Khyber Pakhtunkhwa Peshawar.
- 9. All Directors of E&S Education in Khyber Pakhtunkhwa.
- 10. All District Coordination Officer in Khyber Pakhtunkhwa.
- 11. All Executive District Officer (E&S) in Khyber Pakhtunkhwa.
- 12. Director Information, Khyber Pakhtunkhwa.
- 13. PS to Secretary E&S Department, Khyber Pakhtunkhwa.
- 14. PS to Additional Secretary, E&S Department.
- 15. Incharge EMIS E&S Department.
- 16. Manager, Govt Printing Press Peshawar.

(Signature)

(MUJEEB-UR-REHMAN)
SECTION OFFICER (SCHOOLS/MALE)

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GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION
DEPARTMENT

Dated Peshawar the September 30, 2013

NOTIFICATION

NO.SO(S/M)E&SED/4-16/2013/Mr. Muhammad Uzair Ali (BS-19): The Competent Authority is pleased to allow Mr. Muhammad Uzair Ali, Associate Professor (BS-19) Higher Education Archives & Libraries Department to rejoin Elementary & Secondary Education Department as District Education Officer (Male) BS-19 in the Management Cadre with immediate effect.

SECRETARY

Endst: of even No. & Date

Copy forwarded to the:

1. Accountant General, Khyber Pakhtunkhwa Peshawar.
2. Secretary, Higher Education, Archives & Libraries Department.
3. PSO to Chief Minister, Khyber Pakhtunkhwa, Peshawar.
4. Director, E&SE Khyber Pakhtunkhwa, Peshawar.
5. Director Higher Education Khyber Pakhtunkhwa Peshawar.
6. District Accounts Officer, Nowshera/ Swabi.
7. District Education Officer (Male), Nowshera/ Swabi.
8. PS to Secretary E&SE Department, Khyber Pakhtunkhwa, Peshawar.
9. PS to Special Secretary E&SE Department, Khyber Pakhtunkhwa, Peshawar.
10. PA to Additional Secretary E&SE Department, Khyber Pakhtunkhwa, Peshawar.
11. Incharge EMISE E&SE Department.
12. Officer concerned. *DBO (M) NSR*
13. Office order file.

Mujeeb-ur-Rehman
(MUJEEB-UR-REHMAN)
SECTION OFFICER (SCHOOLS/MALE)

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Amir Khan

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT, D.L.KHAN
(Judicial Department)



No. 186 of 1986

JUDGMENT

Date of hearing 18.12.1986

Appellant-petitioner: Shahzada Shahpur Jan

Mr. Shahzada Shahpur Jan

Respondent: Chief Secretary, Government of F.W.P.

Mr. Ahmad Farooq Khan, District Administrator

ABDUL LATIF KHAN, J. Through the instant petition the petitioner seeks directions to respondents No. 1 and 2 to place his promotion case before the Provincial Selection Board in accordance with the seniority list prepared by the Public Service Commission.

Amir

2. Shahzada Shahpur Jan, learned counsel for the petitioner contended that after the separation of management cadre from teaching cadre, the petitioner, in response to the advertisement made by the Public Service Commission, applied and after test and interview, he was recommended to the Government for appointment in the management cadre and accordingly the Government issued Notification to the effect that the Commission prepared an inter-segment list of the

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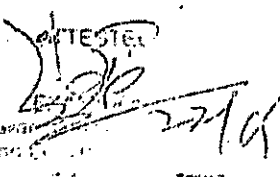
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selectees on 02.8.2012 in BPS-19 where the name of the petitioner was shown at serial No.1 whereas the name of respondent No.4 was at serial No.4. He added that respondent No.4 was junior to the petitioner right from BPS-16 to BPS-19 in teaching cadre previously. He contended that after the separation of management cadre, two posts of BPS-20 have become available which are likely to be filled amongst the senior most officers on the basis of merit list prepared by the Public Service Commission. He contended that the petitioner is senior most, therefore, his name in working papers for placing before the Provincial Selection Board in BPS-20 in management cadre shall be added. He added that previously twice the working papers were prepared for the purpose but the name of the petitioner was not included, despite of his seniority and excellent service, by ignoring the inter-se seniority, in order to adjust respondent No.4 through back door. He referred to the merit list wherein the petitioner was shown at serial No.1 and respondent No.4 figured at serial No.12.

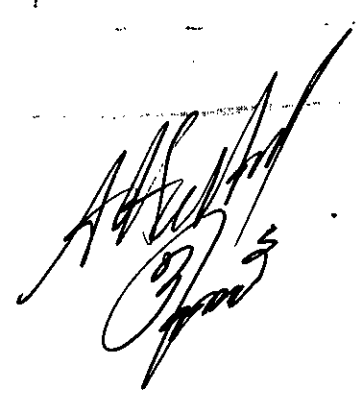
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3. As against that the learned A.A.G for respondents No.1-to 3 assisted by Mr. Ahmad Farooq Khan, learned counsel representing respondent No.4 raised the objection that the writ petition is not

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maintainable, for the reason that the petitioner and respondent No.4 are civil servants and under Article 212 of the Constitution of Islamic Republic of Pakistan, 1973, the matter relates to the jurisdiction of Service Tribunal and the provisions of Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, cannot be invoked. It was argued that the merit lists relied upon by the petitioner are not relevant and placed reliance on the latest merit list prepared on 22.02.2012 and pointed out that respondent No.4 has been shown at serial No 2 whereas the name of the petitioner finds mention at serial No 16. It was vehemently argued that the petitioner has got no locus standi to file the instant petition, as no cause of action accrues to him, for the reason that nobody has been recommended and even if recommendations are proposed, the same would be made from the top of the merit list whereas the petitioner being at serial No.16 is not entitled in any eventuality to be recommended for the post in BPS-20

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4. We have considered the arguments of learned counsel for the parties and perused the record with their valuable assistance.

5. The merit list relied upon by the petitioner was in fact interview results of EDC (B-19) at

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Elementary & Secondary Education Department. This interview for the posts was held from 01.02.2010 to 30.4.2010 and as a result, recommendations were made to the Government for appointment and on the basis of which, appointments were made. No doubt this result card shows the name of petitioner at serial No.1 whereas name of respondent No.4 at serial No.12. Another list referred by the petitioner, prepared as on 05.01.2009 for the officers of BPS-19 in Elementary & Secondary Education Department as final list, wherein the petitioner was shown at serial No.68 and respondent No.4 was at serial No.85, however, the final seniority list of the officers BPS-19 (Executive District Officers/Additional Directors), Elementary & Secondary Education Department Management cadre, as on 22.02.2012 was prepared and announced, wherein respondent No.4 was shown at serial No.2 and petitioner was shown at serial No.16. The respondent No.4 was out of the direct selectees against 60% departmental quota whereas petitioner was amongst the direct selectees against 40% open market quota. The final list reveals that respondent No.4 is meritorious than the petitioner. The petitioner has challenged this list before the high-ups (Chief Secretary and Secretary Education, KPK) on 28.02.2013 as reveals from the record available prior to

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GOVERNMENT OF KHYBER PAKHTUNKHWA
 DEPARTMENT OF EDUCATION
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5.
filing of instant petition before the Court and has availed the remedy of appeal which is still subjudice. The claim of the petitioner that he may be recommended for the post of BPS-20 to the Provincial Selection Board does not hold water, for the reason that he is at a lower pedestal than respondent No.4 as per the final list published on 22.02.2012, which is well in the knowledge of the petitioner and has been challenged by him before the competent forum.

6. Under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the jurisdiction of this Court can be invoked only when no other adequate remedy is available. In the instant case, the petitioner has already filed the appeal before the competent Court, therefore, the instant petition is not competent. The petitioner does not come within the ambit of 'aggrieved person', as no order, adverse to his right has been passed nor recommendations have been made so far and even if the recommendations are made, those would be regarding senior most out of the final seniority list for which the petitioner is not eligible. Needless to mention that petitioner and respondents are civil servants and the instant matter relates to the terms and conditions of service and Article 212 of the Constitution of Islamic Republic of

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Abul Hasan Ali Nadwi
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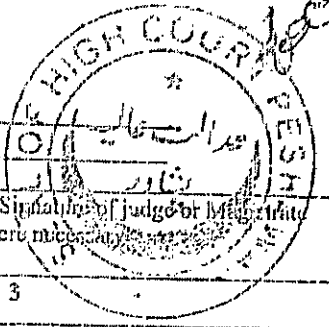
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Annex-4

APESHAWAR HIGH COURT, PESHAWAR
FORM "A"
FORM OF ORDER SHEET.

Court of _____
Case No _____



Serial No of order or proceeding	Date of Order or Proceeding	Order or other proceedings with Signature of judge or Magistrate and that of parties or counsel where necessary
1	2	3
	23.04.2015	<p><u>W/P No. 2049-P/2014</u></p> <p><u>Present:-</u> Mr. <u>Shakeel Ahmad</u>, Advocate for petitioner.</p> <p>Mr. Muhammad Riaz Paindakhel, AAC alongwith Majeed Ullah, Legal representative of respondent No.2.</p> <p>*****</p> <p><u>ROOH-UL-AMIN KHANJI</u>, The moment the case was taken up for hearing, the learned counsel for petitioner stated at the bar that under the instruction of his client, he is no more interested to pursue the matter and requested for dismissal of the instant writ petition as not pressed.</p> <p>Before adhering to the request, the learned counsel for petitioner was confronted with the previous order sheet of this court dated 2.4.2015 which reads as under:-</p>

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"At the very outset, the learned AAG pointed out that for the same very relief the petitioner had earlier approached D.I.Khan Bench of this court through W.P No. 362-D/2013 which was dismissed on 12.09.2013 and without disclosing the same fact, the petitioner has again approached this court through the present petition. We have taken a very serious view of this matter as to why the petitioner did not disclose the same fact in his petition. Adjournd to 15.04.2015 with direction to the learned counsel for the petitioner to come along with the letter on the date fixed".

The learned counsel for petitioner while trying to wriggle out of the situation stated at the bar that at the time of filing of instant petition, the petitioner has not informed him about filing of another writ petition No.362-D/2013 or its dismissal by the Divisional Bench of this court at

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EXAMINER
Peshawar High Court
09 MAY 2015

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D.I.Khan. The learned counsel, without contest, beg unconditional apology on the part of petitioner and also showed remorse on the lackadaisical attitude of the petitioner.

We have noted with great concern and are surprised that high official, possessing the slot of District Education Officer, in Elementary and Secondary Education, Department is litigating the case before this court after dismissal of his earlier writ petition for the same relief and that too, without disclosing the fact to his counsel or the court. Above all, the petitioner Ghulam Qasim Khan, District Education Officer has filed a duly sworn affidavit to the effect that the contents of writ petition filed by him are true to the best of his knowledge and nothing substantial has been concealed from this court. It is manifest from the record that the petitioner has not exhibited clean conduct in seeking equitable relief from court and in spite of adjudication of his right by this court, filed the instant petition, without disclosing the factum of decision of previous writ petition at Circuit Bench, D.I.Khan, which act is reckless and contemptuous, as the petitioner has tried to

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Peshawar High Court
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circumvent and frustrate the law, to gain illegal advantage. He has tried to undermine confidence of public in judiciary. The indolent, fraudulent and deceiving attitude and conduct of the petitioner has exposed him for initiating contempt of court proceedings against him, but in view of the unconditional apology of his counsel and showing remorse on the act of petitioner we, treating it mitigating circumstance, reducing the magnitude of action, taking lenient view at this end and warned the petitioner to remain careful in future.

Before dismissing the petition being not pressed, we deem it necessary to inform the Secretary, Elementary and Secondary Education and Chief Secretary to initiate proceedings against the petitioner under E&D Rules 2011, for frivolous and unjust litigation against the government in callous and highhanded manner.

With the above observation, this writ petition is dismissed being not pressed. The Registrar shall send a copy of this order to the Chief Secretary and Secretary, Elementary and Secondary Education, Department, Khyber Pakhtunkhwa, Peshawar for necessary action and

RECORDED
29 MAR 2015
JUDGE SWF

Abdul
Qasim

26 Feb



compliance report within two months.

Announced.
Dated 24.04.2015.

Rooh-ul-Amin Khan
Ed/eyed. Afsoos Shah

QUALIFIED TO BE TRUSTEES
BARRISTERS
PROBATIONER HIGH COURT PESHAWAR
Authorised Under Article 177
of the Constitution of Pakistan
09 MAY 2015

25/05/15

21737

Date of Presentation of Application *09/05/15*

No of Pages *06-7*

Copying fee */*

Urgent Fee */*

Total *12.00*

Date of Preparation of Copy *09/05/15*

Date Given For Delivery *09/05/15*

Date of Delivery of Copy *09/05/15*

Received By *M. K. Khan*

AKHUND
Q. Khan