

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL  
PESHAWAR

Service Appeal No. 3299/2021

Date of institution ..... 17.02.2021

Saleem Mehmood, SDM (BPS-16), GHS Saeeda, District Dir Lower.

VERSUS

The Government of Khyber Pakhtunkhwa through Secretary (E&SE)  
Department, Khyber Pakhtunkhwa, Peshawar and 02 others.

ORDER

05.06.2023

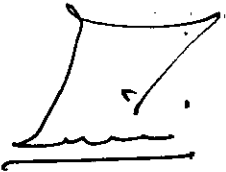
Mr. Noor Muhammad Khattak, Advocate for the appellant  
present. Mr. Asad Ali Khan, Assistant Advocate General for the  
respondents present.

2. At the very outset, learned counsel for the appellant as well as  
learned Assistant Advocate General stated at the bar that similar  
nature appeals have been disposed of by this Tribunal vide  
consolidated order dated 08.05.2023 passed in Service Appeal  
No. 1382/2019, therefore, the appeal in hand may also be disposed of  
in the said terms.

3. Relevant para of order dated 08.05.2023 passed in Service  
Appeal No. 1382/2019 is reproduced as below:-

*During the course of arguments consensus is  
pwas developed that for considering the contention  
of the appellant that 50% quota of promotes was  
not exhausted whereas learned Assistant Advocate  
General while refuting the contention that in view of  
the judgment of the Hon'ble Peshawar High Court,  
Peshawar in COC NO. 105-P/2018 in Writ Petition  
No. 355/2011 and the said quota had already been  
exhausted. Both of them while fairly assisting the*

**SCANNED**  
**KPST**  
**Peshawar**



*Tribunal submitted that it would be appropriate that the department should make proper calculation of the number of posts, in the light of the above judgment coupled with the eligibility of appellant and to ascertain the quota accordingly. Order accordingly. Such exercise should be undertaken within a period of 90 days from the receipt of this order with the directions to the Authorities to associate the appellant with the proceedings and for the purpose if a committee is necessary to be constituted, the Authority may consider that.*

*Consign.*

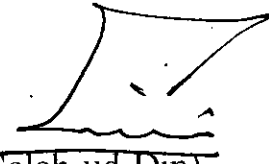
4. In light of the above, this appeal is also disposed of in the terms of consolidated order dated 08.05.2023 passed in Service Appeal No. 1382/2019. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED

05.06.2023



(Fareeha Paul)  
Member (Executive)



(Salah-ud-Din)  
Member (Judicial)


21.03.2023


Junior to counsel for the appellant present.

Asif Masood Ali Shah, Deputy District Attorney for the respondents present.

Former made a request for adjournment as senior counsel for the appellant is busy before Hon'ble Peshawar High Court, Peshawar. Adjourned. To come up for arguments on 05.06.2023 before D.B. Parcha Peshi given to the parties.

SCANNED  
KEEST  
Peshawar


  
(Muhammad Akbar Khan)  
Member (E)

  
(Rozina Rehman)  
Member (J)

20<sup>th</sup> Oct, 2022

Learned counsel for the appellant present. Mr. Muhammad Riaz Khan Paindakhel, Asst: AG for respondents present.

Learned counsel for the appellant seeks adjournment on the ground that he has not prepared the case. To come up for arguments on 20.12.2022 before D.B.

  
(Fareeha Paul)  
Member(Executive)

  
(Kalim Arshad Khan)  
Chairman


20<sup>th</sup> Dec. 2022

Counsel for the appellant present.

**SCANNED**  
**KPST**  
**Peshawar**

Mr. Muhammad Riaz Khan Paindakhel, Assistant Advocate General alongwith Mr. Muhammad Shahab, ADO for the respondents present.

Reply/comments on behalf of the respondents submitted which are placed on file and a copy whereof handed over to learned counsel for the appellant. To come up for rejoinder/arguments on 21.03.2023 before the D.B.

  
(FAREEHA PAUL)  
Member(E)

  
(ROZINA REHMAN)  
Member (J)

24.11.2021


Proper D.B is not available, therefore, case is adjourned to 28 / 2 / 2022 for the same as before.

  
Reader

28-2-22

Due to retirement of the Hon'ble Chairman the case is adjourned on

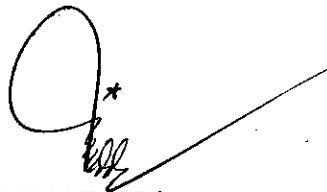
14-6-22

  
Reader

14.06.2022

Clerk of counsel for the appellant present. Mr. Kabirullah Khattak, Additional Advocate General for respondents present.

Clerk of counsel for the appellant stated that learned counsel for the appellant is unable to attend the Tribunal today due to strike of Lawyers. Adjourned. To come up for arguments before the D.B on 15.08.2022.



(MIAN MUHAMMAD)  
MEMBER (EXECUTIVE)



(SALAH-UD-DIN)  
MEMBER (JUDICIAL)

15.8.22

Due to summer vacation, the case is adjourned to 20-10-22 for the same.

  
Reader

25.08.2021

Mr. Noor Muhammad Khattak, Advocate, for the appellant present. Preliminary arguments heard.

Points raised need consideration, therefore, the appeal is admitted to regular hearing to subject to all legal and valid objections. The appellant is directed to deposit security and process fee within 10 days, whereafter notices be issued to the respondents for submission of written reply/comments in office within 10 days after receipt of notices, positively. If the written reply/comments are not submitted within the stipulated time, the office shall submit the file with a report of non-compliance. File to come up for arguments before the D.B on 24.11.2021.

Appellant Deposited  
Security & Process Fee  
38/8

13/9/21



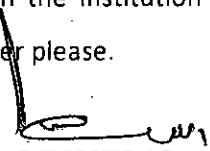


(SALAH-UD-DIN)  
MEMBER (J)

Form- A

FORM OF ORDER SHEET

Court of \_\_\_\_\_

Case No.- 3299 /2021

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	26/02/2021	<p>The appeal of Mr. Saleem Mehmood resubmitted today by Mr. Noor Muhammad Khattak Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p> <p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>07/05/21</u></p> <p style="text-align: right;"> CHAIRMAN</p>
07.05.2021		<p>Due to demise of the Worthy Chairman the Tribunal is defunct, therefore, case is adjourned to 25.08.2021 for the same as before.</p> <p style="text-align: right;"> Reader</p>

The appeal of Mr. Saleem N=Mehmood SDM GHS Saeeda District Dir Lower received today i.e. on 17/02/2021 is incomplete on the following score which is returned to the counsel for the appellatant for completion and resubmission within 15 days.

Copy of service rules mentioned in para-8 of the memo of appeal is not attached with the appeal which may be placed on it.

No. 368 /S.T,

Dt. 17/02 2021



REGISTRAR  
SERVICE TRIBUNAL  
KHYBER PAKHTUNKHWA  
PESHAWAR.

Mr.Noor Muhammad Khattak Adv. Pesh.

Note :- Service rules in para 8 attached.  
same re-submitted today 23.2.2021.  
HJ



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

**APPEAL NO. \_\_\_\_\_/2021**

**SALEEM MEHMOOD**

**VS**

**EDUCATION DEPTT**

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**APPELLANT**

**THROUGH:**

**NOOR MOHAMMAD KHATTAK**

OFFICE: Flat No.4, 2<sup>nd</sup> Floor,

Juma Khan Plaza,

Near FATA Secretariat,

Warsak Road, Peshawar.

0345-9383141.

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**

**PESHAWAR**

Khyber Pakhtunkhwa  
Service Tribunal

**APPEAL NO. 3299 /2021** Diary No. 2216

Dated 17/2/2021

Mr. Saleem Mehmood, SDM (BPS-16),

GHS Saeeda, District Dir Lower..... **APPELLANT**

**VERSUS**

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

..... **RESPONDENTS**

**APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE INACTION OF THE RESPONDENTS BY NOT GRANTING/ALLOWING PROMOTION TO THE APPELLANT TO THE POST OF SECONDARY SCHOOL TEACHER (BPS-16) FROM THE DATE WHEN THE PROMOTION QUOTA WAS FILLED BY THE RESPONDENTS THROUGH INITIAL RECRUITMENT OR FROM THE DATE OF COMMENCEMENT OF THE ACT NO.XVI OF 2009 COMMONLY KNOWN AS REGULARIZATION OF SERVICES ACT, 2009 NOTIFIED IN THE OFFICIAL GAZETTE ON 24.10.2009 WITH ALL BACK BENEFITS INCLUDING SENIORITY AND AGAINST NOT TAKING ACTION ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS**

**PRAYERS:**

That on acceptance of this appeal the respondents may kindly be directed to consider the appellant for promotion to the post of Secondary school Teacher (BPS-16) from the date when the promotion quota have been filled by the respondents through initial recruitment or from the date of Commencement of the Act No.XVI of 2009 commonly known as Regularization of Services Act, 2009 Notified in the official gazette on 24.10.2009 with all back benefits including seniority. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

**R/SHEWETH:**

**ON FACTS:**

**Brief facts giving rise to the present appeal are as**

**under:-**

That initially the appellant was appointed as DM in the respondents Department vide order dated 09.12.1999. That during service the appellant was promoted to the post of SDM (BPS-16). Copy of the appointment order is attached as annexure

..... **A.**

2- That during service as Senior Drawing Master the appellant was in the promotion zone to the post of SST (BPS-16) but the

Filed to-day

Registrar

17/2/2021

Re-submitted to-day

2-

Registrar

26/2/21

respondents instead promoting the appellant advertised the said posts of SST (BPS-16) on adhoc/contract basis. Copy of the advertisement is attached as annexure ..... **B.**

- 3- That under protest the appellant and his colleagues applied for the said post through initial recruitment but the same was also refused to the appellant and colleagues of the appellant on the pretext that regular employees are not entitle to apply for the adhoc/contract posts of SST (BPS-16) thus appellant and his colleagues were deprived from prospects of promotion. That it is pertinent to mention that at the time of above mentioned advertisement the post/cadre of SDM (BPS-16) to which the appellant belong have no prospects of promotion.
- 4- That in light of the said advertisement new appointments were made by the respondents on adhoc basis and even the promotion quota was also filled by the respondents though initial recruitment.
- 5- That in the meanwhile the Provincial Government Promulgated the employees regularization Act, 2009 whereby all the adhoc employees who were appointed as SST on temporary basis were regularized thus further affected the cadre to which the appellant belongs. That the promotion quota for which the appellant and his colleagues have waited for decades has been washed by operation of the said Act of 2009. Copy of the Act is attached as annexure ..... **C.**
- 6- That feeling aggrieved the appellant and his colleagues knocked the door of the Peshawar High Court through various writ petitions including writ petition No.2905/2009. That vide consolidated judgments dated 26.1.2015 the said writ petitions were disposed of with the directions that:  
**(i)- The act.XVI of 2009, commonly known as (Regularization of services) act, 2009 is held as beneficial and remedial legislation, to which no interference is advisable hence, upheld.**  
**(ii)- Official respondents are directed to work out the backlog of the promotion quota as per above mentioned example, within thirty days and consider the in service employees, till the backlog is washed out, till then there would be complete ban on fresh recruit.**  
**Copy of the Judgment is attached as annexure ..... D.**

- 7- That the respondents assailed the said judgment of the august Peshawar High Court Peshawar in CPLAS No.127-P to 129-P/2015 but the same were dismissed as withdrawn vide judgment dated 20.9.2017. That then after the appellant and his colleagues time and again visited the respondents for their promotion to the next higher scale but the respondents instead of redressing the grievance of the appellant and his colleagues advertised the posts through initial recruitment through various advertisements. Copies

of the judgment and advertisements are attached as annexure ..... **E & F.**

- 8- That it is pertinent to mention that during service the appellant was allowed up gradation/promotion to the newly up graded post of Senior Drawing Master (BPS-16) vide order dated 10.6.2014. That it is pertinent to mention that appellant is the senior most SDM (BPS-16) of the respondent department and also eligible in all respect for promotion to the post of SST (BPS-16). Copies of the notification, service rules and educational testimonials are attached as Annexure ..... **G, H & I.**
- 9- That feeling aggrieved the appellant and his colleagues knocked the door of august Peshawar high Court, Peshawar in various COC Petitions and the same has been disposed of vide judgment dated 8.11.2018 with directions to approached the august Service Tribunal for claiming of promotion and seniority. Copy of the judgment is attached as annexure ..... **J.**
- 10- That feeling aggrieved the appellant preferred Departmental appeal but no response has been received so far. Hence the present appeal on the following grounds amongst the others. Copy of the Departmental appeal is attached as annexure ..... **K.**

**GROUND:**

- A- That the inaction of the respondents by not allowing/granting ante dated promotion to the appellant to the post of SST (BPS-16) is against the law, facts, norms of natural justice and materials on the record.
- B- That appellant has not been treated in accordance with law and rules by the respondent Department on the subject noted above and as such the respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973.
- C- That the inaction of the respondents by not allowing/granting ante dated promotion to the appellant to the post of SST (BPS-16) is based on mala fide and arbitrary intentions and as such the same is violative of the principle of natural justice.
- D- That, the respondents acted in a malafide manner by not promoting the appellant to the post of SST (BPS-16) inspite of eligibility, seniority and fitness.
- E- That the respondents acted in arbitrary and malafide manner by not ante dated promotion to appellant to the post of SST (BPS-16) despite the fact that the appellant was not allowed in the initial recruitment process because of the fact that he is in regular

promotion zone and will soon be promoted to the post of SST (BPS-16).

- F- That the inaction of the respondents by not allowing/granting promotion to the appellant to the post of SST (BPS-16) is violative of section-9 of the Civil Servant Act 1973 read with Rule-7 of the (Appointment, Promotion & Transfer) Rules 1989.
- G- That as per Rules and regulation the appellant is entitle for promotion to the post of SST (BPS-16) with all consequential benefits including seniority.
- H- That according to Article 38(e) of the Constitution of Pakistan, 1973 the state is bound to reduce disparity in the income and earnings of individual including persons in the services of Federation.
- I- That appellant seeks permission to advance other grounds and proofs at the time of hearing.

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

**APPELLANT**

*Saleem*  
**SALEEM MEHMOOD**

**THROUGH:**

*Noor*  
**NOOR MOHAMMAD KHATTAK**

**&**

*Afrasiyab*  
**AFRASIYAB KHAN WAZIR**  
**ADVOCATES**

## OFFICE ORDER:

The competent authority is please to order the appointment of the following D.M Candidates in the schools noted against their names in BPS-9 (1685-97-3060) Plus usual allowance from the date of their taking over charge subject to the following terms and conditions:-

S/No	Name of Candidate/Parentage:	Residence:	Merit Marks:	Batch:	School where appointed.	Remarks:
1.	Salim Mahmood S/O Abdur Rahim.	Ouch.	54.92	1998	GMS Ouch:(Sh.) N.C:Post.	
2.	Hamidullah " Fazal Khaliq.	Sangolai.	53.34	"	" Kumber(M): .do.	
3.	Salim Khan. " Tilawat Khan.	Paito Dara.	51.16	"	" Shago Kas: .do.	
4.	Hilalud Din " Mohd Qada.	Beghamdara.	50.86	"	" Shahi. " A.V Post:	
5.	Amanullah " Abdul Khaliq.	Ajoo.	49.53	"	" Warsak. N.C Post:	
6.	Muhammad Salim " Fazli Raziq.	Ouch.	49.45	"	" Qanderay. .do.	
7.	Layaq Zarin S/O Bakht Zarin.	Inzaro.	49.33	"	GHS Gumbat Bando. Against V.Post.	

## Open Merit:

1.	Nisar Ali. S/O Sher Bahadar.	Tindodog.	52.95	Open/ Merit:	GMS Asherkore. N.C Post:
2.	Shah Qadam " Inayat Khan.	Bighamdara.	49.69.	"	" Banr: .do.

## TERMS AND CONLTIONS:

- They will be govern by such rules and regulation may prescribed by the Govt: from time to time for category of the Govt: Servants to which they belong.
- Their Srvices will be liable to termination on one months notice from either side, in case of resignation without notice one months pay will be fore-feited in lieu thereof.
- They should join the post with in one month of the issue of this notification.
- Their inter seniority will be determined in accordance with the merit of departmental selection committee, charge report should be sent to all concerned.
- They will be on probation for a period of two years.
- Their original certificates/Degrees should be checked & verified from the concerned University/B.I.S.E/R.D.E/Islamic address concerned before handing-over charge.
- They are required to produce Health & Age Certificate from the Medical Authority concerned before handing-over charge, in case of fresh candidate.
- Charge should not be given to the A/Age candidates. His case for age relaxation be sent to the concerned quarter.
- Efforts for before the completion of tenure will disqualify him from the Service.
- No TA/DA is allowed.
- An under taking shall be obtained from Master Degree Holders to the effect that they will not left the Education Department for at least five years.

(SHER ZADA KHAN)  
DISTT: EDUCATION OFFICER  
(M) SECY: DIR AT TIMERGARA.

Endst: No. 1685-16109 / Dated Timergara: the, 9 / 12 / 1999.


Copy forwarded to the:-

- P/S to Secretary Education NWFP Peshawar.
- Director Secondary Education NWFP Peshawar.
- Distt: Accounts Officer Dir at Timergara.
- 13: All the Principals/Head Masters of GHSS/GHS & GMS concerned.
- 23: Candidates concerned.
- 24: The Accountant of the Local Office.

DISTT: EDUCATION OFFICER,  
(M) SECY: DIR AT TIMERGARA.



(7)

Answer C - 

**THE <sup>3</sup>[KHYBER PAKHTUNKHWA]  
EMPLOYEES (REGULARIZATION OF SERVICES) ACT, 2009.  
(<sup>4</sup>[KHYBER PAKHTUNKHWA] ACT NO. XVI OF 2009)**

*[First published after having received the assent of the Governor of the <sup>5</sup>[Khyber Pakhtunkhwa] in the Gazette of <sup>6</sup>[Khyber Pakhtunkhwa] (Extraordinary), dated the 24<sup>th</sup> October, 2009]*

AN  
ACT

*to provide for the regularization of the services of certain employees  
appointed on adhoc or contract basis.*

WHEREAS it is expedient to provide for the regularization of the services of certain employees appointed on adhoc or contract basis, in the public interest, for the purposes hereinafter appearing;

It is hereby enacted as follows:-

1. **Short title and commencement.**---(1) This Act may be called the <sup>7</sup>[Khyber Pakhtunkhwa] Employees (Regularization of Services) Act, 2009.

(2) It shall come into force at once.

2. **Definitions.**---(1) In this Act, unless the context otherwise requires,-

- (a) "Commission" means the <sup>8</sup>[Khyber Pakhtunkhwa] Public Service Commission;
- (aa) "contract appointment" means appointment of a duly qualified person made otherwise than in accordance with the prescribed method of recruitment;
- (b) "employee" means an adhoc or a contract employee appointed by Government on adhoc or contract basis or second shift/night shift but does not include the employees for project post or appointed on work charge basis or who are paid out of contingencies;

<sup>3</sup>Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011

<sup>4</sup>Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011

<sup>5</sup>Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011

<sup>6</sup>Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011

<sup>7</sup>Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011

<sup>8</sup>Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011

~~ATTACHED~~



8

16

- (c) "Government" means the Government of the <sup>9</sup>[Khyber Pakhtunkhwa];
- (d) "Government Department" means any department constituted under rule 3 of the <sup>10</sup>[Khyber Pakhtunkhwa] Government Rules of Business, 1985, and does not include any section of a Department or an organization which is federally funded;
- (e) "law or rule" means the law or rule for the time being in force governing the selection and appointment of civil servants; and
- (f) "post" means a post under Government or in connection with the affairs of Government to be filled in on the recommendation of the Commission.

(2) The expressions "ad hoc or contract appointment" and "civil servant" shall have the same meanings as respectively assigned to them in the <sup>11</sup>[Khyber Pakhtunkhwa] Civil Servants Act, 1973 (<sup>12</sup>[Khyber Pakhtunkhwa] Act No. XVIII of 1973).

**3. Regularization of services of certain employees.**---All employees including recommendees of the High Court appointed on contract or ad hoc basis and holding that post on 31<sup>st</sup> December, 2008 or till the commencement of this Act shall be deemed to have been validly appointed on regular basis having the same qualification and experience for a regular post:

Provided that the service promotion quota of all service cadres shall not be affected.

**4. Determination of seniority.**---(1) The employees whose services are regularized under this Act or in the process of attaining service at the commencement of this Act shall rank junior to all civil servants belonging to the same service or cadre, as the case may be, who are in service on regular basis on the commencement of this Act, and shall also rank junior to such other persons, if any, who, in pursuance of the recommendation of the Commission made before the commencement of this Act, are to be appointed to the respective service or cadre, irrespective of their actual date of appointment.

(2) The seniority interse of the employees, whose services are regularized under this Act within the same service or cadre, shall be determined on the basis of their continuous officiation in such service or cadre:

<sup>9</sup>Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011

<sup>10</sup>Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011

<sup>11</sup>Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011

<sup>12</sup>Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011

ATTACHED

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Provided that if the date of continuous officiation in the case of two or more employees is the same, the employee older in age shall rank senior to the younger one.

4A. **Overriding effect.**---Notwithstanding any thing to the contrary contained in any other law or rule for the time being in force, the provisions of this Act shall have an overriding effect and the provisions of any such law or rule to the extent of inconsistency to this Act shall cease to have effect.

5. **Repeal.**---The North-West Frontier Province Employees (Regularization of Services) Ordinance, 2009 (N.-W.F.P. Ordinance No. VII of 2009) is hereby repealed.

~~ANNEXED~~

10

Answer "D"



JUDGMENT SHEET

PESHAWAR HIGH COURT, PESHAWAR  
(JUDICIAL DEPARTMENT)



Writ Petition No.2905 of 2009.

ATTA ULLAH AND OTHERS.....PETITIONERS.

VERSUS.

THE CHIEF SECRETARY KPK ETC....RESPONDENTS..

JUDGMENT.

Date of hearing 26.01.2015

Appellant/Petitioner by Ghulam Nabi Khan Advocate.

Respondent by Sardar Ali Raza Advocate & Waqar Ahmad Khan AAG.

WAQAR AHMAD SETH, J:- Through this single judgment we propose to dispose of the instant Writ Petition No.2905 OF 2009 as well as the connected Writ Petition Nos.2941, 2967,2968,3016. 3025.3053,3189,3251,3292 of 2009,496,556,664,1256,1662,1685,1696,2176,2230,2501,2696, 2728 of 2010 & 206, 355,435 & 877 of 2011 as common question of law and fact is involved in all these petitions.

**ATTESTED**  
Peshawar High Court

08 MAR 2018

**ATTESTED**



2- The petitioners in all the writ petitions have approached this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 with the following relief:-

*"It is, therefore, prayed that on acceptance of the Amended Writ Petition the above noted Act No.XVI 2009 namely 'The North West Province Employees (Regularization of Services) Act, 2009 dated 24<sup>th</sup> October, 2009' being illegal unlawful, without authority and jurisdiction, based on malafide intentions and being unconstitutional as well as ultra vires to the basic rights as mentioned in the constitution be set-aside and the respondents be directed to fill up the above noted posts after going through the legal and lawful and the normal procedure as prescribed under the prevailing laws instead of using the short cuts for obliging their own person.*

*It is further prayed that the notification No.A-14/SET(M) dated 11.12.2009 and Notification No.A-17/SET(5) Contract-Appnt:2009 dated 11.12.2009, as well as Notification No.SO(G)ES/1/85/2009/SS(Contract) dated*

**ATTESTED**  
EXAMINER  
Peshawar High Court

08 MAR 2018

**ATTESTED**

12



31.05.2010 issued as a result of above noted impugned Act whereby all the private respondents have been regularized may also be set-aside in the light of the above submissions, being illegal, unlawful, unconstitutional and against the fundamental rights of the petitioners.

Any other relief deemed fit and proper in the circumstances and has not been particular asked for in the noted Writ Petition may also be very graciously granted to the petitioners".

3- It is averred in the petition that the petitioners are serving in the Education Department of KPK working posted as PST,CT,DM,PET,AT,TT, Qari and SET in different Schools; that respondents No.9 to 1359 were appointed on adhoc/contract basis on different times and later on their service were regularised through the North West Frontier Province Employees (Regularization of Services) Act, 2009; that almost all the petitioners have got the required qualifications and also got at their credit the length of service; that as per notification No.SO(S)6-2/97 dated 03/06/1998

**ATTESTED**

Postmaster

001/11/2010

(13)

(5)

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the qualification for appointment/promotion of the SET Teachers BPS-16 was prescribed that 75% SETs shall be selected through Departmental Selection Committee on the basis of batchwise/yearwise open merit from amongst the candidates having the prescribed qualification and remaining 25% by initial recruitment through Public Service Commission whereas through the same notification the qualification for the appointment/promotion of the Subject Specialist Teachers BPS-17 was prescribed that 50% shall be selected by promotion on the basis of seniority cum fitness amongst the SETs possessing the qualification prescribed for initial recruitment having five years service and remaining 50 by initial recruitment through the Public Service Commission and the above procedure was adopted by the Education Department till 22/09/2002 and the appointments on the above noted posts were made in the light of the above notification. It was further averred that the Ordinance No.XXVII of 2002 notified on 09/08/2002 was promulgated under the shadow of which some 1681 posts of different cadres were advertised by the Public Service Commission.

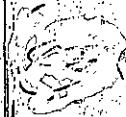
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EXAMINER  
 Peshawar High Court

09 MAR 2015

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That before the promulgation of Act No.XVI of 2009, it was practice of the Education Department that instead of promoting the eligible and competent persons amongst the teachers community, they have been advertising the above noted posts of SET (BPS-16) and Subject Specialist (BPS-17) on the basis of open merit/adhoc/contract wherein it was clearly mentioned that the said posts will be temporary and will continue only for a tenure of six months or till the appointment by the Public Serviced Commission or Departmental Selection Committee That after passing the KPK Act No.XVI of 2009 by the Provincial Assembly the fresh appointees of six months and one year on the adhoc and contract basis including respondents no.9 to 1351 with a clear affidavit for not adopting any legal course to make their services regularized, have been made permanent and regular employees whereas the employees and teaching staff of the Education Department having at their credit a service of minimum 15 to maximum 30 years have been ignored. That as per contract Policy issued on 26/10/2002 the Education Department was not authorised/entitled to

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make appointments in BPS-16 and above on the contract basis as the only appointing authority under the rules was Public Service Commission. That after the publication made by the Public Service Commission thousands of teachers eligible for the above said posts have already applied but they are still waiting for their calls and that through the above Act thousands of the adhoc teachers have been regularized which has been adversely effected the rights of the petitioners, thus having no efficacious and adequate remedy available to the petitioners, they have knocked the door of this Court through the aforesaid constitutional petitions.

4- The concerned official respondents have furnished parawise comments wherein they raised certain legal and factual objections including the question of maintainability of the writ petitions. It was further stated that Rule 3(2) of the N.W.F.P. Civil Servants (Appointment, Promotion & Transfer) Rules 1989, authorised a department to lay down method of appointment, qualification and other conditions applicable to post in consultation with Establishment & Administration Department and the Finance Department.

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 EXAMINER  
 Peshawar High Court  
 08 MAR 2019



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That to improve/uplist the standard of education, the Government replaced/amended the old procedure i.e. 100% including SETs through Public Service Commission KPK for recruitment of SETs B-16 vide Notification No.SO(PE)4-5/SS-RC/Vol-III dated 18/01/2011 wherein 50% SSTs (SET) shall be selected by promotion on the basis of seniority cum fitness in the following manner:-


(i) Forty percent from CT (Gen), CT(Agr), CT(Indust: Art) with at least 5 years service as such and having the qualification mentioned in column 3.

(ii) Four percent from amongst the DM with at least 5 years service as such and having qualification in column 3.

(iii) Four percent from amongst the PET with at least 5 years service as such and having qualification mentioned in column 3.

(iv) One percent amongst Instructional Material Specialists with at least 5 years

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service and having qualification mentioned  
in column 3."

It is further stated in the comments that due to the degradation/fall of quality education the Government abandoned the previous recruitment policy of promotion/appointment/recruitment and in order to improve the standard of teaching cadre in Elementary & Secondary Education Department of KPK, vide Notification dated 09/04/2004 wherein at serial No. 1.5 in column 5 the appointment of SS prescribed as by the initial recruitment and that the (North West Frontier Provincial) Khyber Pakhtunkhwa Employees(Regularization of Services)Act, 2009 (ACT No.XVI of 2009 dated 24<sup>th</sup> October, 2009 is legal, lawful and in accordance with the Constitution of Pakistan which was issued by the competent authority and jurisdiction, therefore, all the writ petitions are liable to be dismissed.

5- We have heard the learned counsel for the parties and have gone through the record as well as the law on the subject.

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6- The grievance of the petitioners is two fold in respect of Khyber Pakhtunkhwa, Employees (Regularization of Services) Act, 2009 firstly, they are alleging that regular post in different cadres were advertised through Public Service Commission in which petitioners were competing with high profile carrier but due to promulgation of Act *ibid*, they could not made through it as no further proceedings were conducted against the advertised post and secondly, they are agitating the legitimate expectancy regarding their promotion, which has been blocked due to the in block induction / regularization in a huge number, courtesy Act, No. XVI of 2009.

7- As for as, the first contention of advertisement and in block regularization of employees is concerned in this respect it is an admitted fact that the Government has the right and prerogative to withdraw some posts, already advertised, at any stage from Public Service Commission and secondly no one knows that who could be selected in open merit case, however, the right of competition is reserved. In the instant case KPK, employees

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(Regularization of Services) Act, 2009, was promulgated, which in-fact was not the first in the line rather N.W.F.P (now Khyber Pakhtunkhwa) Civil Servants (Regularization of Services) Act, 1988, NWFP (now Khyber Pakhtunkhwa) (Regulation of Services) Act, 1989 & NWFP (now Khyber Pakhtunkhwa) Adhoc. Civil Servants (Regularization of Services) Act, 1987 were also promulgated and were never challenged by anyone.

8- In order to comment upon the Act, *ibid*, it is important to go through the relevant provision which reads as under:-

**S.2 Definitions.** (1)---

a)----

aa) "contract appointment" means appointment of a duly qualified person made otherwise than in accordance with the prescribed method of recruitment.

b) "employee" means an adhoc or a contract employee appointed by Government on adhoc or contract basis or second shift/night shift but does not include the employees for project post or appointed on work charge.

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basis or who are paid out of contingencies;

----- whereas,

S. 3 reads:-

Regularization of services of certain employees.---- All employees including recommendee of the High Court appointed on contract or adhoc basis and holding that post on 31<sup>st</sup> December, 2008 or till the commencement of this Act shall be deemed to have been validly appointed on regular basis having the same qualification and experience for a regular post;

9- The plain reading of above sections of the Act, *ibid*, would show that the Provincial Government, has regularized the "duly qualified persons", who were appointed on contract basis under the Contract Policy, and the said Contract Policy was never ever challenged by any one and the same remained in practice till the commencement of the said Act. Petitioners in their writ petitions have not quoted any single incident / precedent showing that the regularized employees under the said Act, were not qualified for the post against

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which they are regularized, nor had placed on record any documents showing that at the time of their appointment on contract they had made any objection. Even otherwise, the superior courts have time and again reinstated employees whose appointments were declared irregular by the Government Authorities, because authorities being responsible for making irregular appointments on purely temporary and contract basis, could not subsequently turned round and terminate services because of no lack of qualification but on manner of selection and the benefit of the lapses committed on part of authorities could not be given to the employees. In the instant case, as well, at the time of appointment no one objected to, rather the authorities committed lapses, while appointing the private respondent's and others, hence at this belated stage in view of number of judgments, Act, No. XVI of 2009 was promulgated. Interestingly this Act, is not applicable to the education department only, rather all the employees of the Provincial Government, recruited on contract basis till 31<sup>st</sup> December 2008 or till the commencement of this Act have been

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regularized and those employees of to other departments who have been regularized are not party to this writ petition.

10- All the employees have been regularized under the Act, *ibid* are duly qualified, eligible and competent for the post against which they were appointed on contract basis and this practice remained in operation for years. Majority of those employees getting the benefit of Act, *ibid* may have become overage, by now for the purpose of recruitment against the fresh post.

11- The law has defined such type of legislation as "**beneficial and remedial**". A beneficial legislation is a statute which purports to confer a benefit on individuals or a class of persons. The nature of such benefit is to be extended relief to said persons of onerous obligations under contracts. A law enacted for the purpose of correcting a defect in a prior law, or in order to provide a remedy where non previously existed. According to the definition of *Corpus Juris Secundum*, a remedial statute is designed to correct an existence law, redress an existence grievance, or introduced regularization conducive to the public goods. The challenged

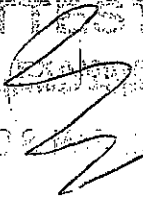
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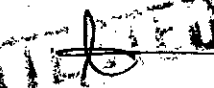
Act, 2009, seems to be a curative statute as for years the then Provincial Governments appointed employees on contract basis but admittedly all those contract appointments were made after proper advertisement and on the recommendations of Departmental Selection Committees.

12- In order to appreciate the arguments regarding beneficial legislation it is important to understand the scope and meaning of beneficial, remedial and curative legislation.

Previously these words have been explained by N.S Bindra in interpretation of statute, tenth edition in the following manners:-

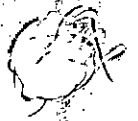
**"A statute which purports to confer a benefit on individuals or a class of persons, by reliving them of onerous obligations under contracts entered into by them or which tend to protect persons against oppressive act from individuals with whom they stand in certain relations, is called a beneficial legislations....In interpreting such a statute, the principle established is that there is no room for taking a narrow view but that the court is entitled to be generous towards the persons on whom the benefit has**

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been conferred. It is the duty of the court to interpret a provision, especially a beneficial provision, liberally so as to give it a wider meaning rather than a restrictive meaning which would negate the very object of the rule. It is a well settled canon of construction that in constructing the provision of beneficent enactments, the court should adopt that construction which advances, fulfils, and furthers the object of the Act, rather than the one which would defeat the same and render the protection illusory..... Beneficial provisions call for liberal and broad interpretation so that the real purpose, underlying such enactments, is achieved and full effect is given to the principles underlying such legislation."

Remedial or curative statutes on the other hand have been explained as:-

"A remedial statute is one which remedies defect in the pre existing law, statutory or otherwise. Their purpose is to keep pace with the views of society. They serve to keep our system of jurisprudence up to date and in

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 EXAMINER  
 Rajasthan High Court  
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harmony with new ideas or conceptions of what constitute just and proper human conduct. Their legitimate purpose is to advance human rights and relationships. Unless they do this, they are not entitled to be known as remedial legislation nor to be liberally construed. Manifestly a construction that promotes improvements in the administration of justice and the eradication of defect in the system of jurisprudence should be favoured over one that perpetuates a wrong".

Justice Antonin Scalia of the U.S. Supreme Court in his book on Interpretation of Statute states that:

"Remedial statutes are those which are made to supply such defects, and abridge such superfluities, in the common law, as arise from either the general imperfection of all human law, from change of time and circumstances, from the mistakes and unadvised determinations of unlearned (or even learned) judges, or from any other cause whatsoever."

13- The legal proposition that emerges is that generally beneficial legislation is to be given liberal interpretation, the beneficial legislation must carry curative or remedial content.

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Such legislation must therefore, either clarify an ambiguity or an omission in the existence and must therefore, the explanatory or clarificatory in nature. Since the petitioners does not have the vested rights to be appointed to any particular post, even advertised one and private respondents who have being regularized are having the requisite qualification for the post against which the were appointed, vide challenged Act, 2009, which is not effecting the vested right of anyone, hence, the same is deemed to be a beneficial, remedial and curative legislation of the Parliament.

14- This court in its earlier judgment dated 26<sup>th</sup> November 2009 in WP No. 2905 of 2009, wherein the same Khyber Pakhtunkhwa (Regularization of Servers ) Act, 2009, vires were challenged has held that this court has got no jurisdiction to entertain the writ petition in view of Article 212 of the Constitution of Islamic Republic of Pakistan, 1973, as an Act, Rule or Notification effecting the terms and conditions of service, would not be an exception to that, if seen in the light of the spirit of the ratio rendered in the case of

**ATTESTED**

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Peshawar High Court

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(27)



I.A.Sherwani & others Versus Government of Pakistan,

reported in 1991 SCMR 1041. Even otherwise, under Rule 3

(2) of the Khyber Pakhtunkhwa (Civil Servants) (appointment), promotion and transfer) Rules 1989, authorize a department to lay down method of appointment, qualification and other conditions applicable to the post in consultation with Establishment & Administrative Department and the Finance Department. In the instant case the duly elected Provincial Assembly has passed the Bill/Act, which was presented through proper channel i.e Law and Establishment Department, which cannot be quashed or declared illegal at this stage.

15- Now coming to the second aspect of the case, that petitioners legitimate expectancy in the shape of promotion has suffered due to the promulgation of Act, *ibid*, in this respect, it is a long standing principle that promotion is not a vested right but it is also an established principle that when ever any law, rules or instructions regarding promotion are violated then it become vested right. No doubt petitioners in the first instance cannot claim promotion as a vested right

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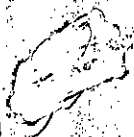
but those who fall within the promotion zone do have the right to be considered for promotion.

16- Since the Act, XVI of 2009 has been declared a beneficial and remedial Act, for the purpose of all those employees who were appointed on contract and may have become overage and the promulgation of the Act, was necessary to given them the protection therefore, the other side of the picture could not be brushed a side simply. It is the vested right of in service employees to be considered for promotion at their own turn. Where a valid and proper rules for promotion have been framed which are not given effect, such omission on the part of Government agency amounts to failure to perform a duty by law and in such cases, High Court always has the jurisdiction to interfere. In service employees / civil servants could not claim promotion to a higher position as a matter of legal right, at the same time, it had to be kept in mind that all public powers were in the nature of a sacred trust and its functionary are required to exercise same in a fair, reasonable and transparent manner strictly in accordance with law. Any transgression from such

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principles was liable to be restrained by the superior courts in their jurisdiction under Article 199 of the Constitution. One could not overlook that even in the absence of strict legal right there was always legitimate expectancy on the part of a senior, competent and honest carrier civil servant to be promoted to a higher position or to be considered for promotion and which could only be denied for good, proper and valid reasons.

17- Indeed the petitioners can not claim their initial appointments on a higher post but they have every right to be considered for promotion in accordance with the promotion rules, in field. It is the object of the establishment of the courts and the continue existence of courts of law is to dispense and foster justice and to right the wrong ones. Purpose can never be completely achieved unless the in justice done was undone and unless the courts stepped in and refused to perpetuate what was patently unjust, unfair and unlawful. Moreover, it is the duty of public authorities as appointment is a trust in the hands of public authorities and it is their legal and moral duty to discharge their functions as

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 Peshawar High Court  
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trustee with complete transparency as per requirement of law, so that no person who is eligible and entitle to hold such post is excluded from the purpose of selection and is not deprived of his any right.

18- Considering the above settled principles we are of the firm opinion that Act, XVI of 2009 is although beneficial and remedial legislation but its enactment has effected the in service employees who were in the promotion zone, therefore, we are convinced that to the extent of in service employees / petitioners, who fall within the promotion zone have suffered, and in order to rectify the inadvertent mistake of the respondents/Department, it is recommended that the promotion rules in field be implemented and those employees in a particular cadre to which certain quota for promotion is reserved for in service employees, the same be filled in on promotion basis. In order to remove the ambiguity and confusion in this respect an example is quoted, " If in any cadre as per existence rules, appointment is to be made on 50/50 % basis i.e 50 % initial recruitment and 50 % promotion quota then all the employees have been

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regularized under the Act in question be calculated in that cadre and equal number i.e remaining. 50 % are to promoted from amongst the eligible in service employees, other wise, eligible for promotion on the basis of sonority cum fitness."

19- In view of the above, this writ petition is disposed of in the following terms:-

(i) "The Act, XVI of 2009, commonly known as (Regularization Of Services) Act, 2009 is held as beneficial and remedial legislation, to which no interference is advisable hence, upheld.

(ii) Official respondents are directed to workout the backlog of the promotion quota as per above mentioned example, within 30 days and consider the in service employees, till the backlog is washed out, till then there would be complete ban on fresh recruitments.

Order accordingly.

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Announced.  
26<sup>th</sup> January 2015

JUDGE

JUDGE

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CERTIFIED TO BE TRUE COPY

Examiner  
Peshawar High Court, Peshawar  
Authorized Under Article 177 of  
The Constitution of Pakistan Order 1984

08 MAR 2015

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IN THE SUPREME COURT OF PAKISTAN  
(APPELLATE JURISDICTION)

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PRESENT:  
MR. JUSTICE EJAZ AFZAL KHAN,  
MR. JUSTICE SH. AZMAT SAEED,  
MR. JUSTICE IJAZ UL AHSAN.

CIVIL PETITIONS NO. 127-P TO 129-P OF 2015,  
(Against the judgment dated 26.1.2015 of the  
Peshawar High Court, Peshawar passed in Writ  
Petition No.2905 of 2009, 3025 of 2009, 224 of 2010)

The Chief Secretary, Govt. of KPK., Peshawar and others. ...Petitioner(s)  
(in all cases)  
Versus  
Aftaulah and others.  
Nasruminullah and others.  
Mukhtar Ahmad and others. ...Respondent(s)

For the petitioner(s): Mr. Mujahid Ali Khan, Addl. A.G. KPK

For the respondent(s): Mr. Ghulam Nabi Khan, ASC  
Mr. Abdul Qayyum Sarwar, AOR

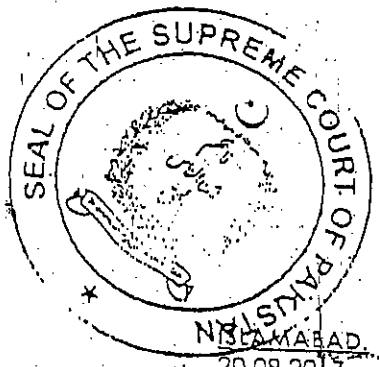
Date of Hearing: 20.09.2017.

ORDER

Ejaz Afzal Khan, J.- The learned Additional Advocate General  
appearing on behalf of the Govt. of KPK stated at the bar that as per  
instructions of the Government he does not press these petitions. Dismissed  
as such.

Sd/-Ejaz Afzal Khan, J  
Sd/-Sh. Azmat Saeed, J  
Sd/-Ijaz ul Ahsan, J.  
Certified to be True Copy.

*[Signature]*  
29/9/17  
Court Associate  
Supreme Court of Pakistan  
Islamabad



Islamabad  
20.09.2017  
M. Azhar-Malik  
25/9/17

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*[Signature]*

GR No: 14572/17 Civil/Criminal  
Date of Presentation: 29-9-17  
No of Writ: 3  
No of Fees: 3  
Requisition Fee: 2-00  
Copy Fee in: 1-88  
Court Fee \$: 6-88  
Date of Co: 29/9/17  
Date of delivery copy: 2/10/17  
Compared by/Prepared by: *[Signature]*  
Received by: *[Signature]*

*[Signature]*



درخواستوں پر غور نہیں کیا جائیگا۔

کونوں میں درج ذیل آسامیوں پر کرنے کے لئے خیرہ بھرتوں کے متعلقہ اطلاع کے کوئی اہل امیدواروں سے مجوزہ فارم مورخہ 20 دسمبر 2017ء تک درخواستیں مطلوب ہیں۔ درخواست فارم (NTS) کی ویب سائٹ (http://www.nts.org.pk) پر دستیاب ہے۔ مقررہ تاریخ گزارنے کے بعد موصول ہونے والی

نمبر شمار	نام آسامی	تالیف
1	سیکنڈری سکول ٹیچر (SST) بیالوجی / کیمسٹری - BPS-16	(i) کسی بھی تسلیم شدہ یونیورسٹی سے سیکنڈ ڈیویژن پچھلے ڈگری جس کے ساتھ درج ذیل دو مضامین لازمی ہوں۔ (i) کیمسٹری، بیالوجی (زوالوگی یا بائی) سلیکشن اور تقرری کے بعد 9 ماہ کی لازمی ٹرینگ حکومتی اداروں RITE/PITE سے حاصل کرنی ہوگی۔
2	سیکنڈری سکول ٹیچر (SST) فزکس / میٹھس - BPS-16	(i) کسی بھی تسلیم شدہ یونیورسٹی سے سیکنڈ ڈیویژن پچھلے ڈگری جس کے ساتھ درج ذیل دو مضامین لازمی ہوں۔ (i) فزکس، میٹھس یا (ii) فزکس، میٹھس B یا (iii) فزکس، اینگلس (ii) سلیکشن اور تقرری کے بعد 9 ماہ کی لازمی ٹرینگ حکومتی اداروں RITE/PITE سے حاصل کرنی ہوگی۔
3	سیکنڈری سکول ٹیچر (SST) جزیل - BPS-16	(i) کسی بھی تسلیم شدہ یونیورسٹی سے سیکنڈ ڈیویژن پچھلے ڈگری جس کے ساتھ درج ذیل دو مضامین لازمی ہوں۔ (i) انگریزی لازمی، ہونٹینگریز گروپ یا دیگر مساوی گروپ۔ (ii) سلیکشن اور تقرری کے بعد 9 ماہ کی لازمی ٹرینگ حکومتی اداروں RITE/PITE سے حاصل کرنی ہوگی۔

سلیکشن کر دینا: اساتذہ کے سلیکشن کیلئے کریٹیریا درج ذیل ہے۔ کل 200 نمبرات کی تقسیم اس طرح سے کی جائیگی۔  
(1) سکرٹنگ ٹیسٹ بذریعہ NTS=100 نمبر (ب) تظہی قابلیت=100 نمبر جس کی جزئیات یہ ہیں اس طرح ہوگی

بی ایس چار سالہ کورس کی صورت میں فیروز کی تقسیم اس طرح ہوگی۔ حاصل کردہ نمبر 40x تقسیم کل نمبر جبکہ پیش درنامہ اسے ایجوکیشن کی صورت میں فیروز کی تقسیم بطریقہ ذیل ہوگی۔  
ایم ایس ایجوکیشن حاصل کردہ نمبر 10x تقسیم کل نمبر (5 نمبر بی ایچ + 5 ایم ایچ)  
ایم ایچ (1) ہر سکول کی آسامی کیلئے بطور ملحدہ مہرٹ لسٹ مرتب کی جائیگی جس میں امیدواروں کے NTS کے حاصل کردہ نمبر اور تظہی قابلیت کے فیروز کو جمع کیا جائیگا۔ (2) NTS ٹیسٹ میں 40 فیصد فیروز لے سکتی ہے۔  
40 فیصد سے کم فیروز لے والا امیدوار اہل تصور ہوگا اور مہرٹ لسٹ میں شامل نہیں ہوگا۔

تظہی قابلیت	کل نمبر	ایس ایس سی	ایس ایس سی
ایس ایس سی	حاصل کردہ نمبر 20x تقسیم کل نمبر	ایس ایس سی	ایس ایس سی
بی ایس ایس سی	حاصل کردہ نمبر 20x تقسیم کل نمبر	ایم ایس ایس سی	ایم ایس ایس سی
بی ایچ	حاصل کردہ نمبر 05x تقسیم کل نمبر	ایم ایچ ایم ایس ایس ایس	ایم ایچ ایم ایس ایس ایس
ایم ایچ/بی ایچ ڈی	حاصل کردہ نمبر 10x تقسیم کل نمبر	ایم ایچ ایم ایس ایس ایس	ایم ایچ ایم ایس ایس ایس

**عمومی شرائط :-** (1) تمام تقرریاں حکومت خیرہ بھرتوں کے مرہوق قوانین کے مطابق 25 فیصد بنیادی تقرری (Initial Appointment) کے تحت خالصتاً عارضی بنیادوں پر ایچ ہاک / کنٹریکٹ پر ایک سال کیلئے ہوگی۔ (2) سفور افراد کیلئے دو فیصد اور اقلیتی امیدواروں کیلئے تین فیصد کوٹیشن ہے (مستند افراد کے دو فیصد کوٹیشن ہے جس کیلئے سینیٹر جج میڈیکل بورڈ کا سرٹیفکیٹ لینا لازمی ہے بشرطیکہ وہ سفوری فرانسس کی انجام دہی میں رکاوٹ نہ ہو۔) (3) انٹرویو کے وقت اصلی تظہی اسناد بعد از اجماع امیدوار کو برداشت کرنا ہوگی۔ (4) انٹرویو کیلئے آنے والے امیدواروں کو کوئی TANDA نہیں دیا جائیگا۔ (5) صرف مقررہ وقت کے بعد موصول ہونے والی درخواستوں پر غور کیا جائیگا۔ (6) ذریعہ پختگی کو اختیار حاصل ہے کہ وہ کوئی بھرتائے بغیر کسی بھی وقت کل یا جزوی طور پر انٹرویو منسوخ کر دے۔ (7) اگر اس اشتہار کے بعد حکومت وقت کی طرف سے بھرتی کے طریقہ کار میں تبدیلی کی گئی تو سلیکشن کمیٹی اس کے مطابق عمل کرنے کی پابند ہوگی۔ (8) تظہی اسناد صرف گورنمنٹ کے تسلیم شدہ اداروں کی قابل قبول ہوگی۔ (11) اگر کسی امیدوار کی اسناد پختگی پائی گئی تو اس کے خلاف قانونی چارہ چینی کی جائے گی اور اسے اس کے لئے اسے سرکاری ملازمت کے لئے اہل تصور کیا جائیگا۔ (12) پختگی فارم یا معلومات کی صورت میں درخواست فارم خود بخود منسوخ تصور کیا جائیگا جس کے لئے کوئی اپیل منظور نہیں کی جائے گی۔ (13) انٹرویو کیلئے الگ شیڈول جاری کیا جائیگا جس میں ڈاکومنٹیشن چیک کئے جائیں گے۔ (14) تمام تقرریاں مختلفہ اضلاع کے ڈویژنوں کی بنیاد پر ہوگی۔ امیدوار کا ڈویژن اس کے متعلقہ اضلاع کا ہونا لازمی ہے۔ 20 دسمبر 2017ء کے بعد پختگی میں کسی قسم کی تبدیلی قابل قبول نہ ہوگی۔ (15) امیدوار کو کسی سکول میں مہرٹس کرنا ہوگی جو کہ قابل تبادلہ ہوگی۔ (16) ایک امیدوار ایک وقت 5 سکولوں میں خالی آسامیوں کیلئے درخواست دے سکتا ہے۔ امیدوار کے ایک یا ایک سے زیادہ سکولوں میں سلیکشن کی صورت میں اس کی تقرری کسی ایک سکول میں کی جائے گی اس کی صورت میں سکول سلیکشن کا امتحان امیدوار کو حاصل نہیں بلکہ اس میں اس بات کا خیال رکھا جائیگا کہ مہرٹ سکولوں میں اس کے بعد زیادہ مہرٹ والے امیدوار کو سلیکشن کا موقع مل سکے۔ (17) درخواست دینے کا طریقہ کار NTS کی ویب سائٹ پر مندرجہ ہے۔ (18) مختلفہ اضلاع کے خالی آسامیوں کی تفصیل سکول و انٹرویو درخواست فارم کے ساتھ NTS کی ویب سائٹ پر دی گئی ہے اور ہر سکول کو اپنا کوڈ دیا گیا ہے۔

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INF(P) 6749

محمد رفیق خٹک، ڈائریکٹر ایجوکیشن، ایسٹ سیکنڈری ایجوکیشن خیرہ پختہ نغمہ پشاور





NOTIFICATION

*Annexure*

Consequent upon the recommendation of the Departmental Promotion Committee and in pursuance of the Government of Khyber Pakhtunkhwa Elementary & Secondary Education Notification No. SO (B&A)/1-18/E&SE/2012 dated 11.07.2012, Finance Department Endorsement No. SO (FR)/ED/10.-22 (E)/2010 dated 16.07.2012 and Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar Notification No. 1278-84/File No. 1/Promotion Senior CT B-16 dated 18.04.2014, the following Male CTs B-15 are hereby prompted to the post of senior CT B-16 (Rs. 10000-800-34000) plus usual allowances as admissible under the rules on regular basis under the existing policy of the Provincial Government, on the terms and conditions given below with immediate effect and further they will be posted in the Government Higher/ High Schools against the newly upgraded Senior CTBPS-16 posts.

S.NO	Name	PLACE OF DUTY	
1	Mr. Bakht Biland Khan CT	GHS	Bahrain
2	Mr. Mizajud Din CT GMS: Kalagay CT	GHS:	Chail
3	Mr. Muhammad Sadiq CT	GHS:	Dherai
4	Mr. Zahir Shah CT	GHS	Dherai

Terms & Combinations:

1. They should be on Probation period of one year, extendable for another one year.
2. They will be governed by such rules and Regulations as may be issued from time to time by the Government.
3. Their services can be terminated at any time, in case his performance is found unsatisfactory during probationary period. In case of misconduct, he shall be preceded under the rules framed from time to time.
4. Charge Reports should be submitted to all concerned.
5. Their Inter-Se-seniority on lower post will remain intact.
6. No TA/DA is allowed for joining duty.
7. They will give an under taking to be recorded in their service book to the effect that if any over payment is made to him in light this order will be recovered and if he is wrongly prompted he will be reversed

(ABDULLAH)  
DISTRICT EDUCATION OFFICER  
(MALE) SWAT AT GUL KADA

Endst No. 7153-6 .....

dated 10/6 ...../2014

Copy is forwarded to:

1. The Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.
2. The District Comptroller of Accounts Swat.
3. The Budget & Accounts Officer local office.
4. The Teacher Concerned.

*(Signature)*  
DISTRICT EDUCATION OFFICER  
(MALE) SWAT AT GUL KAD

*(Signature)*  
1000-  
7062

**ATTACHED**



GOVERNMENT OF THE KHYBER PAKHTUNKHWA  
ELEMENTARY AND SECONDARY EDUCATION DEPARTMENT.

NOTIFICATION

Peshawar, dated the November 13, 2012.

No. SO(PE)4-5/SSRC/Meeting/2012/Teaching Cadre:- In pursuance of the provisions contained in sub rule (2) of rule 3 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 and in supersession of all Notifications issued in this behalf, the Elementary and 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 the Appendix to this Notification which shall be applicable to all the posts specified in Column No. 2 of the said Appendix and the schedule therewith.

SECRETARY TO GOVERNMENT OF THE KHYBER PAKHTUNKHWA  
ELEMENTARY AND SECONDARY EDUCATION DEPARTMENT.

Endst. No. & Date as above.

Copy forwarded to:-

1. The Secretary to Govt. of Khyber Pakhtunkhwa, Establishment Department.
2. The Secretary to Govt. of Khyber Pakhtunkhwa, Finance Department.
3. The Secretary to Govt. of Khyber Pakhtunkhwa, Law Department.
4. The Secretary Khyber Pakhtunkhwa, Public Service Commission Peshawar.
5. The Accountant General, Khyber Pakhtunkhwa Peshawar.
6. The Director (E&SE) Khyber Pakhtunkhwa Peshawar.
7. The Director Education (FATA), Peshawar.
8. Copy to Manager Liaison KPK

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Answer H

KPK

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- 8. The Director Curriculum & Teachers Education Abbottabad.
- 9. The Director (PITE) Khyber Pakhtunkhwa Peshawar.
- 10. The Director ESRU, Elementary & Secondary Education Khyber Pakhtunkhwa, Peshawar.
- 11. The Deputy Director Database(EMIS) E&SE Department.
- 12. All District Coordination Officers in Khyber Pakhtunkhwa.
- 13. All Executive District Officers Elementary & Secondary Education in Khyber Pakhtunkhwa.
- 14. All District Accounts Officers in Khyber Pakhtunkhwa / Agency Accounts Officers FATA.
- 15. All Agency Education Officers FATA.
- 16. P.S to Governor, Khyber Pakhtunkhwa.
- 17. P.S to Chief Minister, Khyber Pakhtunkhwa.
- 18. P.S to Chief Secretary, Khyber Pakhtunkhwa.
- 19. PS to Minister E&SE Khyber Pakhtunkhwa Peshawar.
- 20. PS to Secretary E&SE Department.
- 21. Master File.

KPK

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Section Officer (Primary)

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APPENDIX

S.NO.	Nomenclature of the post	Minimum qualification and experience for initial appointment or by transfer	Age limit	Method of recruitment.
1.	2.	3.	4.	5.
1.	<p>Secondary School Teacher (BPS-16)</p>	<p>(i) Second class Bachelor's Degree with two subjects as Chemistry, Botany, Zoology, Physics, Mathematics, Statistics Humanities and other equivalent groups from a recognized University; or</p> <p>(ii) M.A in Education or Bachelor's Degree in Education from a recognized university.</p>	<p>18 to 35 Years.</p>	<p>(a) Fifty percent by promotion on the basis of seniority-cum-fitness in the following manners.</p> <p>(i) forty percent from amongst the certified Teachers (General). Certified Teachers (Industrial Arts) and Certified Teachers (Home Economics) with at least five years service as such and having qualification mentioned in column No. 3.</p> <p>(ii) four percent from amongst the Drawing Masters with at least five years service as such and having qualification mentioned in column No. 3.</p> <p>(iii) four percent from amongst the Physical Education Teachers with at least five years service</p>

SEI →  
Redesignated

No quota has been allocated for PST's cadre.

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10.	Arabic Teacher (AT) (BPS-15)	(i) Second Class Secondary School Certificate from a recognized Board with Shahdatul Alamia Fil Uloomul Arabia wal Islamia from or Darul Uloom Saidu Sharif Swat, Darul Uloom Darosh Chitral, Government run Darul Uloom, as notified by the Government from time to time; or (ii) Second Class Master's Degree in Arabia from a recognized University.	By initial recruitment
11.	Theology Teacher (TT) (BPS-15)	(i) Second Class Secondary School Certificate from a recognized Board with Shahdatul Alamia Fil Uloomul Arabia wal Islamia from or Darul Uloom Saidu Sharif Swat, Darul Uloom Darosh Chitral, Government run Darul Uloom, as notified by the Government from time to time; or (ii) Second Class Master's Degree in Arabia from a recognized University.	(a) Seventy five percent by initial recruitment; and (b) twenty five percent by promotion on the basis of seniority-cum-fitness from amongst the senior Qaris with at least five years service and having qualification prescribed for initial recruitment of Theology Teacher; Note: In case of non availability of suitable person for promotion then by initial recruitment.
12.	Senior Qari (BPS-15)		By promotion on the basis of seniority-cum-fitness from amongst Qaris with at least five years service as such and having qualification as prescribed for initial recruitment.
13.	Certified Teacher (General)	Bechlor's Degree or equivalent qualification from a recognized	(a) Forty percent by initial recruitment; and

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		<p>Certified or two years Associate Degree in Education from a recognized University or eighteen months Diploma in Education.</p>	<p>(b) sixty percent by promotion on the basis of seniority-cum-fitness from amongst the Primary School Head Teachers with at least five years service and having qualification prescribed for initial recruitment of Certified Teacher (General).                  Provide that if no suitable candidate is available amongst the Primary School Head Teachers for transfer, then the posts will be filled by promotion on the basis of seniority-cum-fitness from amongst senior primary school teachers with at least five years service and having qualification prescribed for initial recruitment of certified teacher (General).                  Note: In case of non availability of suitable person for promotion then by initial recruitment.</p>
<p>14.</p>	<p>Certified Teacher (Industrial Arts) (BPS-15)</p>	<p>(i) Bachelor's Degree from a recognized University with two years training in the relevant technical subjects from any Government industrial or Govt: Technical vocational Institute or Centre; or                  (b) Bachelor's Degree from a recognized</p>	<p>(a) Forty percent by initial recruitment; and                  (b) sixty percent by promotion on the basis of seniority-cum-fitness from amongst the primary school head teachers with at least five years service and having qualification prescribed for initial recruitment of certified teacher</p>

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APPENDIX

39/A

S.No.	Nomenclature of the post.	Minimum qualification and experience for initial appointment or by transfer.	Age limit.	Method of recruitment.
	2.	3.	4.	5.
1.	Secondary School Teacher (HPS-16).	(i) Second class Bachelor's Degree with two subjects as Chemistry, Botany, Zoology, Physics, Mathematics, Statistics Humanities and other equivalent groups from a recognized University; or  (ii) M.A in Education or Bachelor's Degree in Education, from a recognized University.	18 to 35 years.	(a) Fifty percent by promotion on the basis of seniority-cum-fitness, in the following manner:  (i) forty per cent from amongst the Certified Teachers (General), Certified Teachers (Agriculture), Certified Teachers (Industrial Arts) and Certified Teachers (Home Economics) with at least five years service as such and having qualification mentioned in column No.3;  (ii) four per cent from amongst the Drawing Masters with at least five years service as such and having qualification mentioned in column No.3;  (iii) four per cent from amongst the Physical Education Teachers with at least five years service as such and having qualification mentioned in column No. 3.

*KPK. J. B. R. Singh*

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*M. A.*

*(M)*

39/B

				<p>(iv) one per cent from amongst the Instructional Material Specialists, with atleast five years service as such and having qualification mentioned in column No. 3; and</p> <p>(v) one per cent from amongst the Arabic Teachers with at least five years service as such and having qualification mentioned in Column No.3; and</p> <p>(b) fifty per cent by initial recruitment.</p>
2.	Senior Arabic Teacher (SAT) (BPS-16)			<p>By promotion, on the basis of seniority-cum-fitness, from amongst Arabic Teachers, with at least five years service as such and having qualification as prescribed for initial recruitment of Arabic Teacher.</p>
3.	Senior Theology Teacher (STT) (B-16)	KPK		<p>By promotion, on the basis of seniority-cum-fitness, from amongst Theology Teachers, with at least five years service as such and having qualification as prescribed for initial recruitment of Theology Teacher.</p>
4.	Senior Certified Teacher (SCT)(General) (BPS-16).			<p>By promotion, on the basis of seniority-cum-fitness, from amongst Certified Teachers (General), with at least five years service as such and having qualification as prescribed for initial recruitment of Certified Teacher (General).</p>

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10. Arabic Teacher (AT) (BPS-15).	(i) Second Class Secondary School Certificate, from a recognized Board with Shahdatul Alamia Fil Uloomul Arabia wal Islamia from a recognized Tanzimatuat Wafaqul Madaris; or Darul Uloom Saidu Sharif Swat, Darul Uloom Charbagh Swat, Darul Uloom Chitral, Darul Uloom Daroshi Chitral and any other Government run Darul Uloom, as notified by the Government from time to time; or (ii) Second Class Master's Degree in Arabic from a recognized University.	20 to 35 years.	By initial recruitment
11. Theology Teacher (TT) (BPS-15). ✓	(i) Second Class Secondary School Certificate, from a recognized Board with Shahdatul Alamia from a recognized Tanzimatuat Wafaqul Madaris or Darul Uloom Saidu Sharif Swat, Darul Uloom Charbagh Swat, Darul Uloom Chitral, Darul Uloom Daroshi Chitral and any other Government run Darul Uloom, as notified by the Government from time to time; or (ii) Second Class Master's Degree in Islamiyat from a recognized University.	20 to 35 years.	(a) Seventy-five per cent by initial recruitment; and (b) twenty-five per cent by promotion, on the basis of seniority-cum-fitness, from amongst the Senior Qaris, with at least five years service and having qualification prescribed for initial recruitment of Theology Teacher. <u>Note:</u> In case of non availability of suitable person for promotion, then by initial recruitment.
12. Senior Qari (BPS-15).			By promotion, on the basis of seniority-cum-fitness, from amongst Qaris, with at least five years service as such and having qualification prescribed for initial recruitment.
13. Certified Teacher (General) (BPS-15). ✓	Bachelor's Degree or equivalent qualification from a recognized University with Certified Teacher	18 to 35 years.	(a) Forty per cent by initial recruitment; and

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39/E

Primary School Teacher

Category of Qualification	Total Marks 100 For Humanities group out Intermediate Level	For Candidate of Science group
SSC	Marks obtained X 20 / total marks =	5 Extra marks for F.Sc. 5 Extra marks for B.Sc and 5 Extra marks for M.Sc will be added to the total score obtained by a candidate during his selection
HSSC	Marks obtained X 10 / total marks =	
B./BSc	Marks obtained X 25 / total marks =	
PST Certificate/ Diploma in Education / ADE.	Marks obtained X 20 / total marks =	
MA/MS/MA Ed / MA Edu	Marks obtained X 20 / total marks =	
MPhil/Ph.D	Marks = 05	

Other conditions:-

1. The concerned appointing authority will scrutinize and verify the documents and make the appointment as per prescribed rule and the will get the documents rejected after the issuance of appointment orders within shortest possible time, not exceeding ninety (90) days.
2. The merit list prepared by the concerned appointing authority shall be displayed for ten days to receive the objections/appeals. If any, will issue the final merit list after making necessary corrections while addressing the observations/objections/appeals, followed by requisite appointment orders.
3. In case of document(s) issues found falsified/ forged/ bogus/ tampered/ scrutiny/ verification/ the service of the teacher concerned shall be terminated and the amount paid to him as salary shall be recovered from him and an FIR shall be lodged against him on account of forgery/ fraud under the relevant law.
4. Demand issued from recognized Force/ Government of Jammu and Kashmir, Darul Uloom Saidu Sharif Swat, Darul Uloom Charbagh Swat, Darul Uloom Chitral, Darul Uloom Daroosh Chitral and any other Government run Darul Uloom, as notified by the Government from time to time will be acceptable for the purpose of appointment against the posts of Arabic Teachers or Theology Teachers, as the case may be.

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S. No. 0711114

بِسْمِ اللّٰهِ الرَّحْمٰنِ الرَّحِیْمِ

Roll No. 38893

Annexure I

40

**BOARD OF INTERMEDIATE AND SECONDARY EDUCATION**



**Peshawar N.W.F.P. Pakistan**  
**Secondary School Certificate Examination**

SESSION 1990 (ANNUAL)

THIS IS TO CERTIFY THAT Saleem Mahmood  
Son/Daughter of Abdur Rahim  
and a student of Govt: High School Ouch Dir

has passed the *Secondary School Certificate Examination*  
of the Board of Intermediate & Secondary Education, Peshawar held in March 1990  
as a *Regular candidate*. He/She obtained 659 Marks out of 850  
and has been placed in Grade A Representing Excellent

The Candidate passed in the following subjects:

- |            |                     |                |            |
|------------|---------------------|----------------|------------|
| 1. English | 3. Islamiyat        | 5. Mathematics | 7. Physics |
| 2. Urdu    | 4. Pakistan Studies | 6. Chemistry   | 8. Biology |

He/She has been awarded Grade A on the basis of internal  
assessment by the Institution concerned.

Date of birth according to admission form is Fifth February,  
one thousand nine hundred and Seventy Four (05-02-1974)

Asst. Secretary  
11th August 1990

Secretary

*This certificate is issued without alteration or omission.*

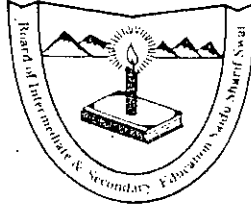
Attested

Head Master  
G. H. S. Banda Talash  
Distt. Dir. (L)

SW No. (IA) 891

Roll No. 19574

**BOARD OF INTERMEDIATE AND SECONDARY EDUCATION**



**Saidu Sharif Swat N.W.F.P. Pakistan**  
*Intermediate Examination*

PRE-MEDICAL Group

SESSION ANNUAL 1993

THIS IS TO CERTIFY THAT SALFEM MAYMOOD

Son/Daughter of ABDUL RAHIM

and a student of SOVT COLLEGE TRANA MEDICAL AGENCY

Registered No. 90-P/J-91 has passed the Intermediate Examination of the Board of Intermediate and Secondary Education, Saidu Sharif Swat held in 1993 as a *Regular/Private candidate*. He/She obtained 560 Marks out of 1100 and has been placed in Grade B Representing VERY GOOD

The Examination was taken as a whole/in parts and the candidate passed the following subjects:

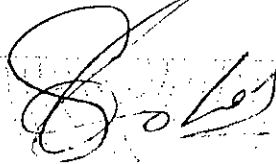
- |            |   |            |
|------------|---|------------|
| 1. English | 3. Islamic Education - Pakistan Studies | 5. BIOLOGY |
| 2. Urdu    | 4. CHEMISTRY                            | 6. PHYSICS |

Date of birth according to admission form is XXXX  
one thousand nine hundred and XXXX

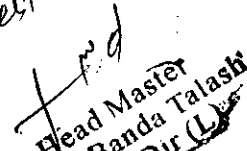
  
Asst. Secretary

This certificate is issued without alteration or erasure.

  
Secretary



Attested

  
Head Master  
G.H S Banda Talash  
Distt. Dir (L)

42

B.A



# University of Peshawar

(Pakistan)

Session ANNUAL 1996

SALEEM MAHMOOD

Son

of

ABDUR RAHIM

and a student

of GOVT. DEGREE COLLEGE THANA

having passed the prescribed examination held in August 1996, is this day admitted by the University of Peshawar

to the Degree of

## Bachelor of Arts

in the SECOND division.

The Examination was taken as a whole / in parts.

Serial No 035596

Registration No: 99-T-3049

Roll No. 32590

Result declared on FEBRUARY 15, 1997



*[Signature]*  
Registrar

Countersigned

*[Signature]*  
Vice-Chancellor

*Attested*  
*[Signature]*  
**Sabir Khan**  
S.C.T  
G.H.S Shawa Dir (L)

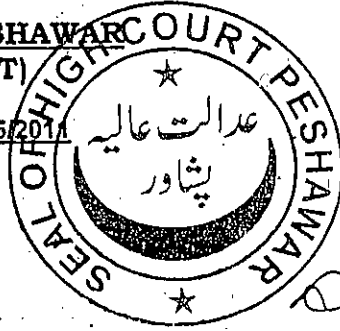
46

Anxxa J

**JUDGMENT SHEET**  
**PESHAWAR HIGH COURT, PESHAWAR**  
**(JUDICIAL DEPARTMENT)**

COC No. 105-P/2018 in WP No. 355/2011

**JUDGMENT.**



Date of hearing: 08.11.2018

Petitioner (s): Nisar Ahmad & Mr. Noor Mahmood Usmani

Respondent (s): Muhammad Azam Khan & Spd. Qasim Ali Khan ADL.

**WAQAR AHMAD SETH, CJ:-** Through this

single judgment, we propose to dispose of instant contempt petition as well as connected COC No. 107-P/2018 in WP No. 1662/2010, COC No. 108-P/2018 in WP No. 2967/2009 & COC No. 109-P/2018 in WP No. 3189/2009 because in all the petitions, the petitioners have sought initiation of contempt of court proceedings against the respondents for not implementing the judgment/order dated 26.01.2015.

2. Facts in brief are that the petitioners had filed Writ Petitions before this Court and prayed that the Act No. XVI 2009, namely, 'The North West Province Employees (Regularization of Services) Act, 2009 dated 24<sup>th</sup> October, 2009' being illegal unlawful, without authority and jurisdiction, based on malafide intentions and being unconstitutional as well as ultra vires to the basic rights as mentioned in the constitution be set-aside and the respondents be directed to fill up the above noted posts after going through the legal and lawful and the normal procedure as prescribed under the prevailing laws instead of using the short cuts for

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EXAMINER  
Peshawar High Court  
30 NOV 2018

obliging their own person. They further prayed that the notification No. A-14 / SET (M) dated 11.12.2009 and Notification No. A-17 / SET (S) Contract-Appnt: 2009 dated 11.12.2009, as well as Notification No. SO(G) / ES / 185 / 2009 / SS(Contract) dated 31.05.2010 issued as a result of above noted impugned Act whereby all the private respondents have been regularized may also be set-aside in the light of the above submission, being illegal, unlawful, unconstitutional and against the fundamental rights of the petitioners. The writ petitions came up for hearing and vide judgment/order dated 26.01.2015, the same were disposed of in the following terms:-

- (i) *The Act, XVI of 2009, commonly known as (Regularization of Services) Act, 2009 is held as beneficial and remedial legislation, to which no interference is advisable hence, upheld.*
- (ii) *Official respondents are directed to workout the backlog of the promotion quota as per above mentioned example, within 30 days and consider the in service employees, till the backlog is washed out, till then there would be complete ban on fresh recruitments".*

3. After passing the above said judgment, the petitioners were quite hopeful regarding their promotion to the next higher grade being senior most employees but the respondents have again started recruitment process by advertising the posts of various cadres for initial recruitment in various Districts of Khyber Pakhtunkhwa and as such, the inaction of respondents squarely fall within the ambit of

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ATTENDED

contempt of court and they are liable to be proceeded and punished under the law; hence, the instant petitions.

4. Respondents No. 2 & 3 have filed reply to the show cause and prayed for dismissal of instant petitions.

5. Arguments heard and record perused.

6. While deciding writ petition No. 2905/2009, vide judgment dated 26.1.2015 which has been upheld by the apex Court, the respondents-department was directed to workout the backlog of the promotion quota and consider in service employees for promotion against the vacant post, till the backlog is washout. In this respect record is suggestive that the backlog was worked out and by that time 2725 employees / teachers were in the promotion zone and as such were promoted. Moreover, by virtue of Regularization Act, 2009, Act No. XVI of 2009, 1766 employees / teachers got regularization and as such, when worked out, the promotion quota was fully exhausted. The judgment in this respect was not for all the times to come for promotion purposes. Once the promotion quota, which was given advantage, in view of Regularization Act, 2009, cannot be claimed again and again. By now it's the question of fact that as to whether any employee / teacher was not promoted and by that time when Act 2009 was enforced they were in the promotion zone. Even otherwise, once backlog was worked out and promotion was done then claiming seniority and promotion is the job of service tribunal.

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7. In view of the above, the instant as well as connected contempt petitions are disposed of in terms above.

Show cause notice issued to respondents is hereby recalled.

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**ANNOUNCED.**  
Dated: 08.11.2018

Chief Justice

Judge

Nawab Shah SCS (DB) Justice Waqar Ahmad Seth CJ & Justice Muhammad Ayub Khan J.

No. 15857

Date of Presentation of Application 25.11.18

No of Pages 3

Copying Fee 20

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Delivery of Copy 25.11.18

Received by [Signature]

**CERTIFIED TO BE TRUE COPY**

EXAMINER  
Peshawar High Court, Peshawar  
Authorized Under Article 187 of  
The Constitution of Pakistan Order 1973

**30 NOV 2018**

[Signature]

The Secretary (E&SE) Department,  
Khyber Pakhtunkhwa, Peshawar.

**DEPARTMENTAL APPEAL FOR THE GRANT OF PROMOTION TO THE POST OF SECONDARY SCHOOL TEACHER (BPS-16) FROM THE DATE WHEN THE PROMOTION QUOTA WAS FILLED UP THROUGH INITIAL RECRUITMENT OR FROM THE DATE OF COMMENCEMENT OF THE ACT NO.XVI OF 2009 COMMONLY KNOWN AS REGULARIZATION OF SERVICES ACT, 2009 NOTIFIED IN THE OFFICIAL GAZETTE ON 24.10.2009 WITH ALL BACK BENEFITS.**

**Respected Sir,**

With due respect it stated that I was initially appointed as DM in your good self Department vide order dated 09.12.1999. During service as AT I was in the promotion zone to the post of SST (BPS-16) but the concerned authority instead of promoting me advertised the said posts of SST (BPS-16) on adhoc/contract basis. I was under protest and my colleagues applied for the said post through initial recruitment but the same was also refused to me and my colleagues on the pretext that regular employees are not entitle to apply for the adhoc/contract posts of SST (BPS-16) thus me and my colleagues were deprived from the prospects of promotion. It is pertinent to mention that at the time of above mentioned advertisement the post/cadre of DM (BPS-15) to which I belong have no prospects of promotion. In light of the said advertisement new appointments were made by the authorities on adhoc basis and even the promotion quota was also filled by the authority though initial recruitment. In the meanwhile the Provincial Government Promulgated the employee's regularization Act, 2009 whereby all the adhoc employees who were appointed as SST on temporary basis were regularized thus further affected the cadre to which I belong. That the promotion quota for which me and my colleagues have waited for decades has been washed by operation of the said Act of 2009. I was feeling aggrieved alongwith my others colleagues knocked the door of the Peshawar High Court through various writ petitions. That vide consolidated judgments dated 26.1.2015 the said writ petitions were disposed of with the directions that:

**(i)- The act.XVI of 2009, commonly known as (Regularization of services) act, 2009 is held as beneficial and remedial legislation, to which no interference is advisable hence, upheld.**

**(ii)- Official respondents are directed to work out the backlog of the promotion quota as per above mentioned example, within thirty days and consider the in service employees, till the backlog is washed out, till then there would be complete ban on fresh recruit.**

The concerned authority assailed the said judgment of the august Peshawar High Court Peshawar in CPLAS No.127-P to 129-P/2015 but the same

**ATTACHED**



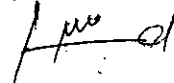
(51)

were dismissed as withdrawn vide judgment dated 20.9.2017. That then after me and my colleagues time and again visited the concerned quarter for our promotion to the next higher scale but the concerned authority instead of redressing the grievances advertised the posts through initial recruitment through various advertisements. During service I was allowed up gradation/promotion to the newly up graded post of Senior Drawing Master (BPS-16). That it is pertinent to mention that I am the senior most SDM (BPS-16) of your good self Department and also eligible in all respect for promotion to the post of SST (BPS-16). I am feeling aggrieved filed this Departmental appeal before your good self for redressal of my grievances.

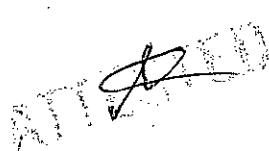
It is therefore, most humbly prayed that on acceptance of this Departmental I may very kindly be promoted to the post of SST (BPS-16) including seniority with all back benefits w.e.f. the date when the promotion quota was filled up through initial recruitment.

Dated: 20.10.2020

Your Obediently



**SALEEM MEHMOOD**, SDM (BPS-16),  
GHS Saeeda, District Dir Lower



**VAKALATNAMA**

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

\_\_\_\_\_ OF 2021

Saleem Mehmood

(APPELLANT)  
(PLAINTIFF)  
(PETITIONER)

**VERSUS**

Education Deptt.

(RESPONDENT)  
(DEFENDANT)

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

Dated. \_\_\_\_/\_\_\_\_/2021

Handwritten Signature  
\_\_\_\_\_  
**CLIENT(S)**

**ACCEPTED**  
**NOOR MOHAMMAD KHATTAK**  
**15401-0705985-5**  
**BC-08-0853**  
&

**KAMRAN KHAN**  
Handwritten Signature  
**AFRASIAB KHAN WAZIR**

**HAIDER ALI**  
**ADVOCATES**

OFFICE:  
Flat No.4, Upper Floor,  
Juma khan plaza near (FATA) Secretariat  
Warsak road Peshawar.  
Mobile No. **0345-9383141**