BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR
AT CAMP COURT ABBOTTABAD

Service Appeal No. 796/2022

BEFORE: **MR. KALIM ARSHAD KHAN** ... **CHAIRMAN**
MRS. RASHIDA BANO ... **MEMBER(J)**

Akhtar Zaib S/O Abdul Wahid (PE BPS-17, GCMHSS Battagram City), R/O Jasool, Batagram.

... (Appellant)

VERSUS

1. Chief Secretary, Government of Khyber Pakhtunkhwa, Civil Secretariat Peshawar.
2. Secretary Elementary & Secondary Education Department, Government of Khyber Pakhtunkhwa, Peshawar.
3. Director, Elementary & Secondary Education Department, Peshawar.

... (Respondents)

SCANNED
KPST
Peshawar

Mr. Hamayun Khan
Advocate ... For Appellant

Mr. Asif Masood Ali Shah
Deputy District Attorney ... For Respondents

Date of Institution.....16.05.2022
Date of Hearing.....20.06.2023
Date of Decision.....20.06.2023

JUDGMENT

RASHIDA BANO, MEMBER (J): The relevant facts leading to filing of instant appeal are that appellant was appointed as PET in year 1989 and against impugned transfer order dated 13.01.2022, the appellant filed writ petition before the Hon'ble Peshawar High Court, Abbottabad Bench and vide order dated 12.04.2022 the Hon'ble Court, treat the writ petition as service appeal and sent the same to Service Tribunal with the prayer copied as below:

"On acceptance of the instant writ petition order/notification dated 24.02.2022 and 18.01.2022 passed by the respondent No. 2

may kindly be declared null and void and transfer order dated 13.01.2022 of the appellant against the vacant post of IPE BPS-17 at GCMHSS Battagram may kindly be restored."

1. Brief facts giving rise to the instant appeal are that appellant was appointed as PET in the respondent department in the year 1989. The appellant was promoted to the post of DPE/IPE (BPS-17) in the year 2018. Till 13.01.2022 he performed his duties with full devotion and dedication in the remote backward area schools of the District Battagram. That on 15.12.2021 the appellant filed application for transfer against the vacant post at GCMHSS Battagram City on medical grounds before the respondent No.2, his application was allowed and he was transferred from GHSS Thakot to GCMHSS Batagram City vide notification dated 13.01.2022. The appellant relieved the charge at GSS Thakot on 14.01.2022 and assumed the charge at GCMHSS Battagram on 15.01.2022. On 18.01.2022, respondent No.2 issued notification for cancellation of transfer order issued on 13.01.2022. The appellant filed departmental appeal on 19.01.2022, which was regretted on 24.02.2022. Feeling aggrieved the appellant filed writ petition before Hon'ble Peshawar High Court, Abbottabad Bench and the Hon'ble Court treat the writ petition as service appeal and sent to this Tribunal, hence, the present service appeal.

2. Respondents were put on notice who submitted written replies/comments on the appeal. We have heard the learned counsel for the appellant as well as the learned Deputy District Attorney and perused the case file with connected documents in detail.

3. Learned counsel for the appellant argued that the act of the respondents is against the law, facts and policy hence the respondents are bound to restore the order dated 13.01.2022 of the appellant according to

law. He contended that impugned order dated 18.01.2022 of the appellant is illegal and without authority hence, liable to be set aside. He further contended that the impugned transfer cancellation order is premature and against the transfer/posting policy is also liable to be set aside. Lastly, he submitted that appellant is near to the age of superannuation and as per law and rules he has prerogative to serve his near station during last year of service, therefore, he requested for acceptance of the present service appeal.

4. Conversely, learned Deputy District Attorney argued that appellant has been treated in accordance with law and rules and as per section 10 of Civil Servants Act 1973, every civil servant shall be liable to serve anywhere within the district in the best interest of public service without raising any objections. He contended that all proceedings have been done by the competent authority as per rules and law, therefore, he requested for the dismissal of the instant appeal.

5. Perusal of record would reveal that appellant, through instant appeal, has challenged his transfer/posting order/notification dated 24.02.2022 and order of rejection of departmental appeal dated .18.01.2022. Appellant contended that he filed an application on 15.12. 2021 for his transfer/posting against the vacant post at GCMHSS Batagram City on medical ground. As a result of which he was transferred and posted to GCHMSS Batagram vide notification dated 13.01.2022. In consequence of which appellant assumed charge on 15.01.2022 but all of a sudden on 18.01.2022 respondent no. 2 cancelled appellant's transfer/posting order vide notification dated 13.01.2022. Feeling aggrieved from the said, the appellant preferred departmental appeal on 19.01.2022. After giving chance of personal hearing to the appellant, respondent No. 2 rejected appeal of the appellant vide order dated 24.02.2022. Main contention of the appellant is that his transfer was

premature because on fifth day of transfer/posting order and on fourth day of assuming his charge, his transfer order was cancelled despite the fact that he was cardiac and diabetic patient.

6. It is important to note here that initially appellant filed writ petition No.286-A/2022 before Hon'ble Peshawar High Court, Peshawar, which was converted into service appeal by the Hon'ble High Court vide order dated 12.04.2022, and sent it to this Tribunal. The Hon'ble Peshawar High Court, Peshawar, vide order dated 08.03.2022, suspended operation of both the impugned notification/orders dated 18.01.2022 and 24.02.2022 and, since, then till date appellant is performing his duties in GCMHSS Batagram City. The appellant assumed the charge of the said post on 15.01.2022, where after one and a half year has elapsed. Learned counsel argued that appellant was going to retire within next few months on his attaining the age of superannuation and this fact is also mentioned in ground "E" of the appeal and it will be in the interest of justice that appellant may be allowed to serve near home station because the appellant is cardiac and diabetic patient. It will create hardship for the students, who are used to appellant's teaching method and by allowing the appellant to serve for few months more till his attaining 60 years would not affect any public interest. Otherwise too. Clause-I of the posting/transfer policy elucidates that all the posting transfers shall be strictly in public interest and shall not be misused to victimize government servant. Clause-IV of the said policy has laid down specified tenure against various posts. Neither this transfer order having regard to the illness of the appellant was made in any public interest nor guidelines for normal tenure were observed.

7. For what has been discussed above, we dispose of this appeal in terms that appellant should not be disturbed/transferred from GCHMSS Batagram till his

retirement which is within next few months and if there remains more time till his retirement then this order will have no effect. Costs shall follow the event. Consign.

8. *Pronounced in open court at Abbottabad and given under our hands and seal of the Tribunal on this 20th day of June, 2023.*

(RASHIDA BANO)
Member (J)
Camp Court, Abbottabad

(KALIM ARSHAD KHAN)
Chairman
Camp Court, Abbottabad

SCANNED KPST Peshawar

*Kaleemullah

ORDER
20th June, 2023

1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present.

2. Vide our detailed judgement of today placed on file, we dispose of this appeal in terms that appellant should not be disturbed/transferred from GCHMSS Batagram till his retirement which is within next few months and if there remains more time till his retirement then this order will have no effect. Costs shall follow the event. Consign.

3. *Pronounced in open court at Abbottabad and given under our hands and seal of the Tribunal on this 20th day of June, 2023.*

SCANNED
KPST
Peshawar

(RASHIDA BANO)
Member (J)
Camp Court, Abbottabad

(KALIM ARSHAD KHAN)
Chairman
Camp Court, Abbottabad

Kaleemullah

26th April, 2023

1. Appellant alongwith his counsel present. Mr. Asif Masood Ali Shah, Deputy District Attorney alongwith Mr. Sohail Ahmad Zeb, Assistant for the respondents present.

2. Written reply has not been submitted. Representative of the respondents seeks some time to submit the same on the next date. Last chance is given to the respondents on payment of cost of Rs. 5000/-. To come up for written reply on 24.04.2023 before S.B at camp court Abbottabad. P.P given to the parties.

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Peshawar

(Kalim Arshad Khan)
Chairman
Camp Court Abbottabad

Adnan Shah, P.A

24.05.2023 Learned counsel for the appellant present. Mr. Asad Ali Khan, Assistant Advocate General for the respondents present.

Reply/comments on behalf of respondents submitted through office which are placed on file. Copy of the same handed over to learned counsel for the appellant. To come up for arguments as well as cost of Rs. 5000/- before the D.B on 20.06.2023 at camp court Abbottabad. Parcha Peshi given to the parties.

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Peshawar

(Muhammad Akbar Khan)
Member (E)
Camp Court Abbottabad

Kamranullah

27/12/22 Due to winter vocation the case is adjourned. To come up for the same as before on. 29-3-23

Reader

30.03.2023 Appellant present through counsel.

Preliminary arguments heard. Record perused.

Points raised need consideration. Instant appeal is admitted for regular hearing subject to all legal objections. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notice be issued to respondents for submission of written reply/comments. To come up for reply/comments on 26.04.2023 before S.B at Camp Court, Abbottabad. Parcha Peshi given to the appellant.

Rs-100/-
Appellant Deposited
Security & Process Fee
6/4/23

Annexed with the memo of appeal is an application for interim relief. Notice of this application be served upon respondents. In the meanwhile, operation of impugned orders dated 18.01.2022 & 24.02.2022 shall remain suspended, if not acted upon earlier.

SCANNED
KPST
Peshawar

(Rozina Rehman)
Member (J)
Camp Court, A/Abad

SCANNED
KPST
Peshawar

Form-A

FORM OF ORDER SHEET

Court of _____

Case No. 796/2022

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge
1	2	3
1	16/05/2022	The present appellant initially went in Writ Petition before the Hon'ble Peshawar High Court Bench A.Abad and the Hon'ble High Court vide its order dated 12.04.2022 treated the Writ Petition into an appeal and sent the same to this Tribunal for decision in accordance with law. The same may be entered in the Institution Register and put up to the worthy Chairman for further order please. REGISTRAR
2-	24-5-22	This case is entrusted to S. Bench at Abbottabad for preliminary hearing to be put up there on 14-6-22. Notices shall be issued to appellants and his counsel for the date fixed. CHAIRMAN
	14.06.2022	Nemo for appellant. Lawyers are on general strike. Notice be issued to appellant and his counsel for 18.08.2022 for preliminary hearing before S.B at Camp Court, Abbottabad. (Rozina Rehman) Member (J) Camp Court, A/Abad
18	8-2022	Tour to camp Court Abbottabad has been Cancelled. To come up for the same on 27-12-2022

Transfer
Disposed

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

BEFORE: **KALIM ARSHAD KHAN ... CHAIRMAN**
FAREEHA PAUL ... MEMBER (Executive)

Service Appeal No.664/2022

Date of presentation of appeal 24.03.2022
Dates of Hearing.....10.05.2023
Date of Decision.....10.05.2023

Shah Zada, District Public Prosecutor (BP-19) District Bajour Under transfer to Swabi, as Senior Public Prosecutor.

.....*(Appellant)*

Versus

1. Government of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa, Civil Secretariat Peshawar.
2. **The Secretary** to the Government of Khyber Pakhtunkhwa Khyber Pakhtunkhwa Home and Tribal Affairs, Department, Civil Secretariat, Peshawar.
3. **Director,** General Prosecution, Khyber Pakhtunkhwa Peshawar.

.....*(Respondent)*

Present:

Mr.Yasir Saleem, Advocate.....For appellant.

Mr. Fazal Shah Mohmand,
Additional Advocate General.....For respondents.

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE NOTIFICATION DATED 31.01.222 WHEREBY THE APPELLANT HAS BEEN TRANSFERRED FROM THE POST OF DISTRICT PUBLIC PROSECUTOR BPS-19 BAJAUR TO SWABI AS SENIOR PUBLIC PROSECUTOR BS-19 AGAINST WHICH HIS DEPARTMENTAL APPEAL/REVIEW DATED 03.02.2022 HAS NOT BEEN RESPONDED TILL DATE.

Tariq Asad, Advocate Supreme Court and Mehr Khan Malik, Advocate-on-Record for Respondents (in C.As. Nos. 1412 and f413 of 2002).

Nemo for Respondents (in CPs. Nos. 1420, 1464, 1491, 1492, 1625, 1645 and 1659 of 2002).

Wasim Sajjad, Senior Advocate Supreme Court and Mehr Khan Malik, Advocate-on-Record for Petitioners (in C.Ps. Nos.25 to 44 of 2002).

Barrister Ch. Muhammad Jamil, Advocate Supreme Court and M.S. Khattak, Advocate-on-Record for Respondent-Company (in C.Ps. Nos.24 to 44 of 2002).

Barrister Ch. Muhammad Jamil, Advocate Supreme Court and M.S. Khattak, Advocate-on-Record for Petitioners-Company (in C.Ps. Nos. 1779 to 1810 and 1812 of 2002).

Rai Muhammad Nawaz Kharral, Advocate Supreme Court and Mehr Khan Malik, Advocate-on-Record for Respondents (in C.P. Nos. 1779 to 1810 of 2002).

Nemo for Respondents (in C. P. No. 1812 of 2002).

Barrister Ch. Muhammad Jamil, Advocate Supreme Court and M. S. Khattak, Advocate-on-Record (in C.Ps. Nos.1850, 1861 to 1914, 1992 to 2040, 2051 to 2100, 2117 to 2161, 2169 to 2317 and 2327 of 2002).

Wasim Sajjad, Senior Advocate Supreme Court and Mehr Khan Malik, Advocate-on-Record for Respondents (in CPs. Nos.1850, 1861, 1862, 1867, 1870, 1872, 1875 to 1877, 1879, 1882, 1892 to 1898, 1900, 1901, 1905, 1906, 1914, 1994 to 1996, 1998 to 2006, 2009, 2023, 2024, 2026, 2028, 2034, 2036, 2037, 2052 to 2057, 2059, 206, 3, 2075, 2076, 2078, 2079, 2081 to 2092, 2094, 2098, 2100, 2125, 2126, 2128, 2131, 2134 to 2137, 2139 to 2161, 2169, 2170, 2173, 2176 td 2179, 2182, 2183, 2187, 2189, 2192, 2199, 2200, 2209 to 2211, 2241, 2242, 2248, 2251, 2252, 2255 to 2257, 2262, 2265 to 2267, 2271, 2281, 2282, 2285, 2286, 2309, 2311 and 2312 of 2002).

Syed Iftikhar Hussain Gillani, Senior Advocate Supreme Court and Ejaz Muhammad Khan, Advocate-on-Record for Respondents (in CPs. Nos. 1863 to 1866, 1868, 1869, 1871, 1873, 1874, 1879, 1880, 1882 to 1885, 1888, 1889, 1890, 1891, 1899, 1903, 1904, 1907 to 1911, 1913, 1992, 2011 to 2022, 2025, 2031, 2073, 2080, 2097, 2118, 2119, 2123, 2124, 2130, 2171, 2172, 2174, 2175, 2180, 2181, 2184, 2190, 2194, 2195, 2196, 2198, 2202, 2203, 2204, 2207, 2212 to 2217, 2218 to 2223, 2226, 2227, 2228, 2229, 2230, 2231, 2233, 2235, 2238, 2239, 2240, 2244, 2247, 2249, 2253, 2254, 2258, 2261, 2263, 2264, 2276, 2277, 2279, 2280, 2288 to 2296, 2298, 2300 to 2304, 2306, 2307 and 2308 of 2002).

Rai Muhammad Nawaz Kharral, Advocate Supreme Court and Ejaz Muhammad Khan, Advocate-on-Record for Respondents (in CPs. Nos. 1902, 2185 to 2187, 2191, 2193, 2197, 2201, 2205, 2206, 2208, 2225, 2237, 2243, 2246, 2259, 2268 to 2270, 2272, 2275, 2283, 2284, 2297, 2299, 2305, 2313, 2315 and 2317 of 2002).

Mehr Khan Malik, Advocate-on-Record for Respondents (in CPs. Nos.2008, 2030, 2038, 2040, 2051, 2065, 2070, 2074, 2095, 2096, 2099, 2120, 2122, 2133 of 2002).

Nemo for Respondents (in CPs. Nos. 1878, 1881, 1886, 1887, 1912, 1993, 1997, 2007, 2010, 2027, 2029, 2032, 2033, 2035, 2039, 2058, 2061, 2062, 2064, 2066 to 2069, 2071, 2072, 2093, 2117, 2121, 2127, 2129, 2132, 2138, 2188, 2224, 2232, 2234, 2245, 2250, 2260, 2273, 2274, 2278, 2287, 2310, 2314, 2323 of 2002).

Tariq Asad, Advocate Supreme Court and Mehr Khan Malik, Advocate-on-Record for Petitioners (in C.Ps. Nos.762 to 765, 1219 to 1225, 1242 to 1244, 1294 to 1298 and 1364 to 1366 of 2002).

Ch. Akhtar Ali, Advocate-on-Record for Petitioners (in C.Ps. Nos.2792 to 2798 and 2801 of 2001).

JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: According to the facts gathered from the memorandum and grounds of appeal are that the appellant was initially appointed as Additional Public Prosecutor (BPS-17) through Public Service Commission and was posted at Nowshera; that keeping in view his meritorious service, the appellant had been given promotion and currently he had holding the post of Senior Public Prosecutor (BS19); that the appellant out of his total service career, posted at hard areas for more than fifteen years i.e. District Buner, Shangal and Dir Upper; that lastly the appellant was posted as District Public Prosecutor (BPS-19) at Bajaur vide notification dated 06.01.2021 and he took over the charge of his new place of posting as District Public Prosecutor on 01.02.2021; that having hardly served for one year, the appellant had been transferred from Bajaur ot Swabi as Senior Public Prosecutor (BPS-19) vide impugned notification dated 31.01.2022; that feeling aggrieved from the impugned notification dated 31.01.2022, the appellant preferred departmental representation which was not responded within the statutory period of ninety days, and then he filed the instant service appeal.

2. On receipt of the appeal and admission to full hearing, the respondents were summoned, who, on putting appearance, contested the appeal by filing written reply raising therein numerous legal and factual objections. The defence setup was a total denial of the claim of the appellant.

petition could be filed---Error, therefore, had crept in the judgment under review on account of applying ratio decidendi of the case as well as for want of inquiry coupled with the fact of non?application of the rule laid down in another case on the similar matter--?Supreme Court, in circumstances, recalled the judgment under review to the extent of non-suiting the petitioners and case was remanded.

Wasim Sajjad and others v. Federation of Pakistan PLD 2001 SC 233 arid Executive Engineer, Central Civil Division, P.W.D., Quetta v. Abdul Aziz and others PLD 1996 SC 610 ref.

(w) Constitution of Pakistan (1973)---

----Art. 188---Supreme Court Rules, 1980, O.XXVI, R.1---Review of Supreme Court Judgment---Error apparent on the face of record regarding interpretation of expressions i.e. 'reinstatement' and 'absorption' as given in the judgment under review needed to be rectified---Supreme Court allowed the review petition to the extent that the expression 'reinstatement' and 'absorption' were distinct and different from each other therefore conclusion in the judgment under review that those were synonymous terms was expunged from, the judgment under review holding that the petitioners shall be absorbed into service as had been done in compliance with other Supreme Court judgments on identical matters in view of Art.25(1) of the Constitution.

Mohtarma Benazir Bhutto v. The State PLD 1999 SC 937 fol.

Managing Director, Sui Northern-Gas Co. Ltd. v. Saleem Mustafa Sheikh and others PLD 2001 SC 176; Engr. Narain Das and others v. Federation of Pakistan and others 2002 SCMR 82 and Abdul Samad v. Federation of Pakistan and others 2002 SCMR 71 ref.

Barrister Ch. Muhammad Jamil, Advocate Supreme Court and M.S. Khattak, Advocate-on-Record for Appellant-Company (in C.As. Nos.533 to 539 and 1396 to 1663 of 2002).

Hafiz S.A. Rehman, D.A.-G. for Appellant No.2. (in C.As. Nos. 1396 to 1663 of 2002).

Mr. Wasim Sajjad, Senior Advocate Supreme Court and Mehr Khan Malik, Advocate-on-Record for Respondents (in C.As. Nos.533 to 539, 1442 to 1446, 1449 to 1452, 1454 to 1459, 1461 to 1463, 1465, 1469 to 1471, 1474 to 1484, 1493 to 1496, 1591 to 1593, 1595, 1596, 1605, 1609, 1613, 1617, 1620, 1623, 1624, 1627 to 1636, 1646 to 1648, 1652 to 1656, 1658, 1660, 1662 and 1663 of 2002).

Respondent No.2: Ex parte (in C.As. Nos.533 to 539 of 2002).

Muhammad Akram Sheikh, Senior Advocate Supreme Court and Mehr Khan Malik, Advocate-on-Record for Respondents (in C.As. Nos. 1466 to 1468, 1472; 1473, 1485 to 1490, 1597, 1603, 1604, 1616, 1618, 1619, 1621, 1622, 1 626, 1637 to 1639, 1641 to 1644, 1649, 1657, 1661 of 2002).

Syed Iftikhar Hussain Gillani, Senior Advocate Supreme Court and Mehr Khan Malik, Advocate-on-Record for Respondents (in C.As. Nos. 1396 to 1417, 1419, 1421, 1422 to 1426, 1498 to 1500, 1502 to 1504, 1507 to 1513, 1544 to 1571 of 2002).

Abid Hassan Minto, Senior Advocate Supreme Court and Mehr Khan Malik, Advocate-on-Record for Respondents (in C. As. Nos. 1418, 1427 to 1439, 1497, 1516 to 1519, 1521 to 1524, 1526 to 1531, 1533, 1534, 1536, 1537, 1539 to 1543, 1584, 1572 to 1574, 1576 to 1583 and 1585 to 1588 of 2002).

Sadiq Muhammad Warraich, Senior Advocate Supreme Court and Mehr Khan Malik, Advocate-on-Record for Respondents (in C.As. Nos. 1140, 1441, 1447, 1448, 1453, 1501,1505, 1506, 1514, 1515, 1520, 1525, 1532, 1535, 1538, 1575, 1589, 1590, 1594, 1598 to 1602, 1606 to 1608, 1610 to 1612, 1614, 1615, 1640, 1650 and 1651 of 2002).

3. We have heard learned counsel for the appellant, learned Additional Advocate General for the respondents.

4. Learned counsel for the appellant argued that the appellant has not been treated in accordance with law and rules. The appellant had hardly served for one year at Bajaur and had not yet completed his normal tenure of posting thus the transfer order is illegal and unlawful. He further stated that he was purposely posted at a station where he is made junior to a station where he is made junior to a BPS-18 Officer. He requested that the appeal might be accepted.

5. On the other hand learned Additional Advocate General for the respondents argued that the appellant had completed the normal tenure at Bajaur, therefore, the ground taken in the memo and grounds of appeal that he was pre-maturely transferred no more remain. He requested that the appeal might be dismissed.

6. In the first instance, the appellant had filed writ petition No. 501-P/2022 which was decided on 11.02.2022. The judgment is reproduced below:

> *"2. In essence, petition, who is serving as District Public Prosecutor (BPS-19) issued by the Secretary to Government of Khyber Pakhtunkhwa, Home & Tribal Affairs Department, whereby, his services were transferred from District Public Prosecutor, Bajaur to Senior Public Prosecutor, Swabi. In this regard his review petition filed before the competent authority was not considered. It is further averred in the petition that*

WAPDA v. Muhammad Khalid 1991. SCMR 1765; Allah Warayo Chana and 29 others v. Aijaz Ahmad Khan and 6 others 1999 SCMR 880; Baber Gul and another v. .Sohail Ahmed Sheikh and' others 2002 SCMR 581; Muhammad Yaqub v. Pakistan Petroleum Ltd. and another 2000 SCMR. 830; Messrs Pakistan State Oil Co. Ltd. v. Muhammad Tahir Khan and others PLD 2001 SC 980 and Teekam Das M. Haseeja, Executive Engineer, WAPDA v. Chairman, WAPDA and another 2002 SCMR 142 ref.

Government of Pakistan through Establishment Division, Islamabad and 7 others v. Hameed Akhtar Niazi 2003 PLC (C.S.) 212 **distinguished.**

(s) Constitution of Pakistan (1973)---

----Art. 188---Supreme Court Rules, 1980, O.XXVI, R.1---Reveiw of Supreme Court judgment---Scope---Reversal of conclusion earlier reached by the Court, after full consideration of the question was not possible in exercise of the review jurisdiction under Art.188 of the Constitution---If nothing had been overlooked by the Supreme Court nor the Court had failed to consider any important aspect of the matter, review petition would not sustain.?

Abdul Ghaffar Abdul Rehman and others v. Asghar Ali and others PLD 1998 SC 363; Federation of Pakistan through Secretary, Establishment Division, Government of Pakistan, Islamabad v. Muhammad Tariq Pirzada 1999 SCMR 2189 and Wasim Sajjad v. Federation of Pakistan through Secretary, Cabinet Division and others PLD 2001 SC 233 ref.

(t) Constitution of Pakistan (1973)---

----Art. 188---Supreme Court Rules, 1980, O.XXVI, R.1---Review of Supreme Court judgment---Non-consideration of documents had made out a case for review of the judgment---Review petition thus would be competent if something which was obvious in the judgment had been overlooked and had the same been 'considered by the Court, the final result of the case would have been otherwise.?

I.A. Sherwani and others v. Government of Pakistan through Secretary, Finance Division, Islamabad and others 1991 SCMR 1041 and Suba through Legal Heirs v. Fatima Bibi through Legal Heirs 1996 SCMR 158 ref.

(u) Constitution of Pakistan (1973)---

----Arts. 188 & 25(1)---Supreme Court Rules, 1980, O.XXVI, R.1--?Review of Supreme Court Judgment---Ground for the review was based upon the principles of equal protection of law under Art.25(1) of the Constitution, to the effect that the arguments which were advanced in some other cases without success could not form the basis in the judgment under review for imposing condition upon the petitioners for absorption in service---Validity---All persons equally placed to be treated alike both in privileges conferred and liabilities imposed---An error in the judgment under review being apparent on the record, case was covered under Art. 188 of the Constitution--- -Supreme Court directed the employer to absorb the employees (petitioners) without any condition.?

Sui Southern Gas Company Ltd. v. Engr. Naraindas and others PLD 2001 SC 555; Managing Director, Sui Northern Gas Co. Ltd. v. Saleem Mustafa Sheikh and others PLD 2001 SC 176; Engr. Narain Das and others v. Federation of Pakistan and others 2002 SCMR 82 and Abdul Samad v. Federation of Pakistan and others 2002 SCMR 71 ref.

(v) Constitution of Pakistan (1973)---

----Art. 188---Supreme Court Rules, 1980, O.XXVI, R.1---Review of Supreme Court Judgment---Ratio decidendi of a case may not have been applied in the judgment under review and if there was a necessity to conduct an inquiry in the matter, the case could have been remanded for further inquiry in the interest of justice---Effect---When it was established that the Court had failed to consider any important aspect of the matter, review

since the Khyber Pakhtunkhwa Service Tribunal is not functional; as such, he has filed the instant petition.

3. Learned counsel for the petitioner stated that petitioner has never been allowed to complete his normal tenure and is prematurely transferred vide the impugned order dated 31.01.2022. He further stated that he was purposely posted at a station where he is made junior to a station where he is made junior to a BPS-18 Officer. When questioned about the availability of alternate remedy, learned counsel for the petitioner stated that on the retirement of the incumbent Chairman, the Khyber Pakhtunkhwa Service Tribunal, Peshawar is not functional. In order to confirm the same, we called upon Mohammad Zeb Khan, worthy Member Inspection Team of this Court, who appeared and stated that summary pertaining to the appointment of Chairman, Khyber Pakhtunkhwa Service Tribunal is presently pending before Hon'ble the Chief Justice and that shortly the nomination will be made.

4. In view of the above and particularly when the Khyebr Pakhtunkhwa Service Tribunal is not functional; besides, on tentative assessment, we find that prima facie case exists in favour of the petition, as such, it is directed that status-quo be maintained till the first hearing before the Khyber Pakhtunkhwa Service Tribunal. However, petitioner is directed to submit Service Appeal before the Khyber Pakhtunkhwa Service Tribunal in this regard, if not already filed.

5. This writ petition is disposed of in the above terms."

7. The appellant then filed appeal before this Tribunal

8. It was at the very outset pointed out by the learned Law Officer that the appellant had completed the normal tenure at Bajaur, therefore, the ground taken in the memo and grounds of appeal that he was pre-maturely transferred no more remained. This contention of the learned Law Officer would not alone be sufficient to dismiss this appeal because the appellant had taken another plea that he was being victimized and humiliated on irrelevant considerations and that he was posted under a Junior Officer. The Tribunal gave sufficient time to the respondents to come up with resolution

----S. 1(4)---Employees falling within the definition of "workman" as per S.1(4), West Pakistan Industrial and Commercial Employment (Standing Orders) Ordinance, 1968 would enjoy the protection of the said Ordinance and their services would not be governed by the principle of ,master and servant.

Mst. Zeba Mumtaz v. First Women Bank Ltd. and others PLD 1999 SC 1106 and WAPDA v. Khanimullah and others 2000 SCMR 879

(o) Service Tribunals Act (LXX of 1973)---

----S. 2-A & 4---West Pakistan Industrial and Commercial Employment (Standing Orders) Ordinance (VI of 1968), S.1(4)---Industrial Relations Ordinance (XXIII of 1969), S.1(3)---Employees of a Government Controlled Company commenced their services with the said Company in 1994-1995 and continued the same for a considerably long period---Such employees, at that time enjoyed the protection of West Pakistan Industrial and Commercial Employment (Standing Orders) Ordinance, 1968, therefore, Labour Courts established under Industrial Relations Ordinance, 1969 had jurisdiction for the redressal of their grievance but on 10th June, 1997 on insertion of S.2-A in the Service Tribunals Act, 1973 the forum was changed in respect of an organization, corporation etc. owned/controlled by the Government and the remedy for redressal of their grievance was provided to them before the Service Tribunal without touching to substantive laws under which their services were being governed---Service Tribunal, therefore, while dealing with the cases of workmen, shall decide their cases according to Labour Laws by applying procedure envisaged under S.4, Service Tribunals Act, 1973.

(p) West Pakistan Industrial and Commercial Employment (Standing Orders) Ordinance (VI of 1968)---

----S.O. 1(b)---Permanent workman---Determination---Record showed that neither there was any specific project against which the employees were recruited/appointed, nor the project against which their' appointments had taken place had been completed--- Inference thus could be drawn that the employees were put on the jobs which were likely to continue for a period of more than nine months, as such in view of provisions of S.O.1(b) of the West Pakistan Industrial and Commercial Employment (Standing Orders) Ordinance, 1968, they had attained the status of a permanent workman.

Administration and Coordination, Faisalabad Development Authority and another v. Muhammad Amin and others 1995 SCMR 21 and Izhar Ahmed Khan and another v. Punjab Labour Appellate Tribunal, Lahore 1999 SCMR 2557 ref.

(q) Service Tribunals Act (LXX of 1973)---

----Ss. 2-A & 4---West Pakistan Industrial and Commercial Employment (Standing Orders) Ordinance (VI of 1968), S.4(4)---Employees of Government-controlled company who enjoyed the protection of West Pakistan Industrial and Commercial Employment (Standing Orders) Ordinance, 1968 for determination of their rights, after the 10th June, 1997 by insertion of S.2-A in the Service Tribunals Act, 1973, remedy would be available to them before Service Tribunal vis-a-vis termination simpliciter of their service as well as in consequence of disciplinary action who, on following the procedure laid down under S.4, Service Tribunals Act, 1973, shall decide their cases.

(r) Service Tribunals Act (LXX of 1973)---?

----S. 4---Constitution of Pakistan (1973), Art.212---Condonation of delay by the Service Tribunal in filing the proceedings before it--?Validity---Consistent practice of the Supreme Court was that findings recorded by the Service Tribunal condoning the delay in filing proceedings before it were not interfered, but if it was shown that discretion had been exercised discriminately qua the cases in which identical question of condonation of delay in filing appeal was involved, the interference became essential to meet the ends of justice and case was remanded to the Tribunal.

so that grievance of the appellant, that he should not be posted under his juniors, could be redressed privately but they did not. Therefore, we dispose of this appeal with the observation that the appellant shall be allowed to complete his normal tenure at the place from where he was transferred vide impugned order dated 31.01.2022 and in case he has completed his normal tenure he may be posted anywhere at the discretion of the authority but having regard to his seniority so that discipline of the department may not disturb. Costs shall follow the event. Consign.

9. ***Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 10th day of May, 2023.***

KALIM ARSHAD KHAN
Chairman

FAREEHA PAUL
Member (Executive)

Adnan Shah, PA

----S.4(1)---Sui Southern Gas Transmission Company Limited Executive Service Rules, 1982, Rr.6.1, 6.2 & 6.3---appeal by employees of the company ---Limitation---Condonation of delay---If an. employee of the company had filed a departmental appeal or representation, departmental appeal or representation being not competent, if some delay had been caused due to waiting the result of representation the same was liable to be condoned.?

Government of Sindh v. Masood Hussain 2002 PLC (C.S.) 752 ref.

(k) Limitation---

---- Administration of justice---Decision of the cases on merits always to be encouraged instead of non-suiting the litigants for technical reasons including on limitation.?

Muhammad Yaqub v. Pakistan Petroleum Limited and another 2000 SCMR 830; Messrs Pakistan State Oil Company Limited v. Muhammad Tahir Khan and others PLD 2001 SC 980; Teekam Das M. Haseja, Executive Engineer, WAPDA v. Chairman, WAPDA 2002 SCMR 142 and WAPDA v. Muhammad Khalid 1991 SCMR 1765 ref.

(l) Service Tribunals Act (LXX of 1973)---

----Ss. 4 & 5---Constitution of Pakistan (1973), Art.212---Appeal to Service Tribunal --- Condonation of delay by the Tribunal---Validity---Interference by Supreme Court in the order of the Service Tribunal, condoning the delay in filing appeal before it, would not advance the cause of justice.?

Muhammad Hussain and others v. Muhammad and others 2000 SCMR 367 and Ali, Muhammad through Legal Heirs and others v. Chief Settlement Commissioner and others 2001 SCMR 1822 fol.

Syed Imran Raza Zaidi, Superintending Engineer, Public Health Engineering Circle-1, Gujranwala v. Government of the Punjab through Services, General Administration and Information Department, Punjab Secretariat, Lahore and 2 others 1996 SCMR 645 ref.

(m) Service Tribunals Act (LXX of 1973)---

----Ss.5 & 4---Sui Southern Gas Transmission Company Limited Executive Service Rules, 1982, Rr.6.1, 6.2 & 6.3---Constitution of Pakistan (1973), Art. 25---Powers of Service Tribunal ---Scope---?Appeal---Service Tribunal had jurisdiction to direct the employer? Company for absorption of the employees of the Company who were litigating with it--- Equal protection of law ---Persons similarly situated or similarly placed were to be treated alike and could not be discriminated against under Art.25 of the Constitution and would be entitled to the same relief which had been given to the other employees whose services were terminated or under the same circumstances as they belonged to the same group--- Observations of the Service Tribunal made in the judgment with regard to the similarly placed person being discriminatory were expunged by the Supreme Court---Employees thus could not be directed to qualify IBA test for permanent absorption in service of the company.

Managing Director, Sui Northern Gas Co. Ltd. v. Saleem Mustafa Sheikh and others PLD 2001 SC 176; Engineer Narain Das and others v. Federation of Pakistan and others 2002 SCMR 82; Abdul Samad v. Federation of Pakistan and others 2002 SCMR 71; Dr. Anwar Ali Sahto and others v. Federation of Pakistan and others PLD 2002 SC 101; I.A. Sharwani and others v. Government of Pakistan through Secretary, Finance Division, Islamabad and others. 1991 SCMR 1041; Government of Balochistan through Additional Chief Secretary v. Azizullah Memon and 16 others PLD 1993 SC 341; Messrs Elahi Cotton Mills and others v. Federation of Pakistan through Secretary M/O Finance, Islamabad and 6 others PLD 1997 SC 582; Mehram Ali and others v. Federation of Pakistan and others PLD 1998 SC 1445 and Pakistan Muslim League (Q) and others v. Chief Executive of Islamic Republic of Pakistan and others PLD 2002 SC 994 ref.

(n) West Pakistan Industrial and Commercial Employment (Standing Orders) Ordinance (VI of 1968)---

THE
PESHAWAR HIGH COURT
ABBOTTABAD BENCH.

PH: 0992-921058
FAX: 0992-921055

No. _____ *Dated Abbottabad* 18/04 */2022*

From

The Additional Registrar,
Peshawar High Court,
Abbottabad Bench.

To

The Worthy Chairman Service Tribunal,
Khyber Pakhtunkhwa, Peshawar.

Khyber Pakhtunkhwa Service Tribunal 613 16/5/22

Subject: **WRIT PETITION NO. 286-A of 2022.**

Akhtar Zeb

.....**Petitioner**

VERSUS

Chief Seceretary Khyber Pakhtunkhwa Peshawa etc ...**Respondents**

Respected Sir,

I am directed to forward herewith writ petition (in Original) bearing **No. 286-A/2022 titled "Akhtar Zeb Vs Chief Secretary Khyber Pakhtunkhwa & others"** alongwith copy of order dated 12.04.2022, passed by the Honourable Court D.B in the above noted case for **further necessary action please.**

Additional Registrar

PESHAWAR HIGH COURT, ABBOTTABAD BENCH.

FORM OF ORDER SHEET

Court of.....

Case No.....**of**.....

Date of Order of Proceedings	Order or other Proceedings with Signature of Judge (s)
1	2
12.04.2022.	WP No. 286-A/2022. Present: Mr. Hamayun Khan, Advocate for petitioner. *** **WIQAR AHMAD, J.** Through this petition filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, petitioner namely ***Akhtar Zaib*** has invoked the jurisdiction of this Court with the following prayer:- *It is therefore, very humbly prayed that on acceptance of the instant writ petition, order/Notification dated 24.02.2022 and 18.01.2022 passed by respondent No. 2 may kindly be declared null and void and transfer order dated: 13.01.2022 of the petitioner against the vacant post of IPE BPS-17 at GCMJSS Battagram may kindly be restored.* 3. Admittedly, the position and status of petitioner is of a civil servant and the grievance of the petitioner directly relates to the terms & conditions of his service, which is not amenable to the writ jurisdiction of

SCANNED

this Court under Article 199 of the Constitution, in view of the bar contained in Article 212 of the Constitution of Islamic Republic of Pakistan, 1973. Reliance is placed on case titled '***Pir Muhammad Vs. Government of Baluchistan through Chief Secretary and others***' (**2007 SCMR 54).** Furthermore, Service Tribunal also has now been functional, thus, where, a civil servant is aggrieved of violation of any of the terms & conditions of his/her service, then he/she can approach the Service Tribunal for the redressal of his/her grievance but on no count he/she could agitate such issue before this Court. However, instead of passing any order in the case, in the interest of justice, we treat this petition as service appeal and send the same to the service Tribunal for its disposal in accordance with law. Office is directed to do the needful.

JUDGE

JUDGE

13/4/22

IN THE PESHAWAR HIGH COURT, ABBOTTABAD BENCH

OPENING SHEET FOR WRIT BRANCH

Case No. _____
Date of Filing: _____
District: _____

Case Type: WRIT PETITION

Category Code: | | | | | | |

Nature of Original Proceedings:
(Categories & Sub Categories are given at the back of the opening sheet)

Review/ Contempt of Court in respect of | |

Writ of; | Heabus Corpus | | Prohibition | | Mandamus | | Quo Warranto | | Certiorari | |

If Certiorari;

Forum	Date	Interlocutory /Final Order

Caste Pertains to

☐ **SB**
☐ **DB**

Petitioner Name	Akhtar Zaib son of Abdul Wahid.
Mobile No.	
Address	(IPE BPS-17 GCMHSS Battagram City), resident of Jasool, Battagram.
CNIC No.	
Email Address	

Counsel for Petitioner(s)	Hamayoun Khan
Mobile No.	0312-0861681
Address	Office at District Courts, Abbottabad
CNIC No.	
Email Address	

Respondent(s)	Chief Secretary Khyber Pakhtunkhwa, Peshawar & others
Address	Correctly given in the heading of writ petition.

Original Order/ Action/ Inaction Complained of;
Writ Petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973.

Prayer;

On acceptance of the instant writ petition, order/ Notification dated 24.02.2022 and 18.01.2022 passed by respondent No. 2 may kindly be declared null and void and transfer order dated 13-01-2022 of the petitioner against the vacant post of IPE BPS-17 at GCMHSS Battagram may kindly be restored. Any other relief which this Honourable Court deem fit and proper in the circumstances of the case may also be granted to the petitioner.

Law/Rules/Governing the original proceedings/action/Inaction

1. Constitution of Islamic Republic of Pakistan, 1973
2.
3. Other relevant case law will be cited at the bar.

FILED TODAY
ADDITIONAL REGISTRAR
PESHAWAR HIGH COURT
ABBOTTABAD BENCH
14/2/22

Signature: _____

Al-Shahzad Composing Point: 01-Hayat Sherpao Lawyers Plaza, Kutchery Compound, Abbottabad
Phone No. 0992-341017, Cell Nos. 0344-9472808, 0313-3730639

BEFORE HONOURABLE PESHAWAR HIGH COURT, BENCH ABBOTTABAD

W.P No. 286 -A/2022

Appeal no. 796/2022

Akhtar Zaib son of Abdul Wahid (IPE BPS-17 GCMHSS Battagram City), resident of Jasool, Battagram.

...PETITIONER

VERSUS

Chief Secretary Khyber Pakhtunkhwa, Peshawar & others.

....RESPONDENTS

02 MAR 2022

WRIT PETITION

INDEX

S. #	*Description*	*Page #*	*Annexures*
1.	Writ petition alongwith affidavit & certificate	1 to 11	
2.	List of books	12	
3.	Addresses of the parties	13	
4.	Copy of application	14	"A"
5.	Copy of transfer order dated 13/01/2022 of the petitioner	15	"B"
6.	Copy of relieving the charge dated 14/01/2022 and charge assuming report dated 15/01/2022	16-17	"C"
7.	Copy of impugned notification dated 18/01/2022	18	"D"
8.	Copy of departmental appeal	19	"E"
9.	Copy of letter dated 02/02/2022	20	"F"
10.	Copy of impugned notification dated 24.02.2022	21	"G"
11.	Copy of notice and postal receipts	22-23	"H"
12.	Court fee stamp paper worth Rs. 500/-	24	
13.	Wakalatnama	25	

...PETITIONER

Through

Dated: 26/2/2022

(HAMAYUN KHAN)
Advocate High Court, Abbottabad

FILED TODAY
ADDITIONAL REGISTRAR
PESHAWAR HIGHT COURT
ABBOTTABAD BENCH
26/2/22

BEFORE HONOURABLE PESHAWAR HIGH COURT, BENCH ABBOTTABAD

W.P No. 286 -A/2022

Appeal no. 796/2022

Akhtar Zaib son of Abdul Wahid (IPE BPS-17 GCMHSS Battagram City), resident of Jasool, Battagram.

...PETITIONER

VERSUS

1. Chief Secretary Khyber Pakhtunkhwa, Peshawar.
2. Secretary Elementary & Secondary Education Khyber Pakhtunkhwa, Peshawar.
3. Director Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.

....RESPONDENTS

WRIT PETITION UNDER SECTION 199 OF THE CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN 1973, FOR DECLARATION TO THE EFFECT THAT ORDER/ NOTIFICATION DATED 24.02.2022 PASSED/ ISSUED BY RESPONDENT NO. 2 ON THE DEPARTMENTAL APPEAL OF THE PETITIONER, WHEREBY RESPONDENT NO. 2 HAS REGRETTED/ REJECTED THE DEPARTMENTAL APPEAL DATED 19.01.2022 AGAINST THE NOTIFICATION DATED 18.01.2022 PASSED BY

No. 1253
26-02-22

FILED TODAY
ADDITIONAL REGISTRAR
PESHAWAR HIGH COURT
ABBOTTABAD BENCH
26/2/22

RESPONDENT NO. 2, WHEREBY RESPONDENT NO. 2 CANCELLED TRANSFER ORDER DATED 13.01.2022 WHICH IS ILLEGAL, AGAINST THE LAW, FACTS, NATURAL JUSTICE, VOID-AB-INITIO, HENCE INEFFECTIVE UPON THE RIGHTS OF THE PETITIONER.

==========

PRAYER: ON ACCEPTANCE OF THE INSTANT WRIT PETITION, ORDER/ NOTIFICATION DATED 24.02.2022 AND 18.01.2022 PASSED BY RESPONDENT NO. 2 MAY KINDLY BE DECLARED NULL AND VOID AND TRANSFER ORDER DATED 13-01-2022 OF THE PETITIONER AGAINST THE VACANT POST OF IPE BPS-17 AT GCMHSS BATTAGRAM MAY KINDLY BE RESTORED. ANY OTHER RELIEF WHICH THIS HONOURABLE COURT DEEM FIT AND PROPER IN THE CIRCUMSTANCES OF THE CASE MAY ALSO BE GRANTED TO THE PETITIONER.

==========

Respectfully Sheweth:-

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ADDITIONAL REGISTRAR
PESHAWAR HIGHT COURT
ABBOTTABAD BENCH
26/1/22

That the facts forming the background of the instant writ petition are arrayed as under; -

1. That initially the petitioner was appointed as PET in the respondents department in the year 1989.

2. That thereafter, the petitioner join his duty and continuously performed his duties/ responsibilities with full devotion, dedication and liabilities and no complaint has been ever remained against the petitioner.

3. That since 1989 petitioner performed his duties in the remote backward area Schools of District Battagram till 13/01/2022.

4. That due to good performance of the petitioner, the respondents department has promoted the services of the petitioner time to time and lastly in the year 2018 petitioner was promoted to BPS-17 as DPE/IPE and was posted at GHS Thakot Battagram.

5. That on 15/12/2021 petitioner filed application for transfer against the vacant post at GCMHSS Battagram City before the respondent No. 2 on medical grounds. Copy of application is annexed as Annexure "A".

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PESHAWAR HIGHT COURT
ABBOTTABAD BENCH

6. That on the application of petitioner, the respondent No. 2 issued transfer order of the petitioner vide notification dated 13/01/2022 whereby petitioner was transferred from GHSS Thakot to GCMHSS Battagram City. Copy of transfer order is attached as Annexure "B".

7. That after relieving the charge from GHSS Thakot on 14/01/2022, the petitioner assumed the charge at GCMHSS Battagram City on 15/01/2022. Copy is annexed as Annexure "C".

8. That on 18/01/2022 respondent No. 2 issued impugned notification whereby transfer order dated 13/01/2022 was cancelled. Copy of impugned notification is annexed as Annexure "D".

9. That on 19/01/2022 petitioner preferred departmental appeal before the respondent No. 1 and thereafter respondent No. 1 sent the said appeal to respondent No. 2 for disposal. Copy of departmental appeal is annexed as Annexure "E".

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PESHAWAR HIGHT COURT
ABBOTTABAD BENCH
26/7/22

10. That on 02/02/2022 respondent No. 2 issued letter to the petitioner for personal hearing on departmental appeal and on the date fixed for personal hearing, petitioner appeared before the respondent No. 2. Copy of letter is annexed as Annexure "F".

11. That on 24/02/2022 respondent No. 2 passed/ issued notification on the departmental appeal of the petitioner, whereby respondent No. 2 regretted/ rejected appeal of the petitioner. Copy of impugned notification dated 24.02.2022 is annexed as Annexure "G".

Feeling aggrieved from the above said situation, the present petitioner seeks indulgence of this Honourable Court, inter-alia on the following amongst other grounds;-

GROUNDS:-

a. That the act of the respondents is against the law, facts and policy hence, the respondents are bound to restore order dated 13/01/2022 of the petitioner under the law.

ADDITIONAL REGISTRAR
PESHAWAR HIGH COURT
ABBOTTABAD BENCH

b. That the impugned order dated 18/01/2022 of petitioner is patently illegal, based on malafide and without authority, hence are liable to be set-aside.

c. That the impugned transfer cancellation order dated 18.01.2022 of petitioner is premature, against the tenure, policy and same is liable to be set-aside.

d. That petitioner is being politically victimized by the Local MPA of District Battagram.

e. That petitioner is near to retirement age as and per law and rules he has prerogative to serve his near station during last year of service.

f. That both the notifications dated 18/01/2022 & 24/02/2022 on political grounds, whereby petitioner deprived from his legal rights.

g. That respondents department ignored that order dated 13/01/2022 issued against the

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ADDITIONAL REGISTRAR
PESHAWAR HIGH COURT
ABBOTTABAD BENCH

vacant post and no one was effected from the said order but despite this facts respondents issued both the notification which is liable to be set aside.

h. That respondents department ignored all basic principle of natural justice and fair play.

i. That respondents ignored the fact that petitioner performed his duties since 1989 till 13/01/2022 outside the local area for more than 32 years.

j. That petitioner performed his duties for more than 32 years in remote backward area District Battagram and lastly applied for transfer on medical ground, because petitioner now a days old age employee.

k. That there is no other alternate adequate remedy available to the petitioner except the titled petition.

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ADDITIONAL REGISTRAR
PESHAWAR HIGH COURT
ABBOTTABAD BENCH
26/7/22

l. That notice/ intimation of filing the instant writ petition against the respondents have duly been served upon the respondents through registered post. Copies of notice & receipts are attached as Annexure "H".

m. That court fee stamp worth Rs. 500/- is attached with the petition.

n. That any other ground will be raised at the time of arguments with the permission of this Honourable.

It is, therefore, very humbly prayed that on acceptance of the instant writ petition, order/ Notification dated 24.02.2022 and 18.01.2022 passed by respondent No. 2 may kindly be declared null and void and transfer order dated 13-01-2022 of the petitioner against the vacant post of IPE BPS-17 at GCMHSS Battagram may kindly be restored. Any other relief which this Honourable Court deem fit and proper in the circumstances of the case may also be granted to the petitioner.

ADDITIONAL REGISTRAR
PESHAWAR HIGHT COURT
ABBOTTABAD BENCH

INTERIM RELIEF;

Meanwhile the operation of impugned notifications/ orders dated 18/01/2022 & 24/02/2022 issued by respondent No. 2 may graciously be suspended till final disposal of the titled writ petition.

...PETITIONER

Through

Dated: _____/2022

(FAZLULLAH KHAN)
&

(HAMAYUN KHAN)
Advocates High Court, Abbottabad

VERIFICATION:-

Verified on oath that the contents of foregoing writ petition are true and correct to the best of our knowledge and belief and nothing has been concealed therein from this Honourable Court.

...PETITIONER

ADDITIONAL REGISTRAR
PESHAWAR HIGHT COURT
ABBOTTABAD BENCH

-10-

BEFORE HONOURABLE PESHAWAR HIGH COURT, BENCH ABBOTTABAD

W.P No. 986 -A/2022

Akhtar Zaib son of Abdul Wahid (IPE BPS-17 GCMHSS Battagram City), resident of Jasool, Battagram.

...PETITIONER

VERSUS

Chief Secretary Khyber Pakhtunkhwa, Peshawar & others.

....RESPONDENTS

WRIT PETITION

AFFIDAVIT

I, ***Akhtar Zaib son of Abdul Wahid (IPE BPS-17 GCMSS Battagram City), resident of Jasool, Battagram***, do hereby solemnly affirm and declare that the contents of foregoing writ petition are true and correct to the best of my knowledge and belief and nothing has been concealed therein from this Honourable Court. 13202-88.0/05-8

DEPONENT

AFFIDAVIT
No: 813/624 Receipt No: 624
Certified that the above was verified on Solemn affirmation ____ before me on this 26 day of Feb 2022 by Akhtar Zaib S/o Abdul Wahid Caste ____ No LCMSS Who was identified by ____ Rs 5001/- Who is personally known is me

Oath Commissioner
(Additional Registrar)
Peshawar High Court Abbottabad Bench

262/22

FILED TODAY
ADDITIONAL REGISTRAR
PESHAWAR HIGH COURT
ABBOTTABAD BENCH

BEFORE HONOURABLE PESHAWAR HIGH COURT, BENCH ABBOTTABAD

W.P No. 286 -A/2022

Akhtar Zaib son of Abdul Wahid (IPE BPS-17 GCMHSS Battagram City), resident of Jasool, Battagram.

...PETITIONER

VERSUS

Chief Secretary Khyber Pakhtunkhwa, Peshawar & others.

....RESPONDENTS

WRIT PETITION

CERTIFICATE

Certified that no writ petition has earlier been filed by the petitioner on the subject.

It is further certified that notice of writ petition alongwith grounds of writ has been dispatched to the respondents.

...PETITIONER

Through

Dated: _____/2022

(HAMAYUN KHAN)
Advocate High Court, Abbottabad

FILED TODAY
ADDITIONAL REGISTRAR
PESHAWAR HIGHT COURT
ABBOTTABAD BENCH

-12-

BEFORE HONOURABLE PESHAWAR HIGH COURT, BENCH ABBOTTABAD

W.P No. 986 -A/2022

Akhtar Zaib son of Abdul Wahid (IPE BPS-17 GCMHSS Battagram City), resident of Jasool, Battagram.

...PETITIONER

VERSUS

Chief Secretary Khyber Pakhtunkhwa, Peshawar & others.

....RESPONDENTS

WRIT PETITION

LIST OF BOOKS

1. Constitution of Islamic Republic of Pakistan 1973.
2.
3. Other law books shall be sited at Barr.

...PETITIONER

Through

Dated: 26/2 /2022

(HAMAYUN KHAN)
Advocate High Court, Abbottabad

FILED TODAY
ADDITIONAL REGISTRAR
PESHAWAR HIGH COURT
ABBOTTABAD BENCH

BEFORE HONOURABLE PESHAWAR HIGH COURT, BENCH ABBOTTABAD

W.P No. 286 -A/2022

Akhtar Zaib son of Abdul Wahid (IPE BPS-17 GCMHSS Battagram City), resident of Jasool, Battagram.

...PETITIONER

VERSUS

Chief Secretary Khyber Pakhtunkhwa, Peshawar & others.

....RESPONDENTS

WRIT PETITION

ADDRESSES OF THE PARTIES

Respectfully Sheweth:-

Addresses of the parties are as under;-

Akhtar Zaib son of Abdul Wahid (IPE BPS-17 GCMHSS Battagram City), resident of Jasool, Battagram.

...PETITIONER

VERSUS

1. Chief Secretary Khyber Pakhtunkhwa, Peshawar.
2. Secretary Elementary & Secondary Education Khyber Pakhtunkhwa, Peshawar.
3. Director Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.

....RESPONDENTS

...PETITIONER

Through

Dated: 26/2/2022

(HAMAYUN KHAN)
Advocate High Court, Abbottabad

FILED TODAY
ADDITIONAL REGISTRAR
PESHAWAR HIGH COURT
ABBOTTABAD BENCH

-14-

ANNEX "A"

To

The Honorable Secretary

Elementary & Secondary Education

Khyber Pakhtunkhwa (Pakistan)

Subject: **REQUEST FOR TRANSFER/ADJUSTMENT ON MEDICAL GROUND**

FROM GOVT: HIGHER SECONDARY SCHOOL THAKOT

TO GOVT: CENTENNIAL MODEL HIGHER SECONDARY SCHOOL BATTAGRAM

Dear Sir,

With due respect it is stated that I **Mr. Akhtar Zeb IPE BPS-17** serving at Govt: Higher Secondary School Thakot, Battagram since **January 2018.** The school is about 60 KM from my home town.

I am cardio patient and getting medicines regularly. Moreover, I am also diabetic patient. It is difficult for me to travel about 60 Km daily.

Recently Govt: Centennial Model High school Battagram is upgraded to Govt: Centennial Model Higher Secondary School Battagram. The post of IPE is lying vacant in said school.

Therefore you are requested to transfer/adjust me against vacant post of IPE at GCMHSS Battagram.

With Regards

Akhtar Zeb IPE BPS-17

GHSS Thakot, Battagram

Dated: 15/12/2021

The application is based on facts So, submitted for further process pls.

Principal GHSS Thakot

SOSM Kindly facilitate ... 21/12

DEA

-15-

ANNEX "B"

TO BE SUBSTITUTED BEARING SAME NO & DATE.

GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY AND SECONDARY EDUCATION DEPARTMENT
Block-"A" Opposite MPA's Hostel, Civil Secretariat Peshawar
Phone No. 091-9223533

Dated Peshawar the January 13, 2022

NOTIFICATION

NO.SO(SM)E&SED/7-1/2022/ PT/G/IPE. The Competent Authority is pleased to order the transfer of Mr. Akhtar Zeb, IPE (BS-17) GHSS Thatkot District Battagram and post him as IPE (BS-17) at Govt. Centennial Model Higher Secondary School District Battagram against the vacant post, in the best public interest, with immediate effect.

SECRETARY TO GOVT. OF KHYBER PAKHTUNKHWA
E&SE DEPARTMENT

Endst: of even No. & Date

Copy forwarded to the:

1. Accountant General, Khyber Pakhtunkhwa Peshawar.
2. Director, E&SE Khyber Pakhtunkhwa, Peshawar.
3. District Education Officer (Male) Battagram.
4. District Account Officers, Battagram.
5. Director, EMIS E&SE Department.
6. PS to Minister for E&SE Department.
7. PS to Secretary E&SE Department.
8. PA to Deputy Secretary (Admn) E&SE Department.
9. Mr. Akhtar Zeb, IPE, Govt. Centennial Model Higher Secondary School District Battagram.
10. Office order file.

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

-1)
MALE

Scanned with CamScanner

ANNEX "C"

RELIEVING CERTIFICATE

Incompliance with the Notification No.SO(SM)E&SED/7-1/2022/PT/G/IPE Vide: Govt of Khyber Pakhtunkhwa E&SED, Dated Peshawar the January 13, 2022. Mr. Akhter Zeb, IPE BPS-17 transferred from GHSS Thakot Battagram to Govt. Centennial Model Higher Secondary School Battagram is hereby relieved off his duties today on January 14, 2022 afternoon and directed to report to the concerned school.

Principal
GHSS Thakot Battagram

Endst: 1377-79 Dated: 14 / 01 /2022

Copy Forwarded to:

1. DEO(M) Battagram.
2. DAO Battagram.
3. Office Copy.

OFFICE OF THE PRINCIPL GCMHSS BATTAGRAM

CHARGE /ARRIVAL REPORT

I Akhtar Zeb in compliance of posting /Transfer order issued under EndstNO:SO(SM)E&SED/07-01/2022/PT/IPE Vide:Govt of Khyber Pakhtunkhwa E&SED, Dated Peshawar the 13/01/2022 issued by secretary of Elementary & secondary Education KHyber Pakhtunkhwa Peshawar took over charge as IPE BPS 17 from principal GCMHSS Battagram today on 15/01/2022 forenoon.

15/01/2022
PRINCIPAL
GCMHS Battagram

Principal
GCMHSS BATTAGRAM

Took Over

Mr.Akhtar Zeb
Desingnation: IPE BS-17

Endst: No 20-25 dated:15-01-2022

Copy for information to:

1. **DEO (M) Battagram**
2. **DAO Office Battagram**
3. **DMO Office Battagram**
4. **Official Concerned**
5. **Office Copy**

GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY AND SECONDARY EDUCATION DEPARTMENT
Block-"A" Opposite MPA's Hostel, Civil Secretariat Peshawar
Phone No. 091-9223533

ANNEX "D"

Dated Peshawar the January 18, 2022

NOTIFICATION

NO.SO(SM)E&SED/7-1/2022/ PT/G/IPE. The Competent Authority is pleased to cancel this Department Notification of even number dated 13-01-2022 in respect of Mr. Akhtar Zeb, IPE (BS-17) Govt. Centennial Model Higher Secondary School District Battagram with immediate effect, in the best public interest.

SECRETARY TO GOVT. OF KHYBER PAKHTUNKHWA
E&SE DEPARTMENT

Endst: of even No. & Date

Copy forwarded to the:

1. Accountant General, Khyber Pakhtunkhwa Peshawar.
2. Director, E&SE Khyber Pakhtunkhwa, Peshawar.
3. District Education Officer (Male) Battagram.
4. District Account Officers, Battagram.
5. Director, EMIS E&SE Department.
6. PS to Minister for E&SE Department.
7. PS to Secretary E&SE Department.
8. PA to Deputy Secretary (Admn) E&SE Department.
9. Mr. Akhtar Zeb, IPE, Govt. Centennial Model Higher Secondary School District Battagram.
10. Office order file.

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

ANNEX "E"

To

The Honourable Chief Secretary to Govt Of Khyber Pukhton Khuwa

Subject: Appeal for restoration of Previous Transfer

Respected Sir!

With due respect it is stated that I Mr Akhtar Zeb IPE BPS17 had been transfred from GHSS Thakot to GCMHSS Battagram issued under Endst No SO(SM)E&SED/07-01 2022/PT/G/IPE vide Govt Of Khyber Pukhton Khuwa E&SED Dated Peshawar the 13-01-2022 issued Secretary of Elementry and Secondery Education Khyber Pukhton Khuwa, on that dated my Medical Ground and Tenure too.

But unfortunatly the honourable Secretary KPK E&SE Department cancelled the said transfer under ENDST Of even No and date. The cancellation order was issued on January 18-2022.

Note : Therefore it is requested in your kind honour that if you kindly grant me restored on the previous position at GCMHSS Battagram

Thanks

Name: Mr Akhtar Zeb IPE BPS17
GCMHSS Battagram

Dated 19-01-2022

Copy to :

1) District Education Officer Battagram
2) Principal GCMHSS Battagram
3) Principal GHSS Thakot
4) District Account Officer Battagaram

Mr Akhtar Zeb IPE BPS17 GCMHSS Battagaram

19/01/2022

SO School Male
922 3533
7-1
IPE
31 Jan 2022

Regd:

—20—

ANNEX F.

GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION
DEPARTMENT

No.SO(SM)E&SED/7-1/2022/PT/IPE
Dated Peshawar the February 01, 2022

To

Mr. Akhtar Zeb,IPE (BS-17),
GHSS Thakot Battagram,

Subject: - **PERSONAL HEARING.**

I am directed to refer to your appeal dated 19.01.2022 on the subject noted above and to inform you to attend the office of Additional Secretary (Estab/ General) Elementary & Secondary Education Department, Civil Secretariat Peshawar on **02.02.2022 at 1100 hrs** for personal hearing before the Additional Secretary (Estab/General) E&SED, please.

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

Endst: Even No. & Date:

Copy of the above is forwarded to the PS to Secretary, E&SE Department Khyber Pakhtunkhwa, Peshawar.

SECTION OFFICER (SCHOOLS MALE)

GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY AND SECONDARY EDUCATION DEPARTMENT
Block-"A" Opposite MPA's Hostel, Civil Secretariat Peshawar
Phone No. 091-9223533

ANNEX "A"

No.SO(SM)E&SED/5-17/2022/PT/General
Dated Peshawar the February, 24 2022

To

Mr. Akhtar Zeb, IPE (BS-17)
GCMHSS Battagram.

SUBJECT: APPEAL FOR RESTORATION OF PREVIOUS TRANSFER.

I am directed to refer to your appeal dated 19-01-2022 on the subject noted above and to state that the Competent Authority has regretted your appeal regarding restoration of previous transfer dated 13-01-2022.

24-02-22

(SYEDA ZAINAB NAQVI)
SECTION OFFICER (SCHOOLS MALE)

Copy of the above is forwarded to:-

1. Director E&SE Khyer Pakhtunkhwa Peshawar.
2. PS to Secretary, E&SE Department.

24-02-22.

SECTION OFFICER (SCHOOLS MALE)

-22-

ANNEX "H"

HAMAYUN KHAN

Advocate High Court, Abbottabad
Office No. 15, Jinnah Lawyers Plaza,
Kutchery Compound, Abbottabad
Cell No. 0312-0861681

Ref: _____ Dated: _____/2022

To

1. Chief Secretary Khyber Pakhtunkhwa, Peshawar.
2. Secretary Elementary & Secondary Education Khyber Pakhtunkhwa, Peshawar.
3. Director Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.

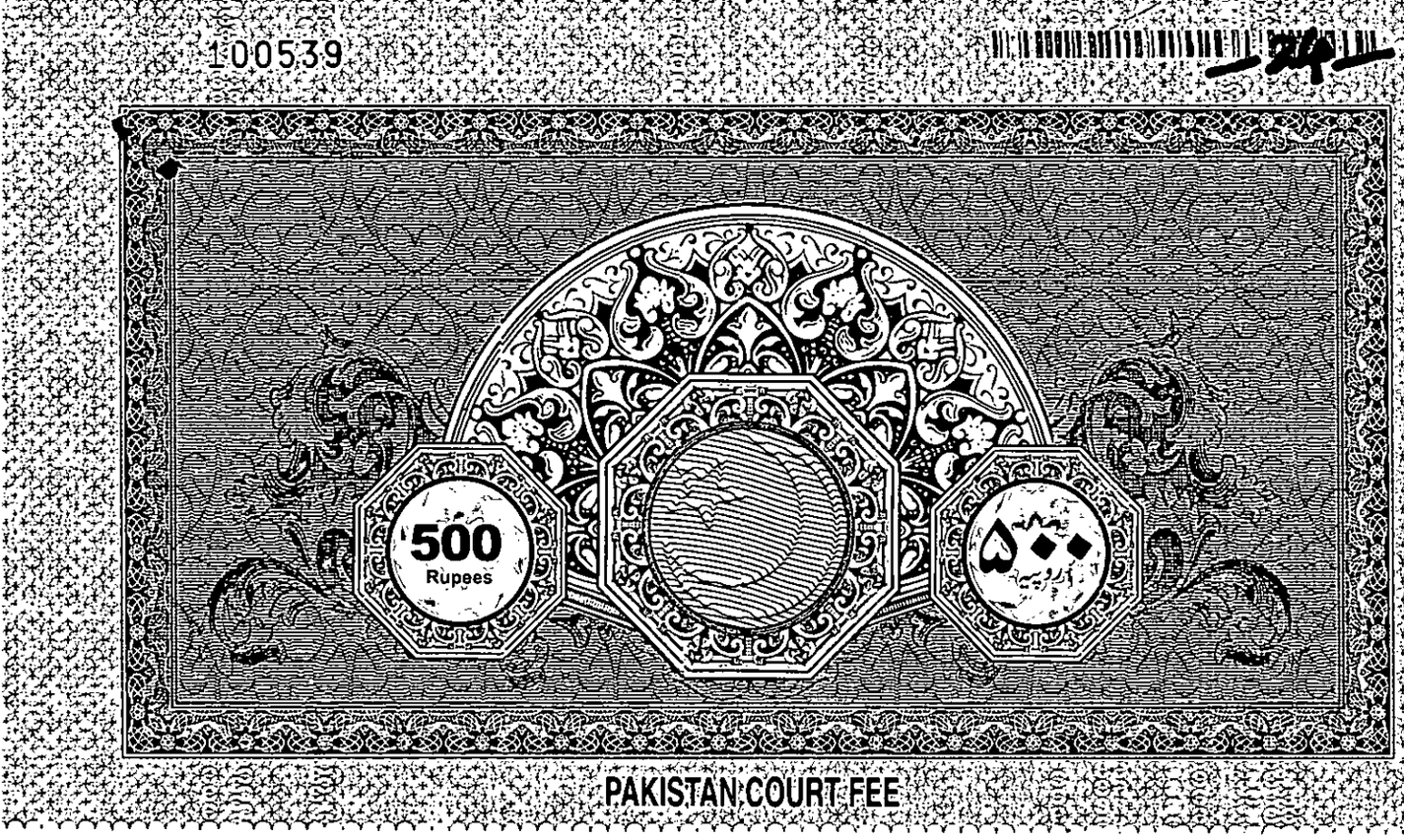
Subject: **NOTICE OF FILING OF WRIT PETITION.**

On the advice of my client ***Akhtar Zaib son of Abdul Wahid (IPE BPS-17 GCMHSS Battagram City), resident of Jasool, Battagram***, a writ petition is being filed before the Honourable Peshawar High Court, Abbottabad Bench. A notice/ intimation of the same is being sent to you for information/ necessary action under the law. Copy of writ petition is attached herewith.

Dated: _____/2022

(HAMAYUN KHAN)
Advocate High Court, Abbottabad

100539



BEFORE THE PESHAWAR HIGH
COURT Ad Bench

AKHTAR ZEB

VS

CHIEF SECRETARY & Other

CANCELLED

CANCELLED

CANCELLED

Petitioner
Through
Hamayun Khan
Advocate High Court
Ad

ADDITIONAL REGISTRAR
PESHAWAR HIGH COURT
ABBOTTABAD BENCH
26/1/22

THE

PESHAWAR HIGH COURT,

ABBOTTABAD BENCH

Ph: 0992-921058
Fax: 0992-921055

No: 1871 to 189 Dated Abbottabad 15/2/2022

From

The Additional Registrar,
Peshawar High Court,
Abbottabad Bench.

To

1. The Chief Secretary Khyber Pakhtunkhwa, Peshawar.
2. The Secretary Elementary & Secondary Education Khyber Pakhtunkhwa, Peshawar.
3. The Director Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.

Subject: **WRIT PETITION NO. 286-A/2022 With Interim Relief.**

Akhter Zaib

.....PETITIONERS

VERSUS

Chief Secretary Khyber Pakhrtunkhwa & others.

.....RESPONDENTS

Memo,

Reproduce a copy of order dated 08.03.2022, passed by the Honourable Court D.B in the above noted case for Immediate compliance.

"Learned counsel for the petitioner states that Service Tribunal is not functional, therefore, the bar of jurisdiction shall not come in the way of petitioner. Let notice of this petition be given to learned Additional Advocate General, who accepted the same on behalf of respondent no. 3. To come up for arguments on 12.04.2022. Till then impugned notifications/orders dated 18.01.2022 and 24.02.2022 shall remain suspended."

(Additional Registrar)

High Court Bar Association Abbottabad

Superintendent / Librarian
HCBA

24

-25-

HCBA Reg No. 5 2 3 - A

BC No. 1 1 - 0 1 2 1

Place of Practice ایبٹ آباد

Name of Advocate ہمایوں خان

S. No. 24105

HIGH COURT BAR ASSOCIATION ABBOTTABAD BENCH

وکالت نامہ

بعدالت: عالیہ پشاور ہائی کورٹ ایبٹ آباد بنچ

عنوان: اختر زیب بنام: چیف سیکرٹری وغیرہ

منجانب: پٹیشنر نوعیت مقدمہ: WP

باعث تحریر آنکہ:

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جوابدہی برائے پیشی یا تصفیہ مقدمہ بمقام ایبٹ آباد کے لیے

ہمایوں خان ایڈووکیٹ ہائی کورٹ

کو حسب ذیل شرائط پر وکیل مقرر کیا ہے کہ میں ہر پیشی پر خود یا بذریعہ مختار خاص روبرو عدالت حاضر ہوتا رہوں گا اور بروقت پکارے جانے مقدمہ وکیل صاحب موصوف کو اطلاع دے کر حاضر عدالت کروں گا۔ اگر پیشی پر مظہر حاضر نہ ہوا اور مقدمہ میری غیر حاضری کی وجہ سے کسی طور پر میرے خلاف ہو گیا تو صاحب موصوف اس کے کسی طور پر ذمہ دار نہ ہونگے نیز وکیل صاحب موصوف صدر مقام کچہری کے علاوہ کسی جگہ یا کچہری کے اوقات سے پہلے یا پیچھے یا بروز تعطیل پیروی کرنے کے ذمہ دار نہ ہونگے اور مقدمہ کچہری کے علاوہ کسی اور جگہ سماعت ہونے یا بروز تعطیل یا کچہری کے اوقات کے آگے پیچھے پیش ہونے پر مظہر کو کوئی نقصان پہنچے تو اس کے ذمہ دار یا اس کے واسطے کسی معاوضہ کے ادا کرنے یا محتانہ کے واپس کرنے کے بھی صاحب موصوف ذمہ دار نہ ہونگے۔ مجھ کو کل ساختہ پرداختہ صاحب موصوف مثل کردہ ذات منظور و مقبول ہوگا اور صاحب موصوف کو عرض دعویٰ یا جواب دعویٰ اور درخواست اجرائے ڈگری و نظر ثانی اپیل و نگرانی و ہر قسم درخواست پر دستخط و تصدیق کرنے کا بھی اختیار ہوگا اور کسی حکم یا ڈگری کرانے اور ہر قسم کا روپیہ وصول کرنے اور رسید دینے اور داخل کرنے اور ہر قسم کے بیان دینے اور اس پر ثالثی و راضی نامہ و فیصلہ بر حلف کرنے اقبال دعویٰ دینے کا بھی اختیار ہوگا اور بصورت جانے بیرون از کچہری صدر اپیل و برآمدگی مقدمہ یا منسوخی ڈگری یکطرفہ درخواست حکم امتناعی یا قرقی یا گرفتاری قبل از گرفتاری و اجرائے ڈگری بھی صاحب موصوف کو بشرط ادائیگی علیحدہ محتانہ پیروی کا اختیار ہوگا اور بصورت ضرورت صاحب موصوف کو یہ بھی اختیار حاصل ہوگا کہ مقدمہ مذکور یا اس کے کسی جزو کی کاروائی کے یا بصورت اپیل کسی دوسرے وکیل کو اپنے بجائے یا اپنے ہمراہ مقرر کریں اور ایسے وکیل کو بھی ہر امر میں وہی اور ویسے اختیارات حاصل ہونگے جیسے صاحب موصوف کو حاصل ہیں اور دوران مقدمہ جو کچھ ہرجانہ التوا پڑے گا وہ صاحب موصوف کا حق ہوگا۔ اگر وکیل صاحب موصوف کو پوری فیس تاریخ پیشی سے پہلے ادا نہ کروں گا تو صاحب موصوف کو پورا اختیار ہوگا کہ وہ مقدمہ کی پیروی نہ کریں اور ایسی صورت میں میرا کوئی مطالبہ کسی قسم کا صاحب موصوف کے برخلاف نہیں ہوگا۔

مورخہ: 25-2-22

دن مہینہ سال

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

نوٹ: اس وکالت نامہ کی فوٹو کاپی ناقابل قبول ہوگی۔

Accepted

SEAL OF THE PESHAWAR HIGH COURT ABBOTTABAD BENCH

BEFORE HONOURABLE PESHAWAR HIGH COURT, BENCH ABBOTTABAD

W.P No. 286 -A/2022

Akhtar Zaib son of Abdul Wahid (IPE BPS-17 GCMHSS Battagram City), resident of Jasool, Battagram.

...PETITIONER

VERSUS

1. Chief Secretary Khyber Pakhtunkhwa, Peshawar.
2. Secretary Elementary & Secondary Education Khyber Pakhtunkhwa, Peshawar.
3. Director Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.

....RESPONDENTS

Certified to be True Copy
EXAMINER
29 MAR 2023
Peshawar High Court Atd Bench
Authorized Under Se 75 Evid Ordns:

No. 1253
26-02-22

FILED TODAY
ADDITIONAL REGISTRAR
PESHAWAR HIGH COURT
ABBOTTABAD BENCH
26/2/22

WRIT PETITION UNDER SECTION 199 OF THE CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN 1973, FOR DECLARATION TO THE EFFECT THAT ORDER/ NOTIFICATION DATED 24.02.2022 PASSED/ ISSUED BY RESPONDENT NO. 2 ON THE DEPARTMENTAL APPEAL OF THE PETITIONER, WHEREBY RESPONDENT NO. 2 HAS REGRETTED/ REJECTED THE DEPARTMENTAL APPEAL DATED 19.01.2022 AGAINST THE NOTIFICATION DATED 18.01.2022 PASSED BY

RESPONDENT NO. 2, WHEREBY RESPONDENT NO. 2 CANCELLED TRANSFER ORDER DATED 13.01.2022 WHICH IS ILLEGAL, AGAINST THE LAW, FACTS, NATURAL JUSTICE, VOID-AB-INITIO, HENCE INEFFECTIVE UPON THE RIGHTS OF THE PETITIONER.

PRAYER: ON ACCEPTANCE OF THE INSTANT WRIT PETITION, ORDER/ NOTIFICATION DATED 24.02.2022 AND 18.01.2022 PASSED BY RESPONDENT NO. 2 MAY KINDLY BE DECLARED NULL AND VOID AND TRANSFER ORDER DATED 13-01-2022 OF THE PETITIONER AGAINST THE VACANT POST OF IPE BPS-17 AT GCMHSS BATTAGRAM MAY KINDLY BE RESTORED. ANY OTHER RELIEF WHICH THIS HONOURABLE COURT DEEM FIT AND PROPER IN THE CIRCUMSTANCES OF THE CASE MAY ALSO BE GRANTED TO THE PETITIONER.

Certified to be True Copy
EXAMINER
29 MAR 2023
Peshawar High Court Atd Bench
Authorized Under Se 75 Evid Ordns

Respectfully Sheweth:-

FILED TODAY
ADDITIONAL REGISTRAR
PESHAWAR HIGH COURT
ABBOTTABAD BENCH

That the facts forming the background of the instant writ petition are arrayed as under; -

PESHAWAR HIGH COURT, ABBOTTABAD BENCH.

FORM OF ORDER SHEET

Date of Order of Proceedings	Order or other Proceedings with Signature of Judge (s)
1	2
08.03.2022	***W.P.No.286-A/2022 with Interim Relief.*** Present: Mr. Hamayun Khan, Advocate for the petitioner. *** Learned counsel for the petitioner states that Service Tribunal is not functional, therefore, the bar of jurisdiction shall not come in the way of petitioner. Let notice of this petition be given to learned Additional Advocate General, who accepted the same on behalf of respondent No.3. To come up for arguments on 12.04.2022. Till then impugned notifications / orders dated 18.01.2022 and 24.02.2022 shall remain suspended. JUDGE JUDGE

Certified to be True Copy
EXAMINER
29 MAR 2023
Peshawar High Court Atd Bench
Authorized Under Se 75 Evid Ordns:

Aftab PS/*

Hon'ble Mr. Justice Wiqar Ahmad
Hon'ble Mr. Justice Kamran Hayat Miankhel

PESHAWAR HIGH COURT, ABBOTTABAD BENCH.

FORM OF ORDER SHEET

Court of.....

Case No.....of.....

Date of Order of Proceedings	Order or other Proceedings with Signature of Judge (s)
1	2
12.04.2022.	WP No. 286-A/2022. Present: Mr. Hamayun Khan, Advocate for petitioner. *** WIQAR AHMAD, J. Through this petition filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, petitioner namely ***Akhtar Zaib*** has invoked the jurisdiction of this Court with the following prayer:- *It is therefore, very humbly prayed that on acceptance of the instant writ petition, order/Notification dated 24.02.2022 and 18.01.2022 passed by respondent No. 2 may kindly be declared null and void and transfer order dated: 13.01.2022 of the petitioner against the vacant post of IPE BPS-17 at GCMJSS Battagram may kindly be restored.* 3. Admittedly, the position and status of petitioner is of a civil servant and the grievance of the petitioner directly relates to the terms & conditions of his service, which is not amenable to the writ jurisdiction of

SEAL OF THE PESHAWAR HIGH COURT ABBOTTABAD BENCH

Certified to be True Copy
EXAMINER
29 MAR 2023
Peshawar High Court Atd Bench
Authorized Under Se 75 Evid Ordns:

this Court under Article 199 of the Constitution, in view of the bar contained in Article 212 of the Constitution of Islamic Republic of Pakistan, 1973. Reliance is placed on case titled '*Pir Muhammad Vs. Government of Baluchistan through Chief Secretary and others*' (2007 SCMR 54). Furthermore, Service Tribunal also has now been functional, thus, where, a civil servant is aggrieved of violation of any of the terms & conditions of his/her service, then he/she can approach the Service Tribunal for the redressal of his/her grievance but on no count he/she could agitate such issue before this Court. However, instead of passing any order in the case, in the interest of justice, we treat this petition as service appeal and send the same to the service Tribunal for its disposal in accordance with law. Office is directed to do the needful.

JUDGE

JUDGE

Certified to be True Copy
EXAMINER
29 MAR 2023
Peshawar High Court Abd Bench
Authorized Under Se 75 Evid Ordns:

Office
13/4/22

Tahir PS

Hon'ble Justice Wiqar Ahmad and Hon'ble Justice Kamran Hayat Miankhel.

Khyber Pakhtunkhwa
Service Tribunal
Diary No. 5495
Dated 22/5/2023

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal # 796/2022

Mr. Akhtar Zaib, IPE (BS-17).....Appellant.

SCANNED
KPST
Peshawar

VERSUS

Chief Secretary, Govt: of Khyber Pakhtunkhwa & others.....Respondents.

INDEX

S#	Description of Documents	Annex	Pages
1.	Joint Parawise Comments	A	1-2
2.	Exoneration/application	B	3
3.	Affidavit	C	4
4.	Authority Letter	D	5
5.	Annexure	E	6,7,8

Despondent

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR CAMP COURT ABBOTTABAD.

In Service Appeal No. 796/2022

Mr. Akhtar Zaib, IPE (BS-17).....Appellant.

VERSUS

Chief Secretary to Govt of KPK Peshawar..... Respondents.

PARAWISE COMMENTS ON BEHALF OF THE RESPONDENTS NO. 1, 2 & 3.

Respectfully Sheweth:

Joint Para wise comments on behalf of respondents are submitted as under:

Preliminary objections:-

1. That the appellant has no cause of action to file the instant service appeal.
2. That the appellant has no locus standi to file the instant service appeal.
3. That the appellant did not come to this Honorable Tribunal with clean hands.
4. That the appellant concealed and distorted the material facts from this Honorable Tribunal.
5. That the present service appeal has been filed just to pressurize the respondents.
6. **That as per Section 10 of Civil Servant Act 1973, every civil servant shall be liable to serve anywhere within or outside the Province.**
7. That the departmental appeal of the appellant was rejected by the competent authority.
8. That the instant service appeal is not maintainable in its present form.
9. That Notification dated 18-01-2022 and dated 24-02-2022 issued by the competent authority as well as in best interest of the public service hence, same are liable to be maintained.
10. That all the proceedings have been done by the competent authority as per Rule & Law hence, the service appeal is liable to be dismissed without any further proceedings.

Factual Objections:-

1. That Para No. 1, of the service appeal relates to appointment record of the appellant hence, need no comment.
2. That Para No. 2, of the instant service appeal is subject to the proof.
3. That Para No. 3, of the instant service appeal as composed is incorrect hence, denied and not admitted.
4. That Para No. 04, of the service appeal relates to record.
5. That Para No. 05, of the service appeal relates to record.
6. That the Para No. 06, of the service appeal is correct to the extent of issuance of Notification dated 13-01-2022 while rest of the Para as composed is incorrect hence, denied and not admitted. Copy of the Notification dated 13-01-2022 is annexed as Annexure "B" of the instant service appeal.
7. That the Para No. 07, of the service appeal relates to record.

8. That Para No. 08, of the service appeal is correct.
9. That the Para No. 09 of the appeal relates to record.
10. In reply to Para No. 10 of the instant appeal it is submitted that to opportunity of personal hearing was provided to appellant vide letter dated 01-02-2022 and copy of the letter is already annexed as Annexure "F" of the instant service appeal
11. That the Para No. 11 of the instant appeal is correct.

GROUNDS:-

a. That ground a, of the instant appeal as composed is incorrect hence, denied and not admitted.
b. That ground b, as composed is incorrect hence, denied and not admitted as per Section 10 of Civil Servant Act 1973, every Government Servant is bound to serve anywhere within the District in the best interest of public service without raising any objection in this regard.
c. That ground c, of the instant appeal as composed is incorrect hence, denied and not admitted.
d. That the ground d, as composed is incorrect hence, denied.
e. That the ground e, as composed is incorrect hence, denied.
f. That the ground f, as composed is incorrect hence, denied.
g. That the ground g, as composed is incorrect hence, denied.
h. That the ground h, as composed is incorrect hence, denied.
i. That the ground i, as composed is incorrect hence, denied.
j. That ground j, is subject to cogent proof.
k. That the ground k, as composed is incorrect hence, denied.
l. No comment.
m. No comment.
n. That the answering respondents seek permission of this Honorable Tribunal to advance further grounds/ points during the course of arguments.

It is, therefore, very humbly prayed that in the light of forgoing comments the service appeal in hand may graciously be dismissed with cost throughout.

Secretary
E&SED Khyber Pakhtunkhwa Peshawar
(Respondents No. 1, 2 & 3)

BEFORE THE HON'BLE SERVICE TRIBUNAL PESHAWAR

Service Appeal # 796/2022

Mr. Akhtar Zaib, (IPE), BS-17..... .....Petitioner

VERSUS

Govt. of Khyber Pakhtunkhwa & others.....Respondents

AFFIDAVIT

I, **Muhammad Imran Zaman,** Section Officer (Litigation-II) Elementary & Secondary Education, Department do herby solemnly affirm and declare that the contents of the accompanying para-wise comments, submitted by the respondents, are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Court.

ATTESTED
TARIQ IHSAN ADVOCATE
High Court Peshawar
NOTARY PUBLIC
Distt. Court Peshawar

DEPONENT

Muhammad Imran Zaman
Section Officer (Lit-II)
E&SE Department Peshawar

BEFORE THE HON'ABLE SERVICE TRIBUNAL, PESHAWAR.

In Service Appeal # 796/2022

Akhtar Zaib, IPE (BS-17) ..... Appellant.

VERSUS

The Secretary E&SE & others..... Respondents.

APPLICATION FOR EXEMPTION OF COST OF RS 5000 VIDE ORDER DATED 26-04-2023

Respectfully sheweth:

The respondents most humbly submitted as under:

1. That the above titled appeal is pending before this Hon'ble Court for submission of parawise comments.

2. That on the previous date of hearing the respondent department was imposed **Rs. 5000/-** fine by this Hon'able Tribunal for not submission of comments.

3. That this Hon'able Tribunal directed the respondents to submit parawise comments on next date of hearing in the instant case.

4. That the respondents were not in the knowledge of the Service Appeal and because of the same reason a fine was imported which needs to be remit.

5. That in compliance to this Hon'ble Tribunal the requisite parawise are submitted before Hon'ble Tribunal.

In view of the above submission it is most humbly requested that this Hon'able Court to kindly remit the cost of Rs. 5000/- against the respondent and the order sheet dated 26-04-2023 may kindly be review/withdrawn, please.

SECRETARY
Elementary & Secondary Education,
Department Khyber Pakhtunkhwa.

GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION DEPARTMENT

Block "A" Civil Secretariat, Peshawar *Phone No. 091-9211128*

AUTHORITY LETTER

It is certified that Mr. Fahim Ullah, Focal Person Elementary & Secondary Education Department is hereby authorized to submit parawise comments on behalf of Secretary Elementary & Secondary Education Department Peshawar in Service Appeal No. 796/2022 case title Akhtar Zaib Vs Government of Khyber Pakhtunkhwa & Others.

Secretary
Elementary & Secondary Education,
Department.

-18-

GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY AND SECONDARY EDUCATION DEPARTMENT
Block-"A" Opposite MPA's Hostel, Civil Secretariat Peshawar
Phone No. 091-9223533

ANNEX "D"

Dated Peshawar the January 18, 2022

NOTIFICATION

NO.SO(SM)E&SED/7-1/2022/ PT/G/IPE. The Competent Authority is pleased to cancel this Department Notification of even number dated 13-01-2022 in respect of Mr. Akhtar Zeb, IPE (BS-17) Govt. Centennial Model Higher Secondary School District Battagram with immediate effect, in the best public interest.

SECRETARY TO GOVT. OF KHYBER PAKHTUNKHWA
E&SE DEPARTMENT

Endst: of even No. & Date

Copy forwarded to the:

1. Accountant General, Khyber Pakhtunkhwa Peshawar.
2. Director, E&SE Khyber Pakhtunkhwa, Peshawar.
3. District Education Officer (Male) Battagram.
4. District Account Officers, Battagram.
5. Director, EMIS E&SE Department.
6. PS to Minister for E&SE Department.
7. PS to Secretary E&SE Department.
8. PA to Deputy Secretary (Admn) E&SE Department.
9. Mr. Akhtar Zeb, IPE, Govt. Centennial Model Higher Secondary School District Battagram.
10. Office order file.

Attested

(HAFEEZ UR REHMAN SHAH)
SECTION OFFICER (SCHOOLS MA

-15-

ANNEX "B"

TO BE SUBSTITUTED BEARING SAME NO & DATE.

GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY AND SECONDARY EDUCATION DEPARTMENT
Block-"A" Opposite MPA's Hostel, Civil Secretariat Peshawar
Phone No. 091-9223533

Dated Peshawar the January 13, 2022

NOTIFICATION

NO.SO(SM)E&SED/7-1/2022/ PT/G/IPE. The Competent Authority is pleased to order the transfer of Mr. Akhtar Zeb, IPE (BS-17) GHSS Thatkot District Battagram and post him as IPE (BS-17) at Govt. Centennial Model Higher Secondary School District Battagram against the vacant post, in the best public interest, with immediate effect.

SECRETARY TO GOVT. OF KHYBER PAKHTUNKHWA
E&SE DEPARTMENT

Endst: of even No. & Date

Copy forwarded to the:

1. Accountant General, Khyber Pakhtunkhwa Peshawar.
2. Director, E&SE Khyber Pakhtunkhwa, Peshawar.
3. District Education Officer (Male) Battagram.
4. District Account Officers, Battagram.
5. Director, EMIS E&SE Department.
6. PS to Minister for E&SE Department.
7. PS to Secretary E&SE Department.
8. PA to Deputy Secretary (Admn) E&SE Department.
9. Mr. Akhtar Zeb, IPE, Govt. Centennial Model Higher Secondary School District Battagram.
10. Office order file.

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

Attested
13/1/2022

Scanned with CamScanner

GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY AND SECONDARY EDUCATION DEPARTMENT
Block-"A" Opposite MPA's Hostel, Civil Secretariat Peshawar
Phone No. 091-9223533

ANNEX. G

No.SO(SM)E&SED/5-17/2022/PT/General
Dated Peshawar the February, 24 2022

To

Mr. Akhtar Zeb, IPE (BS-17)
GCMHSS Battagram.

SUBJECT: APPEAL FOR RESTORATION OF PREVIOUS TRANSFER.

I am directed to refer to your appeal dated 19-01-2022 on the subject noted above and to state that the Competent Authority has regretted your appeal regarding restoration of previous transfer dated 13-01-2022.

24-02

(SYEDA ZAINAB NAQVI)
SECTION OFFICER (SCHOOLS MALE)

Copy of the above is forwarded to:-

1. Director E&SE Khyer Pakhtunkhwa Peshawar.
2. PS to Secretary, E&SE Department.

24-02-22

SECTION OFFICER (SCHOOLS MALE)

A-No-786/22
Akhtar Zeb

26th April, 2023

1. Appellant alongwith his counsel present. Mr. Asif Masood Ali Shah, Deputy District Attorney alongwith Mr. Sohail Ahmad Zeb, Assistant for the respondents present.

2. Written reply has not been submitted. Representative of the respondents seeks some time to submit the same on the next date. Last chance is given to the respondents on payment of cost of Rs. 5000/-. To come up for written reply on 24.04.2023 before S.B at camp court Abbottabad. P.P given to the parties.

(Kalim Arshad Khan)
Chairman
Camp Court Abbottabad

Adnan Shah, P.A

Certified to be true copy
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 19/5/23
Number of Words
Copying Fee 5/-
Urgent
Total 5/-
Name
Date of Completion of Copy 19/5/23
Date of Delivery of Copy 19/5/23