

3<sup>rd</sup> July, 2023

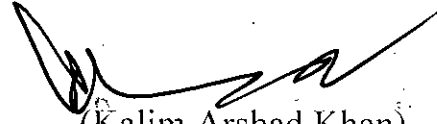
1. Nobody present on behalf of the appellant. Mr. Asif Masood Ali Shah, Deputy District Attorney for respondents present.
2. The case was called time and again but neither the appellant nor his counsel put appearance, therefore, the appeal in hand is dismissed in default. Consign.
3. *Pronounced in open Court in Peshawar given under our hands and seal of the Tribunal on this 3<sup>rd</sup> day of July, 2023.*

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



(Rashida Bano)  
Member(J)

\*Adnan Shah\*



(Kalim Arshad Khan)  
Chairman

14.03.2023

Junior to counsel for the appellant present. Mr. Syed Asif Ali Shah, Deputy District Attorney for respondents present.

Junior to counsel for the appellant requested for adjournment on the ground that senior counsel is appointed as Additional Advocate General and he wants to submit fresh Wakalatnama. Adjourned. To come up for arguments on 30.05.2023 before D.B. P.P given to the parties.

SCANNED  
KPST  
Peshawar

(Salah-Ud-Din)  
Member (J)

(Kalim Arshad Khan)  
Chairman

30<sup>th</sup> May, 2023

1. Junior to counsel for appellant present. Mr. Fazal Shah Mohmand, Additional Advocate General for respondents present.

2. Junior to counsel for appellant requested for adjournment as senior counsel is not available today. Adjourned. To come up for arguments on 03.06.2023 before D.B. P.P given to the parties.

SCANNED  
KPST  
Peshawar


(Muhammad Akbar Khan)  
Member (E)

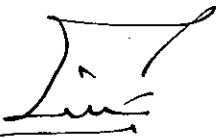
(Kalim Arshad Khan)  
Chairman

01.02.2023

Clerk of learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney for the respondents present.

The appeal in hand was heard by a bench comprising one of us (Mr. Salah-ud-Din) and Mr. Mian Muhammad the then learned Member (Executive), who has now been transferred, therefore, to come up for re-arguments on 02.03.2023 before the D.B.


  
(Fareeha Paul)  
Member (E)


  
(Salah-ud-Din)  
Member (J)

02.03.2023

Learned counsel for the appellant present. Mr. Muhammad Riaz Khan Pindakhel, Assistant Advocate General for the respondents present.

Learned counsel for the appellant requested for adjournment on the ground that he has not made preparation for arguments. Adjourned. To come up for arguments on 14.03.2023 before the D.B. Parcha Peshi given to the parties.

  
(Fareeha Paul)  
Member (E)

  
(Salah-ud-Din)  
Member (J)


SCANNED  
KPST  
Peshawar

SCANNED  
KPST  
Peshawar

05.01.2023

Learned counsel for the appellant present. Mr. Naseer-ud-Din Shah, Assistant Advocate General for the respondents present.

Mr. Salah-ud-Din, learned Member (Judicial) is on leave, therefore, order could not be announced. Adjourned. To come up for order on 12.01.2023 before D.B.



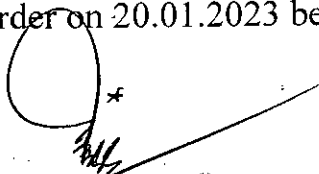
(Mian Muhammad)  
Member (E)

12.01.2023

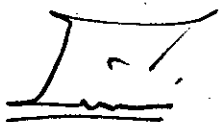
Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney for the respondents present.

Case law relied upon by learned counsel for the appellant produced today, which require time for its perusal, therefore, to come up for order on 20.01.2023 before the D.B.

SCANNED  
KPJ  
POSHAWARI



(Mian Muhammad)  
Member (E)



(Salah-Ud-Din)  
Member (J)

20.01.2023

Proper D.B is not available, therefore, case is adjourned for the same as before on 01.02.2023.



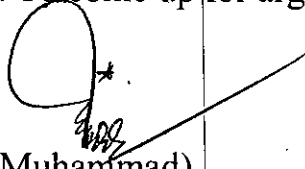
Reader

22.12.2022

Junior of learned counsel for the appellant present. Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present.

Junior of learned counsel for the appellant requested for adjournment on the ground that learned counsel for the appellant is busy in the august Peshawar High Court, Peshawar. Adjourned. To come up for arguments on 03.01.2023 before D.B.

SCANNED  
KPST  
Peshawar



(Mian Muhammad)  
Member (E)



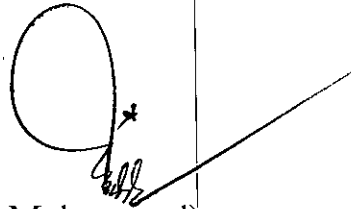
(Salah-ud-Din)  
Member (J)

03.01.2023

Learned counsel for the appellant present. Mr. Arshed Ali, ADEO alongwith Mr. Naseer-ud-Din Shah, Assistant Advocate General for the respondents present.

Arguments heard. To come up for order on 05.01.2023 before the D.B.

SCANNED  
KPST  
Peshawar



(Mian Muhammad)  
Member (E)





(Salah-Ud-Din)  
Member (J)

07.09.2022

Learned counsel for the appellant present: Syed Naseer Ud Din Shah, Asst: AG for respondents present.

Learned counsel for the appellant seeks adjournment on the ground that he has not prepared the case. Last opportunity is granted for arguments. To come up for arguments on 16.11.2022 before D.B.


  
(Fareeha Paul)  
Member (E)

  
(Kalim Arshad Khan)  
Chairman

16<sup>th</sup> Nov. 2022 Assistant to counsel for the appellant present.

Mr. Muhammad Riaz Khan Paindakhel, Assistant Advocate General alongwith Arshad Ali, ADO (Litigation) for the respondents present.

This appeal was heard by a Bench consisting of learned Member Judicial Mr. Salah-ud-Din and learned Member Executive Mr. Mian Muhammad. Therefore, this appeal be fixed before the concerned Bench and to come up for arguments on 22.12.2022 before the concerned Bench.

  
(FAREEHA PAUL)  
Member(E)

  
(ROZINA REHMAN)  
Member (J)

SCANNED  
KPST  
Peshawar

01.06.2022

Mr. Fazal Shah Mohmand, Advocate for the appellant present. Mr. Muhammad Riaz Khan Paindakhel, Assistant Advocate General for the respondents present.

Partial arguments heard. To come up for remaining arguments on 03.06.2022 before D.B.



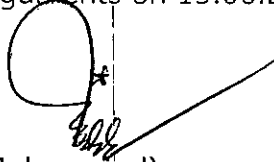
(Mian Muhammad)  
Member (E)

(Salah-ud-Din)  
Member (J)

03.06.2022

Miss. Rabia Muzafar, Advocate (Junior of learned counsel for the appellant) present. Mr. Riaz Ahmed Paindakhel, Assistant Advocate General for the respondents present.

Junior of learned counsel for the appellant requested for adjournment on the ground that learned counsel for the appellant is busy before the other D.B. Adjourned. To come up for remaining arguments on 13.06.2022 before the D.B.



(Mian Muhammad)  
Member (E)



(Salah-ud-Din)  
Member (J)

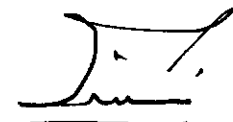
13.06.2022

Clerk of counsel for the appellant present. Mr. Kabirullah Khattak, Additional Advocate General for the 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 remaining arguments before the D.B on 07.09.2022.



(MIAN MUHAMMAD)  
MEMBER (EXECUTIVE)



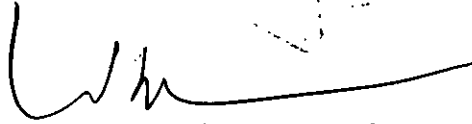
(SALAH-UD-DIN)  
MEMBER (JUDICIAL)

02.12.2021

Counsel for the appellant present.

Mr. Muhammad Rasheed, Deputy District Attorney alongwith  
Mr. Touseef Ahmed ADO, for respondents present.

Former made a request for adjournment as he has not  
prepared the brief. Adjourned. To come up for arguments on  
09.12.2021 before D.B.



(Atiq Ur Rehman Wazir)  
Member (E)

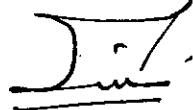


(Rozina Rehman)  
Member (J)

09.12.2021

Counsel for the appellant and Mr. Asif Masood, DDA  
alongwith Arshad Khan, ADEO (Litigation) for the  
respondents present.

Learned senior counsel for the appellant seeks  
adjournment in order to further prepare the brief.  
Request is accorded. Case to come up for arguments on  
08.02.2022 before the D.B.



(Salah-ud-Din)  
Member(J)



Chairman

8-2-2022

*Due to retirement of hon'ble Chairman  
the case is adjourned to come up  
for the same as before on 1/6/2022*





01.01.2021 Due to summer vacation, case is adjourned to  
13.04.2021 for the same as before.

  
Reader

13.04.2021 Due to demise of the Worthy Chairman, the Tribunal is  
non-functional, therefore, case is adjourned to  
28.07.2021 for the same as before.


  
Reader

28.07.2021 Clerk to counsel for appellant present.

Muhammad Adeel Butt learned Additional Advocate General  
for respondents present.

Lawyers are on general strike, therefore, case is adjourned.  
To come up for arguments on 02.12.2021 before D.B.

  
(Rozina Rehman)  
Member (J)

  
Chairman

09.03.2020

Junior to counsel for the appellant and Mr. Usman Ghani learned District Attorney present. Junior to counsel for the appellant seeks adjournment as senior learned counsel for the appellant is not available. Adjourn. To come up for arguments on 12.05.2020 before D.B.

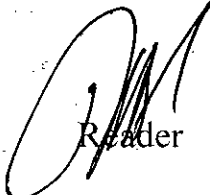
  
Member

  
Member

12.05.2020


Due to public holidays on account of Covid-19, the case is adjourned. To come up for the same on 07.08.2020 before D.B.



  
Reader

07.08.2020


Due to summer vacation case to come up for the same on 27.10.2020 before D.B.

  
Reader

27.10.2020

Junior to counsel for the appellant and Addl. AG for the respondents present.

The Bar is observing general strike, therefore, the matter is adjourned to 07.01.2021 for hearing before the D.B.

  
(Atiq-ur-Rehman Wazir)  
Member

  
Chairman

31.07.2019

Wali Khan Advocate junior to counsel for the appellant and Mr. Riaz Khan Paindakheil learned Assistant Advocate General present. Junior to counsel for the appellant seeks adjournment as senior counsel for the appellant is not in attendance. Adjourn. To come up for arguments on 24.10.2019 before D.B.

  
Member

  
Member

24.10.2019

Junior counsel for the appellant and Mr. Kabirullah Khattak, Additional AG alongwith Mr. Arshed Ali, ADO for the respondents present. Junior counsel for the appellant requested for adjournment on the ground that learned senior counsel is busy before the Hon'ble Peshawar High Court, Peshawar. Adjourned to 03.01.2020 for arguments before D.B.

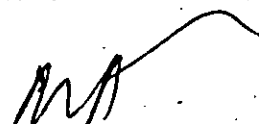
  
(Hussain Shah)  
Member

  
(M. Amin Khan Kundi)  
Member

03.01.2020

Junior to counsel for the appellant present. Mr. Mr. Riaz Paindakheil learned Assistant Advocate General for the respondents present. Junior to counsel for the appellant seeks adjournment as senior counsel for the appellant is not available on record. Adjourned. To come up for arguments on 09.03.2020 before D.B.

  
(Hussain Shah)  
Member

  
(M. Amin Khan Kundi)  
Member

04.2.2019

Junior to counsel for the appellant and Addl. AG alongwith Arshad Ali, ADO for the respondents present.

Representative of respondents requests for adjournment as requisite reply has though been prepared but is yet to be signed by the respondents. Adjourned to 27.03.2019 on which date the reply shall positively be submitted.

  
Chairman


27.03.2019

Appellant in person present. Mr. Kabir Ullah Khattak learned Additional Advocate General alongwith Arshid Ali ADO present. Representative of the respondent department submitted written reply/comments. Adjourn. To come up for rejoinder/arguments on 31.05.2019 before D.B

  
Member

31.05.2019

Clerk to learned counsel for the appellant and Mr. Kabir Ullah Khattak learned Additional Advocate General present. Clerk to counsel for the appellant submitted rejoinder which is placed on file and seeks adjournment as learned counsel for the appellant is not in attendance. Adjourn. To come up for arguments on 31.07.2019 before D.B.

  
Member

  
Member

10.12.2018

**SCANNED  
KPST  
Peshawar**

Counsel for the appellant Shah Hussain present. Preliminary arguments heard. It was contended by learned counsel for the appellant that the appellant was serving in Education Department. It was further contended that the appellant was terminated from service by the competent authority. It was further contended that on the basis of Government of Khyber Pakhtunkhwa Sacked Employees (Appointment) Act 2012 the appellant was entitled for appointment but the respondent was reluctant to appoint the appellant on the basis of said act therefore, the appellant filed Writ Petition, the Writ Petition was accepted and the respondent-department, appointed the appellant on the basis of judgment of Worthy Peshawar High Court but the appointment order of the appellant was issued with immediate effect. It was further contended that the Sacked Employees (Appointment) Act was passed on 20.09.2012 therefore, the respondent-department was required to appoint the appellant with effect from 20.09.2012 therefore, the appellant filed departmental appeal but the same was not decided, hence, the present service appeal.

The contention raised by the learned counsel for the appellant needs consideration. The 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 the respondents for written reply/comments for 04.02.2019 before S.B.


Appellant Deposited  
Security & Process Fee

  
**Muhammad Amin Khan Kundi**  
Member

Form- A  
FORM OF ORDER SHEET

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

Case No. 1410/2018

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	19/11/2018 <b>SCANNED KPST Peshawar</b>	The appeal of Mr. Shah Hussain presented today by Mr. Fazal Shah Mohmand Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.  REGISTRAR 19/11/18
2-	20-11-2018	This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>10-12-2018</u>   CHAIRMAN

Court Fee  
& Process Fee

**BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR**

Service Appeal No 1410 /2018

Shah Hussain.....Appellant

**VERSUS**

DEO and Others.....Respondents


**INDEX**

S No	Description of Documents	Annexure	Pages
1.	Service appeal with affidavit		1-3
2.	Copy of KPK Sacked Employees (Appointment) Act	A	4-7
3.	Copy of titled page of WP No.& Judgment dated 20-09-2017.	B	8-16
4.	Copy of COC No 56-P/2018 & Appointment Order dated 26-06-2018	C & D	17-18
5.	Copy of departmental appeal dated 19-07-2018	E	19
6.	Wakalat Nama		20

Dated:-16-11-2018

Through

1410  
Appellant

  
Fazal Shah Mohmand  
Advocate, Peshawar

OFFICE:- Cantonment Plaza Flat 3/B Khyber Bazar Peshawar Cell# 0301.8804841  
Email:- fazalshahmohmand@gmail.com

- 1 -

**BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR**

Service Appeal No 1410 /2018

Shah Hussain Certified Teacher (General) (BPS-15) Govt. Middle School  
Sarkhana Peshawar.....**Appellant**

Khyber Pakhtukhwa  
Service Tribunal

Diary No. 1647

Dated 19-11-2018

**V E R S U S**

1. District Education Officer (Male) Peshawar.
2. Director, Elementary and Secondary Education, Govt. of  
KPK Peshawar.
3. Secretary, Elementary and Secondary Education, Govt. of  
KPK Peshawar.....**Respondents**

**APPEAL U/S 4 OF THE KPK SERVICE TRIBUNAL ACT 1974 FOR  
THE MODIFICATION OF APPOINTMENT ORDER DATED 26-  
06-2018 PASSED BY RESPONDENT NO 1 WHEREBY THE  
APPELLANT HAS BEEN APPOINTED AS CERTIFIED TEACHER  
(GENERAL) (BPS-15) WITH IMMEDIATE EFFECT INSTEAD OF  
20-09-2012 AND FOR WHICH DEPARTMENTAL APPEAL OF  
THE APPELLANT HAS NOT BEEN RESPONDED SO FAR  
DEPSITE THE LAPSE OF MORE THAN THE STATUTORY  
PERIOD OF NINTY DAYS.**

**PRAYER:-**

On acceptance of this appeal the impugned Appointment Order dated 26-06-2018, of respondent No 1 may kindly be modified and the appellant may kindly be ordered to be appointed as Certified Teacher (General) (BPS-15) w.e.f 20-09-2012, instead of 26-06-2018 with all back benefits

**Respectfully Submitted:-**

1. That the appellant was appointed against the post of Certified Teacher on and and after performing duties for about two years, when the Govt. changed, the services of the appellant along with others were dispensed with.
2. That in the year 2009 the Federal Govt. promulgated Ordinance for the reinstatement of the employees of the Federal Govt. who were appointed from 1<sup>st</sup> November 1993 to 1<sup>st</sup> day of November 199 and were terminated during the period from the 1<sup>st</sup> day of November 1996 to 12-10-1999 and i
3. n the year 2010 the Federal Govt. enacted the Sacked Employees (Re-instatement) Act 2010 to provide relief to sacked employees and accordingly the provincial Govt. of KPK enacted the KPK

Filed to-day  
Registrar  
19/11/18



Sacked Employees (Appointment) Act on 20-09-2012. **(Copy of Act is enclosed as Annexure A).**

4. That the appellant accordingly approached respondents for his appointment in the prescribed period of 30 days but of no use where after the appellant along with others approached Peshawar High Court Peshawar by filing Writ Petition No 1901-P/2013 which was finally allowed vide Order and Judgment dated 20-09-2017. **(Copy of titled page of Writ Petition and Judgment dated 20-09-2017 is enclosed as Annexure B).**
5. That even then the respondents were reluctant to appoint the appellant where after the appellant filed Contempt of Court petition No 56-P/2018 and consequently the appellant along with others was appointed vide Appointment order Dated 26-06-2018 instead of 20-09-2012. **(Copy of COC Petition No 56-P/2018 and Appointment Order dated 26-06-2018 is enclosed as Annexure C & D).**
6. That the appellant submitted Departmental appeal before respondent No 1 on vide Diary No 2928 dated 19-07-2018 which has not been responded so far despite the lapse of more than the statutory period of ninety days. **(Copy of Departmental appeal is enclosed as Annexure E).**
7. That the impugned order dated 26-06-2018 of respondent No 1 is liable to modification thereby appointing the appellant w.e.f. 20-09-2012 on grounds inter alia as follows:-

### **GROUND:-**

- A. That the impugned order is liable to modification as per the KPK Sacked Employees (appointment) Act 2012 with effect from 2012.
- B. That the appellant has been punished without any omission or commission on his part and he has been denied appointment for no fault.
- C. That mandatory provisions of law have been violated by the respondents which could not be attributed to the appellant.
- D. That the law as well as the principles of justice favors that no one should be penalized for the fault of others.
- E. That even as per the dictums of the Superior Courts, the appellant is entitled to be appointed from the date of his application.
- F. That the appellant timely approached respondents for his appointment but they were not ready to shoulder their responsibility and the appellant finally had no alternate remedy



but to approach the High Court for his appointment, thus the appellant on one hand litigated and on the other hand has been deprived of his seniority for no fault.

- G. That there is no omission or commission on part of the appellant and as such he is entitled to be appointed from due date with all benefits.
- H. That the omission of the respondents has resulted in miscarriage of justice besides financial and seniority loss.
- I. That the commission and commissions of the respondents have resulted in making him junior to his colleagues which fault is liable to be corrected.
- J. That the appellant seeks the permission of this honorable Tribunal for further/additional grounds at the time of arguments.

**It is therefore prayed that appeal of the appellant may kindly be accepted as prayed for.**

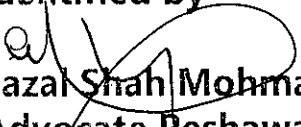
**Any other remedy not specifically asked for, may also be granted in favor of the appellant.**

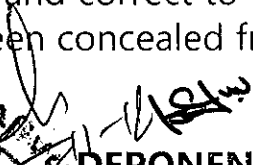
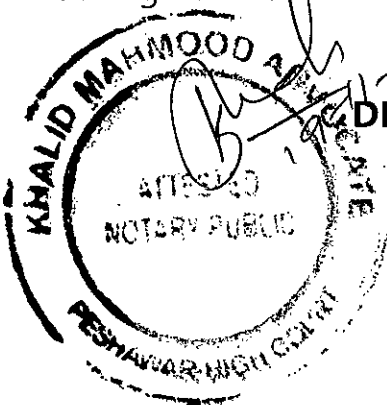
**Dated:-16-11-2018**

  
**Appellant**  
 Through   
**Fazal Shah Mohmand**  
**Advocate, Peshawar**

**AFFIDAVIT**

I, Shah Hussain Certified Teacher (General) (BPS-15) Govt. Middle School Sarkhana Peshawar, do hereby solemnly affirm and declare on oath that the contents of this **Appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable Tribunal.

Identified by  
  
**Fazal Shah Mohmand**  
**Advocate Peshawar**

  
**DEPONENT**  


ORDINARY

Better copy

REGISTERED NO. P.III



GOVERNMENT

GAZETTE

North-West-Frontier-Province

Published by Authority

PESHAWAR, SATURDAY, 20<sup>TH</sup> September, 2012

PROVINCIAL ASSEMBLY SECRETARIAT

THE KHYBER PAKHTUNKHWA

NOTIFICATION

Dated Peshawar, the 20<sup>th</sup> September, 2009

No. PA/Khyber Pakhtunkhwa/Bills/2012/6077:- The Khyber Pakhtunkhwa Sacked Employees (Appointment) Bills, 2012 having been passed by the Provincial Assembly of Khyber Pakhtunkhwa on 10<sup>th</sup> September, 2012 and assented to by the Governor of the Khyber Pakhtunkhwa on 17<sup>th</sup> September, 2012 is hereby published as an Act on the Legislature of the Khyber Pakhtunkhwa.

THE KHYBER PAKHTUNKHWA SACKED EMPLOYEES (APPOINTMENT) ACT, 2012  
KHYBER PAKHTUNKHWA ACT NO. XVII OF 2012)

(First published after having received the assent of the Governor of the Khyber Pakhtunkhwa in the Gazette of the Khyber Pakhtunkhwa (Extraordinary).

Dated the 20<sup>th</sup> September, 2012

AN

ACT

ATTESTED

To provide relief to those sacked employees in the Government service, who were dismissed, removed or terminated from service, by appointing them into the Government service

WHEREAS it is expedient to provide relief to those sacked employees who were appointed on regular basis to a civil post in the Province of the Khyber Pakhtunkhwa and who possessed the prescribed qualification and experience required for the said post, during the period from 1st day of November 1993 to the 30th day of November, 1996 (both days inclusive) and were dismissed, removed, or terminated from service during the period from 1st day of November 1996 to 31st day of December 1998 on various grounds;

WHEREAS the Federal Government has also given relief to the sacked employees by enactment;

(22)

- 5 -

AND WHEREAS the Government of the Khyber Pakhtunkhwa has also decided to appoint these sacked employees on regular basis in the public interest;

It is hereby enacted as follows:

1. Short title, extent and commencement—(1) This Act may be called the Khyber Pakhtunkhwa Sacked Employees (Appointment) Act, 2012.

(2) It shall apply to all those sacked employees, who were holding various civil posts during the period from 1st day of November, 1993 to 30th day of November, 1996 (both days inclusive).

(3) It shall come into force at once.

2. Definitions.—In this Act, unless the context otherwise requires, the following expressions shall have the meanings hereby respectively assigned to them that is to say,—

(a) "civil post" means a post created by the Finance Department of Government for the members of civil service of the Province;

(b) "Department" means the Department and the attached Department as defined in the Khyber Pakhtunkhwa Government Rules of Business, 1985, including the Divisional and District offices working there under;

(c) "Government" means the Government of the Khyber Pakhtunkhwa;

(d) "Prescribed" means prescribed by rules;

(e) "Province" means the Province of the Khyber Pakhtunkhwa;

(f) "rules" means the rules made under this Act; and

(g) "sacked employee" means a person who was appointed on regular basis to a civil post in the Province and who possessed the prescribed qualification and experience for the said post at that time, during the period from 1st day of November 1993 to the 30th day of November, 1996 (both days inclusive) and was dismissed, removed, or terminated from service during the period from 1st day of November 1996 to 31st day of December 1998 on the ground of irregular appointments.

3. Appointment of sacked employees.—Notwithstanding anything contained in any law or rule for the time being in force, on the commencement of this Act, all sacked employees subject to section 7, may be appointed in their respective cadre of their concerned Department, in which they occupied civil posts before their dismissal, removal and termination from service:

Provided that the sacked employees shall be appointed against thirty percent of the available vacancies in the said Department:

Provided further that the appointment of sacked employees shall be subject to the medical fitness and verification of their character antecedents to the satisfaction of the concerned competent authority.

(BB) ( ) ( ) -6-

4. Age relaxation.—The period during which a sacked employee remained dismissed, removed or terminated from service, till the date of their appointment shall be deemed to have been automatically relaxed and there shall be no further relaxation under any rules for the time being in force.

5. Sacked employees shall not be entitled to claim seniority and other back benefits.—A sacked employee appointed under section 3, shall not be entitled to any claim of seniority, promotion or other back benefits and his appointment shall be considered as fresh appointment.

6. Preference on the basis of age.—On the occurrence of a vacancy in the respective cadre of the concerned Department of the sacked employee against the thirty percent available share, preference shall be given to the sacked employee who is older in age.

7. Procedure for appointment.—(1) A sacked employee, may file an application, to the concerned Department within a period of thirty days from the date of commencement of this Act, for his appointment in the said Department:

Provided that no application for appointment received after the due date shall be entertained.

(2) The concerned Department shall maintain a list of all such sacked employees whose applications are received under sub section (1) in the respective cadres in chronological order

(3) If any vacancy occurs against the thirty percent available share of sacked employees in any department, the senior age from such sacked employee shall be considered by the concerned department Selection Committee of the District Selection Committee as the case may be as to be constituted in the prescribed manner for appointment

Provided that no willingness of response is received within a period of thirty days the next senior sacked employee shall be considered for appointment

(4) The concerned Department Selection Committee of District Selection Committee as the case may be will determine the suitability or eligibility of the sacked employees.

(5) If as sacked employee is available against thirty percent vacancy reserved in respective cadre in Department then the post shall be filled through initial recruitment

8. Removal of difficulties.—If any difficulty arises in giving effect to any of the provisions of this Act, the Chief Minister Khyber Pakhtunkhwa may issue such order not inconsistent with the provision of this Act, as may appear to him to be necessary for the purpose of removing the difficulty:

Provided that no such power shall be exercised after the expiry of one year from coming into force of this Act.

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Act to override other laws:- Notwithstanding anything to the contrary contained in any other law or rule for the time being in force the provision of this Act shall have overriding effect and the provision of any other law or rules to the extent of inconsistency to this Act, shall cease to have effect.

9. Power to make rules:- Government may make rules for carrying out the purpose of this Act.

BY ORDER OF MR. SPEAKER,

PROVINCIAL ASSEMBLY OF KHYBER  
PAKHTUNKHWA

(AMANULLAH)

Secretary

Provincial Assembly of Khyber Pakhtunkhwa

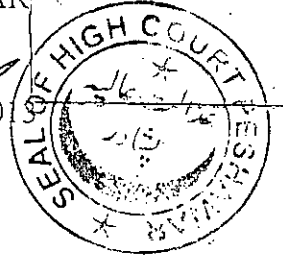
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BEFORE THE PESHAWAR HIGH COURT PESHAWAR

Writ Petition No. 1901 / 20



- 1- Ali Akbar s/o Gul Akbar, (Ex-CT), R/o Village Daaman Afghani, District Peshawar.
- 2- Shah Hussain s/o Abdur Rahman, (Ex-CT), R/o Vill: Mashai Gul Bala District Peshawar.
- 3- Abdul Shafi s/o Muhammad Karim, (Ex-CT), R/o Wazir Bagh, Peshawar.
- 4- Jahanullah s/o Haji Awal Khan, (Ex-CT), R/o Village Daaman Afghani, District Peshawar.
- 5- Imtiaz Ali s/o Abdul Ghani, (Ex-CT), R/o Village Mian Gujar Peshawar.
- 6- Ijaz Ahmad s/o Allah Bakhsh, (Ex-PET), R/o Village Daaman Hindki, District Peshawar.
- 7- Muhammad Shakirullah s/o Muhammad Wasifullah, (Ex-PET), R/o Village Mian Gujar Peshawar.
- 8- Ihsanullah s/o Muhammad Rehan, (Ex-TT), R/o Village Daaman Hindki, District Peshawar.
- 9- Muhammad Amjad s/o Muhammad Younis, (Ex-DM), R/o Garhi Qamar Din Kohat Road, Peshawar.

PETITIONERS

Versus

- 1- Government of Khyber Pakhtunkhwa through Secretary, Elementary & Secondary Education (E&SE), Civil Secretariat, Peshawar.
- 2- Secretary, Elementary & Secondary Education (E&SE), Civil Secretariat, Peshawar.
- 3- Director, Elementary & Secondary Education (E&SE), KPK, Dabgari Gardens Peshawar.
- 4- District Education Officer (Male) District Peshawar.

FILED TODAY  
Deputy Registrar

ATTESTED  
EXAMINER  
Peshawar High Court  
23 SEP 2017

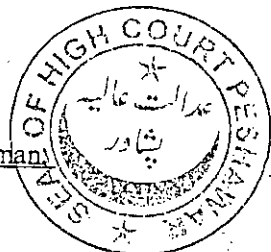
**IN THE PESHAWAR HIGH COURT,**  
**PESHAWAR,**  
**[Judicial Department].**

**Writ Petition No.1901-P/2013**

Date of hearing:- 19.09.2017

Petitioner(s):- Ali Akbar & eight others by Mr. Ibad ur Rehman  
Advocate.

Respondent (s):- Govt of KP through Secretary Elementary &  
Secondary Education and others by Syed Qaisar Ali  
Shah, AAG.



**JUDGMENT**

**ROOH-UL-AMIN KHAN, J:-** Through this common judgment, we, propose to decide the instant constitutional petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, filed by petitioners Ali Akbar and eight others and identical connected Writ Petition No.3449-P/2014, filed by petitioners Sheraz Badshah, the questions of law and facts are involved therein are one and the same. One Naseer ud Din O.T., has filed C.M. No.1070-P/2016, for his impleadment as petitioner in connected W.P. No.3449-P/2014, on acceptance of which learned AAG has no objection. The application is allowed and and petitioner Naseer ud Din is impleaded as petitioner in the connected writ petition.

2. In essence, the grievance of the petitioners is that during the period, since 1993 to 1996, they were appointed as teachers against the vacant posts of CT/PET/DM/OT

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**EXAMINER**  
**Peshawar High Court**  
**23 SEP 2017**



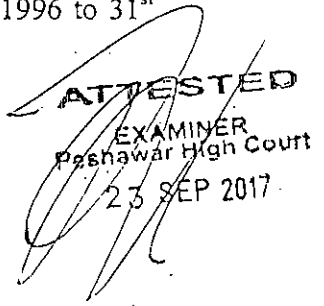
and T.T. fully described in their respective writ petition, in the Education Department, Peshawar and Charsadda, respectively, after observing all the codal formalities, but later on, with the change of Government, on the pretext of alleged irregularities in their appointment, were terminated from the service. The petitioners agitated their grievance before different levels, but with no fruitful result. In the year 2010, the Federal Government enacted 'the Sacked Employees (Re-Instatement) Act, 2010' (the Act of 2010) to provide relief to persons in corporation service or autonomous or semi autonomous bodies or in the Government service who were dismissed, removed or terminated from service. The Provincial Government of Khyber Pakhtunkhwa while following the Act of 2010, also enacted 'the Khyber Pakhtunkhwa Sacked Employees (Appointment) Act, 2012' (the Act of 2012) so as to provide relief to those sacked employees who were appointed on regular basis to a civil post in the Province of the Khyber Pakhtunkhwa and who possessed the prescribed qualification and experience required for the said post, during the period from 1<sup>st</sup> day of November 1993 to the 30<sup>th</sup> day of November, 1996 (both days inclusive) and were dismissed, removed or terminated from service during the period from 1<sup>st</sup> day of November, 1996 to 31<sup>st</sup> day of December, 1998 on various grounds.

*Lawyer's name*

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EXAMINER  
Peshawar High Court  
23 SEP 2017



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3. Respondents have filed their Para-wise comments, wherein it is averred that under the Act of 2012, sacked employee is a person who was appointed on regular basis to a civil post in the province and who possessed the prescribed qualification and experience for the said post at that time during a period from 1<sup>st</sup> day of November, 1993 to 30<sup>th</sup> day of November, 1996 (both days inclusive) and was dismissed, removed, or terminated from service during the period from 1<sup>st</sup> day of November, 1996 to 31<sup>st</sup> day of December, 1998 on the ground of irregular appointments. Some of the petitioner petitioners being lacking the prescribed academic qualification and criteria laid down by the Act of 2012, and some being untrained, cannot be extended benefit of the Act of 2012.

4. Having heard the arguments of learned counsel for the parties, it appears from the record the controversy of re-instatement of sacked employees cropped up before this Court in "Writ Petition No.1662-P/2013, titled, "Hazrat Hussain etc Vs the Govt of Khyber Pakhtunkhwa and others" which was decided on 24.12.2014, in the following way:-

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"It is worth to note that persons similarly, placed with the petitioners have been re-instated by the department while giving effect to the judgments given by the Khyber Pakhtunkhwa Service Tribunal. Moreso, one Mst. Gul Rukh whose services were terminated by the respondents along with the petitioners, has been appointed under the Act vide order dated 09.05.2013. It is cardinal principle of law that similarly placed persons should be treated alike and no different yard stick should be used while redressing their

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EXAMINER  
Peshawar High Court  
23 SEP 2017

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grievances. It is the hall mark and grundnorm of our constitution that every person is entitled to equal protection of law. Not only similarly placed colleagues of the petitioners have been appointed by the respondents but the petitioners are also entitled to the relief given to the sacked employees under the Act.

For what has been discussed above, we admit and accept both the writ petitions and direct the respondents to consider the petitioner for their appointment in accordance with the provision of the Act."

Subsequently, W.P. No.516-A/2013, titled, "Iftikhar Khan etc Vs Govt of Khyber Pakhtunkhwa etc" and so many other writ petitions, were filed by the sacked employees with regard to relief of reinstatement, before Abbottabad Bench of this Court, which were disposed of through a common judgment dated 24.05.2016, placed in W.P. No.516-A/2013, in the following terms:-

- i. *That the petitioners though eligible for appointment but not equipped with training certificate, shall be considered for re-instatement against their respective posts under the Khyber Pakhtunkhwa Sacked Employees (Appointment) Act, 2012 immediately;*
  - ii. *The concerned District Education Officer shall scrutinize the case of each individual petitioner independently;*
  - iii. *Thereafter the department shall arrange and manage the requisite training course for them and the petitioners shall be provided opportunity to acquit the requisite training certificate;*
  - iv. *In case the petitioner failed to acquire the requisite training certificate within the stipulated period, specified by the department, their services shall stand terminated automatically.*
- Needless to remark that the respective EDOs of each district shall complete the process of re-instatement of the petitioners within one month, positively.*

*Loosheed*

The aforesaid judgment of this Court was impugned before the Hon'ble apex Court in C.P. No.401-P/2016 by the Government of Khyber Pakhtunkhwa through Secretary

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EXAMINER  
Punjab High Court  
23 SEP 2017

Elementary and Secondary Education, Peshawar, and the Hon'ble Supreme Court while maintaining the judgment of this Court vide judgment dated 24.05.2017 observed as under:-

"We have been apprised by learned counsel for the respondents that according to the advertisement and appointment letters issued to the respondents, two kinds of candidates could be appointed (i) those who have the requisite academic qualifications and training (ii) those who have the requisite academic qualification but do not possess the necessary training. As regards the second category, such persons would be provided with an opportunity to complete the training within a specific period. This is exactly what the learned High Court as allowed in the relief granting portion of the impugned judgment. Undoubtedly, this is in consonance with the Department's own advertisement and the terms and conditions of service, therefore, the learned High Court did not fall into any error by requiring the Department to allow the respondents to complete training within a specific period of time and to take action against them in case of failure to do so. No exception can be taken to the impugned judgment, which is upheld. Resultantly, Civil Petition No.401-P/2016 is dismissed on merit. The connected petitions are also dismissed on the above score and for being time-barred as no sufficient cause has been shown for condonation of delay."

5. In section 2 (g) of the Act of 2012, sacked employee has been defined as under:-

"Sacked employee" means a person who was appointed on regular basis to a civil post in the province and who possessed the prescribed qualification and experience for the said post at that time, during the period from 1<sup>st</sup> day of November, 1993 to the 30<sup>th</sup> day of November, 1996 (both days inclusive) and was dismissed, removed or terminated from service during the period from 1<sup>st</sup> day of November 1996 to 31<sup>st</sup> day of December 1998 on the ground of irregular appointments."

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The petitioners having been appointed during the period since 1993-1996, do fall within the meaning of section 2

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EXAMINER  
Peshawar High Court  
23 SEP 2017

(g) of the Act of 2012. Section 3 of the Act (ibid), provides mechanism for appointment of the sacked employees, according to which on commencement of the Act, all sacked employees subject to section 7, may be appointed in their respective cadre of their concerned Department, in which they occupied civil posts before their dismissal, removal and termination from service. Proviso attached to section 3 provides that the sacked employees shall be appointed against thirty percent of the available vacancies in the said Department and according to second proviso attached to section 3 provides further that the appointment of sacked employees shall be subject to the medical fitness and verification of their character antecedents to the satisfaction of the concerned competent authority. The case of the present petitioners is not on different footing from the other sacked employees who have already been granted the relief of re-instatement in their service in light of decision of the Service Tribunal as well as the judgment of this Court and the Hon'ble Supreme Court (supra). The respondents have not specifically mentioned as to what kind of the academic qualification the petitioners are lacking. So far as the objection of the respondents that some of the petitioners are untrained is concerned, suffice to say that objection has exhaustively been dealt with by the Hon'ble apex Court in the judgment (supra) that according to the advertisement and appointment letters

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 EXAMINER  
 Rajasthan High Court  
 23/SEP 2017

issued to the petitioners, two kinds of candidates could be appointed (i) those who have the requisite academic qualifications and training (ii) those who have the requisite academic qualification but do not possess the necessary training. As regards the second category, such persons would be provided with an opportunity to complete the training within a specific period.

6. The argument of learned AAG that since the petitioners have not filed applications before the respondents department for their re-instatement within 30 days as contemplated under section 7 of the Act of 2012, therefore, they cannot claim any benefit under the Act (ibid), if prevailed before this Court would amount to technical knockout of the petitioners whose rights otherwise have been established, therefore, the same is repelled.

7. It is golden principle of law that alike shall be treated alike which has further been elaborated by the apex Court in the case of "Hameed Akhtar Niazi Vs the Secretary Establishment Division, Government of Pakistan and others" reported as (1996 SCMR 1185) and again in the case of "Government of Punjab through Secretary Education and others Vs Sameena Parveen & others" reported as (2009 SCMR 01), in the following words"-

*Learned*

*"If a Tribunal or this Court, decides a point of law relating to the terms and conditions of a civil*

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EXAMINER  
Peshawar High Court  
23 SEP 2017

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- 17 -

PESHAWAR HIGH COURT, PESHAWAR	
FROM 'A'	
FORM OF ORDER SHEET	
COURT OF _____ CASE NO. _____	
SERIAL NO OF CALLER OR PROCEEDINGS	DATE OF ORDER OR PROCEEDINGS
1	2
26.06.2018	COC No. 56-P/2018 in W.P. No. 1901-P/2013
<p>Present: -</p> <p>Mr. Ibadur Rahman, advocate for the petitioners.</p> <p>Mr. Mujahid Ali Khan, AAG for the official respondents.</p> <p style="text-align: center;">~~~~~</p> <p><u>WAQAR AHMAD SETH SBJ</u>: When the case was taken up for hearing, learned AAG produced copies of appointment orders dated 26.06.2018, issued by Deputy District Education Officer, (Male), Peshawar and averred that grievance of the petitioners have been redressed, as they have been appointed on their respective posts with immediate effects. Learned counsel for the petitioner when confronted with the situation, he also showed his satisfaction over the appointment letters. Thus this contempt petition has served its purpose. Hence disposed of as such.</p> <p style="text-align: right;">SENIOR PUISNE JUDGE</p> <p style="text-align: right;">JUDGE</p> <p>ANNOUNCED 26.06.2018.</p>	

Amir Bashir Awan, Court Secretary.

(SG) Hon'ble Mr. Justice Waqar Ahmad Seth, Senior Puisne Judge and Mr. Justice Muhammad Khuram Khan, Jd.

**ATTESTED**

# District Education Officer (Male) Peshawar

PH/Fax No. 091-93319337, 9225397,

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## APPOINTMENT.

In compliance of judgement dated 20-09-2017 passed by the Honorable Peshawar High Court Peshawar in Writ Petition No. 1901-P/2013, appointments of the following candidates under Khyber Pakhtunkhwa Sacked Employees (Appointment) Act, 2012 is hereby ordered on regular basis against the post of CT (General) in BPS-15 (Rs.16120-1330-56020) @ Rs. 16120/- in Teaching Cadre on terms and conditions given below with immediate effect:-

S.No	Name	FATHER Name	CNIC#	Name of School	Remarks
1.	Abdul Shafi	Muhamamd Karim	17301-4988093-4	GHSS Urmar Payan	Against Vacant post
2.	Ali Akbar	Gul Akbar	17301-0126814-9	GMS Naguman	Against Vacant post
3.	Shah Hussain	Sahibzada Abdur Rehman	17301-1327067-3	GMS Sarkhana	Against Vacant post
4.	Imtiaz Ali	Abdul Ghani	17301-5882447-9	GHSS Pakha Ghulam	Against Vacant post
5.	Jahan Ullah	Awal Khan	17301-4952140-5	GHSS No.1 Peshawar Cantt	Against Vacant post

### Terms & Conditions

- The candidate lacking the requisite qualification for the above mentioned post, shall acquire the requisite qualification within three years of the issuance of this appointment order as per court directions failing which their appointment order shall stand cancelled.
- The candidates having third division in BA/BSc and CT shall also required to obtain second division in BA/BSc and CT from the recognized Boards, Universities and Institutions within three years of the issuance of this appointment order as per court directions failing which their appointment order shall stand cancelled.
- No TA/DA is allowed.
- Charge reports should be submitted to all concerned.
- Appointment is subject to the condition that the certificates/documents shall be verified from the concerned authorities and anyone found producing bogus certificates or degrees his appointment shall be cancelled forthwith and he will be reported to the concerned law enforcement department for appropriate action.

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6. Their services are liable to termination on one month prior notice from either side. In case of resignation without notice their one month pay shall be forfeited to the Government treasury.
7. Pay shall not be drawn until and unless a certificate issued by this office that his documents are verified.
8. They will be on probation for period of one year extendable to another year.
9. They shall join their post within 15 days of the issuance of this notification failing which their appointment shall stand cancelled/expired automatically and no subsequent appeal etc. shall be entertained.
10. Health & Age Certificate should be produced from the Medical Superintendent before taking over charge.
11. They will be governed by such Rules and Regulations as may be issued from time to time by the Government.
12. Their services shall be terminated at any time in case their performance is found unsatisfactory during their service period. In case of misconduct, they shall be proceeded under the relevant rules & regulations announced from time to time.
13. According to section 5 of the Khyber Pakhtunkhwa Sacked Employees (Appointment) Act, 2012 they shall not be entitled to any claim of seniority, promotion or other back benefits and his appointment shall be considered as fresh appointment.
14. Errors and omissions will be acceptable within the specified period.

Note:

Appointment order shall be verified by the concerned Drawing and Disbursing Officers personally from the office of the undersigned before handing over charge to the official.

(JADDI KHAN KHALIL)  
DISTRICT EDUCATION OFFICER  
(MALE) PESHAWAR.

Endst: No. 14837-50

Dated Peshawar the 26/6/2018.

Copy forwarded for information to:

1. Accountant General Khyber Pakhtunkhwa Peshawar.
2. PS to the Secretary to Govt: Khyber Pakhtunkhwa E&SE Department.
3. Deputy Commissioner, Peshawar
4. PA to the Director E&SE Khyber Pakhtunkhwa, Peshawar.
5. Principals/Headmasters concerned.
6. PA to District Education Officer (Male) Peshawar.
7. Cashier Local Office.
8. Officials Concerned.
9. M/File.

*[Signature]*  
Deputy District Education Officer  
(Male) Peshawar

4319

19-7-2018

خدمت جناب ڈسٹرکٹ ایجوکیشن آفیسر (سر دائرہ)

due seniority

عنوان سے اپیل برائے

جناب عالی

گزارش ہے کہ مجھے 1997 میں ملازمت سے سیاسی بنیادوں پر برطرف  
 کیا گیا، سال 2012 میں صوبائی حکومت نے سیاسی بنیادوں پر برطرف  
 شدہ ملازمین کی بحالی کیلئے ایکٹ جاری کیا اور میں نے مذکورہ  
 ایکٹ کے تحت بحالی کیلئے آرپ کو مقررہ 30 دن کے اندر درخواست  
 دی تاہم مجھے بحال نہیں کیا گیا جس کے بعد میں نے عدالت عالیہ  
 لیسٹاؤ میں پیٹن نے دیگر ساتھیوں سمیت عدالت عالیہ ریٹری بیٹیشن کے 19/1/2013  
 دائر کی جو کہ سرورم 19/9/2017 کو منظور ہو کر عدالت عالیہ کے حکم

محلہ کو مجھے مذکورہ بالا ایکٹ کے تحت بھرتی کرنے کا حکم صادر  
 فرمایا تاہم عدالتی فیصلے کے باوجود مجھے بھرتی نہیں کیا گیا جس کے  
 بعد میں نے دیگر ساتھیوں سمیت عدالت عالیہ لیسٹاؤ میں نوے میں عدالت  
 کا مقدمہ 2018-26/P دائر کیا جس کے بعد مورخہ 26/6/2018 کو  
 مجھے بھرتی کا حکم فیصلے بھرتی کا حکم صادر فرمایا گیا تاہم مجھے

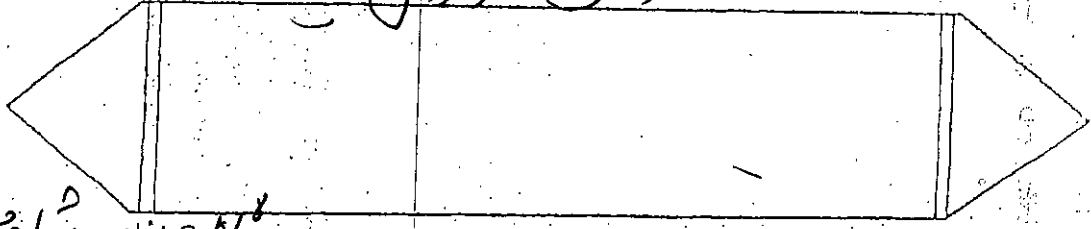
مزید گزارش ہے کہ میں نے بروقت محلے کو درخواست دی تھی عدالت  
 عالیہ لیسٹاؤ نے ریٹری بیٹیشن کے بعد بروقت دائرہ کیا تاہم ان سبب  
 کے باوجود بھرتی نہیں ہوئی تاہم 26/6/2018 کو جاری کیا گیا ہے  
 اس طرح مجھے تقریباً 20 سال کی seniority سمیت دیگر سہولت سے محروم  
 کیا گیا جس میں میرا کوئی تصور نہیں ہے اور محلے کی حالت عدالتی  
 باعث مجھے سزا دی گئی جو کہ الفتن کے اصولوں کے منافی ہے  
 لہذا استدعا ہے کہ میری seniority جملہ سہولت سمیت 2012 سے  
 دیگر مشورہ فرمائیں

درخواست گزار سیدہ ارم شاہ عین ولدہ سیدہ ارم عبد الرحمن

C.T. پیپر سکنڈ سٹی ٹریفک

ATTESTED

# بعدالت سردی بیرونی



شاہ سنہ 2015ء پنجاب شاہ سنہ  
بنام 500 روپے

موزخہ  
مقدمہ  
دعویٰ  
جرم

## باعث تحریر آنکہ

مقدمہ مندرجہ عنہن بالا میں اپنی طرف سے واسطے بیرونی جواب دہی دکن کاروائی متعلقہ شاہ محمد الدوبلیہ سردی  
آن مقام کیلئے شاہ محمد الدوبلیہ سردی

مقرر کر کے اتر کر کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کاروائی کا کامل اختیار ہوگا۔ نیز  
ذیل صاحب کو راضی نامہ کرنے و تقرر ثالثہ فیصلہ پر حلف دینے جواب دہی اور اقبال دعویٰ اور  
بصورت ڈگری کرنے اجراء اور وصولی چیک در پیہ اور عرضی دعویٰ اور درخواست ہر قسم کی تصدیق  
زراں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم بیرونی یا ڈگری یا کیلٹرنہ یا اپیل کی برآمدگی اور مندرجہ  
نیز دائر کرنے اپیل عمرانی و نظر ثانی و بیرونی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور  
کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار  
ہوگا۔ اور صاحب مقرر شدہ کو کسی دہی جملہ مذکورہ باختیارات حاصل ہوں گے اور اس کا پختہ  
پرداختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ درجہ التوائے مقدمہ کے سبب سے رہے گا۔  
کوئی تاریخ پیشی مقام دورہ پر ہو یا حدیث سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ بیرونی  
مذکور کریں۔ لہذا ادکالت نامہ لکھ دیا کہ سند ہے۔

شاہ محمد الدوبلیہ سردی

20 ماہ المرتوم

Accepted  
Attested

Accepted  
Attested

مقام

**BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA**

**SERVICE APPEAL NO.1410/2018**

**Mr. Shah Hussain**

**V/S**

**DEO and Others**

**REPLY ON BEHALF OF RESPONDENTS 1, 2, & 3.**

Respectively Sheweth:

The Respondents submits bellow:

**PRELIMINARY OBJECTIONS:**

1. That the Appellant has got no cause of action /locus standi.
2. That the Appellant has concealed material facts from this Hon,ble Tribunal.
3. That the Appellant has been estopped by his own conduct to file the instant appeal before this Hon'ble Tribunal.
4. That the instant Appeal is badly time barred.
5. That the instant Appeal is not maintainable in its present form.
6. That the instant Appeal is bad for mis-joinder and non-joinder for the necessary parties.
7. That the Appellant has not come with clean hands to this Hon'ble Tribunal.
8. That the instant Appeal is barred by law.
9. That the Appellant does not fall within the ambit of aggrieved person.

**ON FACTS.**

1. That in reply to Para No.1, it is submitted that the Appellant was illegally appointed without any test, interview and advertisement, Moreover, the appellant was also appointed on fixed pay therefore, the Department terminated them from their services and the stances of the Department also upheld by the Apex Court on his judgment dated 11-10-2018.
2. That Para No.2 pertains to record.
3. That Para No.3 is incorrect, misleading and against the facts. The Appellant doesn't fall within the definition of Sacked Employee ACT-2012 section 2(g). Moreover section 2(g) says that "Sacked Employee means a person who was appointed on regular basis to a civil post in the Province and who possessed the prescribed qualification and experience for the said post at that time, during the period from 1<sup>st</sup> day of November 1993 to the 30<sup>th</sup> day of November, 1996 (both days inclusive) and was dismissed, removed, or terminated from service during the period from 1<sup>st</sup> day of November 1996 to 31<sup>st</sup> day of December 1998 on the ground of irregular appointments"  
(The said Act is already been annexed as A page 4-7 of the instant Appeal)
4. That in reply to Para No.4, it is submitted that the appellant did not fall within the ambit of definition of "Sacked Employee Act-2012".

5. That reply to Para No.5, it is submitted that the appellant was appointed without codal formalities on fixed pay and he did not fall within the ambit of definition of Sacked Employee Act-2012. In this context the Hon'ble Supreme Court of Pakistan issued judgment dated 11-10-2018 in Civil Petitions No. 210,300 in which the Hon'ble Supreme Court of Pakistan issued directions **"We have heard learned ASC for the Petitioners it was admitted before us that the Petitioner are seeking relief under the Khyber Pakhtunkhwa Sacked Employees (Appointment) Act, 2012. It was also admitted by the learned ASC for the Petitioner that none of the Petitioners was regular employee and that they have been appointed on temporary basis by the Education Minister Nawabzada Muhammad Khan Hoti. The Sacked Employee, as defined in the Act, required that the employee has to be regular employee to avall its benefit. Admittedly such not the position of the petitioner, thus their case does not fall within the ambit of the said Act"**

**(The Judgment is attached as Annexure: A)**

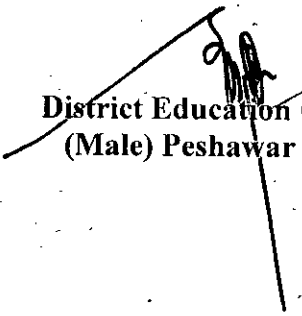
6. That Para No. 6 is misleading and against the facts. The appointment letter which is issued to the appellant terms and conditions No.13 clearly mentions that "According to section 5 of the Khyber Pakhtukhwa Act: a Sacked Employees (Appointment) Act: 2012 they shall not be entitled to any claim of seniority, promotion or other back benefits and his appointment shall be considered as fresh appointment". Moreover the appellant was appointed in compliance of Contempt of Court Petition not reinstated. Therefore the appellant is not entitled for back benefits.
7. That Para No.7 is misleading and against the facts. The appellant has no cause of action to file the instant appeal in this Hon'ble Service Tribunal.


## **GROUND**

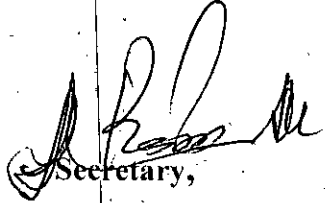
- A. That Ground-A is incorrect and misleading and against the facts.
- B. That Ground-B is also incorrect and misleading the detailed reply has been given in the above Para.
- C. That Ground -C is incorrect, misleading and against the facts. The appellant was appointed not reinstated. Moreover he didn't come in the ambit of sacked employees Act-2012 Section 2(g).
- D. That Ground-D incorrect and misleading.
- E. That Ground-E is incorrect misleading and against the facts the appointment of the appellant has already declared null and void by the Apex Court in his judgment dated: 11-10-2018 which is already annexed as Annexure A.
- F. That Ground -F is incorrect and misleading. The detailed reply has been given in the above Para.
- G. That Ground-G is also incorrect and misleading.
- H. That ground H is also incorrect and misleading the appellant was appointed not reinstated.
- I. That Ground-I is also incorrect and misleading. The detailed reply has been given in above Para.

J. That the respondents have also seeks the permission of this Hon'ble Tribunal for further / additional grounds at the time argument.

It is therefore, very humbly prayed that on acceptance of this reply, the instant appeal may very kindly be dismissed with cost.

  
District Education Officer  
(Male) Peshawar

  
Director,  
(E &SE) KPK Peshawar

  
Secretary,  
(E &SE) KPK Peshawar

**SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

Present:  
Mr. Justice Gulzar Ahmed  
Mr. Justice Qazi Faez Isa  
Mr. Justice Mazhar Alam Khan Mankhel

**C.P. Nos. 210 & 300 of 2017**  
(On appeal against common Judgment dated 28.11.2016  
passed by the Peshawar High Court, Mingora Bench (Dar-  
ul-Qaza), Swat, in W.P. Nos. 145-M/2015 & 176-M/2015)

Muhammad Azam Khan (CT) & others [In CP.210]  
Falas Khan & others [In CP.300] Petitioner(s)

**VERSUS**

Government of Khyber Pakhtunkhwa through Secretary [In CP.210]  
Elementary & Secondary Education, Peshawar & others

Government of Khyber Pakhtunkhwa through Chief [In CP.300].  
Secretary, Civil Secretariat, Peshawar Respondent(s)

For the Petitioner(s)

[In C.P.No.210]

[In C.P.No.300]

: Mr. Zulfiqar Ahmed Bhutta, ASC  
: Mr. Muhammad Ameen K. Jan, ASC

For Govt. of KPK

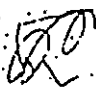
: Barrister Qasim Wadood, Addl.A.G. KPK

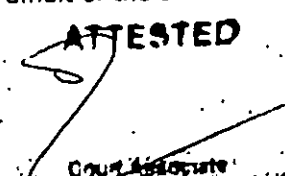
Date of Hearing

: 11.10.2018

**ORDER**

**GULZAR AHMED, J.** — We have heard learned ASC for the petitioners. It was admitted before us that the petitioners are seeking relief under the Khyber Pakhtunkhwa Sacked Employees (Appointment) Act, 2012. It was also admitted by the learned ASC for the petitioners that none of the petitioners was regular employee and that they have been appointed on temporary basis by the Education Minister Nawabzada Muhammad Khan Hoti. The sacked employee, as defined in the Act, required that the employee has to be regular employee to avail its benefit. Admittedly such being not the position of the petitioners, thus their case does not fall within the ambit of the said Act. The



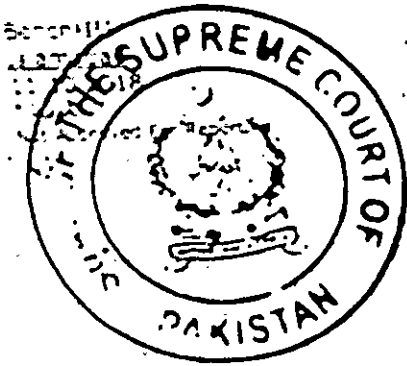
**ATTESTED**  
  
Cous Associate

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High Court. In the impugned judgment dated 28.11.2016, has adverted to all the aspects of the matter and we find no reason to interfere with the same.

These petitions are, therefore, dismissed and leave refused.

*(Handwritten marks)*



Certified to be True Copy

*(Signature)*  
Supreme Court of Pakistan  
Islamabad

GR No: 24662/P18  
Date of Presentation: 16/11/18  
No. of Words: 16  
No. of Folios: 5  
Requisition Fee Rs: 500  
Copy Fee In: 200  
Court Fee Stamps: 200  
Date of Completion of Copy: 16/11/18  
Date of delivery of Copy: \_\_\_\_\_  
Compared by/Prepared by: \_\_\_\_\_  
Received by: \_\_\_\_\_



**BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.**

Service Appeal No 1410/2018.

Shah Hussain.....Appellant.

**V E R S U S**

DEO & Others.....Respondents

**REPLICATION ON BEHALF OF THE APPELLANT.**

**REPLY TO PRELIMINARY OBJECTIONS.**

All the objections raised by the respondents are incorrect, and as such denied. The appellant has got a valid cause of action and locus standi to bring the present appeal, the appellant has come to this honorable tribunal with clean hands, the appellant has concealed nothing from this honorable Tribunal and instant appeal is maintainable in its present form. All necessary parties have been impleaded, the appellant is not estopped by his conduct to bring instant appeal, the appellant is aggrieved person, and instant appeal is well within time and is not bared by law.

**REPLY TO FACTS/GROUNDS:**

Comments of the respondents are full of contradictions, rather amounts to admissions and are based on malafide. Respondents have failed to show that the version of the appellant is incorrect. Even respondents have failed to show and substantiate their version referring to any law and rules. In the circumstances the appellant has been deprived of his rights without any omission or commission on his part and he has been deprived of his rights guaranteed by the Constitution and law of the land. The issue whether the appellant falls within the honorable High Court which is a past and closed transaction and respondents have no authority to repel the judgment of learned High Court. The appellant duly applied within the stipulated time and the respondents were required to have appointed the appellant timely but they failed to discharge their duties which resulted in depriving the appellant of his due rights of pay and seniority, the appellant could not be punished for the fault of respondents. Further the appellant never refused such appointment, thus no fault could be attributed to him.

In the circumstances the appellant has not been treated according to law and rules being his fundamental right and he has been deprived of his legal

rights without any omission or commission on his part in violation of the principles of natural justice.

**It is therefore prayed that appeal of the appellant may kindly be accepted as prayed for.**

**Dated:-31-05-2019.**

**Appellant**

**Through**

**Fazal Shah Mohmand**

**Advocate Peshawar**

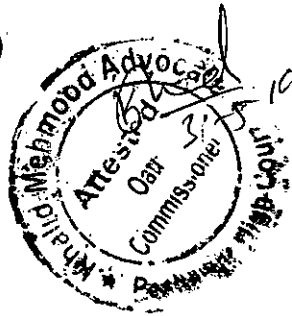
## **AFFIDAVIT**

I, Shah Hussain, Certified Teacher (General) (BPS-15), Govt. Middle School Sarkhana Peshawar, (the appellant), do hereby solemnly affirm and declare on oath that the contents of this **Replication** are true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable Tribunal.

**Identified by**

**Fazal Shah Mohmand**

**Advocate Peshawar.**



**DEPONENT**

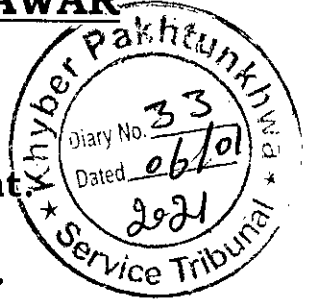
**BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR**

S.A.No. 1410 /2018

Shah Hussain.....Applicant/Appellant

**VERSUS**

DEO and others.....Respondents.



*Put up to the court with  
re-layout appeal.*

**APPLICATION FOR EARLY HEARING OF THE TITLED  
SERVICE APPEAL.**

*6/1/2021*  
**Respectfully Sheweth;**

- Ready*
1. That the above titled service appeal is pending adjudication before this August Tribunal, fixed for 13-04-2021.
  2. That the titled appeal was filed in 2018 and the same is ripe for arguments, however the same has been delayed on one or other pretext, thus needs to heard and fixed on early date.
  3. That fixing an early date is in interest of justice and there is no hurdle in fixing an early date in the above titled appeal, besides if any early date is not fixed in the titled appeal, the service appeal would lose its purpose and would become in fructuous.

**IT IS THEREFORE, PRAYED, THAT ON ACCEPTANCE OF THIS APPLICATION, THE ABOVE TITLED SERVICE APPEAL MAY KINDLY BE FIXED FOR AN EARLY DATE.**

DATED: -06-01-2021

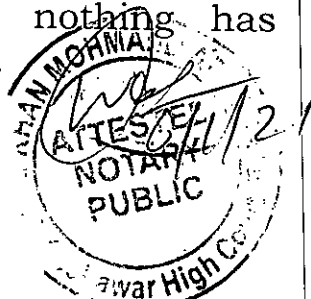
*[Signature]*  
APPLICANT/ APPELLANT

THROUGH,

*[Signature]*  
FAZAL SHAH MOHMAND  
ADVOCATE SUPREME COURT

**AFFIDIVAT**

I, **Shah Hussain**, (Applicant/ Appellant) ,do hereby solemnly affirm and declare on oath that the contents of this **Application** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Court.



*[Signature]*  
DEPONENT

**BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR**

S.A.No. 1410 /2018

Shah Hussain.....Applicant/Appellant.

**VERSUS**

DEO and others.....Respondents.

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DATED: -06-01-2021

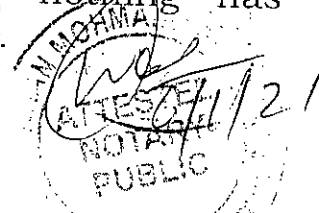
  
APPLICANT/ APPELLANT

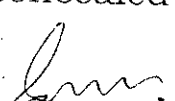
THROUGH,

  
FAZAL SHAH MOHMAND  
ADVOCATE SUPREME COURT

**AFFIDIVAT**

I, **Shah Hussain**, (Applicant/ Appellant) ,do hereby solemnly affirm and declare on oath that the contents of this **Application** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Court.



  
DEPONENT

**BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR**

S.A.No. 1410 /2018

Shah Hussain.....Applicant/Appellant.

**VERSUS**

DEO and others.....Respondents.

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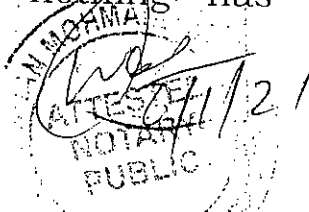
  
APPLICANT/ APPELLANT

THROUGH,

  
FAZAL SHAH MOHMAND  
ADVOCATE SUPREME COURT

**AFFIDIVAT**

I, **Shah Hussain**, (Applicant/ Appellant) ,do hereby solemnly affirm and declare on oath that the contents of this **Application** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Court.



  
DEPONENT

APPOINTMENT

Appointment of the following person(s) is hereby ordered against the post of GT on temporary & adhoc basis at Rs: 1695/- fixed plus usual allowances as admissible under the rules in P.S. 9 (Rs:                     ) at the Institution noted against each name.

S/No:	Name, Qualification & Address	Posted at	Remarks.
1)	Shah Arshad A. Sahibzada Abdur Rehman Village Road, Peshawar	GT, Fakha Ghulam Peshawar.	Against the GT vacant post.

TERMS & CONDITIONS

1. His/Her appointment is purely temporary & liable to termination any time without assigning reasons or notice.
2. In case of resignation he/she will have to submit one month's prior notice to the Deptt; or forfeit one month's pay in lieu thereof to the Govt;.
3. He/She is required to produce health & age certificate from the Medical authority concerned before taking over charge provided he/she is not in Govt; service.
4. He/She should not be allowed to take over charge if his/her age is less than 18 years or above 25 years.
5. His/Her apptt; is subject to further condition that he/she is domiciled of NWFP.
6. His/Her antecedents forms should be obtained duly verified by the local police authorities & submit to this office together with application for apptt; on prescribed form & under taking declaration of moveable & immovable property for record in this office.
7. All original educational character & domicile certificates should be thoroughly checked before handing over charge, if necessary, should be verified from the Institutions concerned.
8. If he/she fails to take over charge of the post within a week of the receipt of this order the offer of apptt; shall stand cancelled.
9. Charge reports should be submitted to all concerned.
10. No TA/DA etc is allowed.
11. He/she should be given test in Nazira Quran & Pakistan Studies & result intimated to this office.

(SHAH-I-ROOM KHAN)  
 DIVL: DIRECTOR OF EDUCATION(S),  
 PESHAWAR DIVN: PESHAWAR.

E. dt; No: 16378-84 Dated 31-8-1995

- Copy to the:-
1. DEO(H) & (S) Secy; Peshawar.
  2. DADR: Charaydixar/Nowshorax A.G. Office H.M.S.P Peshawar.
  3. Headmaster/Asst. admstrs Headmaster (S), Fakha Ghulam Peshawar.
  4. Candidate concerned.
  5. Supt; E; branch.
  6. P/ File.

Jehanzeb/  
 Yousaf Zai

*[Signature]*  
 for Divl; Director of Education(S),  
 Peshawar Division Peshawar.

*[Signature]*  
 P.S.                      822



OFFICE OF THE  
DISTRICT EDUCATION OFFICER (MALE)  
Swat (Cell # 0946 9240209-228)

OFFICE ORDER

Whereas Mr. Muhammad Shereyar S/O Muhammad Shalyar R/O kara Durushkheila and Mr. Anwar Zeb S/O Hunar Mand R/O Charbagh Swat were initially appointed as PTC vide office order Endst No. 2157-60/e-2/T&A dated 21.5.1995 and No. 1453-55/M-2/T&A dated 17.4.1995 respectively.

Whereas their appointments were found illegal, ab-initio void and against the prescribed rules and were dispensed with immediate effect vide office order Endst No. 581-607 dated 13.2.1997.

Where as they filed Service Appeal No. 532/2008 under title "Muhammad Shereyar VS ACO etc" and Service Appeal No. 533/2008 under title "Anwar zeb VS ACO etc" before the Khyber Pakhtunkhwa Service Tribunal Peshawar, which were accepted by the Honorable Tribunal vide judgment dated 4.1.2013 and directed the respondents to consider the grievances of the appellants.

Whereas in compliance of the said judgment, the appellants were re-instated vide office order Endst No. 727-32/PST (M)/Apptt: dated 5/7/2013 and posted them at GPS Khakhtay and GPS Asharbanr respectively, but back benefits were not given to them.

Whereas feeling aggrieved from the said re-instatement order, the appellants filed Service Appeal No. 1202/2013 and 1203/2013 before the Khyber Pakhtunkhwa Service Tribunal Peshawar, which were accepted by the Honorable Tribunal and directed the respondents to modify the impugned order and directed to extend the benefits of the previous services to the appellants and further directed that the period in which they remained out of service shall be treated as leave of the kind due.

Whereas the respondents as well as the appellants filed CPLAs in the apex court against the said judgment. The Honorable court dismissed both CPLAs and leave refused vide judgment dated 27.3.2020; however in the last Para of the judgment, the Honorable Court allowed counting of their service for the protected period for payment of pensionary benefits.

Whereas this office sought guidance/ legal opinion about the last Para specially the protected period from law department through proper channel.

Whereas the law department cleared the judgment in the following words.

"the service tribunal has extended the service benefits of the previous service of the petitioners and the period remained out of service was treated as leave of the kind due. Hence the period in which the petitioners remained out of service is to be treated as on leave of the kind due and thereby the said period shall be counted towards pension."

Now therefore in view of the above factual position, the re-instatement /office order endst. No. 727-32/PST (M)/Apptt: dated 5/7/2013 (appellants Mr. Muhammad shereyar PST GPS Khakhtay and Mr. Anwar Zeb PST GPS Asharbanr) is hereby modified and the service benefits of the

Anwar Zeb

previous service i.e 21.5.1995 and 17.4.1995 respectively to 12.2.1997 is extended to them and the period in which they remained out of service i.e 13.2.1997 to 5.7.2013 is to be treated as leave of the kind due and thereby the said period shall be counted towards pensionary benefits only.

Note:- All the terms and conditions will remain the same as mentioned in the re-Instatement order issued vide endst:No.727-32/PST(M)/Apptt:dated 05.07.2013.

(MUHAMMAD RIAZ)  
DISTRICT EDUCATION OFFICER  
(MALE) SWAT

Endst: No.7242-46 Swat

Dated 16/07/2021

Copy forwarded to:-

1. The Director Elementary and Secondary Education Khyber Pakhtunkhwa Peshawar.
2. The District Comptroller of Accounts Swat at Saidu Sharif.
3. The SDEOs (M) Matta and Charbagh Swat.
4. PA to DEO (M) local office.
5. The teachers concerned.

DISTRICT EDUCATION OFFICER  
(MALE) SWAT