

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

Service Appeal No: 2397/2021

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 3591

Dated 15/2/2023

Waqas, DM (BPS-15) GHS Hadora Bandi, District
Abbottabad.....Appellant

VERSUS

Government of, Khyber Pakhtunkhwa through the Secretary E&SE
Department & others.....Respondents

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T. Q. M.
Assistant Director (Lit: II)
E&SE Department, Khyber
Pakhtunkhwa, Peshawar.

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Department & others.....Respondents

JOINT PARAWISE COMMENTS ON BEHALF OF RESPONDENTS No: 1-5.

Respectfully Sheweth:

The Respondents 1 to 5 submit as under:-

PRELIMINARY OBJECTIONS.

- 1 **That** the Appellant has got no cause of action/locus standi.
- 2 **That** the Appellant has not come to this Honorable Court with clean hands.
- 3 That the appeal in hand is based on mala fide intentions for illegal service benefits.
- 4 **That** the appellant has concealed material from the ambit of this Honorable Bench is the titled matter.
- 5 **That** the case is bad for mis-joinder and non-joinder of the nessacery parties to the appeals.
- 6 **That** the matter is barred by law.
- 7 **That** the appellant has been treated as per law rules of policy by the Department.
- 8 That this Honorable Bench has got no jurisdiction to entertain the tiled case in view of legal bar under the law.
- 9 **That** the service rule dated 24-7-2014 & 24-4-2018 are legally competent.
- 10 **That** the Appellant is not entitled for the relief he has sought from this Honorable Bench through the instant case.

ON FACTS.

- 1 Correct to the extent of the appointment of the appellant against the PST in BPS-12 on Union Council based policy vide Notification dated 2-6-2012 issued by the then EDO (E&SED) District Malakand which is attached as **Annexure-A** for ready reference.
- 2 Needs no comments as this para pertains to the academic qualification of BS in computer Science which is not a matter of dispute in the given circumstances of the case.
- 3 Correct to the extent of framing service structure/Rules for the grant of promotion to the different Teaching Cadre employees of the Department including the appellant against the SST (Sc/G) posts in the Department under the specified reserved Quota for promotion notified by the Respondent Department vide Notification dated 24-7-2014 attached as **Annexure-B** for ready reference Hence, the plea of the appellant is misleading and liable to be rejected..
- 4 Correct that vide Notification dated 24-4-2018 attached as **Annexure-C**, the Respondent Department has framed and notified service Rule/structure for different cadre of information Technology (IT) including the SST (IT) in BPS-16, wherein, the prescribed qualification for promotion has been maintained as under:-
 - a) *Fifty percent by promotion on the basis of Seniority cum fitness from amongst the CT, (IT) with five years' service as such and having the qualification prescribed for the post of SST (IT) in BPS-16.*
 - b) *Fifty percent by initial recruitment. Provided that if no suitable candidate is available for promotion then by initial recruitment.*
- 5 Correct that the appellant while aggrieved from the aforesaid service structure/Rules, has filed a WP No. 596-P/2019 in the Peshawar High Court Peshawar under Article 199 of the constitution of Islamic Republic of Pakistan 1973 which was dismissed vide judgment dated 03-9-2020 in favor of the Responded Department on merits of the case and a copy of the cited Judgment dated 03-9-2020 is attached as **Annexure-D** for ready reference.
- 6 Incorrect, hence, denied on the grounds that no Departmental appeal has been filed by the appellant against the afore mentioned service rule/structure dated 24-7-2014 & 24-4-2018, therefore, got finality under the relevant provision of law & limitation act 1908 against the appellant.
- 7 Incorrect, hence, denied, the stand of the appellant is illegal, therefore, the appeal in hand is liable to be rejected on the following grounds inter alia:-

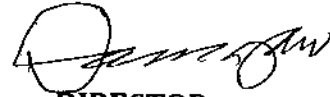
ON GROUNDS.

3

- A. **Incorrect & not admitted.** The plea of the Appellant is without any cogent reason and legal justification as the service rules/structure dated 24-7-2014 & 24-4-2018 are mainly based on natural justice and equality, wherein, each & every teaching cadre has a prospect of promotion to the higher posts in the Department on the basis of seniority cum fitness basis. Therefore, the claim of the appellant is liable to be rejected.
- B. **Incorrect & not admitted.** The Appellant has been treated as per law, rules and service Rules & structure as mentioned above, therefore, the appellant seeks two separate channels for promotion against the SST (IT) post and SST (G) which is illegal and liable to be rejected.
- C. **Incorrect & not admitted.** The plea of the appellant is illegal and liable to be rejected in view of the above submission made in foregoing paras of the present reply on behalf of the Respondents.
- D. **Incorrect & not admitted.** The act of the Respondents with regard to the afore stated service Rules & structure dated 24-7-2014 & 24-4-2018 is within legal sphere & liable to be maintained.
- E. **Incorrect & not admitted.** The act of the Department is legal having no aspect of discrimination towards to the appellant in the aforementioned service Rules. Therefore, the stance of the appellant is liable to be rejected.
- F. **Incorrect & not admitted.** No constitutional violation has been made by the answering Respondents. They have always fulfilled their legal and constitutional obligations.
- G. **Incorrect & not admitted.** Hence, needs no further comments, however, the Respondents also seek leave of this Honorable Bench to submit additional record, grounds and case Law at the time of arguments of the case.

Therefore, it is most humbly prayed that the appeal of the appellant may kindly be dismissed to in favor of the Respondents in the interest of justice.

Dated ___/___/2022.



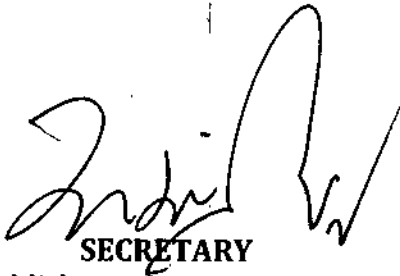
DIRECTOR

E&SE Khyber Pakhtunkhwa, Peshawar.
(Respondent No: 5)



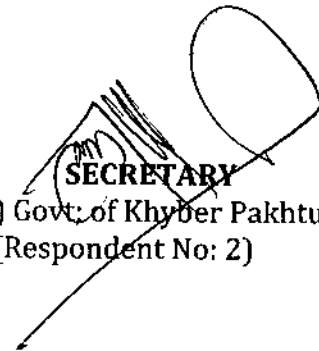
SECRETARY

E&SE Department Khyber
Pakhtunkhwa, Peshawar.
(Respondents No: 1 & 4)



SECRETARY

(Establishment) Department Govt; of
Khyber Pakhtunkhwa, Peshawar.
(Respondent No: 3)



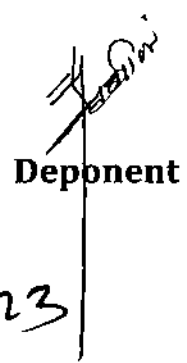
SECRETARY

(Finance) Govt. of Khyber Pakhtunkhwa.
(Respondent No: 2)

AFFIDAVIT

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

ATTESTED


Deponent

Annex A

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OFFICE OF THE EXECUTIVE DISTRICT OFFICER (E&S-Edu:) MALAKAND
PROMOTION / APPOINTMENT

Consequent upon the recommendation of the Departmental Promotion/Selection Committee Malakand in its meeting held on 25.5.2012, the EDO(E&SE), Malakand, being the competent authority is pleased to approve and promote the following existing PSTs as C.Ts and to appoint the fresh eligible candidates (Male & Female) against the post of C.T (General)/DM/Qarla in BPS No.09 (Rs.6200-380-17600) and PSTs in BPS No.07 (Rs.5800-320-15400) plus usual allowances as due and admissible to them under the rules from the date of their taking over charge against the posts at the schools noted against their names in the interest of public service with the following terms and conditions.

(1) PROMOTION OF PST (MALE) AGAINST THE 60% VACANCIES

C	Name	Father's name	Seniority No.	Present School	School where posted as C.T
1.	Abdus Salam	Sherin Zada	254	GPS Faisal Abad	GHS No.1 Dheri Alladand
2.	Sher Ali	Toti Rahman	283	GPS Kharki	GHSS, Palal
3.	Noor Zada	Azim Khan	331	GPS Ghawar Kali	GHSS, Palal
4.	Abdul Wadood	Ghulam Muhammad	347	GPS No.2 Dargai	GHSS, Palal
5.	Nazar Muhammad	Hazrat Muhammad	363	GPS No.2 Makhnawala	GHS, Bazdara Bala

(2) PROMOTION OF PST (FEMALE) AGAINST THE 60% VACANCIES

S#	Name	Father's name	Seniority No.	Present School	School where posted as C.T
1.	Robina Akbar	Ghulam Akbar	194	GGPS No.2 Batkhela	GGMS, Piran (Julagram)
2.	Bacha Zamina	Khanzad Gul	425	GGPS Total	GGMS, Nehr Banglow
3.	Fahmida	Sultan Mehmood	455	GGPS Dheri Julagram	GGHS, Dheri
4.	Sajida	Taj Muhammad	501	GGCMS Agra	GGMS, Piran (Julagram)

(3) APPOINTMENT OF THE LEFT OVER CANDIDATES AGAINST THE POST OF CT (MALE) BPS NO.09 WHICH LEFT VACANT DUE TO NON-ASSUMPTION OF CHARGE BY THE APPOINTEES

S#	Name	Father's name	Residence	Score	Merit Position	School where posted As C.T
1.	Karam Muhammad	Wali Muhammad	Dheri Alladand	56.95	13	GHSS, Palal
2.	Fazil Wahid	Amir Zaman	Kot	56.66	14	GHS, Bazdara Payan

(3) APPOINTMENT OF THE LEFT OVER CANDIDATES AGAINST THE POST OF DM (MALE) BPS NO.09 WHICH LEFT VACANT DUE TO NON-ASSUMPTION OF CHARGE BY THE APPOINTEES

S#	Name	Father's name	Residence	Score	Merit Position	School where posted As DM
1.	Shahid Khaliq	Fazil Khaliq	Thana	47.31	4	GHS, Bazdara Bala
2.	Muhammad Ishfaq Hussain	Muhammad Sherlen Badshah	Alladand	46.86	5	GMS, Heroshah

(4) APPOINTMENT OF QARI (FEMALE) BPS NO.09

S#	Name	Father's name	Residence	Score	Merit Position	School where posted As Qarla
1.	Amina Bibi	Umar Rahman	Thana Malakand Agency	56.06481	1	GGHS No.2 Batkhela
2.	Shahana Gul	Nek Muhammad	Thana Malakand Agency	49.70266	2	GGHS, Bazdara Bala
3.	Madina Zaman	Shah Zaman	Village & P.O Matkanai	48.1126	3	GGHS, Matkani
4.	Laila Nisar	Muhammad Nisar Khatak	Village Meherdi	45.19153	4	GGHS, Wartair
5.	Nusrat Begum	Muhammad Pervaiz	Village & P.O Agra	44.5899	5	GGHS, Agra
6.	Sapna Kamran	Sher Muhammad	Village Heroshah	43.46515	6	GGHS, G.U.Khel
7.	Roshni Bibi	Fazil Rahman	Dheri Julagram	36.23658	7	GGHS, Totakan
8.	Hajira Bibi	Shahabud Din	Dheri Julagram	35.16465	8	GGHS, Pirkhel
9.	Zainab	Mukhtar Ahmad	Thana	33.05882	9	GGHS, Maina
10.	Safia Bibi	Fazal Waris	Agra	31.92727	10	GGHS, Kot

(6) APPOINTMENT OF PST (FEMALE) BPS NO.07

S#	Name/Father's Name	Residence	Union Council	Score	Merit Position	School Where Posted	Union Council Where posted as PST
1	Tasneem Sanl D/O Mushtaq Ahmad	Ghundi Agra	Agra	49.629	1	GGPS, Sargaro	Agra
2	Saeeda Begum D/O Nek Muhammad	Agra	Agra	49.096	2	GGPS, Margho	Agra
3	Zafran Begum D/O Said Muhammad	Agra	Agra	48.818	3	GGPS, Kuz Naranjal	Agra
4	Safia Bibi D/O Yaqoob Khan	Sarkawai	Agra	39.843	4	GGPS, Thand	Agra
5	Husna D/O Muhammad Ismail	Alladand	Alladand	57.406	1	GGPS No.2 Batkhela	Batkhela Upper (Adjacent)
6	Shamim Begum D/O Gul Hakim	Abbas Kali	Badragga	40.119	1	GGPS Badragga	Badragga

ATTESTED

7	Nousheen Kiran D/O Saeed Khan	Batkheela Lower	Batkheela Lower	51.361	1	GGPS, No.1 Batkheela	Batkheela (M) adjacent
8	Shagufta D/O Khan Muhammad	Dargal	Dargal	54.541	1	GGPS, Dargal Patak	Dargal
9	Naseem Begum D/O Faqir Muhammad	Dheri (Alladand)	Dheri (Alladand)	50.116	1	GGPS, Baghdara	Dheri (Alladand)
10	Samina Bibi D/O Khadim Muhammad	Dheri (Alladand)	Dheri (Alladand)	48.784	2	GGPS, Baghdara	Dheri (Alladand)
11	Zainab Bibi D/O Sher Ali Khan	Khatak Abad	Garhi Usmani Kheh	50.735	1	GGPS, Naro Ubo	Heroshah adjacent
12	Saima D/O Habib Khan	Haryankot	Hero Shah	51.945	1	GGPS, H/Shah Kalan	Heroshah
13	Ghazala Bibi D/O Habib Rasool	Amir Akbar Shah Kall	Heroshah	51.061	2	GGPS, Zarif Shah Baba	Heroshah
14	Habsha Saleem D/O Muhammad Saleem	Palonow	Heroshah	46.312	3	GGPS, Zarif Shah Baba	Heroshah
15	Fozla Begum D/O Muhammad Saeed	Haryankot	Heroshah	38.897	4	GGPS, Naro Ubo	Heroshah
16	Tahira Bibi D/O Fazli Akbar	Kotkay Khar	Khar	46.031	1	GGPS, Dheri	Dheri Julagram (Adjacent)
17	Anila D/O Amir Khan	Kharki	Kharki	48.973	1	GGPS, Pirkhel	Pirkhel (Adjacent)
18	Rahat D/O Rahmatullah	Kharki	Kharki	44.966	2	GGPS, Sholawaf	Pirkhel (Adjacent)
19	Nazish, Rahim D/O Rahimdad	Koper	Koper	52.069	1	GGPS, Ashakal	Koper
20	Asla Zahir Shah D/O Zahir Shah	Qadar Kall	Koper	51.182	2	GGPS, M/Patal	Koper
21	Ghazala Jamal D/O Nasir Ali Shah	Koper	Koper	44.271	3	GGPS, Aghi Garh	Hero Shah (Adjacent)
22	Mehdia D/O Hayat Nabl	Kot	Kot	55.368	1	GGPS, D/Kot	Selai Patty (Adjacent)
23	Yasmeen Bibi D/O Mian Sald	Kot	Kot	53.324	2	GGPS, S/Patal	Selai Patty (Adjacent)
24	Parveen D/O Muhammad Ali	Maina	Kot	50.887	3	GGPS, Khanoori No.2	Selai Patty (Adjacent)
25	Madeeha Bano D/O Zaiwar Khan	Kot	Kot	50.347	4	GGPS, Khanoori No.2	Selai Patty (Adjacent)
26	Seema Bibi D/O Masih Ullah	Kot	Kot	48.076	5	GGPS Dad Dheri	Selai Patty (Adjacent)
27	Nizakat Begum D/O Abdullah Shah	Kot	Kot	48.052	6	GGPS, Dad Dheri	Selai Patty (Adjacent)
28	Asma Bibi D/O Zaiwar Khan	Kot	Kot	47.187	7	GGPS, Dara Total	Selai Patty (Adjacent)
29	Salma Bibi D/O Muhammad Azam	Maina	Kot	46.031	8	GGPS, Naranji Total	Selai Patty (Adjacent)
30	Salma Nawab D/O Sald Nawab	Piran	Malakand	47.695	1	GGPS, Jehangir Abad	Malakand
31	Tawseef Iqbal D/O Muhammad Iqbal	Piran	Malakand	47.377	2	GGPS, Jehangir Abad	Malakand
32	Shabnam Sultan D/O Sultanul Haq	Malakand	Malakand	45.239	3	GGPS, Hatam Banda	Malakand
33	Nazia Gul D/O Rahmat Shah	Malakand	Malakand	43.749	4	GGPS, Hatam Banda	Malakand
34	Naveeda D/O Jamshaid	Palal	Palal	47.266	1	GGPS, Palal No.1	Palal
35	Khursheda D/O Fazal Ghafoor	Dawa Khan Kall	S/KOT BANDA JAT	42.734	1	GGPS, Arab Danda	S/KOT BANDA JAT
36	Neelam Aman D/O Amanullah	Sakhakot	S/Kot Jadeed	55.971	1	GGPS, Petaw	S/Kot Jadeed
37	Ayesha Bibi D/O Muzammil Shah	Latifay Kalay	S/Kot Jadeed	52.855	2	GGPS, Petaw	S/Kot Jadeed
38	Farzana Gul D/O Itbar Gul	Baghicha Kall	S/Kot Jadeed	49.99	3	GGPS, Khadoo	S/Kot Jadeed
39	Sumaira Imran D/O Muhammad Imran	Khan Garhi	S/Kot Khas	51.933	1	GGPS, Khan Garhi	S/Kot Khas
40	Ummi Kalsoom D/O Khan Lall	CC Thana	Thana Bandajjat	51.96	1	GGPS, Shahkot	Palal (Adjacent)
41	Robina Begum D/O Saif Ur Rahman	Bakhta	Thana Bandajjat	51.098	2	GGPS, Gandiro Sharif	Palal (Adjacent)
42	Salma Naz D/O Sher Ali	Sorana	Wartair	51.464	1	GGPS, Pindara	Wartair
43	Nehaz D/O Isal Muhammad	Wartair	Wartair	47.859	2	GGPS, Pindara	Wartair
44	Safia D/O Tahir	Dobandl	Wartair	46.859	3	GGPS, Nakar Dara	Wartair
45	Madeeha Ahmad D/O Ahmad Khan	Dobandal	Wartair	46.464	4	GGPS, B/Bala	Palal (Adjacent)

ATTESTED



68	Shoukat Ali S/O Muhammad Aziz	Gulbahar Colony Thana	Thana Khas	45.53324	1	GPS No.2 Jalala	Thana Jadeed (Adjacent)
69	Fazal Raziq S/O Sher Afzal	Thana	Thana Khas	46.23975	2	GPS Haibat Gram	Thana Jadeed (Adjacent)
70	Fazlullah S/O Sakhi Rahman	Khawar Garay	Thana Khas	45.07201	3	GPS No.1 Jalala	Thana Jadeed (Adjacent)
71	Waris Khan S/O Hakim Khan	Totakan	Totakan	49.10856	1	GPS Shelkh Hassan Baba	Totakan

TERMS AND CONDITIONS


1. Their services will be considered regular, but without pension and gratuity in terms of Section-19 of the Civil servants Act 1973 amended vide NWFP Civil servants (Amendment) Act 2005. They will however be entitled to contributory provident fund in such a manner and at such rates as prescribed by the government.
2. Their appointment is purely on temporary basis and is liable to termination at any time without notice. In case of resignation they shall be required to submit one month's prior notice OR deposit one month's pay into Government treasury in lieu thereof.
3. They will be governed by such rules and regulation as may be prescribed by the Government from time to time for the category of government servants to which they belong.
4. They should produce health and age certificate from the medical Superintendent District Head quarter Hospital Batkhela, Malakand Agency.
5. The appointment of the aforesaid selected candidates is subject to the condition that they are domiciled in Malakand.
6. No TA/DA is allowed in case of initial recruitment.
7. In case of fresh candidate they should not be handed over charge if their age exceed 38 years (for being related to backward areas of Tehsil Swat and Sama Ranizai) or below 18 years.
8. The drawing and disbursing officer concerned shall have to collect photo copies of their testimonials along with verification fees and submit the same to the office of the undersigned for further verification from the institution concerned.
9. Their salary should not be drawn unless and until a clearance certificate regarding verification of documents and release of pay is issued by this office.
10. In case of non availability of vacancy the last one of the relevant category according to their merit position will lose the job.
11. The fresh appointees shall be on probation for the period of two years which is extendable to one year more while in the case of promotion the probation will be one year and shall be extendable for the next one year.
12. The appointees should join their posts within 15 days of the issue of this order, failing which the order shall stand automatically cancelled.
13. Those fresh candidates except in-service candidates, who have been posted in the schools which are closed for summer vacation, will be entitled for their salaries from the date of reopening of the schools on the expiry of summer vacation.
14. The appointment of any candidate if challenged on any grounds in any court of law and the case if decided in favour of the challenger/ appellant/ plaintiff, the appointment of the concerned challenged appointee shall stand null and void.
15. Charge report should be submitted to all concerned.

MUSHTAQ AHMAD
EXECUTIVE DISTRICT OFFICER (E&SE)
MALAKAND

Endst: No.6122-6414/Rectt:/CT/DM/QARI/PST(M&F)/EDO(E&SE) MKD Dated 02/06/2012

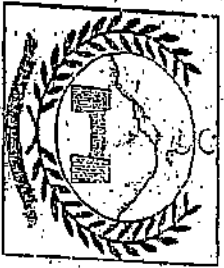
Copy forwarded for information and necessary action to:-

1. The Secretary, E&SE Department, Govt. of Khyber Pakhtunkhwa, Peshawar.
2. The Director, E&SE, Khyber Pakhtunkhwa, Peshawar.
3. PS to Minister for Education Khyber Pakhtunkhwa, Peshawar.
4. The District Coordination Officer Malakand
- 5-6. The District Officer (M&F) local office.
- 7-25. The Principals/Headmasters/Headmistress of the concerned schools.
- 26-29. Dy: District Officer Edu: (M&F) in Malakand
30. The Agency Account Officer Malakand.
31. The Budget & Account Officer local office
32. The Assistant Programmer DEMIS Cell Local Office.
- 33-149. The Head-Teachers GPS/GMPS/GGPS of concerned Schools.
- 150-289. The Candidates concerned.
- 290-293. D.A Concerned.


EXECUTIVE DISTRICT OFFICER (E&SE)
MALAKAND

S.MULK/

ATTESTED



GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION DEPARTMENT

Peshawar, dated the 24th July, 2014.

NOTIFICATION

No.SO(PE)4-5/SSRC/Meeting/2013/Teaching Cadre: In pursuance of the provisions contained in sub rule (2) of rule 3 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, the Elementary and Secondary Education Department in consultation with the Establishment Department and the Finance Department hereby directs that in this Department's Notifications No.SO(G)S&L/D/1-28/2003/Vol-II dated, 09-04-2004, Notification No.SO(G)S&L/1-69/06/Vol-1/DPE/LIB dated, 13-11-2007, and Notification No.SO(PE)4-5/SSRC/Meeting/2012/Teaching Cadre, dated, 13.11.2012, the following further amendments shall be made, namely:

AMENDMENTS

In the Appendix,-

(C) Serial/No. 1 shall be renumbered as 1B and before Serial No. 1B, as so renumbered, the following new entries shall be inserted in respective columns, namely:

1	2	3	4	5
"1"	Subject Specialist (BPS-17)	i. At least second class Master's Degree or four years BS Degree in the relevant subject; and ii. Bachelor of Education or Master of Education (Industrial Art or Business Education) or M.A Education or equivalent qualification from a recognized University.	23 to 35 years	(a) Fifty per cent by promotion, on the basis of seniority-cum-fitness, for the relevant subject from amongst the Secondary School Teachers (BPS-16), with at least five years service as such and having qualification mentioned in column No. 3.

Note: If no suitable candidate is available in the relevant subject the post falling in their promotion quota shall be filled by initial

INTERESTED

17	Director Physical Education (BPS-17)	At least second class Master's Degree in Physical Education from a recognized University.	22-35 years	<p>recruitment, and</p> <p>(b) fifty percent by initial recruitment.</p> <p>(a) Fifty percent by promotion, on the basis of seniority-cum-fitness, from amongst Senior Physical Education Teachers (BPS-16), with at least five years service as Senior Physical Education Teacher and Physical Education Teacher and having qualification mentioned in column No. 3;</p> <p>Provided that if no suitable person is available from amongst Senior Physical Education Teachers for promotion then the post shall be filled by promotion, on the basis of seniority-cum-fitness, from amongst the Physical Education Teachers, with at least five years service as such and having qualification mentioned in column No. 3;</p> <p>Note:- If no suitable candidate is available in the relevant cadres of the above teachers, the post falling in their promotion quota shall be filled by initial recruitment; and</p> <p>(b) fifty percent by initial recruitment; and</p>
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ATTESTED

								<p>Provided that if no suitable candidate is available from amongst Senior Drawing Masters for promotion then the post shall be filled by promotion, on the basis of seniority-cum-fitness, from amongst Drawing Masters with at least five years service as such and having qualification mentioned in column No. 3;</p> <p>(c) Four per cent from amongst the Senior Arabic Teachers (BPS-16), with at least five years service as Senior Arabic Teachers and Arabic Teachers, and having qualification mentioned in column No. 3;</p> <p>Provided that if no suitable candidate is available from amongst Senior Arabic Teachers for promotion then the post shall be filled by promotion, on the basis of seniority-cum-fitness, from Arabic Teachers with at least five years service as such and having qualification mentioned in column No. 3;</p> <p>(d) Four per cent from amongst the Senior Theology Teachers (BPS-16), with at least five years service as Senior Theology Teachers and Theology Teachers and having qualification mentioned in column No. 3;</p>
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ATTESTED

125

Provided that if no suitable candidate is available from amongst Senior Theology Teachers for promotion, then the post shall be filled by promotion, on the basis of seniority-cum-fitness, from amongst Theology Teachers with at least five years service as such and having qualification mentioned in column No. 3;

(e) three per cent from amongst the Senior Qaris (BPS-16), with at least five years service as Senior Qari and Qari and having qualification mentioned in column No. 3;

Provided that if no suitable candidate is available from amongst the Senior Qaris then the post shall be filled by promotion, on the basis of seniority-cum-fitness, from Qaris with at least five years service as such and having qualification mentioned in column No. 3;

(f) twenty per cent from amongst the Primary School Head Teachers (BPS-16), with at least seven years service as Primary School Head Teachers and Senior Primary School Teachers and Primary School Teachers and having qualification mentioned in column No. 3; Provided that if no suitable candidate is available from amongst

ATTESTED

			<p>Primary School Head Teachers for promotion then the post shall be filled by promotion, on the basis of seniority-cum-fitness, from amongst Senior Primary School Teachers with at least seven years' service as Senior Primary School Teachers and Primary School Teachers and having qualification mentioned in column No. 3.</p> <p>Provided further that if no suitable candidate is available from amongst Senior Primary School Teachers for promotion then the post shall be filled from amongst Primary School Teachers with at least seven years' service as such and having qualification mentioned in column No. 3; and</p> <p>(ii) twenty five percent by initial recruitment.</p> <p>Note:</p> <p>I. If no suitable candidate is available in the relevant cadre of the above teachers, the post falling in their promotion quota shall be filled by initial recruitment.</p> <p>II. Posts of General SST and SSTs-1 Science and SST-2 Science shall be filled by promotion or initial recruitment, each on need basis separately."</p>
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SECRETARY TO GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION DEPARTMENT

Encl : of even No & date:

1. The Secretary to Government of Khyber Pakhtunkhwa, Establishment and Administration Department Peshawar.
2. The Secretary to Government of Khyber Pakhtunkhwa, Finance Department Peshawar.
3. The Secretary to Government of Khyber Pakhtunkhwa, Law Department Peshawar.
4. The Secretary Khyber Pakhtunkhwa, Public Service Commission Peshawar.
5. The Accountant General Khyber Pakhtunkhwa Peshawar.
6. The Director, Elementary and Secondary Education Department Khyber Pakhtunkhwa Peshawar.
7. The Director of Education (PATA) Peshawar.
8. The Director, Curriculum and Teacher Education Khyber Pakhtunkhwa Abbottabad.
9. The Director, (PTEE) Khyber Pakhtunkhwa Peshawar.
10. The Director, ESRI Elementary and Secondary Education Department Khyber Pakhtunkhwa Peshawar.
11. Manager: Government Printing Press Khyber Pakhtunkhwa Peshawar.
12. The Deputy Director, EMIS (S&SE) Department Khyber Pakhtunkhwa Peshawar.
13. All District Education Officer (M&F) in Khyber Pakhtunkhwa.
14. All District Account Officer in Khyber Pakhtunkhwa.
15. All Agency Education Officer in PATA.
16. All Agency Account Officer in PATA.
17. PS to Governor Khyber Pakhtunkhwa, Peshawar.
18. PS to Chief Minister Khyber Pakhtunkhwa, Peshawar.
19. PS to Chief Secretary Khyber Pakhtunkhwa, Peshawar.
20. PS to Minister E&SE Khyber Pakhtunkhwa, Peshawar.
21. PS to Secretary E&SE Khyber Pakhtunkhwa, Peshawar.
22. Master file

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(ZAMIN KHAN MOMAND)
SECTION OFFICER (PRIMARY)

EXTRAORDINARY
GOVERNMENT



REGISTERED NO. P/11
GAZETTE

KHYBER PAKHTUNKHWA

Published by Authority

PESHAWAR, TUESDAY, 24th APRIL, 2018.

GOVERNMENT OF KHYBER PAKHTUNKHWA ELEMENTARY & SECONDARY EDUCATION DEPARTMENT

NOTIFICATION

Peshawar, dated: 24th April 2017.

No. 50(G)/E&SE/1-85/I.T/2017: In pursuance of the provisions contained in sub rule (2) of rule 3 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, and in supersession of the notification issued in this behalf, the Elementary and Secondary Education Department in consultation with the Establishment & Administration Department and Finance Department hereby lays down the method of recruitment, qualification and other conditions specified in column No. 2 to 5 of the Appendix to the Notification which shall be applicable to the posts of Information Technology Teaching Cadre (Male/Female) in the Elementary and Secondary Education Department as specified in column No. 2 of the said Appendix:

APPENDIX:

S.No.	Nomenclature of the post	Minimum qualification for appointment by initial recruitment transfer	Age limit	Method of recruitment
1	Subject Specialist- Information Technology (SS-IT) (BPS-17)	<p>i. At least Second Class Master's Degree in Computer Science or Information Technology or Bachelor's Degree in Computer Science (BES/BSCS Honours - 4 years) or equivalent qualification from a recognized University; and</p> <p>ii. Bachelor Degree in Education (B.Ed) or equivalent qualification from a recognized University.</p> <p>Note: A candidate did not have the qualification under clause (ii), shall acquire the same within three years from the date of his/her appointment.</p>	21-35	<p>a) Fifty percent by promotion on the basis of seniority-cum-fitness from amongst the Secondary School Teacher-IT with at least five years service; and</p> <p>b) Fifty percent by initial recruitment.</p> <p>Provided that if no suitable candidate is available for promotion, then by initial recruitment.</p>

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Printed and published by the Manager, State, P. O., Dera, Khyber Pakhtunkhwa, Peshawar.

SECRETARY TO GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION DEPARTMENT

<p>By initial recruitment.</p>	<p>18-35</p>	<p>At least 2nd Division Intermediate School Certificate or equivalent qualification from a recognized Institution of Board with one year Diploma in Information Technology Computer Science from any recognized Institution; and ii. Certified Teacher Certificate (CT) of Associate Degree in Education (ADE) from any recognized Institution/University Note: A candidate did not have the qualification under clause (ii), shall acquire the same within three years from the date of his/her appointment.</p>	<p>1 Certified Teacher-Information Technology (CT-IT) (BPS-12)</p>
<p>a). Fifty percent by promotion on the basis of seniority-cum-fitness from amongst the Certified Teacher-II with five years service as such and having the qualification prescribed for the post of Secondary School Teacher-II. b). Fifty percent by initial recruitment. provided that if no suitable candidate is available for promotion, then by initial recruitment.</p>	<p>21-35</p>	<p>Agri/Sci/Sec/Health/Sci/Master's Degree in Computer Science or Information Technology or Bachelor's Degree in Computer Science (BCS/BSCS Honours (4 years) or Bachelor's Degree with a subject of Computer Science or equivalent qualification from a recognized University; and ii. Bachelor Degree in Education (B.Ed) or equivalent qualification from a recognized University. Note: A candidate did not have the qualification under clause (ii), shall acquire the same within three years from the date of his/her appointment.</p>	<p>2. Secondary School Teacher-Information Technology (SSI-II) (BPS-16)</p>

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50% Fresh

50% CT (II)

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(11)

Nomenclature of the post	Minimum Qualification for appointment by initial recruitment or by transfer.	Age Limit	Method of recruitment
Subject Specialist-Information Technology (SS-IT) (B-17) Government Higher Secondary Schools/ Govt. comprehensive High Schools and other equivalent posts in the Teaching Cadre.	i.) Master Degree in Computer Science/IT at least in 2 nd Division or equivalent qualification from any recognized University. ii.) Bachelor Degree of Education (B.Ed) at least in 2 nd Division from any recognized University.	21-35	a). Fifty percent by promotion on the basis of seniority-cum-fitness from amongst the Secondary School Teacher-IT with at least five years' service AND Secondary School Teacher (SST) (General/Science) possessing master degree in IT or equivalent qualification with 05 years' experience. b). Fifty percent by initial recruitment. Note: If no suitable candidate is available for promotion in the relevant cadre then by initial recruitment. Their seniority may be clubbed with SS and amendment may be made in the existing service rules.
Secondary School Teacher Information Technology (SST-IT) (B-16) Govt. High / Higher Secondary Schools	i.) Bachelor Degree with the subject of Computer Science at least in 2 nd Division / equivalent Qualification from any recognized institution ii.) Bachelor Degree of Education (B. Ed) at least in 2 nd Division from any recognized institution.	21-35	a). Fifty percent by promotion on the basis of seniority-cum-fitness from amongst the Computer Lab. In-charge with (05) years' service having the qualification prescribed for the post of IT Teacher. b). Fifty percent by initial recruitment. Note: If no suitable candidate is available for promotion in the relevant cadre then by initial recruitment.
Junior Teacher- Information Technology (JT-IT) (B-12) Govt. High/Higher Secondary Schools	Intermediate or equivalent qualification from any recognized institution with one-year Diploma in IT/Computer Science from any recognized institution and Certified Teacher Certificate/Diploma or equivalent qualification from any recognized institution.	18-35	By initial recruitment.

ATTESTED

The committee members discussed the proposed amendments in the service rules structure for the SST (General/Science) & SST (IT) in depth and were agreed upon unanimously.

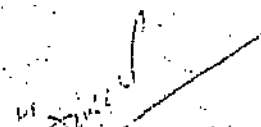
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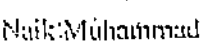
The following decisions were made in consensus:-


- i. The proposed amendments in the service rules/structure as depicted in the above table was approved.
- ii. Nomenclature of the post of CT(IT) was changed as Junior Teacher Information Technology (JT-IT)
- iii. Seniority of SST (General/Science) & SST (IT) will be clubbed together immediately for the purpose of promotion in light of the above amended service rules for the post of SST (General/Science) & SST (IT) to the post of SS(IT/Computer Science)


The meeting ended with vote of thanks to/from the Chair.

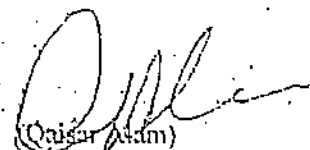

 (Jayed Siddique)
 Deputy Secretary (R), Finance Department

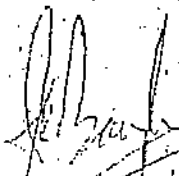

 (Mahsin Mushtaq)
 Assistant (R-I), E&AD Deptt.


 Naik Muhammad
 Section Officer (Primary), E&SE Department


 Muhammad Shoaib
 Deputy Secretary (A), E&SE Deptt.


 (Mohammad Raftue Khattak)
 Director, E & SE, Peshawar


 (Qaisar Adam)
 Special Secretary, E&SE Deptt.


 12/9/17
 Dr. Shahzad Khan Bangash
 Secretary E&SE Department
 (Chairman)

INTERESTED

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GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION DEPARTMENT

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Subject: MINUTES OF THE MEETING OF THE SSRC REGARDING ALLOTMENT OF 50% QUOTA TO SST (GEN/SC) FOR PROMOTION TO THE POST OF SS-IT

Meeting of the SSRC regarding the subject matter was held under the Chairmanship of Secretary Elementary & Secondary Education Department on 10/08/2017 at 11:00 am in the committee room of this Department. The following Officers/Officials of the concerned Department/attached Department attended the meeting.

The following attended the meeting:-

1. Dr. Shaliziad Khan Bangash, Secretary E&SE Department (In Chair)
2. Mr. Qaisar Alam, Special Secretary (Est.) E&SE Department.
3. Mr. Muhammad Rafiq Khattak, Director E&SE, Peshawar.
4. Mr. Muhammad Shouib, Deputy Secretary (A), E&SE Department.
5. Mr. Javed Siddique, Deputy Secretary (R) Finance Department.
6. Mr. Nafeq Muhammad, Section Officer (Primary) E&SE Department.
7. Mr. Mohsin Mushfaq, Assistant (R-I) E&AD Department.

2. The forum was informed that E&SE Department vide Notification No. SOG/E&SED/1-86/SS.IT/2016 of E&SE Department Peshawar dated 15.08.2016 has notified the nomenclature of Information Technology Teaching Cadre/Posts serving in the Government High & Higher Secondary Schools of Khyber Pakhtunkhwa of E&SE Department, as Subject Specialist-IT (SS-IT/Computer Science) BPS-17 (Annex-A). Further E&SE Department vide Notification No. SO (PE)4-5/SSRC/Meeting/ 2013/ Teaching Cadre: dated 24/07/2014 has approved promotion to SS posts (BPS-17) from SST (BPS-16). The SST regular having 50% quota of the total sanctioned SS posts allotted for promotion (Annex-B). 50% quota has already been allotted for SSTs (General/Science) in 12 different subjects for Subject Specialist Post. But unfortunately, SSTs (General/Science) who have M.Sc (Computer Science)/BS (CS)/MIT qualification and are eligible for promotion to the post of SS (IT) B-17 have no quota for promotion.

3. In light of the above facts, this Department, therefore, proposed that all those SSTs (General/Science) who have M.Sc. (Computer Science)/BS (Computer Science)/MIT may be given 50% quota for promotion to the post of SS (IT) B-17 like other SSTs, so as to bring uniformity in the teaching cadre.

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4. In the above context, the service rules/structure of SST (General/Science) & SST (IT) were approved as tabulated below:-

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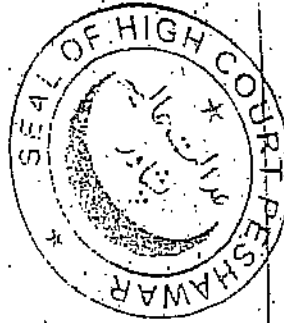
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JUDGMENT SHEET
PESHAWAR HIGH COURT PESHAWAR
JUDICIAL DEPARTMENT

W.P. No.596-P/2019

Muhammad Raees Gul and another
Vs.

Government of Khyber Pakhtunkhwa through
Chief Secretary Khyber Pakhtunkhwa;
Peshawar and 06 others



JUDGMENT

Date of hearing 03.09.2020

Mr. Zahid Ullah Zahid, Advocate, for the petitioners.

Mr. Arshad Ahmad Khan, AAG, for the Provincial Government, a/w Mr. Jehangir Khan, AD (Litigation), Directorate of E&SED, Peshawar and Mr. Dawood Khan, ADO, office of DEO, Peshawar.

Mr. Aftab Khan, Advocate, for the private respondent No.7.

IAZ ANWAR, J. Muhammad Raees Gul and another, petitioners herein, through the instant Constitutional petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, have prayed for the following relief:-

"It is, therefore, most graciously prayed that while allowing this writ petition, an appropriate writ may kindly be issued by declaring the act of omitting the subject of

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Peshawar High Court

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Computer Science from promotion to the post of SST is illegal, unlawful, discriminatory and without lawful authority with the direction to consider and include the subject of Computer Science in the criteria for promotion to the post of SST.

Any other relief though not specifically asked for to which the petitioner is found entitled in the circumstances may also be granted.

2. Keeping in view the averments made in the instant petition, comments were called from the respondents who furnished the same accordingly, wherein, they opposed the issuance of desired writ, as prayed for.

3. Arguments heard and record perused.

4. Perusal of the record reveals that petitioners have called in question the recruitment rules notified vide Notification dated 24.07.2014, whereby, according to them, the incumbents, holding the posts of Primary School Teacher (BPS-12) with qualification of

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Peshawar High

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Computer Science, are not included in the feed cadre for the post of Senior Science Teacher (BPS-16).

5. Learned counsel for the petitioners has laid much stress upon the discrimination so meted out to the petitioners and also about depriving them from future prospect of promotion, albeit, we are of the view that questioning the vires of rules purely relates to the terms and conditions of service, for which the proper forum is Khyber Pakhtunkhwa Service Tribunal established under the Khyber Pakhtunkhwa Service Tribunals Act, 1974. Besides, the jurisdiction of this Court is barred under Article 212 of the Constitution of Islamic Republic of Pakistan, 1973. In this regard, reference can be made to the cases of "I.A Sherwani and others (1991 SCMR 1041)"; "Ali Azhar Khan Baloch (2015 SCMR 456)" and "Mubeen-ul-Salam (2006 SCMR 100)".

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6. Thus, for the reasons recorded hereinabove, and in view of the bar

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Peshawar High Court

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contained in Article 212 of the Constitution of Islamic Republic of Pakistan, 1973 and also in view of the availability of alternate remedy to the petitioners, this writ petition is not maintainable. Accordingly, it is dismissed in limine. Needless to observe that petitioners may approach to the Khyber Pakhtunkhwa Service Tribunal, Peshawar for the redressal of their grievance, if they are so advised.

Announced
D:03.09.2020

JUDGE

JUDGE

1001 The No. Justice Hazratullah Khan and Justice Mr. Justice Hazrat

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