FORM OF ORDER SHEET Court of Appeal No. 1564 / 2023 S.No Order or other proceedings with signature of judge Date of order proceedings 1 2 .: 3 1-02/08/2023 The appeal of Mr. Muhainmad Yasin presented today by Mr. Zia-ur-Rehman Advocate. It is fixed for preliminary hearing before Single touring Bench at D.I.Khan on By the order of Chairman GISTRAR

BEFORE THE SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA, PESHAWAR

Service Appeal No. 56 of 2023

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Muhammad YasinAppellant

VERSUS

Government of KPK & Others......Respondents

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Dated:- 02.08.2023

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Your Humble Appellant

Muhammad Yasin, Through Counsel

Zia-ur-Rahman Advocate Supreme Court of Pakistan, Dera Ismail Khan BC - 10 - 4894

BEFORE THE SERVICE TRIBUNAL. KHYBER PAKHTUNKHWA. PESHAWAR

Service Appeal No. 554 of 2023

Muhammad Yasin,

Son of Muhammad Amin Resident of Mohallah Wakeelan Wala, Primary School Teacher (PST) BPS-12 Government Primary School No. 10, Dera Ismail Khan.

Appellant

VERSUS

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1. Province of Khyber Pakhtunkhwa through Secretary to Government, Elementary & Secondary Education (E&SE) Department, Peshawar.

2. Director Elementary & Secondary Education, Peshawar.

3. District Education Officer (Male) Dera Ismail Khan.

 Sub-Divisional Education Officer (SDEO) (Male) Dera Ismail Khan.

5. Budget & Account Officer, Dera Ismail Khan.

- 6. District Account Officer, Dera Ismail Khan.
- Secretary, Ministry of Energy (Power Division), Government of Pakistan, Room No.201, 204, 2nd Floor A Block Pak Secretariat, Red Zone, Islamabad Capital Territory (ICT), Islamabad.
- 8. Chief Operating Officer, Peshawar Electric Supply Company, Peshawar.
- 9. Director General HR & Admin, PESCO, Peshawar.
- 10. Additional Director General (HR) HQ PESCO, Peshawar
- 11. Additional Director General (Confidential) PESCO,

12. Deputy General Manager Finance, PESCO, Peshawar.

13. Director Finance, PESCO, Peshawar.

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- 14. Superintending Engineer, (Operation) PESCO Bannu Circle Bannu.
- 15. Executive Engineer (XEN), SS&TL Division PESCO, Bannu.

Respondents

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AIMED AGAINST THE IMPUGNED OFFICE ORDER BEARING ENDST: NO. 4441-45 DATED 13.03.2023 PASSED BY DISTRICT EDUCATION OFFICER (MALE), D.I.KHAN/RESPONDENT NO. 03 AND ALSO AIMED AGAINST THE IMPUGNED DEPARTMENTAL APPEAL'S REJECTION ORDER (IF ANY) THROUGH WHICH THE APPELLANT HAS BEEN DENIED/WITHHELD THE BENEFIT OF COUNTING OF HIS PREVIOUS SERVICE FOR THE PURPOSE OF PAY PROTECTION/RE-FIXATION OF PAY & PENSIONARY BENEFITS.

PRAYER IN SERVICE APPEAL

Prayer A:

On acceptance of instant service appeal, this Honourable Tribunal may be pleased to set aside/struck down the impugned Office Order bearing Endst: No. 4441-45 Dated 13.03.2023 passed by District Education Officer (Male), D.I.Khan/Respondent No. 03 along with impugned Departmental Appeal's Rejection Order (if any) and to direct the Respondents to allow the benefit of counting of previous service of the Appellant rendered in PESCO with effect from 09.12.2002 to 21.04.2019 for the purpose of pay protection/re-fixation of pay & pensionary benefits.

Prayer-B:

Any other relief ex debito justitiae may please be extended in favour of the Appellant as against the Respondents.

Respected Sir,

The Appellant humbly submits as under: -

 That Appellant was inducted into Peshawar Electricity Supply Company services (PESCO) on Dated 09.12.2002 on the post of Assistant Sub Station Attendant (ASSA) and that too on Contract basis through Appointment Order No. 17418-24/SEGSO/5/23 on Dated 09.12.2002. Copy of Appointment Order of the Appellant No. 17418-24/SEGSO/5/23 on Dated 09.12.2002 is enclosed as <u>Annexure "A"</u>.

- 2. That later on, the services of the Appellant were brought on regular cadre of PESCO employees through Office Order Dated 28.06.2006. Copy of the Service Book of the Appellant is enclosed as <u>Annexure "B"</u>.
- 3. That in the year 2014, certain posts of Primary School Teacher (PST) were Advertised by District Education Officer (Male), D.I.Khan/Respondent No. 03 to which the Appellant applied through proper channel and also got Non Objection Certificate (NOC) from the Deputy Manager (HR) PESCO, Peshawar/competent Authority. Copy of the NOC letter No: 10088-96 on Dated 11.06.2014 is enclosed as <u>Annexure "C"</u>.

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4. That Appellant contested for the post and appeared in NTS examination and his name stood at serial No.³⁰03 of the merit list. He was called for interview and declared as successful candidate but his Appointment Order in Education Department was not issued, so he was constrained to file Constitutional Petition No: 603-D of 2014 which came up for final hearing on 06.03.2018 before the Honourable Peshawar High Court D.I.Khan Bench. allowed The same was through Judgment/Order Dated 06.03.2018. Copies of the memo of Writ Petition No. 603-D of 2018 and Judgment/Order Dated 06.03.2018 of this Honourable Peshawar High Court D.I.Khan Bench is enclosed as Annexure "D" & "E" respectively.

- 5. That finally, the endeavors of the Appellant got succeeded and District Education Officer (Male), D.I.Khan/Respondent No. 03, issued his Appointment Order on 20.04.2019 as Primary School Teacher (PST) BPS- 12 and posted him in Government Primary School No. 10, D.I.Khan. Copy of Appointment Order No. 10088-96 Dated 22.04.2019 of the Appellant is enclosed as **Annexure** "F".
- 6. That it is pertinent to mention here that despite issuance of NOC by the PESCO authorities, they refused to relive the appellant from their department and constrained him to submit resignation to take up new assignment in Education Department, therefore, the appellant submitted resignation in PESCO to take up another new appointment in Education Department in pursuance of Appointment Order No. 10088-96 Dated 22.04.2019.
- 7. That finally, the Appellant assumed the charge of new assignment as Primary School Teacher (BPS-12) in Government Primary School-10, D.I.Khan and moved an application Dated 11.07.2019 to the District Education Officer (Male), D.I.Khan/Respondent No. 03 for counting of his previous service in earlier Department/PESCO. The application Dated 11.07.2019 of the Appellant was not responded in either way by the Respondent No. 03, hence, he was constrained to file

constitutional petition No. 487-D of 2021 before the Honourable Peshawar High Court D.I.Khan Bench on 30.08.2021 which came up for final hearing on 22.12.2022. The Respondent No. 03 was directed to decide the pending application Dated 11.07.2019 of the Appellant in either way through Judgment/Order Dated 22.12.2022. Copies of the application Dated 11.07.2019, memo of W.P No. 487-D of 2021 along with Judgment/Order Dated 22.12.2022 are enclosed as **Annexure "G". "H" & "I"** respectively.

- 8. That as it is palpable from the Judgment/Order Dated 22.12.2022 of the Honourable Peshawar High Court D.I.Khan Bench that Respondent No. 03/District Education Officer (Male), D.I.Khan was specifically directed to decide the pending application Dated 11.07.2019 in either way, therefore, Respondent No. 03 passed the impugned Order Dated 13.03.2023 and turned down the legal and genuine prayer of the Appellant. Copy of the impugned Office Order No. 4441-45 Dated 13.03.2023 passed by Respondent No. 03/District Education Officer (Male), D.I.Khan is enclosed as **Annexure "I"**.
- 9. That feeling aggrieved from the impugned Order Dated 13.03.2023, the Appellant filed a within time Departmental Appeal before the Respondent No. 04 on 07.04.2023 which was not responded in either way nor any kind of decision has been

communicated to the Appellant over the said Departmental Appeal, therefore, after lapse of Ninety (90) days, the appellant is at liberty to file the instant service appeal in view of the mandate of section 04 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974. Copy of the Departmental Appeal Dated 07.04.2023 is enclosed as **Annexure "K".**

10. That appellant is left with no other remedy but to seek the indulgence of this Honourable Tribunal against the impugned actions and inactions of the Respondents on the following amongst other grounds: -

GROUNDS

a. That refusal, denial and inactions of the Respondents to extend the benefit of counting of previous service of the Appellant for the purpose of pay protection/re-fixation of pay and pensionary benefits rendered in PESCO with effect from 09.12.2002 to 21.04.2019 is against law, facts of the case and material available on the record, hence not tenable in the eyes of law and Respondents are bound to extend the afore-stated service benefits as prayed for. b. That earlier service of the appellant with PESCO was a government service for all legal and practical purposes in terms of CSR 361 as held by the Honourable Peshawar High Court D.I.Khan Bench in its Judgment/Order Dated 06.03.2018 passed in W.P No. 603-D of 2014 filed by the Appellant. The relevant excerpts of the Judgment/Order Dated 06.03.2018 is reproduced for ease of reference: -

> We have examined the Initial Appointment to Civil "6. Posts (Relaxation of Upper Age Limit), Rules, 2008, whereby the Govt. servants who have completed 02 years service, are entitled to 10 years automatic relaxation. The arguments that the petitioner being an employee of PESCO is not entitled to the age relaxation is not legally tenable, because PESCO is a Public Limited Company established by the Federal Government, 100% of its shares are with the Federal Government, the Chief Executive is being appointed by the Federal Government and is administered and governed under the administrative control of Secretary Ministry of Power Government of Pakistan. In fact PESCO (Distribution Company) is supplying electricity to the consumers and such functions are mainly the affairs of the Federal Government. In the Rules, 2008 (ibid) the word Govt. servant has been used which is a very vast term and the candidate seeking relaxation should not necessarily be a civil servant. In such view of the matter, the petitioner

who is posted as ASSA in 132 KV Grid Paroa, D.I.Khan is a Govt. servant and thus entitled to automatic age relaxation as required under the rules."

Therefore, the impugned Order is nullity in the eyes of law and liable to be reversed.

- c. That not counting previous service of the appellant for the purpose of pay protection/re-fixation of pay and pensionary benefits is infringement of legal rights of the appellant as held in 2008 SCMR 14, 2008 PLC (C.S) 482, 2010 PLC (C.S) 804, 2022 SCMR 77, PLD 2016 SC 534 & 1997 SCMR 1477, therefore, the impugned orders are against the settled precedence of the superior courts and liable to be struck down.
- d. That impugned orders of the Respondents amounts to deprive the appellant from agitating his genuine service grievances, thereby negating the fundamental rights of the appellant as enshrined under the Constitution of Islamic Republic of Pakistan, 1973, therefore, the impugned actions/Orders are liable to be interfered with.
- e. That legal and factual aspects of the controversy have not been appreciated by the Respondents in the present case and they have miserably failed to address the genuine grievances of the

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appellant in not granting prayed service benefits. Hence, the impugned actions/Orders are liable to be undone.

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- f. That Respondents are bulldozing the fundamental rights of the appellant to be dealt with in accordance with law and to be treated in accordance with law, therefore, their impugned actions/Orders need to be checked by this Honourable Tribunal.
- **g.** That Counsel for the appellant may please be allowed to urge additional grounds at the time of hearing.

Dated:- 02.08.2023

It is therefore, most humbly prayed that instant service appeal may please be allowed as prayed in the prayer clauses.

Muhammad Yasin, Appellant Through Counsel

BC-10-4894

Zia-ur-Rahman Advocate Supreme Court of Pakistan, Dera Ismail Khan

BEFORE THE SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA, PESHAWAR

Service Appeal No. of 2023

Muhammad YasinAppellant

VERSUS

Government of KPK & Others......Respondents

SERVICE APPEAL

AFFIDAVIT

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I, **Muhammad Yasin**, Son of Muhammad Amin Resident of Mohallah Wakeelan Wala, Primary School Teacher (PST) BPS-12 Government Primary School No. 10, Dera Ismail Khan, Appellant do hereby solemnly affirm and declare on Oath that the contents of instant service appeal are true and correct and that nothing has been concealed or kept secret from this Service Tribunal.

Deponent

Identifica by Liandam Ser ZIA-UR RAHMAN ADVOCALE SUPREME COURT of PARISTAN

PESHAWAR ELECTRIC SUPPLY COMPANY *(Ltd:) 1.1 PHONE NO. 13 9211865 OFFICE OF THE FAX NO. 9211862 SUPERINTENDING ENGINEER OSO CIRCLE PESCO KOHAT BOAD p E 55 + î.F Δ. $\cdot \mathbf{W}$ NO 17418-A /secso/5/23 Dated. 2002 Ľ, Muhammad Yaseen S/O Muhammad Amin i Mohalla Wakeelano Wala D.I.Khan' SUBJECT: -APPOINTMENT AS ASSA ANT ON CONTRACT BASIS. You are hereby informed that you have been appointed as ASSA/4127 in GSO Circle Pesco Pestiawar on the following terms and condition. ۱. Pay Minimum of the BPS-05 Viz (Rs.2100-100-5100) Increment will be admissible under the normal rules. . 2 . Period of contract-shall be one year extendable for a period of further two years on performance (if required) from the date of assumption of charge. 3 You will be entitled to allowances as admissible to You will be entitled to an ASSA/ALM of Wapda/Pesco, Tourwirr of governed by the Leave Rules contained in the Pakistan WAPDA Leave Rules for WAPDA Employees 1982. How-ever provisions contained in Rules-9(b) 11,12,13,14,17,1 (b) (c)19,20 and 20(a) shall not apply. You shall be entitled to house rent allowance as may by admissible to other employees of company. 6 Travelling allowance for hourmes as admissible under the WAPDA Travelling Allowance Rules as amended from time to time to regular employees of the corresponding pay scale shall be admissible to you. 7. Medical Facilities as admissible under the WAFDA Medical attendance Rules-1979 as amended from time to time. 8. In respect of other matters, not specified in this letter you will be governed by the Rules/Regulation as applicabl 9. You will be governed by Company Efficiency and Discipling Rules as amended from time to time! 10. Your hole time will be at the disposal of Company. You ma be employed in any required manner by appropriate authori without claim for extra remuneration. You will devote you whole time to the Company's business and at all times c the rules prescribed for the time being for the regulary. of service in the post in which you have been employed. will be liable in serve anywhere within the Company. 11, The appointment on contract shall be liable to termination on one month's notice or payment of one month's pay in] thereof by either side without assigning any reasion. How ever your service can be terminated withdut iny notice in you are found guilty of dishonesby, misconor when is dish ator (espineers) and " homenad ÷. 1 1.11 Children .

SUPERINTENDING ENGINEER GSO CIRCLE PESCO PESHAWAR The Manager Admu: Pesco Peshawar for Intermation The Finance Director Pesco Peshawar for information. The Medical Superintendent Wapda/Pesco Hospital for information and necessary action please. The Xen SS&TL Division CSO Pesco information and necessary action. ABBOT-HISAD for Circle Superintendent GSO Circle Pesco Pechawar.

This issue with the approval of Chief Executive Pesco Peshawar.

If you accept this offer please report to the office of Executive Engineer SS&TE Division GGO Peaco 214307 1004 on 26/12/2002 (Forenoon).

in the performance of your duties and responsibilities.

I take this opportunity to welcome you on penale of Chief Executive Pesco Peshawar as ASSA/ALM and a valued member of PESCO and wish you every success

You should before reporting for duty produce a cortific of Medical Fitness from the Medical Superintendent WAPP one of the Medical officer of Wapha if any Redical offi of wapda refers you to Specialist for openion of if you are required to cotain an X-Ray or Electro Cardiogram the cost of such consultation service will be bome by y You will not divulge, either directly or instingully to a. person any knowledge or information of a confidential nature which which the same con or a confidential enterprise and undertaking our one confidential

(I) Any other relation of the employees or his wife was residing and wholly depend him.

(K) Wife/Wives, real/step children residing with the employee and wholly dependent upon him.

You will make a declaration in writing of all movable and imovable including shares, certificates, necurities insurances policies, cash and Jewellery of the value of Rs.50,000/- belonging to or held by you or by member in your family individually or Collectively as defined in the Pakistan Wards Employees Conduct Rules-1978 villin one month of your watering in the berview. The mono-of family according to the Pakistan WAPDA Employee (Cut

You submit a surcty bond (referred to in part 12 of the letter duly attested on non judicial Stamped paper of

In case you leave FSSCO service at any time that of a training or before completion of the initial content period as mentioned in your appointment letter your defray to the PESCO the sum of Rs.25,000/4 (Rupees Twenty five Thousand only) as liquidated damages, in addition to the law reglyrd during raining plug addition to the a salary recived during raining plus expenses of lodging and boarding if any bern by preci

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• •• 4. the Although ۲۲ آ 1102-בו חשות שלומנים וואמול מוויד 'S}; 1112 matz Stratuge av on 30.05 - 211 DESCO BUILD म गपा छा हरका है। -Sector 933:48:37 . ZCE-V. ۲.__ • CO EVINE 2834 NINU 11.853 Ù ١Ì. gomnellatte off 10 1 באוש פלכ. aro m THE ODER THE POST rbait n 1-1-·F 201 3 J4 R . AVS К-~/ ٨ bdnog ant iv जनाम्बयुद्ध \$57 Ē 57 mun 6917 $\overline{\mathcal{O}}$ m (Non ľ. Ò 228 ור ח W NN YG C 4 . HIP ECDDI Varified from the Bury <u>ətə ettiği</u> 01.5-2F-1.3.5 x ł ST TL DIVISESCO BANNU 11-0 ĕ adiat 101 ລ. pę . 0718-001-01128 ø 52,015-4550 F **r (V** / KNY 7/ 17422217Ky 1 PESCOBA Mo_ VEDITIX HI WHEEK W N 21/20 6712.8.X-75 5875 -3 ٤1 Зc U.S. 175 8, 7 4 C, 6 Ý73 $\nabla \mathcal{C} \mathcal{C}$ ~ bor 52 2/ ふー Σ 100100 P 1-719 poling 11:/~~ x11? 1911 . <u>- n</u> - n ې. بېرې بېرې بهومميا ورز زر سرور م يتوحجا เสาว์ก: --متي المايي المناج اہے۔ ' 12/5 зĄ ابر ا דייי יצריא Zaza (**)* 1. A. . diselmelb. 2011 ----lo avael nexel onice A desing interventor Signementor Signementor Jueur n non of -----bratsed-p'The uohowou Jou oruse Notime Print 57-15C-7 THE STREET WAR CLARKE WAR STREET ST CILSANE 52

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7 Q., 26 . . . Ъ÷ A. A. A. A. 6 ··· 7 STREET PROVIDENCE OF STREET 5 A With the Street Pay in substantive position , Additional (ihaupetalive) ppointment of. (ii) whether service Other Wielher Substantive of ornclating any whether permanent or temporary noluments Ialling ; under/thei term pay Signifi Date of annoint. Goven pay lor officialling 7 counts for ension under rule 3-20 of こう C.S.R. (Pb.) Volume 11 اکر مار می ب ذائد تتمولو بلود کائم متام ۲è نيمر زان تنرر بي ,ı¥ "لإديدر درجه لماذم مارمن سنتز دىد: م مار من ااز مت. ۶, 7 رول کے ملکن پیش ک 586 مننج الأكن قاقم معانم ļ ij Rs. H.s C . Å Let IN LIGHT OF GOVT OF PAKIETAN FILLAR DIVISION (1995) WIND ISLAN ACAD OFF OFF τī 17 1000 (1) Inpres MERS 600 DATED . . 07/07 al PESCO (. . . PESI \mathbf{r} D.C. 40.753 ۰. ΕD Ciè 4.4 848 /, Pay As 22 Pay Revised As On Man-2019 395 - 07 90 10 <u>ą:r</u> 0 Cin. ا بر ان 11:003 ٠. ۰. 1 ρ_{ζ} 0 7 es. 992 207 7 Service ton the Pando +01-12 10 10 92 . Varifica fram the Pay Bits ste. 771 THE REPORT Ο EXECUTIVE ESGINEER F VAL WERCO BAMIN and' sh o ceo banno Califica California 16 4 , iii . . FINANCE . . · . IN LIGH OF GANT OF PAKISTAL FINANCE IN LIGH OF GANT OF PAKISTAL VI OFFICE DIVISION (REG. WING) ISLAMAL VI OFFICE DIVISION (REG. WING) ISLAMAL VI OFFICE MEMO: NO F.NO.1 (2) IMPORTATION DATED MEMO: NO F.NO.1 (2 PAKISTAL ÷ ٠, ٠ : : : 1/28 12:2

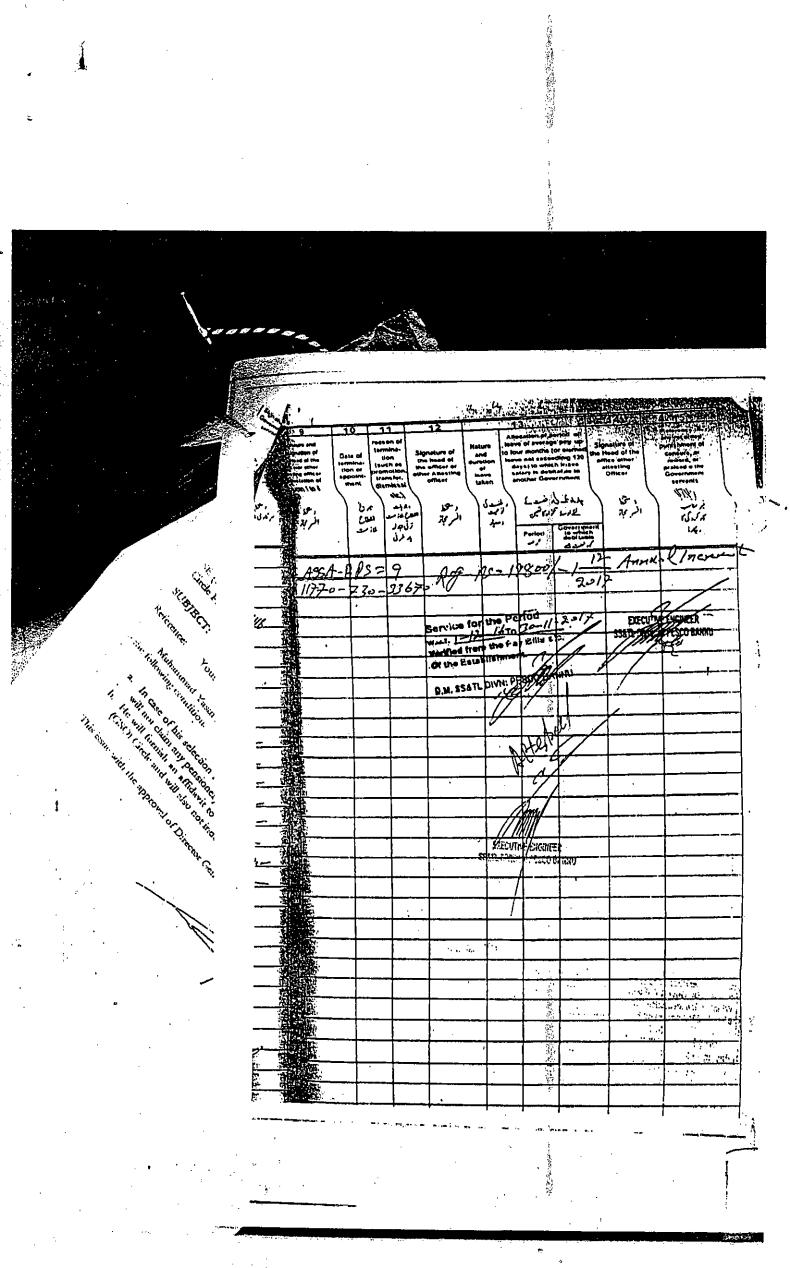
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PESHAWAR ELECTRIC SUPPLY COMPANY Wapda House, Shami Road Peshawar - Pakistan Phone No: +92.91.9212025 Ext. 207-208 32 Website: www.pesco.gov.pk 17/72-179_HR/PESCO/11/28 GSO Hownertune Dated: ___ 11 _/06/2014 HE (GSO) PESCO, Circle Peshawar SUBJECT: N.O.C Reference: Your letter No. 4475-77 dated. 27.05.2014 Muhammad Yasin ASSA is hereby allowed to apply for the post of School Teacher subject - the following condition. In case of his selection for the post applied for he will resign from PESCO service and а. will not claim any pensionery benefits. b. He will furnish an affidavit to this effect duly attested by Notrary Public as well 25 SE (GSO) Circle and will also not indulge in Court proceedings. This issue with the approval of Director General (HR) PESCO Pechawa Deputy Manager (HR) PESCO Peshawar Hiles . 4

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1.10 Before Hon'ble Peshawar High Court, Bench Dera Ismail Khan Inved W.P NO.603 of 2014 6 шÌ Muhammad Yasin S/O Muhammad Amin Resident of House No. C-1076 Mohallah D AWNE DERA Tehsil & District D.I.Khan. Petilione S Ε R U 10% (11 Government of Khyber Pakhtunkhwa, 1 Through Secretary Education, KPK Peshawar Education. KPK Elementary & Secondary Director Peshawar. (Male) Elementary Education Officer District 3. Secondary Education, D.I.Khan. Interview Committee constituted for Male? PST for 4. 28.04.2014 at Government High School No. 04.D.I.Khon. headed by SDEO (Male), D.I.Khan. Muzammil S/O Ellahi Bakhsh Asim thorugh D.E.O Male y 5. Respondent No. 03. Imtiaz Rasool Arif S/O Muhammad Tariq Khan thorugh 6. D.E.O Male / Respondent No. 03. M. Jungid Khan thorugh D.E.O Male / Respondent No. 03. 7. M. Imran thorugh D.E.O Male / Respondent No. 03. Filed today M. Haroon thorugh D.E.O Male / Respondent No. 03. Add: Real M. Hassan Ali thorugh D.E.O Male / Respondent No. 03. 10. 21/10/14. M. Hamid thorugh D.E.O Male / Respondent No. 03. 11. M. Naseem thorugh D.E.O Male / Respondent No. 03. 12. Naveed Anjum thorugh D.E.O. Male / Respondent No. 03. 13. Habib Ullah thorugh D.E.O Male / Respondent No. 03. 14. Respondent WRIT PETITION UNDER ARTICLE 199 OF THE CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN 1973. IESIS. WP.603-D of 2014 (Muhammad Yasin.Vs.KPK) (Grounds) 3 EXAMINOR

Pesnawar High Court Bench, Dera tamait ruom

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- 1. That the addresses of the parties given in the heading are correct for the purposes of service upon them.
- Uera Ismail Khan in WAPDA PESCO and has successfully passed his studies i.e. S.S.C. F.A. B.A. M.A. P.T.C. B.Ed. M.Ed. Certified copies of all credentials are enclosed as <u>Annexure "A/1" to "A/7".</u> 2. That the Petitioner is serving as ASSA AET Sub Division,
- 3. That the Respondents No. 3 advertised the union wise applications from the candidates having domicile of D.I.Khan. Copy of advertisement is enclosed as Annexure <u>"B".</u>
- 4. That as per directions given in the ibid advertisement and in pursuance thereta, the Petitioner submitted his application for P.S.T through proper channel and also annexed along with his application NOC regarding his appointment from PESCO and appeared in N.T.S Examination, wherein the Petilioner secured 63 Marks in N.T.S and in academics he secured 52.49 total marks 115.49. Copy of Domicile of the Pelilioner, Copy of letters of NOC from his service department & NTS meril card are enclosed as Annexure "C", "D", "E",

5. That after passing the written test and placing at S. No. 03 on merit, the Petitioner was asked to appear for interview on 29.04.201 **b** at Government High School No. 06. In pursuance to interview call, the Petitioner appeared before the interview committee and was interviewed. Thereafter the Petitioner was declared as successful and he was assured that the appointment order will be issued to him at his given residence address but inspite of issuance of various appointment orders, the petitioner was not issued with any appointment order and other appointment orders regarding union council No. 04 arë still pending for which the Respondent No. 03 affixed tentative list of PST UC-4 Tehsil D.I.Khan of Respondents. No. 07 to 14. Copy of impugned appointment order to the extent of Respondents No. 05 & 06 and tentative list of Respondents No. 07 to 14 are enclosed as Annexure <u>"F", "F/1".</u>

6. That on non-receiving of appointment order of the Petilioner, he moved on application for his appointment with the prayer that the Respondents have wrongly appointed the Respondents No. 05, 06 who have score i.e. 82.17 & 110.66 respectively and intended to appoint

WP.603-D of 2014 (Muhammad Yasin.Vs.KPK) (Grounds)

<u>к</u> ?:

63 EXAMINOR Pesnawaj High Court Bench, 👔 - Cura Isinair raian

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Respondents No. 07 to 14 who have score i.e. 88.59, 83.03, 91,77, 109, 99.45, 86.05, 100.01, 83.93 respectively vide tentative list vide which merit of the Respondents were less than the Petitioner. The said application of the Petitioner was assigned a number by the Respondent ds Appeal No. 13. Similarly another application has also been given to the Respondent No. 03 which was allotted o diary number as 7043 dated: 14.10.2014 but all in vain. Copies of applications are enclosed as Annexure "G/1". <u>"G/2".</u>

- That the Respondents have not only violated the policy as published by them of the time of calling applications from the petitioner besides other condidates, but also misinterpreted the recruitment policy and without any reason and justification, they are reluctant to appoint the Petilioner in-spite of the fact that low scored candidates have been appointed but the Petitioner has been denied on the political basis.
- the Respondents in-spite of observing and 8. That completing all the coddle formalities by the Petitioner reluctant for issuance of appointment order of the Petitioner, without any just cause of reason, rather the excess and lapses of the Respondents are very much evident on the record which amounts to deprivation from established rights of the Petitioner as guaranteed in the Constitution of Islamic Republic of Pakistan 1973
- 9. That the Petitioner has a legal right to be appointed and issuė ore under obligation bo the respondents appointment order of the Petitioner as he is on merit without prejudicing their mind nor to accommodate their nears and dears and the impugned appointment orders of the Respondents No. 05, 06 may kindly be declared as -

illegal, unlawful and without jurisdiction. Moreover it is olso a right of the Petilloner to claim his appointment orders as his name has been cited at the top of the merit lists, therefore, no grounds what so ever the same can't be denied without ony delay.

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- 10. That the Petilioner is not treated in accordance with law, He is virtually deprived of his right to life as guaranteed under Article 9 and other enabling provisions of the Constitution of Islamic Republic of Pakistan 1973.
- 11.That the impugned action of the Respondents are highly illegal, discriminatory, supra Constitutional, against the principles of natural justice, without lawful authority and of no legal effect.

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EXAMINOR

WP.603-D of 2014 (Muhammad Yasin.Vs.KPK) (Grounds)

12. That this is very important Constitutional issue and required an authoritative pronouncement.

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13. That Counsel for the Petitioner may be allowed to raise additional grounds during the course of arguments.

In wake of the submission made above it is respectfully prayed that on acceptance of this Writ Petition Respondents may kindly be directed to issue an appointment order of the Petitioner and the impugned appointment order so issued to the Respondents No. 05 & 06 as well as tentative merit list of UC-4 Tehsil D.I.Khan regarding Respondents No. 07 to 14 may kindly be declared as illegal, unlawful and without jurisdiction.

The Hon'ble Court may grant any other relief it deems appropriate.

Interim Relief:

As an interim relief to stay / suspension of operation of impugned appointment order of Respondent No. 05 & 06 and tentative merit list of UC-4 Tehsil D.I.Khan regarding! Respondents No. 07 to 14 to restrain the Respondents Irom concluding the recruitment procedure, issuanče Οf appointment orders to any other candidate and appointing any other persons against the posts of P.S.T Union Council 4 Tehsil D:I.Khan against the merit of the Petitioner | lill the decision of Wril Pelilion lilled above.

Pelilioner, Muhammad Yasin Through Coursel

Abdur Rastlid Khan Advocate Supreme Court of Pakistan

Sardar Umar Faroog Khan Mlankhel Advocate High Court D.I.Khan

Petitioner

4 - 4²⁵ -EXAMINOR

Dera tanàn Khan

Pesnawar/High Court Bench.

<u>Certificate:</u>

Dated: 20.10.2014

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It is certified that no other writ petilion for the subject is pending nor been decided between the parties. All the contents of this writ petition are correct.

WP.603-D of 2014 (Muhammad Yasin.Vs.KPK) (Grounds)

Before Hon'ble Peshawar High Court, Bench Dera Ismail W.P No. 603 of 2014

Muhammad Yasin

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Filed today.

Addi: Realsonar.

21/10/14.

S/O Muhammad Amin Resident of House No. C-1076 Mohallah Dewan Sahib Tehsil & District D.I.Khan.

F D 2

Petitioner

Respondents

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Government of Khyber Pakhtunkhwa, Through Secretary Education, KPK Peshawar.

Director Elementary & Secondary Education. KPK Peshawar.

- 3. District Education Officer (Male) Elementary Secondary Education, D.I.Khan.
 - Interview Committee constituted for Male PST for 28.04.2014 at Government High School No. 04, D.I.Khan, headed by SDEO (Male), D.I.Khan.
 - Muzammil S/O Ellahi Bakhsh Asim thorugh D.E.O Male 🖗 Respondent No. 03.
 - Imitaz Rasool Arif S/O Muhammad Tariq Khan thorugh D.E.O Male / Respondent No. 03.

M. Junaid Khan thorugh D.E.O Male / Respondent No. 03.

M. Imran thorugh D.E.O Male / Respondent No. 03.

M. Haroon thorugh D.E.O Male / Respondent No. 03.

M. Hassan Ali thorugh D.E.O Male / Respondent No. 03. 10.

M. Hamid thorugh D.E.O Male / Respondent No. 03. 11.

M. Naseem thorugh D.E.O Male / Respondent No. 03. 12.

Naveed Anjum thorugh D.E.O.Male / Respondent No. 03. 13.

Habib Ullah thorugh D.E.O Male / Respondent No. 03. 14.

WRIT PETITION UNDER ARTICLE 199 OF THE CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN 1973.

Pesnawar High Court WP.603-D of 2014 (Muhammad Yasin.Vs.KPK) (Grounds)

JUDGMENT SHEET (38 IN THE PESHAWAR HIGH COUR D.I.KHAN BENCH (Judicial Department)

W.P. No.603-D/2014 with C.M.No.621-D/2014

2014 with D/2014

Muhammad Yasin

<u>Versus.</u>

from E"

A PHAR HIGH

Govt. of K.P.K and others

<u>JUDGMENT</u>

Date of hearing: 06.3.2018.

Appellant-Petitioner by Mr. Abdur Rashind Kum Advocate

Respondent by Mr. Kamran Hayat Heankles AAG

IJAZ ANWAR, J.- Through the instant writ petition filed under Article 199 of the Islamic Republic of Pakistan, 1973, the petitioner has sought the following relief:-

> "In wake of the submission made above, it is respectfully prayed that on acceptance of this writ petition respondents may kindly be directed to issue appointment order of the petitioner and the impugned appointment order so issued to the respondents No.5 and 6 as well as tentative merit list of UC-4 Tehsil

Imran/•

(D.B) Mr. Justice Ijaz Anwar and Mr. Justice Shakeel Ahmad, JJ

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D.I.Khan regarding respondents No.7 to 14 may kindly be declared as illegal, unlawful and without jurisdiction. The Hon'ble Court may grant any

other relief it deems appropriate."

2. The brief facts as depict from the memo of writ petition are that the petitioner is serving as ASSA AET Sub Division, D.I.Khan in WAPDA PESCO. Respondent No.3 through an advertisement invited applications for the posts of PSTs on Union Council wise basis. The petitioner while possessing the qualification of M.A, B.Ed, M.Ed and P.T.C applied for the post of P.S.T. through proper channel. He appeared in NTS examination and in aggregate obtained 115.49 marks and²⁴his name appeared at Serial No.3 of merit list. Thereafter, he was called for interview and was declared as successful but his appointment order was not issued and respondents No.5 and 6 were appointed as PSTs for UC-4, D.I.Khan despite the fact that they were below in merit than the petitioner. The petitioner approached the competent authority for redressal of his grievances but they are reluctant to appoint the petitioner, therefore, he filed the instant writ petition.

Imran/

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3. On the direction of the Court, respondent No.3 submitted his para-wise comments, according to

(D.B) Mr. Justice Ija: Anwar & Mr. Justice Shakeel Ahmad,

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which the petitioner was over age by six years and four months on the closing date of applications for the post of PSTs, therefore, he was not eligible for appointment.

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4. Arguments heard and record perused.

Perusal of the record reveals that the 5. petitioner while holding qualification of M.A, B.Ed, M.Ed and PTC, applied for appointment against the post of PST (BPS-12) through proper channel. The record further transpired that the petitioner is serving in the PESCO as ASSA. He duly appeared in the written examination conducted by the National Testing Service (NTS) and his aggregate marks were shown as 115.49. However, when the appointment order was issued, he failed to find his name among the appointees, though he was better in merit than the one who were appointed. The main plea of the respondents in denying the appointment to the petitioner was that he is over age of six years and four months on the closing date of applications and that being an employee of PESCO, is not a civil servant, therefore, not entitled to the age relaxation.

6. We have examined the Initial Appointment to Civil Posts (Relaxation of Upper Age Limit) Rules, 2008, whereby the Govt. servants who have completed 02 years service, are entitled to 10 years automatic relaxation. The arguments that the petitioner being an

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(D.B) Mr. Justice Ijaz Anwar & Mr. Justice Shakeel Ahmad, Ĵ.

employee of PESCO is not entitled to the age relaxation is not legally tenable, because PESCO is a Public Limited Company established by the Federal Government, 100% of its shares are with the Federal Government, the Chief Executive is being appointed by the Federal Government is administered and governed and under the administrative control of Secretary Ministry of Power Government of Pakistan. In fact PESCO (Distribution Company) is supplying electricity to the consumers and such functions are mainly the affairs of the Federal Government. In the Rules, 2008 (ibid) the word Govt. servant has been used which is a very vast term and the candidate seeking relaxation should not necessarily be a civil servant. In such view of the matter, the petitioner who is posted as ASSA in 132 KV Grid Paroa, D.I.Khan is a Govt. servant and thus entitled to automatic age relaxation as required under the rules.

7. This Court at very initial stage while issuing notice to the respondents allowed interim relief to the extent that one post of PST in Union Council City-IV, D.I.Khan shall be kept vacant. The record further transpired that the petitioner was better in merit than those who were appointed. However, since the candidates who got appointments have served for about four years, we are not inclined to disturb them.

(D.B) Mr. Justice Ijaz Amvar & Mr. Justice Shakeel Ahmad, JJ

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8/7/022

8. For the reasons stated above, this writ petition is allowed in terms that the petitioner shall be appointed as PST (BPS-12) in Union Council City-IV, D.I.Khan with effect from the date when the respondents No.7 to 14 were appointed. Since the petitioner also remained in gainful employment, therefore, he shall not be entitled to any arrear of salary except seniority.

Announced. Dt:06.3.2018.

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EXAMINIZA

18/7/022

High Court Beneti, Deratamail Kijan

<u>JUDGE</u>

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(D.B) Mr. Justice Ijo: Anwar & Mr. Justice Shakeel Ahmad, JJ

OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) DERA ISMAIL KHAN 1210121/9220121

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APPOINTMENT

Consequent upon the Decision / Judgment of Honorable Peslutwar High Court DIKhan Bench vide Petition No. 603-D/2014 with C.M. No. 621-D/2014 & COC No. 809/2018, appointment of the following candidate is hereby ordered against the post of PST. School based, in BPS-12 (Rs. 13320-960-42120). @ Rs. 13520/- fixed plus usual allowances as admissible under the rules on adhoc basis on Contract under the existing policy of the Provincial Government, in Teaching Cadre on the terms and condition given below with effoct from the date of their taking over charge: \sim

<u>.</u>		Name of Candidate	Father Name		D.O.İL	Total Scure	110	Place of Posting
	1,760222	Muhammad Yaxin	Mulummail	12101-	20/9/1972			GPS NO. 10
TE	RMS & C	ONDITIONS	Amin	7341749-1	20141313	115.19		DIKIng

1. NO TA/DA etc is allowed.

- 2. Charge reports should be submitted to all concerned in duplicate.
- 3. Appointment is purely on temporary & contract basis initially for one year from the date of issuance
- Appuintment is subject to the condition that the certificate/documents must be verified from the concerned authorities by the DEO, anyone found producing bogus Certificate will be reported to the law enforcing agencies for further action. Expenditure on verification will be borne by the appointees.

5. His services are liable to termination on one month's notice from either side. In case of resignation without notice his one-month pay/allowances shall be forfeited to the Goyernment.

- 6. Pay will not be drawn untit and unless a certificate regarding verification of his documents is issued by this office.
- He should join his post within 10 days of the issuance of this notification. In case of , initure to join the post within stipulated period, his appointment will stands expired automatically and no subsequent appeal etc shall be entertained.
- Health and Age Certificate should be produced from the Medical Superintendent concerned before taking over charge.
- Before handing over charge, he will have to sign an agreement with the Department; otherwise this order will not be valid.
- 10. He will be governed by such rules and regulations as may be issued from time to time

- 11. His services shall be terminated at any time, in case his performance is found unsatisfactory during his contract period. In case of misconduct, he shall be preceded under the rules framed from time to time.
- 12. His appointment is made on School based, He will have to serve at the place of posting, and his service is not transferable to any other station.
- 13. He shall not be entitled for any arrear of salary except seniority with NTS PST appointee 2014.
- 14. Before handing over charge, once again their document may be checked by the DDO concerned, if they have not the required relevant qualifications as per rules or in case of any degree/certificate issued after 28/08/2015 against which he claimed score for merit they may not be handed over charge of the post.

Ends: No. 10089-9.

Copy forwarded to:

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- 1. The Director E&SE-Khyber Pakhtunkhwa, Peshawar.
- 2. The Deputy Commissioner, DI Khan.
- 3. The PS to the Secretary to Govt. Khyber Pakhtunkhwa E&SE Department.
- 4. The District Comptroller of Accounts, DI Khan.
- 5. Additional Registrar Peshawar High Court Bench DIKhan with compliance of COC No. 809/2018.
- 6. The SDEO (M) DIKhan
- 7. The Head Teachers concerned.
- 8. The Candidates Concerned.
- 9. Master File,

District 10 ucation Officer

---Sd---District Education Officer (Male) Dern Ismail Khan

Dated DI Khan the 2.9

(Male) Dera Ismail Khan

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Page 2 - 12

The District Education Officer (Male) DIKhan.

Through Proper Channel

VICE UNDER CSR 418-B OF PREVICUS SER COURT CASE/CONTINUATI

Respected Sir,

Subject:

With profound regards and the best respects I have the honor to submit the following few lines for your kind perusal and sympathetic consideration on merit and in the light of rules and law.

- that I have applied for the post of PST through roper channel as I was serving in PESCO in the 1 equality of ASSA (BPS-09). Copy of NOC issued by the Dy, Director (HR) PESCO Peshawar is attached as ready reference and succeeded to qualify the NTS test for the post of PST. But on the demand of PESCO, I tendered resignation to take up appointment in the E&SED, DIKhan.
- 2- that pursuance to the verdict of honourable Peshawar High Court, DIKhan Bench announced on 06-03-2018, I have been appointed as PST in BPS-12 with effect from the date of taking over charge, whereas the said court has held in its verdict that "the petitioner shall be appointed as PST (BPS-12) in Union Council City-IV DIKhan with effect from the data when the respondents No.7 to 14 were appointed without arrear of splary except seniority". In other words, the respondent department has not fulfilled the judgment in letter and spirit.
- 3- that it is significant to mention that under CSR 418 (b) "Resignation of an appointment to take up another appointment, service in which counts , is not a resignation of the public service." Copy of CSR is attached as Annex-A. The CSR under reference allows counting for my previous service rendered in PESCO to the present one for the purpose of leave, pension and re-fixation of salary,

As a sequel to what has been explained above it is earnestly requested that my appointment may be considered with effect from the 1" notification regarding appointment of PST issued on 17-05-2014 and my previous service may be counted for keeping in view the decision of honourable. Peshawar High Court, DIKhan Bench and the CSR 418-B, referred to above as early as possible, so that I may be able to serve the department without any anxiety. However, the undersigned reserve the rights to avail the opportunity of COC once again if genuine grievances are not removed well in time.

Allah Date /2019 Yours obediently, 5.01 (Malle) DIVE D. 141 26 30 (Muhammad Yaseen) F, GPS No. 10, D1Khan 1201 OFFICE OF THE S.D.E.O (MALE) DIKHAN No. /Court Case.

The appeal of Mr. Muhammad Yaseen, PST, GPS No. (0) DIKhancis submitted to the District Education Officer, DIKhan for further necessary action please.

Dated DIKhan the

S.D.E.O (Male) DIKhan

/2019

EFORE THE HONORABLE PESHAWAR HIGH COURT. DERA ISMAIL KHAN BENCH

Writ Petition No.

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Muhammad Yasin,

Son of Muhammad Amin Resident of Mohallah Wakeelan Wala, Primary School Teacher (PST) EPS-12 Government Primary School No. 10, Dera Ismail Khan.

Petitioner

Filed today.

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VERSUS

-D/of 2021

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Alletio

1. Province of Khyber Pakhtunkhwa through Secretary (Government, Elementary & Secondary Education (E&SE) Department, Peshawar.

2. Director Elementary & Secondary Education, Peshawar.

3. District Education Officer (Male) Dera Ismail Khan

4. Sub-Divisional Education Officer (SDEO) (Male) Dera Ismail Khan.

Respondents

WRIT PETITION UNDER ARTICLE 199 OF THE CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN 1973 AS AMENDED UP TO DATE.

WP N0.487-D of 2021 (Grounds)

iESTe. EXAMINOR tigh Court Berich, Dera Ismail Khan

PRAYER IN WRIT PETITION

Prayer A:

constitutional instant acceptance of On petition, this Honourable Court may be pleased to direct the Respondent No. 03 to decide the application Dated 11.07.2019 diarized as D No. 76/SDE (Male) of the Petitioner agitating service in previous grievances of his accordance with law and on merits. Filed ioday

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Prayer B:

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To direct the Respondents to act in accordance with law on the application Dated 11.07.2019 of the Petitioner or to grant any other relief *exdebito justitiae* in favour of the Petitioner.

Respectfully Sheweth,

Note:- Addresses given above shall suffice the object of service

The Petitioner humbly submits as under: -

That Petitioner was inducted into Peshawar Electricity Supply Company services (PESCO) on Dated 09/12/2002 on the post of Assistant Sub Station Attendant (ASSA) and that too on Contract basis through Appointment Order No. 17418-24/SEGSO/5/23 on Dated 09/12/2002, Copy of

WP N0.487-D of 2021 (Grounds)

EXAMINGE Program High Court Bench On i Findin Arge



Appointment Order of the Petitioner No. 17418-24/SEGSO/5/23 on Dated 09.12.2002 is enclosed as Annexure "A".

 That later on, the services of the Petitioner were brought on regular cadre of PESCO employees through Office Order Dated 28.06.2006. Copy of the Service Book of the Petitioner is enclosed as <u>Annexure "B"</u>.

3. That in the year 2014, certain posts of Primary School Teacher (PST) were Advertised by District Education Officer (Male), D.I.Khan/Respondent No. 03 to which the Petitioner applied through proper channel and also got Non Objection Certificate (NOC) from the Deputy Manager (HR) PESCO, Peshawar/competent Authority. Copy of the NOC letter NO: 10038-96 on Dated 11.06.2014 is enclosed as <u>Annexure "C"</u>. ented 10^{day}

4.

That Petitioner contested for the post and appeared in NTS examination and his name stood at serial No. 03 of the merit list. He was called for interview and declared as successful candidate but his Appointment Order in Education Department was not issued, so he was constrained to file Constitutional Petition No: 603-D of 2014 which came up for final hearing on 06.03.2018 before this Honourable Court. The same was allowed through Judgment/Order Dated 06.03.2018. Copy of the memo of Writ Petition No. 603-D of 2018 and Judgment/Order Dated 06.03.2018 of this Honourable Court is enclosed as Annexure "D" & "E" respectively.

WP N0.487-D of 2021 (Grounds)

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Prenawar High Court Burren. Dara Ibrean Nation 5. That finally, the endeavors of the Petitioner got succeeded and District Education Officer (Male), D.I.Khan/Respondent No. 03, issued his Appointment Order on 20.04,2019 as Primary School Teacher (PST) BPS- 12 and posted him in Government Primary School No. 10, D.I.Khan. Copy of Appointment Order No. 10088-96 Dated 22.04.2019 of the Petitioner is enclosed as <u>Annexure "F"</u>.

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6. That finally, the Petitioner assumed the charge of new first assignment as Primary School Teacher (BPS-12) in Government Primary School-10, D.I.Khan and moved an application Dated 11.07.2019 to the District Education Officer (Male), D.I.Khan/Respondent No. 03 for counting of All his previous service in earlier Department/PESCO and to give effect to his appointment from 17.05.2014 instead of 22.04.2019 but despite lapse of more than two years period, the application of the Petitioner has not been responded nor decided. Copy of the application Dated 11.07.2019 is enclosed as Annexure "G".

ThatDistrictEducationOfficer(Male),D.I.Khan/Respondent No. 03 is a public functionary and islegally bound to act in accordance with law and to treat thePetitioner in accordance with law. He is also duty bound todecide the application Dated 11.07.2019 of the Petitionerpurely on merits and that too as early as possible so thatPetitioner is able to obtain original Order. If the grievancesof the Petitioner are not being redressed by the DistrictEducation Officer (Male), D.I.Khan/Respondent No. 03, thenhe would be able to agitating his grievances firstly before

WP N0.487-D of 2021 (Grounds)

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Departmental Appellant Authority and then before appropriate Provincial Service Tribunal.

That feeling aggrieved from the inactions for the 8. Respondents over the application Dated 11.07.2019 of the Petitioner, he is left with no other remedy but to seek a direction from this Honourable Court against the Respondents specially against District Education Officer (Male), D.I.Khan/Respondent No. 03 to act in accordance with law on the following amongst grounds. Allerter

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a. That inaction of the public functionaries/Respondents over the application Dated 11.07.2019 agitating his service grievances is against law, facts of the case and material available on the record, hence not tenable in the eyes of law and Respondents are bound to decide the application Dated 11.07.2019 of the Petitioner purely on merits and also in accordance with law.

b. That silence of the Respondents over the application Dated 11.07.2019 of the Petitioner amounts to deprive the Petitioner from agitating his genuine service grievances before the appropriate forums, thereby

WP N0.487-0 of 2021 (Grounds)



negating the fundamental rights of the Petitioner as enshrined under the Constitution of Islamic Republic of Pakistan, 1973.

c. That legal and factual aspects of the controversy are not ⁽⁴⁾ being appreciated by the Respondents in the present case and they have miserably failed to address the genuine grievances of the Petitioner in the shape not deciding the application Dated 11.07.2019 on merits and in accordance with law despite lapse of period of more than two years.

- d. That by not deciding the application Dated 11.07.2019 of the Petitioner, the Respondents have almost closed further avenues for redressal of grievances of the Petitioner, therefore, the inactions of the Respondents Especially Respondent No. 03 calling for interference of this Honourable Court for issuing appropriate directions as prayed for.
- e. That Respondents are buildozing the fundamental rights of the Petitioner to be dealt with in accordance with law and to be treated in accordance with law, therefore, their inactions needs to be checked on the touchstone of

WP N0.487-0 of 2021 (Grounds)

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judicial review as envisaged under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973.

f. That Counsel for the Petitioner may please be allowed to urge additional grounds at the time of hearing.

Dated:- 30.08.2021

It is therefore, most humbly prayed that instant Constitutional Petition may please be allowed as prayed in the prayer clauses.

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Muhammad Yasin, Petitioner Through Counsel

Zia-ur-Rahman Advocate Supreme Court of Pakistan, Dera Ismail Khan

MINOR esnawar High Court Secon, Deratsmain Knam

WP N0.487-0 of 2021 (Grounds)

KHAN BENCH PESHAWAR HIGH COURT, D.I

FORM OF ORDER SHEET

Date of Order or Proceedings Order or other proceedings with signature of Judge(s). Image: State of the proceedings with signature of Judge(s). 22.12.2022 W.P.No.487-D/2021. Present: Mr. Zia ur Rehman Qazi, Advocate for the petitioner. MUHAMMAD FAHEEM WALL J: Clause of the petitioner reveals that he had filed an application to District Education Officer (Male) D.I.Khan through proper channel for continuation of previous service under CSR 418-B which was though received on 11.7.2019, but till date the same has been kept pending for any decision thereon. The learned counsel for the petitioner submits that unless decision is made on the application, it would stay as an impediment in the way of petitioner to approach the proper forum. The learned counsel for the petitioner requested that the respondents may please be directed to decide the application of petitioner expeditiously. The request seems genuine. 2. In view of above, this petition is disposed of in the terms that respondent No.3 is directed to decide the pending application of the petitioner, either way, within two months, positively strictly in accordance with law and rules. Mut Mut Mut Mut Mut Mut Mut Mut Mut Mut	2	<u></u>	ANT CHILDREN CONTRACTOR
Order or Proceedings (2) (2) (2) 22.12.2022 W.P.No.487-D/2021. (2) (2) Present: Mr. Zia ur Rehman Qazi, Advocate for the petitioner. (3) MUHAMMAD FAHEEM WALL. J.: The prayer (3) (4) Issuer (4) (4) (4) MUHAMMAD FAHEEM WALL. J.: The prayer (4) (4) Issuer (4) (4) (4) MUHAMMAD FAHEEM WALL. J.: The prayer (4) (4) Issuer (4) (4) (4) District Education Officer (Male) (4) (4) (4) District Education Officer (Male) (4) (4) (4) District Education Officer (Male) (4) (4) (4) MMW received on 11.7.2019, but till date the same has been (4) (4) Kept pending for any decision thereon. The learned (4) (4) (4) MMW is made on the application of petitioner to approach the (4) (4) proper forum. The learned counsel for the petitioner (4) (4) (4) MMW (4) (4) (4) (4)<			
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Hon'ble Mr. Justice Muhammad Faheem Wali Hon'ble Mr. Justice Shahid Khan

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GOVERNMENT OF KHYBER PAKHTUNKH OFFICE OF THE DISTRICT EDUCATION OFFICE DERA ISMAIL KHAN

OFFICE ORDER

WHEREAN, Mr. Muhammad Yaseen S/O Muhammad Amin was appointed as Assisting ubSt Attendant (ASSA) on contract basis w.e.f. 09-12-2002 in PESCO DIKhan.

AND WHEREAS, His services were regularized w.e.f. 28-06-2006 in that departmentifie DiKhan

AND WHEREAS, He applied for PST post through NTS in the year 2014 in Education Department DIKhan.

AND WHEREAS, He was appointed as PST in BPS-12 vide DEO (M) DIKhan under Endst No 10088-96 dated 22-04-2019 in comptiance of Honorable Peshawar High Court DIKhan Benel in Writ Petition bearing No. WP 603-15/2014 docided on 06-03-2018 on contract basis initially for the period of one year.

AND WHEREAS: He has applied for continuation of his previous service while he was on could fer the period of one year on 11-07-2019.

AND WITEREAS, His service are regularized under regularization ACT 2022 vide DIO (Mafe) DEChan Endst No.28395-28400 dated 01-12-2022 at Serial No. 101 of 2019.

AND WHEREAS, After regularization he can apply for his pay protection as well as for his explanation of his previous service under Govt: of KPK finance Department (Regularization wing) No FD (\$95R-1) 12-172014 dated Peshawar 6th February 2014. On the terms & condition mentioned in the said i Solification. այս ին≰≏երինն

AND WHEREAS. He was given seniority along with his batch mates of 2014 NTS as per Hopograble Shawar High Court DIKhan Bench judgment as mentioned in his appointment order.

AND WHEREAS. He will be promoted to SPST post after fulfilling the prescribed criteria mentioned in 1 3/ 1910 4-57 (88080) meeting / 2012 / Teaching cadre dated 13-11-2012 & notification/#aidd 50/03-20/8

at Serial 180.20 As per policy statement SPST post will be filled by promotion on basisiof seniority clim 1 funces, from amongst Primary School Teachers with at least five years' service as such and having qualification prescribed for initial recruitment of Primary School Teacher, <u>Marin</u>

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Dated

DISTRICTEDIO (MALE) DERA IST

-Sil-DISTRICT EDUCATION OFFICER (MALE) DERA ISMAIL KH

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NOW THEREFORE, As per policy he is not entitle for promotion from PST to SPST post dillhat time.

Endst: No. 4441-45

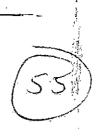
Copy of the above is forwarded to the:

1. Registrar Peshawar High court DIKhan Bench ,

SDEO (Maie) DIKhan,

Teacher Concerned,

- PA to DEO (Male) DiKhan
- Office copy.



The Director, Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar,

Homesure

SUBJECT:

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DEPARTMENTAL APPEAL FOR PREVIOUS SERVICE CONTINUATION AND PAY PROTECTION AGAINST ORDER DATED 13-03-2023

Respectfully Sheweth:-

Brief facts giving rise to instant appeal are as under:-

- That the appellant worked in PESCO as ASSA (BPS-09) through order bearing Endst; 17418- 24/SEGSO/5/23 dated 09/12/2002, thereafter the appellant was transferred in SS&TL PESCO Bannu Division.
- 2. That in meanwhile, the preset appellant applied for the post of PST in Education Department through proper channel and appellant were appointed on the post of PST due to successful candidate of NTS and in this respect the proper NOC was issued to the appellant by the concerned Department i.e Deputy Director (HR) PESCO Peshawar. Copy of NOC & appointment order are attached.
- 3. That on the demand of PESCO, the appellant tendered resignation to take up appoint in the Department of Elementary & Secondary Education stationed at DIKhan.
- 4. That it is significant to mention that under CSR- 418(b) "Resignation of an appointment to take up another appointment, service in which counts, is not a resignation of public service, Copy of CSR is attached.

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To,

5. That the appellant is senior most employee of Government, furthermore on the direction of Honourable Peshawar High Court, DIKhan Bench is available that the application of appellant is to be decided within two months, but all in vain.

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- 6. That it is pertinent to mention here that the District Education Officer (Male) DIKhan stated in his order dated 13/03/2023 that "After regularization he can apply for his pay protection as well as for his continuation of his previous service......etc", hence on the above stated facts and circumstances, the application of appellant may kindly be decided according to law and previous service of the appellant may graciously be counted and in this respect the appellant is entitled for Pay protection.
- a. That the Appellant may very graciously be allowed to add further grounds during the course of personal hearing.

In wake of the submissions made above, It is humbly prayed that the instant appeal may graciously be accepted as prayed for.

Your Humble Appellant

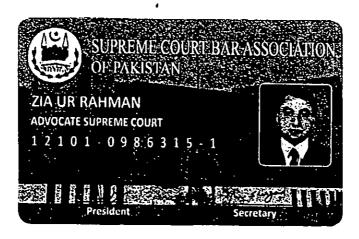
Dated: 07/04/2023

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MUHAMMAD YASIN S/o Muhammad Amin Caste Rajput R/o Mohallah Wakilan Wala, City Dera Ismail Khan, Ex-ASSA Gomal University Grid Station, DIKhan Presently PST Govt. of Primary School No. 10, Dera Ismail Khan. CNIC No. 12101-7341749-1 Cell No. 0346-7856231

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Opposite Hagnawaz Perk Cantt Market Behind HBL, DiR 0344-9720039

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وكالرث ث 15ª مته، مد مند رجه بالالمزوان مين التي شرف واسط ويرد وي وجواب وألى برائع توشى بالتعفيه مقد مد ورمام جاءر الان الدر کو صب از ای شرائط بر ویک مقرر کمیا ہے کہ ایک تیتن پر خود یا بزا بذرائیہ رو برد عدالت حاضر ۲۶ رادل کا ادر ہر دات بکارے جانے مقدمہ وکیک ماجب موسوف کر اللارع المست کر المالس کردن کا اکر تیش بر مظهر حاضر نه او اور مقدمه بیری فیمر حاضری کی دجه المت ممک طور میرید، خلاف جو مما از ماهب موسوف اس سے سمی افرار وجہ دار نہ وول کے نیز وکیل صاحب موسوف صدر مقام کچھری کے طاور یا کچھری کے اوقاح سے پہلے یا پیچے یا برور فعظمل یروی کرنے کے ذہر اور ایر اور سک اور مقدمہ مدر کیم کی سک مادہ اور جکہ ماحت مولے کا برد، تعلیل یا کیم کی کے اوقات سک آسک یا تیکھ میں مولے یر مظہر کوئی نشان پیلیج تو اس کے ذمہ دار یا اسکٹ داستے کی سخاہت کے ادا کرنے یا محنت نہ دائیں کرنے کے مجمی صاحب موسوف ذمہ دار نہ بول کے مجھ کوکل سافته به وافته سادب موسوف مثل کرده والت خود منظور قبول او تا ادر ساحب موسوف کو مرض وتوی با جواب دعوی با ور فراست اجرام اساست و گری الفروني اليلي ترافى و برنظم در فواست برنغ ک بیان دسینا اور بر الن با داخن نامه و فسله برصل کرتے اقبال رامی کا بھی اعتبار ہو کا اور بصورت مقرر اولیے اجراع بیشی مترب الارد بیردن از آبادی مدر بیروی الله به ترور تشرینانی ایش و ایرا مدکی متعد با منسوقی وکری کی طرف با درتواست تکم اشامی با قرتی با کرازاری قبل از ایرانه از استا اکری نمی صاحب موسونه کو اشرط اداشتن منیوره مخاصینهای کا اعتبار موکا اور قمام ساخته مداخته صاحب موسوف مثل کرده از مود منظور و قبول بو کار المديرين شرونرت صاحب سوهوف کو سياجي والتيار و که مقدمه مرکور با اس کے کمی جزو کی کاروائی با بصورت ورفواست تظر قانی ایلی ترانی در سداند و قدمه زکرده تمی دور به وکل با با با متر کو اینا این از اینا امراد مترد کریا از ایس مثیر قانون کو جمک تر امر شما دانا اور ویسته التبارات ما من الدار المله البينا صاحب، موسول كر مامل اين اور ودران مقدمه من جو تركم اير جانه الواو يزت كل دو ماحب موسوك كا حق مولكا تمر ما سه، ارسمان ۲ ایرای فیمی ۱۹۸۶ فیش سه ایل ادا نه کردن کا تر ساحب موسوف کر بودا اعتیار او که که عدمه ک بردی نه کرین ادر اسک مورجه شايرا كولى مطالبه مى المتم كا صاحب موسول حك برطاف الملي الموكا الإلماءكانست نامديكود بإسب تأكد ستودست مون د کالسته نامدین لیاب ادراحیمی طرح سمجه لیا به **ادرمنطور ب** 4894 Yaseen Appellat ياة بيترمنغرا بدردان سين زرباركيث بالقابل جانز بولل فرعده ساعيل خان أوانا : 714812

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