

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal # 1443/2023

Mst. Bibi Amina, Principal (BPS-19).....Appellant.

VERSUS

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

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Despondent

17-08-2023

(1)

BEFORE THE HON'BLE SERVICE TRIBUNAL PESHAWAR

Khyber Pakhtunkhwa
Service Tribunal

Service Appeal # 1443/2023

Diary No. 7073

Dated 17/8/2023

Mst. Bibi Amina, Principal (BPS-19).....Appellant

VERSUS

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

AFFIDAVIT

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

It is further, stated on oath that in this appeal the answering Respondents have neither been placed ex-parte nor has their defense been struck off.



DEPONENT

A handwritten signature in black ink.

Mr. Amjad Ali
Section Officer (Lit-II)
E&SE Department Peshawar

(2)




GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION DEPARTMENT

Block "A" Civil Secretariat, Peshawar

Phone No. 091-9211128

AUTHORITY LETTER

It is certified that **Mr. Fahim, Representative (Litigation-II)** Elementary & Secondary Education Department is hereby authorized to submit parawise comments on behalf of Secretary Elementary & Secondary Education Department Peshawar in **Service Appeal No. 1443/2023 Case Titled Mst. Bibi Amina, Principal (BPS-19) vs Government of Khyber Pakhtunkhwa** through Secretary Elementary & Secondary Education Department Khyber Pakhtunkhwa, Peshawar.


Mr. Anjad Ali
Section Officer (Lit-II)
E&SE Department Peshawar

(3)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No# 1443/2023

Mst. Bibi Amina, Principal (BPS 19).....Appellant.

VERSUS

Secretary, Govt: of Khyber Pakhtunkhwa E&SE Department & Others..... Respondents.

APPLIACTION FOR VACTION OF SUSPENSION ORDER DATE 21-07-2023 AGAINST THE NOTIFICATION DATED 16-05-2023

Respectfully Sheweth,

Preliminary Objections

1. That the appellant have filed this service appeal against the Notification dated 16-05-2023
2. That this Honorable Service Tribunal has suspended the above Notification on 21-07-2023 by way of interim relief.
3. That the applicant/respondent seeks the order dated 21-07-2023 of this Honorable Tribunal to be set aside because the necessary functions of the respondent department has been disturbed and hanged which needs consideration along with the following grounds.

Grounds:-

1. That the respondents has acted in accordance with law & rules. The appellant has been lawfully transferred the appellant by exercising powers conferred under Section 10 of the civil Servient Act 1973 in the best public interest.
2. That the appellant is duty bound to serve any where she may be given the task by the competent authority therefore the appellant has got no cause of action against the respondent.
3. That there is no merits in the present appeal and is liable to be dismissed summarily.
4. That the appellant has no prima facie case nor has any locus standi and even no chance of success.
5. That balance of convenience lies in favor of the respondent and if the interim order is not reviewed the respondent/department will suffer irreparable loss.
6. That the applicant have not come to the court with clean hands.
7. That the appellant have concealed material facts from this Honorable Tribunal.

It is therefore, most humbly requested that, the interim relief already granted on 21-07-2023 may kindly be set aside in favor of the department/respondent

Secretary

**Elementary & Secondary Education Department.
(Respondent No. 1)**

(B)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

SERVICE APPEAL NO. 1443/2023

MST. BIBI AMINA PRINCIPAL.....APPELLANT.

VERSUS

**GOVT. OF KHYBER PAKHTUNKHWA THROUGH CHIEF SECRETARY & OTHER
..... RESPONDENTS.**

PARAWISE COMMENTS ON BEHALF OF THE RESPONDENTS NOS. 01, 02 & 03

Respectfully Sheweth,

Preliminary Objections:

1. The appellant has got no cause of action to file instant Service Appeal against the Respondents.
2. The appellant has concealed the material facts from this Hon'able Tribunal, hence liable to be dismissed on this score only.
3. The appellant is not an aggrieved person nor has any locus standi to file the present Service Appeal.
4. The appellant has filed the instant appeal with malafide intension just to pressurize the Respondents.
5. That the appellant is not entitled for any relief, she has sought from this Honorable Tribunal
6. That the appellant has been treated according to law, rules and discretionary powers conferred upon respondent No.1, under Section-10 of Civil Servant Act 1973.
7. That the appellant does not fall within the ambit of aggrieved person
8. That the present appeal is liable to be dismissed being devoid of any merits.

On FACTS

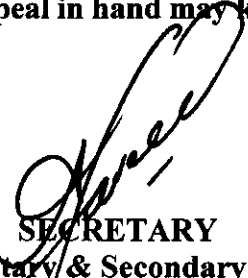
1. That Para-01 Pertains to record.
2. That Para-02 pertains to record. However, the husband of the appellant is a teacher in a private institution, the benefit of spouse policy cannot be extended to the appellant.
3. That Para-03 is correct. The benefit of transfer was extended to the appellant despite the fact that she was not entitled for posting in District Peshawar under spouse policy as per record annexed with Service Appeal her husband not a Civil Servant.
4. The appellant was initially posted as a Principal (BPS-19) at Government Girls Higher Secondary School, Teri Karak vide Notification dated. 15-03-2023, but she failed to compliance with the direction of the Competent Authority. (Annex-A)
5. That Para-05 pertains to record.
6. That appellant is a Civil servant and occupying the Provincial Cadre post i.e., Principal and as per Section 10 of Civil Servant Act 1973 the Competent Authority have the prerogative to place the services of the appellant anywhere in the province in the public interest.

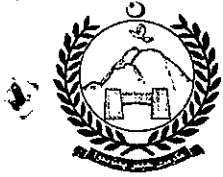
7. That the Competent Authority facilitated the appellant as per her request but another Principal summary namely Mst. Alia already moved by the Department prior to the appellant request for place of her choice was approved by the Competent Authority after due process and the Competent Authority do not have alternate remedy but to withdraw the corrigendum order dated 15-05-2023 of the appellant.
8. Incorrect, the competent authority is empowered under Section-10 of Civil Servant Act, 1973 to transfer the appellant as well as all the Civil Servant anywhere throughout the province in the best public interest.
9. Incorrect, the appellant is not an aggrieved person and the appellant cannot be posted at the place of her choice being a Civil Servant. She is liable to serve throughout the province being holding the Provincial Cadre post. The impugned Notification dated 16-05-2023 within the legal sphere of law and no vested right of the appellant is violated. Hence, liable to be maintained inter-alia on the following grounds

On Grounds:

- A. Incorrect, misleading and strongly denied. The competent authority have the prerogative right as per Section-10 of Civil Servant Act, 1973 to post the services of a Civil Servant anywhere in the province.
- B. Incorrect, misleading and strongly denied. Already explained in Para-3 on the Reply of Facts. The appellant is duty bound to serve the department and obey the orders of the Competent Authority in the best public interest.
- C. Incorrect, misleading and strongly denied. It is settled law that no civil servant is allowed to perform duties according to their choices.
- D. Incorrect, misleading and strongly denied. The appellant is not an aggrieved person and cannot be posted at the place of her choice being a Civil Servant she is liable to serve throughout the province being holding the Provincial Cadre post. The impugned Notification dated 16-05-2023 within the legal sphere and no vested right of the appellant is violated.
- E. Incorrect the respondents also seeks the permission for additional grounds at the time of arguments.

It is therefore, most humbly prayed that the appeal in hand may kindly be dismissed with cost.


SECRETARY
Elementary & Secondary Education
Department Peshawar
(Respondent No. 01, 02 & 03)



GOVT. OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION DEPARTMENT

Email: sectionofficersf@gmail.com


091-9223588

Dated Peshawar the March 15th, 2023

NOTIFICATION

NO.SO(S/F)E&SED/2-3/2022/Promotion/: In pursuance of this Department's notification of even No. dated 13.12.2022 (on their promotion from (BS-18) to (BS-19) and on the relaxation of ban on posting/transfer of officers by the Election Commission of Pakistan vide letter dated 01.02.2023, the following teaching cadre officers of BS-19 are hereby posted accordingly:

Sr. No	Name & Designation	From	To
01	Mst. Bakht Bibi	GGHSS Jogiwara Peshawar	GGHSS Ghallanai Mohmand (AVP)
02	Mst. Noor Shad Ali	GGHSS Ghoriwala Bannu	GGHSS Shahbaz Azmat Khel Bannu (AVP)
03	Mst. Riffat Yasmin	GGHSS No.2 Mansehra	GGHSS Oghi Mansehra (AVP)
04	Mst. Farsiya Kanwal	GGHSS Dhamor Abbottabad	GGHSS Balakot Mansehra (AVP)
05	Mst. Jannat Bibi	GGHSS Shahdhand Baba Mardan	GGHSS Palai Malakand (AVP)
06	Mst. Zubaida Khatoon	GGHSS Gulshan Abad Manerai Swabi	GGHS KSK Swabi Vice Sr. No. 16
07	Mst. Naila Bibi	GGHSS Bangash Khel Bannu	RPDC (F) Bannu AVP of Senior Instructor
08	Mst. Shabana Begum	GGHS Sakai Mardan	GGHSS Shahdhand Baba Mardan (AVP)
09	Mst. Sabina Yusrat Rahim	GGHSS University Town Peshawar	GGHSS Tota Kan Malakand (AVP)
10	Mst. Ishrat Zakir	RPDC Abbottabad	GGCMS Kotnajibullah Haripur (AVP)
11	Mst. Bibi Amina	GGHSS Chamkani Peshawar	GGHSS Teri Karak (AVP)
12	Mst. Mastoore Khas	GGHSS Nowshera Kalan	RPDC (F) Swat AVP of Senior Instructor
13	Mst. Uzma Ali	GGHSS No.2 D.I Khan	GGHSS Narshukrullah Bannu (AVP)
14	Mst. Humera Khanum	GGHSS Jogiwara Peshawar	GGHS Joligram Malakand (AVP)


Section Officer (S/F)
Elementary & Secondary Education
Dept. Govt. of Khyber Pakhtunkhwa



GOVT. OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION DEPARTMENT

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091-9223588

15	Mst. Sanam Haroon	GGHSS Akora Khattak Nowshera	GGHSS Mandoori Nowshera (AVP)
Consequential Posting/transfer			
16	Mst. Gul e Rana Principal (BS-19)	GGHS KSK Swabi	RPDC (F) D.K Khan AVP of Senior Instructor (BS-19)

SECRETARY TO GOVT: OF KHYBER PAKHTUNKHWA
E&SE DEPARTMENT

Endst: of even No.& date:

Copy forwarded to the:

1. Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. Director, E&SE, Khyber Pakhtunkhwa, Peshawar.
3. District Education Officer (Female) concerned.
4. Principal RPDCs concerned.
5. Director, Directorate of Professional Development (DPD) Peshawar.
6. District Account Officer concerned.
7. Director EMIS, E&SE Department for uploading at official website at the earliest.
8. PS to Minister for E&SE Department, Khyber Pakhtunkhwa.
9. PS to Secretary, E&SE Department.
10. Office order file.

FO

16-3-23

[Handwritten signature]

Section Officer (S/F)
Elementary & Secondary Education
Deptt, Govt. of Khyber Pakhtunkhwa

[Handwritten signature]
16/3/23
(SHAWANA HALEEM)
SECTION OFFICER (S/F)



GOVT. OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION DEPARTMENT

Email: sectionofficersf@gmail.com

091-9223588

Dated Peshawar the May 15th, 2022

CORRIGENDUM

NO.SO(S/F)E&SED/2-3/2022/Promotion/: In partial modification of this Department's Notification of even No. dated 15.03.2023, the place of posting in respect of Mst. Bibi Amina (newly promoted) Principal (BS-19) appearing at Sr. No. 15 may be read as GGHSS Mathra Peshawar instead of GGHS Teri Karak. She will assume charge on 31.05.2023 after retirement of Mst. Riffat Naseem Principal (BS-19).

SECRETARY TO GOVT: OF KHYBER PAKHTUNKHWA
E&SE DEPARTMENT

Endst: of even No.& date:

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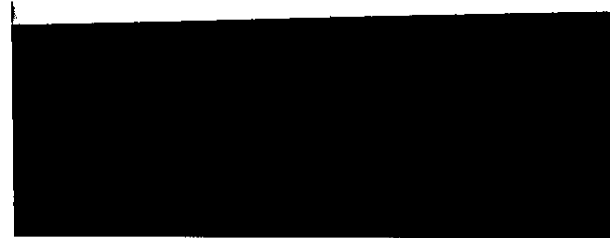
1. Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. Director, E&SE, Khyber Pakhtunkhwa, Peshawar.
3. District Education Officer (Female) Karak.
4. District Account Officer Karak.
5. Director EMIS, E&SE Department for uploading at official website at the earliest.
6. PS to Minister for E&SE Department, Khyber Pakhtunkhwa.
7. PS to Secretary, E&SE Department.
8. Officers/Official Concerned.
9. Office order file.sh

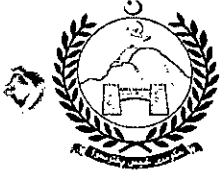
Section Officer (S/F)
Elementary & Secondary Education
Deptt. Govt. of Khyber Pakhtunkhwa

(SHAWANA HALEEM)
SECTION OFFICER (S/F)

15/5/23

3





GOVT. OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION DEPARTMENT
Email: sectionofficersf@gmail.com
091-9223588

Dated Peshawar, May 16th, 2023

NOTIFICATION

NO.SO(S/F)E&SED/4-16/2022/Posting/Transfer/: This Department's notification of even number dated: 15.05.2023 in respect of Mst. Bibi Amina (BS-19) is hereby withdrawn, ab-initio.

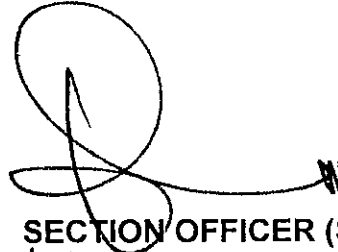
**SECRETARY TO GOVT: OF KHYBER PAKHTUNKHWA
E&SE DEPARTMENT.**

Endst: of even No. & date:

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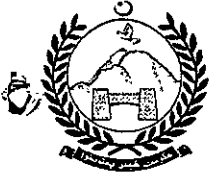
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2. Director, E&SE, Khyber Pakhtunkhwa, Peshawar.
3. District Education Officers (Female), concerned.
4. District Accounts Officers, concerned.
5. Director EMIS, E&SE Department for uploading at official website at the earliest.
6. PS to Secretary, E&SE Department.
7. Officer concerned.
8. Office order file.


23/5/23


SECTION OFFICER (S/F)
for 16/5/23



Section Officer (S/F)
Elementary & Secondary Education
Dept: Govt: of Khyber Pakhtunkhwa



GOVT. OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION DEPARTMENT

Email: sectionofficersf@gmail.com

091-9223588

No. SO(S/F) E&SED/4-16/2023

Dated Peshawar the July 05th, 2023

To

The Bibi Amina Principal (BS-19)
GGHSS Mathra Peshawar.

→ EOM.
6.7.23.

SUBJECT: DEPARTMENTAL APPEAL/REPRESENTATION AGAINST THE ORDER DATED 16.05.2023 VIDE WHICH POSTING ORDER DATED 15.05.2023 HAS BEEN WITHDRAWN AB INITIO ON THE BASIS OF PLITICAL CONSIDERATION.


I am directed to refer to your appeal received vide Secretary E&SE Department Diary No. 3479 dated 26.06.2023 on the subject noted above and to state that your said appeal was examined and hereby rejected by the Competent Authority, please.


(SHAWANA HALEEM)
SECTION OFFICER (S/F)

Endst: of even No. & Date:

Copy forwarded for information to: PS to Secretary E&SE Department.


SECTION OFFICER (S/F)


Section Officer (S/F)
Elementary & Secondary Education
Deptt: Govt. of Khyber Pakhtunkhwa

Appeal No: 1443/2022
Bibi Amna vs Govt

21st July, 2023



1. Learned counsel for the appellant present and argued that impugned order was passed on 16.05.2022 against which appellant filed departmental appeal which was refused by order dated 05.06.2023. Feeling aggrieved he filed instant service appeal under Section-4 of Khyber Pakhtunkhwa Service Tribunal Act, 1974 on 07.07.2023. He argued that appellant was posted to GGHSS Teri Karak vide order dated 15.03.2023 against which appellant filed departmental representation for issuance of corrigendum and her posting to any school at Peshawar, which was accepted by the authority on 15.05.2023. Appellant was posted at GGHSS Mathra w.e.f 31.05.2023 after retirement of Mst. Riffat Naseem, Principal. As a result of the same appellant assumed charge on 01.06.2023. Consequently, pay of appellant was released as Principal (BPS-19) which is available on page 14 and performed her duties during the month of June in the said school. He further argued that impugned corrigendum notification dated 15.05.2022 was mala fide shown to be withdrawn ab-initio on 16.05.2022 by back dating it. If impugned order was issued in fact on 16.05.2022. A copy of which was also addressed to Accountant General then in such a situation salary of the appellant for the month of June 2020 had not been released by the Accountant General Office. Points raised during the course of arguments needs consideration. Therefore, appeal in hand is admitted for regular hearing subject to all legal objections. The appellant is directed to deposit security fee within 10 days. Thereafter, notices be issued to respondents for submission of written reply/comments. Adjourned. To come up for written reply/comments on 27.07.2023 before S.B. P.P given to learned counsel for the appellant.

2. Annexed with the appeal there is an application for suspension of operation of impugned order dated 16.05.2022. In the meanwhile, operation of impugned order shall remain suspended till the date fixed, if already not acted upon.

Certified to be true copy

MEMBER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

(Rashida Bano)
Member(I)