

DIFA

10.08.2023 01. Learned counsel for the petitioner present. Mr. Asif Masood Ali Shah, Deputy District Attorney alongwith Mr. Faheem, Assistant for the respondents present.

02. As per order sheet dated 04th August, 2023 representative of the respondents *department had* ~~was~~ produced copy of Notification dated 04.08.2023 which shows that the judgment of the Tribunal has been implemented in letter and spirit. Since the order of Tribunal has been complied with, therefore, the instant execution petition is filed. Consign.

03. *Pronounced in open court at Peshawar and given under my hand and seal of the Tribunal this 10th day of August, 2023.*

(Muhammad Akbar Khan)
Member (I)

BEFORE THE COURT OF SERVICE TRIBUNAL, PESHAWAR

Implementation Petition No. _____ /2023

In line with Service appeal No.76/2022 decided on 05-07-2022.

Muhammad Noor Sultan etc.

Versus

Govt of KPK & Others

**APPLICATION FOR FIXATION AT
PRINCIPAL SEAT PESHAWAR.**

RESPECTFULLY SHEWETH,

1. That the above title implementation petition in being filed before this Honorable Tribunal.
2. That the case relates to jurisdiction of camp court D.I.Khan but due to summer vacation camp court is not functional.
3. That respondent have violated the judgement of this Honorable Tribunal and issued impugned notification dated 01.08.2023.
4. That it is urgent matter and if not fix then petitioner will suffer Irreparable loss.

It is, therefore, very humbly requested that keeping in view the above facts, above titled implementation Petition may be fixed before principal seat today to meet the ends of justice.

Dated: 2/8/2023

Petitioner Through

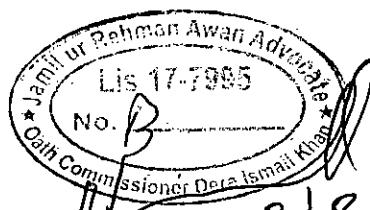

Khalid Mehmood

Advocate High Court D.I.Khan

Mob # 0336-4330001

Affidavit

I Muhammad Noor Sultan SDEO Male Education Department, petitioner affirm that all the contents of the above application are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.



02/8/23


Deponent

12103-1489991-7

GENORAL KHYBER PAKHTUNAWA SERVICE TRIBUNAL, PESHAWAR
CHECK LIST

Case Title: Mohamud Noor Sothi vs Sothi case

Sr	Contents	Yes	No
1.	This appeal has been presented by: <u>Counsel</u>	✓	
2.	Whether Counsel / Appellant / Respondent / Deponent have signed the requisite documents?	✓	
3.	Whether Appeal is within time?	✓	
4.	Whether the enactment under which the appeal is filed mentioned?	✓	
5.	Whether the enactment under which the appeal is filed is correct?	✓	
6.	Whether affidavit is appended?	✓	
7.	Whether affidavit is duly tested by competent oath commissioner?	✓	
8.	Whether appeal/annexures are properly pagged?	✓	
9.	Whether certificate regarding filing any earlier appeal on the subject, furnished?	✓	
10.	Whether annexures are legible?	✓	
11.	Whether annexures are attested?	✓	
12.	Whether copies of annexures are readable/clear?	✓	
13.	Whether copy of appeal is delivered to A.G.P.A.?	✓	
14.	Whether Power of Attorney of the Counsel engaged is attested and signed by petitioner/appellant/respondents?	✓	
15.	Whether numbers of referred cases given are correct?	✓	
16.	Whether appeal contains cuttings/overwriting?	✓	
17.	Whether list of books has been provided at the end of the appeal?	✓	
18.	Whether case relate to this Court?	✓	
19.	Whether requisite number of spare copies attached?	✓	
20.	Whether complete spare copy is filed in separate file cover?	✓	
21.	Whether addresses of parties given are complete?	✓	
22.	Whether index filed?	✓	
23.	Whether index is correct?		
24.	Whether Security and Process Fee deposited? on		
25.	Whether in view of Khyber Pakhtunawa Service Tribunal Rules 1974 Rule 11, notice along with copy of appeal and annexures has been sent to respondents? on		
26.	Whether copies of comments/reply/rejoinder submitted? on		
27.	Whether copies of comments/reply/rejoinder provided to opposite party? on		

It is certified that formalities/documentation as required in the above table have been fulfilled.

Name: Khalid Mahmood
 Signature: [Signature]
 Dated: 2/8/2023

**BEFORE THE HONORABLE SERVICE TRIBUNAL,
KHYBER PAKHTUNKHWA**

Implementation Petition No. 558 /2023

In line and with reference to

Service Appeal No. 76 of 2022

Muhammad Noor Sultan VS. Govt of KPK

through Secretary Education, Peshawar and other.

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2.	Copy of Notification dated 03.01.2022, Copy of Notification dated 04.01.2022, Judgment dated 05.07.2022 in Service appeal No 76 of 2022 of this Hon'ble Tribunal	A, B & C	9-15
3.	Copy of Notification dated 27.03.2023	D	16
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Yours Humble Petitioner

(Muhammad Noor Sultan)

Through Counsel

Khalid Mahmood
Advocate High Court
Stationed at D.I.Khan

Dated: 2 / 8 / 2023

①

**BEFORE THE HONORABLE SERVICE TRIBUNAL,
KHYBER PAKHTUNKHWA**

Implementation Petition No. 558 /2023

In line and with reference to

Service Appeal No. 76 of 2022

Khyber Pakhtunkhwa
Service Tribunal

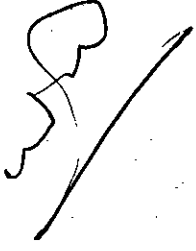
Diary No. 6875

Dated 03/08/23

Muhammad Noor Sultan, Sub Divisional Education
Officer (male) Tehsil Paharpur, District D.I.Khan.

Petitioner

V E R S U S

- 
1. **Government of Khyber Pakhtunkhwa** through, Chief Secretary Khyber Pakhtunkhwa, Peshawar.
 2. Chief Secretary to Govt of Khyber Pakhtunkhwa Peshawar,
 3. Secretary to Govt of Khyber Pakhtunkhwa Elementary & Secretary Education Department, Peshawar.
 4. **Director**, Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.
 5. **District Education Officer** Dera Ismail Khan, Education.
 6. **District Education Officer** Battagram, Education.
 7. **District Account Officer**, D.I.Khan.
 8. Muhammad Zareef SDEO (Male) Alai Battagram
 9. Dr Abdul Hafeez SDEO (Male) Daraband presently transferred as SEDO (Male) D.I.Khan.

Respondents

APPLICATION FOR IMPLEMENTATION OF
JUDGMENT DATED: 05.07.2022 PASSED
BY THIS HON'BLE TRIBUNAL IN SERVICE
APPEAL NO.76/2022, WHEREBY, THE
APPEAL OF PETITIONER WAS ACCEPTED
AND THE IMPUGNED NOTIFICATION
DATED: 04.01.2022 REGARDING

(2)


TRANSFER AND POSTING OF PETITIONER
WAS DECLARED ILLEGAL AND INVALID,
CONSEQUENTLY STANDS SET ASIDE AND
CANCELLED.

PRAYERS

**On acceptance of this implementation
Petition this Hon'ble Tribunal may please
be directed the respondents to fully and
effusively make compliance of the
Judgment dated 05.07.2022 of this
Honorable Tribunal in true letter & spirit
without any further delay.**

Respectfully Sheweth,

Concise Facts

- 
1. That the petitioner filed service Appeal No. 76 of 2022 before this Honorable Tribunal with the prayer that on acceptance of present service appeal and by setting aside notification bearing no SO(MC)E&SED/4-16/2021/posting/transfer/MC dated 04.01.2022, the impugned transfer of appellant from the post for SDEO (male) Paharpur to the post of Male Alai Battagram, may graciously be cancelled and as result thereof the posting of appellant as SDEO (male) Paharpur, D.I.khan, may graciously be restored. On fixation of the case, after having hear the appellant/petitioner at great length vide judgment dated: 05.07.2022 passed by this Hon'ble Tribunal, the impugned Notification dated 04.01.2022 was setaside/cancelled and thereby appeal of the petitioner was accepted. Copy of Notification dated 03.01.2022, Copy of Notification dated 04.01.2022, Judgment dated 05.07.2022 in Service appeal No 76 of 2022 of this Hon'ble Tribunal are annexed herewith as Annexure A, B & C.

2. That it is manifest that Judgement of this Hon'ble Tribunal passed on 05.07.2022 but in utter disregard and violation of Judgement of this Hon'ble Tribunal as well as posting/transfer policy of the Government of Khyber Pakhtunkhwa, the respondent / Secretary Education, Peshawar has issued another Notification dated: 27.03.2023, whereby the respondent No 8 Muhammad Zareef was posted to SDEO (male), Tehsil Paharpur District DIkhan. Copy of Notification dated: 27.03.2023 is enclosed as Annexure D.
3. That aggrieved from notification dated 27.03.2023 petitioner filed implementation petition no 223/2023 for implementation of judgement dated 05.07.2022 passed in service appeal no 76/2022 before this Honorable Tribunal. Copy of implementation petition annexed as Annexure E.
4. That during pendency of implementation petition, respondent no 3 modified the notification dated 27.03.2023 in which the posting of respondent no 8 was changed from the post of SDEO (M) Paharpur to the post of SDEO (Male) Daraband D.I.Khan vide notification dated 5.4.2023. Copy of notification dated 5.4.2023 is annexed as Annexure F.
5. That execution petition was fixed on 18.05.2023 before SB at camp court D.I.Khan and the representatives of respondents produced copy of order dated 10.04.2023 vide which the petitioner has been posted as SEO (M) D.I.Khan and respondent No 8 posted as SDEO Paharpur and respondent no 9 posted as SDEO (Male) Daraband D.I.Khan. The copy of order sheet dated 18.05.2023 in implementation petition 223/2023 and notification dated 10.04.2023 are annexed as Annexure G & H.
6. That astonishingly within two months of the said order dated 10.04.2023 (which was provided in Honorable Tribunal) the petitioner was again displaced by respondent

no 9 and posted as SDEO Daraband D.I.Khan vide impugned notification dated 01.08.2023 Copy of the impugned notification dated 01.08.2023 is annexed as Annexure I.

7. That it is far-fetched to mention here that despite clear and well explained judgment in favour of petitioner, the respondents/Department without any lawful reason have lurk in hesitation to fully implement the judgment of this Hon'ble Court, rather violated the essence and validation of the judgment whereas the law prohibit them to do as such, but the department/ respondents in careless manner, flatly denying the judgment of this Tribunal and in respect of which, they may be dealt with in accordance with law viz to comply with the subject judgment.

8. That the judgment dated 05.07.2022 in *service appeal*, the Department / respondents have not complied so far in true essence and spirit, despite various resorts of petitioner to the Secretary Education, Peshawar / Competent authority, therefore, the petitioner approaches this Honorable Tribunal for implementation of judgment dated 05.07.2022 on inter-alia the following grounds.

G R O U N D S

a. That the Judgment dated 05.07.2022 in the subject service Appeal is self-contained wherein was specifically stated that *"We are thus constrained to allow this appeal and as a result consequent, set aside the impugned order dated 04.01.2022 restoring the order dated 03.01.2022. The official respondents may, however again transfer the appellant after completion of his normal tenure"* but direction of this Hon'ble Tribunal has not yet been fully and wholly implemented. Copy of transfer/posting policy is annexed as Annexure J.

- b. That the judgment dated 05.07.2022 in the main service appeal of this Tribunal is self-explanatory, simple and clear and it did not require any further interpretation. But respondents tactfully, illegally and unlawfully twisted the same on technical grounds to smash the essence of judgment in order to sabotage the rights of petitioner. As, *Quoties in verbis nulla est ambiguitas, ibi nulla exposition contra verba fienda est* which means "so long as there is no ambiguity in the words, there should be no interpretation contrary to the words" therefore, respondents have no lawful authority to go beyond the specific verdict of the *ibid* judgment.
- c. That the scheme of the law is that in one proceeding the court/Tribunal determines the liability of a party and the corresponding right of the other party and incorporates them in the judgment/order and in another proceeding it executes the said order /judgment, i.e. at the instance of one party specifically enforces the liability against the other. There can be no execution or specific enforcement of a liability without a previous determination of the liability by a Court and incorporated in a formal document called judgment. In the instant matter, the liability and corresponding rights of the parties have rightly been determined and after passing the judgment, the respondents/department have not in entirety honored the decision of this Hon'ble Tribunal which act of respondents is nullity in the eye of law.
- d. That the successive transfers of the petitioner to various stations within a span of one and half year are against the posting/transfer policy of the Provincial Government, which indicated that a Government servant should not be transferred, in ordinary



circumstances, prior to completion of a period of three years at one place of posting. In this backdrop, the wisdom may also be derived from the judgment of Hon'ble Supreme Court 2011 P L C (C.S.) 935 (Supreme Court of Pakistan), whereby it is held that;-

----- S. 30 (3) ----- Constitution of Pakistan Art.212(3)--Successive Transfer -- Respondent was patwari who was transferred to three stations within a span of eight month--- Service Tribunal accepted appeal filed by respondent patwari and set aside his transfer orders --- Validity --- Successive transfer of respondent to three stations within a span of eight months were against posting/transfer policy of Provincial Government, which indicated that a government servant should not be transferred in ordinary circumstances, prior to completion of a period of three years at one place of posting --- Transfer order of respondent was passed during ban period, prematurely under political influence, as copy of the same was sent to private secretary to Provincial Minister for Revenue --- Tenure of posting of and officer or official of Government to a District Government was provided in S.30(3) of North-West Frontier Province Local Government Ordinance, 2001, as three years but any officer could be transferred earlier due to exigency of service or in public interest to an individual grievance and no substantial question of law of public importance was involved warrant interference by Supreme Court under Art.212 (3) of the Constitution---Supreme Court did not find any illegality or infirmity in the Judgment passed by Service Tribunal so as to justify interference by Supreme Court under Art.221(3) of the Constitution---Petition was dismissed.

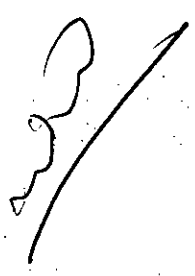
3/

e. That the respondent /department without any lawful reason willfully not implementing the order of this Hon'ble, albeit, in doing so, this Tribunal while exercising its jurisdiction may deal with the matter with iron hands because the matter of honor and integrity or order of Court.

f. That it may not be out of place to mention here that order/Judgment or any Court or court shall be implemented/executed by the Tribunal concerned in its true essence and its implementation by the department / authority concerned is the moral duty of that authority to obey it accordingly. For the sake of harmony amongst the functionaries of the state, it is imperative for all concerned to fully honor the order/judgment of competent Court/Court. In such view of the matter, denial of respondents to effusively implement the Judgment passed in service appeal is beyond the settled parameters of jurisprudence.

g. That it is imperative to highlight that the respondents, in sheer violation of Rules and policy in vogue by the Government of Khyber Pakhtunkhwa, have posted the respondent No 8 to Tehsil Paharpur DIKhan who were not obliged to do so for the reason the petitioner has not completed the normal tenure of service at the incumbent position. In fact, the petitioner has no political legs to stand upon to make her transfer and posting according to her wish and whims, that's why, exploited at the hands of respondent despite having decision in his favor.

h. That as no ambiguity in the judgment passed by this Hon'ble Tribunal and all the material aspect relating to the tenure and transfer policy in the light of provision in the Rules & Policy in vogue and judgment of apex Court were discussed properly. When this being the




position in the judgment passed by this Tribunal, again posted the respondent to Tehsil Paharpur DIKhan and that too by not completing the normal tenure i.e. three years by the petitioner, respondents are highly unjust and unwarranted under the law.

- i. That it is pertinent to mention here that all impugned notifications of posting transfers are against the judgement of Honorable Supreme Court of Pakistan. Copy of judgement of Supreme Court of Pakistan (PLD 2021 Supreme court 313) is annexed as Annexure K.
- j. That Counsel of the petitioner may please be allowed to raise additional grounds at the time of arguments.

It is therefore, humbly prayed that respondents may please be directed to make fully and effusively compliance of the Judgment dated 05.07.2022 of this Honorable Tribunal in true essence & spirit without any further delay.


Dated: 2/8/2023

N. Sultan
 Yours humble Petitioner
 Through Counsel

 Khalid Mahmood
 Advocate High court.
 Stationed at D.I.Khan

AFFIDAVIT

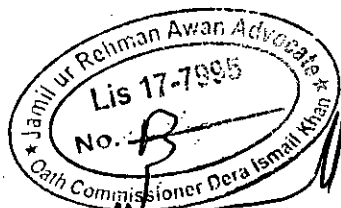
I, **Muhammad Noor Sultan**, Sub Divisional Education Officer (male), Education Department, D.I.Khan, the petitioner, do hereby solemnly affirm and declare on oath that all the Para-wise contents of this **Petition** have been prepared under my instruction and all its Para-wise contents are correct and true to the best of my knowledge & belief. I further solemnly affirm and declare that no part of above petition is false and nothing material has been deliberately concealed.

Identified by Counsel:


 Khalid Mahmood
 Advocate High Court
 Stationed at D.I.Khan

Deponent

N. Sultan
 12103-1489991-7



02/8/23

To be substituted for the notification bearing the same number and date

GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY AND SECONDARY EDUCATION DEPARTMENT
Block-"A" Opposite MPA's Hostel, Civil Secretariat Peshawar
Phone No. 091-9223388

Amef (A)

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CORRIGENDUM

Dated Peshawar the, January 03rd, 2022

No. SO(MC) E&SED/4-16/2021/POSTING/TRANSFERS: In partial modification of this Department's Notification of even number dated 10-12-2021 & 31-12-2021, the Competent Authority is pleased to order the posting / transfers of the following teachers / officers of Elementary & Secondary Education, Khyber Pakhtunkhwa with immediate effect, in the public interest:-

Sr. No	Name & designation	From	To
1	Mr. Rehmat Khan (TC BS-17)	Assistant Director, E&SE Khyber Pakhtunkhwa.	Assistant Director, MAs E&SE Khyber Pakhtunkhwa (Vice No-3)
2	Muhammad Ashraf (TC BS-17)	Assistant Director, MAs E&SE Khyber Pakhtunkhwa	SDE (Male) Mirali North Waziristan (AVP)
3	Dr Abdul Qayyum Khan (MC BS-17)	Under transfer as SDEO (Male) Miranshah North Waziristan.	Assistant Director, MAs E&SE Khyber Pakhtunkhwa (Vice No-4)
4	Mr Matiullah Khan (MC BS-17)	Assistant Director, MAs E&SE Khyber Pakhtunkhwa.	SDE (Male) Miranshah North Waziristan (Vice No-3)
5	Muhammad Wajhuddin (TC BS-17)	Monitoring Officer, E&SE Department, KP	Assistant Director, MAs E&SE Khyber Pakhtunkhwa (AVP).
6	Mr. Nisar Ahmad (MC BS-17)	Under transfer as SDEO (Male) Kalkot Dir Upper	SDEO (Male) Rustam, Mardan (Vice No-9)
7	Mr. Wisal Muhammad (MC BS-17)	Under transfer as SDEO (Male) Garhi Kapura Mardan	SDEO (Male) Tangi Charsadda (AVP).
8	Muhammad Noor Sultan (MC BS-17)	Under transfer as SDEO (Male) Bettani Lakki Marwat	SDEO (Male) Pharpur DI Khan (AVP)
9	Hafiz Fazli Akbar (MC BS-17)	Under transfer as SDEO (Male) Rustam Mardan	Services placed at the disposal of Directorate of E&SE KP for further adjustment against the vacant post of AD (BS-17).
10	Mr. Sultan Muhammad (MC BS-17)	Under transfer as SDEO (Male) Orakzai Lower	SDEO (Male) Ghari Kapura Mardan (Vice No-7)

SECRETARY TO GOVT. OF KHYBER PAKHTUNKHWA
E&SE DEPARTMENT

Endst: of Even No & date

Copy forwarded for information to the:-

1. Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. Director E&SE Khyber Pakhtunkhwa, Peshawar
3. District Education Officers (Male) concerned.
4. District Accounts Officers concerned.
5. Director EMIS, E&SE Department with the request to upload the posting/ transfer notification on the official website of the department.
6. PS to Minister for E&SE Department, Khyber Pakhtunkhwa.
7. PS to Secretary, E&SE Department, Khyber Pakhtunkhwa.
8. Officers concerned.
9. Master file.

Attested

(HAFEEZ UR REHMAN SHAH)
SECTION OFFICER (Management Cadre)



GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY AND SECONDARY EDUCATION DEPARTMENT
Block-"A" Opposite MPA's Hostel, Civil Secretariat Peshawar
FD No. 101-92/1988

Annex (B) 10

Date: Peshawar the January 04th, 2022

NOTIFICATION

NO. SO(MC)E&SED/4-16/2021/POSTING/TRANSFER (MC) In-partial modification of this Department's Notifications of even number dated 30-12-2021 and 03-01-2022, the Competent Authority is pleased to order the posting/transfer of the following Officers of Elementary & Secondary Education, Khyber Pakhtunkhwa with immediate effect, in the public interest. -

Sr. No	Name & designation	From	To
1	Muhammad Zareef (MC BS-17)	SDEO (Male) Alai Battagram	SDEO (Male) Pharpur DI Khan
2	Muhammad Noor Sultan (MC BS-17)	SDEO (Male) Pharpur DI Khan	SDEO (Male) Alai Battagram

SECRETARY TO GOVT. OF KHYBER PAKHTUNKHWA
E&SE DEPARTMENT

Ends: of even No. & date:

Copy forwarded for information to the: -

1. Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. Director, E&SE Khyber Pakhtunkhwa, Peshawar.
3. District Education Officer (Female) Battagram and DI Khan
4. Director EMIS, E&SE Department with the request to upload the same on the official website of the department.
5. District Accounts Officers Battagram and DI Khan.
6. PS to Secretary, E&SE Department, Khyber Pakhtunkhwa.
7. Officers concerned.
8. Master file.

(HAFEEZ UR-REHMAN SHAH)
SECTION OFFICER (Management Cadre)

Al-Gesal
2/2

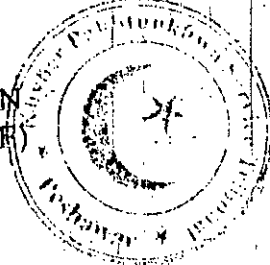
Service Appeal No.76/2022 titled "Muhammad Noor Sultan vs Government of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa and others" heard on 01.07.2022 by Division Bench comprising Kalim Arshad Khan, Chairman, and Mian Muhammad Member Extraordinary, Khyber Pakhtunkhwa Service Tribunal, Camp Court, Dera Ismail Khan and decided on 05.07.2022 at Peshawar.

Amr C

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**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.**

**BEFORE: KALIM ARSHAD KHAN --- CHAIRMAN
MIAN MUHAMMAD --- MEMBER (P)**



Service Appeal No.76/2022

Muhammad Noor Sultan, Sub-Divisional Education Officer, Tehsil Paharur, District D.I.Khan.
.....(*Appellant*)

Ver us

1. Government of Khyber Pakhtunkhwa, through Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
 2. Chief Secretary to Government of Khyber Pakhtunkhwa, Elementary & Secondary Education Department, Peshawar. (*as written in the appeal twice*).
 3. Secretary to Government of Khyber Pakhtunkhwa Elementary & Secondary Education Department, Peshawar.
 4. Director, Elementary & Secondary Education Department, Peshawar
 5. District Education Officer (M), Dera Ismail Khan.
 6. District Education Officer (M), Battagram.
 7. District Accounts Officer, D.I.Khan.
 8. Muhammad Zareef, Sub-Divisional Education Officer (M), Alai Battagram.
-(*Respondents*)

Arshad
W/O

Present:

Mr. Ahmad Ali,
Advocate.....For appellant.

Mr. Anwar Awan,
Advocate.....For respondent No.8

Mr. Muhammad Adeel Butt,
Additional Advocate General

Mr. Farhaj Sikandar,
District Attorney.....For official respondents.

Date of Institution.....24.01.2022
Date of Hearing.....01.07.2022
Date of Decision.....05.07.2022

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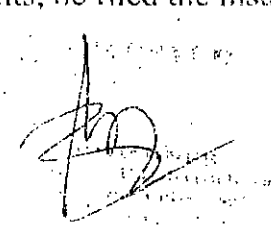
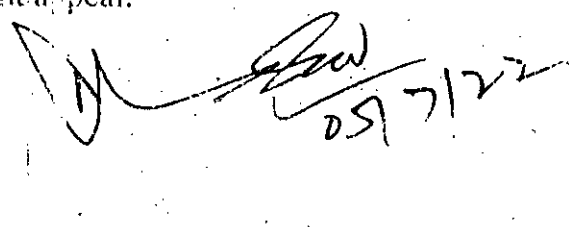
APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE NOTIFICATION BEARING NO. SO(MC) E&SED/4-16/2021/POSTING/TRANSFER/MC DATED 04.01.2022 ISSUED BY THE RESPONDENT NO.3.

JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN. The appellant is aggrieved of notification NO. SO(MC)E&SED/4-16 /2021/ Posting/ Transfer/MC dated 04.01.2022 issued by the Secretary to Government of Khyber Pakhtunkhwa E&SE Peshawa by way of which earlier notifications dated 30.12.2021 and 03.01.2022 were modified and the appellant was transferred to the post of SDEO (M) Alai Battagram.

Allowed
D

2. Facts surrounding the appeal are that on 15.09.2021 the appellant was transferred from the post of SDEO (M) Daraban to the post of SDEO(M) Paharur. After three months, the appellant was transferred to the post of SDEO(M) Battani Lakki Marwat from where, on 03.01.2022, he was again transferred to the post of SDEO(M) Paharpur, where he assumed the charge of his post on the same day but on the very next date i.e on 04.01.2022, his notification of transfer, issued on 03.01.2022, was modified and he was, instead, transferred and posted as SDEO(M) Ala Battagram. Aggrieved of order dated 04.01.2022 he filed departmental appeal on 05.01.2022 and awaiting ninety days statutory period, when no reply was received from the respondents, he filed the instant appeal.

 
05/7/22

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

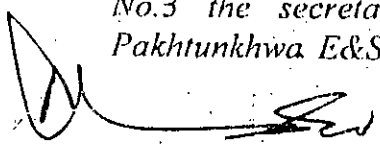
4. We have heard learned counsel for the appellant, learned Additional Advocate General for the official respondents and learned counsel for private respondent No.8.

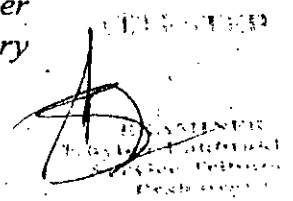
Noted

5. Learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned AAG controverted the same by supporting the impugned order(s).

6. It is in the reply of the official respondents, that on acceptance of the representation of private respondent No.8, he was transferred as SDEO (M), Ghazni Khel Lakki Marwat vide notification dated 15.11.2021 which was withdrawn because respondent No.8 had been declared as Returning Officer Allai Battagram during the Local Government Election 2021 phase-II. It is further stated in the comments at para-6 and 7 read as under:

"6. Appellant filed representation before the respondent No.3 the secretary to the Government of Khyber Pakhtunkhwa E&SE Department. The worthy Secretary


25/7/22


CHIEF SECRETARY
GOVERNMENT OF KHYBER PAKHTUNKHWA
PESHAWAR

14

E&SE Department was pleased to call the appellant for personal hearing on 17.01.2022 after personal hearing of appellant the respondent No.3 was pleased to dismiss the appeal of the appellant being devoid of merit. It is further added that the private respondent No.8 appeal dated 10.12.2021 regarding his restoration as SDEO(M) Ghazni Khail, District Lakki Marwat was in process but in the mean while the post of SDEO(M) Ghazni Khail was filled with new incumbent named Mr. Abdul Qadeer Shah. Therefore, the respondent No.3 was pleased to transfer the private respondent to the post of SDEO(M) Paharpur D.I.Khan vide Notification dated 04.01.2022 being Senior Management Cadre Officer of this department.

"7. The appellant got promotion to the post of SDEO BS-17 vide notification dated 30.12.2021 and he was posted as SDEO Bhetanni District Lakki Marwat but after three days appellant got transfer to the post of SDEO(M) Paharpur D.I.Khan. This transferred order of the appellant was not justified in eye of law; therefore, competent authority has been pleased to transfer the appellant to post of SDEO(M) Allai District Battagram. The service appeal of the appellant is an exercise in futility. Further proceedings in this regard would bear no fruit. It is, therefore, requested to this Hon'ble Tribunal to dismiss the service appeal of the appellant with cost.

Alleged

7. When confronted with the situation as to what prompted the official respondents or what was the public interest involved in cancellation of the order issued on 03.01.2022 just after one day, the representative of the respondents as well as the learned AAG could not explain the situation. Therefore, it is found that impugned order is in utter violation of Clause (i) and (iv) the posting/transfer policy of the provincial government wherein it is contained that a government servant would complete normal tenure at a station it is also against the interest of public service.

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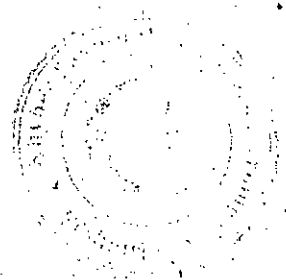
Official stamp and signature of the Tribunal member.

Service Appeal No 76/2022 titled "Muhammad Naor Sultan vs Government of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa and others" filed on 03.07.2022 by Division Bench comprising Kalim Arshad Khan, Chairman, and Mian Muhammad, Member Executive, Khyber Pakhtunkhwa Service Tribunal, Camp Court Peshawar, decided on 05.07.22 at Peshawar.

8. We are thus constrained to allow his appeal and as a resultant consequence, set aside the impugned order dated 04.01.2022 restoring the order dated 03.01.2022. The official respondents may, however, again transfer the appellant after completion of his normal tenure. Cost shall follow the event. As regards to private respondent No.8, the department may adjust him at a nearer station if his request is found genuine. Cost shall follow the event. Consign.

9. Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 05th day of July, 2022.

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KALIM ARSHAD KHAN
Chairman
Camp court D.I.Khan

Handwritten signature of Mian Muhammad.

MIAN MUHAMMAD
Member Executive
Camp court D.I.Khan

05/07/22

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EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

29.7.22
11-8-22



GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION
DEPARTMENT

Dated: 27th March, 2023

NOTIFICATION

NO.SO(MC)E&SED/4-16/Posting/Transfer/2023: Mr. Muhammad Zareef, SDEO (Male) Tank is hereby transferred and posted as SDEO (Male) Paharpur District D.I.Khan, against the vacant post, with immediate effect, in the best public interest.

SECRETARY TO GOVT. OF KHYBER PAKHTUNKHWA
E&SE DEPARTMENT

Endst: of oven No.& date:

Copy forwarded for information to the:-

1. Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. Director, E&SE Khyber Pakhtunkhwa, Peshawar.
3. District Accounts Officers D.I.Khan, Tank
4. District Education Officer (Male) D.I.Khan, Tank.
5. Director EMIS, E&SE Department with the request to upload the same on the official website of the department.
6. PS to Secretary, E&SE Department, Khyber Pakhtunkhwa.
7. Officer concerned.
8. Master file

(IMRAN ZAMIAN)
SECTION OFFICER (Management Cadre)

27/3/2023

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Amey (E)

(17)

**BEFORE THE HONORABLE SERVICE TRIBUNAL,
KHYBER PAKHTUNKHWA**

Implementation-Petition No 223 /2023.

In line and with reference to
Service Appeal No. 76 of 2022

Muhammad Noor Sultan, Sub Divisional Education
Officer (male) Tehsil Paharpur, District D.I.Khan.

Petitioner

VERSUS

1. **Government of Khyber Pakhtunkhwa** through, Chief Secretary Khyber Pakhtunkhwa, Peshawar.
2. Chief Secretary to Govt Of Khyber Pakhtunkhwa Peshawar,
3. Secretary to Govt of Khyber Pakhtunkhwa Elementary & Secretary Education Department, Peshawar.
4. **Director**, Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.
5. **District Education Officer** Dera Ismail Khan, Education.
6. **District Education Officer** Battagram, Education.
7. **District Account Officer**, D.I.Khan.
8. **Muhammad Zareef SDEO** (Male) Alai Battagram

Respondents

APPLICATION FOR IMPLEMENTATION OF JUDGMENT DATED: 05.07.2022 PASSED BY THIS HON'BLE TRIBUNAL IN SERVICE APPEAL NO.76, 2022, WHEREBY, THE APPEAL OF PETITIONER WAS ACCEPTED AND THE IMPUGNED NOTIFICATION DATED: 04.01.2022 REGARDING TRANSFER AND POSTING OF PETITIONER

Attested
W 3

Attested
W 2



Aneef (F)

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**GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION
DEPARTMENT**

Dated: 5th April 2023

NOTIFICATION

NO.SO/MC/E&SED/4-16/Posting/Transfer/2023: In partial modification of this Department's notification of even number dated 27-03-2023, the place of posting in respect of Mr. Muhammad Zaroof may be read as SDEO (Male) Daraband, D.I.Khan instead of Pahaipur.

2- Consequent upon above, Mr. Habib Ullah, SDEO (Male) Daraband, D.I.Khan is hereby transferred and posted as SDEO (Male) Tank in the best public interest.

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

Endat: of even No. & date:

Copy forwarded for information to the: -

1. Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. Director, E&SE Khyber Pakhtunkhwa, Peshawar.
3. District Accounts Officers D.I.Khan, Tank.
4. District Education Officer (Male) D.I.Khan, Tank.
5. Director EMIS, E&SE Department with the request to upload the same on the official website of the department.
6. PS to Secretary, E&SE Department, Khyber Pakhtunkhwa.
7. Officer concerned.
8. Master file.

Attested

111/11/11
5-4-2023
(IMRAN ZAMAN)
SECTION OFFICER (Management)

BEFORE THE HONORABLE SERVICE TRIBUNAL,

KHYBER PAKHTUNKHWA

Amey

(19)

Implementation Petition No. 223 /2023

In line and with reference to

Service Appeal No. 76 of 2022

Muhammad Noor Sultan, Sub Divisional Education
Officer (male) Tehsil Pakarpar, District D.I.Khan.

Petitioner

V E R S U S

1. **Government of Khyber Pakhtunkhwa** through, Chief Secretary Khyber Pakhtunkhwa, Peshawar.
2. Chief Secretary to Govt Of Khyber Pakhtunkhwa Peshawar,
3. Secretary to Govt of Khyber Pakhtunkhwa Elementary & Secretary Education Department, Peshawar.
4. **Director**, Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.
5. **District Education Officer** Dera Ismail Khan, Education.
6. **District Education Officer** Battagram, Education.
7. **District Account Officer**, D.I.Khan.
8. **Muhammad Zareef SDEO (Male)** Alai Battagram

Respondents

APPLICATION FOR IMPLEMENTATION OF JUDGMENT DATED: 05.07.2022 PASSED BY THIS HONBLE TRIBUNAL IN SERVICE APPEAL NO.76/2022, WHEREBY, THE APPEAL OF PETITIONER WAS ACCEPTED AND THE IMPUGNED NOTIFICATION DATED: 04.01.2022 REGARDING TRANSFER AND POSTING OF PETITIONER

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18th May, 2023

01. Counsel for the petitioner present. Mr. Muhammad Jan, District Attorney alongwith Khalid Saeed Akhtar, ADEO (Litigation) for the respondents.

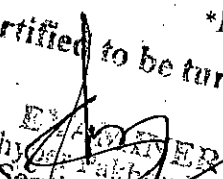
02. The said representative of the respondents produced copy of order dated 10.04.2023, vide which the petitioner has been posted as SDEO(Male) D.I.Khan on his personal consent. Placed on file. Counsel for the petitioner is satisfied of this order. The judgment of the Tribunal stands implemented. Consign.

03. Pronounced in open Court at Camp Court D.I.Khan and given under my hand and the seal of the Tribunal on this 18th May, 2023.


(Faeza Paul)
Member (E)
Camp Court, D.I.Khan

Faeza Subhan P.S

Certified to be true copy


Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application 01/6/23
Number of Words _____
Copying Fee 5/50
Urgent 5/50
Total 10/50
Name of _____
Date of Completion of _____ 01/6/23
Date of Delivery of Copy 01/6/23



GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION
DEPARTMENT

Dated: 10th April, 2023

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NOTIFICATION
NO. SO/MC/E&SED/4-18/2022/Posting/Transfer/MC: The following postings/transfer are hereby ordered with immediate effect, in the best public interest -

Sr#	Name & Designation	From	To	Remarks
1	Muhammad Noor Sultan MC BS-17	SDEO (Male) Paharpur	SDEO (Male) D.I.Khan	V.S.No.2 on his personal consent in the E.P No.22/233 in SA # 16/22
2	Dr. Abdul Hafeez, MC BS-17	SDEO (Male) D.I.Khan	SDEO (Male) Daraband D.I.Khan	V.S.No.3
3	Muhammad Zareef MC BS-17	SDEO (Male) Daraband D.I.Khan	SDEO (Male) Paharpur	V.S.No.1

SECRETARY TO GOVT. OF KHYBER PAKHTUNKHWA
E&SE DEPARTMENT

Ends of even No. & date:

Copy forwarded for information to the:-

1. Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. Director, E&SE Khyber Pakhtunkhwa, Peshawar.
3. Director EMIS, E&SE Department with the request to upload the same on the official website of the department.
4. District Education Officers (Male) Concerned.
5. District Accounts Officers Peshawar.
6. Additional Director General (Election-1) Election Commission of Pakistan, Islamabad.
7. PS to Advisor to Chief Minister for E&SE Khyber Pakhtunkhwa.
8. PS to Secretary, E&SE Department, Khyber Pakhtunkhwa.
9. Master file.

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(IMRAN ZAMAN)

10-4-23
SECTION OFFICER (Management Cadre)

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GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY AND SECONDARY EDUCATION DEPARTMENT
Block-"A" Opposite MPA's Hostel, Civil Secretariat Peshawar
Phone No. 091-9210626

Amr (I)

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Dated: 1st August, 2023

NOTIFICATION

NO. SO(MC)E&SED/4-10/2022/Posting/Transfer/MC/: The following posting/ transfer are hereby ordered with immediate effect, in the best public interest.

Sr. No.	Name & Designation	From	To	Remarks
1	Muhammad Noor Sultan MC BS-17	SDEO (Male) D.I. Khan	SDEO (M) Daraband Kalan D.I. Khan	V.S.No 2
2	Dr. Abdul Hafooz MC RS-17	SDEO (M) Daraband Kalan D.I. Khan	SDEO (Male) D.I. Khan	V.S.No 1

SECRETARY TO GOVT. OF KHYBER PAKHTUNKHWA
E&SE DEPARTMENT

Endst: of oven No. & date:

Copy forwarded for information to the:-

1. Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. Director, E&SE Khyber Pakhtunkhwa, Peshawar.
3. Director EMIS, E&SE Department with the request to upload the same on the official website of the department.
4. District Education Officers (Male) D.I. Khan
5. District Accounts Officers D.I. Khan
6. Additional Director General (Election-1) Election Commission of Pakistan, Islamabad
7. PS to Advisor to Chief Minister for E&SE Khyber Pakhtunkhwa.
8. PS to Secretary, E&SE Department, Khyber Pakhtunkhwa.
9. Master file.

1/1/2023
1/8/2023

(IMRAN ZAMAN)
SECTION OFFICER (Management Cadre)

Alto

- iii) All, contract Government employees appointed against specific posts, can not be posted against any other post.
- iv) The normal tenure of posting shall be three years subject to the condition that for the officers/officials posted in unattractive areas the tenure shall be two years and for the hard areas the tenure shall be one year. The unattractive and hard areas will be notified by the Government.
- v) { }
- vi) While making postings/transfer from settled areas to FATA and vice-versa, specific approval of Governor, NWFP needs to be obtained.
- 2 While making postings/transfers of officers/officials up to BS-17, from settled areas to FATA and vice-versa approval of the Chief Secretary NWFP needs to be obtained. Whereas, in case of posting/transfer of officers in BS-18 and above, from settled areas to FATA and vice-versa approval of the Governor NWFP shall be obtained.
- vi (a) All officers/officials selected against Zone-I/FATA quota in the Provincial Services should compulsorily serve in FATA for at least eighteen months in each grade. This should start from senior most scales/grades downwards in each scale/grade of each cadre.
- vii) Officers may be posted on executive/administrative posts in the Districts of their domicile except District Coordination Officers (D.C.Os) and DPOs/Superintendent of Police (SP). Similarly Deputy Superintendent of Police (DSP) shall not be posted at a place where the Police Station (Thaana) of his area/residence is situated.
- viii) No posting/transfers of the officer's/officials on detailment basis shall be made.
- ix) Regarding the posting of husband/wife, both in Provincial services, efforts where possible would be made to post such persons at one station subject to the public interest.
- x) All the posting/transferring authorities may facilitate the posting/transfer of the unmarried female government Servants at the station of the residence of their parents.
- xi) Officers/officials except DCOs and DPOs/SPs who are due to retire within one year may be posted on their option on posts in the Districts of their domicile and be allowed to serve there till the retirement.

1 Para-1(v) regarding months of March and July for posting/transfer and authorities for relaxation of ban deleted vide letter No: SOR-VI (E&AD) 1-4/2008/Vol-VI, dated 3-6-2008. Consequently authorities competent under the NWFP Government Rules of Business, 1985, District Government Rules of Business 2001, Posting/Transfer Policy and other rules for the time being in force, allowed to make posting/transfer subject to observance of the policy and rules.

2 Added vide Urdu circular letter No. SOR-VI(E&AD)1-4/2003, dated 21-09-2004

- ¹DCOs and DPOs who are due to retire in the near future may also be posted in the District of their domicile subject to the condition that such posting would be against non-administrative posts of equivalent scales;
- xii) In terms of Rule-17(1) and (2) read with Schedule-III of the NWFP Government Rules of Business 1985, transfer of officers shown in column 1 of the following table shall be made by the authorities shown against each officer in column 2 thereof.

Outside the Secretariat		
1.	Officers of the all Pakistan Unified Group i.e. DMG, PSP including Provincial Police Officers in BPS-18 and above.	Chief Secretary in consultation with Establishment Department and Department concerned with the approval of the Chief Minister.
2.	Other officers in BPS-17 and above to be posted against scheduled posts, or posts normally held by the APUG, PCS(EG) and (SS).	
3.	Heads of Attached Departments and other Officers in B-19 & above in all the Departments.	-do-
In the Secretariat		
1.	Secretaries	Chief Secretary with the approval of the Chief Minister.
2.	Other Officers of and above the rank of Section Officers: a) Within the Same Department b) Within the Secretariat from one Department to another.	Secretary of the Department concerned. Chief secretary/Secretary Establishment.
3.	Officials up to the rank of Superintendent: a) Within the same Department b) To and from an Attached Department c) Within the Secretariat from one Department to another	Secretary of the Department concerned. Secretary of the Dept in consultation with Head of Attached-Department concerned. Secretary (Establishment)

1 Added vide Urdu circular letter No: SOR-VI (E&AD)/1-4/2005, dated 9-9-2005.

Attest
[Signature]

xiii)

While considering posting/transfer proposals all the concerned authorities shall keep in mind the following:

- a) ~~To ensure the posting of proper persons on proper posts~~, the Performance Evaluation Report/annual confidential reports, past and present record of service, performance on post held presently and in the past and general reputation with focus on the integrity of the concerned officers/officials be considered.
- b) Tenure on present post shall also be taken into consideration and the posting/transfers shall be in the best public interest.

xiv)

Government servants including District Govt. employees feeling aggrieved due to the orders of posting/transfer authorities may seek remedy from the next higher authority / the appointing authority as the case may be through an appeal to be submitted within seven days of the receipt of such orders. Such appeal shall be disposed of within fifteen days. The option of appeal against posting/ transfer orders shall be exercised only in the following cases:

- i) Pre-mature posing/transfer or posting transfer in violation of the provisions of this policy.
- ii) Serious and grave personal (humanitarian) grounds.

2. To streamline the postings/transfers in the District Government and to remove any irritant/confusions in this regard the provision of Rule 25 of the North West Frontier Province District Government Rules of Business 2001 read with schedule - IV thereof is referred. As per schedule-IV the posting/transferring authorities for the officers/officials shown against each are as under:-

S. No.	Officers	Authority
1.	Posting of District Coordination Officer and Executive District Officer in a District.	Provincial Government.
2.	Posting of District Police Officer.	Provincial Government
3.	Other Officers in BPS-17 and above posted in the District.	Provincial Government
4.	Official in BPS-16 and below	Executive District Officer in consultation with District Coordination Officer.

3. As per Rule 25(2) of the Rules mentioned above the District Coordination Department shall consult the Government if it is proposed to:

- a) Transfer the holder of a tenure post before the completion of his tenure or extend the period of his tenure.
- b) Require an officer to hold charge of more than one post for a period exceeding two months.

4. I am further directed to request that the above noted policy may be strictly observed /implemented.

All concerned are requested to ensure that tenures of the concerned officers/officials are invariably mentioned in summaries submitted to the Competent Authorities for Posting/Transfer.
{Authority: Letter No: SOR-VI/E&AD/1-4/2003 dated 24-6-2003}.

It has been decided by the Provincial Government that posting/transfer orders of all the officers up to BS-19 except Heads of Attached Departments irrespective of grades will be notified by the concerned Administrative Departments with prior approval of the Competent Authority obtained on the Summary. The Notifications/orders should be issued as per specimen given below for guidance.

All posting/transfer orders of BS-20 and above and Heads of Attached Departments (HAD) shall be issued by the Establishment Department and the Administrative Departments shall send approved Summaries to E&A Department for issuance of Notifications

SPECIMEN NOTIFICATION.

GOVERNMENT OF NWFP
NAME OF ADMINISTRATIVE
DEPARTMENT

Dated Peshawar, _____

NOTIFICATION

NO. _____ The Competent Authority is pleased to order the transfer of Mr. _____ Department and to post him as _____ in the interest of public service, with immediate effect.

CHIEF SECRETARY
GOVERNMENT OF NWFP

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(NAME)
SECTION OFFICER
Administrative Department

{Authority: Letter No. SO (E-1) E&AD/9-12/2006 dated 22-12-2006}.

Amended
W.D.

P L D 2021 Supreme Court 313

Present: Gulzar Ahmed, C.J., Faisal Arab and Ijaz ul Ahsan, JJ

GOVERNMENT OF BALOCHISTAN through Secretary Services and General Administration Department and others---Appellants

Versus

ABDUL RAUF and others---Respondents

Civil Appeals Nos.433 to 438 and 596 of 2020, decided on 14th October, 2020.

(Against the judgment dated 03.01.2020 passed by the High Court of Balochistan, Quetta in C.Ps. Nos. 48, 363, 401, 401, 656, 678 and 1173 of 2019).

Constitution of Pakistan---

---Art. 224 (1A)---Caretaker Government/Cabinet, powers of---Scope---Caretaker Government/Cabinet could not take policy decisions and permanent measures including recruitments, making appointments, transfers and postings of Government servants during the limited period that it held office.

In the present case, the process of recruitment may have been initiated by way of publication of advertisement before the Caretaker Government was put in place. However, all material steps including processing of applications, tests (if any) interviews (if any) and recommendations by the Recruitment Committee were taken during the Caretaker Government and the elected Government was practically presented with a fait accompli. The mandate of a Caretaker Government was to hold the mantle in the interregnum when the term of the sitting Government had expired and the new Government was yet to take charge. A caretaker Government was empowered only to carry out day to day affairs of the State with the help of available machinery/ resources/manpower. It could not take policy decisions and permanent measures including recruitments, making appointments, transfers and postings of Government Servants. It must leave such matters to the elected Government which took charge as a result of elections.

Khawaja Muhammad Asif v. Federation of Pakistan and others 2013 SCMR 1205 ref.

Decisions having far reaching consequences should only be taken by the elected government having the mandate to perform such functions as were required of it in exercise of powers conferred by the Constitution.

Nemat Ullah and others v. Chairman Governing Body Worker Welfare Board/Secretary to Government of KPK, Labour Department and others 2016 SCMR 1299 ref.

Even otherwise, in the present case, there was no record whatsoever of any process of recruitment having been transparently conducted with a view to make merit-based appointments. The recommendations made by the Committee had ex facie been made arbitrarily and were neither based upon any test results nor interviews. There was not an iota of evidence available on the record that any test or interview was conducted or transparent and proper merit list was prepared showing marks obtained by each candidate in the NTS test or interview.

In the interest of being just and fair the Supreme Court directed that it would be appropriate if all those candidates who filed applications pursuant to the advertised posts

Answer (K)

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were allowed to appear in fresh tests to be conducted by NTS. Appeals were allowed with further relevant directions.

Arbab M. Tahir, A.G. Balochistan, Ayaz Khan Swati. Addl. A.G. Balochistan for Appellants (in all cases).

Sardar Ahmed Haleem, Advocate Supreme Court for Respondents (in C.A. No. 433 of 2020).

Amanullah Kanrani, Advocate Supreme Court for Respondents (in C.As. Nos. 435-438 of 2020).

Kamran Murtaza, Senior Advocate Supreme Court for Respondents (in C.A. No. 596 of 2020) (via video-links from Quetta).

Syed Rifaqat H. Shah, Advocate-on-Record for Respondent: (in C.As. Nos. 433, 435-438 and 596 of 2020).

Nemo for Respondents (in C.A. 434 of 2020).

Date of hearing: 25th September, 2020.

JUDGMENT

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IJAZ UL AHSAN, J.---Through this common judgment, we intend to decide Civil Appeals Nos. 433, 434, 435, 436, 437, 438 and 596 of 2020 as they arise out of a single consolidated judgment of the High Court of Balochistan. Quetta dated 03.01.2020.

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2. Briefly stated the facts necessary for disposal of these appeal are that in response to advertisements published in daily newspapers "Daily Mashriq dated 17.05.2017" and "Daily Express Century dated 18.02.2018" inviting applications for different posts on divisional quota basis, the Respondents filed applications. They alleged that tests and interviews were conducted by a Selection/Recruitment Committee which had been constituted by the Government of Balochistan under the Chairmanship of Director General Mines and Minerals Department, Government of Balochistan. After the applications had been processed the Committee through minutes of meetings held on 11.07.2018 and 12.07.2018 made recommendations for appointment of the Respondents against the respective posts for which they had filed applications. However, the department neither announced the results on the recommendations of the Committee nor published the merit list as required by the Recruitment Policy, 2009. Instead the entire process was scrapped and the posts were re-advertized. The Respondents were aggrieved of the inaction of the department and approached the Balochistan High Court through the constitutional petition. They sought relief to the effect that the department may be directed to produce the merit list and issue appointment letters accordingly. It was also prayed that the department may be restrained from undertaking the recruitment process afresh. The constitutional petition was allowed and the Appellants were directed to issue appointment letters to the Respondents after due verification of the credentials. The Government of Balochistan was aggrieved of such order and approached this Court by way of a civil petition for leave to appeal.

3. Leave to appeal was granted vide order dated 01.04.2020 which is reproduced below:

"Learned Additional Advocate General, Balochistan contends that advertisements were published on 17.05.2017 and 18.02.2018 for different posts by the Director General Mines and Minerals Department, Government of Balochistan. He contends that though the Departmental Recruitment Committee was constituted but actually, no transparent process whatsoever for making appointments was undertaken by the said Committee and even the minutes of the meeting dated 11 and 12.07.2018 are not in accordance with law, for that, no test and interview of any of the candidate was undertaken, as there is no record of such test and interview. He contends that no merit list was prepared and there is no existence of merit list on the record. He contends that as per guidelines issued under Para-5 of letter dated 15.03.2016, captioned, "the Observance of the Recruitment Policy, 1997 (Appointment, Promotion and Transfer) Rules, 2009 and Specific Quotas Fixed for Appointment Against Initial Recruitment". If a merit list is prepared, the same is required to be published but there is no publication of such merit list. He contends that as there was no transparent recruitment process and there was even no conclusion of the recruitment process.

thus, no right accrued to the respondents for being appointed and in this manner, the petitioners were justified to re-advertise the posts. He contends that the recruitment process was to be completed within 120 days with extension of 60 days, but the recruitment process was never completed even though 420 days had expired and thus, the whole process of recruitment itself had become infructuous, as per the policy.

2. The contentions raised by the learned AAG require consideration. Leave to appeal is granted to consider, inter alia, the same. The appeal shall be heard on the available record but the parties are allowed to file additional documents within a period of one month. As the matter relates to service, office is directed to fix the same expeditiously, preferably, after three months".

4. The learned Advocate General Balochistan has argued that the alleged process of test and interview was purportedly conducted during the period when a Caretaker Government was in place. There was a bar on fresh recruitments imposed by the Election Commission of Pakistan and the recruitment exercise was altogether illegal. He maintains that the constitution of the Committee and the alleged process was in itself illegal in so far as a Caretaker Government is not empowered to undertake any permanent steps other than day to day running of the Government. In this context he had relied upon Khawaja Muhammad Asif v. Federation of Pakistan and others (2013 SCMR 1205) where this Court has categorically held that the mandate of a Caretaker Government does not go beyond running day to day affairs till such time that duly elected Government takes charge. He has vehemently argued that no process either of testing or interview took place. There is neither record of testing or interview and the nominations were made without a transparent process on the whims of the Committee. He maintains that the alleged minutes of meetings of the illegally constituted Recruitment Committee dated 11 and 12.07.2018 are a sham, as the recommendations made were neither based upon ability nor merit. Even otherwise, the recommendations of the Committee carry no legal validity or value. He finally submits that the Balochistan High Court fell in grave error in holding that the Committee held tests and interviews in a fair and transparent manner and prepared a merit list on the basis of marks obtaining by the candidates in test and interview. He points out that the said finding is clearly and patently contrary to the record as there is no material anywhere in the record that may even remotely support such finding.

5. The learned counsel for the Respondents on the other hand submits that initially there may have been a ban but the same was lifted by the Election Commission of Pakistan. The tests and interviews were conducted by a duly constituted Committee which recommended appointments and the new Government which came into place scrapped the process to accommodate their own cronies which action was ex facie illegal and unsupported by law. He further points out that by reason of completion of the process and recommendations made by the Committee a vested right had accrued in favour of the Respondents which cannot be taken away without lawful reason. The impugned judgment of the Balochistan High Court proceeds on correct appreciation of the legal principles on the subject in view of the fact that there was no justified or plausible reason for cancellation of recommendations of the Committee and re-advertisement of the same posts.

6. We have heard the learned Advocate General Balochistan as well as the learned counsel for the Respondents at considerable length. With their assistance we also scanned the record.

7. There is no denial of the fact that the process of recruitment may have been initiated by way of publication of advertisement before the Caretaker Government was put in place. However, all material steps including processing of applications, tests (if any) interviews (if any) and recommendations by the Recruitment Committee were taken during the Caretaker Government and the elected Government was practically presented with a fait accompli. The mandate of a Caretaker Government is to hold the mantle in the interregnum when the term of the sitting Government has expired and the new Government is yet to take charge. A caretaker Government is empowered only to carry out day to day affairs of the State with the help of available machinery/resources/ manpower. It cannot take policy decisions and permanent measures including recruitments, making appointments, transfers and postings of Government Servants. It must leave such matters to the elected government which takes charge as a result of elections. It was in this context that in a case reported, as Khawaja Muhammad Asif v. Federation of Pakistan and others (supra) held that a Caretaker Government/Cabinet has to confine itself to running the affairs of the State. However, decisions and to take decisions required for orderly running the affairs of the State. However, decisions having far reaching consequences should only be taken by the elected government having the

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mandate to perform such functions as are required of it in exercise of powers conferred by the Constitution. The above principle was reiterated in a late judgment of this Court reported in the case *Nemat Ullah and others v. Chairman Government Body, Worker Welfare Board Secretary to Government of KPK, Labour Department and others* (2016 SCMR 1299).

8. A perusal of the aforementioned judgments and the ratio of the same clearly settle the law that a Caretaker Government/Cabinet lacks the power to make appointments, transfers and postings during the limited period that it holds office. Therefore, we are in no manner of doubt that the refusal of the Appellants to implement the recommendations of the Recruitment Committee constituted by the Caretaker Government had legal backing and lawful justification. Consequently, the finding of the Balochistan High Court that the recommendations of the Committee were legally sound and valid and should have been implemented is not based upon or supported by legal principles settled by this Court. Further, the learned High Court misdirected itself in holding that by reason of appearing in written tests and interviews a vested right had accrued in favour of the Respondents. In the first instance, we are not convinced that any tests or interviews were held and even if the same had been held, no vested right to appointment accrues unless a merit list is displayed and appointment letters are issued. The Government can always stop or abandon the process or initiate a fresh one if there are valid reasons or justification to support such action. In the instant case, such valid reasons and justification were amply available.

9. We have also noticed that there is no record whatsoever of any process of recruitment having been transparently conducted with a view to make merit based appointments. The recommendations made by the Committee had *ex facie* been made arbitrarily and were neither based upon any test results nor interviews. The learned Advocate General Balochistan has categorically stated that no test let alone an impartial and transparent test in the form of NTS was ever conducted and there is no record of any candidate appearing in such test or a merit list having been prepared in order to test the ability of each candidate. Further, the entire process was completed with unholy haste in a matter of only ten days and vacancies in excess of about 600 posts were recommended to be filled without any process having been followed. This haste speaks volumes about the validity, credibility and genuineness of the process and its underlying intent, motive and purpose.

10. Despite the arguments of the learned counsel for the respondents that tests and interviews were conducted, there is not an iota of evidence available on the record that any test or interview was conducted or transparent and proper merit list was prepared showing marks obtained by each candidate in the NTS test or interview.

11. We further find that the recommendations made by the Committee are clearly and patently illegal as the Committee itself was illegally constituted for a purpose which was beyond the mandate of the Caretaker Government. We have asked the learned Advocate General Balochistan if tests and interviews are conducted for all grades. He has candidly conceded that tests and interviews are not conducted for employment against grades 1 to 6. However, all posts in grade 7 upwards are filled by the process of testing and interview in accordance with the Recruitment Policy of 2009. In this view of the matter, the learned Advocate General has conceded that he would not object if those already appointed to posts against grades 1 to 6 are not disturbed. However, he maintains that those who are required to undergo the process of testing and interview must go through the same in order to ensure that the most competent, qualified and able candidates fill the available posts.

12. We notice that the Respondents had filed applications for appointments against posts advertised on 17.05.2017 and 18.02.2018 in daily 'Mishriq' and daily 'Express'. It also

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appears that pursuant to the advertisement published in daily Jang on 16.02.2019 a number of applications have been received against the advertised posts. However, the process was stopped pursuant to the judgment of the High Court. We are therefore of the opinion that in the interest of being just and fair it would be appropriate if all those candidates who filed applications pursuant to advertisements dated 17.05.2017, 18.02.2018 and 16.02.2019 are allowed to appear in fresh tests to be conducted by NTS. Further, interviews must be conducted by competent and impartial Committee(s) and on the basis of marks scored in NTS tests and interviews, merit list/lists must be prepared for appointments against various posts strictly and purely on merit. The process must be fair and transparent and provide a level playing field to all candidates with a view that the best amongst the lot are selected. The learned Advocate General Balochistan submits that an effort is being made to fill these posts through the Balochistan Public Service Commission ("BPSC"). In case, the BPSC undertakes the exercise the same shall also be conducted in the same manner of impartial testing and interviews and preparation of a merit list which shall be displayed publicly as well as on the website of the Government of Balochistan as well as that of BPSC. On the basis of such merit list recommendations can be made to the Government for appointments against all available posts. We are sanguine that the aforesaid exercise shall be completed as expeditiously as possible and preferably within a period of three months. The merit lists prepared as a result of testing and interviews shall be placed before us for our examination in Chambers.

13. For the reasons recorded above, these appeals are accordingly allowed. The impugned judgment of the Balochistan High Court dated 03.01.2020 is set aside.

MWA/G-16/SC Appeals allowe

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KHALID MEHMOOD

Advocate
bc-15-5415
Date of issue: November 2022
Valid upto: November 2025



Secretary
KF Bar Council

وکالت نامہ

کوٹ
فیس

جناب محترم جج صاحب ہائے عدالت

محمد نور سلطان

Implementation Petition

دعویٰ یا جرم

2022/267/2022

تفصیل دعویٰ یا جرم

باعث خیر امانت

ظہیر احمد صاحب

مقدمہ مندرجہ بالا عنوان میں اپنی طرف سے درخواستی اور اپنی طرف سے مقدمہ نمونہ نمبر

محمد نور سلطان

کو حسب ذیل شرائط پر وکیل مقرر کیا ہے کہ میں پیشی پر خود یا اپنے ذریعہ اور ہر عدالت حاضر ہونا ضروری ہے اور ہر وقت ہمارے جانے مقدمہ وکیل صاحب موصوف کو اطلاع دے کر حاضر عدالت کروں گا اگر پیشی پر منظم حاضر نہ ہو اور مقدمہ میری غیر جانبداری کی وجہ سے کسی طور میرے خلاف ہو گیا تو صاحب موصوف اس کے کسی طرح ذمہ دار نہ ہوں گے نیز وکیل صاحب موصوف صدر منام بکھری کے علاوہ یا بکھری کے اوقات سے پہلے یا پہلے یا بروز تعطیل بیرومی کرنے کے ذمہ دار نہ ہوں گے اور مقدمہ صدر بکھری کے علاوہ اور جگہ سماعت ہونے یا بروز تعطیل یا بکھری کے اوقات کے کسی بھی طرح پیشی نہ ہونے پر منظم کوئی نقصان پہنچے تو اس کے ذمہ دار یا اسکے واسطے کسی معائنہ کے ادا کرنے یا ضمانت نہ واجب کرنے کے بھی صاحب موصوف ذمہ دار نہ ہوں گے مجھ کو اصل ساختہ پر داخست صاحب موصوف میں کردہ ذات خود منظور ال ہو گا اور صاحب موصوف کو عرض دشمنی یا جواب دشمنی یا درخواست اجراء اجازت دشمنی نظر ثانی اپیل گمرانی و ہر قسم درخواست ہر قسم کے بیان دینے اور پر اپنی یا راضی نامہ یا ایصالہ بکھری کرنے انہیں دعویٰ کا بھی اختیار ہوتا ہے اور بصورت مقرر ہونے تاریخ پیشی مقدمہ مقرر بیرون از بکھری صدر بیرومی مقدمہ مقرر ہونی اپیل و گمرانی و ہر قسم کی مقدمہ یا منسوقی دشمنی ایک طرف یا درخواست عدم اجرائی یا قرنی یا گرفتاری قبل از فیصلہ اجرائی و گرفتاری بھی صاحب موصوف کو ہونا اور اسکی مقدمہ مقرر بیرومی کا اختیار ہو گا اور تمام ساختہ پر اذانت صاحب موصوف میں کردہ از خود منظور و قبول ہو گا اور بصورت ضرورت صاحب موصوف کو یہ بھی اختیار ہو گا کہ مقدمہ مقررہ یا اس کے کسی جزو کی کارروائی یا بصورت درخواست نظر ثانی اپیل گمرانی یا دیگر معائنہ و مقدمہ مذکورہ کسی دوسرے وکیل یا ہیر مٹر اپنے ہوائے یا اپنے ہمراہ مقرر کریں اور ایسے مشیر قانون کو بھی ہر امر میں اپنی اور دوسرے اختیارات حاصل ہوں گے جیسے صاحب موصوف کو حاصل ہیں اور دوران مقدمہ میں جو کچھ ہو جائے انہیں پڑے گا وہ صاحب موصوف کا ہے اور صاحب موصوف کو پوری فیس تاریخ پیشی سے پہلے ادا نہ کروں گا تو صاحب موصوف کو ہر قسم اختیار ہو گا کہ مقدمہ کی پروی نہ کریں اور اسکی بصورت میں میرا کوئی مطالبہ کسی قسم کا صاحب موصوف کے برخلاف نہیں ہوگا

لہذا وکالت نامہ اسی بنا پر ہے تاکہ مقدمہ

2023 اکت 2

مضمون وکالت نامہ اپنا ہے اور اپنی طرف سے سمجھ لیا ہے اور منظور ہے

Accepted

03364330001

محمد نور سلطان (پیشی)

M. Sultan

12103-1489991-7

0345-9240885



GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY AND SECONDARY EDUCATION DEPARTMENT
Block-"A" Opposite MPA's Hostel, Civil Secretariat Peshawar
Phone No. 091-9223588

Dated Peshawar the August 4th, 2023

NOTIFICATION

NO. SO(MC)E&SED/4-16/2022/POSTING/TRANSFER/MC: Consequent upon the Implementation Petition No. 558/2023 of Honorable Service Tribunal in Service Appeal No. 76/2022 filed by Mr. Noor Sultan Vs Government Of Khyber Pakhtunkhwa. The Competent authority is pleased to cancel/withdraw this Department's Notification of even number dated 01.08.2023.

SECRETARY TO THE GOVT: OF KHYBER PAKHTUNKHWA
E&SE DEPARTMENT

Endst: of even No.& date:

Copy forwarded for information to the: -

1. Registrar Service Tribunal Khyber Pakhtunkhwa Peshawar
2. Accountant General, Khyber Pakhtunkhwa, Peshawar.
3. Director, E&SE Khyber Pakhtunkhwa, Peshawar.
4. Section Office (Litigation-II), E&SE Department Peshawar.
5. District Education Officers (Male) D.I.Khan.
6. Director EMIS, E&SE Department with the request to upload the same on the official website of the department.
7. District Accounts Officer D.I.Khan.
8. PS to Minister E&SE Khyber Pakhtunkhwa.
9. PS to Secretary, E&SE Department, Khyber Pakhtunkhwa.
10. Officers concerned.
11. Master file.

111 / 4.8.2023

SECTION OFFICER (Management Cadre)