




**DIRECTORATE ELEMENTARY & SECONDARY
EDUCATION KHYBER PAKHTUNKHWA, PESHAWAR.**

AUTHORITY LETTER

I Director, Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar do hereby authorize Mr. M. Tufail Assistant (Litigation) of this Directorate of Elementary & Secondary Education Khyber Pakhtunkhwa, Peshawar to attend the Khyber Pakhtunkhwa Service Tribunal in connection with filing of para wise comments in Service Appeal No. 1712 / 2023 Titled Thtisham Ullah VS Government of Khyber Pakhtunkhwa Elementary & Secondary Education Department.

Dated 15 / 9 / 2023


Director
Elementary & Secondary Education
Khyber Pakhtunkhwa Peshawar.

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR.

Service Appeal No: 1712/2023

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 7556

Dated 15/9/23

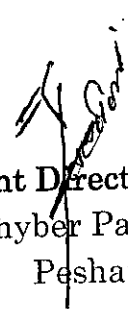
Ihtisham Ullah, Senior Clerk BPS-14 DEO (F) Dir UpperAppellant.

VERSUS

Secretary (E&SE) Department, Khyber Pakhtunkhwa & others.....Respondents

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Assistant Director (Lit: II)
E&SE Khyber Pakhtunkhwa,
Peshawar

BEFORE THE HONORABLE KHYBER PAKHATUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No: 1712/2023

Ihtisham Ullah, Senior Clerk BPS-14 DEO (F) Dir UpperAppellant.

VERSUS

Secretary (E&SE) Department, Khyber Pakhtunkhwa & others.....Respondents

JOINT PARAWISE COMMENTS FOR & ON BEHALF OF RESPONDENTS No:1-3.

Respectfully Sheweth :-

The Respondents No.1-3 submit as under: -

PRELEMENARY OBJECTIONS.

- 1 That the appellant has got no cause of action/locus standi.
- 2 That the Appellant is not an aggrieved person within the meaning of Section-4 of Civil Servant Act 1974 read with Article-212 of the Constitution of Islamic Republic of Pakistan 1973.
- 3 That the instant Service Appeal is badly time barred.
- 4 That the appellant has concealed material facts from this Tribunal in the instant appeal with regard to the open inquiry against the appellant in terms of letter dated December 2018 of the Respondent No.2 in response to the complaint received vide letter dated 28-10-2020 from the Directorate of Anti-Corruption.
- 5 That the instant Appeal is based on mala-fide intentions.
- 6 That the appellant has not come to this Tribunal with clean hands.
- 7 That the appellant is not entitled for the relief to the extent of cancellation/withdraw orders dated 10-04-2023 and 19-04-2023 of the transfer order/Notification he has sought from this Honorable Tribunal.
- 8 That an inquiry has already been pending against the appellant Notified vide Notification No. 7298-9300 dated 06-07-2021 through Mr. Jaffar Mansoor Abbasi, the then DEO (M) Dir Upper regarding the demand of money bribe from the Ex-MPA Badshah Saleh Dir Upper.

- 9 That the instant Appeal is not maintainable in its present form.
- 10 That the instant Appeal is bad for mis-joinder & non joinder of the necessary parties.
- 11 That the instant Appeal is barred by law.
- 12 That the appellant is not competent to file the instant appeal against the Respondents.
- 13 That the impugned transfer orders/Notifications dated 10-04-2023 & 19-04-2023 of the Respondent Department are legally competent.
- 14 That transfer & posting a Civil Servant is the discretionary powers of the competent authority under section-10 of Civil Servant Act-1973.

ON FACTS

- 1 That Para-1 pertains to the residential status of the appellant.
- 2 That Para-2 is correct to the extent of employment of the appellant in the Despondent Department against the Senior Clerk BSP-14 post in the office of the DEO (F) Dir Upper where from he has been transferred & posted vide order 10-04-2023 in GHSS Saddo Dir lower under the above cited provision of Law by the competent authority.**(Copy of the order dated 10-04-2023 is attached as Annexure-A).**
- 3 That Para-3 is correct to the extent of Notification dated 22-01-2023 of the ECP Govt; of Pakistan, however, the plea of the appellant regarding ban on transfer & posting in Khyber Pakhtunkhwa & Punjab due to the upcoming General Election is in violation Section-230 of the Election Act-2017 on the grounds that formal approval in the titled matter has already been obtained & allowed by the competent authority resulted in the impugned order dated 10-04-2023, whereby, the service of the appellant were placed at the disposal of the Respondent No.2 on administrative grounds and letter on he was adjusted at GHSS Saddo Dir Lower vide order dated 19-04-2023 under the cited provision of Law attached as **Annexure-B & C** for ready reference.
- 4 That Para-4 is correct to the extent of the transfer and posting orders dated 10-04-2023 & 19-04-2023, whereby, the appellant was transferred and adjusted at the above said stations as referred and already attached the above paras .

- 5 That para-5 is incorrect as the transfer & posting of the Civil Servant is the discretionary powers of the competent authority under section-10 of Civil Servant Act-1973, hence, the orders dated 10-04-2023 & 19-04-2023 are the result of the cited provision of law made by the Department.
- 6 That Para-6 is correct to the extent of filling of Departmental appeal against the order dated 10-04-2023 & 19-04-2023 by the appellant with no date on the same appeal, which was seen and filed by the competent authority under the law & rules in vogue attached as **Annexure-D**.
- 7 That Para-6 is also correct that the appellant has invoked the jurisdiction of Honorable High Court under article-199 of the constitution of 1973 in W.P. No. 425-M/2023 under the said titled which was dismissed vide order dated 06-07-2023 attached as **Annexure-E**.
- 8 That the Appellant is not an aggrieved person within the meaning of Section-4 of Civil Servant Act 1974 read with Article-212 of the Constitution of Islamic Republic of Pakistan 1973, the appeal in hand is liable to be rejected on the following grounds inter alia:-

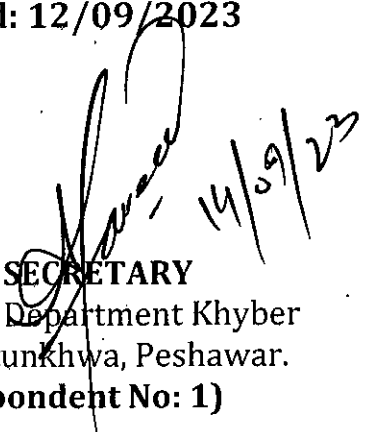
ON GROUNDS.


- A. **Incorrect & not admitted.** The orders dated 10-04-2023 & 19-04-2023 of the Department are the result of due process of law & rules and even in the interest of justice, hence, liable to be maintained.
- B. **Incorrect & not admitted.** The plea of the appellant is against the law & rules, hence, liable to be rejected as the act of the Department with regard to orders as cited above within legal sphere having no violation of Article 04 & 25 of the constitution of 1973 by the Department.
- C. **Incorrect & not admitted.** The plea of the appellant is against the law & rules, hence, liable to be rejected as the act of the Department with regard to orders as cited above within legal sphere having no violation of Article 218 (3) 220 of the constitution of 1973 read with Sections-4,5, 8 (C) and 230 of Election Act 2017.
- D. **Incorrect & not admitted.** The act of the Department with regard to the orders cited above are legal having no question of discrimination favoritism and nepotism on the part of the Department.

- E. **Incorrect & not admitted.** The stance of the appellant is illegal is liable to be rejected in view of the above made submission by the Department.
- F. **Incorrect & not admitted.** Detail reply to this ground has already been given, hence, needs no further comments.
- G. **Incorrect & not admitted.** The statement of the appellant is against the law & rules as the orders dated 10-04-2023 & 19-04-2023 are in accordance with the provision of Clause-I, IV & VIII of the transfer/posting policy of the provincial Govt. Therefore, the plea of the appellant is liable to be rejected.
- H. **Incorrect & not admitted.** Detail reply to this ground has already been given, hence, needs no further comments
- I. **Incorrect & not admitted.** However, the Department is also seek leave of this Honorable Tribunal to submit additional grounds, record & case law at the time of arguments on the date fixed.

In view of the above made submissions, it is most humbly requested that this Honorable Tribunal may very graciously be pleased to dismiss the instant Service Appeal along with recalling the stay order dated 24-08-2023 in favor of the Respondents in the interest of justice.

Dated: 12/09/2023


14/09/23
SECRETARY
E&SE Department Khyber
Pakhtunkhwa, Peshawar.
(Respondent No: 1)


DIRECTOR
E&SE Department Khyber
Pakhtunkhwa, Peshawar.
(Respondents No: 2 & 3)

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No: 1712/2023

Ihtisham Ullah, Senior Clerk BPS-14 DEO (F) Dir UpperAppellant.

VERSUS

Secretary (E&SE) Department, Khyber Pakhtunkhwa & others.....Respondents

AFFIDAVIT

I, Dr. Hayat Khan Assistant Director (Litigation-II) E&SE Department Khyber Pakhtunkhwa, do hereby solemnly affirm & declare on oath that the contents of the instant para wise Comments are true & correct to the best of my knowledge & belief. It is further stated on oath that in this appeal the answering Respondents have neither been placed Ex-Parte nor their defense has been struck off/cost.

[Handwritten Signature]
Deponent

ATTESTED



15-09-2023



DIRECTORATE OF ELEMENTARY & SECONDARY EDUCATION
KHYBER PAKHTUNKHWA PESHAWAR
 Phone: 091-92351111 Fax: 091-92351111 Email: @gpnkpw.gov.pk

OFFICE ORDER

The transfer order of the following officials is hereby ordered on full pay and D/S in the interest of public service with immediate effect.

Sr. No.	Name/Designation	Present Post	Service Place	Remarks
1	Mr. M. Ishaq Senior Clerk D/S-11	DEO (N) Dir Upper	Services Place in the disposal of Directorate E&S	Administrative ground
2	Mr. M. Abdullah Senior Clerk D/S-11	IGDEO (N) Tinkh Nusrul Karak	GIS, Mandivali Karak	Administrative ground

Note:
 1. Complained report should be submitted to all concerned.

DIRECTOR
 Elementary & Secondary Education
 Khyber Pakhtunkhwa Peshawar

English No. 3861-67 / D/S No. A-23/MS/Complained Dir Upper Dated: 10/11/2023
 Copy forwarded to the

1. Accountant General, Khyber Pakhtunkhwa Peshawar
2. District Education Officer concerned
3. District Account Officer concerned
4. Principals concerned
5. Official concerned
6. PA to Director Elementary & Secondary Education, Khyber Pakhtunkhwa Peshawar
7. Master file

(Signature)

Assistant Director (Admin)
 Directorate of Elementary & Secondary Education
 Khyber Pakhtunkhwa Peshawar

(Signature)

11/11/23

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Legible Copy

**DIRECTORATE OF ELEMENTARY & SECONDARY EDUCATION
KHYBER PAKHTUNKHWA, PESHAWAR**

OFFICE ORDER

The transfer order in respect of the following official is hereby ordered on his own pay and BPS in the interest of public service with immediate effect.

S.N	Name/ designation	From	To	Remarks
1	Mr. Ishtisham Senior Clerk BPS-14	DEO (F) Dir Upper	services placed at the disposal of Directorate E&SE	Administrative ground
2	Mr. Abdullah Senior Clerk S-14	SDEO (F) Takht-e-Nasrati Kark	GHSS Mandiwah Karak	Administrative ground

Note:

1. Compliance report should be submitted to all concerned.

DIRECTOR

Elementary & Secondary Education,
Khyber Pakhtunkhwa, Peshawar

Endst. No.3861-67/F.No.A-23/MS/Complaint Dir Upper

dated 10/4/2023

Copy forwarded to the:-

1. Accountant General Khyber Pakhtunkhwa, Peshawar
2. District Education Officer, concerned
3. District Account Officer concerned
4. Principal concerned
5. Official concerned.
6. PA to Director Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar
7. Master File.

Sd/-

Assistant Director (Admn)

Directorate of Elementary & Secy. Education
Khyber Pakhtunkhwa, Peshawar

Attested
[Signature]

ELECTION COMMISSION OF PAKISTAN
NOTIFICATION

Islamabad, the 22nd January, 2023

F.No.2(1)/2023-Corr. - WHEREAS, the Provincial Assemblies of Punjab and Khyber Pakhtunkhwa under Article 112 of the Constitution of the Islamic Republic of Pakistan stand dissolved on 1st and 10th January, 2023 respectively.

AND WHEREAS, the Election Commission of Pakistan is mandated with the constitutional duty to organize and conduct elections in terms of Article 218(3) of the Constitution and to make such arrangements as are necessary to ensure that the elections are conducted honestly, justly, fairly and in accordance with the law and that corrupt practices are guarded against;

AND WHEREAS, it has become imperative that the Election Commission shall take all necessary steps under the Constitution and prevalent law for smooth conduct of General Elections to the Provincial Assemblies of Punjab and Khyber Pakhtunkhwa.

4 → NOW THEREFORE, in exercise of the powers conferred upon it under Articles 216(5), 220 of the Constitution of the Islamic Republic of Pakistan, Sections 4, 5, 8(c) read with Section 230 of the Elections Act, 2017 and as supported by the Workers' Party case through Akhtar Hussain Advocate, General Secretary and 6 others Versus Federal of Pakistan and 2 others reported in PLD 2012 SC 681, and all the other powers enabling it in that behalf, the Election Commission of Pakistan, to ensure transparent election and to provide a level playing field for all contesting candidates and political parties hereby directs the Caretaker Governments of Punjab and Khyber Pakhtunkhwa:

- (a) To assist the Election Commission to hold elections in accordance with law as provided under section 230(1)(b) of the Elections Act, 2017.
- (b) To ensure the compliance of all the notifications, directives and the provisions as laid down in Section 230 of the Act *ibid*.
- (c) Not to post or transfer any public official after the issuance of this notification within and to / from Punjab & Khyber Pakhtunkhwa without prior approval in writing of the Election Commission as laid down in Clause 2(f) of Section 230 of the Elections Act, 2017.
- (d) Ensure that all kinds of recruitments in any Ministry, Division, Department or Institution under the Provincial Governments and Local Governments of Punjab and Khyber Pakhtunkhwa are banned with immediate effect except recruitments by the Provincial Public Service Commissions and those government organizations where test / interviews have already been conducted before this day.
- (e) Not to announce / execute any kind of Development Schemes in Punjab and Khyber Pakhtunkhwa Provinces except those which are ongoing and approved before the issuance of this notification. Moreover, the Provincial Governments and Local Governments of Punjab and Khyber Pakhtunkhwa shall not issue tenders of such schemes till culmination of General Elections of both Assemblies.

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- (f) All development funds relating to Local Government Institutions of Punjab and Khyber Pakhtunkhwa and Cantonment Boards falling in the jurisdiction of Punjab and Khyber Pakhtunkhwa shall stand frozen with immediate effect till announcement of results of the said General Elections.
- (g) To ensure immediate termination of services of all heads of the Institutions appointed on political basis and to send their files to the Commission forthwith.
- (h) To ensure vacation of the government residential facilities from Ex-Chief Ministers and their advisors, Ex-Provincial Ministers and Ex-Members of the Provincial Assemblies of Punjab and Khyber Pakhtunkhwa besides ensuring withdrawal of official vehicles from them. Furthermore, the dignitaries shall be provided security / protocol as per their entitlement and any extra deployment of security / protocol be withdrawn from them forthwith.
- (i) The Caretaker Governments shall perform their functions and attend to day-to-day matters which are necessary to run the affairs of the Provinces in accordance with law.
- (j) The Chief Minister or a Minister or any other member of Caretaker Governments shall, within three days from the date of assumption of office, submit to the Commission a statement of assets and liabilities including assets and liabilities of his spouse and dependent children as on the preceding 30th day of June on Form B.

This issues with the approval of Election Commission of Pakistan.

(Omar Hamid Khan)
Secretary

Election Commission of Pakistan

Attended
17/6/20

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104/2020
GODY



TO BE SUBSTITUTED BY EVEN NO. & DATE

DIRECTORATE OF ELEMENTARY & SECONDARY EDUCATION
KHYBER PAKHTUNKHWA PESHAWAR
 Phone: 091-9225344 Email: ddadm@ecsc@gmail.com

OFFICE ORDER

The Posting/Transfer in respect of the following official is hereby ordered on their own pay and BPS in the interest of public service with immediate effect.

Sr	Name/Designation	From	To	Remarks
1.	Mr. Ihtisham Senior Clerk BPS-14	DEO (F) Dir Upper under transfer to GCMHSS Dir Upper	GHSS Saddo Dir Lower	A.N.P
2.	Mr. Zahid Hussain S/Clerk	GCMHSS Dir Upper	DEO (F) Dir Upper	Vice Si No 1

Note:

1. Compliance report should be submitted to all concerned.
2. No TA/DA etc is allowed.

DIRECTOR
 Elementary & Secondary Education
 Khyber Pakhtunkhwa, Peshawar

Endst: No. / F.No. A-23/MS / Complaint Dir Upper

Dated 19/4/2023

Copy forwarded to the:-

1. District Education Officer concerned
2. District Account Officer concerned
3. Principal Concerned
4. Official concerned
5. PA to Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar
6. Master File.

8/19/23

Assistant Director (Admin)
 Directorate of Elementary & Secy. Education
 Khyber Pakhtunkhwa, Peshawar

Approved

ATTESTED

1) Given this is a main transfer order transfer order all

To,

Secretary,
Elementary & Secondary Education Department
Khyber Pakhtunkhwa at Peshawar

Subject: REQUEST FOR THE CANCELLATION OF TRANSFER ORDERS
DATED 10.4.2023 & 19.4.2023 OF MR. IHTISHAM ULLAH SENIOR
CLERK O/O DEO (FEMALE) DIR UPPER

R/Sir,

1. That the applicant is serving as a senior clerk at DEO female office Dir upper since 2021.
2. The the applicant is performing his duty very well and their no such complaint which against the rules and regulation.
3. That recently without any proper investigation or any inquiry my transfer is placed on the disposal of Directorate of E&SE and then to Dir Lower. It is pertinent to mention here that the administrative ground transfer is favourly on inquiry or allegation base but there is no such inquiry is pending against the applicant.
4. That the transfer is totally on the basis of political approach.
5. That the applicant is ready to face any type of inquiry (if have).
6. That the pplicant belongs to a respectable family and due this illegal transfer, reputation of applicant is badly suffering as well as duty in far station will be much harmful for applicant and will face difficulties.
7. The official concerned has also been transfer three times in the last four years all supporting documents are attached for ready reference.

Therefore, it is requested that kindly withdraw/cancelled the transfer orders dated 10.4.2023 and 19.4.2023 in respect of Mr. Ihtisham Ullah senior clerk may kindly be withdrawn/cancelled and oblige.

Thanks

Ihtisham Ullah, Senior Clerk
O/O DEO (F) Dir Upper

ATTESTED

-45-

PESHAWAR HIGH COURT, MINGORA BENCH
(DAR-UL-QAZA), SWAT

FORM OF ORDER SHEET

Court of

Case No..... of.....

Serial No. of order or proceeding	Date of Order or Proceedings	Order or other Proceedings with Signature of Judge and that of parties or counsel where necessary.
1	2	3
	06.07.2023	<p><u>CM No.1291-M/2023</u> <u>In WP No.425-M/2023</u></p> <p><u>Present:</u> Mr. Shamsul-Hadi Advocate for the applicant-petitioner</p> <p>Mr. Khwaja Salah-ud-Din, A.A.G. for official respondents</p> <p style="text-align: center;">***</p> <p><u>DR. KHURSHID IQBAL, J.---</u> Through the instant CM, the applicant-petitioner seeks suspension of the impugned orders and to allow him to continue to work in the office he has been transferred from. The learned A.A.G present in some other cases was put on notice. He accepted the same. The matter was heard at some length.</p> <p>2. The learned counsel contended that the Election Commission of Pakistan had imposed a complete ban on postings/transfers of public officials. Therefore, the impugned orders are without jurisdiction. Contrarily, the learned A.A.G submitted that the applicant-petitioner is a civil servant and the matter of posting/transfer falls within the ambit of his terms and conditions of service. Therefore,</p>

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on account of bar contained under Article 212 of the Constitution, this Court lacks jurisdiction to entertain the instant matter. Added that the petitioner has also filed a departmental appeal before the Appellate Authority. Hence, in view of the doctrine of election, the instant petition is not competent.

3. This court being seized of the interim matter has limited jurisdiction, whereas the grounds agitated essentially go deep to the roots of the controversy involved. Indeed, its judicial examination exclusively falls within the domain of a Division Bench. Record shows that the respondents have already been put on notice. They have filed their para-wise comments as well. No urgency is involved in the instant matter. In the circumstances, it is deemed appropriate that let the grounds urged be left for the judicial scrutiny by a Division Bench. No case for the indulgence of this court at this stage is made out. The CM is, therefore, disposed of accordingly.

Announced
06.07.2023

JUDGE
K. Iqbal
AUG 21 2023

Office
06/07/2023