

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

Service Appeal No: 1669/2023


Haji Muhammad SST (BPS-16) GHS Land North WaziristanAppellant.

VERSUS

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

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Asstt: Director (Lit: II)
E&SE Department, Khyber
Pakhtunkhwa, Peshawar.

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VERSUS

Govt; of Khyber Pakhtunkhwa through Secretary (E&SED) &
others..... Respondents

JOINT PARAWISE COMMENTS FOR & ON BEHALF OF THE RESPONDENTS No: 1-2

Respectfully Sheweth :-

The Respondents No. 1-2 submit as under: -

Preliminary Objections

1. **That** the appellant has got no cause of action/locus standi.
2. **That** the instant Service Appeal is badly time-barred, & liable to be dismissed.
3. **That** the appellant is not an aggrieved person within the meaning of Section-4 of Khyber Pakhtunkhwa Service Tribunal Act-1974 read with Article 212 of the constitution of Islamic Republic of Pakistan 1973.
4. **That** the appellant has concealed material facts from this Honorable Tribunal in the instant service appeal with regard to the disposal of his Departmental Appeal in compliance of the judgment dated 09-05-2023 of the Honorable High Court vide Notification No. (MC) E&SED/4/16/2023/MC/TC/ASDEO dated 12-07-2023 by the Respondent No. 1 under the Rules.
5. **That** the instant service appeal is against the relevant provisions of law.
6. **That** the appellant has filed the instant appeal on mala-fide intentions just to put extra ordinary pressure on the Respondents for the grant of illegal & even unauthorized service benefits of his posting against a MC post in violation of the Rules & policy as well as judgments of this Honorable Tribunal.
7. **That** the appellant has not come to this Honorable Tribunal with clean hands.
8. **That** the instant appeal is liable to be dismissed for mis joinder & non-joinder of the necessary parties to the present appeal.
9. **That** the appellant is estopped by his own conduct to file the instant appeal

10. **That** the instant Service Appeal is not maintainable in its present form.
11. **That** the impugned Notification/order dated 19-04-2023, is legally competent & liable to be maintained in favor of the Respondent in the interest of justice.
12. **That** the appellant has been treated as per law, rules & relevant policy in the instant case by posting him against his original post of SST at GHS Land North Waziristan vide Notification 19-04-2023 by the Respondent No. 2.
13. **That** the competent authority has got jurisdiction to transfer & post a regular Civil Servant U/S-10 of Civil Servants Act 1973.
14. **That** the post of the appellant is a Provincial Teaching Cadre & he is liable to be serve anywhere in any Province.

ON FACTS.

- 1 **That** Para-1 pertains to the residential record of the appellant.
- 2 **That** Para-2 is correct that as per available Service Record of the appellant in the custody of the Department that he is originally inducted & working against the SST (G) in BPS-16 post & was adjusted against the ADEO North Waziristan on staff gape arrangement till the arrival of a regular officer of Management cadre, hence, the claim of the appellant regarding his regular posting as ASDEO in the said District is based on mala fide & liable to be rejected.
- 3 **That** Para-3 is correct to the extent of the Notification dated 22-01-2023 of the ECP Govt; of Pakistan in terms of Article 218(3), 220 of the constitution of 1973 read with sections- 4, 5, 8(c) of section-230 of the Elections Act, 2017, where under transfer & posting of all Civil Servants has been banned except under para-I of the said Notification ***which says that the care taker Governments shall perform their functions & attend to day to day which are necessary to run the affairs of the province in accordance with Law,*** hence, the plea of the appellant is illegal. ***attached as Annex-A.***
- 4 **That** Para-4 is incorrect, as the act of the Respondent No. 2 with regard to the Notification dated 19-04-2023, whereby, the appellant has been posted against his original teaching cadre post of SST (G) in BPS-16 at GHS Land North Waziristan by the Respondent No. 2 under the above cited provision of Law & Rules ***attached as Annex-B.***
- 5 **That** Para-5 is also incorrect that vide Notification No. SO(MC) E&SED/4-16/2023/PT/MC/TC/ASDEO dated 12-07-2023 the converted Departmental Appeal vide judgment dated 09-05-2023 in W. P No. 1677/2023 Haji Muhammad Vs Govt; has been disposed of by the Respondent No. 1 to the

extent of rejection of the said appeal, hence, the claim of the appellant is based on mis-statement & mala-fide ***attached as Annex-C.***

- 6 **That** Para-6 is correct to the extent of filing of W.P No. 1677/2023 Haji Muhammad Vs Govt; remitted to the Respondent No. 1 by treating the said petition as Departmental appeal on behalf of the appellant vide judgment dated 09-05-2023 & in compliance whereof, the appeal of the appellant has been disposed of vide Notification dated 12-07-2023 under the Rules & policy.
- 7 **That** Para-6 is correct to the extent of filing of W.P No. 1677/2023 Haji Muhammad Vs Govt; remitted to the Respondent No. 1 by treating the said petition as Departmental appeal on behalf of the appellant vide judgment dated 09-05-2023 & in compliance whereof, the appeal of the appellant has been disposed of vide Notification dated 12-07-2023 under the Rules & policy, hence the appeal in hand is liable to be rejected on the following grounds inter alia :-

GROUND.

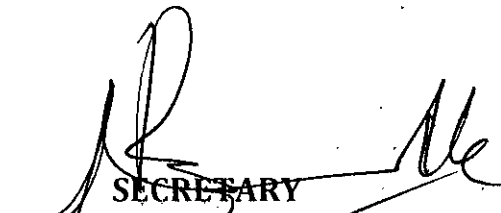
- A. **Incorrect & not admitted.** The impugned Notification dated 19-04-2023 is within legal sphere & even in accordance with the law in terms of clause-X of the transfer & posting policy of the Govt; & liable to be maintained in favor of the Respondent Department
- B. **Incorrect & not admitted,** the statement of the appellant is without any cogent reason & record hence liable to be rejected in terms of above made submissions by the Respondents No. 1-4 in the instant reply.
- C. **Incorrect & not admitted.** The stand of the appellant is illegal as the Notification dated 19-04-2023 is in accordance with the provision of Articles 4 & 25 of the constitution of 1973.
- D. **Incorrect & not admitted.** The impugned Notification dated 19-04-2023 is within legal sphere & even in accordance with the law in terms of clause-X of the transfer & posting policy of the Govt; & liable to be maintained in favor of the Respondent Department.
- E. **Incorrect & not admitted.** As replied above.
- F. **Incorrect & not admitted** because the statement of the appellant is correct to the extent of the Notification dated 22-01-2023 of the ECP Govt; of Pakistan in terms of Article 218(3), 220 of the constitution of 1973 read with sections- 4, 5, 8(c) of section-230 of the Elections Act, 2017, where under transfer & posting of all Civil Servants has been banned.


However, as per provision under para-I of the said Notification *which says that the care taker Governments shall perform their functions & attend to day to day which are necessary to run the affairs of the province in accordance with Law*, hence, the plea of the appellant is illegal.

G. Incorrect & not admitted. That the appellant is not an aggrieved person within the meaning of Section-4 of Khyber Pakhtunkhwa Service Tribunal Act-1974 read with Article 212 of the constitution of Islamic Republic of Pakistan 1973 However, the Respondents 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 dismissed the instant Service Appeal by maintaining the Notification dated 19-04-2023 in favor of the Respondents in the interest of justice.

Dated ___/ ___/2023.


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 PAKHATUNKHWA SERVICE
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Haji Muhammad, SST BPS-16 GHS Land North Waziristan..... Appellant.

VERSUS

Govt; of Khyber Pakhtunkhwa through Secretary (E&SED) &
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.


Deponent

ATTESTED



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ELECTION COMMISSION OF PAKISTAN
NOTIFICATION

Islamabad the 22nd January, 2023

F.No.2(1)/2023-Cord.- WHEREAS, the Provincial Assemblies of Punjab and Khyber Pakhtunkhwa under Article 112 of the Constitution of the Islamic Republic of Pakistan stand dissolved on 14th 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.

NOW THEREFORE, in exercise of the powers conferred upon it under Articles 218(3), 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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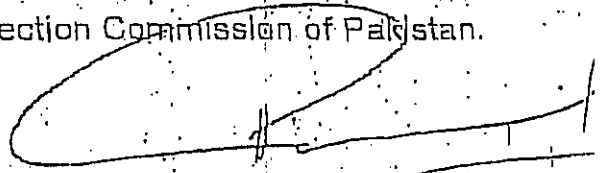
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Member

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②

- (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 lists 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 Government 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.

Attested
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(Omar Hamid Khan)
Secretary

Election Commission of Pakistan

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DIRECTORATE OF ELEMENTARY &
SECONDARY EDUCATION, KHYBER
PAKHTUNKHWA, PESHAWAR

NOTIFICATION

Consequent upon approval of the Competent Authority the following postings/transfers are hereby ordered in their own pay & BPS in the best interest of public service with immediate effect with the following terms and conditions:-

Sr	Name & Designation	Place of present posting	Where posted as	Remarks
1	Mr. Haji Muhammad ADEO/SST	AD/EO at District North Waziristan	GHS District North Waziristan	Land: V/No S No 2
2	Mr. Ihsan Ullah SST	GHS North Waziristan	AD/EO at District North Waziristan	Vice S No 1

TERMS AND CONDITIONS

- Charge reports should be sent to all concerned.
- No TAVDA etc. are allowed.
- The order of the above named SSTs against the posts of ADEO/ASDEOs will be effective subject to the condition that they will give an undertaking on judicial stamp paper to the District Education Officers concerned to the effect that they will neither claim the seniority of ADEO/ASDEO Post nor absorption in Management Cadre.
- The terms and conditions mentioned in his appointment/promotion order as SST (Teaching Cadre) will remain intact.

Attested

Director
Elementary & Secondary Education
Khyber Pakhtunkhwa

Endst No. 19092-76 IA-12/ADEO (M) Dated Pesh. the 19/06/2023

- Copy forwarded to the:-
1. District Education Officer North Waziristan at Tank.
 2. District Accounts Officer North Waziristan at Tank.
 3. Principals/Headmaster concerned.
 4. Officials concerned.
 5. PA to Director Elementary and Secondary Education Khyber Pakhtunkhwa Peshawar.

Assistant Director (Establ)
Elementary and Secondary Education
Khyber Pakhtunkhwa

ATTESTED
to be true

Legible Copy

DIRECTORATE OF ELEMENTARY &
SECONDARY EDUCATIONS KHYBER
PAKHTUNKHWA, PESHAWAR

NOTIFICATION

Consequent upon approval of the competent authority the following postings/ transfers are hereby ordered in their own pay and BPS in the best interest of public service with immediate effect with the following terms and conditions.

S#	Name & designation	Place of present posting	Where as	Remarks
1	Mr. Haji Muhammad ADEO /SST	ADEO at District North Waziristan	GHS Land District North Waziristan	Vide S.No.2
2	Mr. Ihsan Ullah SST	GHS Land District North Waziristan	ADEO at District North Waziristan	Vide S.No.1

Terms and conditions

1. Charge reports should be sent to all concerned
2. NO TA/DA etc are allowed
3. The order of the above named SSTs against the posts of ADEO/ASDEOs will be effective subject to the condition that they will give an under taking on judicial stamp paper to the District Education Officers concerned to the effect that they will either clam the seniority of ADEO/ASDEO post nor absorption in Management cadre.
4. That terms and conditions mentioned in his appointment/promotion order as SST (Teaching Cadre) will remain intact.

Attested
(P/-)

Director
Elementary & Secondary Education
Khyber Pakhtunkhwa

Endst. 19072-76/A-12/ADEO (M) Dated Pesh: the 19/04/2023

Copy forwarded to the:

1. District Education Officer North Waziristan at Tank.
2. District Accounts Officer North Waziristan at Tank.
3. Principal/Headmaster concerned.
4. Officials concerned.
5. PA to Director Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar

Sd/-
Assistant Director (Estab)
Elementary & Secondary Education
Khyber Pakhtunkhwa



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

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Dated: 12th July, 2023

NOTIFICATION

NO.SO(MC)E&SED/4-16/2023/PT/MC/TC/ASDEO: WHEREAS, Directorate of Elementary & Secondary Education, Department, issued Notification No. 2557-62/A-12/ADEO (M) Dated 19.02.2021 wherein, Mr. Haji Muhammad, SST GHS Spinwam North Waziristan was posted as ASDEO (Male) North Waziristan.

2. And whereas, Haji Muhammad was transferred from ASDEO (Male) North Waziristan to the post of SST, GHS Land District North Waziristan, after completion of 02 years' tenure on the said post.

3. And whereas, Haji Muhammad filed a Writ Petition No. 1677/2023 in the Honorable Peshawar High Court.

4. And whereas, The case was remanded by the Honorable Peshawar High Court on 09.05.2023 to the E&SE Department and converted into Departmental Appeal and sent to the Secretary E&SE (Respondent No.1) for decision in accordance with Law.

5. NOW, THEREFORE, the Competent Authority in Elementary & secondary Education Department after examining the case is pleased to regret the appeal on the ground that the appellant has already completed his normal tenure on the said post.

Endst: of even No.& date:

Copy forwarded for information to the: -

1. Registrar Peshawar High Court 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. Section Officer (Lit-III) E&SE Department.
5. District Education Officer (Male) North Waziristan.
6. District Accounts Officer North Waziristan.
7. PS to Advisor to Chief Minister on E&SE Khyber Pakhtunkhwa.
8. PS to Secretary, E&SE Department, Khyber Pakhtunkhwa.
9. Master file.

SECRETARY E&SE DEPARTMENT

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Put in record.

19/07/2023 397
14/7/23

20/07/23
14/7/2023

ADDU(MPA)
14/7

(IMRAN ZAMAN)

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12/7/2023



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

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AUTHORITY LETTER

I Director, Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar do hereby authorize Mr. Muhammad Imran 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. 1669/2023 Titled Haji Muhammad VS Government of Khyber Pakhtunkhwa Elementary & Secondary Education Department.

Dated 05/10/2023

**Director
Elementary & Secondary Education
Khyber Pakhtunkhwa Peshawar.**