


FORM OF ORDER SHEET

Court of _____

Implementation Petition No. 742/2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge.
1	2	3
1	10.10.2023	<p>The implementation petition of Mr. Khurshid Ahmad submitted today by Mr. Ali Gohar Durrani Advocate. It is fixed for implementation report before Single Bench at Peshawar on <u>11-10-2023</u>. Original file be requisitioned. AAG has noted the next date. Parcha peshi is given to the counsel for the petitioner.</p> <p>By the order of Chairman  REGISTRAR</p>

BEFORE THE
HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

In Re:

Execution Petition No. 742 /2023

In Service Appeal No. 1474/2023

Decided on: 22. 09. 2023

Prof. Khurshid Ahmad

Versus

The Government of Khyber Pakhtunkhwa and others

I N D E X

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Petitioner

Through



(ALI GOHAR DURRANI)
Advocate High Court
0332-9297427

①

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

In Re:

Execution Petition No. 742 /2023

In Service Appeal No. 1474/2023

Khyber Pakhtunkhwa
Service Tribunal

Decided on: 22. 09. 2023

Diary No. 8213

Dated 10-10-2023

Prof. Khurshid Ahmad (BS-20),
Professor, Government Degree College, Hayatabad, Peshawar

..... Petitioner

Versus

1. The Government of Khyber Pakhtunkhwa,
Through Chief Secretary Government of Khyber Pakhtunkhwa,
Civil Secretariat Peshawar.
2. Establishment Department, Govt. of Khyber Pakhtunkhwa,
Through Secretary Establishment, Government of Khyber
Pakhtunkhwa
Civil Secretariat, Peshawar.
3. Higher Education Department, Government of Khyber
Pakhtunkhwa,
Through Secretary Higher Education Department,
Civil Secretariat, Peshawar.
4. Prof. Dr. Faridullah Shah
Director, Higher Education, Higher Education Department,
Government of Khyber Pakhtunkhwa.

..... Respondents

EXECUTION PETITION TO IMPLEMENT THE
JUDGMENT OF THIS HONOURABLE TRIBUNAL DATED
22-09-2023, WHEREBY THE POSTING/TRANSFER
NOTIFICATION DATED 22-03-2023 FROM THE POST OF
DIRECTOR EDUCATION, OF THE
PETITIONER/APELLANT HAS BEEN SET ASIDE.

Respectfully Sheweth.

That the petitioner earnestly craves the permission of the Honorable Service Tribunal to submit as under:

1. **That** the Petitioner/Appellant is serving Respondent No. 3, as Director Higher Education Khyber Pakhtunkhwa and has served the Provincial Government for almost three decades while maintaining an immaculate track record, unimpeachable reputation, and spotless integrity, never giving any chance of even a minor complaint to any of his superiors. He has an apolitical career and one of the cleanest track-record amongst the ranks of Government servants in the Department of Higher Education.

2. **That** the Petitioner was posted and transferred against the vacant position of Director, Higher Education on 21.12.2022, wherein he was performed his duties meritoriously. Moreover, private respondent No. 4 was posted in Government Degree College Hayatabad Peshawar. Vide the impugned Notification dated 22.03.2023, the Petitioner was transferred to Government Degree College Hayatabad Peshawar, while private respondent No. 4 was posted as Director Higher Education Khyber Pakhtunkhwa in place of the Petitioner. The Petitioner being aggrieved of the Notification dated 22.03.2023, challenged the same by way of filing representation on 27.03.2023, however the same was not responded within the statutory period of 90 days, hence an instant appeal was filed in this regard.

(Copy of transfer as Director Higher Education is **Annex-A**)
(Copy of the transfer orders dated 22-03-2023 is **Annex-B**)

3. **That** an appeal i.e Appeal No. 1474/2023, was filed in this regard, before the Honourable Service Tribunal on 17-07-2023, and the same was heard & decided on 22-09-2023. The said appeal was accepted, and subsequently, the impugned transfer/posting notification dated 22-03-2023 was set-aside, and directions were given to respondents to allow the Petitioner/Appellant to complete his normal tenure on the post of Director Higher Education Khyber Pakhtunkhwa. Relevant portion of the judgment has been reproduced herein below:

3

"Consequently, the appeal in hand is allowed by setting-aside the impugned Notification dated 22.03.2023 and the respondents are directed to allow the appellant to complete his normal tenure on the post of Director Higher Education Khyber Pakhtunkhwa."

(Copy of the Service Appeal No. 1474/2023 is **Annex-C**)

(Copy of the judgment dated 22-09-2023 has been **Annex-D**)

4. **That** the Honourable Tribunal rendered its judgment dated 22-09-2023, however, no necessary action was taken by the Respondent to implement the said judgment, as a result of which, the Petitioner moved an application for implementation of judgment dated 22-09-2023, however, to no avail.

(Copy of implementation application dated 02-10-2023 is

Annexed-E)

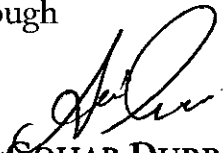
5. **That** the execution petitioner now approaches this Honorable Tribunal for directions to implement the judgment dated 22-09-2023 in the larger interest of justice and fair play.

Prayer:

It is therefore most humbly prayed that upon the acceptance of this execution petition, may it please this honorable tribunal to so kindly direct the implementation of judgment dated 22-09-2023 in Service Appeal No. 1474/2023 titled Prof. Khurshid Ahmad vs. Government of Khyber Pakhtunkhwa through Chief Secretary on the Execution Petitioner, any other relief that this Honorable Tribunal may deem appropriate in the circumstances of the case may also be given.


Execution Petitioner

Through


(ALI GOHAR DURRANI)

Advocate High Court

0332-9297427

khaneliegohar@yahoo.com

SHAH | DURRANI | KHATTAK

4

BEFORE THE
HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

In Re:

Execution Petition No. _____/2023

In Service Appeal No. 1474/2023

Decided on: 22. 09. 2023

Prof. Khurshid Ahmad

Versus

The Government of Khyber Pakhtunkhwa and others

AFFIDAVIT Of,

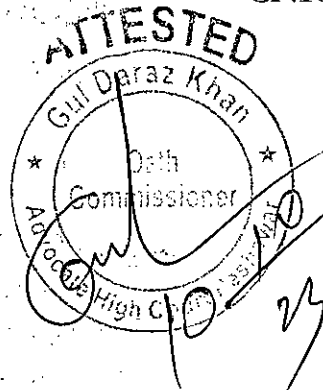
I, Prof. Khurshid Ahmad (BS-20), Professor, Government Degree College, Hayatabad, Peshawar, do hereby solemnly declare and affirm on oath:- I am personally conversant with the facts and circumstances of the case as contained therein and the facts and circumstances mentioned in the enclosed writ petition are true and correct to the best of my knowledge and belief.

Deponent

CNIC#

Identified by:

ALI GOHAR DURRANI
Advocate High Court



5

BEFORE THE
HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

In Re:

Execution Petition No. _____/2023

In Service Appeal No. 1474/2023

Decided on: 22. 09. 2023

MEMO OF ADDRESS

Prof. Khurshid Ahmad (BS-20),
Professor, Government Degree College, Hayatabad, Peshawar

..... Petitioner

Versus

5. The Government of Khyber Pakhtunkhwa,
Through Chief Secretary Government of Khyber Pakhtunkhwa,
Civil Secretariat Peshawar.
6. Establishment Department, Govt. of Khyber Pakhtunkhwa.
Through Secretary Establishment, Government of Khyber
Pakhtunkhwa
Civil Secretariat, Peshawar.
7. Higher Education Department, Government of Khyber
Pakhtunkhwa,
Through Secretary Higher Education Department,
Civil Secretariat, Peshawar.
8. Prof. Dr. Faridullah Shah
Director, Higher Education, Higher Education Department,
Government of Khyber Pakhtunkhwa.

..... Respondents

Petitioner

Through



(ALI GOHAR DURRANI)

Advocate High Court

0332-9297427

khaneliegohar@yahoo.com



GOVERNMENT OF
KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT

Dated Peshawar, the March 22, 2023

NOTIFICATION

NO. SO(E-I)/E&AD/9-88/2023. Following posting/transfer of Professors is hereby ordered, in the public interest, with immediate effect:-

S.#	NAME OF THE OFFICERS	FROM	TO
1.	Dr. Fareedullah Shah (BS-20)	Professor, Government Degree College, Hayatabad, Peshawar	Director, Higher Education, Khyber Pakhtunkhwa vice Sr. No. 02
2.	Mr. Khurshid Ahmad (BS-20)	Director, Higher Education, Pakhtunkhwa	Professor, Government Degree College, Hayatabad, Peshawar vice Sr. No. 01

CHIEF SECRETARY
GOVERNMENT OF KHYBER PAKHTUNKHWA

ENDST. NO. & DATE EVEN.

Copy forwarded to the:-

1. Additional Chief Secretary, P&D Department.
2. Senior Member Board of Revenue, Khyber Pakhtunkhwa
3. Principal Secretary to Governor, Khyber Pakhtunkhwa.
4. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
5. Secretary to Govt. of Khyber Pakhtunkhwa, Higher Education Department.
6. All Divisional Commissioners in Khyber Pakhtunkhwa.
7. All Deputy Commissioners in Khyber Pakhtunkhwa.
8. Accountant General, Khyber Pakhtunkhwa.
9. Director General, Information, Khyber Pakhtunkhwa.
10. Director, Higher Education, Khyber Pakhtunkhwa.
11. Principals of concerned College(s).
12. PS to Chief Secretary, Khyber Pakhtunkhwa.
13. PS to Minister for Establishment & Administration Department.
14. PS to all Ministers concerned.
15. PS to Secretary Establishment.
16. Professors concerned.
17. Manager, Govt. Printing Press Peshawar.

GHANI ULLAH/

ATTESTED

(ZIA.UL.HAQ)
SECTION OFFICER (ESTT. I)

Ph # 091-9210529

ATTESTED
to be true Copy



GOVERNMENT OF
KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT

Dated Peshawar, the March 22, 2023

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2.	Mr. Khurshid Ahmad (BS-20)	Director, Higher Education, Khyber Pakhtunkhwa	Professor, Government Degree College, Hayatabad, Peshawar vice Sr. No. 01

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GOVERNMENT OF KHYBER PAKHTUNKHWA

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4. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
5. Secretary to Govt. of Khyber Pakhtunkhwa, Higher Education Department.
6. All Divisional Commissioners in Khyber Pakhtunkhwa.
7. All Deputy Commissioners in Khyber Pakhtunkhwa.
8. Accountant General, Khyber Pakhtunkhwa.
9. Director General, Information, Khyber Pakhtunkhwa.
10. Director, Higher Education, Khyber Pakhtunkhwa.
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15. PS to Secretary Establishment.
16. Professors concerned.
17. Manager, Govt. Printing Press Peshawar.

GHANIULLAH**

ATTESTED

(ZIA. UL HAQ)
SECTION OFFICER (ESTT. I)
Ph # 091-9210529

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(3) (C) Amur

IN THE
HONOURABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Appeal No. _____/2023

Prof. Khurshid Ahmad (BS-20),
Professor, Government Degree College, Hayatabad, Peshawar.

..... Appellant

Versus

1. The Government of Khyber Pakhtunkhwa,
Through Chief Secretary Government of Khyber Pakhtunkhwa,
Civil Secretariat Peshawar.
2. Establishment Department, Govt. of Khyber Pakhtunkhwa.
Through Secretary Establishment, Government of Khyber
Pakhtunkhwa
Civil Secretariat, Peshawar.
3. Higher Education Department, Government of Khyber
Pakhtunkhwa,
Through Secretary Higher Education Department,
Civil Secretariat, Peshawar.
4. Prof. Dr. Faridullah Shah
Director, Higher Education, Higher Education Department,
Government of Khyber Pakhtunkhwa.

..... Respondents

APPEAL UNDER SECTION 4 OF THE KHYBER
PAKHTUNKHWA SERVICES TRIBUNAL ACT, 1974
READ WITH ALL OTHER LAWS ENABLING
JURISDICTION OF THIS HONORABLE TRIBUNAL
UNDER ARTICLE 212 OF THE CONSTITUTION OF
THE ISLAMIC REPUBLIC OF PAKISTAN, 1973, TO
WITHDRAW THE POSTING/ TRANSFER ORDERS
DATED 22-03-2023 WHEREBY THE APPELLANT HAS
BEEN TRANSFERRED ILLEGALLY AND
UNLAWFULLY FROM THE POST OF DIRECTOR
HIGHER EDUCATION

RESPECTFULLY SUBMITTED:

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The Appellant most earnestly request to submit as under: ⑨

That the Appellant is working against the designation mentioned in the heading of the petition in the Higher Education Department. The Appellant is a Civil Servant, and is before this Honorable tribunal for redress of his grievance in respect of transfer of the appellant, which being part and parcel of the terms and conditions of service, gives exclusive jurisdiction to this honorable tribunal for adjudication of the matter under the Constitution of Pakistan, 1973, the Khyber Pakhtunkhwa Civil Servants Act, 1973, the Khyber Pakhtunkhwa Service Tribunal Act, 1974 and the Rules made under the two Acts.

BRIEF FACTS:

1. That the Appellant is serving Respondent No. 3, as Director Higher Education Khyber Pakhtunkhwa and has served the Provincial Government for almost three decades while maintaining an immaculate track record, unimpeachable reputation, and spotless integrity, never giving any chance of even a minor complaint to any of his superiors. He has an apolitical career and one of the cleanest track-record amongst the ranks of Government servants in the Department of Higher Education.
2. The appellant during this time has served the department with complete dedication and utmost honesty. The PER's and service record of the appellant bears witness to the professionalism of the appellant. The appellant also has been granted promotions during this time period and given important assignments, which the appellant has always ensured to complete.
Copy of the final posting orders of the appellant is Annex-A.
3. That recently the appellant was posted and transferred against the vacant position of Director, Higher Education on 21.12.2022, wherein he was performed his duties meritoriously.
Copy of transfer as Director Higher Education is Annex-B.

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4. That the appellant being completely apolitical and having no political affiliation was posted as stated against the vacant position of Director, Higher Education above due to his unblemished service record. However, a summary was initiated whereby a one Prof. Dr. Faridullah Shah was proposed to be posted in the appellant's stead. The summary is imperative wherein comments of the Chief Minister at Para 6 sought a query about the tenure of both the appellant and Prof. Dr. Faridullah Shah. In response para 7 provided the tenure, and the same shows that the tenure of the present appellant is 02 months whereas that of Prof. Dr. Faridullah Shah is 4months. But this aspect was completely ignored and vide para 12 the para 1 read with para 5 was approved. This is despite the fact that Secretary Establishment on his turn had sought "appropriate order" on the summary and not transfer orders.

Copy of the summary is Annex-C.

5. That it is important to mention that pursuant to the dissolution of Khyber Pakhtunkhwa Assembly on 18.01.2023, under Article 224 of the Constitution of the Islamic Republic of Pakistan, a Caretaker setup was installed in the province of Khyber Pakhtunkhwa. Election Commission of Pakistan had issued Notification on 22.01.2023 wherein they have imposed a ban on all posting and transfer in the province of Khyber Pakhtunkhwa. Copy of the ECP Notification dated 22.01.2023 is Annex-D

6. That since the mandate of caretaker setup is very limited as has been discussed in an array of judgments wherein the mandate of Constitution and certain provisions of Election Act, 2017 have also been taken into consideration but despite that, a letter dated 14.03.2023 was written and sought approval for posting of Prof. Dr. Faridullah Shah as the Director Higher Education purely on political basis.

Copy of letter dated 14.03.2023 is Annex-E.

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7. That it is worth to mention here that firstly the "Impugned letter & Notification" dated 14.03.2023 is issued in total disregard of the Constitution and Section 230 of the Election Act, 2017 secondly approval requires from the commission which is comprising of five members and not from the Chief Election Commissioner alone as it is the mandate of law thus the Appellant feeling gravely dissatisfied and aggrieved of the "Impugned letter & Notification" dated 14.03.2023 filed a writ petition which was dismissed for want of jurisdiction.

8. That in the aftermath of the above-mentioned letter dated 14-03-2023, the appellant was ordered to be transferred on 22-03-2023. The appellant in compliance of the said orders relieved charge, and to challenge the same, preferred a representation before the competent authority.

Copy of the transfer orders dated 22-03-2023 is Annex-F.

9. That the appellant being aggrieved of the actions of the respondents preferred a representation "through proper channel" before the competent authority dated 27-03-2023. The said representation comprehensively dealt in the issue and highlighted most of the illegalities that had taken place. The said representation hasn't been answered/replied to as of now.

Copy of the representation dated 27-03-2023 is Annex-G.

10. That the appellant being aggrieved in respect of his illegal and unlawful transfer, now approaches this honorable tribunal for indulgence of this tribunal amongst others on the following grounds:

Grounds- Submissions in Law:

- a. Because the Appellant is an aggrieved person within the meaning of Article 212 of the constitution of the Islamic Republic of Pakistan 1973 in respect of his terms and conditions of service, and is by law required to submit a representation within 90 days of the transfer orders and are required to be disposed of within 90

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days, furthermore per the Posting and transfer policy of Civil Servants which lay as under:

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 could be exercised only in the following cases.

- i) Pre-mature posting/transfer or posting transfer in violation of the provisions of this policy.

- b. Because the Fundamental Rights of the Appellant have been violated in relation to Article 4, 8, 9, 18 & 25 of the Constitution of the Islamic Republic of Pakistan, 1973. This Honorable court being the custodian of the Rights of citizens of Pakistan as enshrined in the law of the land made in furtherance of the rights and the protections afforded by the Constitution of Islamic Republic of Pakistan, 1973, is why the Appellant seek the redressal of his grievances.

- c. Because the decision of transfer orders taken on the basis of the Summary dated 01.02.2023 is based in a nullity in the eyes of the law as it goes in direct negation of the provisions of law. Furthermore, when the base is wrong and rooted in a nullity any superstructure built on the base is wrong. The principle laid down through PLD 1958 SC 104 has been reiterated in PLD 2022 SC 119, 2021 SCMR 637, PLD 2007 SCMR 1835, which essentially forms part of our jurisprudence.

- d. Because as soon as a care-taker setup is appointed, the Constitutional command is that 'its mandate is to hold free and fair election in aid of ECP'. No care-taker Cabinet could make policy decision even in relation to appointment and posting of civil servants. This principle was settled by the Supreme Court

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after 18th Amendment to the Constitution in the case Khawaja Muhammad Asif v. Federation of Pakistan, etc., 2013 SCMR 1205; followed by another case 2016 SCMR 1299, Nematullah Vs Ch. Governing Body; and reaffirmed by the Supreme Court in PLD 2021 SC 313.

e. Because The Rules designate certain posts as 'tenure posts' (rule 22 read with Schedule IV of the Rules) and prescribe a period of three years for an incumbent to serve on such posts. Such prescribed tenure may therefore be categorized as the ideal duration for which a civil servant should serve at a particular post. The post of the appellant is a tenure post, yet he has been transferred from his posting before the tenure was complete. Thus, the appellant having not been allowed to complete his normal tenure and thus the order impugned is violation of transfer posting policy of the Government and the judgment of the apex court reported in PLD 1995 SC Page No 530 and PLD 2013 Supreme Court Page No 195.

f. Because the recently the august Supreme Court of Pakistan has in its Judgment reported in 2013 PLD SC 195, decided a point of law and while committing upon the transfer and posting and other related matters of service held as under:-

(i) Appointments, Removals and

Promotions:- Appointments, removals and promotions must be made in accordance with the law and the rules made there under; where no such law or rule exists and the matter has been left to discretion, such discretion must be exercised in a structured, transparent and reasonable manner and in the public interest.

(ii) Tenure, posting and transfer:

When the ordinary tenure for a

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posting has been specified in the law or rules made there under; such tenure must be respected and cannot be varied, except for compelling reasons, which should be recorded in writing and are judicially reviewable.

(iii) Illegal Orders: Civil servants owe their first and foremost allegiance to the law and the Constitution. They are not bound to obey orders from superiors which are illegal or are not in accordance with accepted practices and rule, based norms; instead, in such situations, they must record their opinion and; if necessary, dissent.

(iv) O.S.D Officers should not be posted as OSD except for compelling reasons, which must be recorded in writing and are judicially reviewable. If at all an Officer is to be posted as OSD, such posting should be for the minimum period possible and if there is a disciplinary inquiry going on against him, such inquiry must be completed as the earliest.

g. Because Section 10 of the Khyber Pakhtunkhwa Civil Servants Act states as follows:

“Every civil servant shall be liable to serve anywhere within or outside the Province in any post under the Federal Government, or any Provincial Government or local authority, or a an corporation or body set up or established by any such Government:

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Provided that nothing contained in this section shall apply to a civil servant recruited specifically to serve in a particular area or region:

Provided further that where a civil servant is required to serve in a post outside his service or cadre, his terms and conditions of service as to his pay shall not be less favourable than those to which he would have been entitled if he had been so required to serve."

The aforesaid section does not empower the Government to cut short the normal tenure of a posted/transferred civil servant, and particularly without assigning any reason. In the case of Mahmood Akhtar Naqvi (Anita Turab case) (above) this Court held:

"16. In the Hajj Corruption Case, the court reiterated its earlier ruling in Zahid Akhtar v. Government of Punjab (PLD 1995 SC 530), where it had been held that

"the normal period of posting of a Government servant at a station, according to Rule 21 of the Rules of Business is three years, which has to be followed in the ordinary circumstances, unless for reasons or exigencies of service a transfer before expiry of the said period becomes necessary in the opinion of the competent authority." Furthermore, with regard to transfers of civil servants, this Court has stated that transfers by political figures which are not legally sustainable. Farrukh gulzar v. Secretary Local Government and Rural Development Department, Lahore and 2 others (1998 SCMR 2222). These are principles of law enunciated by this court and are to be followed in terms of Article 189 of the Constitution. We, however, repeatedly come across violations of such principles. This unnecessarily leads to litigation which, in turn, clogs Courts and Service Tribunals."

- h. Because in-fact there exist no exigencies of service nor can the order of transfer be termed as in the public interest rather the same has been issued in violation of the transfer and posting policy and in ban period.

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- i. Because the principles of legitimate expectation as expounded by the Honorable Superior Courts of Pakistan and recently reiterated in 2022 SCMR 694 is seriously violated in the instant case.
- j. Because the care-taker set up has tried to assume the role of a regular/elected government and is making transfers and posting purely on political basis in complete and sheer negation of the law which are highly objectionable and violative thus, against the Natural justice of equal treatment as guaranteed by the Constitution of Islamic Republic of Pakistan.
- k. Because the Appellant has not been treated in accordance with law, and his right secured and guaranteed under Law and Constitution have been violated.
- l. Because the Appellant has served the department with utmost honesty and clarity and must not be deprived of their due rights.
- m. Because the Rights of the Appellant are secured under Article 8, and the entirety of Part II of the Constitution of the Islamic Republic of Pakistan, and its redress falls solely within the ambit of Article 212 of the Constitution of the Islamic Republic of Pakistan, 1973.
- n. Because the Appellant has suffered for no fault of their own and the entire premise of the case is based on the illegality of the respondents to the complete detriment of the Appellants.
- o. Because the Judgment of the Honorable Supreme Court reported as 2013 SCMR 1205 has been specifically violated. The same warrants action from this Honorable Tribunal.
- p. Because the Appellant crave for leave to add further grounds at the time of his oral arguments before this Hon'ble Court.

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highlighting further contraventions of the provisions of the Constitution & Laws.

P R A Y E R:

In view of the above, it is humbly prayed that this honorable Tribunal may graciously be pleased to:

- a) Declare that the Impugned transfer orders dated 22.03.2023 is issued illegally, unlawfully and without lawful authority and coram non iudice;
- b) Set aside the "Impugned transfer orders" dated 22.03.2023, as being illegal, unlawful and without lawful authority and reinstate the appellant to the post of Director Higher Education.
- c) Any other relief, in favor of the Appellant, deemed just and appropriate.

Interim Relief:

May it please this honorable court to so kindly suspend the operation of the Impugned transfer orders dated 22.03.2023 till the final disposal of instant Appeal.



Appellant

Through



(ALI GOHAR DURRANI)

Advocate High Court

0332-9297427

khaneliegohar@yahoo.com

Shah | Durrani | Khattak

(a registered law firm)

House No. 231-A, New Shami Road,
Peshawar.

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18

IN THE
HONOURABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Appeal No. _____/2023

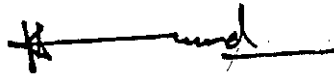
Prof. Khurshid Ahmad Vs. Govt. of KP & others

AFFIDAVIT

I, Prof. Khurshid Ahmad, Director Higher Education, Higher Education Department, Khyber Pakhtunkhwa do hereby solemnly declare and affirm on oath:-

That the enclosed appeal has been drafted under my instructions.

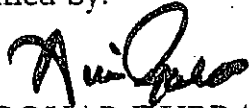
That I am personally conversant with the facts and circumstances of the case as contained therein. That the facts and circumstances mentioned in the enclosed appeal are true and correct to the best of my knowledge and belief.



Deponent

CNIC# 17301-4217928-9

Identified by:



ALI GOHAR DURRANI
Advocate High Court

~~NOT PREPARED
OR FILED COPY~~

18/A

IN THE
HONOURABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Appeal No. _____/2023

Prof. Khurshid Ahmad Vs. Govt. of KP & others

Memo Of Address:

Appellant:

Prof. Khurshid Ahmad (BS-20),
Professor, Government Degree College, Hayatabad, Peshawar

Respondents:

1. Government of Khyber Pakhtunkhwa
Through Chief Secretary to the Government of Khyber
Pakhtunkhwa,
Civil Secretariat, Peshawar.
2. Establishment Department, Government of Khyber
Pakhtunkhwa,
Through Secretary Establishment Department,
Civil Secretariat, Peshawar.
3. Higher Education Department, Government of Khyber
Pakhtunkhwa.
Through Secretary Higher Education Department,
Civil Secretariat, Peshawar.
4. Prof. Dr. Faridullah Shah
Director, Higher Education.

Appellant

Through



Ali Gohar Durrani
Advocate High Court.



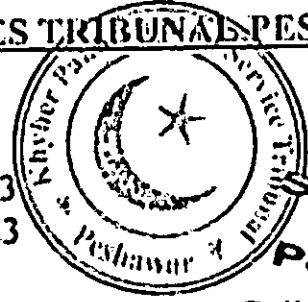
Annex
(D)

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

Service Appeal No. 1474/2023

Date of Institution ... 17.07.2023

Date of Decision... 22.09.2023



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KPST
Peshawar

Prof. Khurshid Ahmad (BS-20), Professor, Government Degree College,
Hayatabad, Peshawar.

... (Appellant)

VERSUS

The Government of Khyber Pakhtunkhwa, through Chief Secretary
Government of Khyber Pakhtunkhwa, Civil Secretariat Peshawar and 03
others.

... (Respondents)

MR. ALI GOHAR DURRANI,
Advocate

For appellant.

MR. ASIF MASOOD ALI SHAH,
Deputy District Attorney

For official respondents No. 1 to 3.

MR. MUHAMMAD ASIF YOUSAFZAI,
Advocate

For private respondent No. 4.

SALAH-UD-DIN
FAREEHA PAUL

MEMBER (JUDICIAL)
MEMBER (EXECUTIVE)

JUDGMENT:

SALAH-UD-DIN, MEMBER:- Precise facts forming the
background of the instant appeal are that the appellant was serving
as Director Higher Education Khyber Pakhtunkhwa, while private
respondent No. 4 was posted in Government Degree College
Hayatabad Peshawar. Vide the impugned Notification dated
22.03.2023, the appellant was transferred to Government Degree
College Hayatabad Peshawar, while private respondent No. 4 was
posted as Director Higher Education Khyber Pakhtunkhwa in
place of the appellant. The appellant being aggrieved of the
Notification dated 22.03.2023, challenged the same by way of

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Khyber Pakhtunkhwa
Services Tribunal

filing representation on 27.03.2023, however the same was not responded within the statutory period of 90 days, hence the instant appeal.

2. On receipt of the appeal and its admission to regular hearing, respondents were summoned. Official respondents appeared through their representative, while private respondent No. 4 also appeared and contested the appeal by way of filing respective replies raising therein numerous legal as well as factual objections.

3. Learned counsel for the appellant contended that the appellant was posted as Director Higher Education Khyber Pakhtunkhwa vide Notification dated 21.12.2022 but he was not allowed to complete his normal tenure and was pre-maturely transferred vide the impugned Notification dated 22.03.2023. He next contended that upon the dissolution of Khyber Pakhtunkhwa Assembly on 18.01.2023, Caretaker set-up was installed in the province and a posting/transfer summary was initiated, which resulted in transfer of private respondent No. 4 as Director Higher Education Khyber Pakhtunkhwa in place of the appellant. He further contended that there was no exigencies of service nor could the impugned posting/transfer Notification be termed to have been passed in the public interest rather the same had been issued in violation of the posting/transfer policy of the Provincial Government. He also argued that the impugned posting/transfer Notification was issued during the ban period for the purpose of

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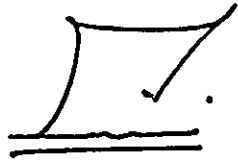
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Service Officer
Date: 21/03/23

posting private respondent No. 4 as Director Higher Education Khyber Pakhtunkhwa purely on political basis. He next contended that the impugned transfer/posting Notification was issued with mala-fide intention, therefore, the same is liable to be set-aside.

4. On the other hand, learned Deputy District Attorney for official respondents has argued that the impugned posting/transfer Notification was issued in the interest of public and in view of Section-10 of the Khyber Pakhtunkhwa Civil Servants Act, 1973, the appellant is having no vested right to remain posted on a desired post. He next contended that before issuing of impugned posting/transfer Notification, proper NOC was obtained from the Election Commission of Pakistan. In the last he requested that the impugned posting/transfer Notification may be kept intact and the appeal in hand may be dismissed with costs.

5. Learned counsel for private respondent No. 4 while placing reliance on the arguments of learned Deputy District Attorney has further contended that the appellant was previously assigned look after charge of the post of Director Higher Education Khyber Pakhtunkhwa vide order dated 09.12.2021, which was issued in violation of Government Instructions dated 07.12.2022 as contained in ESTA Code. He next contended that as per the seniority list of Professors BS-20 College Cadre, the appellant has been placed at serial No. 186, while private respondent No. 4



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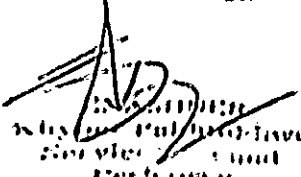
has been placed at serial No. 140 and the appellant thus could not be posted as Director, Higher Education Khyber Pakhtunkhwa for the reason that he is junior to private respondent No. 4. He further argued that the appellant has been transferred to Government Degree College Hayatabad Peshawar and none of his rights were violated. In the last he requested that the impugned Notification may be kept intact and the appeal in hand may be dismissed with costs.

6. We have heard the arguments of learned counsel for the parties and have perused the record.

7. A perusal of the record would show that the summery for posting/transfer of the appellant and private respondent No. 4 was submitted to the Caretaker Chief Minister Khyber Pakhtunkhwa on 01.02.2023 and vide para-6 of the summery, he had inquired about the tenure of the appellant and private respondent No. 4 on the positions held by them prior to the impugned posting/transfer Notification. Vide para-7 of the summery, the Secretary Higher Education provided the details of tenure of posting of the appellant and private respondent No. 4 as 02 months and 04 months respectively, however vide para-12 of the summery, the proposal of posting/transfer was approved by the Caretaker Chief Minister on 10.02.2023 and the impugned transfer/posting Notification was issued on 22.03.2023.

Similarly, copy of the summery submitted to the Chief Minister in respect of the representation/departamental appeal preferred by

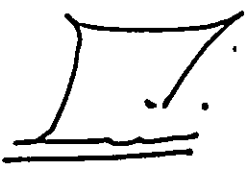
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the appellant against the impugned posting/transfer Notification dated 22.03.2023 is also available on the record. In para-12 of the afore-mentioned summery, the Chief Minister Khyber Pakhtunkhwa had observed that at no stage were adequate reasons given for transfer of these officers after such short tenures. The representation/departmental appeal of the appellant, however remained un-responded.

8. Keeping in view the material available on the record, it is an admitted fact that the appellant was pre-maturely transferred vide the impugned transfer/posting Notification dated 22.03.2023. According to Clause-iv of the Posting/Transfer Policy notified by the Provincial Government, the normal tenure of posting shall be two years. Similarly, Clause-i of the said policy prescribes that all postings /transfers shall be made strictly in public interest and shall not be abused misused to victimize the Government servants. The impugned posting/transfer Notification was issued in violation of Clauses-i & iv of the Posting/Transfer Policy notified by the Provincial Government. Supreme Court of Pakistan in its judgment reported as PLD 2013 Supreme Court 195 has held as below:-



"12. This Court, in a number of precedents has, interpreted and emphasized these very principles, some of which need to be reiterated at this point. Before that, however, we may note the precept and rule of public trust which forms the basis of this area of the law. This court has

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 CHIEF MINISTER
 KHYBER PAKHTUNKHWA
 SERVICE COMMISSION
 PESHAWAR

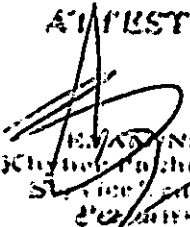
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repeatedly observed that "functionaries of the State are fiduciaries of the people and ultimately responsible to the people who are their pay masters." [Syed Yousaf Raza Gillani v. Assistant Registrar, (PLD 2012 SC 466) affirming Muhammad Yasin v. Federation of Pakistan]. Most recently, in the case relating to dual nationality of Parliamentarian, we have reiterated that "all State authority is in the nature of a 'sacred trust' and its bearers should therefore be seen as fiduciaries" (Mehmood Akhtar Naqvi v. Federation of Pakistan, Const. P.5/2012). One of the implications of this concept, highlighted in the case-law considered below, is that the matter of tenure, appointment, posting, transfer and promotion of civil servants cannot be dealt with in an arbitrary manner; it can only be sustained when it is in accordance with the law. Moreover, the use of the words 'in the public interest' in such matters are not fatuous or pointless, but emphasize the fiduciary nature of orders relating to tenure, posting, etc. Thus a proposed decision which deviates from the accepted or rule-based norms without proper justification, can be tested on the touchstone of a manifest public interest."

9. It has further been held in the above referred judgment that when the ordinary tenure for a posting has been specified in the law or rules made there-under, such tenure must be respected and cannot be varied, except for compelling reasons, which should be recorded in writing and are judicially reviewable.

10. Consequently, the appeal in hand is allowed by setting-aside the impugned Notification dated 22.03.2023 and the respondents


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 H. M. A. N. S. I. L.
 Chief Justice
 Service Tribunal
 Islamabad

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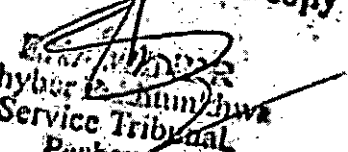
are directed to allow the appellant to complete his normal tenure on the post of Director Higher Education Khyber Pakhtunkhwa. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
22.09.2023


(SALAH-UD-DIN)
MEMBER (JUDICIAL)


(FAIZLEHA PAUL)
MEMBER (EXECUTIVE)

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Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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The Government of Khyber Pakhtunkhwa,
Through Chief Secretary Government of Khyber Pakhtunkhwa,
Civil Secretariat Peshawar.

2. Establishment Department, Govt. of Khyber Pakhtunkhwa.
Through Secretary Establishment, Government of Khyber
Pakhtunkhwa
Civil Secretariat, Peshawar.

3. Higher Education Department, Government of Khyber
Pakhtunkhwa.
Through Secretary Higher Education Department,
Civil Secretariat, Peshawar.

Subject:

AN APPLICATION FOR THE IMPLEMENTATION OF
JUDGMENT DATED 22-09-2023 IN SERVICE APPEAL
OF 2023 OF THE KHYBER PAKHTUNKHWA
TRIBUNAL, WHEREBY THE POSTING/ TRANSFER
DATED 22-03-2023 FROM THE POST OF DIRECTOR
EDUCATION, OF THE APPELLANT HAS BEEN SET
RESPECTFULLY SUBMITTED.

The Applicant most earnestly request to submit as under:

1. That the Applicant was serving as Director Higher Education
Pakhtunkhwa by virtue of the posting orders dated 21.12.2022.
Copy of transfer as Director Higher Education is Annex

2. That in violation of the tenure policy, the applicant was
transferred on 22-03-2023. The appellant in compliance of
orders relieved charge, and to challenge the transfer, he made
representation before the competent authority, and the same was
answered/responded to, preferred an appeal before the
Khyber Pakhtunkhwa Service Tribunal. The appeal was heard on
hearing before division bench of the Tribunal on 22/09/2023,
wherein the appeal was allowed.

Copy of the Judgment of the Khyber Pakhtunkhwa Service Tribunal
is attached herewith as Annex-B.

Annex-B.

3. That the applicant now submits the judgment of the
Tribunal dated 22/09/2023 for the consideration of the
competent authority.

on file
admittedly
2.16.2023

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To,

1. **The Government of Khyber Pakhtunkhwa,**
Through Chief Secretary Government of Khyber Pakhtunkhwa,
Civil Secretariat Peshawar.
2. **Establishment Department, Govt. of Khyber Pakhtunkhwa.**
Through Secretary Establishment, Government of Khyber
Pakhtunkhwa
Civil Secretariat, Peshawar.
3. **Higher Education Department, Government of Khyber
Pakhtunkhwa,**
Through Secretary Higher Education Department,
Civil Secretariat, Peshawar.

**Subject: AN APPLICATION FOR THE IMPLEMENTATION
OF THE JUDGMENT DATED 22-09-2023 IN SERVICE
APPEAL NO. 1474 OF 2023 OF THE KHYBER
PAKHTUNKHWA SERVICES TRIBUNAL, WHEREBY THE
POSTING/ TRANSFER ORDERS DATED 22-03-2023 FROM
THE POST OF DIRECTOR HIGHER EDUCATION, OF THE
APPELLANT HAS BEEN SET ASIDE
RESPECTFULLY SUBMITTED:**

The Applicant most earnestly request to submit as under:

1. That the Applicant was serving as Director Higher Education Khyber Pakhtunkhwa by virtue of the posting orders dated 21.12.2022.

Copy of transfer as Director Higher Education is Annex-A.

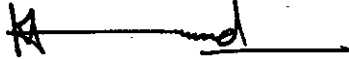
2. That in violation of the tenure policy, the applicant was ordered to be transferred on 22-03-2023. The appellant in compliance of the said orders relieved charge, and to challenge the same, preferred a representation before the competent authority, and as the same was not answered/responded to, preferred an appeal before the Worthy Khyber Pakhtunkhwa Service Tribunal. The appeal came up for hearing before division bench of the honorable tribunal on 22/09/2023, wherein the appeal was allowed.

Copy of the Judgment of the Khyber Pakhtunkhwa Service Tribunal is Annex-B.

3. That the applicant now submits the judgment of the Honorable Service Tribunal dated 22/09/2023 for the compliance of the directions rendered therein.

4. That proprietary demands that the judgment be forthwith complied with.

It is therefore most humbly requested that on the acceptance of this application, may it please your good-self to so kindly implement the judgment ibid and make compliance of the directions so rendered by the Worthy Tribunal.



Applicant

Prof. Khurshid Ahmad

POWER OF ATTORNEY

BEFORE THE

Service Tribunal

Peshawar No. *SANo. 1474* of 2023

Prof. Khurshid

VERSUS

Court 9 141

Respondent

I/we *Respondent* do hereby appoint & constitute **The Law Firm Of**
SHAH | DURRANI | KHATTAK

(a registered law firm) as counsel in the above mentioned case, to do all or any of the following acts, deeds and things:-

1. To appear, act and plead for me/us in the above mentioned case in this Court/Tribunal or any other court/tribunal in which the same may be tried or heard and any other proceedings arising out of or connected therewith.
2. To sign, verify and file Plaint/Written Statement or withdraw all proceedings, petitions, suit appeals, revision, review, affidavits and applications for compromise or withdrawal, or for submission to arbitration of the said case, or any other document, as may be deemed necessary or advisable by him for proper conduct, prosecution or defence of the said case at any stage.
3. To do and perform all other acts which may be deemed necessary or advisable during the course of the proceedings.

AND HEREBY AGREE:-

- a) To ratify whatever the said Advocates may do in the proceedings in my interest, Not to hold the Advocates responsible if the said case be proceeded ex-parte or dismissed in default in consequence of their absence from the Court/Tribunal when it is called for hearing or is decided against me/us.
- b) That the Advocates shall be entitled to withdraw from the prosecution of the said case if the whole OR any part of the agreed fee remains unpaid.

In witness whereof I/We have signed this Power of Attorney/Wakalat Nama hereunder the contents of which have been read/explained to me/us and fully understood by me / us this *16* day of *October* at *2023*.

[Signature]
Signature of Executant(s)

Accepted subject to term regarding payment of fee for/on behalf of The Law Firm of Shah | Durrani | Khattak.

[Signature]
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Sarah Aziz
Advocate District & Sessions Court(s)

Shah | Durrani | Khattak
(A registered law firm)

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