, 19.12.2022

Learned counsel for the appellant present. Mr. Muhammad Riaz Khan Paindakhel, Assistant Advocate General for the respondents present.

Learned counsel for the appellant seeks adjournment being not prepared for arguments today. Adjourned. To come up for arguments on 16.03.2023 before the D.B.



(Mian Muhammad) Member (E)

(Salah-Ud-Din) Member (J)

19th Oct., 2022

Junior to counsel for the appellant present. Mr. Kabirullah Khattak, Addl. AG for the respondents present.

Request for adjournment was made on behalf of learned counsel for the appellant due to his engagement in Honourable Peshawar High Court today. Last opportunity is granted To come up for arguments on 10.11.2022 before the D.B.

(Fareeha Paul) Member (E)

(Kalim Arshad Khan) Chairman

10.11.2022

Junior to counsel for the appellant present.

Kabir Ullah Khattak learned Additional Advocate General for the respondents present.

Former requested for adjournment on the ground that his senior counsel is busy before Hon'ble Peshawar High Court. Another last chance is given. To come up for arguments on 19.12.2022 before the D.B.



(Fareeha Paul) Member (E)

(Rozina Rehman) Member (J)

25th July 2022

2 Appellant in person present. Mr. Kabirullah Khattak, Additional Advocate General for the respondents present.

Appellant requested for adjournment on the ground that his counsel is not available today. To come up for arguments on 10.10.2022 before the D.B.

(Salah-Ud-Din) Member (J)

(Kalim Arshad Khan) Chairman

10.10.2022

Mr. Taimur Ali Khan, Advocate for the appellant present. Mr. Fazal . Khaliq, ADEO (Litigation) alongwith Mr. Muhammad Riaz Khan Paindakhel, Assistant Advocate General for the respondents present.

Arguments heard. To come up for order before the D.B on 13.10.2022.

(Mian Muhammad) Member (E)

13.10.2022

Learned counsel for the appellant present. Mr. Muhammad Riaz Khan Paindakhel, 'Assistant Advocate General for the respondents present.

Further legal assistance is needed on certain points, therefore,

to come up for re-arguments on 19.10.2022 before the D.B.

(Mian Muhammad) Member (E) (Salah-Ud-Din) Member (J)

(Salah-Ud-Din)

Member (J)

14.02.2022

Due to retirement of the Worthy Chairman, the Tribunal is defunct, therefore, case is adjourned to 01.06.2022 for the same as before.

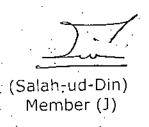
01.06.2022

Mr. Taimur Ali Khan, Advocate junior of learned counsel for the appellant present. Mr. Noor Zaman Khattak, District Attorney alongwith Mr. Fazle khaliq, ADO for the respondents present.

Junior of learned counsel for the appellant requested for adjournment on the ground that learned counsel for the appellant is busy in the august Peshawar High Court, Peshawar. Adjourned. To come up for arguments on 25.07.2022 before D.B.

(Mian Muhammad) Member (E) (Salah-ud-Din) Member (J) Syed Noman Ali Bukhari, junior of learned counsel for the appellant present. Mr. Kabirullah Khattak, Additional Advocate General for the respondents present.

Junior of learned counsel for the appellant seeks adjournment on the ground that learned senior counsel for the appellant is busy before the august Peshawar High Court, Peshawar. Adjourned. Case to come up for arguments on 05:01.2022 before the D.B.



05.01.2022.

06.12 2021

Learned counsel for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney alongwith Mr. Fazle Khaliq ADO and Mr. Ghusullah Jan Senior Auditor for respondents present.

Former made a request for adjournment as he has not prepared. the brief. Adjourned. To come up for arguments before the D.B on 14.02.2022.

(Atiq-Ur-Rehman Wazir) Member (E)

1.25

Chai

14055/20

27.05.2021

Stipulated the bus possed. Reply of Respondent NO04 & 05 has not been sub-utted. Junior to counsel for the appellant and Mr. Javaidullah, Asstt. AG for the respondents present.

Respondents have not furnished Reply/comments. Learned AAG is required to contact the respondents for submission of written reply/comments in office within 10 days, positively. If the written reply/ comments are not submitted within the stipulated time, the office is required to submit the file with a report of noncompliance. File to come up for arguments on 17.09.2021 before the D.B.

Chairmar

P.S

08.06.2021 Learned Addl. A.G be reminded about the omission and for submission of reply within extended time of 10

days.

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17.09.2021

Mr. Taimur Ali Khan, Advocate for the appellant present. Mr. Kabirullah Khattak, Additional Advocate General for the respondents present.

Learned counsel for the appellant submitted rejoinder, copy of which is handed over to the learned Additional Advocate General. Learned counsel for the appellant sought time for preparation. Adjourned. To come up for arguments before the D.B on 06.12.2021

(ATIQ UR REHMAN WAZIR) MEMBER (EXECUTIVE)

(SALAH UD DIN) MEMBER (JUDICIAL)

A.J

29.12.2020

Appellant Deposited Security & Process Fee Learned counsel for the appellant present.

Preliminary arguments heard.

Points raised need consideration. The appeal is admitted to regular hearing subject to all just exceptions. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for submission of written reply/comments on 22.03.2021 before S.B.

(Atig-Ur-Rehman Wazir) Member (E)

(SALAH-UD-DIN) MEMBER (JUDICIAL)

22.03.2021

Counsel for the appellant present. M/S Fazle Khaliq, ADEO (Litigation) on behalf of respondents No. 1 to 3, Ghoos Ullah Jan, Senior Auditor on behalf of respondent No. 4 and Naseeb Khan, Section officer on behalf of respondent No. 5 alongwith Mr. Kabirullah Khattak, Additional Advocate General present.

Representative of respondents No. 1 to 3 submitted parawise comments on behalf of the said respondents, which are placed on file, while representatives of respondents No. 4 & 5 are seeking further time for submission of written reply/comments. Adjourned. To come up for written reply/comments on behalf of respondents No. 4 & 5 on 27.05.2021 before S.B.



Form- Λ

FORM OF ORDER SHEET

<u>Ş</u>.,

	Case No	14055 12020
S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	09/11/2020	The appeal of Mr. Kifayatullah resubmitted today by Mr. Muhammad Asif Yousafzai Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.
2-	· · ·	This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>29)Doo</u> . CHAIRMAN

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The appeal of Mr.Kifayat Ullah retired SPST GPS Wali Baz Khan Korna Bamkhe Swabi received today i.e. on 29.10.2020 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

Annexures B, F, H and I of the appeal are illegible which may be replaced by legible/better one.

No. 378/__/S.T,

A.

Dt.<u>29/10</u>/2020.

REGISTRAR SERVICE TRIBUNAL **KHYBER PAKHTUNKHWA**

PESHAWAR.

Mr. M.Asif Yousafzai Adv. Pesh.

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17.09.2021

Mr. Taimur Ali Khan, Advocate for the appellant present. Mr. Kabirullah Khattak, Additional Advocate General for the respondents present.

Learned counsel for the appellant submitted rejoinder, copy of which is handed over to the learned Additional Advocate General. Learned counsel for the appellant sought time for preparation. Adjourned. To come up for arguments before the D.B on 06.12.2021

(ATIQ UR REHMAN WAZIR) MEMBER (EXECUTIVE)

(SALAH UD DIN) MEMBER (JUDICIAL)

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

14055

APPEAL NO.____/2020

Kifayat Ullah

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V/S^{L}

Education Deptt:

INDEX	

S.NO.	DOCUMENTS	ANNEXURE .	PAGE
1.	Memo of Appeal		01-04
2	Copies of application and order dated 02.09.2019	A&B	05-06
3.	Copy of application, deposit bank Challan slip and attendance register	C,D&E	07-27
4.	Copies of letter dated 13.01.2020 and 21.02.2020	F&G	28-29
5.	Copies of inquiry report and notification dated 11.06.2020	H&I	30-31
6	Copy of departmental appeal	- J	32-34
7.	Vakalat Nama		. 35 •

APPELLANT

THROUGH:

And hay'

M. ASIF YOUSAFZAI ADVOCATE SUPREME COURT

(TAIMUR ALI KHAN) ADVOCATE HIGH COURT,

(S. NOMAN ALI BUKHRI) ADVOCATE HIGH COURT &

SHAHKAR KHAN YOUSAFZAI ADVOCATE

Room No. Fr-8, 4th Floor, Bilour Plaza, Peshawar Cantt: Contact No. 03339103240

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

<u>APPEAL NO. /2020</u>

Kifayat Ullah, Retired SPST (PBS-14) * GPS, Wali Baz Khan Korona Bamkhel, Swabi.

(APPELLANT)

VERSUS

- 1. The Secretary (E&SE) Khyber Pakhtunkhwa, Peshawar.
- 2. The Director (E&SE) Khyber Pakhtunkhwa, Peshawar.
- 3. The District Education Officer (Male) Swabi.
- 4. The district Account Officer, Peshawar.
- 5. The Secretary Finance Khyber Pakhtunkhwa, Peshawar.

(RESPONDENTS)

APPEAL UNDER SECTION 4 OF THE KPK SERVICE . TRIBUNALS ACT, 1974 AGAINST THE ORDER DATED 02.09.2019, WHEREBY THE APPELLANT WAS RETIRED WITH EFFECT FROM 30.07.2019 AND AGAINST THE ORDER DATED 11.06.2020, WHEREBY THE APPLICATION FOR WITHDRAWAL/CANCELLATION OF RETIREMENT HAS BEEN REJECTED AND AGAINST NOT TAKING ACTION ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN THE STIPULATED PERIOD OF NINETY DAYS.

PRAYER:

THAT ON THE ACCEPTANCE OF THIS APPEAL, THE ORDER DATED 02.09.2019 AND 11.06.2020 MAY KINDLY BE SET ASIDE AND THE APPELLANT MAY BE REINSTATED INTO SERVICE WITH ALL BACK AND CONSEQUENTIAL BENEFITS. THE RESPONDENTS MAY FURTHER BE DIRECTED TO RELEASE SALARIES OF THE APPELLANT WITH EFFECT FROM 01.08.2019 TILL 31.12.2019 AS HE HAS PERFORMED DUTY WITH EFFECT FROM 01.08.2019 TILL 31.12.2019 ON THE DIRECTION OF RESPONDENT NO.3. ANY OTHER REMEDY, WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT, MAY ALSO, BE AWARDED IN FAVOUR OF APPELLANT.

RESPECTFULLY SHEWETH:

FACTS:

- 1. That the appellant was appointed on the post of Naib Qasid on13.04. 1993 and then appointed on the post PST (then PTC) on 21.10.2004 and with the passage of time promoted to the post of SPST (BPS-14) in the year 2014 and since his appointment the appellant has performed his duty with great devotion and honesty whatsoever assigned to him.
- 2. That due to domestic problem the appellant filed an application for early retirement on 21.08.2019 and on the basis of his application, the appellant was retired from service vide order dated 02.09.2019 with effect from 30.07.2019 without availing the benefits of encashment of leave in lieu of LPR due to non completion of 26-years qualifying service. (Copies of application and order dated 02.09.2019 are attached as Annexure-A&B)
- 3. That the appellant then filed application on 13.09.2019 for cancellation/withdrawal of his early retirement and on his application the respondent No.3 told the appellant that his cancellation/withdrawal, application for retirement will be accepted. and directed the appellant to came to school for duty and also directed him to deposit commutation and pension which he has already withdrawn and on the direction of respondent No.3 the appellant deposited his commutation and pension and also started teaching in the concerned school and thought in the school till December 2019. which is evident from the attendance register of the teachers. (Copy of application, deposit bank Challan slip and attendance register are attached as Annexure-C,D&E)
- 4. That on his application respondent No.3 wrote a letter dated 13.01.2020 to respondent No.2 for guidance regarding withdrawal of retirement after sanction/ starting of pension on which he replied vide letter dated 21.02.2020 to deal the case at your own level as per rules and policy being a competent authority. (Copies of letter dated 13.01.2020 and 21.02.2020 are attached as Annexure-F&G)
- 5. That the respondent No.2 constituted the inquiry committee to decide the issue of cancellation application of the appellant. The inquiry committee conducted the inquiry on the issue and gave its conclusion that if the appellant was reinstated in his service it would became a precedent for others, which may cause trouble for the department, he has refunded a big amount of Rs. 1512551/- with the direction of high ups as the appellant stated before inquiry/scrutiny on May 11, 2020. Now if he was not reinstated in service, it would be difficult to refund the amount back to him and in intervening period he consistently attend school but neither IMU nor Education Officer took notice of it, while he was officially declared as retired person and the respondent No.3 without observing the comments of inquiry committee and without assurance to the appellant of his withdrawal of retirement

rejected the withdrawal application vide notification dated 11.06.2020. (Copies of inquiry report and notification dated 11.06.2020 are attached as Annexure- H&I).

- 6. That the appellant then filed departmental appeal on 07.07.2020 which was not responded within the statutory period of ninety days. (Copy of departmental appeal is attached as Annexure-J)
- 7. That now the appellant has no other remedy except to file this service appeal in this august Service Tribunal on the following grounds amongst others.

GROUNDS:

- A) That the impugned orders dated 02.09.2019 and 11.06.2020 and not taking action on the departmental appeal of the appellant are against the law, facts, norms of justice and material on record, therefore not tenable and liable to be set aside.
- B) That the appellant has filed application for early retirement on 21.08.2019, while he was retired from on 30.07.2019 vide order 02.09.2019, which shows that the retirement order passed with retrospective effect and such like orders have no effect and null and void-ib-initio.
- C) That the appellant has filed application for early retirement on 21.08.2019, while he was retired from on 30.07.2019 vide order 02.09.2019, which shows that he was retired before filling application for retirement which is not permissible under the law.
- D) That the appellant has filed application on 13.09.2019 for cancellation of his early retirement and on his application the respondent No.3 told the appellant that his cancellation application for retirement will be accepted and directed the appellant to came to school for duty and also directed him to deposit commutation and pension which he has already withdrawn and on the direction of respondent No.3 the appellant deposited his commutation and pension and also started teaching in the concerned school and thought in the school till December 2019, which shows that the appellant has worked for 5-months and also deposited his commutation and pension and he did it on the direction his high ups and has legitimate expectancy for withdrawal of his retirement order.
- E) That the inquiry committee also committed in the favour of the appellant but despite that respondent No.3 rejected his application

without observing comments of the committee and assurance given by him of withdrawal of his retirement.

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- F) That the appellant has already/deposited commutation & pension vide receipt/challan dated 11/05/2020 on the direction of respondent No. 3 but despite that the appellant has been made to suffer.
- G) That even benefits of leave encashment of leave in lieu of LPR has not been given to the appellant which also shows the malafide of respondent department.
- H) That the appellant seeks permission to advance others grounds and proofs at the time of hearing.

It is, therefore most humbly prayed that the appeal of the appellant may be accepted as prayed for.

THROUGH:

APPELLANT Kifayat Ullah

M. ASIF YOUSAEZAI ADVOCATE SUPREME GOURT

(TAIMUR ALT KHAN) ADVOCATE HIGH COURT,

> (S. NOMAN ALI BUKHRI) ADVOCATE HIGH COURT &

SHAHKAR KHAN YOUSAFZAI ADVOCATE

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OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) SWABI

Email address: emis_swittle, attution_Phil 0938-280239

RETIREMENT ORDER (To be substituted with same No & date)

Senction is hereby accorded to the grant of premature Refirements from Govt, service in r/o Mr, Kifdyat Ullah SPST GPS Wali Baz, Khan Koroona Barn khel (Swabi) w.o.f <u>30-07-2019 (A.N)</u> without availing the benefit of encashment of leave in here of LPR due to non-completion of 26-year qualifying service.

<u>Note:</u>

Entry to this effect should be made in his Service books & leave account.

DISTRICT

IMALE

(NISAR MUHAMMAD) DISTRICT EDUCATION OFFICER MALE) SWARI

ON OFFICER

WAB

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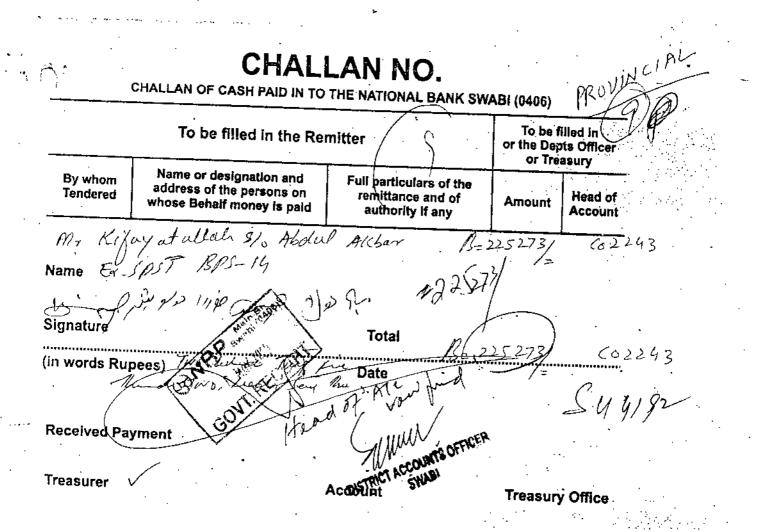
- 1. District Accounts Officer Swabi.
- 2 District Monitoring Officer Savabi.
- 3. SDEO (Male) Swabi a/w original S/Book
- 4. EMIS Cell local office.
- 5. Official Concerned.

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With due respect it is sated that this office wants to draw your kind sottention towards an issue facing by this office on the subject cited above. A teacher named Mr. <u>Kifayat Ullah</u> SPS1 of GPS Wali Bar Khan koronn Bam Khel (Swabi) applied for premature retirement w.e., 30-07-21. 9 and an order issued at his favor vide this office order No.11258-62/Dated: 02-09-2019 (copy attached) His pension & other grants like B/F, RBSDC, G.P.Fund and eer etc. have also been processed to the concerned offices/departments. Apart from this the District account office Swabi has started monthly pension regularly from date of retirement and a cheque of commutation has also been issued in his lavar, though according to him not yet cashed.

Now, he wants to withdraw the retirement and ion and ion duty as SPST again. He raised an application and ready to return any amount paid to film in this regard. This office is in a vague whether to cancel this order or otherwise.

Therefore, it is humbly requested that an opinion from your esteemed office and from office of the Accountant General Khyber Pakhtunkhwa Peshawar is required in this regard with masks.

DISTRICT ENDEATION OFFICER

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The District Education Male Swabir SUBMIBLING **XIFAYATULIAN**

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subject:-

In reference to your letter No. 3251 57 dated 28/5/2020, it is here by stated that the committee constituted by your office has probed into the said matter and has summarized the whole matter as thus,

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- In pursuance of his specific request, Mr. Kifayatulah Ex. SPST BPS 14 was allowed pre-mature retirement from service by DEO (Male) Swabi under Endost: No.11258-62, dated 02-09-2019 on domestic ground vide application for retirement dated 01-08-2019. Annexure (A
- In his application dated 13/9/2019, Mr. Kifayatullah Ex-SPST BRS-14 has stated in he has been ethas therefore able to settle his family affairs and is now in the position to resume his service. requested that his Pre-Mature retirement be cancelled and he be allowed to resume duty to complete his service tenore. Annexure (B)
- > During his intervening period, he has regularly sattended school and CPD trainings while he was officially declared assettired person. Statement of the flead teacher and a photocopy of teacher attendance register is attached herewith. Annexure (C&D).
- 1. We have scrutinized the application submit by the employee for the withdrawal of his retirement order and reinstatement in service and found that no dairy number is given to the application in the DEO (Male) office, secondly, no correspondence was made within the office, thirdly, the applicant did not follow the proper channel in submitting his application,
- 2. He has availed commutation of Rs.12, 87278/- under Cheque No.1777575 dated 17/10/2019. He has also availed monthly pension Rs.225273/- and EEF of Rs.30000/- under Cheque No.1359981544 dated 18-11-2019, which is still not cashed by the employee and has thus expired, but Mr. Kifayatuliah has refunded all benefits he has availed so far. He refunded commutation Rs 1287278/- under Challan No.1 dated 11-5-2020 and pension amount of Rs 225273/- under
- 3. We have sought the notification issued by the inance pepariments mature. Annexure (I)
- 4. Comments:-
- A. If Mr. Kifayatullah is reinstated in his service it would become a precedent for others, which may cause trouble for the Department. 1 1
- B. He has refunded a big amount of Rs.1512551 with the direction of high ups as he stated, before inquiry/ Scrutiny on May 11, 2020. Now if he is not reinstated in service, it would be difficult to refund the amount back to him.
 - C. In intervening period he consistently attended school but neither IMU nor Education. Officers took while he was officially declared as retired person.

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Lagwearnus Hao Principal GHSS Sheikh Jana to Munamimab Principal LHS Sheikh Oheri ٥

EDUCATION OFFICER (M OFFICE OF

- NOTIFICAT
- WHEREAS, Mr. Kilayatullah SPST, GPS Wali Baz Koroona submitted an application on 21/8/2019 duly forwarded by Head Teacher and ASDEO concerned for pre-mature retirement.

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- 2. AND WHEREAS, the then DEO (M) after accepting his request, accorded sanction for pre-mature retirement w.e.f 30-7-2019 vide Endst No. 11258-62/Retirement File No.1/Vol:11/PST Dated 02/09/2019.
- 3. AND WHEREAS, the official concerned submitted pension papers duly forwarded by the SDEO (M) concerned for final payment and other pensionary benefits which were further forwarded to DAO office Swabi.
- 4. AND WHEREAS, the DAO Swabi after processing his pension case issued commutation cheque on 17/10/2019 as well as regular monthly pension thenceforth.
- 5. AND WHEREAS, the teacher concerned submitted another application for cancellation/withdrawl of his retirement order on 18/10/2019.
- 6. AND WHEREAS, an inquiry committee was constituted comprising of Mr. Tagweem UI Hag Principal GHSS Sheikh Jana and Fida Mohammad Principal GHS Sheikh Dheri vide Notification No. 3251-57 Dated: 28/05/2020 to look into the matter and submit/propose recommendations thereof.
- 7. AND WHEREAS, The committee after thorough perusal and examining the relevant record submitted inquiry report and recommended that his case has got matured hence attained finality in the light of Finance Department Letter No. FD(SOSR-II)/4-36/2018 dated 5/09/2018 which cannot be withdrawn being a closed transaction.
- 8. AND WHEREAS the Competent Authority (District Education Officer (M) Swabi) after having considered the evidences and recommendations of the inquiry committee, is of the view that retirement sanction in respect of Kifayatullah Ex-SPST GPS Wali Baz Koroona is matured and has oot finality.
- 9 NOW, THEREFORE, I Muhammad Idrees, District Education Officer (M) Swabi as Competent Authority is pleased to reject his request for withdrawl of retirement sanction as recommended by the inquiry committee.

Date Endst; No

Copy for information to ;-

- Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.
- 1. District Monitoring Officer Swabi.
- 2 District Accounts Officer Swabi.
- 3. SDEO (M) Swabi.
- 4. Teachers Concerned.
- 5. Master File. 6.

DISTRICT EDUCATION OFFICER (M) CIMARI

(DR. MUHAMMAD IDREES) DISTRICT EDUCATION OFFICER (M) SWABL

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صبى تسلى كالم معدل رمد حورصه معى تعى وسيس خرج الخبراج الرخ صلی جمع مراف کی لوک سے ادخا تھے افس محصر الی طری حیاراتی الم التي المركم المالية من المد تحدث ولا مسكان على على على المالية مير ملين الجليد دوسي في من مسي شريس في تسييري to D.E. o. the man and a sine and a ciolo عامیا با مد دوسری تینی بنا و تفاحر مدیاها / اندور یه کا سنار ۲ ج سر الارس المرمن سائل المل وف الم الدود فراس معد 27 22 کر ازری منارکی شماری مربعی ارد -المسياط معنى رفي دمى مس دور مرك معدن دور من معدن معدن معدن معدن من المال المال المعالي المحال في تعالى وهذا المعالي ولا المعالية المراجل مع مر مر من معالي المعالي مرد المن سالي كراني when to be ille ~ S.PST on contractioned the fiel fil Cit WINS NO. EX. S. PST. WINCH -0302-5888455. Uje

VAKALAT NAMA

NO.____ /2020

IN THE COURT OF KP Service Tribunal	Peshawar.
Kifayat Ullah VERSUS	(Appellant) (Petitioner) (Plaintiff)
Education Defst etc.	(Respondent) (Defendant)
I/WE, <u>Bifayat Ullah</u>	

Do hereby appoint and constitute *M. Asif Yousafzai, Advocate Supreme Court Peshawar,* to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate/Counsel on my/our costs.

I/We authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter. The Advocate/Counsel is also at liberty to leave my/our case at any stage of the proceedings, if his any fee left unpaid or is outstanding against me/us.

Dated /2020

· (CLIENT)

ACCEPTED

M. ASIF YOUSAFZAI Advocate Supreme Court Peshawar.

(TAIMUR ALI KHAN) Advocate High Court Peshawar

(SYED NOMAN ALI BUKHARI) Advocate High Court Peshawar

S. Khanz (SHAHKAR KHAN YOUSAFZAI) ADVOCATE PESHAWAR

OFFICE:

Room # FR-8, 4th Floor, Bilour Plaza, Peshawar, Cantt: Peshawar Cell: (0333-9103240)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Appeal No. 14055/2020

 $\cdot V/S$

Biary No. 3259

Kifayat Ullah

Education Department.

SCANNED KPST Poshawar

APPLICATION FOR FIXING OF AN EARLY DATE OF HEARING IN THE ABOVE TITLED INSTEAD OF 16.03.2023

RESPECTFULLY SHEWETH:

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- That the appellant has filed appeal against the order dated 02.09.2019, whereby the appellant was retired from service with effect from 30.07.2019 and against the order dated 11.06.2020 whereby the application for cancellation of retirement has been rejected.
- 2. That the instant appeal was fixed on 19.12.2022, however the case was adjourned and the next fixed in the instant appeal is 16.9.2023, which is too long.
- 3. That the main issue in the appeal is regarding the preretirement from service of the appellant. The appellant is facing great hardships in shape of unemployment due to which the whole family is suffering a lot.

4. That it is interest of justice to fix the instant appeal on any early date instead of 16.03.2023.

It is, therefore, most humbly prayed that the appeal is hand may kindly be fixed on an early date instead of 16.03.2023 to meet the ends of justice.

THROUGH:

APPELLANT

(TAIMUR ALI KHAN) **ADVOCATE HIGH COURT**

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Appeal No. /2020

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APPELLANT

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 14055 of 2020

Kifayat Ullah, Retired SPST (BPS-14) GPS Wali Baz Khan Korona, Bamkhel (Swabi) ------Appelant.

- 1. Secretary E&SED Khyber Pakhtunkhwa Peshawar.
- 2. Director E&SE Khyber Pakhtunkhwa Peshawar.
- 3. District Education Officer (E&SE) Male Swabi.
- 4. District Accounts Officer Swabi.
- 5. The Secretary Finance Khyber Pakhtunkhwa Peshawar------Respondents

S.No	Description of documents	Annexure	Page
1	Para-wise comments with Affidavit		1-4
2	Revised Leave Rules, 1981	A	5-14
3	Retirement Order	A1	15
4	Finance department letter	В	16
5	Enquiry letter	С	17-18
6	Appeal rejection notification	C1	19
7	2007-PLC(CS)718	D	20-24
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11	Letter of Secretary E&SE to Secretary Finance	Н	31

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DISTRICT EDUCATION OFFICER (MALE) SWABI

District Education Officer (Maje) Swabi.

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- 4. District Accounts Officer Swabi.
- 5. The Secretary Finance Khyber Pakhtunkhwa Peshawar------**Respondents** Parawise Comments on behalf of Respondents No. 1,2 & 3.

Respectfully Sheweth,

Preliminary Objections:

- 1. That the appellant retired from service on his own application/request, which was accepted and the same had attained finality, being a passed and closed transaction, received all the pensionary benefits and now desire to withdraw the option, hence the appeal is not maintainable.
- 2. That the departmental appeal is badly time bard and hit by the Principle of latches, hence not maintainable and is liable to be dismissed.
- 3. That the appellant has not come to the tribunal with clean hands.
- 4. That the appellant has concealed the material facts from the honorable tribunal.
- 5. That the appellant has no local standi or cause of action to file the instant appeal.
- 6. That the appellant has filed the instant appeal just to pressurize the respondents.
- 7. That the appellant is estopped by his own conduct to file the instant appeal.
- 8. The appeal is bad for misjoinder and non-joinder of necessary party.
- 9. That the appeal is not maintainable in the present form and also in the present circumstances of the issue.
- 10.That no scope of repeated appeals/representation is available to the civil servant and the period of limitation could not be extended by repeated representations, hence the instant appeal is not maintainable.

Facts:

- 1. Admitted to the extent that the appellant was initially appointed on the post of Naib Qasid on 13-04-1993and then appointed against the primary school teacher (PST) dated 21-10-2004. After that he was promoted to the post of SPST. (BPS-14) in the year 2014. It is mandatory for each and every Govt. servant to perform his duties upto the entire satisfaction of his superiors, because he is paid for his services from the national exchequer.
- 2. That the appellant himself admits, that due to domestic problems the appellant filed an application for premature retirement on 21-08-2019 and on the basis of his application, the appellant was retired from service vide order dated: 02-09-2019 w.e.f 30-07-2019. According to the Govt. of Khyber

Pakhtunkhwa revised leave rules, 1981 rule-20 (4) clarification vide No. FD.SO(SR-IV) 5-54/80/Vol:II, Dated: 20-11-1986, "the civil servants seeking retirement on voluntary basis should be treated equally and the option should not be necessary if they want to encash their LPR. However, a civil servant who wants to proceed on retiring pension shall have to wait for 365days after qualifying service of 25-years for the purpose of encashment of LPR.

COMMENTARY:

Under the above clarification, encashment of LPR is admissible on completion of 26-years qualifying service".

The appellant only completed 25-years qualifying service, which is less than 26-years qualifying service, therefore, the appellant is not entitled for the benefits of encashment of leave in lieu of LPR. Govt. of Khyber Pakhtunkhwa Revised Leave Rules 1981 annexed as "A".

- 3. Incorrect hence strongly denied. The respondent No.3 did not tell the appellant that his cancellation/withdrawal of application for retirement would be accepted. The respondent did not direct the appellant to come to school for duty. Furthermore, the respondent did not direct him to deposit commutation and pension which he has already withdrawn. The statement of the appellant that on the direction of respondent No.3 he deposited his commutation and pension and also started teaching in the concerned school and taught in the school till December 2019, is false, conjectural and ludicrous. The attendance he annexed is self-made. According to the appellant, he filed an application on 13-9-2019 while his attendance in the annexed page of attendance register is also existed before 13-09-2019, on whom direction the appellant marked this attendance. The appellant is talking argy bargy. No proper and valid request has been made for any right he is seeking. The appeal he claims is doubtful, incomplete, manipulated and consists of concealment of facts.
- 4. Admitted to the extent that the respondent No.3 wrote a letter dated 13-01-2020 to respondent No.2 for guidance regarding withdrawal of retirement after sanction/starting of pension on which he replied vide letter dated 21-02-2020 to deal the case at your own level as per rules and policy being a competent authority. It cannot be ignored that a civil servant though had a right to withdraw the option before its acceptance but not thereafter. Since the same had attained finality being a passed and closed transaction, pursuant whereto he admittedly had received all the pensionary benefits. He is not entitle for re-instatement.
- 5. That appellant claims he filed an application for cancellation of his premature retirement on 13-9-2019 annexed as "C" with page 7 of the appeal and then he filed an application annexed as "J" with page 32 of the appeal for re-instatement. Thus he made a repetitive departmental appeals, which has not legal effect. As there is, "no scope for repeated appeals/representations available to the civil servants and the period of limitations could not be extended by the repeated representations". The same is reported in 2001-SCMR 912, 2004 SCMR 497, 2009 PLC(cs)89 and 2007 PLC (cs) 15 that the appeal of appellant has not legal effect and service appeal is badly time bar the bar the enquiry report of the enquiry committee is

self explanatory. The committee stressed on the notification issued by Finance department and concluded that the case of the appellant is mature. As per this notification he or she may withdraw his/her option of voluntary retirement before the retirement matures. As per reported Judgment 2007 PLC.(CS) 718, Art.212 Estacode, chapter No.X serial NO.7 civil servant had sought premature retirement upon completion of 25-years of qualifying service for health reason which request was eventually accepted by notification dated 30-03-2000. Civil servant subsequently acclaimed to have withdraw the option throught kiter dated 29-3-2000 addressed to the competent authority alleged to have been received the same day i.e a day prior to acceptance notification, seeking recalling of the notification of his premature retirement which request was turned down.validity. Civil servant though had a right to withdraw the option before its acceptance but not thereafter, since the same has attained finality being a passed and closed transaction, pursuant whereto he admittedly received all the pensionary benefits. Thus the appellant is not entitled to be re-instated in service. The respondent No.3 rightly rejected the withdrawal of retirement application of the appellant. Finance department letter, enquiry report and reported Judgment 2007 PLC (CS) 718 are annexed as "B", "C" & "D".

- 6. That according to his own statement he filed repetitive appeals, representations, which are badly time bard and having no legal effect.
- 7. The appellant estopped by his own conduct to file the instant appeal. He is not an aggrieved person at all. Therefore, he has no cause of action to file the instant appeal and the appeal in hand is liable to be dismissed inter-alia amongst the following grounds.

GROUNDS:

- A. Incorrect hence denied the impugned order 02-09-2019 was issued on the request of appellant. Furthermore, there is no other order dated 11-6-2020 existed anywhere in the whole draft of the appeal. The time bard appeal of the appellant with subject, "appeal for withdrawal of retirement notification" was processed and sent to the Secretary Govt. of Khyber Pakhtunkhwa Finance department for guidance dated 9-10-2020 but without receiving any guidance from the competent authority the appellant filed, the instant appeal which is illegal. The act of the respondents is in accordance with law, facts, norms of justice and material on record. Therefore, is liable to be accepted. Letter to DEO Male Swabi to Director E&SE KP, letter of Director E&SE KP to Secretary E&SED KP and letter of Secretary E&SED to Secretary Govt. of KP Finance Department are annexed as "E, F, G & H".
- B. Incorrect hence denied that the appellant has filed application for premature retirement on 21-8-2019 and was retired from service on 30-07-2019 vide order dated 02-09-2019 on the request of the appellant. His age was less than 55-years, that is why he was retired from service on 30-07-2019 on his own request. The appellant is talking argy-bargy just for the creation of his right falsely.
- C. Incorrect, hence denied. The appellant was retired from service on his own request dated 30-07-2019.
- D. Incorrect, hence strongly denied. The appellant was retired on his own wish and request. He accepted all the terms and conditions of the retirement order without anyagitation. After receiving all the pensionary benefits, when he

knew that encashment of LPR admissible on completion of 26-years of qualifying service but his qualifying service was 25-years, therefore, he was not paid encashment of LPR. Thus the appellant started hue and cry for creating of his right of encashment of LPR in the shape of re-instatement. He did not work for a single day at all. He planted self-made story which has no legal effect at all.

- E. Incorrect, hence denied. The enquiry committee quoted a finance department notification and concluded that his case is mature. In their recommendations they said "if the appellant is re-instated in his service it would become a precedent for others which may cause trouble for the department" thus nothing is existed in favor of the appellant in the enquiry report. Thus the respondent No.3 rightly rejected his application for withdrawal of his retirement. It is a settled law that ill-gotten gain cannot be made a precedent.
- F. Incorrect, hence denied. The respondent No.3 did not direct him to deposit commutation or pension. It is fabricated and a self-made planted story of the appellant.
- G. Incorrect, hence denied. Encashment of LPR is admissible on completion of 26-years qualifying service while the qualifying service of the appellant was 25-years, thus he was not paid encashment of LPR rightly.
- H. That the respondents seek permission to raise/argue other points/grounds on the day of hearing this appeal.
 - In view of the above stated submissions it is earnestly requested that the appeal may very graciously be dismissed with cost in favor of respondents.

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DISTRICT EDUCATION OFFICER MALE SWABI

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OR E&SE

Khyber Pakhtunkhwa Peshawar Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshcwar

AFFIDAVIT

SECRETAF

E&SED Khyber Pakhtunkhwa Peshawar.

I do hereby solemnly affirm and declare on oath that the contents of the para-wise comments are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable tribunal or misstated.

DISTRICT EDUCATION OFFICER (MALE) SWABI

Annexuse - A

CHAPTER-7

GOVERNMENT OF KHYBER PAKHTUNKHWA REVISED LEAVE RULES, 1981

Notified vide No. FD SO(SR-IV)5-54/80(Vol-II) dated 17.12.1981 (Amended Up-to-date)

1. Short title, commencement and application. (i) These rules may be called The Khyber Pakhtunkhwa Civil Servants Revised Leave Rules, 1981.

ii) They shall come into force at once.

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iii) They shall apply to all Civil Servants the rule making authority of the Governor except those who opted not to be governed by The Khyber Pakhtunkhwa Civil Servants Leave Rules, 1979.

2. Admissibility of leave to civil servant: Leave shall be applied for, expressed and sanctioned in terms of days and shall be admissible to a civil servant at the following rate and scale:

i) A Civil servant shall earn leave only on full pay. It shall be calculated at the rate of four days for every calendar month of the period of duty rendered and credited to the leave account as "leave on full pay" duty period of 15 days or less in a calendar month being ignored and those of more than 15 days being treated as a full calendar month, for the purpose. If a civil servant proceeds on leave during a calendar month and returns from it during another calendar month and the period of duty in either month is more than 15 days, the leave to be credited for both the incomplete months will be restricted to that admissible for one full calendar month only.

servant of a vacation department may e	
	At the rate of one day for every calendar
, ·	month of duty rendered
b) When during any year he is prevented	As for a civil servant in non-vacation
for a solution from self of full variation	Department for that year
VIII an he quails him self of only a part of	As in (a) above plus such proportion of 30
5 ⁻	days as the number of days of vacation not
vacation	taken bears to the full vacation

iii) There shall be no maximum limit on the accumulation of such leave.When leave carned: All service rendered by a civil servant qualifies him to earn leave in accordance with these rules but shall not be earned during period of leave.

Grant of leave on full pay: (I) the magnetic many be granted at one time by the competent so thority shall be as follows:

(i) Without Medical certificate	120 days
	180 days
(ii) With Medical certificate	1
Plus	265 1
(iii) On medical certificate from Leave account in entire service.	365 days

2) The maximum prescribed at (i) and (ii) of sub-rule (I) are independent of each other. In other words a civil servant may be granted, at a time, total leave on full pay on medical certificate upto the permissible extent in continuation of leave upto 120 days without medical certificate, subject to given conditions.

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Grant of leave on half pay-(1) Leave on full pay may be converted into leave on half pay at the option of the civil servant.

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Debits to the leave account will be at the rate of one day of the former for every two days of the latter; fraction of one-half counting as one full day's leave on full pay.
 The request for such conversion shall be specified by the civil servant in his

3) The request for such conversion share of pro-

4) There shall be no limit, on the grant of leave on half pay so long as it is available by conversion in the leave account.

Conversion of leave account-(1) All leave at credit in the account of a civil servant who was in service on the Its day of July, 1978, shall be carried forward and expressed in terms of leave on full pay. The leave account in such cases shall, with effect from Its July; 1978, or in the case of a civil servant who was on leave on that date with effect from the date of his return from leave, be recast as under, ignoring the fraction if any:

e fraction	
i)	Leave on full pay 30 Days
	a) 1 Month
ļ	b) 1 Day
ii)	Leave on half pay 15 Days
	a) i Month
	b) 2 Day

2) In carrying forward the leave, the leave at credit of a civil servant in columns, 7 and 8 and half of the leave at credit in column 9 of the existing leave account shall be carried forward to the new leave account of the civil servant.

3) The leave availed under the existing rules from column 13(a) of the leave account shall be debited against the maximum limit of 365 days fixed under Rule-4 (I) (iii).

Leave not due- (1) Leave not due may be granted on full pay, to be offset against leave to be earned in future for a maximum period of three hundred and sixty five days in the entire period of service, subject to the condition that during the first five years of service it shall not exceed ninety days in all.

Such leave may be converted into leave on half pay.

3) Such leave shall be granted only when there are reasonable chances of the Civil Servant resuming duty on the expiry of the leave.

4) Such leave shall be granted sparingly and to the satisfaction of the sanctioning authority/but it shall not be admissible to the temporary Civil Servants.

Leave Salary-(1) Leave pay admissible during leave on full pay shall be the greater of:

(a) the average monthly pay earned during the twelve complete months immediately preceding the month in which the leave begins; and

(b) the rate equal to the rate of pay drawn on the day immediately before the beginning of the leave.

When leave on half pay is taken, the amount calculated under clause (a) and
(b) of sub-rule (1) shall be halved to determine the greater of the two rates.

3) A Civil Servant shall be entitled to the leave pay at the revised rate of pay if general revision in pay of civil servants takes place or an annual increment occurs during the period of leave of the civil servant.

Sub Rule-3 Added vide No.FD.SO(SR-IV)5-54/80/Vol-III, dated 26.10.1994.

9. Special leave to female civil servants. A female servant may, on the death of her husband, be granted special pay on full pay not exceeding 130 days. This leave shall not be debited to her leave account and will commence from the date of death of her husband. For this purpose she will have to produce death certificate issued by competent authority either along with her application for special leave or, if that is not possible, the said certificate may be furnished to the leave sanctioning authority separately.

10. Maternity leave-(1) Maternity leave may be granted on full pay, outside the leave account, to a female civil servant to the extent of ninety days in all from the date of its commencement or forty five days from the date of her confinement, whichever is earlier.

2) Such leave may not be granted for more than three times in the entire service of a female civil servant except in the case of a female civil servant employed in a vacation department who may be granted maternity leave without this restriction.

3) For confinement beyond the third one, the female civil servant would have to take leave from her normal leave account.

4) The spells of maternity leave availed of prior to the coming into force of these rules shall be deemed to have been taken under these rules.

5) Maternity leave may be granted in continuation of, or in combination with, any other kind of leave including extraordinary leave as may be due and admissible to a female civil servant.

6) Leave salary to be paid during maternity leave shall be regulated as for other leave, in accordance with the formula provided in rule 8.

7) The leave salary to be paid during maternity leave will, therefore, remain unaffected even if any increment accrues during such leave and the effect of such an increment will be given after the expiry of maternity leave.

*Decision: -

al an Officer

A female Government servant proceeded on maternity leave; her pay shall continue to be drawn under the object-01100-Pay of officers-01200- Pay of Establishment excluding conveyance allowance during maternity leave period. Further more no appointments are made on leave vacancy. *FD teller No.BI/5-17/95-96/FD dated 27.6.1996

Disability leave-(1) Disability leave may be granted outside leave account on each occasion up to a maximum of seven hundred and twenty days on such medical advice as the head of office may consider necessary, to a civil servant, other than civil servant in part time

service, disabled by injury, ailment or disease contacted in course or in consequence of duty or official position.

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The leave salary during disability leave shall be equal to full pay for the first one hundred and eighty days and on half pay for the remaining period.

Extraordinary leave (Leave without pay)-(1) Extraordinary leave may be granted outside leave account on each occasion up to a maximum period of five years at a time; provided that the civil servant to whom such leave is granted has been in continuous service for a period of not less that ten years. In case a civil servant has not completed ten years of continuous service, extraordinary leave without pay for a maximum period of two years may be granted at the discretion of the leave sanctioning authority, This leave can be granted irrespective of the fact whether a civil servant is a permanent or temporary employee.

The maximum period of extraordinary leave without pay combined with leave on ł full pay and leave on half pay shall be subject to the limit of 5 years prescribed in FR-18, i.e. the maximum period of extraordinary leave without pay that would be admissible to a civil servant who has rendered continuous service for a period of not less than 10 years shall be 5 years less the period of leave on full pay and leave on half pay so combined.

Extraordinary leave may be granted retrospectively in lieu of absence without leave: 3)

Notwithstanding anything to the contrary contained in the preceding sub-rules, the Finance Department may in cases of individual hardship, grant extra-ordinary leave in excess of the maximum leave admissible to a civil servant under sub-rule(1) or sub-rule(2), as the case may be. *Added vide No.FD.SO(SR-IV)5-54/80.Vol-IV dated 6-7-1999.

CLARIFICATION.

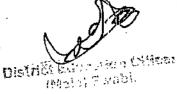
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Extra ordinary leave (Leave without pay) of 5 years is admissible to a Government servant for 'each spell' of 10 years of continuous service. If, however, a civil servant has not completed 10 years of continuous service on each occasion/time. Extra Ordinary leave (leave without pay) for maximum period of two years may be granted at the discretion of the Competent Authority.

Maximum leave availed during one continuous period of 10 years should also not ii) exceed 5 years. The cases already decided need not be reopened. No. FD/SO(SR-IV)5-54/80/Vol-IIII,dated 31.7.91.

Leave applied for on medical certificate shall Leave on Medical Certificate. not be refused. The authority competent to sanction leave may, however, at its discretion, secure a second medical opinion by requesting the Civil Surgeon or the Medical board to have the applicant medically examined. The existing provisions contained in Supplementary Rules 212,213 and Rules 220 to 231 for the grant of leave on medical grounds will apply.

Leave preparatory to retirement- The maximum period up to which a Civil Servant may be granted leave preparatory to retirement shall be 365 days only. It may be taken subject to availability in the leave account, either on full pay or partly on full pay and partly on half pay, or entirely on half pay, at the discretion of the Civil Servant and it will not extend beyond the age of superannuation.



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Recreation leave may be granted for fifteen days once in a Recreation leave -15. calendar year, the debit to the leave account may, however, be for 10 days leave on full pay;

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Provided that such leave shall not be admissible to a Civil Servant enjoying vocation.

Note: Casual leave (as Recreation Leave) shall, however, continue to be granted for 10 days only subject to other conditions under conditions under Government instructions.

Leave Ex-Pakistan: 1) Leave Ex-Pakistan may be granted on full pay to a Civil 16. Servant who applies for such leave or who proceeds abroad during leave, or takes leave while posted abroad or is otherwise on duty abroad & makes a specific request to that effect. The leave pay to be drawn abroad shall be restricted to a maximum of three

2) thousand rupees per month.

The leave pay shall be payable in sterling, if such leave is spent in Asia other than 3) Pakistan and India.

Such leave pay shall be payable for the actual period of leave spent abroad subject to 4) maximum of one hundred and twenty days at a time/.

The Civil Servants appointed after 17th May 1958, shall draw their leave salary in 5) rupees in Pakistan irrespective of the country where they spend their leave.

Leave Ex-Pakistan will be regulated and be subject to the same limits and 6) conditions as prescribed in rule 4,5 and 12.

Assigning reasons for Leave- It shall not be necessary to specify the reasons for which leave has been applied, so long as that leave is due and admissible to Civil Servant.

Commencement and end of Leave- Instead of indicating whether leave starts/ends in the forenoon or afternoon, leave shall commence from the day following that on which a Civil Servant hands over the charge of his post. It shall end on the day preceding that on which he resumes duty.

Absence after the expiry of Leave-Unless his leave is extended by the leave sanctioning authority, a Civil Servant who remains absent (except for circumstances beyond his control) after the end of his leave shall not be entitled to any remuneration for the period of such absence, and double the period of such absence shall be debited against his leave account. Such debit shall if there is insufficient credit in the leave account, be adjusted against future accumulations. Such double debit shall not preclude any disciplinary action that may be considered necessary under any rule for the time being in force, after affording reasonable opportunity to Civil Servant concerned to indicate his position.

1) Where a civil servant opts 20. Encashment of Leave preparatory to retirement: not to avail the leave preparatory to retirement admissible to him under rule 14, he shall be allowed leave salary for the period for which leave proparatory to retirement is admissible, subject to a maximum of 365 days. For the purpose of lump sum payment in lieu of leave Spreparatory to retirement only the senior post allowance will be included in the leave pay so admissible." The payment of leave pay in lieu of leave preparatory to retirement may be made to the Civil Servant either in lump sum at the time of retirement or may at his option, be drawn by him month-wise, in arrears, for and during the period of L.P.R.

.... officer

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2) Encashment of leave preparatory to retirement (LPR) not exceeding three hundred and sixty five days shall be effective from the first day of July, 2012 and shall, for the entire period of leave refused or opted for encashment, be applicable to a civil servant retired, as the case may be, retiring on or, after the first day of July, 2012, provided such leave is available at his credit to a maximum of three hundred and sixty-five days.

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(3) If at any time during such period, leave is granted on account of ill health supported by medical certificate or for performance of Hajj, the amount of cash compensation on account of leave pay shall be reduced by an amount equal to the leave pay for the period of leave so granted

Leave pay for the purpose of encashment of LPR shall be computed on the basis of pay and allowances reckonable towards pension as shown in the last pay certificate of a

Rule-20 substituted vide FD No.SOSE. (IV)5-54/80-Vol-II,dated 24.8.1983.& further amended vide FD civil servant". No SO FR 5-92/2005/ Vol-V, dated 13/12/2012.

Government Decision: It has now been decided that;

1.

a) Unless a civil servant opts to proceed on LPR or submits an application for LPR, he may be deemed to have opted for encashment of LPR according to the rules; and

b) On receipt of a request from a civil servant deemed to have opted for encashment of LPR, the authority competent to sanction LPR, will issue formal sanction for the payment of cash compensation. No.FD'SO(SR-1V)5-54/80-Vol-II dated 26.2.1986

Clarification:- The Civil Servants' seeking retirement on voluntarily basis should be treated equally and the option should not be necessary if they want to encase their LPR. However, a civil servant who wants to proceed on retiring pension shall have to wait for 365 days after qualifying service of 25 years for the purpose of encashment of LPR.

NO.FD.SO (SR-IV) 5-54/80/Vol-11, dated 20:11.1986.

COMMENTARY:-Under the above clarification encashment of LPR is admissible on completion of 26 years qualifying service.

A civil servant may either draw leave pay for the period for which leave is admissible subject to a maximum of 365 days in lump sum after retirement or on month-tomonth basis during such period as under:

a) Leave pay may be drawn at any time for which duty has already been rendered; and

b) The rate of pay shall be the rate admissible at the time the leave pay is drawn. This

order shall take with immediate effect. NO. FD.SO(SR-IV)5-54/80-Vol-III.dated 12.4.1988.

In-service Death etc: 1) In case a Civil servant dies, or is declared permanently incapacitated for further service by a Medical Board, while in service, a lump sum payment equal to leave pay up to 180 days out of the leave at his credit shall be made to his "family" as defined for purposes of the family pension or, as the case may be, to the civil servant.

2) For the purpose of lump sum payment to the family of civil servant who dies while in \S service only the "Senior Post Allowance" will be included in the "leave Pay" so admissible Rule-21 substituted vide FD No. SO(SR-IV)5-54/80-Vol-III dated 3.5. 1988.

District Edwarten Officer (Nicla) Cruchi.

22. **Recall from Leave-** If a civil servant is recalled to duty compulsorily with the approval of leave sanctioning authority, from leave of any kind, which he is spending away from his Headquarters, he may be granted single return fare Plus Daily Allowance as admissible on tour from the station where he is spending his leave to the place where he is required to report for duty. In case he is recalled to duty at Headquarters and his remaining leave is cancelled, then fare admissible shall be for one-way journey only. If the order of recall to the civil servant is optional, then the concession above mentioned will not be admissible.

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23. Any Type of Leave may be Applied:- A civil servant may apply for the type of leave which is due and admissible to him and it shall not be refused on the ground that another type of leave should be taken in the particular circumstances for example, a civil servant may apply for extraordinary leave or leave on half pay even if leave on full pay is otherwise due and admissible to him, or he may proceed on extraordinary leave followed by leave on half pay and full pay rather than on full pay, half pay, and without pay.

24. Combination of different types of leave, etc:- One type of leave may be combined with joining time or with any type of leave otherwise admissible to civil servant:

Provided that leave preparatory to retirement shall not be combined with any other kind of leave.

25. Civil Servants on leave not to join duty without permission before its expiry:-Unless he is permitted to do so by authority which sanctioned his leave a civil servant on leave may not return to duty before expiry of the period of leave granted to him.

26. Leave due may be granted on abolition of post, etc:- (1) When a post is abolished, leave due to the civil servant, whose services are terminated in consequence there of, shall be granted without regard to the availability of a post for the period of leave

2) The grant of leave in such cases shall, so long as he does not attain the age of superannuation be deemed automatically to have also extended the duration of the post and the tenure of its incumbent.

27. Manner of handing over charge, when proceeding on leave, etc:- (1) A civil servant proceeding on leave shall hand over the charge of his post, and if he is in grade-16 and above, he shall, while handing over charge of the post, sign the charge relinquishment report.

2) If leave Ex-Pakistan has been sanctioned on medical grounds, the civil servant shall take abroad with him copy of the medical statement of his case.

28. Assumption of charge on return from leave, etc: (1) A civil servant, on return from leave, shall report for duty to the authority that sanctioned his leave and assume charge of the post of which he is directed by that authority unless such direction has been given to him in advance.

2) In case he is directed to take charge of a post at a station other than that from where he proceeded on leave, travel expenses as on transfer shall be payable to him

29.

Account office to maintain leave account - (1) Leave account in respect of a civil servant shall be maintained as part of his service book.

Distiller T. H. Tithe Onici HE L. Sheet 2) The accounts offices shall maintain the leave accounts of civil servants of whom they were maintaining the accounts immediately before the coming into force of these rules.

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30. Leave to lapse when civil servant quits service - All leave at the credit of a civil servant shall lapse when he quits service.

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3. Leave application its sanction, etc - (1) Except where otherwise stated, an application for leave or for an extension of leave must be made to the head of office where a civil servant is employed and in the case of the head of office to the next-above administrative authority and the extent of leave due and admissible shall be stated in the application.

2) An audit report shall not be necessary before the leave is sanctioned.

When a civil servant subtaits a medical certificate for the grant of leave, it shall be by an authorised medical attendant in the prescribed form.

4) Leave as admissible to a civil servant under these rules may be sanctioned by the head of a Department, attached Department, Office or any other officer authorized by him to do so and, when so required, leave shall be notified in the official Gazette.

5) In cases where all the applications for leave can not, in the interest of public service, be sanctioned to run simultaneously, the authority competent to sanction leave shall, in deciding the priority of the applications consider:-

(i) Whether, and how many applicants can, for the time being, best be spared.

(ii) Whether any applicants were last recalled compulsorily from leave; and

 (iii) Whether any applicants were required to make adjustment in the timing of their leave on the last occasions.

LEAVE SANCTIONING AUTHORITY

门心开

Kind of leave	Civil servants drawing pay in BPS	Sanctioning authority
All kinds of leave except	17 and above other than civil servants in All Pakistan Unified Grades, working in Attached Departments or any other office or organization.	Administrative Secretary
study leave and disability leave	In other cases	Appointing Authority
Study Leave and	All civil servants	Finance Department
(Rule-3 of West Pakis I(S&GAD)1-46/80 da	tan Civil Services Delegation of powers Rules, 1962 read with ted 19.4.1982).	FD Notification No. SOR-

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FORM OF MEDICAL CERTIFICATE.

Signature of applicant: MEDICAL CERTIFICATE FOR CIVIL SERVANTS RECOMMENDED FOR LEAVE OR EXTENSION.

___after careful personal examination of the case, hereby certify hat. whose signature is given above, is suffering fien and I consider that a period of absence from duty; more with effect from *.*4 is absolutely Beerssary for the restoration of his/her health. Dated, the

Government Medical attendant

APPLICATION FOR LEAVE.

Notes:-Item 1 to 9 must be filled in by all applicants. Item 12 applies only in the case of Government servants of Grade 16 and above. 1. Name of applicant

- 3 Leave Rules applicable.
- 3. Post held
- Department or office 4.

5. Pay

7.

- House Rent Allowance/conveyance allowance or other compensatory 6. allowances drawn in the present post.
 - Nature of leave applied for (a)^{*}
 - (b) Period of leave in days.
 - (c) Date of commencement.

Particular Rule/Rules under which leave is admissible. 8. 9

- Date of return from last leave (a)
 - (b) Nature of leave.
 - Period of leave in days. (c)

Signature of applicant

under

Rule

Remarks and recommendation of the Controlling Officer. iU.

leave

!1. Certified that

12. -Report of Audit Officer

Signature/ Designation.

Signature Designation

Signature / Designation

applied for is admissible

and necessary conditions are fulfilled.

Orders of the sanctioning authority certifying that on the expiry of leave the applicant is likely to return to the same post carrying the compensatory allowances being drawn by him.

District Education Office (As of Sivabi.

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FORM OF LEAVE ACCOUNT UNDER THE REVISED RULES, 1981

Annexuse-A

(NISAR MUHAMIMAD) DISTRICT EDUCATION OFFICER (MALE) SWARI

ON OFFICER

X

DISTRICT ED

1/ (MALE) SWABI

OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) SWABI

Email address: emis_my/bl@ , shealcom Phil 0938-280239

RETIREMENT ORDER (To be substituted with same No & date)

Sanction is hereisy accorded to the grant of premature Betirement from Govt. service in r/o Mr. Kifayat Ullah SPST GPS Wali Baz Khan Koroona Bam Khel (Swabi) w.e.f <u>30-07-2019 (</u>A.N) without availing the benefit of encashment of leave in ficu of LPR due to non-completion of 26-year qualifying service.

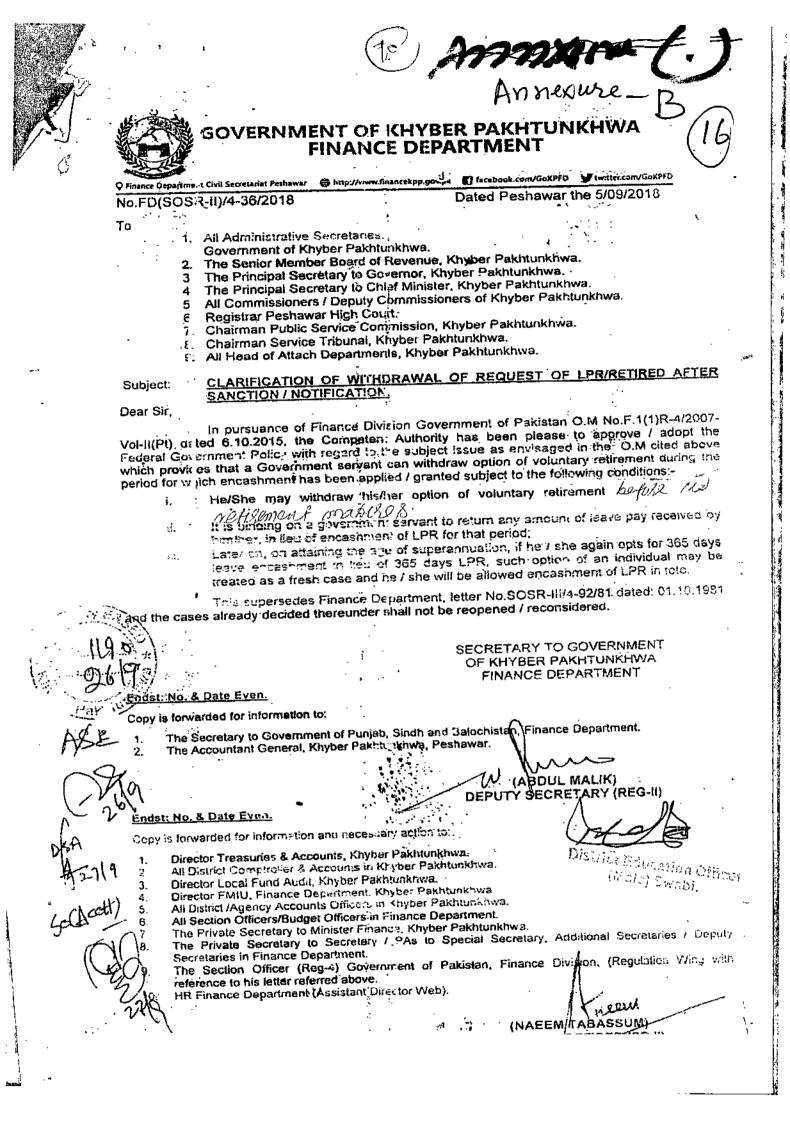
1. Entry to this effect should be made in his Service books & leave account.

Endst. No W2 /Retirement File No.1/Vol:III/PST/Daled 02 09 /2019 Forwarded to the:

- 1. District Accounts Office: Swabi.
- 2 District Monitoring Officer Swabi. .
- 3. SDEO (Male) Swabi a/w original S/Book
- 4. EMIS Cell local office.
- 5. Official Concerned.

Note:

District to officer Other Charles





SCRUTINY COMMITTEE.

Consequent upon approval of the competent authority, the following committee is hereby constituted for scrutiny of documents and to find out the legal position/grounds regarding appeal of Mr. Kifayat Ullah Ex-SPST of GPS Wali Baz Khan Korona Bam Khel Swabi requesting for withdrawal of his retirement order (copy attached), re-instatement in service & decidingintervening period.

1. Mr. Taqweem-Ul-Haq Principal GHSS Sheikh Jana Swabi. Convener Member

- 2. Mr. Fida Muhammad Principal GHS Sheikh Dheri.
 - Furthermore, TOR's may be:
- 1. Applications submitted by the employee on 13-09-2019 & 18-10-2019 be scrutinized.
- 2. The grants like RB&DC, B/F, EEF & other pensionary benefits be checked out whether he has availed all or some of the pensionary benefits or otherwise.
- 3. The notification issued by the Finance department be also sought out and it may be reported whether his case is mature or not in the light of said letter.
- 4. Any other comments will be appreciated in this regard.

The committee officers are directed to probe into the matter and submit detail report/recommendations within a week for further processing.

(MUHAMMAD IDREES) DISTRICT EDUCATION OFFICER 28/05 Endst. No

Forwarded to the:

- 1. District Accounts Officer Swabi.
- 2. District Monitoring Officer Swabi.
- 3. Mr. Taqweem-Ul-Haq Principal GHSS Sheikh Jana Swabi.
- 4. Mr. Fida Muhammad Principal GHS Sheikh Dheri Swabi.
- 5. ADEO (Estab) Local office.
- 6. SDEO Male Swabi.
- 7. Official concerned.

FFICER DISTRICT ED (MALE) SWABI

(MALE) SWABI

District to stallon Officer Male, Sweld.

The District Education Officer

Male Swabi

Subject:-

SUBMITTING DETAIL REPORT/COMMENTS REGARDING THE APPEAL OF M KIFAYATULLAH EX-SPST BPS-14

Sir,

In reference to your letter No.3251-57 dated 28/5/2020, it is here by stated that the committee constituted by your office has probed into the said matter and has summarized the whole matter as thus,

- In pursuance of his specific request, Mr. Kifayatullah Ex- SPST BPS 14 was allowed pre-mature retirement from service by DEO (Male) Swabi under Endost: No.11258-62, dated 02-09-2019 on domestic ground vide application for retirement dated 01-08-2019. Annexure (A).
- In his application dated 13/9/2019, Mr. Kifayatullah Ex-SPST BPS-14 has stated that he has been able to settle his family affairs and is now in the position to resume his service. He has therefore requested that his Pre-Mature retirement be cancelled and he be allowed to resume duty to complete his service tenure. Annexure (B)
- During his intervening period, he has regularly attended school and CPD trainings while he was officially declared as retired person. Statement of the head teacher and a photocopy of teacher attendance register is attached herewith. Annexure (C&D)
- We have scrutinized the application submit by the employee for the withdrawal of his retirement order and reinstatement in service and found that no dairy number is given to the application in the DEO (Male) office, secondly, no correspondence was made within the office, thirdly, the applicant did not follow the proper channel in submitting his application.
- He has availed commutation of Rs.12, 87278/- under Cheque No.1777575 dated 17/10/2019. He has also availed monthly pension Rs.225273/- and EEF of Rs.30000/- under Cheque No.1359981544 dated 18-11-2019, which is still not cashed by the employee and has thus expired, but Mr. Kifayatullah has refunded all benefits he has availed so far. He refunded commutation Rs.1287278/- under Challan No.1 dated 11-5-2020 and pension amount of Rs.225273/- under challan No.09. Annexure (E,F,G&H)
- 3. We have sought the notification issued by the finance Department and concluded that his case is mature. Annexure (I)
- 4. Comments:-
- A. If Mr. Kifayatullah is reinstated in his service it would become a precedent for others, which may cause trouble for the Department.
- B. He has refunded a big amount of Rs.1512551 with the direction of high ups as he stated, before inquiry/ Scrutiny on May 11, 2020. Now if he is not reinstated in service, it would be difficult to refund the amount back to him.
- C. In intervening period he consistently attended school but neither IMU nor Education Officers took notice of it, while he was officially declared as retired person.

0/2020

Tagween ul Hag Principal **GHSS Sheikh Jana**

Fida Muhammad Principal GHS Sheikh Dheri

Distant Refutation Officer (Philo) Swabi,



NOTIFICATION.

- 1. WHEREAS, Mr. Kifayatullah SPST, GPS Wali Baz Koroona submitted an application on 21/8/2019 duly forwarded by Head Teacher and ASDEO concerned for pre-mature retirement.
- AND WHEREAS, the then DEO (M) after accepting his request, accorded sanction for pre-mature retirement w.e.f 30-7-2019 vide Endst No. 11258-62/Retirement File No.1/Vol:III/PST Dated 02/09/2019.
- AND WHEREAS, the official concerned submitted pension papers duly forwarded by the SDEO (M) concerned for final payment and other pensionary benefits which were further forwarded to DAO office Swabi.
- 4. AND WHEREAS, the DAO Swabi after processing his pension case issued commutation cheque on 17/10/2019 as well as regular monthly pension thenceforth.
- 5. AND WHEREAS, the teacher concerned submitted another application for cancellation/withdrawl of his retirement order on 18/10/2019.
- AND WHEREAS, an inquiry committee was constituted comprising of Mr. Taqweem UI Haq Principal GHSS Sheikh Jana and Fida Mohammad Principal GHS Sheikh Dheri vide Notification No. 3251-57 Dated: 28/05/2020 to look into the matter and submit/propose recommendations thereof.
- 7. AND WHEREAS, The committee after thorough perusal and examining the relevant record submitted inquiry report and recommended that his case has got matured hence attained finality in the light of Finance Department Letter No.FD(SOSR-II)/4-36/2018 dated 5/09/2018 which cannot be withdrawn being a closed transaction.
- 8. AND WHEREAS the Competent Authority (District Education Officer (M) Swabi) after having considered the evidences and recommendations of the inquiry committee is of the view that retirement sanction in respect of Kifayatullah Ex-SPST GPS Wali Baz Koroona is matured and has got finality.
- 9. NOW, THEREFORE, I Muhammad Idrees, District Education Officer (M) Swabi as Competent Authority is pleased to reject his request for withdrawl of retirement sanction as recommended by the inquiry committee.

(DR. MUHAMMAD IDREES) DISTRICT EDUCATION OFFICER (M)

Endst: No

Copy for information to ;-

SWART

District Substion Officer (Mole) Swabi.

Annexure-C,

1. Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.

Dated

- 2. District Monitoring Officer Swabi.
- 3. District Accounts Officer Swabi.
- 4. SDEO (M) Swabi.
- 5. Teachers Concerned.
- 6. Master File.

DISTRICT EDUCATION OFFICER (M) SWABI

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2007 P L C (C.S.) 718

[Supreme Court of Pakistan]

Present: Syed Decdar Hussain Shah and Falak Sher, JJ

MUHAMMAD YOUSAF BUTT

Versus

CENTRAL BOARD OF REVENUE and another

Civil Appeal No.2587 of 2001, decided on 9th June, 2004.

(On appeal from the judgment dated 19-9-2001 passed by the Federal Service Tribunal in Appeal No.206(K)(CS/2000).

Constitution of Pakistan (1973)----

----Art. 212---ESTACODE, Chap. No. X, Serial No. 7---Civil servant had sought premature retirement upon completion of 25 years of qualifying service for health reasons which request was eventually accepted by notification dated 30-3-2000---Civil servant, subsequently acclaimed to have withdrawn the option through letter dated 29-3-2000 addressed to the Competent Authority, alleged to have been received the same day i.e. a day prior to the acceptance notification, seeking recalling of the notification of his premature retirement, which request was turned down---Validity---Civil servant though had a right to withdraw the option before its acceptance but not thereafter since the same had attained finality being a past and closed transaction, pursuant whereto he admittedly had received all the pensionary benefits.

M.M. Aqil Awan, Advocate Supreme Court and Ch. Muhammad Akram, Advocate-on-Record for Appellant.

Nahida Mehboob Elahi (Standing Counsel) for Respondents Nos. 1-2.

Date of hearing: 9th June, 2004.

JUDGMENT

l of 5

FALAK SHER, J.-Appellant while serving as Commissioner of Income Tax (Appeals) Zonc-VI, Karachi in BS-20 through letter dated 25-2-2000 sought premature retirement, consequent upon completion of 25 years of qualifying service reportedly for health reasons, hotly pursuing it with the prescribed formalities which was eventually accepted vide Notification, dated 30-3-2000 of the Income Tax Establishment, Government of Pakistan Revenue Division, Central Board of Revenue, relevant text whereof for the sake of convenience is reproduced hereinbelow:

"(To be published in the Gazette of Pakistan Part-I)

Government of Pakistan Revenue Division

District Education Officer

03-Jun-20, 11:46 AV: :

بجبه بمرد

Central Board of Revenue (Administration Income tax)

Islamabad, the 30th March, 2000

Notification (Income-tax Establishment)

<u>No.88-ITE/2000</u>.---The competent Authority has been pleased to accept premature retirement from Government Service of Mr. Muhammad Yousaf Butt, Commissioner of Income Tax (BS-20), Appeals Zone-VI, Karachi, who shall proceed on premature retirement with effect from 26-5-2000."

2. Subsequently, acclaiming to have withdrawn the option through letter, dated 29-3-2000 addressed to the Chairman, Central Board of Revenue, Government of Pakistan, Islamabad alleged to have been received by the Chairman's Secretariat vide daily Diary No.2402 of the same date i.e. a day prior to the acceptance notification, sought recalling of the Notification through letter dated 13-5-2000 which request was turned down vide letter, dated 26-5-2000 enshrining the following:--

"From

Mr. S. Anjum Bashir, Secretary (DTA).

То

§2 of 5

Mr. Muhammad Yousaf Butt,

Commissioner of Income Tax (Appeals-VI),

26-Garden Road, Income Tax Officers Colony, Karachi.

Subject: Retirement on completion of 25 years service

I am directed to refer to your request dated 13-5-2000 regarding withdrawal of your option to retire on completion of 25 years qualifying service.

(2) The matter has been examined in detail in consultation with Establishment Division and regretfully inform you that you cannot withdraw your option as per terms of Note-1, below CSR 465(b) read with Establishment Division's O.M. No.F.14/10/95-R.2, dated 25-8-1996, a Civil Servant cannot be allowed to withdraw his request for premature retirement after its acceptance by the Competent Authority.

(3) You have already been notified to retire w.e.f. 26-5-2000 vide Notification No.88-ITE/2000, dated 30-3-2000."

3. Against which his appeal, dated 21-6-2000 addressed to the President of Pakistan having remained un-responded, impugned legality thereof before the Federal Service Tribunal urging bifold submissions viz. had withdrawn the option of premature retirement prior to the issuance of the acceptance notification which even otherwise has not been accepted by the Competent Authority.

4. Which was dismissed vide impugned judgment, dated 19-9-2001 repelling both the submissions opining that the letter of withdrawal dated 29-3-2000 being a fake and forged document, the Competent Authority had accepted the option, in addition to the appeal being barred by time, concluding as under:--

District Effection Officer (Multip Coversit

"(12) Learned counsel for the appellant, during the course of arguments, has argued that the appellant himself gone to Islamabad and submitted application dated 29 3-2000, but when he was confronted with the situation that the appellant was very much present on duty at Karachi on the said date, then he changed the version and argued that the cousin of the appellant had gone to Islamabad to submit the application, which was received by the Department and diarized at serial No.2402 on 29-3-2000.

(13) This submission made by the learned counsel for the appellant is not acceptable to us due to the reason that there is cutting in the date in the first instance and secondly when the Diary No."2402" was verified from the original diary register, it appears that serial No.2402, was a letter received from "HQ Artillery 5 Corps., Karachi-4", such photo copy has been kept on record after sealing the original. This shows that the diary number, which was given by the appellant, is not only fake and forged one but appears to have beefs manoeuvred only to create a ground and to show that the said application was moved prior to the issuance of the notification. If at all the appellant was so interested in withdrawal of his option for retirement on medical ground, he could have sent it by fax immediately when he got advice from the Doctors that he could continue in service, but this was not done: No doubt, option once made can be withdrawn or taken back prior to the issuance of the notification and such mention finds place in ESTACODE Serial No.6(2), page 968, 2000 Edition, which is reproduced below:-

"(2) The matter has been examined in consultation with the Law Division and the Finance Division and it has been decided that, in partial modification of the existing rules/orders, if a Government servant withdraws his application for premature retirement or modifies the date of retirement, before its acceptance by the Competent Authority, the application or the date of retirement shall be deemed to have been withdrawn or modified, as the case may be."

(14) In such a situation it appears that moving of belated application is nothing but afterthought and if the appellant had the intention to withdraw the option for retirement, he could have done so at an early date and when this was not done, application appears to have been planted with fake diary number, which has been compared with the original number where no such mention finds place and in such circumstances, we will not be in a position to consider the submissions made by the counsel for appellant that the application dated 29-3-2000, was well within time. No doubt, the fact of non-genuineness of the application dated 29-3-2000 is not mentioned in the comments but the very receipt of the said application has been denied, as such, the argument of learned counsel for appellant in that context is without any force. At the same time, the argument of learned counsel for the respondent about limitation is worthy of consideration on the ground that the impugned Notification is dated 30-3-2000 against which departmental appeal was filed on 13-5-2000 and the rejection order was passed on 26-5-2000, whereafter the appellant addressed appeal to the President of Islamic Republic of Pakistan on 21-6-2000 and when the same was not responded, he filed service appeal before this Tribunal on 11-10-2000. Calculation if made reveals that the time will be counted from the date of Notification i.e. 30-3-2000 meaning thereby that the appeal was to be filed within 30 days from the date of impugned order, but the appellant filed appeal on 13-5-2000, which was rejected on 26-5-2000. Thereafter, the appeal was made to the President of Islamic Republic of Pakistan on 21-6-2000 but in all fairness, the said appeal ought to have been made within 30 days from the date of impugned order. In such circumstances, the question raised by the counsel for the respondents has some force. We are in respectful agreement with the authorities cited by the counsel for the respondents, but the judgment of learned Sindh Service Tribunal in Appeal No.11 of 1999, cited by counsel for appellant, appears to be somewhat distinguishable as in the instant case the Department itself had written that they need the services of the appellant therein, but subsequently, his case was idered whereas in the present case the Department has not at all claimed that it

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needed experienced persons' as has been claimed by the appellant."

5. Hence the captioned appeal by leave of the Court reiterating the submission, additionally assailing the finding as to limitation contending that the appeal before the Tribunal was filed within the statutory period awaiting fate of the departmental appeal.

6. Which we are afraid is utterly misconceived even if the plea as to limitation is accepted.

7. Adverting to the submission as to the alleged withdrawal of the sought for premature retirement letter dated 29-3-2000, it may be pointed out that though the appellant had a right to withdraw the same before its acceptance vide Notification dated 30-3-2000, as postulated by serial No.7 of Chapter No.X of the ESTACODE styled as "retirement and re-employment", text whereof for the sake of convenience is reproduced hereinbelow:--

"Sl. No.7 <u>Recall to duty after premature retirement.</u>---Attention is invited to Establishment Division's O.M. No.23/2/81-CV(B) dated 12-4-1981 according to which option to withdraw or modify the request for premature retirement is available to a Government servant only before the said request is accepted by the Competent Authority. Requests for premature retirement once accepted by the competent authority cannot, repeat cannot, be allowed to be withdrawn or modified. Recall to duty after acceptance of request for voluntary retirement amounts to re-employment for which approval of the Prime Minister is required.

(2) Ministrics/Divisions are requested to bring the above position to the notice of all concerned including their attached departments and subordinate offices, autonomous and semi-autonomous organizations, etc. to ensure strict compliance with the above stated provision;"

but not thereafter since the same attained finality being a past and closed transaction. Pursuant whereto the appellant admittedly had received all the pensionary benefits which even otherwise has been factually found to be a fake and forged document which finding is duly borne out from the register which was produced in these proceedings by the learned Standing Counsel on behalf of the respondents.

7-A. Likewise the second plea that the President was the competent authority to accept the appellant's request for premature retirement banking upon section 5 of the Civil Servants Act, 1973 read with Rule 6(1) o f The Civil Servant (Appointment, Promotion and Transfer) Rules, 1973 and Rule 2(2) of The Government Servants (Efficiency and Discipline) Rules, 1973, relevant texts whereof for the sake of convenience of reference are reproduced hereinbelow seriatim:--

Section 5

"(5) <u>Appointments</u>.--- Appointments to an All Pakistan Service or to a civil post of the Federation or to a civil post in connection with the affairs of the Federation, including any civil post connected with defence shall be made in the prescribed manner by the President or by a person authorized by the President in that behalf."

"Rule 6(1). The authorities competent to make appointments to the various posts shall be as follows:

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Appointing Authority

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Posts in basic pay scale 20 and above President or equivalent, i.e. posts carrying pay with the maximum of Rs.5,240 and above.----"

"Rule 2(2). `authority' means the President or an officer or authority designated by him to exercise the powers of the authority under these rules;"

is ill-founded because plain reading thereof, patently spells out that under section 5 of the Civil Servants Act, 1973 the appointing authority is the President or a person authorized by the President in that behalf and Rule 6(1) (ibid) having been made pursuant to the Rule-making power perceived by section 25 (ibid) is subservient thereto, whereunder serial No.2 of Chapter No.X of the ESTACODE contemplates that the competent authority in the case of Grade 21 Officers and above is the Prime Minister and in the case of Officers in Grade 17 to 20 is the Secretary of the Ministry/Division concerned which in the instant case happens to be the Chairman, C.B.R. Ex officio Secretary, who has accepted the appellant's option.

8. Consequently, the appeal being devoid of any substance fails and is hereby dismissed with costs.

9. Before parting, we may observe that the Chairman, C.B.R. being the competent authority would be at liberty to proceed against the appellant in accordance with law for having fabricated fake withdrawal letter, dated 29-3-2000 and used the same alleging its receipt by the Chairman's Secretariat vide Daily Diary No.2402 of 29-3-2000.

M.B.A./M-127/SC

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.Appeal dismissed.

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Annexure-E DUCATION SECONDARY KHTUNKHWA PESHAW<u>AR.</u> 01 But /F. No. Guidance of Previous No. Kited Service. Dated Peshawar the 2020. ٩p The District Education Officer (M) Swabi. Subject: -APPEAL.

Memo:-

I am directed to refer to the subject noted above and to enclose herewith a copy of appeal in respect of Mr. Kifayat Ullah SPST GPS Wali BazKorona Bam Khel District Swabi, and to ask you to submit detail report/comments to this office within a week time.

> 6/ 7/Assistant Director (Estab :) Elementary & Secondary Edu: Khyber Pakhtunkhwa Peshawar.

Endst: No.____/

Copy forwarded to the:-

1. P.A to Director Elementary and Secondary Education local office.

Assistant Director (Estab :) Elementary & Secondary Edu: Khyber Pakhtunkhwa Peshawar.

District Education Officer (Mate: Statut

لفات الله ٢ ع ٩.٤٠ (٢٢) ولا عبد الألب من المخل عبر علو فللمال مرسون طور مع المحبولية المعني الموري وطبقي طور مع المعني المعني المعني المعني المعني المعني المعني المعني المعني الم مردبی - - - . در میک دارند ا اس سراقه عالى مالى زم خنا عالى: - رس مريد بر عراب ب دن مرمن سام رساد رف سال 1993 میں رغب مرد وجو العبران مسائل کار میں درجنا سے درجنا سے سراتے بنشن ردر کنو کرئ (1) ترکن سے سیدوشی کی ارتباعا کی . نقل درجز دست کے بعد 1/2 - 30 - 20/2 00 bio i cono co - 20/2720 5 _____ ver je jul 11258-62 dated Sid je je کری ، یک رطب تر منا مرابع من اردو میں ارد و مول تک کومیک District Trice allan O (Marce) South

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<u>اوم دا کر سرائے محالی حالی میں دست دے دی جسم زمین کرد</u> مزره. عرف المرالي) في مور - دي مرمس رسير في . در المرالي ا الم عنى العنى كامك الدوقة المرورة المرورة المرورة المرائل باسى مورد المرضى المر <u>بعد مردم المح</u> وراكر مرات رمعناتى ليسى لى انعل حصى لف مع جسدان بور حددس باز عالى من صرف 81 لددى لتر لف وق المي المعدورون ما ولو صبر إد مر 19 مي محمد جري محمد المري وي وعال ط يق فيريد رسيانوند ، رين رين بري بد يودوباره تخوالم تمعنى مرتب 200 مور فر 20 12 كر مولمدل ميرل ك حمظی فوزالون م والم مريديس دورون من سائل رمين في الماعدة طور مافرى المرا رو) رورسول جاني رور مر مرا ورتس الم سے لاک محدرون میں رائو طولیونی کی رہم کا دمیں روک دکھری تھرک المرك ما فيرى في من مرضم مرج عرد قط من الربر السا نظر المس مر المحور الرح ال ال مال ال ماه منی سال 2020 من بر 1572551 در می تر تقری مالان لف موريس . رکا سر با وجود اس تک ودود نے سر حکم کی بی زوری نے

رح) صبری شنور کی مذہ عمر تکی رمد حمور صبح مع تعلی مسبع میں خرج الحرار صلی مع مراف بالقرار مع ادعا لل وم محصر الار فرى حور الح اب انی دو کاه کالد است میں اور سخت او سے اس کال صب صبال مر مور . مربع دوسه ی ب مساند شس نه در که ا مد زمسی رکور ط مخوانه محفی کمزی مح Jue 7 3765-70 رامنے سے حبو کدان مور سے ادر ا_ قنبا. O.E. طبا. كامنا يسيم دومه ي منى بنا ولفا حويد ما ما التوريك شمار ؟ ر مر مدرس باره صن سائل رسیل منظ زیار اور در دورس رميسا نظر نعش رفعاري ميں رور سرخا مجدس دمد نا سرخاميد س جارين صن سائل رسیل نظیم و ما یا ب تعل «روز است ا رهی میزد ارتدعاید مرمده خود ، رسل موزمین سالم کدر ای العرمان مر مر مر مر ع ع ع ع ع الم الم ع ع مار ما در in and a) in a serie in a serie - a so 200 لفاسترالله ۲ ۶۶.۶۰ ور عدور الأس من بالعام علم فل :0302-5688450, Ujo

District Education Officer globally Swebb

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OFFICE OF THE DISTRICT EDUCATION OFFICER

(MALE) SWABI

Dated /2020

Τo

The Director E&SED Khyber Pakhtunkhwa Peshawar.

Subject: APPEAL.

Memo:

Reference your letter No. <u>9202</u>/F.No. Guidance of Previous Service/ Dated Peshawar the 09-07-2020 on the captioned subject. Detail report/comments of this office are as under:

- 1. That Mr. <u>Kifayat Ullah</u> SPST had been working in E&S Education Department since: 12-04-1993 and lastly posted as SPST BPS-14 at GPS Wali Baz Korona Bam Khel Swabi.
- 2. That he submitted an application on 21-8-2019 through SDEO concerned for premature retirement.
- 3. That the then DEO Male Swabi accorded sanction of pre-mature retirement w.e.f 30-7-2019 (A.N) vide E/No. 11258-62/Dated: 2-9-2019.
- 4. That his pension case duly forwarded by SDEO Male was sent to DAO Swabi and resultantly the DAO issued commutation cheque and started his monthly pension.
- 5. That the teacher concerned submitted another application for cancellation/ withdrawal of his retirement order & re-instatement in service on 18-10-2019. (Annexed A).
- 6. That an enquiry committee was constituted comprising of Mr. Taqweem-Ul-Haq Principal GHSS Sheikh Jana Swabi and Mr. Fida Muhammad Principal GHSS Sheikh Dheri Swabi vide this office notification No. 3251-57/Dated 28-5-2020 to look into the matter and submit recommendations thereof. (Annexed B)
- 7. That the enquiry committee after thorough perusal and examining the relevant record submitted a report with recommendations that his case got matured hence attained finality in the light of Finance Department letter No.FD(SOSR-II)/4-36/2018 dated 05-09-2018 which cannot be withdrawn being a closed transaction. (Annexed C).
- 8. That in the light of recommendations of the enquiry committee, this office rejected his appeal for withdrawal/cancellation of retirement order and reinstatement order vide E/No. 3765-70/dated 11-6-2020. (Annexed D).
- 9. That according to the appellant he deposited an amount of Rs. 15,12,551/= in the Govt. treasury through two different challans and submitted photo copies of the same to this office. (Annexed E&F).

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Hence comments/report is hereby submitted for perusal and further necessary action accordingly please.

Encl: as above.

Disflict and another officer

DISTRICT EDUCATION OFFICER (MALE) SWABI

Directorate of Elementary & Secondary: Education Annesuit Khyber Pakhtunkhwa, Peshawar. No._ /F.No. Guidance regarding previous service. Dated Peshawar the 09/04/

2020

То

The Secretary to Government of Khyber Pakhtunkhwa, Elementary & Secondary Education Department.

Subject: -APPEAL FOR WITHDRAWL OF RETIREMENT NOTIFICATION Dear Sir,

I am directed to refer to the subject cited above and to enclose herewith connected documents in respect of Mr. Kifayat Ullah Ex-SPST B-14 at GPS Walibaz Korona Bamkhel District Swabi regarding the subject matter for your perusal and onward submission to Establishment Department for guidance if deem appropriate by your good office please.

> Deputy Director (Estab) Elementary & Secondary Education Khyber Pakhtunkhwa

3650 Endst: No.

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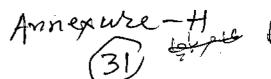
Copy of the above is to:-

1. DEO(M) Swabi. 2. PA to Director Local Directorate.

Deputy Director (Estab) Elementary & Secondary Education Khyber Pakhtunkhwa

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GOVERNMENT OF KHYBER PAKHTUNKHWA ELEMENTARY & SECONDARY EDUCATION DEPARTMENT

SO (A/Cs)/E&SE/7-9/Guidance/2020 Peshawar, the 09 October, 2020

То

The Secretary, Govt. of Khyber Pakhtunkhwa, Finance Department.

Attention: Section Officer (SR-II)

Subject: APPLICATION FOR WITHDRAWAL OF RETIREMENT NOTIFICATION.

Dear Sir,

I am not directed to refer to the subject noted above and to enclose herewith an application along with other relevant documents (which are selfexplanatory) in r/o Mr. Kifayat Ullah Ex-SPST GPS Walibaz Korona Bamkhel District Swabi for guidance please.

(Encl: All relevant documents.)

(ABDUL GHAFFAR) SECTION OFFICER (ACCOUNTS)

Endst: of even No.& date:

Copy for information to:-

- 1. The Deputy Director (Establishment), Directorate of Elementary & Secondary Education, Khyber Pakhtunkhwa, Pesawhar.
- District Education Officer (Male), Swabi.

SECTION OFFICER (ACCOUNTS

Diatifical Clickeliden Officer (Moly : Sweb).

BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR,

Service Appeal No. 14055/2020

VS

Kifayat Ullah

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Education Deptt etc.

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<u>REJOINDER ON BEHALF OF APPELLANT</u>

RESPECTFULLY SHEWETH:

<u>Preliminary Objections:</u>

(1-10) All objections raised by the respondents are incorrect and baseless. Rather the respondents are estopped to raise any objection due to their own conduct.

FACTS:

- 1. It is correct that every Government Servant has paid for his service from the government exchequer and the appellant has performed his duty and for that duty he was paid.
- 2. Correct to the extent that the appellant have some domestic problem and due to the reasons of that domestic problems he was compelled to file application for early retirement on 21.08.2021, however, the respondent department retired the appellant on the basis of that application on 02.09.2019 w.e.f 30.07.2019 which is illegal and void abi-initio as authority has no power to pass an order with retrospective effect.
- 3. Incorrect the appellant filed application for cancellation of his early retirement on which respondent No. 3 told the appellant that his application for withdrawal will be accepted and directed him to deposit commutation and pension and came to school for duty and on t he direction of respondent No.3, the appellant deposited his commutation and pension and also performed duty from September, 2019 to December, 2019 which is evident from Annex-D & E attached with the appeal.
- 4. First portion of Para-4 is admitted correct and other portion of Para-4 is incorrect hence denied as the appellant has filed application for

early retirement due to the reason of domestic problem and as per Superior Courts Judgment that the resignation due to pressure or some other compulsion the resignation can be withdraw after acceptance.

- 5. Incorrect while Para-5 of the appeal is correct.
- 6. Incorrect the appellant has filed only departmental appeal which was not responded within the stipulated period.
- 7. Incorrect the appellant has good cause of action to file the instant appeal which is liable to be accepted.

GROUNDS:

- A) Incorrect. While Para-A of grounds of the appeal is correct. Moreover, the order dated 02.09.2019 and 11.06.2020 are against the law, facts and norms of justice, there not tenable and liable to be seta side.
- B) Incorrect, at the time of application for premature retirement the Government has changed the premature retirement on 25-Years Service to 55 Years of age but the respondent department retired the appellant on 25 years of service which is illegal as the rules at that time for early retirement was 55 years of age and as such the retirement order is illegal and void and has no legal effect, therefore, liable to be set aside on the score alone.
- C) Incorrect the appellant filed application for his premature retirement on 21.08.2019 but he was retired w.e. from 30.07.2019 and as such the retirement order of the appellant was passed with retrospective effect and such like order have no effect and null and void abi-initio.
- D) Incorrect while Para-D of the appeal is correct.
- E) Incorrect while Para-E of the appeal is correct.
- F) Incorrect. The appellant has deposited commutation and pension on the direction of respondent No. 3.

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- G) Incorrect while Para-G of the appeal is correct.
- H) Legal.

It is, therefore, most humbly prayed that the appeal of appellant may kindly be accepted as prayed for.

Through:

(M. ASIF YOUSAFZAI) ADVOCATE SUPREME COURT OF PAKISTAN

&

\ (TAIMUR ALI KHAN) ADVOCATE HIGH COURT

DEPONENT

11. 11.

APPELLANT

<u>AFFIDAVIT</u>

It is affirmed and declared that the contents of rejoinder and appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from Hon'able Tribunal.