


Appeal No. 665/2013.
Mr. Wahid Ali.

6.
09.09.2013

Clerk of counsel for the appellant present and moved an application for adjournment. Case is adjourned. To come up for preliminary hearing on 22.10.2013.


Member

7.
22.10.2013

Counsel for the appellant present and requested for withdrawal of the appeal alongwith connected appeals with permission to file fresh one. Request is accepted and the appeal is dismissed as withdrawn in limine with permission to file fresh one subject to all legal objections. File be consigned to the record.

ANNOUNCED
22.10.2013.


Member

13.5.2013

Counsel for the appellant present and requested for adjournment. Case adjourned to 5.6.2013 for preliminary hearing.

Member.

5.6.2013

Munshi to Counsel for the appellant present. In pursuance of the Khyber Pakhtunkhwa Service Tribunals (Amendment) Ordinance 2013, (Khyber Pakhtunkhwa ord. II of 2013), the case is adjourned on note Reader for proceedings as before on 15.7.2013.

Reader

15.07.2013

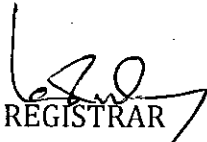

Clerk of counsel for the appellant present and requested for adjournment. Case is adjourned. To come up for preliminary hearing on 09.09.2013.

Member

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 665/2013

| S.No. | Date of order Proceedings | Order or other proceedings with signature of judge or Magistrate |
|-------|---------------------------|--|
| 1 | 2 | 3 |
| 1 | 12/04/2013 | <p>The appeal of Mr. Wahid Ali resubmitted today by Mr. Khan Akbar Khan Advocate may be entered in the Institution Register and put up to the Worthy Chairman for preliminary hearing.</p> <p style="text-align: right;"> REGISTRAR</p> |
| 2 | 15-4-2013. | <p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on <u>13-5-2013</u>.</p> <p style="text-align: right;"> CHAIRMAN</p> |

The appeal of Mr. Wahid Ali PET Teacher GMS Zore Abad received today i.e. on 08/04/2013 is incomplete on the following scores which is returned to the counsel for the appellatant for completion and resubmission within 15 days.

- 1- Copy of Impugned seniority list is not attached with the appeal which may be placed on it.
- 2- The authority to whom the departmental appeal was made/preferred has not been arrayed a party.

No. 577 /S.T,

Dt. 09/04/2013.

6/9/13
REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

MR. KHAN AKBAR KHAN ADV. PESH.

Sir We do not claim our Seniority but we requested, that our intermial period should be counted towards our service. Our application has been fulfilled.

KAE
Advocate
Pesh

BEFORE THE SERVICE TRIBUNAL, KHYBER PAKHTOON
KHWA, PESHAWAR.

Service Appeal No 665/2013

Wahid Ali.....Appellant

VERSUS

Govt of KPK through Secretary and others

.....Respondents

INDEX

| S.No. | Description of Documents | Annex | Pages |
|-------|---|------------|-------|
| 1. | Service appeal | | 1-4 |
| 2. | Application for Interim relief. | | 5-6 |
| 3. | Affidavit | | 7 |
| 4. | Copy of appointment order | "A" | 8 |
| 5. | Copy of Degree of Master | "B" | 9 |
| 6. | Copies of DMCs of Physical Education Training Course and Certificate of Short Course. | "C" & "D" | 10-11 |
| 7. | Copy of relevant page of service book. Office | "E" | 12 |
| 8. | Office Order dated 30.10.2009 | "F" | 13-14 |
| 9. | Copy of Personal Representation. | "G" | 15 |
| 10. | Wakalat Nama | Petitioner | 16 |


Appellant.

Through


(KHAN AKBAR KHAN)
Advocate, Peshawar.

Dated:-06-04-2013

Office: -

107-B, 2nd floor, Town Tower,
Jahangir Abad, University Road,
Peshawar.

Cell No: -

0344-9119111

BEFORE THE SERVICE TRIBUNAL, KHYBER PAKHTOON

KHWA, PESHAWAR.

Service Appeal No 665/2013

~~A.W.F. Peshawar~~
~~Service No. 692~~
~~Dated 08-4-13~~

Wahid Ali, Physical Education Teacher (PET), Government Middle
Secondary School, Zore Abad, Tehsil and District Mardan

.....Appellant

V E R S U S

1. Government of Khyber Pakhtunkhwa, Elementary and Secondary Education Department, Peshawar through its Secretary.
2. Secretary to Government of Khyber Pakhtunkhwa, Finance Department, Civil Secretariat, Peshawar.
3. Director Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
4. Executive District Officer Elementary & Secondary Education Mardan.....Respondents

=====

APPEAL UNDER SECTION-4 OF THE KHYBER
PAKHTON KHWA, SERVICE TRIBUNAL ACT, 1974 TO
THE EFFECT THAT UNTRAINED PERIOD OF THE
APPELLANT MAY KINDLY BE COUNTED TOWARDS HIS
SERVICE AND THE FRESH SENIORITY LIST MAY
PLEASE BE PREPARED ACCORDINGLY.

=====

PRAYER IN APPEAL.

~~Filed to day~~

~~Registered~~

~~re-submitted to day~~
~~and filed;~~

~~Registered~~

On acceptance of this appeal the untrained period
of the appellant may kindly be counted towards
service of the appellant and fresh seniority list
may kindly be prepared accordingly.

=====

Respectfully Sheweth:-

1. That the appellant was appointed in the Education Department, as untrained PET on fixed pay and usual allowances on dated 20.08.1995 and is still serving on the said post with full zeal and

devotion. (Copy of appointment order is attached herewith as **Annexure "A"**).

2. That the appellant has passed Master Examination in the subject of Pashto and has got at his credit on the above said post a long tenure of service extending over 17 years. (Copy Degree of Master is attached herewith as **Annexure "B"**).
3. That later on the appellant on dated 31.03.2002 passed Physical Education Training Course Examination from Department of Examination Education Department and also completed PET Short Course from Schools and Literacy Department, NWFP, at GHSS No.1 Mansehra. (Copies of DMC of Physical Education Training Course and Certificate of PET Short Course are attached herewith as **Annexure "C", "D"** respectively).
4. That after passing the said Course Physical Education, the appellant was regularized and was allowed the graded/running pay scale in BPS-09 with effect from the date of passing the said CT course, i.e. 31.03.2002. (Copy of the relevant page of service book is attached herewith as **Annexure "E"**).
5. That the on dated 30.10.2009, the Finance Department vide office order No. FD (PRC) 5-2/2002 allowed all benefits of annual increment from the date of first appointment to all untrained teachers. (Copy of the office order dated 30.10.2009 is attached herewith as **Annexure "F"**).
6. That previously a seniority list was prepared by the Education Department for District Mardan, on the basis of initial appointed in which petitioner was placed at serial No. **75** whereas in the early December 2012, the respondent Department issued a tentative seniority, wherein the appellant has been placed at Serial No. **108**, thereby ignoring his untrained period of more than 6 years.
7. That now the respondent Department is not ready to count the untrained period of almost of 6 years of the appellant towards his

service in utter disregard of dictum laid down by the superior courts in this behalf.

- 8. That against that action of the respondent department the appellant also moved his representation to the concerned authority on dated 15.12.2012, but no response was given by them. (Copy of the representation is attached herewith as **Annexure "G"**).
- 9. That the appellant along-with his other colleagues having their services extending from 20 to 25 years of spotless character and they have rendered valuable services and have performed their duties with zeal and devotion. But the respondents have totally deprived them from the period spent by them as untrained teachers.
- 10. That this attitude of the respondent department to deprive the appellant from the untrained period of service is without any cogent/legal grounds but just to give benefit to the blue eyed teachers of the respondent department, whom have been appointed in their tenure.
- 11. That the appellant has got no other efficacious remedy available to him but to approach this Honourable Tribunal on the following ground inter-alia.

GROUNDS.

- A. That act of the respondent department, thereby depriving the appellant from the above said benefit of Seniority is illegal, unlawful without authority/ jurisdiction, as well as being based on malafide intentions of the respondent department is liable to be set aside.
- B. That at the time of appointment of the appellant, the respondent Department had no trained teachers, hence the appellant was appointed on fixed pay.
- C. That after appointment of the appellant as PET Teacher there was neither any time limit for completing the desiring course nor there was any special program from Respondent Department.

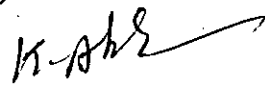
- D. That it is pertinent to mention here that the said untrained period of the appellant is counted in the retirement period as the same is granted on the basis of date of initial appointment.
- E. That since hundred and hundreds of the teachers have been treated in a discriminatory manner and have been deprived of the above said benefit without any just cause.
- F. That the appellant has been serving on the above said post since long, whereas the minimum tenure of service amongst the appellant and his colleagues is 17 years and the maximum tenure amongst them is extended to 25 years, but they have been treated unlawfully without any cogent/solid grounds.
- G. That the said act of the respondent department is not merely illegal as well as unlawful, but is also against the very clear Article of Constitution of Islamic Republic of Pakistan as engraved in the basic rights of said constitution.

It is, therefore, prayed that on acceptance of this Service Appeal, the respondent may please be directed to count the untrained period of the appellant towards his service and they may further be directed to prepare a fresh seniority list on initial appointment basis.

Any other remedy to which appellant is found entitled, in the peculiar circumstances of the case may also be granted.


Appellant

Through


(KHAN AKBAR KHAN)
Advocate, High Court,
Peshawar.

Dated: -05-04-2013

CERTIFICATE:

Certified that as per information furnished by my client no such like service appeal on the subject has earlier been filed in this Hon'ble Tribunal.


ADVOCATE

5

**BEFORE THE SERVICE TRIBUNAL, KHYBER PAKHTOON
KHWA, PESHAWAR.**

C.M No. _____ 2013

In

Service Appeal No _____ /2013

Wahid Ali.....Appellant

VERSUS

Govt of K P K through Secretary & others

.....Respondents

=====

***APPLICATION FOR TEMPORARY INJUNCTION TO THE
EFFECT THAT RESPONDENT MAY KINDLY BE
RESTRAINED FROM TAKING ANY ACTION OVER THE
TENTATIVE SENIORITY LIST, TILL THE FINAL DESICION
OF THE MAIN APPEAL.***

=====

Respectfully Sheweth:

1. That the appellant has filed the above titled service appeal before this Honourable Tribunal, in which no date of hearing has yet been fixed.
2. That respondent has prepared a seniority list in which the untrained period of almost 6 years of the appellant has not been counted towards his service.
3. That the applicant/appellant has very prima facie cause of action and is very hopeful of its ultimate success of his appeal.
4. That all the three ingredients i.e. prima facie case, balance of convenience and irreparable loss as per spirit of the rules for granting injunction is of the applicant/appellant are present in the said appeal.
5. That in case the injunction as prayed for above is denied, the applicant/appellant will suffer irreparable loss as the impugned.

6

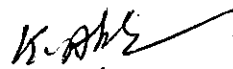
Hence, it is in the interest of justice to stay further proceedings on the impugned notification, till the final decision of this Honourable Tribunal.

6. That there is no legal bar in granting the injunction as prayed for above.
7. That the facts and grounds taken in the memo of appeal may kindly be considered as part and parcel of the instant application.

It is, therefore, humbly prayed that in the light of above said submissions this Honourable Tribunal may please be kind enough to restrain the respondent from taking any action over the tentative Seniority list till the finalisation of the main appeal.


Applicant

Through



(KHAN AKBAR KHAN)
Advocate,
High Court, Peshawar.

Dated: 05-04-2013

BEFORE THE SERVICE TRIBUNAL, KHYBER PAKHTOON
KHWA, PESHAWAR.

Service Appeal No _____/2013

Wahid Ali.....Appellant

VERSUS

Govt of KPK through Secretary and others

.....Respondents

AFFIDAVIT

I, Khan Akbar Khan Advocate, as per instruction of my client, do hereby solemnly affirm and declare on Oath that the contents of the accompanying **Application** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble court.



K.A.K.
Deponent

Annexure = A

⑧ تقریر کا جواب = 31-3

OFFICE OF CIVIL:DIRECTOR SECONDARY EDUCATION MARDAN DIVN:MARDAN.

APPOINTMENT/ADJUSTMENT:

Appointment of the following person(s) is hereby/ordered against the post of P.F.T. on temporary and adhoc basis at Rs. 1605/2 fixed plus usual allowances as admissible under the rules in BPS.No. 9 (Rs. _____ / at the institution noted against each name.

| S.No. | Name/Qualification & Address | Posted at | Remarks. |
|-------|---|------------------|----------|
| 1 | Mr. walid Ac. 810 Nadir Khan Moh. Sharab Nbad, Palodheri Mardan. F.A. | GMS, Tanig. Abad | |

TERMS AND CONDITIONS:

- 1- His/her appointment is purely temporary and liable to termination at any time without assigning reasons or notice.
- 2- In case of resignation he/she will have to submit one month's prior notice to the Deptt: or forfeit one month's pay in lieu thereof to the Government.
- 3- He/She is required to produce health and age certificate from the Medical authority concerned before taking over charge.
- 4- He/She should not be allowed to take over charge if His/Her age is less than 18 years or above 30 (thirty) years.
- 5- His/Her apptt: is subject to further condition that he/she is domiciled of N.W.F.P.
- 6- All original educational, character and domicile certificate should be thoroughly checked before handing over charge, if necessary it should be verified from the Institutions concerned.
- 7- His/Her antecedents form should be obtained duly verified by the local police authorities and submit to this office together with application for apptt: on the prescribed form and under taking declaration of moveable and immovable property for record in this office.
- 8- If he/She fails to take over charge of the post within a month of the issue receipt of this order the offer of apptt: shall stand cancelled.
- 9- Charge report should be submitted to all concerned.
- 10- He/She should be given test in Nazira Quran and Pakistan Studies and result intimated to this office.
- 11- No TA/DA is allowed.

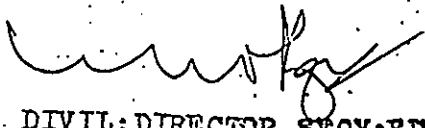
(MOHAMMAD ZAMAN KHAN)
CIVIL:DIRECTOR SECY:EDUCATION
MARDAN DIVN:MARDAN.

Endst:No. 1751-53

Dated Mardan the, 20-5-07

Copy of the above is forwarded to the:-

- 1- Distt:Education Officer. (41) Group Mardan
- 2- Principal/Headmaster/Headmistress
- 3- Distt:Accounts Officer
- 4- Spdtt: local office.
- 5- Candidate concerned


CIVIL:DIRECTOR SECY:EDUCATION
MARDAN DIVN:MARDAN.

Tanf
NE

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

Annexure B

M.A

University of Peshawar

(Pakistan)

Session ANNUAL 2000

WAHID ALI

Son/Daughter of

MEHAR KHAN

and a student/private candidate of

DISTRICT MARDAN

having passed the prescribed examination held in

August, 2000

is this day admitted by the University of Peshawar to the Degree of

Master of Arts

In

PESHAWAR

In Second Division

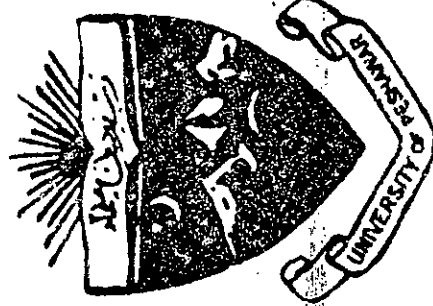
The Examination was taken as a whole/ in parts

Serial No 0062570

Registration No. 28-161-250

Roll No. 20293

Result Declared on FEBRUARY 02, 2001



Abulhasan
Raza

HEAD MASTER
G.M.S Zore Abad
Distt: Mardar

Signature
Registrar

Countersigned

Signature
Vice-Chancellor

Vice-Chancellor

(6)

DEPT. OF TRANSPORTATION
CONTRACT NO. 1009
SECTION 100210

Handwritten notes:
10/15/09
10/16/09

Handwritten notes:
10/15/09
10/16/09

DEPARTMENT OF TRANSPORTATION
CONTRACT NO. 1009
SECTION 100210

DEPARTMENT OF TRANSPORTATION
SUPERINTENDENT'S SECTION

Handwritten signature: [Signature]
10/16/09

Handwritten signature: [Signature]

S. No. 0712

Annexure C

B-51-13
D.M.C

Departmental Examinations Education Department



NWFP

Detailed Marks Certificate

Name Wahid Ali Physical Education Training Examination

Session 2001

Father's name Nadeem Khan

Roll No. 208

| Subject | Maximum Marks | Marks obtained | |
|--|---------------|----------------|----------|
| | | In figures | In words |
| 1. Pri: Organisation and Administration | 100 | 86 | |
| 2. Sc. Of Movement | 100 | 62 | |
| 3. Theory of Games | 100 | 43 | |
| 4. Olym: and recreative games | 100 | 42 | |
| 5. Anatomy and Physiology | 100 | 42 | |
| 6. Health Education | 100 | 31 | |
| 7. Teaching of Education Gyms. | 60 | 46 | |
| 8. Teaching of Athletics | 60 | 24 | |
| 9. Teaching of Major Games | 60 | 26 | |
| 10. Skill in Education Games | 50 | 26 | |
| 11. Skill in apparatus works and marching | 50 | 29 | |
| 12. Skill in Athletics | 40 | 28 | |
| 13. Skill in Games | 40 | 21 | |
| 14. Girls Guide, First Aid, Nursing, Civil Defence | 60 | 25 | |
| 15. Rhythmical Exercises Rifle Drill | 20 | 20 | |
| 16. Morning Assembly | 20 | 19 | |
| Total | 1060 | 691 | |

Attested
[Signature]

HEAD MASTER
G.M.S Zore Abad
Distt: Mardan

Note: Errors/omissions excepted.

Entered/Passed Passad Division II

Prepared by [Signature]

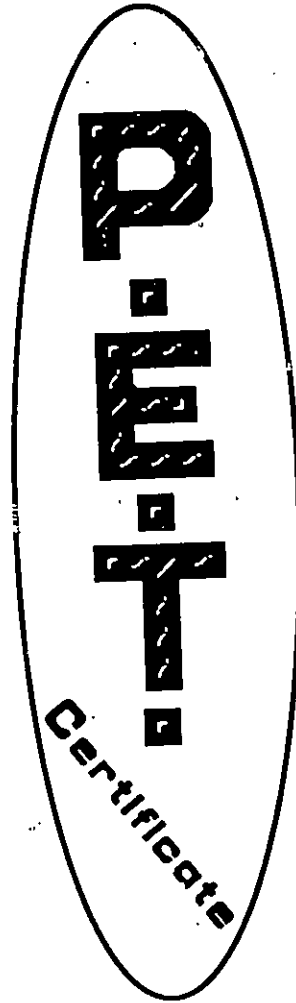
Checked by _____

Date of Declaration of Result **31-3-2002**

[Signature]
Registrar
Departmental Examinations Education Department
NWFP, Peshawar.

Anntwa D.

SCHOOLS & LITERACY DEPARTMENT, NWFP, PESHAWAR



Serial No..... 108.....

Session..... 2001.....

Roll No..... 208.....

Marks Obtained..... 491 / 1050.....

Division..... II.....

Certified that Mr./Mrs./Miss..... Wahid Ali.....

Son/Daughter of..... Nadar Khan..... is a student of

..... PET Short Course at GHSS No. 1 Mansehra.....

having passed the P.E.T. Examination held in..... 14/9/2001..... is

qualified himself/herself.

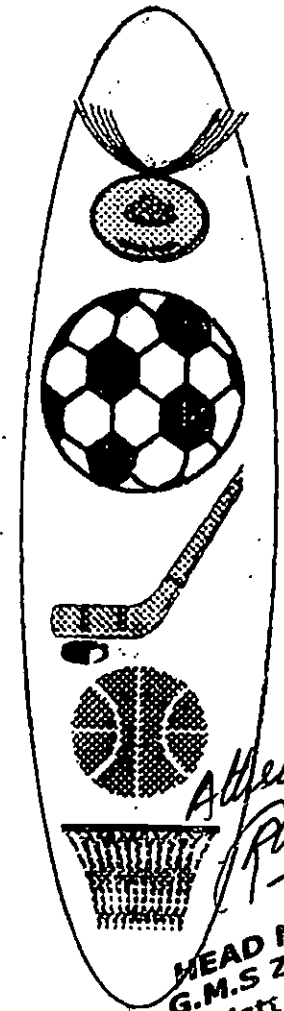
Prepared by..... *[Signature]*.....

Checked by..... *[Signature]*.....

Date of declaration Result..... 31/3/2002.....

Date of Issue..... 1/6/04.....

[Signature]
Deputy Director (Examination)
Schools & Literacy Department,
N.W.F.P., Peshawar.



[Signature]
HEAD MASTER
G.M.S Zone Abad
Dist: Pardan

(13) Annex (F)

**GOVERNMENT OF N.W.F.I
FINANCE DEPARTMENT
(REGULATION WING)**

NO. FD (PRC) 5-2 /2002
Dated Peshawar the: 30-10-2009

To: The Secretary to Govt. of NWFP,
Elementary & Secondary Education Department,
Peshawar.

Subject: GRANT OF ANNUAL INCREMENT / RUNNING PAY TO
UNTRAINED TEACHERS IN THE LIGHT OF SUPREME
COURT JUDGMENT.

Dear Sir,

I am directed to refer to this Department letter No.FD (PRC) 5-2/2002, dated 30-03-2009 on the subject noted above and to say that certain quarters have raised some queries about the subject matter which are clarified as under:-

- i. All those untrained teachers who were appointed on fix pay and were subsequently regularized against their posts, on acquiring / completing requisite training successfully, would be entitled for such benefits of annual increments from the date of their first appointments as such, but without arrears.
- ii. The above benefit would also be admissible to all those retired teachers who fulfil the above conditions.
- iii. The above benefit would not be admissible to those who themselves resigned, or were removed / terminated from service.

2. This Department letter of even number dated 30-03-2009 shall be deemed to have been modified to the above extent.


Yours Faithfully,

(SHAUKAT ULLAH)
SECTION OFFICER (SR-1)

Endst: of even No. & date.

Copy for information and necessary action:-

1. Accountant General, NWFP.
2. All District Coordination Officers, NWFP.
3. All District / Agency Accounts Officers, NWFP / FATA.


SECTION OFFICER (SR-1)

14



GOVERNMENT OF N.W.F.P.
FINANCE DEPARTMENT
(REGULATION WING)

NO.FD (PRC) 5-2/2002
Dated Peshawar the: 30-03-2009

To: The Secretary to Govt. of NWFP,
Elementary & Secondary Education,
Peshawar.

3222
7-4-09

Subject: GRANT OF ANNUAL INCREMENT / RUNNING
PAY TO UNTRAINED TEACHERS IN THE LIGHT
OF SUPREME COURT JUDGEMENT.

Dear Sir,

I am directed to refer to your letter NO.SO (B&A) 1-16/08/
Advance Increment dated February 27, 2009 on the subject noted above and
to state that the Provincial Government is pleased to allow the benefit of
annual increments to the untrained teachers from the date of their regular
appointment.

No arrears shall however, be admissible / payable prior to the
date of issuance of this circular.

H/DO
E.A

(ABDUL JABBAR)
SECTION OFFICER (SR-1)

Encls: of even No & date.

Copy for information & necessary action to the:

- 1. Accountant General NWFP.
- ✓ 2. All District Coordination Officers.
- 3. All District / Agency Accounts Officers NWFP / EATA.

(Signature)
SECTION OFFICER (SR-1)

H/DO / E.A

pl sent a copy to
Edn Inspn. 102
D/CO F.E.D.O F&SE

10/04

خدمت جناب ایگزیکٹو ڈسٹرکٹ آفیسر (ای اینڈ ایس) ایجوکیشن مردان

درخواست برآمدتھ سناری لست 2012 ضلع مردان

(حوالہ: تاریخ آغاز ملازمت کو بنیاد بنایا جائے)

- مندرجہ ذیل گزارشات گوش گزار کرنے کی سعی ہے امید باور ہے شنوائی و کارروائی حسب استدعا عمل میں لائی جائے گی۔
- (۱) یہ کہ مسائل محکمہ تعلیم خیبر پختونخوا میں بحیثیت فزیکل ایجوکیشن ٹیچر (PET) مورخہ 02-9-1995 گورنمنٹ مڈل سکول طارق آباد (مردان) میں تعینات ہوا تھا۔ اور دم تحریر اپنی ذمہ داری بطریق احسن انجام دے رہا ہوں۔
- (۲) یہ کہ گزشتہ سناری لست ضلع مردان کو تاریخ آغاز ملازمت کی بنیاد پر تیار کیا گیا تھا جس میں مسائل کا نمبر 75 تھا۔
- (۳) یہ کہ موجودہ ضلعی سناری لست 2012ء میں ان ٹرینڈ پیریڈ کو شمار نہیں کیا گیا۔ جس میں مسائل کا سناری لست نمبر 108 ہے۔
- (۴) یہ کہ مذکورہ ان ٹرینڈ پیریڈ کے سالانہ انگریمنٹ اور بقایا جات مسائل کو ای ڈی او (ای اینڈ ایس) ایجوکیشن مردان بذریعہ چھٹی نمبر 62084 مورخہ 28-4-2009 ادا کر دی گئی ہیں۔
- (۵) یہ کہ سناری لست 2012ء میں تاریخ آغاز ملازمت کو خاطر میں نہ لاتے ہوئے مرتب کرنا سراسر خلاف ضابطہ و قانون اور انصاف کے تقاضوں سے متصادم ہے۔ اور مسائل کی حق تلفی بھی ہے۔

لہذا آپ صاحبان سے گزارش ہے کہ مذکورہ ضلعی لست 2012ء کو کالعدم قرار دیتے ہوئے تاریخ آغاز ملازمت کو بنیاد بنا کر مرتب کیا جائے۔

مورخہ: 15-12-2012

العارض

نام واحد علی
پوسٹ فزیکل ایجوکیشن ٹیچر (PET)
سکول گورنمنٹ مڈل سکول زور آباد (مردان)

بشرف ملاحظہ:

- (۱) سیکرٹری ایجوکیشن خیبر پختونخوا
(۲) ڈائریکٹر ایجوکیشن خیبر پختونخوا پشاور ✓
(۳) ڈی ای او ضلع مردان