Service Appeal No. 2380/2023

Mr. Yousaf Khan, PST BPS-12, GPS Abid Khan, District Dir Upper ..... (Appellant)

### Versus

- 1. Secretary of Elementary & Secondary Education Department, Government of Khyber Pakhtunkhwa Peshawar.
- 2. Director, Elementary and secondary Education Government of Khyber Pakhtunkhwa Peshawar.
- 3. District Education Officer (M) Dir Upper.

(Respondents)

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4	copy of the relevant page of the APT Rules 1989 is attached isas	A	
5	Copy of the appointment order dated 05-03-2016	В	
6	Copy of the regularization Act 2017	С	
7	Copy of the regularization order dated 21-03-2018	D	

(Abdur Rahman)
District Education officer (M)
District Dir Upper

Service Appeal No. 2380/2023

Mr. Yousaf Khan, PST BPS-12, GPS Abid Khan, District Dir Upper
..... (Appellant)

\*\*Chyber Pakhtukhw
Service Tribunal

### Versus

Diary No. 10269
Dated 3-1-2074

- 1. Secretary of Elementary & Secondary Education Department, Government of Khyber Pakhtunkhwa Peshawar.
- 2. Director, Elementary and secondary Education Government of Khyber Pakhtunkhwa Peshawar.
- 3. District Education Officer (M) Dir Upper.

(Respondents)

# PARA WISE COMMENTS ON& FOR BEHALF OF RESPONDENTSNo.1, 2& 3.

### Respectfully Sheweth:-

#### PRELIMNARY OBJECTIONS.

- 1. That the Appellant is not an "aggrieved" person with the meaning of section 4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974.
- 2. That the Appellant has got no cause of action /locus standi to file the instant appeal because the Appellant did not come on merit.
- 3. That the Appellant has not come to this Honorable court with clean hands.
- 4. That the Appellant is estopped by his own conduct.
- 5. That the instant service appeal is badly time barred
- 6. That the appeal is barred by law and limitation.
- 7. That the appeal in hand is barred by relevant provision of Law/Rules/Policy in field.

## ON FACTS.

- 1. Para -1 of the facts is correct that the appellant was appointed as PST vide appointment order dated 05-03-2016 on ad hoc/temporary basis for a period of one year.
- 2. Para- 2of the facts is correct that regularization Act2017 was promulgated for the employees of the Elementary & Secondary Education Department.
- 3. Para-3 of the facts is also correct, need no further comments.

4. Para-4of the facts is correct, furthermore, as per advertisement in the year 2015, the appellant was appointed as PST vide appointment order dated 05-03-2016 having marks/merit 99.23, while after promulgation of the regularization Act 2017, for the employees of the E&SE Department, he has been placed in the seniority list accordingly as per section 17 (Part-vi) Seniority of the Khyber Pakhtunkhwa civil servants (Appointment, promotion, and transfer) rules 1989.

#### ("Part-vi) Seniority.

- 17. Seniority. --- (1) the seniority inters se of civil servants [appointed to a service, cadre or post] shall be determined. ----
- (a) In the case of persons appointed by initial recruitments, in accordance with the order of merit assigned by the commission [or, as the case may be, the Departmental selection committee;].)

  Thus, as per the rules ibid, the appellant has been placed in his right position in the seniority list. (copy of the relevant page of the APT Rules 1989 is attached as "A", Copy of the appointment order dated 05-03-2016 is attached as "B", Copy of the regularization Act 2017 is attached as "C", Copy of the regularization order dated 21-03-2018 is attached as "D").
- 5. Para-5of the facts is correct that the appellant has been placed in the seniority list on the basis of the merit as per section 17 (Part-vi) Seniority of the Khyber Pakhtunkhwa civil servants (Appointment, promotion, and transfer) rules 1989. Furthermore, terms and condition No.9 of the regularization notification dated 21-03-2018, as for those candidates whose are having same merit position in their first appointment order.
- 6. Para- 6 of the facts needs no comments.
- 7. Para-7 of the facts pertains to record.
- 8. Para-8 of the facts needs no comments.

## **GROUNDS.**

- A) In correct, hence denied. The respondent always follows rules and policies in letter and spirit, whereas the seniority list ibid has been determined on the basis of the merit as per section 17 (Part-vi) Seniority of the Khyber Pakhtunkhwa civil servants (Appointment, promotion, and transfer) rules 1989.
- B) Incorrect, hence denied. The appellants have been treated as per law and rules.

- C)Incorrect, details have been submitted in the facts above.
- D) Correct, the appellant has been placed in the seniority list as per rules.
- E) Incorrect, details have been submitted in the facts above.
- F) Legal, however the respondents also seek permission for additional grounds during arguments.

#### PRAYER.

In the view of the above made submission, it is requested that this Tribunal may very graciously be pleased to dismiss the instant service appeal with cost in favor of the Respondent Department.

(Motasim Billah Shah)

Secretary,

E&SE Peshawar Respondent No. 1

(Ms. Samina Altaf)
Director,

E&SE Peshawar Respondent No.2

(Abdur Rahman)

**District Education officer (M)** 

District Dir Upper Respondent No. 3

Service Appeal No. 2380/2023

Mr. Yousaf Khan, PST BPS-12, GPS Abid Khan, District Dir Upper ..... (Appellant)

## Versus

- 1. Secretary of Elementary & Secondary Education Department, Government of Khyber Pakhtunkhwa Peshawar.
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- 3. District Education Officer (M) Dir Upper.

(Respondents)

### **Affidavit**

### I, Mr. Abdur Rahman District Education Officer

**District Dir Upper** do hereby solemnly affirm & declare on oath that the whole contents of the instant para wise Comments are true & correct to the best of my knowledge and belief. It is further stated on oath that in this appeal the answering Respondents have neither been placed Ex-Party nor their defense has been struck off/ cost.





Service Appeal No. 2380/2023

Mr. Yousaf Khan, PST BPS-12, GPS Abid Khan, District Dir Upper ..... (Appellant)

#### Versus

- 1. Secretary of Elementary & Secondary Education Department, Government of Khyber Pakhtunkhwa Peshawar.
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  - 3. District Education Officer (M) Dir Upper.

(Respondents)

### **AUTHORITY LETTER**

I, Mr. Abdur Rahman District Education Officer District Dir Upper do hereby authorized Mr. Syed Alamzeb Shah Assistant Litigation Officer of this office for submission of Joint Para wise comments in Service Appeal No. 2380/2023

Case Titled: Yousaf Khan, PST BPS-12, GPS Abid Khan, District Dir Upper Vs Government of Khyber Pakhtunkhwa& others fixed for hearing on 22-12-2023, hence, an authority letter is hereby issued in favor of the above-named officer.

(Abdur Rahman)

District Education officer (M)

District Dir Upper

Respondent No. 3

- 17. Seniority.---(1) The seniority inter se of civil servants <sup>1</sup>[appointed to a service, cadre or post] shall be determined.-
  - in the case of persons appointed by initial recruitment, in accordance with the order of merit assigned by the Commission <sup>2</sup>[or, as the case may be, the Departmental Selection Committee;] provided that persons selected for appointment to post in an earlier selection shall rank senior to the persons selected in a later selection; and
  - (b) In the case of civil servants appointed otherwise, with reference to the dates of their continuous regular appointment in the post; provided that civil servants selected for promotion to a higher post in one batch shall, on their promotion to the higher post, retain their inter se seniority as in the lower post.

**Explanation-I.---**If a junior person in a lower post is promoted to a higher post temporarily in the public interest, even though continuing later permanently in the higher post, it would not adversely effect the interest of his seniors in fixation of his seniority in the higher post.

**Explanation-II.**—If a junior person in a lower post is promoted to a higher post by superseding a senior person and subsequently that senior person is also promoted the person promoted first shall rank senior to the person promoted subsequently; provided that junior person shall not be deemed to have superseded a senior person if the case of the senior person is deferred for the time being for want of certain information or for incompletion of record or for any other reason not attributing to his fault or demerit.

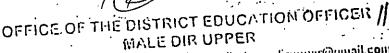
**Explanation-III.---**A junior person shall be deemed to have superseded a senior person only if both the junior and the senior persons were considered for the higher post and the junior person was appointed in preference to the senior person.

- (2) Seniority in various cadres of civil servants appointed by initial recruitment vis-a-viz those appointed otherwise shall be determined with reference to the dates of their regular appointment to a post in that cadre; provided that if two dates are the same, the person appointed otherwise shall rank senior to the person appointed by initial recruitment.
- <sup>3</sup>[(3) In the event of merger/restructuring of the departments, attached departments or subordinate Offices, the inter se seniority of civil servants affected by the merger / restructuring as aforesaid shall be determined in accordance with the date of their regular appointment to a cadre or post.]
- 18. General Rules.---In all matters not expressly provided for in these rules, civil servants shall be governed by such rules as have been or may hereafter be prescribed by Government and made applicable to them.
- **19. Repeal.---**The Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1975, are hereby repealed.

Substituted for the words "appointment to post in the same Basic Pay Scale in a cadre" by Notification No.SOR.I(S&GAD)4-1/80,dated 17-05-1989.

<sup>2.</sup> Inserted by Notification No. SORI(S&GAD)4-1/80(V.II), dated 04-02-1996.

<sup>3.</sup> Added by Notification No. SOR-I(E&AD)4-1/80 (Vol. IV), dated 28-05-2002.



PH No.0944-884400 FAX-0344-0304 (1. e-mail- demadirupper@gmail.com



Consequent upon the recommendation of the Departmental Fromotion Committee, appointment of the following candidates are hereby ordered against the post of Primary School Teachers (PST) Male Wards / School based in BPS-12 ( Rs.9055 -650 -28555 ) @ Rs. 9055 I - fixed plus usual allowances as admissible under the rules on adhec basis under the existing policy of the Provincial Government, in Teaching Cadre on the terms and condition given below with effect from the date of taking over charge :-Place of Posting

	-			Ward/ U.C	Place of Posting
·,	Name	Father's Name	ineril	BANDAI WARI	GPS Seral Nelian
S.f	'	GHANI RAHMAN	<u> </u>		GPS flagans
1 - 1		SAYA GAMMAHUM	115.43	G11114 G1111	GPS Kaudow Mackarl
_   _ ?		MUHAMMAD HAROOM	115.24	BANDAI WARI	GMPS Bodolal
_   _ 1		MUHAMMAD SHERIN	111.05	BANDAI WARI	GPS Korbalan
		SHAHMAND ROZ	110.49	BANDAI WARI	GPs Malar No-2
	S SAID ZAMAN	JABOJ DAMMAHUM	107.02	BANDAI WARI	GPS Ari Mangal
1-7	F TRUHDOLLAH	SHAH NAWZ KHAN	107,07	DANDAI WARI	GPS Shawkand
1	7 MUHAMMAD ISHAD	BACHA AMIN	106.17	BANDAFWARI	GPs Mainr No-2
\ <u> </u>	B SHAH HUSSAIN	ABOUL BASHIR	104.39	BANDAI WARI	
·  -	2 IKRAM UDDIN	ABOUL BASAIN	102.46	BANDAI WARI	GPS Dular
\- <u>-</u>	10 JUAN HUSSAIN	. AHMAD RAHIM	101.13	BANDAI WARI	GPS Bagam
	11 JANZADA	SHAH MAZOL	100.55	DANDAI WARI	GPS Malor
	12 KHAISTAWAR KHAN	· AMIR DAD KHAN	99.23	BANDAL WAR	GPS Abid Khan
	13 YOUSAF KHAN	МАНМООО	95.32	BANDAI WAR	GPS Mater  I GMPS Keekel Dular
<b>▽</b> }-	TA LAL ZADA	LABIR KHAN.	93.53	DVM IVUNVU	
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ŀ	16 SAID GAHAR	MIAN GUL RANGING	92.92	DANDAI WAR	
ľ	17 IJAZ UL HAQ	RAHMAT AMIN	92.11	BANDAI WAR	II GPS Jehangiro
}	10 DWAKHAN	AICBAR ICHAN	21.23	BANDAI WAL	GPS Onborn
1	19 MUHAMMAD IMRAN	ABOUL HALEEM	90.85	BANDAI WAT	RI GPS Badaial Bala
	20 HASHMAT ALI	WASIT ICHAN	20.39	DANDALVIA	TI GPS Soral Nohan
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		FARID KHAN			·
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## ERMS & CONDITIONS:

Charge reports should be submitted to all concerned in duplicate.

Appointment is purely on temporary basis initially for one year. They should not be landed over charge of they exceed 15 years or below 18 pears of age.

Appointment is subject to the condition that their certificates/degrees must be verified from the concerned authorities if any que found producing hogus Certificate will be reported to the law enforcing agencies for further action.

His services are liable to termination on one month's notice from either side. In case of resignation without notice his one-mouth poy/ollowoners shall be forfeited to the

Pay will not be made until and unless a certificate from the concerned unthority is issued as his certificates are varified.

They should join their post within 15 days of the issumee of this notification. In core sound jain their past within 15 gaps of the issuance of this notification. In case of failure to join their past within 15 daps of the issuance of this postification, it is appointment will expire automatically and no subsequent appeal etc shall be entortained. entertained.



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innert will be made so then before making nerification from concerned

e cerurs and omissions etc iffound at any stage shall be rectified. In cas of termination of Said Condidate, he will have no right to claim the order already issued in any court.

(MOIN-UD-DIN)
District Education Officer,
Male dir Upper

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 $\gamma$  is to Na. agry PST/AppH (2016-NTS /OFO(M)/ADO(P) Dated Dir (11)-the os/og/2016 .

Copyeformuled for information and necessary action to the: •

- Director of Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.
- 7 District Accounts Officer Dir Upper
- 3. Ogg District Education Officer Male Dir Upper-
- 4 Sale Divisional Education Officer Male Div and Wari.
- 5 Official Concerned.
- 6 MI/File

District Education Officer, Male dir Upper

N STANDER STAN



## THE KHYBER PAKHTUNKHWA EMPLOYEES OF THE ELEMENTARY AND SECONDARY EDUCATION DEPARTMENT (APPOINTMENT AND REGULARIZATION OF SERVICES) ACT, 2017.

#### (KHYBER PAKHTUNKHWA ACT NO. 1 OF 2018).

(First published after having received the assent of the Governor of the Khyber Pakhtunkhwa in the Gazette of Khyber Pakhtunkhwa, (Extraordinary), dated the 8th January, 2018).

#### AN ACT

to provide for the appointment and regularization of the services of certain employees appointed on adhoc or contract basis or appointed in certain projects in the Elementary and Secondary Education Department in the Province of the Khyber Pakhtunkhwa.

WHEREAS it is expedient to provide for the appointment and regularization of the services of certain employees appointed on adhoc or contract basis or appointed in certain projects in the Elementary and Secondary Education Department in the Province of the Khyber Pakhtunkhwa, in the public interest:

It is hereby enacted as follows:

- 1. Short title, application and commencement.--(1) This Act may be called the Khyber Pakhtunkhwa Employees of the Elementary and Secondary Education Department (Appointment and Regularization of Services) Act. 2017.
- (2) It shall apply to all the employees in the Elementary and Secondary Education Department, as defined in clause (c) of sub-section (1) of section 2 of this Act.
- (3) It shall come into force at once and it shall be deemed to have taken effect from the date of the initial appointment of the employees as referred to in clause (c) of subclause (1) of section 2 of this Act.
- 2. Definitions.---(1) In this Act, unless the context otherwise requires,-
  - (a) "Commission" means the Khyber Pakhtunkhwa Public Service Commission;
  - (b) "contract appointment" means appointment of a duly qualified person for a specific period made otherwise than in accordance with the prescribed method of recruitment;
  - (c) "employees" mean duly qualified persons,-



- who are appointed as teachers on adhoc or contract basis by the Government after 2013 through National Testing Service but does not include the teachers engaged on work charge basis or who are paid out of contingencies;
- (ii) who are appointed in the projects on contract basis in accordance with the project policy; and
- (iii) who are appointed as Junior Clerk in the Elementary and Secondary Education Department by Government after 2013 through National Testing Service;
- (d) "Government" means the Government of the Khyber Pakhtunkhwa;
- (e) "law or rule" means the law or rule for the time being in force governing the selection and appointment of civil servants;
- (f) "project" means,-
  - (i) IT/Computer Teachers in Computer Labs Projects in Khyber Pakhtunkhwa (Phase-II):
  - establishment of five hundreds (500) IT Labs in Government High and Secondary Schools in Khyber Pakhtunkhwa; and
  - (iii) establishment of five hundreds (500) IT Labs in Government High Schools in Khyber Pakhtunkhwa (Phase-III); and
- (g) "teacher" means a teacher of primary, middle, secondary or higher secondary school,
- (2) The expressions "adhoc appointment" shall have the same meaning as respectively assigned to them in the Khyber Pakhtunkhwa Civil Servants Act, 1973 (Khyber Pakhtunkhwa Act No. XVIII of 1973).
- 3. Regularization of services of employees.--(1) Notwithstanding anything contained in any other law or rules, the employees, who hold posts till the commencement of this Act [or till 30th June 2017, in respect of the project as mentioned in sub-clause (i) of clause (f) of sub-section (1) of section 2 of this Act, as the case may be], shall be deemed to have been validly appointed on regular basis from the day of the initial appointment; provided that-
  - (i) they possess the same qualification and experience required for a regular post;

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<sup>&</sup>lt;sup>1</sup> Inserted vide Khyber Pakhtunkhwa Act No. II of 2019.

(ii) they have not resigned from their services or terminated from services on account of misconduct, inefficiency or any other ground, before the commencement of this Act [:]

<sup>2</sup>[Provided that expiry of the project as mentioned in sub-clause (i) of clause (f) of sub-section (1) of section 2 of this Act, shall not be deemed a ground for non-appointment of an employee on regular basis under this Act; and)

- (iii) the service promotion quota of all service cadres shall not be affected.
- (2) The services of the employees shall be deemed to have been regularized only on the publication of their names in the official Gazette.
- 4. Determination of seniority.---(1) The employees whose service are regularized under this Act or in the process of attaining service at the commencement of this Act, shall rank junior to all other employees belonging to the same Cadre, who are in service on regular basis on the commencement of this Act, and shall also rank junior to such other persons, if any, who, in pursuance of the recommendation of the Commission made before the commencement of this Act, are to be appointed to the Cadre, irrespective of their actual date of appointment.
- (2) The seniority inter-se of those employees, whose services are regularized under this Act within the Cadre, shall be determined on the basis of their continuous service in Cadre:

Provided that if the date of continuous service in the case of two or more employees is the same, the employee older in age shall rank senior to the younger one.

5. Overriding effect.-- Notwithstanding anything to the contrary contained in any other law or rules for the time being in force, the provisions of this Act shall have an overriding effect and the provisions of any such law or rules to the extent of inconsistency to this Act shall cease to have effect.

Inserted vide Khyber Pakhtunkhwa Act No. 11 of 2019.

(63)

Replaced vide Khyber Pakhtunkhwa Act No. II of 2019.





PST (NTS) Regularization Order

## OFFICE OF THE DISTRICT EDUCATION OFFICER (NIALE) UPPER DIR



0944-881400-Eax-881400 E-mail\_deorndirupper@gmail.com

#### NOTIFICATION

In pursuance of Khyber Pukhtunkhawa Employees of the Elementary & Secondary Education Appointment & Regularization of Services Act. 2017 (Khyber Pukhtunkhawa Act no.1 of 2018), & Elementary & Secondary Education Department Notification No.SO(S/P)P.&SPID/3-2/2018/SPPI/Contract Dated 16/02/2018. Services of the following (427) Primary School Teachers of Sub-Division Wari, Dir Upper appointed w.e.f. (03-05-2014 to 23-06-2017) through NTS on adhoc/contract basis, are hereby regularized in BPS-12, on terms and condition given below with effect from the date of their 19 appointment as per details given against each, in the interest of public service.

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ADO (P) Establishment

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#### Terms & Condition

- 1. Their services shall be governed by the Khyber Pukhtunkhawa Civil Servants Act, 1973, the Khyber Pukhtunkhawa (Appointment, Deputation, Posting & Transfer of teacher, Instructors & Doctors) Regulatory act, 2011, and such rules and regulations as may be issued from time to time by the Covernment.
- 2. Their services shall be considered regular and they shall be elligible for pension / deduction of OP Fund in terms of the Khyber Pukhtunkhawa Civil Servant Act, 1973 as amended in 2013.
- 3. They shall possess the same qualification and experience regular dor the regular post.
- 4. Their services are liable to termination on one month notice from either side, in case of resignation without notice, their one month pay/allowances shall be forfeited to the Government.
- 5. Their regularization shall not affect the promotion quota of existing holders of posts in respective service gadres.
- 6. The regularization shall not be in favor of those, who have not taken over charge or have remained absent from duty or resigned from service and also not for those who are under disciplinary proceedings.
- 7. The Employees whose services regularized under the Khyber Pukhtunkhawa Employees of the Elementary & Secondary Education (Appointment and Regularization of Services) Act, 2017 (Khyber Pukhtunkhawa Act No.1 of 2018) or in the process of attaining service at the commencement of Khyber Pukhtunkhawa Employees of Elementary and secondary Education (Appointment and Regularization of services) Act, 2017 (Khyber Pukhtunkhawa Act No.1 of 2018) shall rank junior to all civil servants belonging to the same service or eadre. As the case may be, who are in service on regular basis on the commencement of the Khyber Pukhtunkhawa Employees of Elementary And secondary Education (Appointment and Regularization of services) act, 2017 (Khyber Pukhtunkhawa Act No.1 of 2018) and shall also junior to such other persons, if any, who, were appointed on regular basis to the respective service or cadre before the commencement of this Act, irrespective of their actual date of appointment.
- 8. The seniority inter-se of the employees, whose are regularized under this Act within the same service or cadre, shall be determined on the basis of their merit position in such service or cadre.
- 9. Their sentority shall be determined on the basis of their continuous service in cadre, provided that if the date of continuous services in the case of two or more employees is the same, the employee older in age shall be ranked sentor to the younger one.

(ABDUL HAQ)
DISTRICT EDUCATION OFFICER
(MALE) UPPER DIR

ADO (P) Establishment

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PST (NTS) Regularization Order

Endsu: No. 1.5616.7F. No 158/DEO (M)/ADO (P) ESTB:

Dated 2/13 /2018

Copy forwarded to the

- 1. Director E&SE Khyber Pakhtunkhwa Peshawar.
- 2. District Accounts Officer Upper Dir
- 3. Dy: District Education Officer (M), Upper Dir
- 4. SDEO (Mule) Burawal, KAlkot, Dir, Wari & Shoringal.
- 5. Teachers Concerned
- 6. AP EMIS Local Office
- 7. Office Copy

(MALE) UPPER DIR