

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,
PESHAWAR

Execution petition No: 19/2024

In Service Appeal No.2586 /2023

Dr. Asim Saeed, (BPS 18) Teaching Cadre Education Department D.I.Khan

.....**APPELLANT**

VERSUS

**Government of Khyber Pakhtunkhwa through Chief Secretary KPK,
Peshawar and others**

.....**RESPONDENTS**

PARA-WISE COMMENTS ON BEHALF OF RESPONDENT NO.04

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Dated: 25.01.2024

Private Respondent No.4


Muhammad Noor Sultan

Through Counsel


Khalid Mahmood Advocate

High Court DIKhan

0336-4330001

①

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Khyber Pakhtunkhwa
Service Tribunal

Diary No. 10763

Date: 25/1/24

Respectfully Sheweth,

Respondent No.04 through counsel humbly submits as under.

- i. That appellant was transferred vide Notification No.SO(MC)E&SED/2-3/2022/Promotion/MC/Asim Saeed/DDEO(M) Dated 27.09.2023, in response to Notification dated 27.09.2023, Appellant has also relieved from the post of Deputy DEO (Male) on 28.09.2023 (**Annexure-A**) and he is in strength of GHSS Rammak (**Annexure-B**), and Appellant challenged the above notification dated 27.09.2023 before the Honorable Service Tribunal on 14.12.2023 which was become infructuous because Competent Authority has issued another Notification No.SO(MC)E&SED/4-16/2023/PT/SDEOs dated 01.12.2023 (**Annexure-C**) which was not challenged before this Honorable Tribunal by Appellant and Respondent has also taken-over the charge of the post as Deputy District Education Officer (Male) DIKhan on 02.12.2023, in response of Notification dated 01.12.2023 (**Annexure-D**). Furthermore, Appellant has concealed the notification dated 01.12.2023, because his service appeal was filed on 14.12.2023 after 14 days of the said notification dated 01.12.2023. Therefore, this execution petition is liable to be dismissed being in fractious.
- ii. That the appellant has not come to this Honorable Tribunal with clean hands.
- iii. That the appellant is not an aggrieved person nor has any LOCUS standi to file the execution petition.
- iv. That the appellant has concealed material facts from this Honorable Tribunal.
- v. That the execution petition is against the prevailing law and rules.
- vi. That execution petition is liable to be dismissed being devoid of any merits.

ON FACTS

1. That correct to the extent that petitioner is a teaching cadre officer and posting of teaching cadre on management cadre post is violation of the judgements of this Honorable Tribunal as well as judgements of Honorable High Court.
2. Incorrect, being teaching cadre, appellant was removed from the post of management cadre i.e Deputy DEO and a management cadre officer was given additional charge vide Notification dated 27.09.2023 for exigency of service, and afterward, proper posting of management cadre officer was issued vide Notification dated 01.12.2023, which was not challenged by appellant.
3. Incorrect, being teaching cadre officer, appellant was not eligible for the post of management cadre. Therefore, his request was rejected.
4. Being teaching cadre, he is not aggrieved person for not posting on the post of management cadre.

GROUND

1. That incorrect, the petitioner filed service appeal No. 2586/2023 before the Hon'ble Tribunal against the Order dated: 27-09-2023 on 14-12-2023 which was suspended to the extent of petitioner vide court order dated: 15-12-2023. It is pertinent to mention here that the above order dated 27-09-2023 was not in field, because the competent authority has issued Notification dated: 1-12-2023 much before filing of service appeal.
2. Correct to the extent that petitioner submitted an application for the execution of order dated; 15-12-2023 in which Notification dated 27-9-2023 was suspended which is not in field and petitioner concealed the material facts from the Hon'ble Tribunal. It is pertinent to mention here that the above order dated 27-09-2023 was not in field, because the competent authority has issued Notification dated: 1-12-2023 much before filing of service appeal, furthermore petitioner belong to teaching cadre. Therefore, he was posted to teaching side according to in view of the dictum of the judgement dated 18.11.2009, in writ petition No.2937/2009 and department letter No.SO(E-I)E&AD/9-88/2019, dated 08.02.2019 (Annexure-E&F).

- (B)
3. Incorrect, the Notification dated 1-12-2023 was issued much before filing of service appeal No. 2586/2023 which was instituted before Hon'ble Court on 14-12-2023. Furthermore the petitioner not impugned notification dated 1-12-2023 under Service Tribunal Act.
 4. That the impugned notification dated 27.09.2023 was become infructious. Therefore, no need to add other grounds.

It is therefore, humbly requested that in light of the above Para wise reply, the instant execution petition may please be dismissed with special costs in view of dictum laid down by Honorable Islamabad High Court in reported judgement PLJ-2023 Islamabad 212.

Dated: 25-1-2024

Private Respondent No.4


Muhammad Noor Sultan

Through Counsel


Khalid Mahmood Advocate

High Court DIKhan

0336-4330001

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BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,
PESHAWAR

Execution petition No: 19/2024

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**Government of Khyber Pakhtunkhwa through Chief Secretary KPK,
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.....RESPONDENTS

PARA-WISE COMMENTS ON BEHALF OF RESPONDENT NO.04

AFFIDAVIT

I, Muhammad Noor Sultan, Deputy DEO, Respondent No.04 do hereby solemnly affirm and declare on oath that the para-wise contents of the instant reply are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honourable Tribunal.

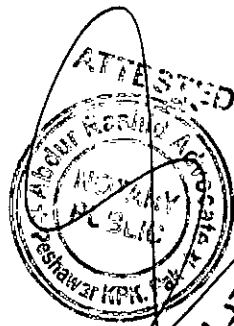
M. Noor Sultan
Deponent

Identified by Counsel

[Signature]

12103-1489991-7

**Khalid Mahmood Advocate
High Court DIKhan
0336-4330001**



25/1/2024

(5)

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,
PESHAWAR

CM in ___/2024

Execution petition No: 19/2024

In Service Appeal No.2586 /2023

Dr. Asim Saeed, (BPS 18) Teaching Cadre Education Department D.I.Khan

.....**PETITIONER**

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APPLICATION FOR VACATION OF INTERIM ORDER DATED 12-01-2024 AGAINST THE NOTIFICATION DATED 01-12-2023.

Respectfully Sheweth:

1. That petitioner has filed execution petition before the Hon'ble Service Tribunal.
2. That the Hon'ble Tribunal has suspended the Notification dated 1-12-2023 on 12-1-2024.
3. That above notification dated 1-12-2023 was not challenged in service appeal No. 2586/2023, neither departmental appeal was filed against said notification.


It is, therefore, most humbly requested that interim relief granted on 12-1-2024 may kindly be set aside in favor of the respondents.

Dated: 25.01.2024


Private Respondent No.4

Muhammad Noor Sultan

Through Counsel


Khalid Mahmood Advocate

High Court DIKhan

0336-4330001

CM in ___/2024

Execution petition No: 19/2024

In Service Appeal No.2586 /2023

Dr. Asim Saeed, (BPS 18) Teaching Cadre Education Department D.I.Khan

.....Petitioner

VERSUS

**Government of Khyber Pakhtunkhwa through Chief Secretary KPK,
Peshawar and others**

.....Respondents

AFFIDAVIT

I, Muhammad Noor Sultan, Deputy DEO, Respondent No.04 do hereby solemnly affirm and declare on oath that the para-wise contents of the instant reply are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honourable Tribunal.

Deponent

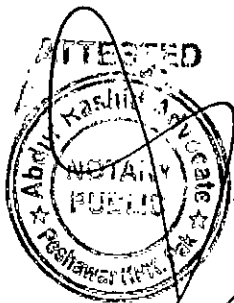
Muhammad Noor Sultan

Identified by Counsel

Khalid Mahmood

Khalid Mahmood Advocate
High Court DIKhan
0336-4330001

12103-1489991-7



25/1/2024




**OFFICE OF THE DISTRICT EDUCATION OFFICER
(MALE) DERA ISMAIL KHAN**

Email. emisdikhan@gmail.com
Tel 0966-9280128/9280131


Annex (A)
(7)

RELIEVING CHITT

In Compliance vide Secretary to the Govt of Khyber Pakhtunkhwa, Elementary and Secondary Education Department Notification No.SO(MC)E&SED/2-3/2022/Promotion /MC/Asim Saeed/DDEO(M), dated 27-09-2023, Mr. Asim Saeed(TC BS 18) Dy D.E.O(M) DIKhan is hereby relieved from his duties today on 28-09-2023, and his directed to report to the Principal GHSS.Ramak(DIKhan), for his further duties against his new assignment


DISTRICT EDUCATION OFFICER
(MALE) DERA ISMAIL KHAN




KHALEED MEHMOOD
Advocate High Court
Stationed at D.I.Khan



**OFFICE OF THE DISTRICT EDUCATION OFFICER
(MALE) DERA ISMAIL KHAN**

Tell: 09669280128- 09669280131

Email: emisdikhan@yahoo.com

Anwar (B)
(9)

No. 21692

Dated DIKhan the: 18/11/2023

To

The Director,
DCTE, Abbottabad.

Subject: NOMINATION FOR THE TRAINING OF SARAIKI TEXT BOOKS
COMPILATION.

Memo:

The following staff is hereby nominated for the training of Saraiki Text Books compilation.

1. Asim Saeed Principal (BS-18) GHSS Rammak DIKhan.
2. Ramzan SST GMS Thoya Fazal DIKhan.
3. Nazakat Hussain CT GHS No.3 Paharpur DIKhan.

Attested

ATTESTED

Khalid Mehmood
KHALID MEHMOOD
Advocate High Court
Stationed at D.I. Khan

M. M. Khan
DISTRICT EDUCATION OFFICER
(MALE) DIKHAN



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

Amir
 9

Date: 1st December 2023

NOTIFICATION

NO. SO (MC) E&SE/DI-16/2023/PT/SDEOs: The following posting/transfer of SDEOs are hereby ordered with immediate effect, in the best public interest!

S#	Name	From	To	Remarks
1	Mr. Noor Sultan MC BS-17	SDEO (M) D.I.Khan	Deputy DEO (M) D.I.Khan in OPS	AVP
2	Muhammad Humayun MC BS-17	SDEO (M) SD Darazenda DIK	SDEO (M) D.I.Khan	V.S.No 1
3	Muhammad Rashid TC BS-17	Head Master (BS-17) GHS Sikandar Sout DIK	SDEO (M) SD Darazenda DIK	V.S.No 2

SECRETARY TO GOVT: OF KHYBER PAKHTUNKHWA
E&SE DEPARTMENT

Endst: of even No. & date:

Copy forwarded for information to the:

1. Accountant General, Khyber Pakhtunkhwa, Peshawar
2. Director, E&SE Khyber Pakhtunkhwa, Peshawar.
3. Director EMIS, E&SE Department with the request to upload the same on the official website of the department.
4. District Education Officers (Male) D.I.Khan.
5. District Accounts Officer D.I.Khan.
6. PS to Secretary, E&SE Department, Khyber Pakhtunkhwa

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 1-12-2023
 (IMRAN ZAMAN)
 SECTION OFFICER (Management Cadre)

Amir

Amir

 KHALID MEHMOOD
 Advocate High Court
 Station Road D.I.Khan

Amr (2)
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CERTIFICATE OF TRANSFER OF CHARGE

(1) Certified that we have on the forenoon/afternoon of this day 01-12-2023 respectively made over & received charge as Deputy District Education Officer (Male) DIKhan in the office of the District Education Office (Male) DIKhan vide Notification No. SO (MC)E&SED/4-16/2023/PT/MC/SDEOs. Dated 1st December, 2023.

(2) Particulars cash important secret and confidential documents handed over are noted on the reverse.

Signature of relived Already Occupied

Government Servant _____

Designation Deputy District Education Officer (Male) DIKhan

Station: DIKhan

Signature of relieving Mr. Muhammad Noor Sultan

Government Servant Mr. Muhammad Noor Sultan

Designation Deputy District Education Officer (Male) DIKhan

Amr
2023

Dated : 01-12-2023

OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) DIKHAN

Endst: No. 22668-70

Dated DIKhan the 02/12/2023

Copy of the above is forwarded to:

1. Director, E&SE Department Khyber Pakhtunkhwa, Peshawar.
2. PS to Secretary to E&SED Department, Khyber Pakhtunkhwa.
3. District Accounts Officer DIKhan.

[Handwritten signature]

[Handwritten signature]
District Education Officer
(Male) DIKhan

Amr (E) (U)

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PESHAWAR HIGH COURT, PESHAWAR.

FORM OF ORDER SHEET

Court of

Case No. of

Serial No. of Order or Proceedings	Date of Order or Proceedings.	Order or other Proceedings with Signature of Judge or Magistrate and that of parties or counsel where necessary.
1	2	3
	18-11-2009	<p><u>W.P No.2937/2009 with I.R.</u></p> <p><u>Present:</u> Mr. Muhammad Amin Khattak Lachi, Advocate, for the petitioners.</p> <p>****</p> <p><u>DOST MUHAMMAD KHAN, J:-</u> As the Provincial Government has taken a firm decisions that all those teachers belonging to teaching cadre shall be posted in the Education Institution to teach the students according to their qualifications while those belonging to administrative cadre shall only hold the posts relating to administration. Therefore, the petitioners must deliver according to the policy of the Government and because they are highly qualified teachers, it is not befitting to hold administrative posts, because they are getting benefits, but the students are suffering thus, they shall go to their respective places, where they are required to do the job. The plea of the learned counsel for the petitioners that similarly placed Teachers/ Professors/Lecturers belonging to Colleges have been retained on administrative posts.</p>

Amr

ATTESTED

KHALID MEHMOOD
Advocate High Court
Stationed at D.I.Khan

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2. If such statement is correct then, it is clearly in violation of the policy laid down by the Provincial Government, therefore, copy of this order be sent to the Secretary Higher Education, Government of NWFP, and the learned Advocate General and it is directed that the policy so laid down must be implemented in full and no pick and choose policy shall be adopted in the matter.

Petition disposed of.

Announced.
Dated.18.11.2009.

~~Signature~~
JUDGE

~~Signature~~
JUDGE

~~Signature~~
JUDGE

14 JUN 2022

ATTESTED

KHALID MEHMOOD
Advocate High Court
Stationed at D.I.Khan

Ally

40877
Date of Preparation 14/6/2009
No of Pages 4-9
Copying 16
Date of Preparation 14/6/2009
Date of Delivery of copy 14/6/2009
Received By

M. Ishaq
20-11-09

Amr (P) 13



GOVERNMENT OF KHYBER PAKHTUNKHWA ESTABLISHMENT DEPARTMENT

NO. SO (E-1)/E&AD/9-BB/2019
Dated Peshawar, the February 8, 2019

To

- 1) The Secretary to Government of Khyber Pakhtunkhwa, Higher Education Department.
- 2) The Secretary to Government of Khyber Pakhtunkhwa, E&SE Department.
- 3) The Secretary to Government of Khyber Pakhtunkhwa, Industries Department.

SUBJECT: - REQUISITIONING OF SERVICES.

Dear Sir,

I am directed to refer to the subject cited above and to say that the competent authority has observed that certain Teaching cadre officers are posted out of their cadre since long. Moreover, some teachers/professors are seeking requisitions from different Departments for posting against managerial or administrative posts, hindering deliverance of quality based education to the students. Consequently, competent authority has desired to invite your attention towards the following judgment of Peshawar High Court Peshawar (in WP No. 2937/2009) (Copy enclosed):-

"As the Provincial Government has taken a firm decisions that all those teachers belonging to teaching cadre shall be posted in the Education Institution to teach the students according to their qualifications while those belonging to administrative cadre shall only hold the posts relating to administration. Therefore, the petitioners must deliver according to the policy of the Government and because they are highly qualified teachers, it is not befitting to hold administrative posts, because they are getting benefits, but the students are suffering thus, they shall go their respective places, where they are required to do the job.

2. In view of the above, the competent authority has desired that the above mentioned judgment of the PHC be implemented, in letter and spirit, under intimation to this Department, for perusal of Competent Authority.

Yours faithfully,

(SHAHID AHMAD)
SECTION OFFICER (Estt. I)

Ali...
→

ESTD
→
KHALED MEHMOOD
Advocate High Court
Stationed at D.I. Khan

9c