

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.**

Khyber Pakhtunkhwa  
Service Tribunal

Service Appeal # 2586/2023

Diary No. 107789

Dated 25/1/2024

Dr. Asim Saeed, Principal.....Appellant.

**VERSUS**

Govt: of Khyber Pakhtunkhwa & others.....Respondents.

**I N D E X**

S#	Description of Documents	Annex	Pages
1.	Affidavit	A	1
2.	Authority Letter	B	2
3.	Para-wise comments/reply	C	3-6
4.	Annexures	D	7-16

  
**Deponent**

6

**BEFORE THE HON'BLE SERVICE TRIBUNAL PESHAWAR**

**Service Appeal # 2586/2023**

**Dr. Asim Saeed ..... Appellant**

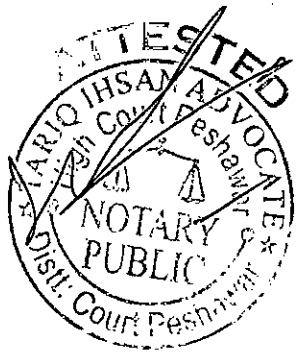
**VERSUS**

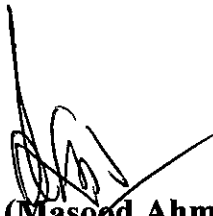
**Govt. of Khyber Pakhtunkhwa & others..... Respondents**

**AFFIDAVIT**

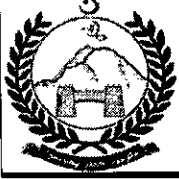
I, **Masood Ahmad**, Secretary, Elementary & Secondary Education, Department do hereby solemnly affirm and declare that the contents of the accompanying para-wise comments, submitted by the respondents, are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Court.

**It is further, stated on oath that in this appeal the answering Respondents have neither been placed ex-parte nor has their defense been struck off.**



  
**(Masood Ahmad)**  
**Secretary**  
**E&SE Department Peshawar**

2



GOVERNMENT OF KHYBER PAKHTUNKHWA  
ELEMENTARY & SECONDARY EDUCATION DEPARTMENT

Block "A" Civil Secretariat, Peshawar

Phone No. 091-9211128

**AUTHORITY LETTER**

It is certified that **Mr. Amjid Ali, Section Officer (Litigation-II)** Elementary & Secondary Education Department, Government of Khyber Pakhtunkhwa, Peshawar is hereby authorized to submit parawise comments on behalf of Secretary Elementary & Secondary Education Department Peshawar **Service Appeal # 2586/2023 Case Titled Dr. Asim Saeed vs Government of Khyber Pakhtunkhwa** through Secretary Elementary & Secondary Education Department Khyber Pakhtunkhwa, Peshawar.

A handwritten signature in black ink, appearing to read 'Masood Ahmad'.

(Masood Ahmad)  
**Secretary**  
**E&SE Department Peshawar**

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.**

**IN SERVICE APPEAL NO. 2586/2023**

**DR. ASIM SAEED.....APPELLANT**

**VERSUS**

**CHIEF SECRETARY TO GOVT OF KPK PESHAWAR..... RESPONDENTS.**

**PARAWISE COMMENTS ON BEHALF OF THE RESPONDENTS NO. 01, 02**

**Respectfully Sheweth,**

**Preliminary Objections:**

1. That according to Honorable Peshawar High Court Peshawar judgment on dated 18-11-2009 in writ petition No. 2937/2009. It has been observed that it is not befitting for teachers to hold administrative posts because they are getting benefits, but the students are suffering thus, they shall go to their respective places
2. That the appellant belongs to Teaching Cadre whereas the respondent No. 04 belong to Management Cadre, who is well competent for the impugned post. Moreover, he is now a days appointed as ARO in PK-113 DI. Khan-III in the upcoming election 2023 who cannot by any means could be transferred from that position.
3. That the Respondent has adopted the proper law and procedure by exercising powers u/s 10 of Civil Servant Act, 1973, which is as under:-

**“10. Posting/Transfer every civil servant shall be liable to serve anywhere within or outside the Province in any post under the Federal Government, or any Provincial Government or local authority, or a corporation or body set up or established by any such Government.**

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

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

In light of Section-10, desired posting is not the perpetual right of a civil servant and the department concerned can transfer any civil servant to serve at the given place as mentioned in the transfer/posting order, while the civil servant cannot refuse compliance.

4. That according to Central Administrative Tribunal-Delhi in the case of Sh. Jawahar Thakur-vs-Union of India held on 19<sup>th</sup> June, 2015 that it is more than stare decisis that transfer is an incidence of service and it is for the executive/administration to decide how to and where to use its employees subject to the conditions of their appointment in the best interest of the organization and public service. It is not always possible and feasible to record strong reasons for allowing an officer to continue at a particular station for a few years or more or less.

5. The Honorable Supreme Court in Mrs. Shilpis Bose and Others vs State of Bihar and others 1991 Supp.(2)SCC-659 went into in the issue of guidelines and has upheld the transfer orders of the employee in the following words:-

**“In our opinion, the Courts should not interfere with a transfer order which are made in public interest and for administrative reasons (unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fid. A Government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violated any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the Courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the Department. If the Courts continue to interfere with day to day transfer orders issued by the Government and its subordinate authorities, there will be complete chaos in the Administration which would not be conducive to public interest. The High Court over looked these aspects in interfering with the transfer orders”**

Therefore, in light of the above situation the present appeal is not maintainable and liable to be dismissed with costs.

6. The appellant has not come to this Tribunal with clean hands, because the appellant have not challenge order dated 01-12-2023 before the proper forum with in statutory period.
7. The appellant is not an aggrieved person nor has any locus standi to file the present appeal.
8. That the appellant has concealed material facts from this Tribunal.
9. That the appellant is estopped by her own conduct to file the present appeal.
10. That the present appeal is against the prevailing law and rules.
11. That the appellant is not entitled for any relief, she has sought from this Honorable Tribunal.
12. That the present appeal is liable to be dismissed being devoid of any merits.
13. That the present appeal is hopeless time barred, hence liable to be dismissed.
14. That the present appeal is just filed by the appellant to pressurized the respondents for getting illegal and unlawful benefits.
15. That the appellant is just wasting the precious time of this Honorable Tribunal through the instant frivolous appeal.
16. In an another famous case, The State of U.P. and Others vs Goverdhan Lal, : 2004 (3) SLJ 244 (SC) it has been held this:

**“It is too late in the day for any Government servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of a civil servant is an essential condition of service in the absence of any specific indication to the contra, in the law governing or conditions of service”**

5

**Reply on Facts.**

1. Pertains to record.
2. Pertains to record.
3. In response of para-03, it is stated that the appellant belongs to teaching cadre whereas the respondent No. 04 belong to Management Cadre, who is well competent for the impugned post being Management Cadre Officer. Moreover, he is now a days appointed as ARO in PK-113 DI. Khan-III in the upcoming election 2023 who cannot by any means could be transferred from that position.
4. Incorrect, the appellant is not an aggrieved person and the departmental appeal was dismissed due to the above stated reasons.
5. That the appellant have not challenge the order dated 01-12-2023 before the proper forum within the statutory period, therefore the appeal is incompetent and bad in the eye of law and no curable at any cost.
6. Incorrect, along with all the grounds of appeal.

**On Grounds:**

1. Para-I is incorrect, the appellant cannot challenge any order before this Honorable Tribunal directly and before approaching the proper forum and without availing proper remedy within statutory period.
2. Incorrect, the transfer order of appellant is in accordance with law and rules.
3. Incorrect, the appellant belongs to teaching cadre whereas he was posted on post belongs to management cadre and the same factor was rectified by the transfer order dated 27-09-2023.
4. Incorrect, to the extent of appellant's case. The appellant is wasting the valuable time of this Honorable Tribunal by the instant false and baseless appeals.
5. Incorrect, the appellant belongs to teaching cadre and he has been send back to his actual cadre, nothing wrong has been done to him. The appellant is trying to deceive this Honorable Tribunal by his emotional stories as stated in the appeal.
6. Incorrect, the appellant belongs to teaching cadre whereas he was posted on post belongs to management cadre and the same factor was rectified by the transfer order dated 27-09-2023.
7. Incorrect, hence denied. According to Honorable Peshawar High Court Peshawar vide its judgment on dated 18-11-2009 in writ petition No. 2937/2009 has observed that it is not befitting for teachers to hold administrative posts because they are getting benefits, but the students are suffering thus, they shall go to their respective places. And so as the case of the appellant.
8. Incorrect, hence denied. The appeal is liable to be dismissed with cost being meritless as replied above in detail.

6

9. Incorrect, hence denied in toto. As replied above.
10. Incorrect, the order dated 01-12-2023 is issued under Section-10 of Civil Servant Act, 1973 which has never ever been challenge before the proper forum within the statutory period.
11. Incorrect, the appeal is not competent and is liable to be dismissed summarily.
12. The respondents also seek permission for advancing additional points at the time of argument.

**It is therefore, requested that the appeal in hand may kindly be dismissed with heavy cost.**



**(Mr. Masood Ahmad)**

**SECRETARY**  
**Elementary & Secondary Education,**  
**Department (Respondent No. 01 & 02)**

(14) (7)  
Ano An 9 (B)

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.
	18-11-2009	<p><u>W.P No. 2937/2009</u> with I.R.</p> <p><u>Present:</u> Mr. Muhammad Amin Khattak Lachi, Advocate, for the petitioners.</p> <p style="text-align: center;">****</p> <p><b><u>DOST MUHAMMAD KHAN, J.:-</u></b> 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>

ATTESTED  
KHALID MEHMOOD  
Advocate High Court  
Stationed at P. I. Khan





15

8

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.

JUDGE

*[Signature]*  
JUDGE

*[Signature]*

14 JUN 2022

ATTESTED

*[Signature]*

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

ATTESTED

*[Signature]*  
KHALID MEHMOOD  
Advocate High Court  
Stationed at D.I. Khan

CC-277  
14/6/2009  
14/6/2009  
14/6/2009

*[Handwritten notes and signatures]*  
14/6/2009



GOVERNMENT OF  
KHYBER PAKHTUNKHWA  
ESTABLISHMENT DEPARTMENT

Annex E  
16  
7

NO. SO (E-1)/E&AD/0-00/2019  
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.

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,

(ISHTIAQ AHMAD)  
SECTION OFFICER (Estt. I)

Scanned with CamScanner

RECEIVED  
ESTABLISHMENT DEPARTMENT  
KHYBER PAKHTUNKHWA  
PESHAWAR

Handwritten signature



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

10

Dated; 1<sup>st</sup> December, 2023

**NOTIFICATION**

**NO.SO (MC) E&SED/4-16/2023/PT/SDEOs** The following posting/ transfer of SDEOs are hereby ordered with immediate effect, in the best public interest.

Sr#	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.

11/12/23  
(IMRAN ZAMAN)

SECTION OFFICER (Management Cadre)

*Im*

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.**

**Service Appeal No# 2586/2023**

**Dr Asim Saeed DDEO D.I.K .....Appellant.**

**VERSUS**

**Secretary, Govt: of Khyber Pakhtunkhwa E&SE Department & Others..... Respondents.**

**APPLICATION FOR VACATION OF STATUS QUO ORDER 12-01-2024 AGAINST THE NOTIFICATION DATED 01-08-2023**

**Respectfully Sheweth,**

**Preliminary Objections**

1. That the appellant has filed this service appeal against the Notification dated 01-12-2023.
2. That this Honorable Service Tribunal has suspended the notification dated 01.12.2023 on 12-01-2024.(Annex-A)
3. That the applicant/ Respondent seeks the order dated 12-01-2024 of this Honorable Tribunal to be set aside due to the fact that the respondent no 04 has been nominated as ARO in PK-113 ( D.I.K III) in the upcoming General Elections 2024 (Annex-B)
4. The appellant has not come to this Tribunal with clean hands, because the appellant have not challenge order dated 01-12-2023 before the proper forum with in statutory period.

**Grounds:-**

1. That the respondents has acted in accordance with law & rules. The appellant has been lawfully transferred the appellant by exercising powers conferred under Section 10 of the civil Servient Act 1973 in the best public interest.
2. That As per the judgment of Honorable Peshawar High court rendered in W.P No 2937/2009 "the employees of teaching cadre staff should be posted at teaching cadre posts and Management cadre staff should be posted at their relevant cadre.it is also held by Honorable Court that the policy so laid down must be implemented in full and no pick & choose policy shall be adopted in the matter
3. That the appellant is duty bound to serve any where He may be given the task by the competent authority therefore the appellant has got no cause of action against the respondent.
4. That there is no merits in the present appeal and is liable to be dismissed summarily.
5. That the appellant has no prima facie case nor has any locus standi and even no chance of success.
6. That balance of convenience lies in favor of the respondent and if the interim order is not reviewed the respondent/department will suffer irreparable loss.
7. That the appellant have concealed material facts from this Honorable Tribunal.

**It is therefore, most humbly requested that, the interim relief already granted on 12.1.2024 may kindly be set aside in favor of the department/respondent.**

  
**(M: Masood Ahmad)**

**SECRETARY**  
**Elementary & Secondary Education,**  
**Department (Respondent No. 01 & 02)**

BE 11 E/A

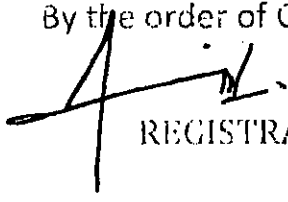
Annex-A

Form- A

FORM OF ORDER SHEET

Court of


Implementation Petition No. 19 /2024

S No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
	04.01.2024	<p>The implementation petition of Dr. Asim Saeed submitted today by Mr. Ahsan Bilal Langraw Advocate. It is fixed for implementation report before Single Bench at Peshawar on <u>12-01-2024</u>. Original file be requisitioned. AAG has noted the next date. Parcha Peshi is given to the counsel for the petitioner.</p> <p>By the order of Chairman  REGISTRAR</p>

12.01.2024

Counsel for the appellant present. Mr. Habib Anwar, Additional Advocate General for the respondents present.

Learned counsel for the appellant submitted a copy of order dated 01.12.2023, whereby private respondent No. 4 in the main appeal has been posted as Deputy District Education Officer vice the appellant. Since this order was not in the knowledge of the court during hearing on 15.12.2023, operation of the order dated 27.09.2023 was suspended. Therefore the learned counsel for the appellant requested to make necessary amendments by impugning the order dated 01.12.2023 in the main appeal which has been fixed for hearing on 16.01.2024 at Camp Court DI. Khan. File to come up alongwith service appeal No.2586/23 on 16.01.2024 before S.B at Camp Court D.I Khan. Meanwhile operation of the order dated 01.12.2023 shall also remain suspended till next date of hearing.

  
(Muhammad Akbar Khan)  
Member (E)



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

Dated; 1<sup>st</sup> December, 2023

**NOTIFICATION**

**NO.SO (MC) E&SED/4-16/2023/PT/SDEOs** The following posting/ transfer of SDEOs are hereby ordered with immediate effect, in the best public interest.

Sr#	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.

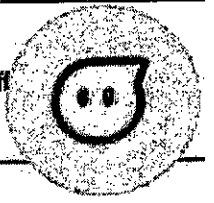
*11/12/23*  
*Imran*  
(IMRAN ZAMAN)

SECTION OFFICER (Management Cadre)

*[Handwritten signature]*

*Annex-B*

No. & Name of Provincial Assembly Constituency	Returning Officers		Assistant Returning Officers	
	1	2	1	2
PK-110 South Waziristan Lower	Faisal Ismail, Assistant Commissioner, Wana		1 Dr. Shoab Khan, Veterinary Officer, Wana	2 Muhammad Miraj, Assistant District Education Officer, Tot Khula
PK-111 Dera Ismail Khan-I	Jahan Said, Additional Assistant Commissioner (Revenue), Dera Ismail Khan		1 Muhammad Zarif, Sub-Divisional Education Officer (Male), Paharpur	2 Shafqatullah, Tehsildar, Paharpur
PK-112 Dera Ismail Khan-II	Muhammad Fasih Ishaq Abbasi, Additional Assistant Commissioner (Rod Kohi), Dera Ismail Khan		1 Ihsanullah, Tehsildar (Rod Kohi), Dera Ismail Khan	2 Zamir Ahmad, Assistant Sub-Divisional Education Officer (Male), Kural Circle, Dera Ismail Khan
PK-113 Dera Ismail Khan-III	Muhammad Nadir Khan, Assistant to Commissioner (Political & Development), Dera Ismail Khan Division		1 Muhammad Noor Sultan, Deputy District Education Officer (Male), Dera Ismail Khan	2 Muhammad Tufail, Tehsildar, Service Delivery Center, Dera Ismail Khan
PK-114 Dera Ismail Khan-IV	Muhammad Iqbal, Assistant Commissioner, Darazinda		1 Anwaar Muhammad Shah, Tehsil Municipal Officer, Paroa	2 Noman Farrukh, Assistant Sub-Divisional Education Officer Circle, Paroa
PK-115 Dera Ismail Khan-V	Nadir Nazar, Additional Assistant Commissioner-II, Daraban		1 Khalid Naeem, Sub-Divisional Education Officer (Male), Kulachi	2 Umar Mukhtar, Additional Assistant Commissioner, Darazinda



*[Handwritten signatures and initials]*