

0.2017

Clerk of counsel for the appellant and Addl. AG for the respondents present. Seeks adjournment as counsel for the appellant is not in attendance. Granted. To come up for arguments on 10-01-2018 before the D.B.


Member


Chairman

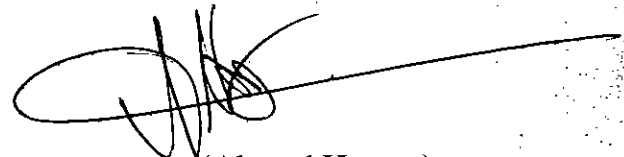
Order


22.03.2019

Counsel for the appellant present. Mr. Kabirullah, Addl: AG alongwith Mr. Abdur Rehman, ADEO for respondents present. Arguments heard and record perused.

This application is also accepted as per detailed judgment of today placed on file in service appeal No. 117/2016 titled "Musarrat Begum-vs- The Govt: of Khyber Pakhtunkhwa through Director, Elementary and Secondary Education, Khyber Pakhtunkhwa, Peshawar and two others." Parties are left to bear their own cost. File be consigned to the record room.

Announced:
22.03.2019

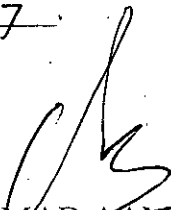

(Ahmad Hassan)
Member


(Hamid Farooq Durrani)
Chairman

04.01.2017

Clerk to counsel for the appellant and Assistant AG for respondents present. Rejoinder submitted which is placed on file. To come up for arguments on 18.5.17.


(ASHFAQUE TAJ)
MEMBER


(MUHAMMAD AMIR NAZIR)
MEMBER

18.05.2017

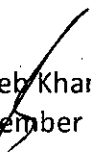
Appellant in person present. Mr. Muhammad Jan Deputy District Attorney for the respondents present. Appellant requested for adjournment. Adjourned. To come up for arguments on 28.07.2017 before D.B.



(Gul Zeb Khan)
Member


(Muhammad Amin Khan Kundi)
Member

28.07.2017

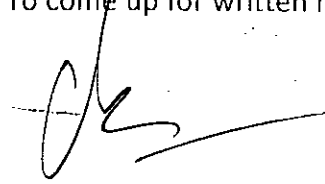
Learned counsel for the appellant and Mr. Usman Ghani, District Attorney for the respondents present. Learned District Attorney for the respondents requested for adjournment. Adjournment granted. To come up arguments on 08.12.2017 before D.B.


(Gul Zeb Khan)
Member


(Muhammad Hamid Mughal)
Member

19.05.2016

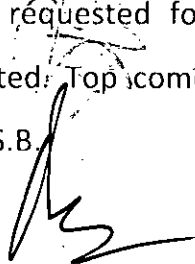
Clerk of counsel for the appellant, M/S Jamshid Khan, Superintendent and Aurangzeb Khan, Assistant alongwith Addl: AG for respondents present. Written reply by respondents not submitted and requested for further time. Last opportunity granted to respondents for submission of written reply. To come up for written reply/comments on 12.08.2016 before S.B.



Member

12.08.2016

Clerk of counsel for the appellant and Mr. Hameedur Rahman, AD alongwith Addl. AG for the respondents present. Learned Addl. AG requested for adjournment. Final last opportunity granted. To come up for written reply on 24.10.2016 before S.B.



Member

24.10.2016

Appellant in person and Mr. Hameed ur Rehman, AD (Litigation) alongwith Assistant AG for respondents present. Written reply submitted. The appeal is assigned to D.B for rejoinder and final hearing on 04.01.2017.



Chairman

15.02.2016

Counsel for the appellant present. The learned counsel for the appellant argued that the appellant was appointed in the year 1996 as PTC in district Kohistan who was transferred from District Kohistan to District Swabi vide order dated 27.09.2008 in pursuance of the government policy, 2008. He further submitted that the said order of 27.09.2008 was once again withdrawn by Director Elementary & Secondary Education vide his order dated 22.10.2015, after 7 years. He argued that the appellant served the department for 20 years to the entire satisfaction of the department, ^{but} strangely, enough, vide impugned order dated 22.10.2015, the appellant was removed from service ~~was~~ by the EDO Kohistan. The learned counsel contented that the order is illegal for the reason, that the order was passed by the authority who was not competent. He submitted that no charge sheet or show cause notice was issued to the appellant nor any enquiry was conducted against him and that impugned order is illegal on this score.

Points urged need consideration. Admit. Subject to deposit of security and process fee within 10 days, notice be issued to the respondents for written/reply/comments on 26.04.2016 before S.B.



MEMBER

26.4.2016

Agent to counsel for the appellant and M/S Hameed-ur-Rehamn, AD (lit.) and Khurshid Khan, SO and Khan Muhammad EDO alongwith Addl. A.G for respondents present. Written reply not submitted. Requested for adjournment. To come up for written reply/comments on 19.5.2016 before S.B.



Chairman

Appellant Deposited
Security of Process Fee

21.03.2016

Counsel for the appellant present. Learned counsel for the appellant argued that the appellant was initially appointed as PST by DEO Kohistan vide order dated 1.2.1996 and vide order dated 27.9.2008 she was transferred to her home district Swabi. That vide impugned order dated 22.10.2015 the said transfer order was cancelled where-against departmental appeal was preferred on 19.11.2015 which was not responded and hence the instant service appeal on 2.3.2016.

That the impugned transfer order was cancelled after lapse of about 7 years and that the same is against facts and law.

Points urged need consideration. Admit. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply/comments for 26.4.2016 before S.B.

Appellant Deposited
Security & Process Fee


Chairman

26.4.2016



Agent to counsel for the appellant and M/S Hameed-ur-Rehamn, AD (lit.) and Khurshid Khan, SO and Khan Muhammad EDO alongwith Addl: A.G for respondents present. Written reply not submitted. Requested for adjournment. To come up for written reply/comments on 19.5.2016 before S.B.


Chairman

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 177/2016

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	02.03.2016	<p>The appeal of Mst. Mussrat Begum presented today Mr. Khaled Rehman Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p> REGISTRAR</p>
2	3-3-2016	<p>This case is entrusted to S. Bench for preliminary hearing to be put up thereon <u>21-03-2016</u></p> <p> CHAIRMAN</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 177 /2016

Mst. Musarrat Begum Appellant

Versus

The Govt. of KPK and others.....Respondents

INDEX

S.No.	Description of Documents	Date	Annexure	Pages
1.	Memo of Service Appeal			1-3
2.	Transfer order of appellant to District Swabi	27.09.2008	A	0-4
3.	Relieving Order	30.09.2008	B	0-5
4.	Letter of Respondent No.2 to Respondent No.3	09.06.2008	C	0-6
5.	Letter	28.11.2008	D	0-7
6.	Notification thereby transfer order of appellant dated 27.09.2008 was withdrawn	22.10.2015	E	0-8
7.	Departmental appeal	19.11.2015	F	9-10
8.	Posting/Transfer Policy		G	11-13
9.	Wakalat Nama			

Musarrat
Appellant

Through

Khaled Rahman
Advocate,
Supreme Court of Pakistan
3-D, Haroon Mansion
Khyber Bazar, Peshawar
Off: Tel: 091-2592458
Cell # 0345-9337312.

Dated: ___/02/2016

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 177 /2016

Mst. Musarrat Begum

Ex-PTC,
GGPS Muhib Banda,
District Swabi
D/o Hazrat Wali,
R/o Village Badraga, PO Dagai,
Tehsil Razar, District Swabi

N.W.F. Province
Service Tribunal
Diary No. 158
Dated 02-3-2016

.....**Appellant**

Versus

1. **The Govt. of Khyber Pakhtunkhwa**
through Secretary
Elementary & Secondary Education
Civil Secretariat, Peshawar.

2. **The Director,**
Elementary & Secondary Education
Khyber Pakhtunkhwa, Peshawar.....

.....**Respondents**

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNALS ACT, 1974 AGAINST THE IMPUGNED NOTIFICATION DATED 22.10.2015 ISSUED BY RESPONDENT NO.2 WHEREBY THE TRANSFER ORDER OF THE APPELLANT ISSUED IN THE YEAR 2008 WAS RECALLED AGAINST WHICH SHE PREFERRED A DEPARTMENTAL REPRESENTATION TO RESPONDENT NO.1 ON 19.11.2015 BUT THE SAME WAS NOT DISPOSED OF WITHIN THE STATUTORY PERIOD OF 90 DAYS.

File No. 177/2016
Registered
2/3/16

PRAYER:

On acceptance of the instant appeal, the impugned Notification dated 22.10.2015 issued by Respondent No.2 may graciously be set aside by restoring the transfer of the appellant to District Swabi at GGPS Muhib Banda, District Swabi.

Respectfully Sheweth,

Facts giving rise to the present appeal are as under:-

1. That the appellant is the resident of District Swabi, she was appointed as PTC Teacher on 01.02.1996 by the then District Education Officer, Kohistan and posted at GGPS Bahadar Shahaib, District Kohistan. In the year 2008, when the District Cadre Policy was introduced, she was transferred to District Swabi by Respondent No.2 vide order dated 27.09.2008 (*Annex:-A*).
2. That pursuant to the transfer order *ibid*, the appellant was relieved by the then Executive District Officer (E&SE), Kohistan vide Relieving order Endst: No.4500-4506 dated 30.09.2008 (*Annex:-B*). Before the transfer *ibid*, the District Education Officer, Kohistan vide recommendation letter Endst: No.3049 dated 09.06.2008 (*Annex:-C*) forwarded the particulars of the appellant to District Education Officer Swabi for post availability which was accordingly provided and her service documents were also verified as is evident from the letter dated 28.11.2008 (*Annex:-D*).
3. That to the utter bewilderment of the appellant, vide impugned Notification dated 22.10.2015 (*Annex:-E*) issued by Respondent No.2, the transfer order dated 27.09.2008 *ibid* was withdrawn all of sudden, after almost 7 years against which she preferred a Departmental Representation to Respondent No.1 on 19.11.2015 (*Annex:-F*) but the same was not disposed of within the statutory period of 90 days, hence this appeal *inter-alia* on the following grounds:-

Grounds:

- A. That Respondents have not treated appellant in accordance with law, rules and policy on subject and acted in violation of Article 4 of the Constitution of Islamic Republic of Pakistan, 1973 and unlawfully issued the impugned Notification, which is unjust, unfair and hence not sustainable in the eye of law.
- B. That the appellant was appointed in the year 1996 and the year 2008 a Policy was formulated by the Provincial Government whereby all the

Primary School Teachers were repatriated to their home Districts and accordingly pursuant to the same policy appellant too was transferred to her home district after observing all the codal formalities, therefore, the impugned Notification is illegal, against the law and hence not sustainable.

- C. That the impugned Notification is against the transfer/posting Policy (*Annex:-G*) formulated by the Government and moreover, the posts of Primary School Teachers are now Union Council Cadre posts, therefore, the transfer of the appellant to a far distant district is unlawful, arbitrary and thus not maintainable under the law.
- D. That the impugned Notification is malafide as the same was cancelled after long seven years without any cogent and plausible reasons and immediately thereafter her services were terminated which means that the means of transfer was used for the purpose of terminating the services of the appellant which is not only against the law but against the ethics of good governance.
- E. That appellant would like to offer some other grounds during the course of arguments.

It is, therefore, humbly prayed that the instant appeal may graciously be accepted as prayed for above.

Any other relief as deemed appropriate in the circumstances of case not specifically asked for, may also be granted to appellant.

Musarrat
Appellant

Through

Khaled Rahman,
Advocate,
Supreme Court of Pakistan

Dated: ___/02/2016

Annex "A"

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OFFICE OF THE DIRECTOR ELEMENTARY & SECONDARY EDUCATION NWFP.

OFFICE ORDER.

Consequent upon the approval by the competent authority, Mst. Musarrat PST GGPS; Somad Abdul Meo District Kohistan is hereby transferred/adjusted against the vacant post of PST at GGPS; Palosai District, Swabi in her own pay & BPS in the interest of public service with immediate effect.

- Notes:-
1. Change report should be sent to all concerned.
 2. No TA/DA etc. is allowed.
 3. The EDO(E&SE) concerned are directed to check her original S/Documents before making payment of salary.
 4. Her Seniority will be determined under the rules.

DIRECTOR ELEMENTARY & SECONDARY EDUCATION NWFP, PESHAWAR.

Order No. 7490-95 / P.No. 60/PST(S) Swabi, dated 27/9 2008.

Copy of the above is to be:-

1. Executive Distt. Officer (E&SE) concerned.
2. Distt. Accounts Officers concerned.
3. PB to Minister for Edu: NWFP, Peshawar.
4. Teachers concerned.
5. PA to Director E&SE NWFP, Peshawar.
6. W/File.

26/9
 Deputy Director (E&SE)
 Directorate of Elementary & Secondary Education NWFP, Peshawar.

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EXECUTIVE DISTRICT OFFICER
S & L KOHISTAN

- 1. The Director, Elementary & Secondary Education, NWFP, Peshawar
- 2. The Executive District Officer, S & L, Swabi.
- 3. The District Accounts Officer, Kohistan.
- 4. The District Accounts Officer, Swabi
- 5. PS to Minister for Education, NWFP, Peshawar.
- 6. The District Officer, Female Primary Education, Kohistan.
- 7. The Teacher Concerned.

Copy forwarded for information and necessary action to :-

EXECUTIVE DISTRICT OFFICER
S & L KOHISTAN
Handst No/ 4500-4506 -- Dt 20/9/08

Consequent upon the transfer of Mst. Masarrat, PST, GGS, Samad Abad, Swabi District Kohistan to GGS Palosa District Swabi vide Director Elementary and Secondary Education, NWFP, Peshawar order No. 7490-95 dated 27.9.2008, she is hereby relieved of her duties in Kohistan District w.e.f. 30.9.2008 after noon. To enable her to join her new assignment.

Relieving Order

Amex B

OFFICE OF THE EXECUTIVE DISTRICT OFFICER, S & L KOHISTAN

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RECOMMENDATION:

Annex 'C' 16

I hereby recommended and certify that Mr. Mst; MUSARRAT is working as a trained PST teacher at name of School) GGPS Samad Abad Sec District Kohistan. His/Her service book and other documents verified and found complete upto _____ He/ She on the active roll of this District and his/ her performance is satisfactory. He/ Her service record has been verified by his/ her service documents upto _____


The following documents duly attested by me are attached herewith (please tick:-

- 1. Academic BSC, BEd, BA/BSc/ MA, MSc.
- 2. Professional: PTC, CT, BEd, MEd.
- 3. Service w.e.f. _____ to _____ is verified.
- 4. Domicile certificate of District Swabi
- 5. NID Card 16202-0879952-8


Deputy District Officer,
(Female) Schools & Lit. Kohistan.

E/No. 3049 / EDO (S&L) KH Dated Dassa the 9/6/2008.

Forwarded to the Executive District Officer, (Schools and Literacy) of District Swabi for post availability on the enclosed proforma and onward submission to Director, Schools & Literacy, NWFP, Peshawar.


Executive District Officer,
Schools & Literacy Kohistan.

Attested to be True Copy
Attested to be True Copy

LL

OFFICE OF THE
DEPUTY DISTRICT OFFICER, (F) FRY:
EDUCATION, DEPT: KOHISTA
No. 400 / Date 28/11/2008.

The Deputy District Officer,
(Female) Fry; Education Kohista,

Annex "D"


7

Subject: VERIFICATION OF SERVICE DOCUMENTS:

Memo:-

Please refer to your office letter No. 867, dated 24/11/2008, on the subject cited above.

The desired documents duly verified by this office and found correct, after verification/ attestation the same are returned herewith for further n/action please.


Deputy District Officer,
(Female) Fry; Edu; Kohistan.

Encl: (11):

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**OFFICE OF THE DIRECTOR OF ELEMENTARY & SECONDARY
EDUCATION KHYBER PAKHTUNKHWA, PESHAWAR**

(72)

Annex 1

NOTIFICATION

The transfer orders of the following teachers from District Kohistan to District Swabi issued vide this office Endst.No. detail given below are hereby withdrawn due to their illegal and irregular appointments as per report of the inquiry officer vide letter No.02 dated 2-12-2014.

S.N	Name of Teacher	From District Kohistan	To District Swabi	Endst.No.
1.	Alia Ghafoor PST	GGPS Banjar Yanjool	GGPS Battai No.2	Endst.No.2511-15 dated 19-10-2011
2.	Ruqia PST	GGPS Mada Khel	GGPS Haryan Banda	Et.No.2511-15 dated 19-10-2011
3.	Nuzhat PST	GGPS Banjar Yanjool	GGPS Haryan Banda	Endst.No.2527-31 datd 24-11-2010
4	Khushnama PST	GGCMS Sijal Kohistan	GGPS Hayatabad	Endst.No.985-90 dated 08-01-2011
5	Nazia Qazi PST	GGPS Bar Komila	GGPS Razi Bahadar Koti	Endst.No.4980-85 dated 20-09-2011
6	Sara PST	GGPS Saglo	GGPS Aala Dher	E.No.1599-1605 dated 15-02-2011
7	Mussarat PST	GGPS Sainad Abad Sao	GGPS Palosai	Endst.No.7490-95 dated 27-09-2008
8	Aneela PST	GGPS Koz	GGPS No.1 Dheri Gandaf	Endst.No.505-10 dated 08-10-2010

Director
Elementary & Secondary Education
Khyber Pakhtunkhwa,

Endst: No. 3007 /F.No.20/(F) Enquiry dated Peshawar the 22/10/2015

Copy to the:-

1. District Account Officer Swabi & Kohistan.
2. District Officer (Female) Swabi & Kohistan.
3. Teacher Concerned.
4. P.A to Director Local Office

Deputy Director (Female)
(E&SE) Khyber Pakhtunkhwa,

19/11/15

OFFICE OF THE DISTRICT EDUCATION OFFICER (FEMALE) SWABI.

Endst: No. 3007-9 /DA-I (Estab) Dated Swabi the 12/11/2015

Copy of the above is forwarded for information and strict compliance to the:-

1. Sub-Divisional Education Officer (Female) Lahor, Swabi and Topi.
2. District Accounts Officer Swabi.

DISTRICT EDUCATION OFFICER
(FEMALE) SWABI.

Attested to be
True Copy

Office of the Sub-Divisional Education Officer (F) Swabi

No. 926 / Dated 13/11/2015

Forwarded in compliance to the kind request

of SCSO, Mulla Banda for further action as per

and strict compliance.

Attested to be
True Copy

12/11/2015
Sub-Divisional Education Officer (F) Swabi

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To

The worthy Secretary,
Elementary & Secondary Education,
Khyber Pakhtunkhwa, Peshawar.

Amalax "F"

9

Subject: Departmental Representation against the impugned Notification vide Endst: No.3887-89 dated 22.10.2015 issued by the Director, E&SE, Khyber Pakhtunkhwa, Peshawar whereby the appellant was transferred from GGPS Palosi, District Swabi to GGPS Samad Abad Sao, District Kohistan.

Respected Sir,

1. That the appellant was appointed as PTC Teacher on 01.02.1996 by the then DEO Primary Education, Kohistan and posted at GGPS Bahadar Shahaib, District Kohistan. After serving for long, she was transferred to District Swabi by the Director E&SE, Khyber Pakhtunkhwa vide office order Endst: No.7490-95 dated 27.09.2008.
2. That pursuant to the transfer order, the appellant was relieved by the EDO S&L, Kohistan vide Relieving order Endst: No.4500-4506 dated 30.09.2008. Before the transfer ibid, the DEO(F) Kohistan vide recommendation letter Endst: No.3049 dated 09.06.2008 forwarded the particulars of the appellant to the EDO (S&L) Swabi for post availability which was provided. Moreover, the credentials of the appellant were also verified vide letter No.400 dated 28.11.2008 by the Department after the transfer order of the appellant.
3. That to the utter bewilderment of the appellant, the Director, E&SE, Khyber Pakhtunkhwa vide Notification dated 22.10.2015 withdrew the transfer order of the appellant issued in the year 2008, after almost 7 years. Pursuant to the said order the DEO(F) Kohistan vide order Endst: No.7105-10/DEO(F) Kohistan dated 22.10.2015 terminated the services of the appellant. (Copy of the impugned Notification is attached)
4. That the appellant now being aggrieved of the transfer order ibid, assails the same before your good-self inter-alia on the following grounds:

Grounds:

- A. That the impugned order issued by the Director, E&SE, Khyber Pakhtunkhwa, is against the law and therefore is not sustainable.
- B. That the appellant was transferred from District Kohistan to District Swabi after observing all the codal formalities as per the Policy of the Government whereunder all the female teachers were directed to be adjusted at their home stations, therefore, there was no fault whatsoever with the transfer order and therefore the impugned Notification is not sustainable under the

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law.

- C. That the transfer order of the appellant has been acted upon, carried into effect and hence valuable rights have accrued to the appellant which cannot be taken away under the principle of locus poenitentiae and for that matter under the principle of promissory estoppels.
- D. That the transfer order was issued in the year 2008 whereas the impugned Notification was issued in 2015 which means that the transfer order was recalled after long 7 years without any justification muchless lawful. The cancellation of the transfer order, after such long period, smacks of malafide and therefore cannot be justified under any canons of law, justice and fair-play.
- E. That it appears that the impugned notification has been used as tool to authorize the DEO(F), Kohistan to terminate the services of the appellant because on the same very date another order was issued by the DEO(F) Kohistan whereby the services of the appellant were terminated. The simultaneous issuance of both the orders by itself reflects an abusive and colourable exercise of power.

It is, therefore, humbly requested that on acceptance of this departmental Representation, the impugned Notification vide Endst: No.3887-89 dated 22.10.2015 issued by the Director E&SE, Khyber Pakhtunkhwa, may graciously be set aside by restoring the posting of the appellant at GGPS Muhib Banda, District Swabi.

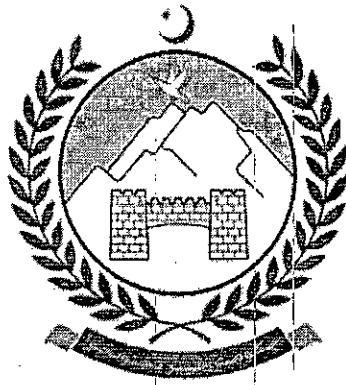
Yours faithfully

Musarrat
Mst. Musarrat Begum
Ex-PTC,
GGPS Muhib Banda,
District Swabi
D/o Hazrat Wali,
R/o Village Badraga, PO Dagai,
Tehsil Razar, District Swabi

Dated: 19/11/2015

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Annex G



ESTA CODE

**ESTABLISHMENT CODE KHYBER PAKHTUNKHWA
(REVISED EDITION) 2011**

**A COMPENDIUM OF LAWS, RULES AND INSTRUCTIONS
RELATING TO THE TERMS AND CONDITIONS
OF PROVINCIAL CIVIL SERVANTS**

Attested to be
True Copy

**COMPILED BY;
(O&M) SECTION
ESTABLISHMENT & ADMINISTRATION DEPARTMENT**

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True Copy
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12



Posting and Transfer

Statutory Provision.

Section 10 of the NWFP Civil Servants Act, 1973.

Posting and 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 a service or cadre, his terms and conditions of service as to his pay shall not be less favourable than those to which he would have been entitled if he had not been so required to serve.

Posting/transfer policy of the Provincial Government.

- i) All the posting/transfers shall be strictly in public interest and shall not be abused/misused to victimize the Government servants
- ii) All Government servants are prohibited to exert political, Administrative or any other pressures upon the posting/transfer authorities for seeking posing/transfers of their choice and against the public interest.
- iii) All contract Government employees appointed against specific posts, can not be posted against any other post.
- iv) Existing tenure of posting/transfer of three (03) years for settled areas and two (02) years for unattractive/hard areas shall be reduced to two (02) years for settled areas, 01½ years for unattractive areas and one year for hard areas.
- v) ⁷⁹[]

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Para-1(v) regarding months of March and July for posting/transfer and authorities for relaxation of ban deleted vide letter No: SOR-VI (E&AD) 1-4/2008/Vol-VI, dated 3-6-2008. Consequently authorities competent under the NWFP Government Rule of Business, 1985, District Government Rules of Business 2001, Posting/Transfer Policy and other rules for the time being in force, allowed to make Posting/Transfer subject to observance of the policy and rules.

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- vi) ⁸⁰While making posting/transfers of officers/officials up to BS-17 from settled areas to FATA and vice versa approval of the Chief Secretary, NWFP needs to be obtained. Save Tehsildars/Naib Tehsildars within a division in respect of whom the concerned Commissioner will exercise the same power. Whereas, in case of posting/transfer of officers in BS-18 and above, from settled areas to FATA and vice versa, specific approval of the Governor, NWFP shall be obtained.

Provided that the power to transfer Political Tehsildars and Political Naib Tehsildars within FATA between different divisions shall rest in Additional Chief Secretary FATA.

- vi (a) All Officers/officials selected against Zone-I/FATA quota in the Provincial Services should compulsorily serve in FATA for at least eighteen months in each grade. This should start from senior most scales/grades downwards in each scale/grade of each cadre.
- vii) Officers may be posted on executive/administrative posts in the Districts of their domicile except District Coordination Officers (D.C.Os) and DPOs/Superintendent of Police (SP). Similarly Deputy Superintendent of Police (DSP) shall not be posted at a place where the Police Station (Thaana) of his area/residence is situated.
- viii) No posting/transfers of the officers/officials on detailment basis shall be made.
- ix) Regarding the posting of husband/wife, both in Provincial services, efforts where possible would be made to post such persons at one station subject to the public interest.
- x) All the posting/transferring authorities may facilitate the posting/ transfer of the unmarried female government Servants at the station of the residence of their parents.
- xi) Officers/officials except DCOs and DPOs/SPs who are due to retire within one year may be posted on their option on posts in the Districts of their domicile and be allowed to serve there till the retirement

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⁸¹ DCOs and DPOs who are due to retire in the near future may also be posted in the District of their domicile subject to the condition that such posting would be against non-administrative posts of equivalent scales;

- xii) In terms of Rule 17(1) and (2) read with Schedule-III of the NWFP Government Rules of Business 1985, transfer of officers shown in column 1 of the following table shall be made by the authorities shown against each officer in column 2 thereof:

Outside the Secretariat	
1. Officers of the all Pakistan Unified Group i.e. DMG, PSP including Provincial Police Officers in BPS-18 and above.	Chief Secretary in consultation with Establishment Department and Department concerned with the approval of the Chief Minister.
2. Other officers in BPS-17 and above to be posted against scheduled posts, or posts normally held by the APUG, PCS(EG) and PCS(SG).	-do-
3. Heads of Attached Departments and other Officers in B-19 & above in all the Departments.	-do-
In the Secretariat	
1. Secretaries	Chief Secretary with the approval of the Chief Minister.
2. Other Officers of and above the rank of Section Officers: a) Within the Same Department b) Within the Secretariat from one Department to another.	Secretary of the Department concerned. Chief secretary/Secretary Establishment.
3. Officials up to the rank of Superintendent: a) Within the same Department b) To and from an Attached Department c) Within the Secretariat from one Department to another	Secretary of the Department concerned. Secretary of the Department in consultation with Head of Attached Department concerned. Secretary (Establishment)

- xiii) While considering posting/transfer proposals all the concerned authorities shall keep in mind the following:
- To ensure the posting of proper persons on proper posts, the Performance Evaluation Report/annual confidential reports, past and present record of service, performance on post held presently and in the past and general reputation with focus on the integrity of the concerned officers/ officials be considered.
 - Tenure on present post shall also be taken into consideration and the posting/transfers shall be in the best public interest.

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xiv) Government servants including District Govt. employees feeling aggrieved due to the orders of posting/transfer authorities may seek remedy from the next higher authority / the appointing authority as the case may be through an appeal to be submitted within seven days of the receipt of such orders. Such appeal shall be disposed of within fifteen days. The option of appeal against posting/ transfer orders could be exercised only in the following cases.

- i) Pre-mature posting/transfer or posting transfer in violation of the provisions of this policy.
- ii) Serious and grave personal (humanitarian) grounds.

2. To streamline the postings/transfers in the District Government and to remove any irritant/confusions in this regard the provision of Rule 25 of the North West Frontier Province District Government Rules of Business 2001 read with schedule – IV thereof is referred. As per schedule-IV the posting/transferring authorities for the officers/officials shown against each are as under:-

S.No.	Officers	Authority
1.	Posting of District Coordination Officer and Executive District Officer in a District.	Provincial Government.
2.	Posting of District Police Officer.	Provincial Government.
3.	Other Officers in BPS-17 and above posted in the District.	Provincial Government.
4.	Official in BPS-16 and below	Executive District Officer in consultation with District Coordination Officer.

3. As per Rule 25(2) of the Rules mentioned above the District Coordination Department shall consult the Government if it is proposed to:

- a) Transfer the holder of a tenure post before the completion of his tenure or extend the period of his tenure.
- b) Require an officer to hold charge of more than one post for a period exceeding two months.

4. I am further directed to request that the above noted policy may be strictly observed/implemented.

5. All concerned are requested to ensure that tenures of the concerned officers/officials are invariably mentioned in summaries submitted to the Competent Authorities for Posting/Transfer.

(Authority: Letter No: SOR-VI/E&AD/1-4/2003 dated 24-6-2003).

WAKALAT NAMA

IN THE COURT OF

Ch. P. A. Benue Tribunal

Mrs. Musarat Begum Appellant(s)/Petitioner(s)

VERSUS

Govt of Peshawar

Respondent(s)

I/We Appellants do hereby appoint
Mr. Khaled Rehman, Advocate Supreme Court of Pakistan in the above
mentioned case, to do all or any of the following acts, deeds and things.

1. To appear, act and plead for me/us in the above mentioned case in this Court/Tribunal in which the same may be tried or heard and any other proceedings arising out of or connected therewith.
2. To sign, verify and file or withdraw all proceedings, petitions, appeals, affidavits and applications for compromise or withdrawal or for submission to arbitration of the said case, or any other documents, as may be deemed necessary or advisable by them for the conduct, prosecution or defence of the said case at all its stages.
3. To receive payment of, and issue receipts for, all moneys that may be or become due and payable to us during the course of proceedings.

AND hereby agree:-

- a. That the Advocate(s) shall be entitled to withdraw from the prosecution of the said case if the whole or any part of the agreed fee remains unpaid.

In witness whereof I/We have signed this Wakalat Nama hereunder, the contents of which have been read/explained to me/us and fully understood by me/us this _____

Attested & Accepted by

Musarat

Signature of Executants

Khaled Rehman,
Advocate,
Supreme Court of Pakistan

3-D, Haroon Mansion
Khyber Bazar, Peshawar
Off: Tel: 091-2592458

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No. 177/2016

MST: Musarrat Begum Ex-PST GGPS Mohib Banda District Swabi.

.....Appellant

Versus

Secretary E&SE Department, Khyber Pakhtunkhwa, & others.

.....Respondents.

JOINT PARAWISE COMMENTS FOR & ON BEHALF OF RESPONDENTS No: 1-2

Respectfully Sheweth.

The Respondents submit as under:-

PRELIMINARY OBJECTIONS :-

- 1 That the Appellant has got no case of action / locus standi.
- 2 That the instant service appeal is badly time barred, hence is liable to be dismissed.
- 3 That the Appellant has concealed material facts from this honorable tribunal.
- 4 That the instant service appeal is against the relevant provisions of law.
- 5 That the Appellant is not aggrieved person under article 212 of the constitution of Islamic Republic of Pakistan, 1973.
- 6 That the Appellant has not come to this honorable tribunal with clean hands.
- 7 That the instant appeal is liable to be dismissed for mis-joinder & non-joinder of the necessary parties to the present appeal.
- 8 That the Appellant is estopped by her own conduct to file the instant appeal.
- 9 That the instant appeal is not maintainable in the present circumstances of the case.
- 10 That the instant appeal is barred by law.
- 11 That the impugned Notification dated 22/10/2015, is legally competent and is liable to be maintained in favor of the respondents.
- 12 That this honorable tribunal has got no jurisdiction to entertained the instant service appeal.
- 13 That the Appellant has been treated as per Law, Rules & relevant Policy in the instant case.
- 14 That the Appellant is not entitled for the grant of relief, she has sought from this Honorable Tribunal.
- 15 That the appointment order of the appellant has been found irregular, hence recalled by the Respondent No: 2 under the relevant provision of law.

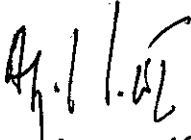
ON FACTS.


- 1 That Para-I is incorrect & denied. The appointment order dated 01/2/1996 has been found fake, bogus & even irregular, hence a fact finding enquiry into the matter was conducted by the competent authority. Wherein, vide enquiry report dated 02/12/2014, the appointment order in respect of the appellant dated 01/2/1996 & transfer order bearing Endst: No: 7490-95 dated 27/9/2008, vide which the appellant has shown herself transferred from GGPS Palosai District Swabi to GGPS Samad Abad Saw District Kohistan against the PST (F) post in the Respondent Department has been withdrawn / recalled under the provision of Section-21 of General Clauses Act 1897.(Copy of the impugned order as Annexure-A).
- 2 That Para-2 is incorrect & denied, detailed reply of this Para has been given in Para-1, hence needs no further comments.
- 3 That Para-3 is also incorrect and miss-leading on the grounds, that the transfer order dated 27/9/2007 from the mentioned Primary School has been found fake & irregular by the enquiry officer in his report dated 02/12/2014 to the competent authority, hence vide the impugned Notification dated 22/10/2015, has been withdrawn. Hence the instant appeal is liable to be dismissed on the following grounds inter alia :-

ON GROUNDS.

- A Ground-A is incorrect & denied. The impugned Notification dated 22/10/2015, is legal & within the jurisdiction, having no question of constitutional violation, hence is liable to be maintained in favor of the Respondents, in the interest of the justice.
- B Incorrect & denied. The statement of the appellant regarding repatriation of the appellant to her home District pursuant to the policy is against the facts of the case on the grounds that for the grant of promotion & upgradation in the light of the policy dated 13/11/2012, the post of PST has been upgraded from BPS-7 & 9 to BPS-12 for initial recruitment with the prescribed qualification FA/F. Sc alongwith diploma in Education / PTC pass course at least in 2nd Division on U/C based appointments from the recognized institutions through NTS. Whereas for the promotion against SPST BPS-14 & PHST BPS-15 posts the criteria of 10-years qualifying service on the basis of seniority cum fitness on District wise based was made pre-conditions in the said policy. Therefore the plea of the appellant is baseless & liable to be dismissed.
- C Incorrect and denied. The impugned Notification dated 22/10/2015 of the Respondent No: 2 is within legal sphere vide which the appellant has been treated as per law, rules & policy.
- D Incorrect & denied. Detailed reply regarding the impugned Notification as mentioned above has been given in the foregoing paras of the present reply.
- E Legal, however, the Respondents seek leave of this Honorable Tribunal to submit additional grounds and case law at the time of arguments.

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


Secretary 18/5/2016.
(E&SE) Department Khyber
Pakhtunkhwa, Peshawar.


Director
(E&SE) Department Khyber
Pakhtunkhwa, Peshawar.

AFFIDAVIT.

I, Khaista Rehman Asstt: Director (Lit: II) Directorate of E&SE Department, Khyber Pakhtunkhwa, do hereby solemnly affirm and declare that the contents of the instant Parawise Comments are true and correct to the best of my knowledge and belief.


Deponent.

**OFFICE OF THE DIRECTOR OF ELEMENTARY & SECONDARY
EDUCATION KHYBER PAKHTUNKHWA, PESHAWAR**

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Annex 'E'

NOTIFICATION

The transfer orders of the following teachers from District Kohistan to District Swabi issued vide this office Endst.No. detail given below are hereby withdrawn due to their illegal and irregular appointments as per report of the inquiry officer vide letter No.02 dated 2-12-2014.

S.N	Name of Teacher	From Kohistan	District	To District Swabi	Endst.No.
1.	Alia Ghafoor PST	GGPS Banjar Yanjool	Banjar	GGPS Battai No.2	Endst.No.2511-15 dated 19-10-2011
2.	Ruqia PST	GGPS Madu Khel	Khel	GGPS Haryan Banda	Et.No.2511-15 dated 19-10-2011
3.	Nuzhat PST	GGPS Banjar Yanjool	Banjar	GGPS Haryan Banda	Endst.No.2527-31 datd 24-11-2010
4.	Khushnama PST	GGCMS Kohistan	Jijal	GGPS Hayatabad	Endst.No.985-90 dated 08-01-2011
5.	Nazia Qazi PST	GGPS Bar Komila	Kohistan	GGPS Razi Bahadar Koti	Endst.No.4980-85 dated 20-09-2011
6.	Sara PST	GGPS Saglo		GGPS Aala Dher	E.No.1599-1605 dated 15-02-2011
7.	Mussarat PST	GGPS Abad Sao	Samad	GGPS Palosai	Endst.No.7490-95 dated 27-09-2008
8.	Aneela PST	GGPS Koz		GGPS No.1 Dheri Gandaf	Endst.No.505-10 dated 08-10-2010

Director
Elementary & Secondary Education
Khyber Pakhtunkhwa,

Endst: No. 3007-24 /F.No.20/(F) Enquiry dated Peshawar the 22/10/2015

Copy to the:-

1. District Account Officer Swabi & Kohistan.
2. District Officer (Female) Swabi & Kohistan.
3. Teacher Concerned.
4. P.A to Director Local Office

Deputy Director (Female)
(E&SE) Khyber Pakhtunkhwa,

19/11/15

OFFICE OF THE DISTRICT EDUCATION OFFICER (FEMALE) SWABI.

Endst: No. 3090-5 /DA-I (Estab) Dated Swabi the 12/11/2015

Copy of the above is forwarded for information and strict compliance to the:-

1. Sub-Divisional Education Officer (Female) Lahor, Swabi and Topi.
2. District Accounts Officer Swabi.

DISTRICT EDUCATION OFFICER
(FEMALE) SWABI.

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office of the sub-divisional education officer Swabi

no. 916 / dated 13/11/2015

Forwarded in compliance to the Headmistress

SSCMS, Madu Khel Banda for further necessary action please

for strict compliance.

Attester to be
True Copy

12/12/15
District Education Officer
(Female) Swabi

E

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 177 /2016

Mst. Musarrat BegumAppellant

Versus

The Secretary E&SE and others.....Respondents

REJOINDER ON BEHALF OF APPELLANT IN RESPONSE TO REPLY FILED BY RESPONDENTS.

Respectfully Sheweth,

Preliminary Objections:

Preliminary objections raised by answering respondents are erroneous and frivolous. The appellant has got cause of action and for that matter locus standi to file the instant appeal before this Hon'ble Tribunal which has got exclusive jurisdiction. All the parties are properly arrayed. The appeal is within time with all the relevant facts concisely incorporated therein. Estoppel has no application to the instant appeal which is in its correct form and shape.

Facts:

1. Incorrect as stated. The appointment order dated 01.02.1996 is correct. No fact finding enquiry has been conducted into the matter. The transfer order of the appellant was issued by the competent authority under the policy then in vogue. The impugned order was illegally issued in violation of the law.
2. Being not replied hence admitted.

3. Incorrect hence denied. The transfer order dated 27.09.2007 was cancelled after long period on 22.10.2015 without any lawful justification hence the instant appeal.

Grounds:

- A. Incorrect. The impugned Notification is against the law, without jurisdiction and therefore is not legally sustainable.
- B. Incorrect hence denied. The answering Respondents have not properly met the objection of the appellant and have attempted to confuse the matter by putting irrelevant statements.
- C. Incorrect. The impugned Notification is according to law and Rules.
- D. Incorrect hence denied.
- E. Needs no reply.

It is, therefore, humbly prayed that the reply of answering Respondents may graciously be rejected and the appeal as prayed for may graciously be accepted with costs.

Through

Musa Zayat
Appellant

Khaled Rahman
Advocate, Peshawar

Dated: 04/01/2017

Verification

Verified, as per instructions, that the contents of this rejoinder are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.

Advocate
[Signature]

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AAH

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

D. 1.14
Illegal
Appointment

PRESENT:

MR. JUSTICE UMAR ATA BANDIAL

MR. JUSTICE IJAZ UL AHSAN


CIVIL PETITION NOS. 2238 OF 2018 TO 2263 OF 2018
AND 2499, 2682, 2778 TO 2781 OF 2018
AND 3505 OF 2018 TO 3514 OF 2018.

(As appeal from the judgment/order dated 14.03.2018 of the Khyber Pakhtunkhwa Service Tribunal, Peshawar Camp Court U.S. Khan passed in Appeal Nos. 943/2012, 1107, 1112, 1092, 1110/2015, 1310/2012, 946/2012, 939/2012, 932/2012, 949/2012, 937/2012, 1197/2012, 947/2012, 938/2012, 937/2012, 950/2012, 957/2012, 944/2012, 943/2012, 953/2012, 953/2012, 934/2012, 928/2012, 934/2012, 936/2012, 1095/2015, 557/2015, 558/2015, 1190/2015, 1202/2015, 1205/2015, 283/2016, 573/2015, 559/2015, 560/2015, 562/2015, 563/2015, 566/2015, 568/2015, 569/2015, 571/2015, 1118/2015).

Rahmat Ullah	(in C.P. No. 2238/2018)
Sibt-ul-Hassan Shah	(in C.P. No. 2239/2018)
Matiullah (in C.P. No.	(in C.P. No. 2240/2018)
Muhammad Shahid	(in C.P. No. 2241/2018)
Muhammad Ibrahim	(in C.P. 2242/2018)
Inam Ullah	(in C.P. No. 2243/2018)
Barkatullah	(in C.P. No. 2244/2018)
Ghazi Marjan	(in C.P. No. 2245/2018)
Mst. Fozia Malik	(in C.P. No. 2246/2018)
Aziz-ur-Rehman	(in C.P. No. 2247/2018)
Muhammad Arif	(in C.P. No. 2248/2018)
Muhammad Azeem	(in C.P. No. 2249/2018)
Hidayatullah	(in C.P. No. 2250/2018)
Muhammad Hassan Khan	(in C.P. 2251/2018)
Ala-ud-Din	(in C.P. No. 2252/2018)
Noor Aslam	(in C.P. No. 2253/2018)
Samiullah	(in C.P. No. 2254/2018)
Mst. Eibi Ayesha	(in C.P. No. 2255/2018)
Mst. Mehnaz Begum	(in C.P. No. 2256/2018)
Imranullah	(in C.P. No. 2257/2018)
Saleemullah	(in C.P. No. 2258/2018)
Samiullah	(in C.P. No. 2259/2018)
Abdul Qadir	(in C.P. No. 2260/2018)
Ghulam ud Din	(in C.P. No. 2261/2018)
Abdul Jalil	(in C.P. No. 2262/2018)
Kifayatullah	(in C.P. No. 2263/2018)
Shahid Nawaz	(in C.P. No. 2499/2018)
Tahir Bashir	(in C.P. No. 2682/2018)
Ghulam Farced	(in C.P. No. 2778/2018)
Saifullah Khan	(in C.P. 2779/2018)
Abdul Rasheed Khan	(in C.P. No. 2780/2018)
Inayat Ullah Khan	(in C.P. No. 2781/2018)
Razia Sultana	(in C.P. No. 3505/2018)
Muhammad Ramzan	(in C.P. No. 3506/2018)
Abdul Ghaffar	(in C.P. No. 3507/2018)
Muhammad Iqbal Khan	(in C.P. No. 3508/2018)
Naeema Sadia	(in C.P. No. 3509/2018)
Nasim Bibi	(in C.P. No. 3510/2018)
Rehana Andaleeb	(in C.P. No. 3511/2018)
Muhammad Sohail	(in C.P. No. 3512/2018)
Shazia Malik	(in C.P. No. 3513/2018)
Muhammad Ilyas	(in C.P. No. 3514/2018).

ATTESTED

...Petitioner(s)


Court Associate
Supreme Court of Pakistan
Islamabad

VERSUS

Director, Elementary and Secondary Education Department,
Peshawar and others
(in C.P. Nos. 2238 to 2242/2018)

The Government of KPK thr. its Secretary, Elementary and
Secondary Education, Peshawar and others
(in C.P. Nos. 2243 to 2262/2018)

Director, Elementary and Secondary Education Department,
Peshawar and others
(in C.P. Nos. 2263, 2499, 2632/2018)

Ministry of Education thr. Secretary Elementary and Secondary
Education, Peshawar and others
(in C.P. Nos. 2773-2780/2018)

Director Education (E & SE), KPK, Peshawar and others
(in C.P. No. 2781/2018)

The Director, Elementary and Secondary Education Department,
Peshawar and others
(in C.P. Nos. 3505-3514/2018)

...Respondent(s):

For the petitioner(s)
(in all cases) Mian Abdul Rauf, ASC

For the respondent(s)
(in all cases) N.R

Date of Hearing: 19.09.2018

ORDER

UMAR ATA BANDIAL, J. The petitioners were

terminated firstly in the year 2009 on account of legal defects in their appointments. By order of the Khyber Pakhtunkhwa Service Tribunal, Peshawar dated 27.10.2011 the petitioners underwent another inquiry by a Committee constituted by Provincial Government wherein the termination of services of the petitioners was affirmed on 08.2.2012. The appointments of the petitioners were determined to be in violation of the provisions of Rule 10(2) of the KPK Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, in that, either the advertisement was missing or the Departmental Selection Committee had not been appointed or a merit list of the candidates had not been prepared. The learned Tribunal by the impugned judgment dated 14.3.2018 has upheld the termination of service of the petitioners by holding that the said

ATTESTED

defects constituted a failure to comply the mandatory requirement of

law.

We do not find any ground to interfere with the view

taken in the impugned judgment which is based on the record and

the correct enunciation of law. For the foregoing reasons, all these

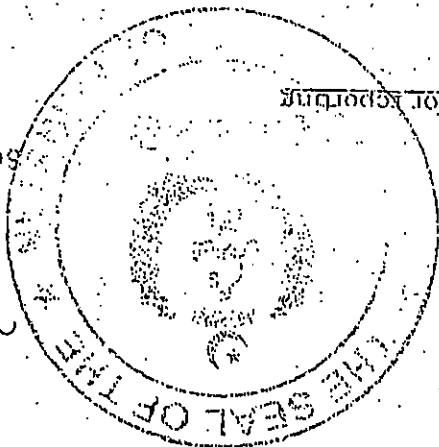
petitions are dismissed and leave to appeal is refused.

3/11 J
3/11 J

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Court Associate
Supreme Court of Pakistan
Islamabad



Islamabad
19.9.2018
Nasir

Not approved for reporting

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR CAMP COURT DI KHAN

Appeal No. 943/2012



Date of Institution ... 08.08.2012

Date of Decision ... 14.03.2018

Mst. Mehnaz Begum son of Haji Gul Daraz Ex-PST, GPS Band
Kulai, D.I.Khan. ... (Appellant)

VERSUS

1. The Government of Khyber Pakhtunkhwa through Secretary,
Elementary & Secondary Education Department, Peshawar and
two others. ... (Respondents)

Mr. Khalid Rahman, Advocate,
Mr. Sanaullah Ranazai,
Mr. Muhammad Anwar Awan, Advocate,
Mr. Gul Tiaz Khan, Advocate,
Mr. Muhammad Arif Baloch, Advocate ... For appellants

Mr. Ziaullah,
Deputy District Attorney, ... For respondents.

MR. NIAZ MUHAMMAD KHAN,
MR. AHMED HASSAN,

CHAIRMAN
MEMBER

ATTESTED



EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,

JUDGMENT

NIAZ MUIHAMMAD KHAN, CHAIRMAN.- This judgment shall also dispose of the following service appeals as in all the appeals common questions of law and facts are involved:


1. Appeal No. 926/2012, Amjad Ali,
2. Appeal No. 927/2012, Ala-ud-Din,
3. Appeal No. 928/2012, Abdul Qadir,
4. Appeal No. 929/2012, Ghazi Marjan,
5. Appeal No. 930/2012, Mst. Mehreen Begum,
6. Appeal No. 931/2012, Zaheerullah,
7. Appeal No. 932/2012 Mst. Fozia Malik,
8. Appeal No. 934/2012, Samiullah Khan,
9. Appeal No. 936/2012, Abdul Jalil,
10. Appeal No. 937/2012, Muhammad Arif,
11. Appeal No. 938/2012, Muhammad Hassan Khan,
12. Appeal No. 939/2012, Muhammad Arif,
13. Appeal No. 940/2012, Muhammad Tahir,
14. Appeal No. 941/2012, Irshadullah Khan,
15. Appeal No. 942/2012, Muhammad,
16. Appeal No. 944/2012, Mst. Bibi Ayesha,
17. Appeal No. 945/2012, Muhammad Imran,
18. Appeal No. 946/2012, Barkatullah,
19. Appeal No. 947/2012, Hidayatullah,
20. Appeal No. 948/2012 Altaf Khan,
21. Appeal No. 949/2012 Aziz-ur-Rahman,

ATTESTED


EXAMINER
 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar

22. Appeal No. 950/2012, Noor Aslam,
23. Appeal No. 951/2012, Azizur Rahman,
24. Appeal No. 952/2012 Shafiullah,
25. Appeal No. 953/2012 Saleemullah,
26. Appeal No. 954/2012, Ghulam-ud-Din,
27. Appeal No. 955/2012, Imranullah,
28. Appeal No. 956/2012 Hafiz Abdul Rahman,
29. Appeal No. 957/2012, Samiullah,
30. Appeal No. 958/2012, Iftikhar Ahmad,
31. Appeal No. 959/2012 Bismillah Jan,
32. Appeal No. 960/2012, Mst. Mussarrat Shaheen,
33. **Appeal No. 557/2015, Shahid Nawaz,**
34. Appeal No. 558/2015, Tahir Bashir,
35. Appeal No. 559/2015, Muhammad Ramzan,
36. Appeal No. 560/2015, Abdul Ghaffar,
37. Appeal No. 561/2015, Muhammad Ali Abbas
38. Appeal No. 562/2015, Muhammad Iqbal Khan
39. Appeal No. 563/2015 Qaisar Abbas,
40. Appeal No. 564/2015, Mumtaz Bibi,
41. Appeal No. 565/2015, Naeema Sadia,
42. Appeal No. 566/2015, Nasim Bibi,
43. Appeal No. 567/2015, Humaira Rehman,
44. Appeal No. 568/2015, Rehana Andaleeb,
45. Appeal No. 569/2015, Muhammad Sohail,
46. Appeal No. 570/2015, Muhammad Azhar,
47. Appeal No. 571/2015, Mst. Shazia Malik,
48. Appeal No. 572/2015 Mst. Attia Naz,

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

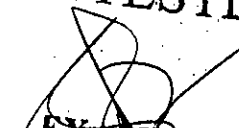
49. Appeal No. 573/2015 Mst. Razia Sultana,
50. Appeal No. 574/2015 Muhammad Asif Rizwan,
51. Appeal No. 622/2015 Mst. Nosheen Faiz,
52. Appeal No. 1091/2015, Rahmatullah,
53. Appeal No. 1092/2015 Muhammad Sahid,
54. Appeal No. 1093/2015, Mst. Tehmina,
55. Appeal No. 1094/2015, Abdul Haleem,
56. Appeal No. 1095/2015 Kifayatullah,
57. Appeal No. 1096/2015 Allah Ditta,
58. Appeal No. 1107/2015, Sibtul Hassan Shah,
59. Appeal No. 1108/2015, Rukhsana Gul,
60. Appeal No. 1109/2015 Muhammad Iqbal,
61. Appeal No. 1110/2015, Muhammad Ibrahim,
62. Appeal No. 1111/2015 Inayatullah,
63. Appeal No. 1112/2015 Mutiullah,
64. Appeal No. 1116/2015 Muhammad Sajid,
65. Appeal No. 1117/2015 Naseem Akhtar,
66. Appeal No. 1118/2015 Muhammad Ilyas,
67. Appeal No. 1119/2015, Arif Hussain,
68. Appeal No. 1120/2015 M. Ismail,
69. Appeal No. 1121/2015 Syed Abne Hassan,
70. Appeal No. 1122/2015 Mst. Safooran,
71. Appeal No. 1123/2015 M. Farooq,
72. Appeal No. 1124/2015, Riaz Hussain,
73. Appeal No. 1125/2015, Murid Hassan,
74. Appeal No. 1126/2015, M. Iqbal,
75. Appeal No. 1127/2015 M. Nawaz,

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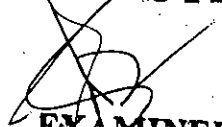
EXAMINER
Kyber Pakhtunkhwa
Service Tribunal
Peshawar

76. Appeal No. 1128/2015 Samiullah,
77. Appeal No. 1129/2015 Khan Zaman,
78. Appeal No. 1130/2015 Hamidullah,
79. Appeal No. 1131/2015 Ulfat Sumaira,
80. Appeal No. 1132/2015 Rehmat Ullah,
81. Appeal No. 1133/2015, Shaken Akhtar,
82. Appeal No. 1134/2015, Muhammad Safdar,
83. Appeal No. 1135/2015, Rustam Khan,
84. Appeal No. 1136/2015 Muhammad Hasnain,
85. Appeal No. 1137/2015 Allah Nawaz,
86. Appeal No. 1138/2015, Ghulam Abbas,
87. Appeal No. 1139/2015 Mst. Safina Bibi
88. Appeal No. 1140/2015 Nasrullah,
89. Appeal No. 1141/2015 Amanullah,
90. Appeal No. 1142/2015 Hafiz Ullah,
91. Appeal No. 1143/2015 Ulfat Ali,
92. Appeal No. 1144/2015, Shah Jahan,
93. Appeal No. 1145/2015 Hafsa Bibi,
94. Appeal No. 1146/2015 M. Salim,
95. Appeal No. 1147/2015 Qazim Ali,
96. Appeal No. 1148/2015, Gohar Iqbal,
97. Appeal No. 1149/2015 Kashmir Khan,
98. Appeal No. 1150/2015 Syed Touqeer Hussain,
99. Appeal No. 1151/2015 Aziz Fatima,
100. Appeal No. 1152/2015, Muhammad Usman,
101. Appeal No. 1153/2015, Shaista Bibi,
102. Appeal No. 1154/2015 Sana Ullah,

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103. Appeal No. 1155/2015 M. Tahir
104. Appeal No. 1247/2015 Malik Mushtaq Hussain,
105. Appeal No. 1248/2015 Muhammad Ramzan,
106. Appeal No. 1249/2015, Ikramullah,
107. Appeal No. 1250/2015 Haji Muhammad,
108. Appeal No. 1251/2015 Niaz Din,
109. Appeal No. 1252/2015 Abdul Majeed,
110. Appeal No. 1253/2015, Hafeez Ullah,
111. Appeal No. 1254/2015 Nabeela Ambreen,
112. Appeal No. 1255/2015 Muhammad Suliman,
113. **Appeal No. 907/2012, Kalimullah,**
114. Appeal No. 908/2012 Ghulam Abbas Shah,
115. Appeal No. 909/2012, Nomera Shahen,
116. Appeal No. 912/2012, Ehsan Ullah,
117. Appeal No. 913/2012 Samman Gull,
118. Appeal No. 914/2012, Muhammad Faheem,
119. Appeal No. 915/2012, Muhammad Altaf,
120. Appeal No. 916/2012, Muhammad Amjad,
121. Appeal No. 917/2012, Mst. Razia Bibi
122. Appeal No. 921/2012 Ehsan Ullah,
123. Appeal No. 922/2012 Malik Sad Ullah,
124. Appeal No. 923/2012, Muhammad Aslam,
125. Appeal No. 924/2012 Mst. Amna Bibi,
126. Appeal No. 925/2012, Ghulam Sarwar,
127. Appeal No. 978/2012, Rehmatullah,
128. **Appeal No. 1187/2012, Rakhan Din,**
129. Appeal No. 1004/2012, Fazal Rahman,

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130. Appeal No. 1188/2012, Mst. Fouzia,
131. Appeal No. 1189/2012, Aqal Khan,
132. Appeal No. 1190/2012, Ulfatullah,
133. Appeal No. 1191/2012 Azmatullah,
134. Appeal No. 1193/2012, Najeeb Ullah,
135. Appeal No. 1194/2012, Abdul Haq,
136. Appeal No. 1195/2012, Abdul Mateen,
137. Appeal No. 1196/2012, Misbah-ur-Rehman,
138. Appeal No. 1197/2012 Muhammad Azeem,
139. Appeal No. 1198/2012, Ahmad Ali,
140. Appeal No. 1200/2012, Abdul Majeed,
141. Appeal No. 1201/2012, Muhammad Idrees,
142. Appeal No. 1202/2012, Waheed Ullah,
143. Appeal No. 1203/2012, Farman Ullah,
144. Appeal No. 1204/2012, Hizbullah,
145. Appeal No. 1205/2012, Mst. Irshad Begum,
146. Appeal No. 1206/2012, Furqan Ullah,
147. Appeal No. 1207/2012, Samiullah,
148. Appeal No. 1208/2012, Mst. Asma Gul,
149. Appeal No. 1210/2012, Inam Ullah,
150. Appeal No. 1211/2012, Latifullah,
151. Appeal No. 1213/2012, Haji Noor Ahmad,
152. Appeal No. 1214/2012, Asmatullah,
153. Appeal No. 1215/2012, Mumtaz Ahmad,
154. Appeal No. 1224/2014, Irfan Ali,
155. Appeal No. 744/2016, Mst. Irum Bibi
156. Appeal No. 743/2016 Shahnaz Bibi,

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157. Appeal No. 745/2016, Ulfat Bibi,
158. Appeal No. 746/2015 M. Shakeel,
159. Appeal No. 747/2016, Ameer Nawaz,
160. **Appeal No. 1187/2015, Muhammad Nawaz,**
161. Appeal No. 1188/2015, Rashid Ashraf,
162. Appeal No. 1189/2015, Syed Qamar Sultan,
163. Appeal No. 1190/2015, Ghulam Fareed,
164. Appeal No. 1191/2015, Muhammad Imran Hussain,
165. Appeal No. 1192/2015, Muhammad Taqi Shah,
166. Appeal No. 1193/2015, Riaz Hussain,
167. Appeal No. 1194/2015, Ghulam Rabani,
168. Appeal No. 1195/2015, Rehmatullah,
169. Appeal No. 1196/2015, Saifullah Khan,
170. Appeal No. 1197/2015 Muhammad Ali,
171. Appeal No. 1198/2015, Muhammad Saleem,
172. Appeal No. 1199/2015 Lal Khan,
173. Appeal No. 1200/2015, Syed Muhammad Bakhsh Shah,
174. Appeal No. 1201/2015 Syed Tajamel Hussain Shah,
175. Appeal No. 1202/2015, Saifullah Khan,
176. Appeal No. 1203/2015 Ghulam Akhtar,
177. Appeal No. 1204/2015 Jafar Hussain,
178. Appeal No. 1205/2015 Abdul Rasheed Khan,
179. Appeal No. 1206/2015, Amina Bibi,
180. Appeal No. 1290/2015, Fazal Abbas,
181. Appeal No. 1291/2015 Muhammad Jamshed,
182. Appeal No. 1292/2015 Najma Bibi,
183. Appeal No. 1293/2015, Ghulam Yaseen,

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184. Appeal No. 1294/2015 Khairat Hussain,
 185. Appeal No. 1295/2015 Amir Hussain Shah
 186. Appeal No. 2743/Neem/2010, Riazul Hassan,
 187. Appeal No. 344/2014 Naeemullah,
 188. Appeal No. 1080/2014, Shah Nawaz,
 189. Appeal No. 22/2015, Kifayatullah
 190. Appeal No. 283/2016, Inayatullah,

Arguments of the learned counsel for the parties heard and record perused. In 27 appeals from 128 to 154 the special attorney of appellants submitted an application that arguments made by other counsel may be treated arguments in their appeals as well.

FACTS

2. Since common question of laws and facts are involved in all these appeals hence decided together. The brief resume of all these appeals is that some appointments were made in the respondent department in the year 2007. These appointments were declared illegal by the concerned authority. Against the said cancellation this Tribunal was approached and finally this Tribunal vide judgment dated 27.10.11 decided the issue through a judgment in Service Appeal No 1407/2010 (or brevity "the judgment"). Through the judgment the appeals were

remanded to respondent no 1 with a direction for the reinstatement of those appellants who were qualified in the light of certain observations made in the judgment (Para 9(iii)). Those observations relevant for the purpose were given in para 8(d) of the judgment. In compliance the respondent no 1 constituted a committee for giving a report. After the report termination orders of present appellants were issued. The appellants then after seeking departmental remedy (though disputed as to limitation) filed the present appeals against these orders of termination.

ARGUMENTS.

3. The gist of the arguments of all the counsel for the appellants is as under:

- i. That the appellants were not heard properly by the Authority or Committee and hence violated the direction of this Tribunal in the judgment.
- ii. That the only direction in the judgment was to reinstate those who were qualified and there was no direction to enter into other illegalities/irregularities as those issues were already decided by the Tribunal in the judgment. But the Committee exceeded its mandate and framed TORs beyond that scope by entering into

all other illegalities/irregularities allegedly committed in the appointments.

- iii. That all the appellants were duly qualified and hence their termination on other grounds was illegal.
 - iv. That no new specific reason was shown in the termination orders except a general reason of illegal/irregular appointments.
 - v. That some of the appellants were only communicated verbal orders of termination and they approached this Tribunal on the basis of verbal orders and those verbal orders have no legal value. Reliance was placed on a case entitled "*Muhammad Ahmed Tariq v District Education Officer*" reported as 2001 PLC(C.S) 109 and "*Abdul Hammed v Sindh Agriculture University and 5 others*" reported as 2006 PLC(C.S) 200.
 - vi. Some appellants like Riazul Hassan were appointed on the intervention of worthy Peshawar High Court and they could not be terminated on the ground of illegal/irregular appointment.
4. The gist of the arguments of the learned DDA is as under:
- i. That the appeals are time barred as all the termination orders were issued in black & white on 8.2.2012 and the appellants either did not file departmental appeals within

time or they did not challenge the said orders in their service appeals.

- ii. That the termination orders were issued on the basis of a report of a broad based committee and the termination orders shall be read with the recommendations of the committee for ascertaining the reasons.
- iii. That the scope of Authority was not confined to qualification but to other observations mentioned in para 8(d) of the judgment.
- iv. That the committee categorized the appointees in terms of commonality of illegalities/irregularities and gave separate findings for each category.

CONCLUSION.

5. This Tribunal is first to decide the maintainability of these appeals qua the limitation and issuance of verbal order and their effect. Some of the appellants approached this Tribunal by alleging that they were issued verbal orders and some in writ jurisdiction to the Worthy Peshawar High Court for direction to department to issue written orders. On the said direction the written orders were communicated to

all the appellants which bear date of 8.2.2012. It means that written orders were issued but were not communicated to appellants. In such situation appeals cannot be dismissed on the ground of limitation. Other related objection is that the written orders were not challenged by some of the appellants. As the written orders were communicated on the direction of the Worthy High Court therefore, all the appeals filed prior to such communication cannot be dismissed on this technical ground. Now we are to see the legal status of verbal orders. As there were written orders which were not communicated hence it cannot be said that termination was on the basis of verbal orders. The rulings on the issue relied upon by appellants are irrelevant in the circumstances.

6. As to the association of the appellants in the proceedings this Tribunal has already decided this issue vide order dated 14-03-2012 in Execution Petition No 34/12 entitled "*Muhammad Hassan Khan v Secretary, E&SE etc*" as upheld by the august Supreme Court of Pakistan on 27-06-2012. While filing execution petition against these termination orders this Tribunal categorically turned down the plea that the appellants were not associated in the proceedings.

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7. The appointments of some of the appellants like Riaz-ul Hassan etc. cannot be saved on the ground of their appointment on the intervention of the High Court as the issue before the Court was not of illegal appointment but that the petitioners were ignored despite being on the merit list. Secondly those writ petitions were not decided on merits.

8. Now we are to deal with the crucial question of the scope/TORs of the inquiry committee in the light of the judgment. The judgment is to be read holistically and pars 8(d) and 9(iii) need proper interpretation in order to reach the conclusion whether the Tribunal cleared the appellants from all alleged illegalities/irregularities and confined the Authority to qualification only. In par 8(d) of the judgment the Tribunal while giving some examples reached the conclusion that the assertion of the Department regarding no advertisement in all cases was not correct. Similarly some cases appeared showing constitution of committees for conducting test and interviews. Again there were some cases where merit list was framed and test and interviews conducted. And in some cases certificates/testimonials were also verified. These examples did not cover all the cases but just to strengthen the conclusion that all cases

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were different, and in some cases some or more formalities were fulfilled. On the basis of these examples the Tribunal did not reinstate the appellants as these examples did not cover all the cases and need was felt to remand the appeals back to department to thrash out all necessary formalities on case to case basis and then decide the fate of the appellants. The wordings used in para 9(iii) regarding reinstatement of qualified appellants is to be read with observations made in foregoing paras of the judgment. This means that only those qualified appellants were to be reinstated if they pass the test of observations made in the judgment. Secondly the word "qualified" used in this para is not confined to "educational qualification" but qualification in terms of fulfilling all the procedural and substantive requirements including educational qualification. Another easy test for ascertaining this mandate can be by assuming that if in the judgment the committee was authorized to see qualification only then the result would be that those fulfilling qualification without advertisement would be deemed to be legal appointees. Such conclusion would be against the settled jurisprudence as developed through many precedents of superior courts and discussed in a judgment of larger bench of this Tribunal as mentioned below. The Tribunal, of course, did not intend to create

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such an anomaly and paradoxical outcome through the judgment (27.10.11). The scope of the Committee was, therefore, wider enough to cover all the areas including procedural and substantive requirements.

9. Now we are to discuss different termination orders of different categories passed on the basis of common illegalities/irregularities as formulated by the committee. The following are the categories

PST-CT-PET-DM-AT-TT-QARI (MALE & FEMALE)

- i. C I. No Advertisement. No merit list and no DSC.
- ii. C II. (relevant for terminated employees only). No merit list and no DSC
- iii. C III. (relevant for terminated employees only). No merit list, no DSC and no sanctioned post.
- iv. C IV. No Advertisement. No merit list and no DSC. Non observance of quota

10. The next question for determination is whether the illegalities/irregularities mentioned in each category justify the termination or these are those lapses which ought to be ignored and cannot be attributed to the fault of the appointees. In this regard we can see guidance from a recent judgment of Larger Bench of this Tribunal

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consisting of the Chairman and all the learned Members delivered in Appeal No 94/2015 entitled "*Shehr Yar Khan v Government of KPK and Others*" decided on 15-02-2018. In this judgment the issue of illegal appointments has been thoroughly discussed and many relevant judgments of the superior courts have been taken into account and thereafter a comprehensive guidelines have been laid down for deciding what orders are void or illegal and what are mere irregular and when an authority is justified in recalling such orders. The superior courts have held in so many judgments that when a civil servant cannot be blamed and when his appointment is to be nullified. A glimpse of such burden on appellants has also been discussed in the judgment (the judgment dated 27.10.11). Without further discussing the above mentioned judgment of larger bench this tribunal reaches the following conclusion qua the propriety of the termination orders in the light of those guidelines.

11.

- i. Category I. No advertisement. No merit list and no DSC.

Appointments are void without advertisement as categorically

laid down in larger bench judgment. The merit list and DSC are discussed below.

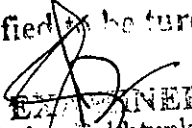
with malafide intention .However in the circumstances non observance of quota was deliberate and to give benefits to employees hence is fatal for appointment. Before parting with the judgment the objection of the appellant regarding no reasons in the orders of termination is also overruled as termination orders are to be read with reasons given against each category by the inquiry committee.

12. Consequently all the appeals are dismissed. Parties are left to bear their own costs. File be consigned to the record room.


(AHMED HASSAN)
MEMBER


(NIAZ MUHAMMAD KHAN)
CHAIRMAN.

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14/03.2018