BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal # 167/2024

Mr. Fida Khan .....Appellant.

VERSUS

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

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Deponent

20-03-2024
S.B
Peshawar

BEFORE THE HON'BLE SERVICE TRIBUNAL PESHAWAR

Service Appeal # 167/2023

Mr. Fida Khan.....**Appellant**

VERSUS

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

AFFIDAVIT

I, **Masood Ahmad,** Secretary, Elementary & Secondary Education, Department do herby 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. Sajid Ullah, 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 # 167/2024 Case Titled Mr. Fida Khan** vs Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Department Khyber Pakhtunkhwa, Peshawar.

(Masood Ahmad)
Secretary
E&SE Department Peshawar

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

In Service Appeal No. 167/2024

Mr. Fida Khan, HM (BS-17).....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 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.

3. 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.

4. That the appellant has got no cause of action against the respondents.

5. That the appellant is just wasting the precious time of this Honorable Tribunal.

6. That the appeal in hand is just filed to pressurize the respondents for getting unfair and undue service advantages.

7. That the appellant is estopped by his own conduct to file the present appeal.

8. That the appellant basically belongs to Teaching Cadre, while he has been placed In Management Cadre on needy bases whereas on the availability of suitable officer BPS-17 Notification dated 31-03-2023 was issued in public interest.

9. The appellant is BPS-17 officer and was entrusted with duties of SDEO on needy/temporary basis, the said notification was withdrawn on 05-10-2023 on the basis of local community complaints. Therefore, the appeal on this score alone is liable to be dismissed.

10. That the appellant concealed material facts from this Honorable Tribunal, therefore is not entitled for any relief.

11. That, according to the Central Administrative Tribunal Delhi in the case of Sh Jawahar Thakur vs Union of India held on 19th June, 2015 that 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 condition 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.

12. That according to the various judgments of this Honorable Tribunal, "The need of experienced staff at the respective places cannot be said to be arbitrary. Therefore, the Notification dated 05-10-2023 is in accordance with law.

13. That in case Mst. Parveen Begum vs Government this Honorable Tribunal in Service Appeal No 1678/2022 by DB discussed thoroughly the posting/transfer of wrong posting of Management/Teaching Cadre and dismissed the same nature appeal.

14. That according to section-10 desired posting is not perpetual right of a civil servant and department concerned can transfer any civil servant to serve at the given place as mention in the transfer/posting order, while the civil servant cannot refuse compliance.

On FACTS

1. Pertains to record.
2. Pertain to record.
3. Pertain to record.
4. In response of Para-04, it is stated that the department is not satisfied due to the un-professional and mal conduct of the appellant. There are numerous complaints against the appellant in just a small Spain tenure of his impugned tenure. **(Copies of complaint is Annex-A).**
5. In response of Para-05, it is stated that beside many complaints against the appellant he was transferred to his original post being Teaching Cadre employee in the best public interest.
6. Incorrect, hence denied. As stated above that there were numerous complaints against the appellant and as he was posted on the impugned post due to unavailability of suitable candidate of Management Cadre. Therefore, his posting on the impugned post is not mandatory and he is duty bound to serve anywhere throughout the province wherever he might be given the task.
7. Incorrect, the departmental representation of appellant was not competent and against the rules, hence was not maintainable.
8. Incorrect, hence denied in toto.

On Grounds:

A. Incorrect, the appellant belongs to Teaching Cadre while the impugned post belongs to Management Cadre. Moreover there are numerous complaints against the appellant.
B. Incorrect, hence denied in toto. Detail explanation has been given above.
C. Incorrect, hence denied in toto. The appellant has stated a false story for securing sympathy of this Honorable Tribunal, his conduct is cleared from the above annexed complaints.
D. Incorrect, hence denied in Toto. As replied above.
E. Incorrect, this pray of the appellant has already become infructuous.
F. Incorrect, the appellant was posted against Management Cadre Post for need bases and there is no specific tenure for any wrong posting.
G. That the respondent seeks/permission for advancing additional points at the time of arguments.

It is therefore, most humbly requested that the appeal in hand being devoid of any merits may kindly be dismissed with special compensatory cost

(Masood Ahmad)
Secretary
E&SE Department Peshawar,
(Respondent Nos.01, 02 & [illegible])

(6)

GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY AND SECONDARY EDUCATION DEPARTMENT
Block-"A" Opposite MPA's Hostel, Civil Secretariat Peshawar
Phone No. 091-9223588

Dated Peshawar the February 10th, 2022

NOTIFICATION

NO.SO(MC)E&SED/4-16/2021/POSTING/TRANSFER/TC: Mr. Fida Khan, SST Bio-Chemistry (BS-16) GHS Sahib Jan Kot, North Waziristan is hereby transferred and posted as SDEO (Male) Razmak, North Waziristan, against the vacant post, in his own pay & scale, with immediate effect, in the public interest and till further orders.

SECRETARY TO THE 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. District Education Officer (Male) North Waziristan.
4. Director EMIS, E&SE Department with the request to upload the same on the official website of the department.
5. District Accounts Officer North Waziristan.
6. PS to Secretary, E&SE Department, Khyber Pakhtunkhwa.
7. Official concerned.
8. Master file.

11-2-2022

10/2/2022

(HAFEEZ-UR-REHMAN SHAH)
SECTION OFFICER (Management Cadre)

Section Officer (Management Cadre)
E&SE Department
Government of Khyber Pakhtunkhwa

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

Dated: 5th October 2023

NOTIFICATION

NO.SO(MC)E&SED/4-16/2023/Posting/Transfer/SDEO/NW: The following posting/ transfer are hereby ordered as mentioned against each, with immediate effect, in the best public interest.

Sr#	Name & Designation	From	To	Remarks
1	Mr. Fida Khan TC BS-17	SDEO (Male) Razmak North Waziristan	Head Master GHS Mandey Khel North Waziristan.	V.S.No.2
2	Mr. Habib Ullah Jan TC BS-17	Head Master GHS Mandey Khel North Waziristan.	SDEO (Male) Razmak North Waziristan	V.S.No.1

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) North Waziristan.
5. District Accounts Officers North Waziristan.
6. PS to Secretary, E&SE Department, Khyber Pakhtunkhwa.
7. Master file.

5.10.2023

(IMRAN ZAMAN)
SECTION OFFICER (Management Cadre)

Page- I to III

تنظیم سب ڈویژن رزمک ضلع شمالی وزیرستان

(18)

SO (MC)

جناب سیکرٹری آف ایجوکیشن خیبر پختونخواہ پشاور

بوساطت ڈسٹرکٹ ایجوکیشن آفیسر ضلع شمالی وزیرستان میرانشاہ

عنوان: رزمک ڈویژن کی پسماندگی دور کرنے کی خاطر Ex SDEO فدا خان سے نجات دلانے کی اپیل۔

جناب عالی!

گذارش ہے کہ فدا خان تقریباً 8 سالوں سے ADEO کی پوسٹ پر رہا ہے چونکہ یہ سائنس ٹیچر بھی ہے۔ کبھی انہوں نے سکول میں نہیں پڑھایا۔ پروموشن ہونے کے بعد سب ڈویژن رزمک کا SDEO مقرر ہوا۔ سب ڈویژن رزمک شروع ہی سے پسماندہ ہے۔ انہوں نے سب ڈویژن رزمک کو پسماندگی کے گڑھے میں دھکیل دیا ہے۔ اساتذہ سے ماہواریاں اور معمولی دستخط پر 10 ہزار سے لیکر 20 ہزار تک روپیہ مانگتے تھے۔ ہمیں اپنے بچوں کے مستقبل کی فکر ہے نہ کہ فدا خان کے پیسے کمانے کی۔

ملگری اساتذہ کو باوثوق ذریعہ سے معلوم ہوا ہے کہ ایک ہفتہ سے Ex SDEO فدا خان سیکرٹریٹ میں گھوم رہا ہے اور DEO حاجی مجیب الرحمن صاحب کے خلاف ایڈیشنل سیکرٹریوں کے پاس بے بنیاد الزامات لگا رہے ہیں جو کہ سراسر بے بنیاد اور من گھڑت ہے۔ جس سکول پر فدا کا بطور ہیڈ ماسٹر آرڈر ہوا ہے یہ سکول بھی سب ڈویژن رزمک کا ہے۔ ہمارے بچوں کی مستقبل کی خاطر اپنی ذمہ داری سنبھالنے کے لئے فدا خان کو سکول بھیجا جائے تاکہ بچوں کا مزید وقت ضائع نہ ہو۔

جناب والا!

اب جناب صاحب نے حاجی حبیب اللہ جان صاحب کو ہمارے رزمک ڈویژن کا SDEO مقرر کیا ہے جو کہ ہر لحاظ سے بہتر ہے کیونکہ ایک تجربہ کار، قابل، فرض شناس اور رحمدل آفیسر ہے۔

لہٰذا سب ڈویژن رزمک کی ملگری اساتذہ تنظیم نے مل کر فیصلہ کیا کہ جناب والا ہمارے بچوں کے مستقبل کو مدنظر رکھ کر فدا خان سے نجات دلانے اور نئے تعینات SDEO حبیب اللہ جان کو رزمک ڈویژن کی پسماندگی دور کرنے کا موقع دیں۔

بہت بہت شکریہ!

تابعدار ملگری اساتذہ تنظیم سب ڈویژن رزمک ضلع شمالی وزیرستان

نمبر شمار	نام	عہدہ	سکول	CNIC NO	دستخط
1	برکت شاہ	DM	GHS Dossali	21502-0511061-3	
2	عبدالغفور خان	SST	GPS Dossali	21502-7791268-9	
3	لائق شاہ	PHST	GPS Kankai Khwa Dirdmi	21502-7597138-7	
4	انعام الدین		GPS Bobali Raasoor	21502-4058923-1	
5	تاج ملوک	T.T	GPS Tamre oba	21502-3142539-1	
6	Noor Jaman	PSHT	GPS Amin Gul Kot	21502-6062109-5	

P.T.O

سری استاذان سیم سب ڈویژن رزمک ضلع شمالی وزیرستان

S.No	School Name	عہدہ	NIC No.	Sig.
7	GPS Inzamrul Razmak	PST	21502-8735017-5	
8	[illegible]	A.T	21502-[illegible]	
9	GM.S. Dawdil	S.S.T	21502-9804154-9	
10	GPS Mirat khan kot	T.T	21502-0587736-5	
11	GMS. Dossalli	SPET	21502-4055597-5	
12	G.H.S Manday Khel	D.M	21502-3981381-7	
13	GPS maza noor Kot Asad Khel	PST	21502-8115682-9	
14	GHS Mandi-e-Khel	C.T	21502-4187408-7	
15	GMS Babali	C.T	21502-0186457-5	
16	GHS mirat Khan	D.M	21502-6711257-3	
17	GMS Babali	C.T	21502-8418103-7	
18	GHS Dossalli	S.C.T	21502-7120927-7	
19	G.MS Dossalli	A.T.	21502-2836503-9	
20	GPS Dossalli	SET	21502-5826896-1	
21	GMS, Babali	C.T	21502-6376437-7	
22	GHS Pir Saleh	Sr. PET	21502-3827851-5	
23	GPS, Mazalam	PSHT	21502-2428942-5	
24	GPS Mirat Khan	SPET	21502-0821805-3	
25	G.P.S. Zeba	P.S.T	21502-7923920-5	
26	GHS Swat Garhi		21502-9246770-3	
27	GHS Dossalli	SST	21502-0112900-5	
28	GPS Zermajan Kot	PSHT	21502-3022786-9	
29	GPS Dosalli vill	PST	21502-[illegible]	

P.T.O

(10)

Page-(3)

دستخط	CIVIL NO	عہدہ	سکول کا نام	نام
AS	21502-5495291-5	PSHT	Gps Akbar Khan	اکبر خان
Sarfraz	21502-0207937-5	PST	GPS Ozakhel Kazmak	سید حواس
[illegible]	21502-8512830 9	T.T	GHS Dossali	حافظ اللہ
[illegible]	21502-5845457-3	PSHT	GHS Barkatullah Kohi Pari	نور ایاز خان

(11)

GOVERNMENT OF KHYBER PAKHTUNKHWA ESTABLISHMENT DEPARTMENT

NO. SO (E-I)/E&AD/9-88/2019
Dated Peshawar, the February 8, 2019

To

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

SUBJECT: - REQUISITIONING OF SERVICES.

Dear Sir,

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

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

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

Yours faithfully,

(ISHTIAQ AHMAD)
SECTION OFFICER (Estt. I)

(13)

Annex (E)

PESHAWAR HIGH COURT, PESHAWAR.

FORM OF ORDER SHEET

Court of .....

Case No. .....of.....

Serial No. of Order or Proceedings	Date of Order or Proceedings.	Order or other Proceedings with Signature of Judge or Magistrate and that of parties or counsel where necessary.
1	2	3
	18-11-2009	**W.P No.2937/2009 with I.R.** Present: Mr. Muhammad Amin Khattak Lachi, Advocate, for the petitioners. **** **DOST MUHAMMAD KHAN, J;-** 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.

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

Peshawar High Court

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

JUDGE

No. 40877 Date of Presentation 14/6/2022
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Examiner
Peshawar High Court, Peshawar
Authorized Under Article 87
of Qanun-e-Shahadat Order 1984
14 JUN 2022

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

Dated 1. Registrar
20-11-09