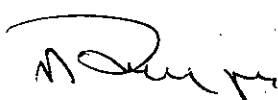
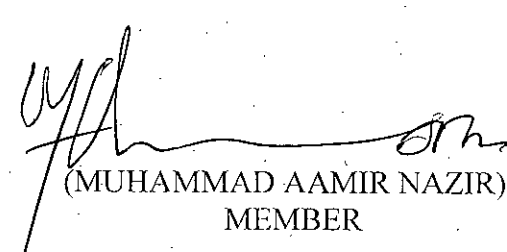
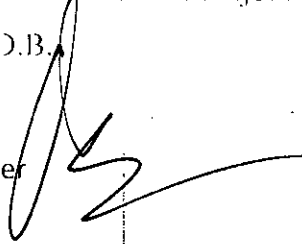


S.No	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
	09.12.2016	<p style="text-align: center;"><u>KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,</u> <u>PESHAWAR.</u></p> <p style="text-align: center;">APPEAL NO. 1270/2013</p> <p>Sardar Hussain-vs- The Government of Khyber Pakhtunkhwa through Secretary Elementary &amp; Secondary Education, Peshawar and others.</p> <p style="text-align: center;"><u>JUDGMENT</u></p> <p style="text-align: center;"><u>MUHAMMAD AAMIR NAZIR, MEMBER:</u></p> <p>Counsel for the appellant and Additional AG for the respondents present.</p> <p>2. In the instant appeal issue of up-gradation is involved and according to the judgment of august Supreme Court of Pakistan dated 17.02.2016 delivered in Civil Appeal No. 101 &amp; 102-P of 2011 the service Tribunals have no jurisdiction to entertain any appeal involving the issue of up-gradation as it does not part of terms and conditions of service of the Civil servants.</p> <p>3. In view of the above the appeal was not found maintainable by this Tribunal for want of jurisdiction. The same is therefore dismissed. The appellant may seek his remedy before any other appropriate forum if so advised. File be consigned to the record room.</p> <div style="display: flex; justify-content: space-around; align-items: flex-end;"> <div style="text-align: center;">         (ASHFAQ TAJ)        MEMBER     </div> <div style="text-align: center;">         (MUHAMMAD AAMIR NAZIR)        MEMBER     </div> </div> <p><u>ANNOUNCED</u> 09.12.2016</p>

17.08.2016

Mr. Sarfaraz Ahmed, Proxy on behalf of counsel for the appellant and Additional AG for respondents present. Mr. Sarfaraz Ahmed proxy on behalf of counsel for the appellant requested for adjournment as counsel for the appellant is not available today before the Tribunal. Adjourned for arguments to 9-12-16 before D.B.

Member



Member



15-11-16

for

for

01.04.2015

Counsel for the appellant and Addl: A.G for respondents present. Rejoinder not submitted. Requested for adjournment. The appeal is assigned to D.B for rejoinder and final hearing for 14.10.2015.




31-11-15

  
Chairman

14.10.2015

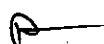
None for the appellant present. Mr. Muhammad Jan, GP for respondents present. To come up for rejoinder and arguments on 12-11-16.

  
Member

  
Member

12.04.2016

Counsel for the appellant and Addl: AG for respondents present. Counsel for the appellant requested for adjournment. To come up for arguments on 17.08.2016.

  
Member

  
Member

20.1.2015

Vide order sheet dated 19.2.2014 in connected Service Appeal No. 1266/2013, this appeal is adjourned to 1-4-15.

Reader M

Vide order sheet dated 19.2.2014 in connected Service Appeal No. 1266/2013, this appeal is adjourned to \_\_\_\_\_.

Reader

Vide order sheet dated 19.2.2014 in connected Service Appeal No. 1266/2013, this appeal is adjourned to \_\_\_\_\_.

Reader

Vide order sheet dated 19.2.2014 in connected Service Appeal No. 1266/2013, this appeal is adjourned to \_\_\_\_\_.

Reader

Vide order sheet dated 19.2.2014 in connected Service Appeal No. 1266/2013, this appeal is adjourned to \_\_\_\_\_.

M

Reader M-2-5

Vide order sheet dated 19.2.2014 in connected Service Appeal No. 1266/2013, this appeal is adjourned to \_\_\_\_\_.

M

Reader M-8-5

Vide order sheet dated 19.2.2014 in connected Service Appeal No. 1266/2013, this appeal is adjourned to \_\_\_\_\_.

Reader

Appeal No. 1270/2013  
Mr. Sander Hussain  
Counsel for the appellant present. Preliminary arguments

07.01.2014

heard and case file perused. Counsel for the appellant contended that the appellant has not been treated in accordance with law/rules. He further contended that similar nature of appeal No. 1323/2013, titled Mr. Muhammad Pervez vs. Education Department, Peshawar has already been admitted and pending before the learned Bench-II for regular hearing. He prayed that the same may also be admitted for regular hearing and club with the said appeal. Points raised at the Bar need consideration. The appeal is admitted to regular hearing subject to all legal objections. The appellant is directed to deposit the security amount and process fee within 10 days. Thereafter, Notice be issued to the respondents for submission of written reply on 19.02.2014 before the learned Bench-II.

  
Member

19.2.2014

vide order sheet dated 19.2.2014 in connected appeal No. 1266/2013, this appeal is adjourned to 7.5.2014.

  
READER

7-5-14

Vide order sheet dated 19.2.2014 in connected appeal No. 1266/2013, this appeal is adjourned to 12-8-14.

  
READER

12-8-14

Vide order sheet dated 19.2.2014 in connected appeal No. 1266/2013, this appeal is adjourned to 6-11-14.

  
READER

6-11-14


Vide order sheet dated 19.2.2014 in connected appeal No. 1266/2013, this appeal is adjourned to 20-1-15.

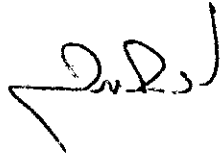
  
READER

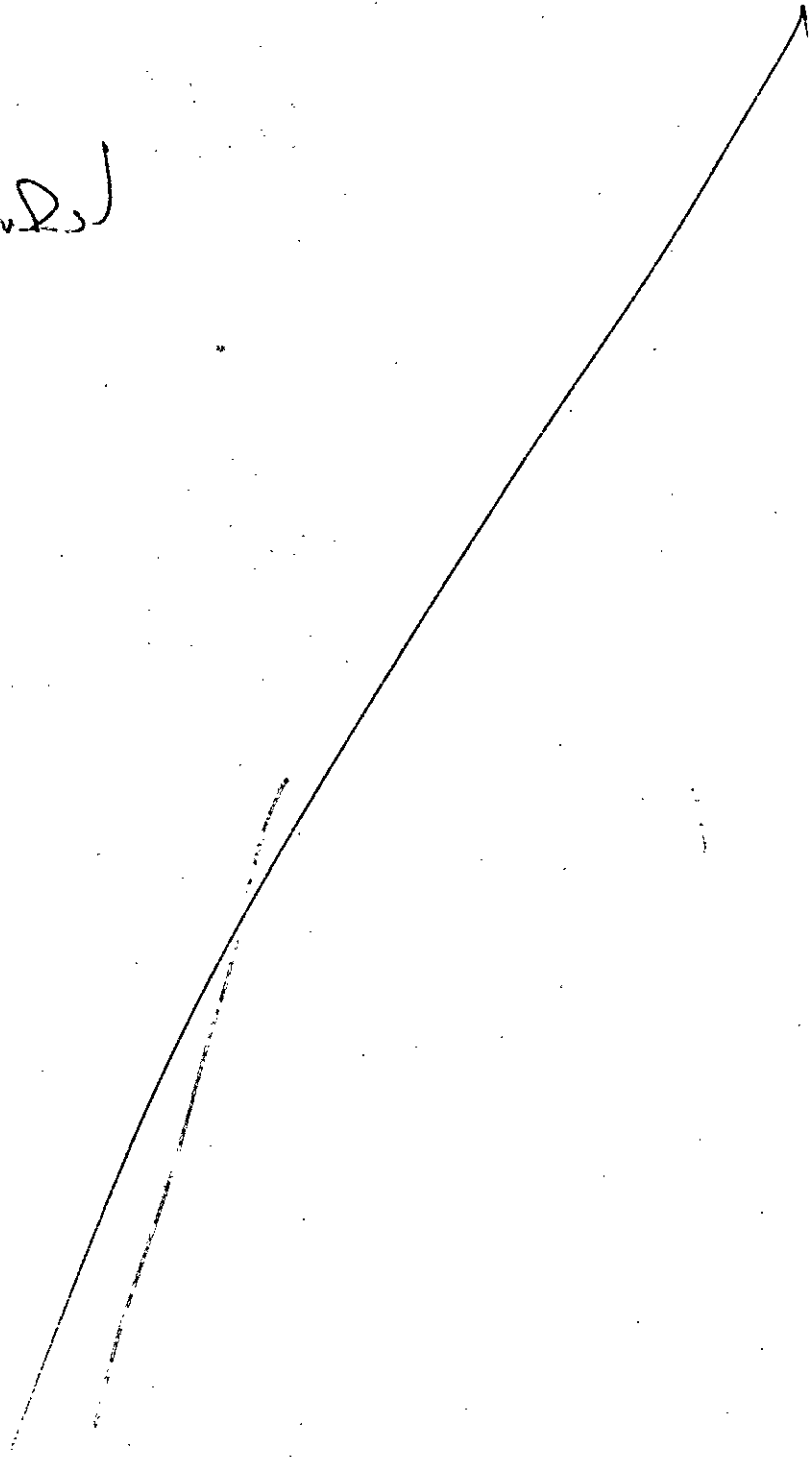
3-

28.11.2013

No one is present on behalf of the appellant. To come up for preliminary hearing on 07.01.2014.

  
Member







Form- A

FORM OF ORDER SHEET

Court of \_\_\_\_\_  
 Case No. 1270 /2013


S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	02/09/2013	<p>The appeal of Mr. Sardar Hussain resubmitted today by Mr. Abdul Ghaffar Khan Advocate may be entered in the Institution Register and put up to the Worthy Chairman for preliminary hearing.</p> <p style="text-align: right;"> REGISTRAR</p>
2	3-9-2013	<p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on <del>28-11-2013</del></p> <p style="text-align: right;"> CHAIRMAN</p>

The appeal of Mr. Sardar Hussain PST GPS Palam Dir Upper received today i.e. on 01/08/2013 is incomplete on the following scores which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Copies of departmental appeal and its rejection order are not attached with the appeal which may be placed on it.
- 2- Annexure-A of the appeal is incomplete which may be completed.
- 3- Annexures of the appeal are illegible which may be replaced by legible/better one.
- 4- Heading of the appeal is incomplete which may be completed.

No. 1124 /S.T,

Dt. 1/8 /2013.

  
REGISTRAR  
SERVICE TRIBUNAL  
KHYBER PAKHTUNKHWA  
PESHAWAR.

Mr. Abdul Ghaffar Khan Adv. Pesh.


Respected Sir,  
① In reply to the initial objection, it may be stated that recruitment rules have been challenged in the instant rules which are construed by superior courts as a final order directly amenable before this Hon'able Tribunal and ~~now~~ departmental appeal is needed to be filed against them. Reference may be made to 1994 SCMR 1033 para 8 at page 1032 says:

"8." In the second appeal (civil appeal no 141/1992), the tribunal was in the error in holding that the policy letter of 10-2-1980 did not amount to an order or a departmental order or a final order.--- All such orders if they effect the terms & conditions of the service of the employee would qualify as departmental order *ex facie* issued by the authority within the department empowered to do so. Hence such order would be amenable to appellate jurisdiction of the service Tribunal"

Reliance may be had on I.A. Sherwani Reported in 1991 SCMR 1041.

② <sup>to ④</sup> Only relevant portion of notification has been annexed as annexure "A". While full copies ~~with~~ of notifications with better copies have already been annexed with connected appeals No. 1054 to 1063/13, which parts of all these appeals are the same & this appeal may kindly be <sup>clubbed</sup> <sub>with them.</sub>  
Graciously the appeal may be put for hearing before a bench for further proceeding.

dt. 30-8-013

  
Abdul Ghaffar Khan Advocate.  
Peshawar.



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

Service Appeal No. 1270 of 2013.

Sardar Hussain PST. .... Appellant

***Versus***

Govt of Khyber Pakhtunkhwa, through Secretary Elementary &  
Secondary Education, Peshawar. .... Respondents

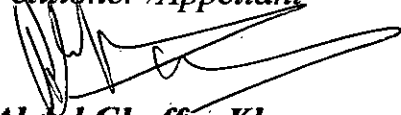
**INDEX**

<b>S.No.</b>	<b>Description of documents</b>	<b>Annexure</b>	<b>Pages</b>
1.	Memo of appeal		1-5
2.	Affidavit		6
3.	Addresses of the parties		7
4.	Application for temporary injunction		8-9
5.	Affidavit		10
6.	Application for condonation of delay		11-12
7.	Copy of Notification dated 13/11/2012	"A"	13-17
8.	Wakalat Nama		18

Dated 06/07/2013

Through

Petitioner /Appellant

  
Abdul Ghaffar Khan  
Advocate, High Court,  
Peshawar.  
Cell # 0300-5956376

(1)

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

Service Appeal No. 1270 of 2013

1216  
01-8-13

*Sardar Hussain Son of Muhammad Khan PST GPS Palam Dir  
Upper R/o Samkot Osherai Dir Upper.*

..... Appellant

**VERSUS**

- 1) *Govt of Khyber Pakhtunkhwa, through Secretary Elementary & Secondary Education, Peshawar.*
- 2) *Director, Elementary & Secondary Education, Peshawar.*
- 3) *Secretary, Finance Department, Govt of Khyber Pakhtunkhwa Peshawar.*

..... Respondents

**APPEAL U/S 4 OF KHYBER PAKHTUNKHWA**  
**SERVICE TRIBUNAL ACT, 1974 AGAINST THE**  
**IMPUGNED NOTIFICATION DATED 13/11/2012**  
**OF THE RESPONDENT NO.1**

*Prayer:*

*On acceptance of this appeal the Respondents may graciously be directed to amend the impugned Rule to the extent of giving the experience /length of service of the appellant a considerable place and allowing him promotion. It is further prayed that respondents may be directed to grant enhancement to the appellant to BPS-15 without tying up his length of service with any academic qualification beyond Secondary School Certificate.*

*co-submitted to [redacted]  
and filed.*

*Respectfully Sheweth:*

- 1) *That the appellant is working in the education department since his appointment against the posts of PTC Teacher (BPS-7), which has now been re-designed as primary school Teachers (PST).*

- 2) That stated post was later on upgraded and by now the post of PST is BPS-12, as such all the PST have now been rendering services in BPS-12.
- 3) That being the senior most teacher and having served for decades on the same post and having no future prospect for the enhancement of their scales, the teacher association struggle for a long time for providing a service structure that may accommodate the senior teachers in higher pay scale, either through promotion or up-gradation or through some time scale.
- 4) That on pressing the demand vigorously and with untiring zeal by the Senior Teachers, the respondents notified the Rules for the recruitment and promotion of the teachers vide notification dated November 13, 2012 (Annexure "A"), wherein PST (BPS-12) appears at S.No.21 with the required qualification and method of recruitment in the corresponding columns.
- 5) That at S.No. 19 of the rules (ibid) is the post of Primary School Head Teacher (PSHT) PBS-15, which is liable to be filled "by promotion, on the basis of seniority-cum-fitness, from amongst Senior Primary School Teachers with at least ten years service and having qualification prescribed for initial recruitment of Primary School Teachers".
- 6) That in the given scenario, the Senior Teachers, including the appellant having been placed no where and they are left hire and dry, without any chance of promotion or enhancement of pay scale. On the contrary, their juniors who are equipped with an intermediate certificate would be able to obtain (BPS-15) and become the bosses of their own seniors.

7) That feeling aggrieved of the said rules the Appellant now assails the same through the instant appeal on the following amongst other grounds:

**Grounds:**

A) That at the time of induction of the Appellant PTC the requisite qualification was only Secondary School Certificate (SSC) and no other academic qualification or, for that matter, any training was required as a condition precedent for appointment against this post. Therefore, the additional qualification of Primary School Teacher Certificate or Diploma in Education, introduced later on, cannot be given retrospective effect and super-imposed on the appellant.

B) That apart from the academic or other qualification(s) required for the post of PTC or PST at different times, the teachers working on these posts, who were equipped with the requisite qualification of their times, cannot be treated differently for any purpose. The Appellant being SSC with required length of service has to be treated on equal footing with any PST having Intermediate, PSTC or Diploma in Education on his credit but appointed recently.

C) That the rich experience of the appellant as PST cannot be ignored and it requires to be considered on the time tested analogy of **OLD IS GOLD.**

D) That the rule of promotion against the post of Primary School Head Teacher (PSHT) is defective yet on another score, as the appellant and similar other Senior Teachers have been afforded no opportunity of further enhancement by way of promotion or otherwise in their service career.

E) That the appellant has been discriminated as similarly placed teachers in other provinces have been allowed time scale upto BPS-15. For instance the provinces of Balochistan and Sindh and the Govt of AJK have adopted a uniform policy by granting a time scale to the stated post on the following count:

<b>BPS-7 to BPS-10</b>	<b>After 09 years</b>
<b>BPS-10 to BPS-11</b>	<b>After 14 years</b>
<b>BPS-11 to BPS-14</b>	<b>After 21 years</b>
<b>BPS-14 to BPS-15</b>	<b>After 25 years</b>

F) That the impugned rules are not sustainable for yet another defect. All the rules on the subject of promotion in almost all departments give a good margin to experience /length of service but this criterion is lacking in the impugned provisions.

G) That in the matter of up-gradation of the same post of PST from BPS-9 to BPS-12 only length of Service of 10 years was required as requisite qualification and no other conditions were attached thereto.

H) That the Appellant have not been treated in accordance with law, as against the provisions contained in **Article 4 of the Constitution.**

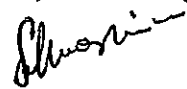
I) That the appellant seeks leave to urge additional grounds, after the stance of the respondents become known to him.

Prayer

In view of the above said facts, it is, therefore, prayed that on acceptance of this appeal the respondents may graciously be directed to amend the impugned rules to the extent of giving the experience/length of service of the appellant a considerable place and allowing him promotion. It is, further, prayed that respondents may be directed to grant enhancement to the Appellant to BPS-15 without tying up his length of service with any academic qualification beyond Secondary School Certificate.

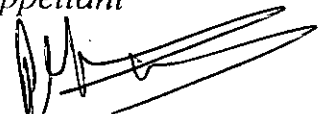
Any other remedy to which the appellant is found fit in law, justice and equity may also be granted.

Dated 06/07/2013



Appellant

Through



Abdul Ghaffar Khan  
Advocate, High Court,  
Peshawar.

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

Service Appeal No. \_\_\_\_\_ of 2013.

Sardar Hussain PST ..... **Appellant**

**Versus**

Govt of Khyber Pakhtunkhwa, through Secretary Elementary &  
Secondary Education, Peshawar. .... **Respondents**

**Affidavit**

I, Sardar Hussain Son of Muhammad Khan PST GPS Palam,  
Dir Upper R/o Samkoat Oshera Dir Upper do hereby solemnly  
affirm and declare on oath that the contents of this appeal /  
application are true and correct to the best of my knowledge  
and belief and nothing has been concealed from this Hon'ble  
Court.

**DEPONENT**

Identified by

**Abdul Ghaffar Khan**  
**Advocate, High Court,**  
**Peshawar.**



①

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

Service Appeal No. \_\_\_\_\_ of 2013.

Sardar Hussain PST. .... Appellant

***Versus***

Govt of Khyber Pakhtunkhwa, through Secretary Elementary &  
Secondary Education, Peshawar. .... Respondents

**ADDRESSES OF THE PARTIES.**

***Appellant***

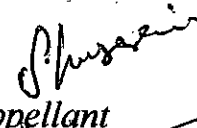
Sardar Hussain Son of Muhammad Khan PST GPS  
Palam, Dir Upper R/o Samkoat Oshera Dir Upper.

***Respondents***

1. Govt of Khyber Pakhtunkhwa, through Secretary  
Elementary & Secondary Education, Peshawar.
2. Director, Elementary & Secondary Education,  
Peshawar.
3. Secretary, Finance Department, Govt of Khyber  
Pakhtunkhwa Peshawar.

Dated 06/07/2013

Through

  
Appellant

  
**Abdul Ghaffar Khan**  
Advocate, High Court,  
Peshawar.



(28)

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

Service Appeal No. \_\_\_\_\_ of 2013.

Sardar Hussain PST. .... Appellant

***Versus***

Govt of Khyber Pakhtunkhwa, through Secretary Elementary &  
Secondary Education, Peshawar. .... Respondents

**APPLICATION FOR TEMPORARY INJUNCTION**  
**TO THE EFFECT THAT RESPONDENTS MAY**  
**KINDLY BE RESTRAINED FROM TAKING ANY**  
**ACTION FOR THE PROMOTION OF PSTS TO BPS**  
**- 14 /15 AS ACCORDING TO THE PROCEDURE**  
**MENTIONED IN THE IMPUGNED RULES /**  
**NOTIFICATION.**

Respectfully Sheweth:

- 1) That the Petitioner/Appellant has filed the above titled service appeal before the this Hon'ble Tribunal, in which no date of hearing has yet been fixed.
- 2) That respondents vide notification dated 13/11/2012 with regard to the fresh education policy has given a new method of promotion which is bound to violate the promotion right of thousands of teachers including the Appellant.
- 3) That the Petitioner/Appellant has prima facie case and is very hopeful for the ultimate success of his appeal.
- 4) That all the three ingredients i.e. prima facie case, balance of convenience and irreparable loss as per spirit

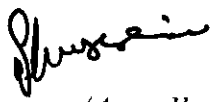

of the rule for granting injunction are present in the said appeal.

- 5) That in case the injunction as prayed for above is denied, the Petitioner /Appellant will suffer irreparable loss as the impugned vacancies will be fill up and there would be no chance for appellant's promotion. Therefore, it is in the interest of justice to stay further proceedings on the impugned notification till the final decision of the instant appeal.
- 6) That the facts and grounds taken in the memo of appeal may kindly be considered as part and parcel of the instant application.

It is, therefore, humbly prayed that in the light of the above said submissions this Hon'ble Tribunal may please be kind enough to restrain the concerned respondents from taking any action towards promoting the PSTs teachers on the basis of the noted notification.

Dated 06/07/2013

Through

  
 Petitioner /Appellant  
  
**Abdul Ghaffar Khan**  
 Advocate, High Court,  
 Peshawar.

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

Service Appeal No. \_\_\_\_\_ of 2013.

Sardar Hussain PST: ..... **Appellant**

**Versus**

Govt of Khyber Pakhtunkhwa, through Secretary Elementary &  
Secondary Education, Peshawar ..... **Respondents**

**Affidavit**

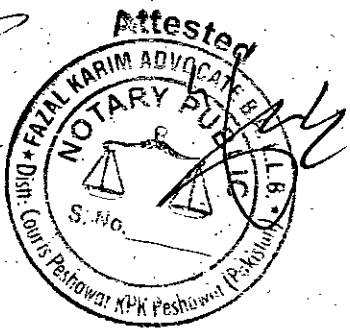
I, Sardar Hussain Son of Muhammad Khan PST GPS Palam,  
Dir Upper R/o Samkoat Osherai Dir Upper do hereby solemnly  
affirm and declare on oath that the contents of this appeal /  
application are true and correct to the best of my knowledge  
and belief and nothing has been concealed from this Hon'ble  
Court.

*[Handwritten Signature]*

**DEPONENT**

Identified by *[Handwritten Signature]*

**Abdul Ghaffar Khan  
Advocate, High Court,  
Peshawar.**



(11)

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

Service Appeal No. \_\_\_\_\_ of 2013.

Sardar Hussain PST ..... Appellant

*Versus*

Govt of Khyber Pakhtunkhwa, through Secretary Elementary &  
Secondary Education, Peshawar. .... Respondents

**APPLICATION FOR CONDONATION**  
**OF DELAY IF ANY.**

Respectfully Sheweth:

- 1) That the Petitioner/Appellant have filed the above captioned appeal in which no date is yet fixed for hearing, before this Hon'ble Tribunal,
- 2) That the contents of the instant appeal which may kindly be read as an integral part of this petition.
- 3) That the petitioner/appellant before filing departmental appeal was repeatedly assured to help him by the respondents and the Appellant visiting the offices of respondents time and again and at last on 07/06/2013 the Petitioner/Appellant were handed over general reply / rejection order on the above mentioned date which reply was earlier given to the Petitioner/Appellant of other cases / appeals.

12

4) That the petitioner /appellant's valuable rights are involved in the captioned appeal, therefore, the petitioner may not be knocked out merely on the basis of technicalities including limitation. Reference is made to the judgments reported in **PLD 2003 SC 724 = 2003 PLC (CS) 796.**

5) That even otherwise the impugned order passed by the respondent No.1 against the appellant is void *abi-initio* and it is an established principle of law that no limitation runs against the void order,

In view of foregoing circumstances, it is respectfully prayed that the instant petition may graciously be accepted and the delay, if any, in filing of the above departmental appeal may kindly be condoned in the interest of justice and the appeal be decided on merits and technicalities may kindly be avoided. Any other relief which this Hon'ble Tribunal deemed fit and proper may kindly be granted in the interest of justice.

Dated 06/07/2013

Through

*Shumai*  
Petitioner /Appellant

*Abdul Ghaffar Khan*  
Abdul Ghaffar Khan  
Advocate, High Court,  
Peshawar.

3



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

Service Appeal No: \_\_\_\_\_ of 2013.

Sardar Hussain PST ..... **Appellant**

**Versus**

Govt of Khyber Pakhtunkhwa, through Secretary Elementary &  
Secondary Education, Peshawar. .... **Respondents**

**Affidavit**

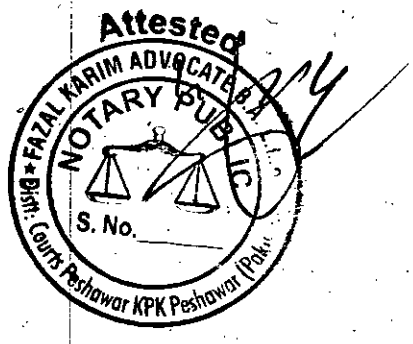
I, Sardar Hussain Son of Muhammad Khan PST GPS Palam,  
Dir Upper R/o Samkoat Osherai Dir Upper do hereby solemnly  
affirm and declare on oath that the contents of this appeal /  
application are true and correct to the best of my knowledge  
and belief and nothing has been concealed from this Hon'ble  
Court.

*[Handwritten Signature]*

**DEPONENT**

Identified by *[Handwritten Signature]*

**Abdul Ghaffar Khan  
Advocate, High Court,  
Peshawar.**



14

13/11/2012

Annex A

Better Copy

GOVERNMENT OF THE KHYBER PAKHTUNKHWA  
ELEMENTARY AND SECONDARY EDUCATION DEPARTMENT.

15 نومبر 2012ء کو جاری کیے گئے ہیں۔  
NOTIFICATION  
15 نومبر 2012ء کو جاری کیے گئے ہیں۔  
Peshawar, dated the November 13, 2012.

S.O. No. 4-VSSRC/Mecting/2012/Teaching Cadre:- In pursuance of the provisions contained in sub-rule (2) of rule 3 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 and in supersession of all Notifications issued in this behalf, the Elementary and Secondary Education Department in consultation with the Establishment Department and the Finance Department hereby lays down the method of recruitment and other conditions specified in the Appendix to this Notification which shall be applicable to all the posts specified in Column No. 2 of the Appendix and the schedule therewith.

SECRETARY TO GOVERNMENT OF THE KHYBER PAKHTUNKHWA  
ELEMENTARY AND SECONDARY EDUCATION DEPARTMENT.

Sl. No. & Date as above.

Copy forwarded to:-

1. The Secretary to Govt. of Khyber Pakhtunkhwa, Establishment Department.
2. The Secretary to Govt. of Khyber Pakhtunkhwa, Finance Department.
3. The Secretary to Govt. of Khyber Pakhtunkhwa, Law Department.
4. The Secretary Khyber Pakhtunkhwa, Public Service Commission Peshawar.
5. The Accountant General, Khyber Pakhtunkhwa Peshawar.
6. The Director (ESSE) Khyber Pakhtunkhwa Peshawar.
7. The Director Education (FAFA), Peshawar.

Handwritten signature and initials (A.S.W.)

جزوی طور پر مندرجہ ذیل کے عہدوں کیلئے 15 نومبر 2012ء کو جاری کیے گئے ہیں۔  
15 نومبر 2012ء کو جاری کیے گئے ہیں۔  
30 نومبر 2012ء کو جاری کیے گئے ہیں۔  
14 اور 15 نومبر 2012ء کو جاری کیے گئے ہیں۔



5

GOVERNMENT OF THE KHYBER PAKHTUNKHWA  
ELEMENTARY AND SECONDARY EDUCATION DEPARTMENT

Amended  
"A"

NOTIFICATION

Peshawar, dated the November 13, 2012.

SECRETARY, EDUCATION (2012) Teaching Cadre: In pursuance of the provisions contained in sub rule (2) of rule 3 of the Khyber Pakhtunkhwa Civil Service (Appointment, Promotion and Transfer) Rules, 1989 and in supersession of all Notifications issued in this behalf, the Elementary and Secondary Education Department in consultation with the Establishment Department and the Finance Department hereby lays down the method of recruitment and other conditions specified in the Appendix to this Notification which shall be applicable to all the posts specified in Column No. 2 of the Appendix and the schedule hereof.

SECRETARY TO GOVERNMENT OF THE KHYBER PAKHTUNKHWA  
ELEMENTARY AND SECONDARY EDUCATION DEPARTMENT

Copy forwarded to:-

1. The Secretary to Govt. of Khyber Pakhtunkhwa, Establishment Department
2. The Secretary to Govt. of Khyber Pakhtunkhwa, Finance Department
3. The State Bar Council of Khyber Pakhtunkhwa, Law Department
4. The Secretary to Government, Public Service Commission Peshawar
5. The Government Officer, Khyber Pakhtunkhwa Postmaster
6. The Director, Education (P.A.T.A.) Peshawar
7. The Director, Education (P.A.T.A.) Peshawar

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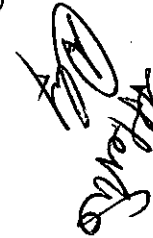
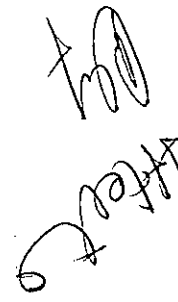

18.	Physical Education Teacher (BPS-15).	Bachelor's Degree from a recognized University with one year junior Diploma in Physical Education course or Army equivalency or other equivalent qualification.	18 to 35 years.	<p>(a) Eighty per cent by initial recruitment, and</p> <p>(b) twenty per cent by promotion, on the basis of seniority-cum-fitness, from amongst the Primary School Head Teachers with at least five years service and having qualification prescribed for initial recruitment of Physical Education Teacher.</p> <p>Provided that if no suitable candidate is available for promotion then on the basis of seniority-cum-fitness from amongst Senior Primary School Teachers with at least five years service and having qualification prescribed for initial recruitment of Physical Education Teacher.</p> <p><u>Note:</u> In case of non-availability of suitable candidate for promotion, then by initial recruitment.</p>
19.	Primary School Head Teacher (PSHT) (BPS-15).			By promotion, on the basis of seniority-cum-fitness, from amongst Senior Primary School Teachers with at least ten years service and having qualification prescribed for initial recruitment of Primary School Teacher.
20.	Senior Primary School Teacher (BPS-14).			By promotion, on the basis of seniority-cum-fitness, from amongst Primary School Teachers.

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			with at least five years service as such ; having qualification prescribed for int recruitment of Primary School Teacher.
21.	Primary School Teacher (BPS-12)	(i) Intermediate or equivalent qualification, from a recognized Board with Primary School Teacher Certificate/ Diploma in Education from a recognized Institute; or (ii) Secondary School Certificate, from a recognized Board in second Division with two years Associate Degree in Education from a recognized University.	18 to 35 years. By initial recruitment on merit at Union Cou level; provided that if no suitable candidate within the Union Council is available, then fr the adjacent Union Councils on merit.
22.	Qari (BPS-12)	Intermediate with Hiz-e-Quran and Qari Sanad from a recognized Institution.	18 to 35 years. By initial recruitment.




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Qualification

Category of Qualification	Total Marks 100
SSC	Marks obtained / 30 / total marks =
Ort Samed from a recognized Institution	Marks obtained / 30 / total marks =
HSSC	Marks obtained / 30 / total marks =
B.A/B.Sc	Marks obtained / 30 / total marks =
M.A/M.Sc / M.Ed / M.A Ed	Marks obtained / 15 / total marks =
M.Phil/Ph.D	Marks = 05

Certified Teachers  
(General, Industrial Arts, Agriculture, Home Economics)

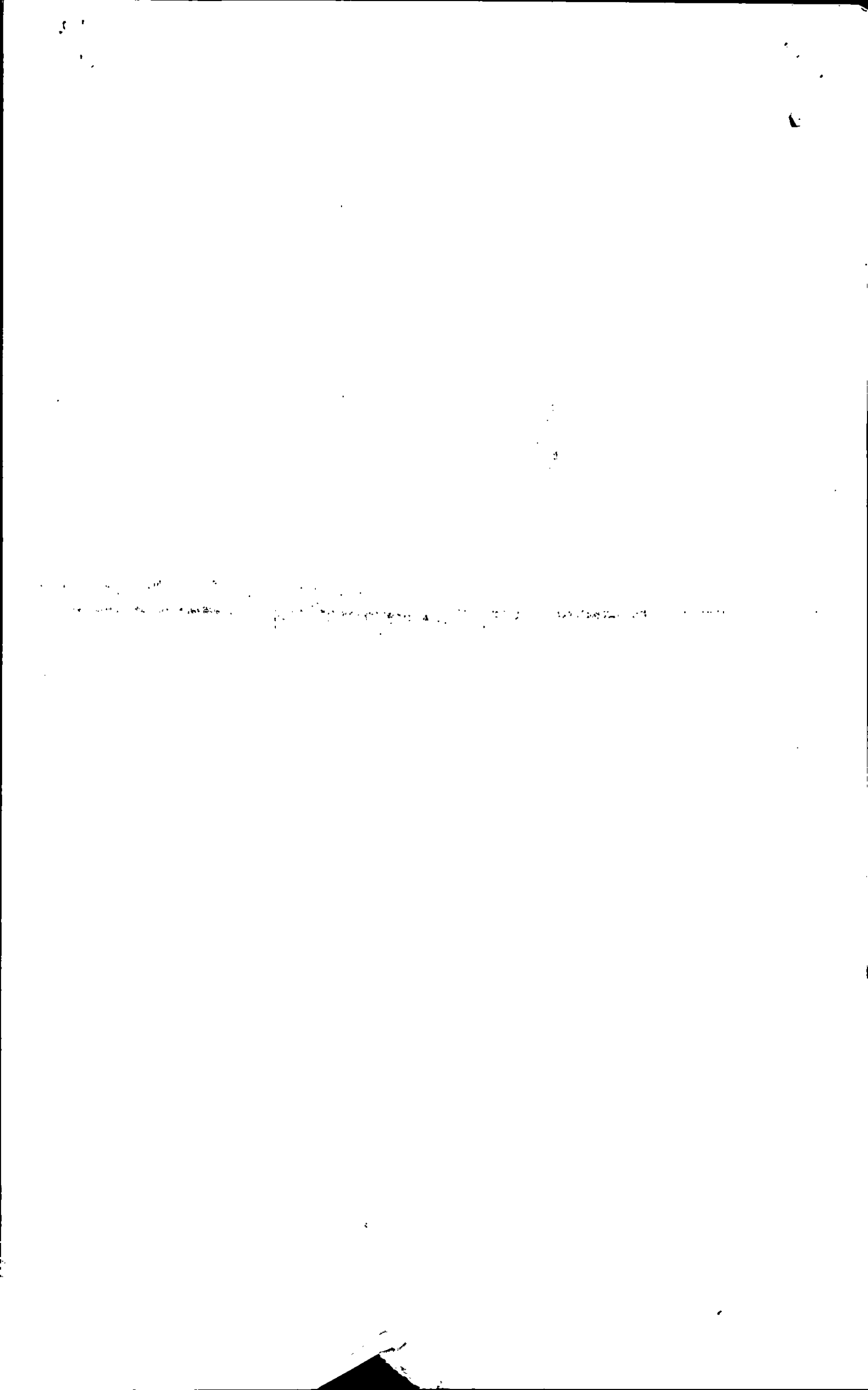
Category of Qualification	Total Marks 100 For Humanities Group of Intermediate/Graduation Level	For Candidates of Science group
SSC	Marks obtained / 36 / total marks =	
HSSC	Marks obtained / 36 / total marks =	5 Extra marks for EN, 3 Extra marks for B.Sc and 5 Extra marks for M.Sc will be added in the total score obtained. 100 is candidate's marking for selection
B.A/B.Sc	Marks obtained / 30 / total marks =	
Ort Certificate/Diploma in Education	Marks obtained / 30 / total marks =	
M.A/M.Sc / M.Ed / M.A Ed	Marks obtained / 15 / total marks =	
Ph.D	Marks = 05	

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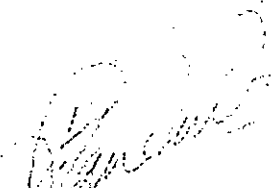
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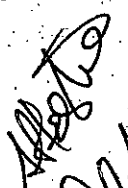

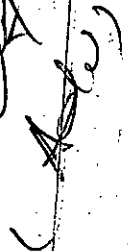




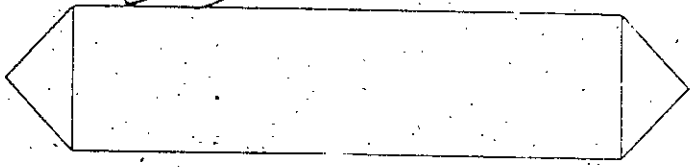
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- The Director Curriculum & Teachers Education Abbottabad.  
The Director (PITE) Khyber Pakhtunkhwa Peshawar.  
10. The Director ESRU, Elementary & Secondary Education Khyber Pakhtunkhwa, Peshawar.  
11. The Deputy Director Database (EMIS) E&SE Department.  
12. All District Coordination Officers in Khyber Pakhtunkhwa.  
13. All Executive District Officers Elementary & Secondary Education in Khyber Pakhtunkhwa.  
14. All District Accounts Officers in Khyber Pakhtunkhwa / Agency Accounts Officers FATA.  
15. All Agency Education Officers FATA.  
16. P.S to Governor, Khyber Pakhtunkhwa.  
17. P.S to Chief Minister, Khyber Pakhtunkhwa.  
18. P.S to Chief Secretary, Khyber Pakhtunkhwa.  
19. P.S to Minister E&SE Khyber Pakhtunkhwa Peshawar.  
20. P.S to Secretary E&SE Department.  
21. Master File.

  
Section Officer (Primary)

Affected  
By

بعد الت سرويسر شريونل صديبر وحتو نحوال مد



اسلامت  
2013ء منجانب (سائل / محکمہ)  
سردار اسمن بنام حکومت KPK و غیرہ

مورثہ  
مقدمہ  
دعویٰ  
جرم

Service Appeal.

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ  
آن مقام کیسٹ اور کیلئے عبدالغفار خان اینڈ وکیٹ  
مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز  
وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ پر حلف دیئے جواب دہی اور اقبال دعویٰ اور  
بصورت ڈگری کرنے اجراء اور وصولی چیک درو پیہ از عرضی دعویٰ اور درخواست ہر قسم کی تصدیق  
زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی  
اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا۔ از بصورت ضرورت  
مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے  
تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے  
اور اس کا ساختہ پرداختہ منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے  
سبب سے دہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں  
گے۔ کہ پیروی مذکور کریں۔ لہذا کالت نامہ لکھد یا کہ سندر ہے۔

صہنا خان  
انڈوسٹریل کورپوریشن  
کراچی

Attested & Accepted.  
[Signature]

المرقوم 30 ماہ جولائی 2013ء

مقام لہستان کے لئے منظور ہے۔

سردار اسمن ولد محمد خان گلند سکون علیہ السلام

[Signature]

(سائل / اسلمت)



**BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR**

SERVICE APPEAL No: 1270/2013.

*Sardar Hussain PST G/S, Palam Dis Upper* ..... Applicants

**VERSUS**

The Secretary Elementary & Secondary Education Department Khyber Pakhtunkhwa, Peshawar & others ----- Respondents

**PARAWISE COMMENTS/REPLY FOR AND ON BEHALF OF THE RESPONDENTS**

**Respectfully Sheweth:-**

**Preliminary objections**

- 1 The appellant has no cause of action/locus standi.
- 2 The instant appeal is badly time barred.
- 3 The appellant has concealed the material fact from this Hon! able Tribunal hence liable to be dismissed.
- 4 The appellant has not come to Hon! able Tribunal with clean hands.
- 5 The present appeal is liable to be dismissed for non joinder/mis-joinder for necessary parties.
- 6 The appellant has filed the instant appeal on malafide motives.
- 7 The instant appeal is against the prevailing laws & rules.
- 8 The appellant is estopped by his own conduct to file in present appeal.
- 9 The instant appeal is not maintainable in the present form & also in the present circumstances of the issue.
- 10 This Hon !able Tribunal has no jurisdiction to adjudicate the present appeal.
- 11 The appellant has not submitted any departmental appeal through proper channel and in accordance with Section -22 of Khyber Pakhtunkhwa Civil Servant Act 1973 and civil servant appeal rules 1986. Hence the present appeal is not tenable and liable to be dismissed.
- 12 That the rule 3(2) of Khyber Pakhtunkhwa Civil Servant (appointment, Promotion and Transfer) rules 1989, authorize the department to lay down the method of appointment, qualification and other conditions applicable to the post in consultation with the Establishment & Administration Department and Finance Department. Hence the appeal in hand is liable too be dismissed.
- 13 That it was observed by the Apex Court that it is exclusively with in the domain of the government to decide whether a particular qualification will be considered

## ON FACTS

- 1 This Para pertains to the service record of the appellant. While the appellant has not presented his appointment order and attested copy of service book, hence no comments.
- 2 This Para also pertains to record, however, the previous recruitment policy, rules & qualifications are amended by the government and enhance the qualification and standard for recruitment and promotions in order to maintain efficiency in service, in consultation with establishment and Finance Department, under the rules 3(2) of Khyber Pakhtunhwa Civil Servant (appointment, Promotion and transfer) rules 1989, on 13/11/2012 as annexure "B" of the appeal).
- 3 The statement is misleading one against the principle of Natural justice, merit & without any cogent legal ground of proof against law, rules in vogue, hence incorrect & denied.
- 4 The statement of the appellant in this Para is related to the recruitment policy of the Govt in Education Department dated 13/11/2012, however no civil servant including the appellant has legal and vested right in promotion and policy as held by the apex court while the government has the right to enhance the qualification and standard for recruitment and promotion in order to maintain efficiency in service and to improve/uplift the standard and quality of education, in best interest of public. The appellant himself is responsible for not improving his academic qualifications, teaching skills during his 32-years service, being connected/ attached with teaching profession.
- 5 Correct to the extent that respondent department notified the rules for the recruitment and promotion for the teachers of various cadres dated 13/11/2012, in accordance with the prevailing law, rules on the subject and to improve/enhance the quality education in the best interest of Public at large.
- 6 As replied in para-4 above.
- 7 Incorrect & not admitted. The present appellant does not fall within the definition of aggrieved person and there is no reason for the petitioner to be aggrieved from the mentioned prevailing policy dated 13/11/2012. While the appellant did not implead the teachers upgraded/promoted under the said rules and those having the higher qualification than appellant and waiting for promotion. Hence the appellant has no cause of action/ locus standi to invoke the jurisdiction of this Hon! able Tribunal. Moreover, how it can be justified that the appellant possessing only SSC, be treated on equal footing with other PST teachers having higher academic and professional qualification, and the same is against norms of natural justice and merit, hence the appeal in hand is liable to be dismissed inter alia on the following grounds:-


## GROUND.


- A Incorrect and not admitted. The statement of the appellant is baseless, false and based on malafide motives, against the law, rules & policy on the subject in vogue, hence denied. However, it can not be justified that the appellant possessing only SSC, be treated on equal footing with other PST teachers having higher academic & professional qualification, and the same is against norms of natural justice and merit.
- B As replied in Para above.
- C Incorrect & not admitted. The statement of the appellant is misleading one and against the wisdom, basic principle of learning process & the needs of the nation.

qualifications, teaching skills during his 32 years service, being connected/attached with teaching profession.

- E Incorrect & not admitted. The appellant has not been discriminated. The policies/rules other Provinces are not applicable in the Province of Khyber Pakhtunkhwa.
- F Incorrect & not admitted. The statement of the appellant in this Para is baseless, misleading one without any support of cogent reason.
- G This Para is related to the Govt: Policy in vogue which is in accordance with law & rules on the subject & framed by the competent authority. Hence needs no comments.
- H Incorrect. The appellant has been treated in accordance with law & constitution of Pakistan.
- I The respondents also seeks the permission of this Hon! able Court to adduce more grounds & proofs at the time of arguments.

**In view of the above submission, it is requested that this Hon' able Tribunal may very graciously be pleased to dismiss the appeal with cost in favour of the respondent Department.**

  
**Secretary**  
Elementary & Secondary Education  
Department, Government of Khyber  
Pakhtunkhwa

  
**Director**  
Elementary & Secondary Education  
Khyber Pakhtunkhwa Peshawar.