

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

Appeal No. 147/2018

**Ishtiaq Ahmad** ..... **Appellant**

**VERSUS**

**Govt of KPK & Others**..... **Respondents**

**Respectively Sheweth**

**Written comments/reply on behalf of respondents.**

**Preliminary Objections**

1. That the Appellant has no cause of action/locus standi to file the instant appeal.
2. That this honorable service tribunal has got no jurisdiction to entertain the present appeal.
3. That the present Appeal is bad for non-joinder and mis joinder of necessary parties.
4. That the instant appeal is badly time barred.
5. That the appellant has concealed material facts from this Honorable Tribunal.
6. That the appellant is estopped by his own conduct, by deed and by law to file the instant appeal.
7. That the instant appeal is barred by law.

**On Facts**

1. Pertain to record.
2. Correct subject to proof.
3. Incorrect. According to the Finance Department (Regulation Wing) Notification No. FD (PRC) 5-2/2002 dated Peshawar the.30-10-2009 the services of all those untrained teachers who were appointed on fix pay and were subsequently regularized against their psots, on acquiring / completing requisite training successfully, would be entitled for such benefits of annual increment from the date of their first appointments as such, but without arrears. In the light of the above the appellant is not entitled for arrears.
4. Incorrect.
5. No Comments.

**GROUND:**

2

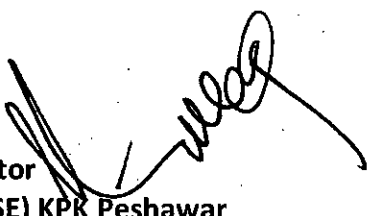
- A. Incorrect. The appellant was treated in accordance with law.
- B. Incorrect. There is clear direction/notification of the Finance Department regarding payment/nonpayment of arrears (Annexure A).
- C. Correct, but the Court Judgment is to the extent of payment from date of training/professional qualification.
- D. Incorrect. As explain in the above para.
- E. Incorrect. The appellant was also treated in the light of notification dated 30-10-2009.
- F. Incorrect. As explained in the above para's.
- G. Incorrect. As per paras above.
- H. Incorrect. The appellant was not discriminated.

It is therefore, requested before your Honor that the present Service Appeal is illegal, against facts and without force, may kindly be dismissed with cost.

**Respondent No.1**

Secretary E & SE  
Govt of KPK Peshawar

**Respondent No.2**



Director  
(E & SE) KPK Peshawar

**Respondent No.3**



District Education Officer (M)  
Nowshera

3

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

**Appeal No. 147/2018**


**Ishtiaq Ahmad .....Appellant**

**VERSUS**

**Govt of KPK & Others..... Respondents**

**AFFIDAVIT**

I Fayaz Hussain, District Education Officer (M) Nowshera do solemnly affirmed and declare on oath that the contents of Par wise comments/ reply on behalf of respondent are true and correct to the best of my knowledge and that nothing has been concealed from this Honourable Court.

  
Deponent



GOVERNMENT OF N.W.F.P  
FINANCE DEPARTMENT  
(REGULATION WING)

NO. FD (PRC) 5-2 /2002  
Dated Peshawar the: 30-10-2009

To:

The Secretary to Govt. of NWFP,  
Elementary & Secondary Education Department,  
Peshawar.

Subject:

GRANT OF ANNUAL INCREMENT / RUNNING PAY TO  
UNTRAINED TEACHERS IN THE LIGHT OF SUPREME  
COURT JUDGMENT.

Dear Sir,

I am directed to refer to this Department letter No.FD (PRC) 5-2/2002, dated 30-03-2009 on the subject noted above and to say that certain quarters have raised some queries about the subject matter which are clarified as under:-

- i. All those untrained teachers who were appointed on fix pay and were subsequently regularized against their posts, on acquiring / completing requisite training successfully, would be entitled for such benefits of annual increments from the date of their first appointments as such, but without arrears.
- ii. The above benefit would also be admissible to all those retired teachers who fulfil the above conditions.
- iii. The above benefit would not be admissible to those who themselves resigned, or were removed / terminated from service.

2. This Department letter of even number dated 30-03-2009 shall be deemed to have been modified to the above extent.

Yours Faithfully,

(SHAUKAT ULLAH)  
SECTION OFFICER (SR-1)

Endst: of even No. & date.

Copy for information and necessary action:-

1. Accountant General, NWFP.
2. All District Coordination Officers, NWFP.
3. All District / Agency Accounts Officers, NWFP / FATA.

SECTION OFFICER (SR-1)

(9)

Directorate of Elementary & Secondary  
Education Khyber Pakhtunkhwa, Peshawar.

No. 2296 /A-88/KC/SET(M&F)SL/Inform:

Dated Pesh: the 31/8 /2012

To

The Executive Distt: Officer  
Elementary & Secondary Education Peshawar

**SUBJECT: - Guidance for the preparation of seniority lists/promotion/upgradation of various cadres of teaching staff in Distt: Peshawar.**

I am directed to refer to your letter No. 11005 dated 23-8-2012 on the subject noted above and to inform you as under:-

1. The seniority cannot be considered from the date of appointment as untrained teacher. The seniority is considered from the date of regular appointment post or from the date of passing the prescribed professional qualification in case of untrained appointment (copy of the Rules attached).
2. The name of the teacher transferred from one district cadre post to other Distt: cadre post on his own request will be placed at the bottom of the seniority list i.e according to the date of taking over charge after the date of issue of his inter Distt: transfer order.
3. The name of the untrained teacher cannot be enlisted in the seniority list unless he passes the prescribed professional qualification.
4. The seniority of the teacher who was transferred to his own District due to devolution of Divisional Directorate will not be disturbed.
5. The new upgraded posts i.e BPS-14, BPS-15 & BPS-16 will be filled by promotion etc as & when the new Service Rules are notified by the Govt: of Khyber Pakhtunkhwa. The notification for constitution of DPC will be issued soon after the new Service Rules.
6. The ACRs/PERs are not required in fixation of pay due to upgradation of scales of PST/Qari teachers (M&F) in BPS 12 as well as upgradation of scale of CT/DM/PET/AT/TA teachers (M & F) in BPS-15. The ACRs will be required for their promotion in next scale against the newly upgraded posts in BPS-14, BPS-15 & BPS-16.
7. The new service rules/ amendment are under process.
8. Before the Service Recruitment Rules 2011, the teachers having FA & F.Sc (in 3<sup>rd</sup> division) already appointed according to the prescribed rules at that time, will be considered for seniority, but their promotion against the newly upgraded posts will be considered if allow the new Service Recruitment Rules which is under process.

  
Deputy Director (Establishment)  
(E&S) Khyber Pakhtunkhwa Peshawar

Endst: No. 2297-2322

Copy forwarded for information & necessary action to the:-

1. All the Executive Distt: Officer (E&SE) in Khyber Pakhtunkhwa.
2. PS to the Secretary to Govt: E&SE Department Khyber Pakhtunkhwa.
3. PA to the Director E&SE Khyber Pakhtunkhwa

  
Deputy Director (Establishment)  
(E&S) Khyber Pakhtunkhwa Peshawar

VAKALAT NAMA

NO. \_\_\_\_\_/20

IN THE COURT OF KP Service Tribunal Peshawar

Ishfaq Ahmad

(Appellant)  
(Petitioner)  
(Plaintiff)

VERSUS

Edo Depp

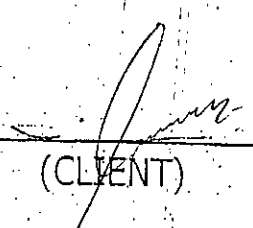
(Respondent)  
(Defendant)

I/We, Ishfaq Ahmad

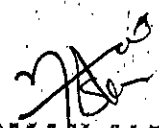
Do hereby appoint and constitute **SYED NOMAN ALI BUKHARI Advocate High Court Peshawar**, to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate/Counsel on my/our costs.

I/We authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter. The Advocate/Counsel is also at liberty to leave my/our case at any stage of the proceedings, if his any fee left unpaid or is outstanding against me/us.

Dated \_\_\_\_\_/20

  
(CLIENT)

ACCEPTED

  
**SYED NOMAN ALI BUKHARI**  
Advocate High Court Peshawar.

Cell: (0306-5109438)