

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

SERVICE APPEAL NO.306/2024

Dilshad Begum DM BPS-15

Govt; Girls Middle School Shinkad District Swat

.....(APPELLANT)

VERSUS

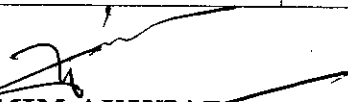
1. The Secretary Elementary & Secondary Education Government of Khyber Pakhtunkhwa Peshawar.
2. The Director E&SE Khyber Pakhtunkhwa Peshawar.
3. The District Education Officer(Female) Swat.
4. Javida DM BPS-15 Government Girls Middle School Rahim Abad.

.....(RESPONDENTS)

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uploaded.*


DR. SHAMIM AKHTAR
DISTRICT EDUCATION OFFICER(F)
SWAT
(Respondent No.3)

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

SERVICE APPEAL NO.306/2024p

Khyber Pakhtunkhwa
Service Tribunal

Dilshad Begum DM BPS-15

Diary No. 12492

Govt; Girls Middle School Shinkad District Swat

Dated 30/4/24

.....(APPELLANT)

VERSUS

1. The Secretary Elementary & Secondary Education Government of Khyber Pakhtunkhwa Peshawar.
2. The Director E&SE Khyber Pakhtunkhwa Peshawar.
3. The District Education Officer(Female) Swat.
4. Javida DM BPS-15 Government Girls Middle School Rahim Abad.

.....(RESPONDENTS)

PARAWAISE COMMENTS ON BEHALF OF RECONDENSTS NO.1,2 &3

Respectfully Shewth;

Repondents submit as under;

PRELIMINARY OBJECTIONS.

1. That the appellant has no cause of action and locus standi to file the instant appeal against the respondent.
2. That the instant appeal is liable to be dismissed due to unnecessary parties and violative of Rule-6(4) of the Khyber Pakhtunkhwa Service Tribunal Rules,1974 which has also been circulated by Khyber Pakhtunkhwa Service Tribunal Peshawar vide No.225-30/ST Dated 02.02.2024 (**Annexure-A**).
3. That the instant appeal is badly barred by time and hence it is liable to be dismissed.
4. That the Present appeal is not maintainable in the present form and manner and is liable to be dismissed.
5. That the appellant has not come to this Hon; Tribunal with Clean hands.
6. That the appellant has concealed the material facts from this Hon; Tribunal and therefore the instant appeal needs to be struck down.
7. That due to legal lacunas, the instant appeal is not maintainable in the eye of law.
8. That the instant appeal is against the Prevailing Rules and laws and Judgments of the Superior Courts of Pakistan and hence is liable to be dismissed.

REPLY ON FACTS.

- i. That this Para-1 is admitted to the Extent of the appointment of the appellant and needs no further comments.
- ii. That this is obligatory for the Government Employees to perform their duties according to their job description and if any one failed to follow orders of the authorities ,he/she shall have to be treated under E&D Rules 2011 accordingly. Hence this stance of the appellant is procedural and needs no comments.

- iii. That this Para-3 as drafted is irrelevant because Section-10 of CSA-1973 is very much crystal Clear regarding Posting Transfer of Government servants, the same is reproduced as below;

Section-10. 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 Provincial Government or Local authority, or a corporation or body set up or established by any such Government;

It is Pertinent to mention here that the appellant occupied the Post of DM at GGMS Rahim Abad since 3.8.2007 till her transfer ie 14.11.2023 and remained there for 16Y-3M-11D , therefore, she has been transferred after the scrutiny of record by the local Committee to ensure transparency and rule of law ,therefore, a meeting of was held on 14.11.2023 (**Annexure-B**) and the committee approved transfer order of the appellant from GGMS Rahim Abad to GGMS Shinkad on the basis of long tenure at GGMS Rahim Abad and similarly the appellant was transferred vide No.9898-907 dated 14.11.2023 (**Annexure-C**) and she accepted her transfer order and took over Charge on 14.11.2023 (**Annexure-D**) as DM at GGMS Shinkad without raising any objection .It is pertinent to mention here that the appellant also availed Medical leave from the date of her transfer w.e.f 30.11.2023 To 14.12.2023 (**Annexure-E**), wef 15.12.2023 To 22.12.2023 (**Annexure-F**), wef 1.3.2024 To 15.3.2024 (**Annexure-G**) , wef 16.3.2024 To 16.4.2024 (**Annexure-H**) but the appellant concealed the facts.

It is further stated that transfer of Government servant is a part of the job & Service and at this juncture wisdom is drawn from the Judgment of the August Supreme Court of Pakistan, reported in **2020 PLC(CS) 1207 SC**,

(b) Civil Service;

Prerogative of employer...Government Servant was required to serve where his Employer wanted him to serve; it was not a choice or prerogative of the employee to Claim a right to serve at a place that he choose to serve.

(Annexure-I)

Hence in the light of the verdicts of the Apex Court of Pakistan, Claim of the appellant for a Place of her Choice /Station is violative and appeal is liable to be dismissed because Every Organ of the state is bound to implement Judgment of the August Supreme Court of Pakistan in the light of Article 189 & 190 of the Constitution of Pakistan ,1973.

- iv. That this Para based on facts .
- v. That this Para as drafted is not admitted because the letter as exhibited by the appellant regarding ban on Posting Transfer dated 22.1.2023 (**Annexure-J**) has been substituted by another letter issued by Government of Khyber Pakhtunkhwa Establishment Department(Regulation wing) vide No.SO(Policy)(E&AD)1-4/2023 dated 29.5.2023 (**Annexure-K**) wherein the relevant Para is reproduced as below;

ii. This ban shall not apply on transfer within the district and within the secretariate and Directorate. However, while proposing such transfer of officers/officials within the district, directorate or the Secretariate, as the case may be, due diligence must be observed and tenure, suitability of the officers/officials for the post and past performance must be taken into account.

Hence transfer of the appellant is legal, justified and within the Jurisdiction and no violation has been made.

- vi. That this Para is not admitted and denied because appellant is not an aggrieved person due to the reason that Transfer is a part of the Service and this the prerogative of the employer (Reference has already been incorporated in the above para -iii) but the appellant concealed the facts and hence the instant appeal being devoid of merit ,needs to be struct down.
- vii. That as the appellant is not an aggrieved party and not entitle for any of kind of relief inter alia on the following grounds;

ON GROUNDS.

- a. That this Para as drafted is not admitted because appellant has been treated within the contours of rules and due Process of law but the appellant concealed the facts regarding her long Tenure, therefore, appeal is liable to be dismissed.
- b. That this para has already been commented in detail in the above para-hence needs no further comments.
- c. That this para is not admitted and denied because the apex Court of Pakistan in plethora of Judgements clarified the Status of the government servants, as reported in **2020 PLC(CS) 1207 SC** (Already appended as Annexure-E in thee above Para-iii) which is settled legal principal and has been followed by the respondent in letter & Spirit, therefore, transfer of the appellant is Justified and within the precinct of the power of the respondents.
- d. That this para is not admitted and has no nexus with the transfer because as & when appellant requested for medical leave, the same has been accepted and sanction granted accordingly but the appellant concealed the facts intentionally and with malicious motives.

In wake of the above, it is humbly Prayed that the appeal in hand may graciously be dismissed.


SAMINA ALTAF

DIRECTOR
ELEMENTARY & SECONDARY EDUCATION
KHYBER PAKHTUNKHWA PESHAWAR (**Respondent No.2**)


DR.SHAMIM AKHTAR

DISTRICT EDUCATION OFFICER(F) SWAT (Respondent No.3**)**

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

SERVICE APPEAL NO.360/2024

Dilshad Begum DM BPS-15

Govt; Girls Middle School Shinkad District Swat

.....(APPELLANT)

VERSUS

- 1. The Secretary Elementary & Secondary Education Government of Khyber Pakhtunkhwa Peshawar.
- 2. The Director E&SE Khyber Pakhtunkhwa Peshawar.
- 3. The District Education Officer(Female) Swat.
- 4. Javida DM BPS-15 Government Girls Middle School Rahim Abad.

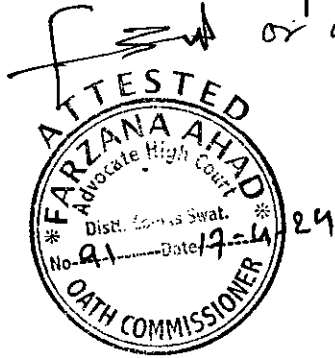
.....(RESPONDENTS)

AFFIDAVIT

I, Dr.Shamim Akhtar DEO(F) Swat do hereby solemnly affirm and declare that contents of the accompanying Para wise Comments are true and correct to the best of my knowledge and information and nothing has been concealed from this Hon;Service Tribunal.

It is further stated on oath that the answering respondent have neither been placed ex-parte nor their defence has been struck off or any cost imposed.

DEPONENT



[Signature]
DR. SHAMIM AKHTAR

KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

No. 225-30 /ST Dated 02-10-2024

A 5
All communications should be
addressed to the Registrar
KPK Service Tribunal and not
any official by name.

Ph:- 091-9212281
Fax:- 091-9213262

Office Order

It is noticed that in the memoranda of appeals, in disregard of the provisions of Sub Rule-(4) of Rule-6 of the Khyber Pakhtunkhwa Service Tribunal Rules, 1974, (the Rule) unnecessary parties are also arrayed as respondents, whereas, Rule-6(4) of the Rules requires that the competent authority whose order is challenged, shall be shown as respondent No.1 and every civil servant to whom the relief may effect, shall also be shown as respondent. The subrule is reproduced as under:

"6 (4) In every memorandum of appeal, the competent authority whose order is challenged shall be shown as Respondent No 1 and every civil servant to whom the relief may effect, shall also be shown as respondent."

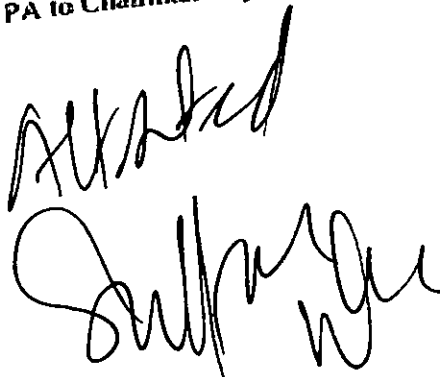
The subrule also excludes, even arraying the appellate authority, if there is no order of the appellate authority, therefore, the office is, henceforth, directed to ensure that only the authority(ies) whose order(s) is/are challenged, shall be arrayed as respondents. Besides, the Civil Servant(s) to whom the relief may effect, shall also be shown as party/parties and all other unnecessary parties shall not be arrayed.

By the Order of Hon'ble Chairman


(PIR MUHAMMAD AFRIDI)
SUPERINTENDENT
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL,
PESHAWAR

Copy forwarded to:-

1. Advocate General Khyber Pakhtunkhwa, Peshawar.
2. All learned Members Khyber Pakhtunkhwa Service Tribunal, Peshawar.
3. Additional Advocate General, posted at Khyber Pakhtunkhwa Service Tribunal, Peshawar.
4. Secretary to Government of Khyber Pakhtunkhwa, Establishment Department for his information with the request to send copies to other Departments and/Attached Departments etc. for their information.
5. CSO to the Chief Secretary Khyber Pakhtunkhwa.
6. PA to Chairman Khyber Pakhtunkhwa Service Tribunal, Peshawar.



District Education Officer (F)
Swat


PIR MUHAMMAD AFRIDI
SUPERINTENDENT
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL,
PESHAWAR



**OFFICE OF THE
DISTRICT EDUCATION OFFICER (FEMALE)
DISTRICT SWAT**

#: (0946) 9240214
Email: deofswat@gmail.com

#: (0946) 9240214
Web: www.female.sed.edu.pk

MINUTES OF THE MEETING

SUBJECT: TRANSFER of DM B-15 Post.

DATE OF MEETING: 14-11-2023.

PARTICIPANTS OF THE MEETING:

1. Dr. Shamim Akhtar.
DEO (F) Swat.....(Chairperson)
2. Ms. Zakia Raza.
ADEO Secy: Local Office.....(Member)
3. Mr. Riaz Ahmad.
Supdt: Local Office.....(Member)

SHORT BRIEF: -

Mst. Javida DM GGMS Shinkad, Swat appointed on 08-04-2017 & she requested for her transfer in the nearby station to her locality but during the security it was pointed out that no vacant post of DM B-15 available in the surrounding of Mingora. She submitted application with the request that having long tenure may be transferred to GGMS Shinkad, Swat in place of the applicant. Committee checked the seniority and long stay of Mst. Dilshad Begum DM B-15 GGMS Rahim Abad Mingora, Swat as compared to the stay of Mst. Javida DM B-15 GGMS Shinkad, Swat & agreed with the following decision accordingly to their tenure.

DECISION:

After perusal of the stay / period of both the officials in the light of policy of Government of Khyber Pakhtunkhwa regarding posting / transfer, Committee decided and agreed with the following proposal.

S. No	Name & Designation	Date of taking over charge in the present school	From	To	Remarks
1	Ms. Javida DM B-15	08-04-2017	GGMS Shinkad	GGMS Rahim Abad	Vice S. No: 02
2	Ms. Dilshad Begum DM B-15	08-01-2007	GGMS Rahim Abad	GGMS Shinkad	Vice S. No: 01 (Long Stay)

Meeting ended with vote of thanks by the chair.

Name & Designation

Status in Committee

Signature

Dr. Shmim Akhtar
DEO (F) Swat

Chairperson

Ms. Zakia Raza
ADEO Secy Local Office

Member

Mr. Riaz Ahmad
Supdt: Local Office

Member

District Education Officer (F)
Swat



OFFICE OF THE
DISTRICT EDUCATION OFFICER (FEMALE)
DISTRICT SWAT

#: (0946) 9240214
Email: deofswat@gmail.com

#: (0946) 9240214
Web: www.female.sed.edu.pk

OFFICE ORDER:

Consequent upon the recommendations of the Departmental Transfer Scrutiny Committee in its meeting held on 14-11-2023 under the Chairmanship of DEO (F) Swat / Competent Authority, the undersigned is pleased to transfer the following DM BPS-15 to the school mentioned against their names on their own pay and scale on the basis of long stay / tenure with immediate effect.

S. #	Name of official	Designation / BPS	From	To	Remarks
1.	Javida.	DM BPS-15	GGMS Shinkad	GGMS Rahim Abad	Vice S. No: 02
2.	Dilshad Begum	DM BPS-15	GGMS Rahim Abad	GGMS Shinkad	Vice S. No: 01 (Long Tenure)

Note: -

1. No. TA / DA is allowed.
2. Charge report should be submitted to all concerned.

Endst: No: 9898-904 / P.F / Javida / DM / GGMS Shinkad Swat.

Ahmad
DISTRICT EDUCATION OFFICER (F)
SWAT
Dated. 14/11 /2023

Copy forwarded for information & necessary action to the:

1. Director E&SE KP, Peshawar.
2. District Comptroller of Accounts Swat.
3. District Monitoring Officer / EMA, Swat.
4. Budget & Accounts Officer Local Office.
5. DEMIS Cell Local Office.
6. Heads of concerned Schools.
7. Officials Concerned.

Ahmad
DISTRICT EDUCATION OFFICER (F)
SWAT

Atkates
Sulman
District Education Officer (F)
Swat

D-8 89

CHARGE REPORT

Certified that I have on the forenoon / afternoon of this day Dated: 27-11-2023 received charge as Drawing Mistress (D.M) BPS-15 at GGMS Shinkad, Distt: Swat against the vacant post of Drawing Mistress (D.M) Vide District Education Officer (Female) Swat, at Saidu Sharif office order bearing Endstt: No. 9898-904 / P.F / Javida / DM / GGMS Shinkad Swat Dated: 14-11-2023.

Signature: [Signature]

Name: Dilshad Begum

Designation: D.M

H/M [Signature]
Head Mistress
Govt. Girls' High School
Shinkad Swat

Endstt: No. _____ /

Dated: 28 / 11 / 2023

Copy forwarded for information & necessary action to the: -

1. District Education Officer (F) Swat at Saidu Sharif.
2. District Comptroller of Accounts, Swat.
3. Head Mistress GGMS Shinkad, Swat.
4. Official Concerned.

H/M [Signature]
Head Mistress
Govt. Girls' High School
Shinkad Swat

[Signature]
District Education Officer (F)
Swat



OFFICE OF THE
DISTRICT EDUCATION OFFICER (FEMALE)
DISTRICT SWAT

#: (0946) 9240214
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#: (0946) 9240214
Web: www.female.sed.edu.pk

GRANT OF LEAVE: -

Under the provision of power conferred by the Government of Khyber Pakhtunkhwa Establishment and Administration Department Regulation Wing No.SOR-VE D-27/2003 dated 17.11. 2005. Sanction is hereby accorded to the grant of Medical Leave w.e.f 30-11-2023 to 14-12-2023 (15 days) on full pay without conveyance and teaching allowance in respect of **Mst. Dilshad Begum** DM BPS-15 GGMS Shinkad, Swat as due and admissible to her under the Leave Rules.

Note:

1. Necessary entry to this effect should be made in her service record accordingly.
2. The Head concerned is directed to recover C.A & T.A of the above mentioned period through Bank Challan under intimation to this office.

Dr. SHAMIM AKHTAR
DISTRICT EDUCATION OFFICER (F)
SWAT

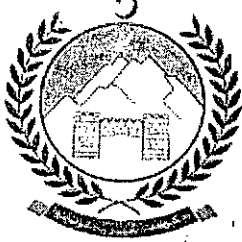
Endst: No. 10538-43 / P. F / Dilshad Begum / DM / GGMS Shinkad, Swat. Dated: 30/11/2023

Copy forwarded for information & necessary to the: -

1. District Comptroller of Accounts Swat.
2. District Monitoring Officer / EMA, Swat.
3. Budget & Accounts Officer Local Office.
4. DEMIS Cell Local Office.
5. Head Mistress GGMS Shinkad, Swat.
6. Mst. Dilshad DM GGMS Shinkad, Swat.

DISTRICT EDUCATION OFFICER (F)
SWAT

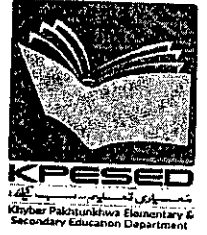
Attended
Sultan Khan
District Education Officer (F)
Swat.



F-10

8

OFFICE OF THE DISTRICT EDUCATION OFFICER
(FEMALE) DISTRICT SWAT
(Establishment Branch)
PHONE & FAX NO: (0946) 9240214
EMAIL: deofswat@gamil.com
Web: www.female.sed.edu.pk



GRANT OF LEAVE: -

Under the provision of power conferred by the Government of Khyber Pakhtunkhwa Establishment and Administration Department Regulation Wing No.SOR-VE D-27/2003 dated 17.11. 2005. Sanction is hereby accorded to the grant of Medical Leave w.e.f 15-12-2023 to 22-12-2023 (07 days) on full pay without conveyance and teaching allowance in respect of **Mst. Dilshad DM BPS-15 GGMS Shinkad, Swat** as due and admissible to her under the Leave Rules.

Note:

1. Necessary entry to this effect should be made in her service record accordingly.
2. The Head Mistress / DDO concerned is directed recover C.A & T.A of the above mentioned period accordingly.

[Signature]
Dr. SHAMIM AKHTAR
DISTRICT EDUCATION OFFICER (F)

SWAT
Dated: 18/12/2023

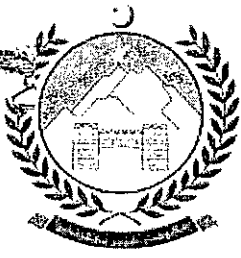
Endst: No. 10915-20 / P. F / Dilshad / DM / GGMS Shinkad, Swat.

Copy forwarded for information & necessary to the: -

1. District Comptroller of Accounts Swat.
2. District Monitoring Officer / EMA, Swat.
3. Budget & Accounts Officer Local Office.
4. DEMIS Cell local Office.
5. Head Mistress GGMS Shinkad, Swat.
6. Mst. Dilshad DM GGMS Shinkad, Swat.

[Signature]
DISTRICT EDUCATION OFFICER (F)
SWAT

[Signature]
District Education Officer (F)
Swat



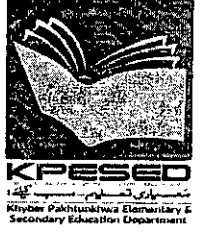
OFFICE OF THE DISTRICT EDUCATION OFFICER
(FEMALE) DISTRICT SWAT

(Establishment Branch)

PHONE & FAX NO: (0946) 9240214

EMAIL: deofswat@gamil.com

Web: www.female.sed.edu.pk



GRANT OF LEAVE: -

Under the provision of power conferred by the Government of Khyber Pakhtunkhwa Establishment and Administration Department Regulation Wing No.SOR-VE D-27/2003 dated 17.11.2005. Sanction is hereby accorded to the grant of Medial Leave w.e.f 01-03-2024 to 15-03-2024 (15 days) on full pay without conveyance and teaching allowance in respect of **Mst. Dilshad Begum** DM BPS-15 GGMS Shinkad, Swat as due and admissible to her under the leave rules.

Note:

1. Necessary entry to this effect should be made in her service record accordingly.
2. The Head Mistress ~~concerned~~ concerned is directed to recover C.A & T.A of the above mentioned period under intimation to this office accordingly.

Dr. SHAMIM AKHTAR
DISTRICT EDUCATION OFFICER (F)

SWAT

Endst: No. 1553-58 / P. F / Dilshad Begum / DM / GGMS Shinkad, Swat.

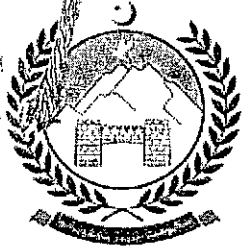
Dated: 19/3/2024

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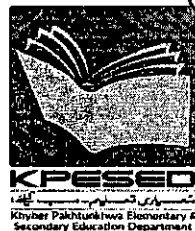
1. District Comptroller of Accounts Swat.
2. District Monitoring Officer / EMA, Swat.
3. DEMIS Cell local Office.
4. Budget & Accounts Officer Local Office.
5. Head Mistress GGMS Shinkad, Swat.
6. Mst. Dilshad Begum DM GGMS Shinkad, Swat.

DISTRICT EDUCATION OFFICER (F)
SWAT

Dilshad Begum
Dilshad Begum
District Education Officer (F)
Swat



OFFICE OF THE DISTRICT EDUCATION OFFICER
(FEMALE) DISTRICT SWAT
(Establishment Branch)
PHONE & FAX NO: (0946) 9240214
EMAIL: deofswat@gamil.com
Web: www.female.sed.edu.pk



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GRANT OF LEAVE: -

Under the provision of power conferred by the Government of Khyber Pakhtunkhwa Establishment and Administration Department Regulation Wing No.SOR-VE D-27/2003 dated 17.11.2005. Sanction is hereby accorded to the grant of Medical Leave w.e.f 16-03-2024 to 16-04-2024 (30 days) on full pay without conveyance and teaching allowance in respect of **Mst. Dilshad Begum** DM BPS-15 GGMS Shinkad, Swat as due and admissible to her under the leave rules.

Note:

1. Necessary entry to this effect should be made in her service record accordingly.
2. Recovery of C.A & T.A may also need to be made under intimation to this office.

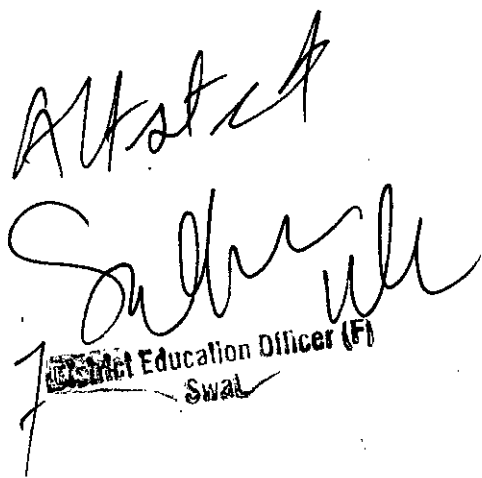

Dr. SHAMIM AKHTAR
DISTRICT EDUCATION OFFICER (F)

Endst: No. 1986 / P. F / Dilshad Begum / DM / GGMS Shinkdad, Swat Dated: 19/3/2024

Copy forwarded for information & necessary to the:-

1. District Comptroller of Accounts Swat.
2. District Monitoring Officer / EMA, Swat.
3. DEMIS Cell local Office.
4. Budget & Accounts Officer Local Office.
5. Head Mistress GGMS Shinkdad, Swat.
6. Mst. Dilshad Begum DM GGMS Shinkad, Swat.


DISTRICT EDUCATION OFFICER (F)
SWAT


District Education Officer (F)
Swat

Admission of Sub of IPR I (13) 08/07/2014

2019] Chief Commissioner of Inland Revenue v. Muhammad Javed 1207
Paracha (Ijaz ul Ahsan, J)

case of Gul Hassan Jatoi (supra) and Mohammad Nadeem Arif and others v. IGP Punjab, Lahore and others (2011 SCMR 408) in which Hon'ble Supreme Court has held that Standing Orders issued by Inspector General of Police have to be approved by Provincial Government.

9. Reverting to the moot point raised by learned Counsel for the Petitioners that candidature of the Petitioners were assessed by the respondents for their appointment against Son Quota. It is an admitted position that Standing Orders have not been approved by the Provincial Government; therefore, no sanctity can be attached with such Standing Orders to claim benefit arising out of it.

10. Learned counsel for the Petitioners while laying emphasis on Rules 10-A and 11-A of Sindh Civil Servant (Appointment, Promotion and Transfer Rules, 1974) argued that the Petitioners are entitled to be appointed on son quota. We are not impressed by the contention of learned counsel for the Petitioners for the reason that aforesaid legal position explicitly show that there is concept of deceased quota subject to all just exception and not son quota, since petitioners have applied admittedly against son quota in police department which under the aforesaid provision cannot be done so.

11. In the light of above discussion, it is crystal clear that Police Department cannot circumvent the law to make appointments by issuing Standing Orders. The appointments can only be made through competitive process on merits as provided under the Recruitment Rules and not otherwise. In view of what has been discussed above, the instant Constitutional Petitions are dismissed along with pending application(s).

Let a copy of this order be transmitted to the IGP, Sindh office for information and compliance.

SA/R-3/Sindh

Petitions dismissed.

2020 P L C (C.S.) 1207

[Supreme Court of Pakistan]

Present: *Gulzar Ahmed, C.J.*
and Ijaz ul Ahsan, J

CHIEF COMMISSIONER OF INLAND REVENUE,
LTU, ISLAMABAD and another

versus

MUHAMMAD JAVED PARACHA
and others

Civil Petitions Nos. 3625 and 3707 of 2018, decided on 2nd July, 2020.

PLC (Service)

Approved
Sulh
1
[Signature]

14

B

(Against the judgment dated 11.07.2018 passed by the Federal Service Tribunal, Islamabad in Appeal No. 1064(R)CS/2017)

(a) Civil service---

---Willful absence from duty without authorization---Removal from service converted into resignation---Petitioner was continuously on leave with effect from 1.4.2008 to 1.7.2013 and his application for extension of leave was not allowed, therefore, he was under an obligation to report for duty which he did not do---Petitioner's application for extension also stated that in case his leave could not be extended and he could not be transferred to his native city, his letter may be treated as his resignation---In view of the fact that the department neither extended his leave nor transferred him to his native city, it should have accepted his resignation and relieved him from duty---Action of the department to have waited and thereafter finding the petitioner absent from duty without leave leading to removal from service proceeding against him was not only unnecessary but also without lawful justification---Service Tribunal was correct in coming to the conclusion that the order of removal from service was unsustainable, however, in view of the fact, that petitioner had tendered his resignation with effect from 1.7.2013, his resignation from service was to be accepted from the said date---Having admittedly tendered his resignation on 1.7.2013 and having never formally withdrawn the same, no lawful reason or basis was made out to reinstate the petitioner into service---Petitions for leave to appeal were dismissed and leave was refused. [pp. 1210] A, B & D

(b) Civil service---

---Place of service---Prerogative of employer---Government servant was required to serve where his employer wanted him to serve; it was not a choice or prerogative of the employee to claim a right to serve at a place that he choose to serve. [p. 1210] C

M.D. Shahzad Feroz, Advocate Supreme Court and Ahmed Nawaz Ch., Advocate-on-Record for Petitioners.

Respondents in person.

Date of hearing: 2nd July, 2020.

ORDER

IJAZ UL AHSAN, J.---Through this judgment we proceed to decide Civil Petition No.3625 of 2018 filed by the Chief Commissioner of Inland Revenue, Islamabad and Civil Petition No.3707 of 2018 filed by Muhammad Javed Paracha. Both petitions arise out of the same judgment and same set of facts.

PLC (Service)

M. D. Shahzad Feroz
Ahmed Nawaz Ch.
 District Education Officer (F)
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2. Leave to appeal is sought against a judgment of the Federal Service Tribunal, Islamabad dated 11.07.2018. Through the impugned judgment the penalty of removal from service imposed on Muhammad Javed Paracha was set aside and his resignation from service with effect from 01.07.2013 was allowed. The prayer of Muhammad Javed Paracha for reinstatement was also rejected.

3. Brief facts necessary for disposal of this lis are that Muhammad Javed Paracha joined the appellant-department as LDC in 1995. Initially he sought leave with effect from 01.04.2008 for 90 days. On expiry of the leave he got it extended for another 730 days with effect from 01.07.2008. He got his leave further extended 1095 days which expired on 01.07.2013. He sought further extension for two years from 01.07.2013 to 01.11.2016. However, such extension was not granted. It was alleged that he absented himself with effect from 01.07.2013. Consequently, he was issued a show-cause notice on the charge of wilful absence from duty. His response was found unsatisfactory. Consequently, major penalty of removal from service was imposed on him vide order dated 16.06.2014. His departmental appeal was rejected which prompted him to approach the Tribunal. The Tribunal converted his penalty of removal from service to accepting his resignation with effect from 01.07.2013. The appeal filed by Muhammad Javed Paracha seeking reinstatement was dismissed. Hence these petitions.

4. The learned counsel for the petitioner submits that the Respondent had remained absent from duty with effect from 01.07.2013 without authorization. His response to the show-cause notice did not give any defence and no plausible reason was given for his absence without leave. It is further pointed out that the Respondent despite being a government servant had taken private employment during the period of his leave and there was neither reason nor justification for Tribunal to set aside the major penalty awarded by the department which was duly supported by the record.

5. The Respondent Muhammad Javed Paracha who appeared in person has submitted that on 01.07.2013 when his initial leave period expired he moved an application for extension and prayed that he may be transferred to his native city D.I. Khan and if that was not possible, his letter may be treated as his resignation. He submits that he was neither transferred to his native city nor was his resignation accepted and there was no valid reason to subsequently initiate proceedings which resulted in imposition of major penalty of removal from service. He further submits that his removal from service was without lawful authority, the department should have taken a compassionate view of things and permitted him to serve in his native city.

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6. We have heard the learned counsel for the petitioner and the Respondent in person.

7. It is clear and obvious to us that the petitioner was continuously on leave with effect from 01.04.2008 to 01.07.2013. His application for extension of leave was not allowed. He was therefore under an obligation to report for duty which he did not. However, his application for extension also stated that in case his leave could not be extended and he could not be transferred to his native city, his letter may be treated as his resignation. In view of the fact that the department neither extended his leave nor transferred him to his native city, it should have accepted his resignation and relieved him from duty. The action of the department to have waited and thereafter finding him absent from duty without leave initiating proceeding against him leading to removal from service was not only unnecessary but also without lawful justification. When the petitioner had tendered his resignation for all intents and purposes, there was no occasion for the department not to accept his resignation, wait for some time and treating him absent from duty initiate proceedings leading to his removal from service. We are therefore of the view that the Tribunal was correct in coming to the conclusion that the order of removal from service was unsustainable. However, in view of the fact. that Muhammad Javed Paracha had tendered his resignation with effect from 01.07.2013, his resignation from service was accepted from the said date.

8. As far as the prayer for reinstatement made by Muhammad Javed Paracha is concerned, there is no denial of the fact that he was absent without leave after having tendered resignation and had according to his own admission taken private employment despite the fact that he continued to be in government service. Further, even today before us he has insisted that he only wishes to serve in his native city on account of his peculiar circumstances.

9. A government servant is required to serve where his employer wants him to serve. It is not a choice or prerogative of the employee to claim a right to serve at a place that he chose to serve. The prayer of Muhammad Javed Paracha in this regard is misconceived and unreasonable and cannot be granted. Even otherwise, having admittedly tendered his resignation on 01.07.2013 and having never formally withdrawn the same, no lawful reason or basis is made out to reinstate him into service. The Tribunal gave valid reasons and lawful justification for its findings which need no interference by this Court. Even otherwise, in neither of the appeals any question of law of public importance has been raised that may necessitate interference by this Court.

PLC (Service)

Muhammad Javed Paracha
Sultan Ali
District Education Officer (A)
Swat.

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10. For reasons recorded above, both petitions are dismissed and leave to appeal is refused.

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Petitions dismissed.

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[Islamabad High Court]

Before Miangul Hassan Aurangzeb, J

GHULAM SARWAR and others

versus

FEDERATION OF PAKISTAN through
Secretary, Ministry of Information and
Technology and others

Writ Petitions Nos. 2114, 2345, 3108, 3625 of 2016 and 483, 494 to 496 of 2018, decided on 20th February, 2020.

(a) *Pakistan Telecommunication Corporation Act (XVIII of 1991)*---

---Ss. 9 & 20 (since repealed)---*Pakistan Telecommunication (Re-Organization) Act (XVII of 1996)*, Ss. 35(2) & 36---*Pakistan Telecommunication Corporation Service Regulations, 1996*---*Employees of Pakistan Telegraph and Telephone Department transferred to Pakistan Telecommunication Corporation and then to Pakistan Telecommunication Company Limited*---*Retirement under Voluntary Separation Scheme*---*Terms and conditions of service*---*Employees were seeking similar pensionary benefits as extended by the Government for retired civil servants*---*Validity*--- *Pakistan Telecommunication Corporation Service Regulations, 1996, had not been notified in the official gazette and same did not have a statutory status*---*Employees of Pakistan Telecommunication Corporation after enactment of Pakistan Telecommunication Corporation Act, 1991 and governed by Pakistan Telecommunication Corporation Service Regulations, 1996, could not agitate a dispute with regard to terms and conditions of their service by filing constitutional petition*---*Section 9 of Pakistan Telecommunication Corporation Act, 1991 and Ss. 35 & 36 of Pakistan Telecommunication (Re-Organization) Act, 1996, did protect the terms and conditions of service of departmental employees*---*Departmental employees who had not opted Voluntary Separation Scheme could agitate grievance regarding terms and conditions of their service in constitutional jurisdiction of High Court*---*Retirement in the ordinary course would*

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ELECTION COMMISSION OF PAKISTAN
NOTIFICATION

Islamabad the 22nd January, 2023

F.No.2(1)/2023-Cord.- WHEREAS, the Provincial Assemblies of Punjab and Khyber Pakhtunhwa under Article 112 of the Constitution of the Islamic Republic of Pakistan stand dissolved on 14th and 18th January, 2023 respectively.

AND WHEREAS, the Election Commission of Pakistan is mandated with the constitutional duty to organize and conduct elections in terms of Article 218(3) of the Constitution and to make such arrangements as are necessary to ensure that the elections are conducted honestly, justly, fairly and in accordance with the law and that corrupt practices are guarded against;

AND WHEREAS, it has become imperative that the Election Commission shall take all necessary steps under the Constitution and prevalent law for smooth conduct of General Elections to the Provincial Assemblies of Punjab and Khyber Pakhtunhwa.

NOW THEREFORE, in exercise of the powers conferred upon it under Articles 218(3), 220 of the Constitution of the Islamic Republic of Pakistan, Sections 4, 5, 8(c) read with Section 230 of the Elections Act, 2017 and as supported by the Workers' Party of Pakistan and 2 others reported in PLD 2012 SC 681, and all the other powers enabling it in that behalf, the Election Commission of Pakistan, to ensure transparent election and to provide a level playing field for all contesting candidates and political parties, hereby directs the Caretaker Governments of Punjab and Khyber Pakhtunhwa:-

- (a) To assist the Election Commission to hold elections in accordance with law as provided under section 230(1)(b) of the Elections Act, 2017.
- (b) To ensure the compliance of all the notifications, directives and the provisions as laid down in Section 230 of the Act *ibid*.
- (c) Not to post or transfer any public official after the issuance of this notification within and to / from Punjab & Khyber Pakhtunhwa without prior approval in writing of the Election Commission as laid down in Clause 2(f) of Section 230 of the Elections Act, 2017.
- ✓ (d) Ensure that all kinds of recruitments in any Ministry, Division, Department or Institution under the Provincial Governments and Local Governments of Punjab and Khyber Pakhtunhwa are banned with immediate effect, except recruitments by the Provincial Public Service Commissions and those government organizations where test / interviews have already been conducted before this day.
- (e) Not to announce / execute any kind of Development Schemes in Punjab and Khyber Pakhtunhwa Provinces except those which are ongoing and approved before the issuance of this notification. Moreover, the Provincial Governments and Local Governments of Punjab and Khyber Pakhtunhwa shall not issue tenders of such schemes till culmination of General Elections of both Assemblies.

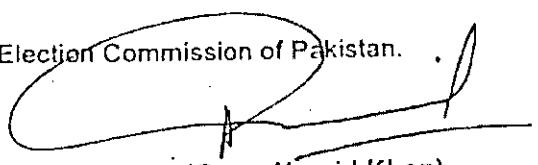
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District Education Officer (F)
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- (f) All development funds relating to Local Government institutions of Punjab and Khyber Pakhtunkhwa and Cantonment Boards falling in the jurisdiction of Punjab and Khyber Pakhtunkhwa shall stand frozen with immediate effect till announcement of results of the said General Elections.
- (g) To ensure immediate termination of services of all heads of the institutions appointed on political basis and to send their lists to the Commission forthwith.
- (h) To ensure vacation of the government residential facilities from Ex-Chief Ministers and their advisors, Ex-Provincial Ministers and Ex-Members of the Provincial Assemblies of Punjab and Khyber Pakhtunkhwa, besides ensuring withdrawal of official vehicles from them. Furthermore, the dignitaries shall be provided security / protocol as per their entitlement and any extra deployment of security / protocol be withdrawn from them forthwith.
- (i) The Caretaker Governments shall perform their functions and attend to day-to-day matters which are necessary to run the affairs of the Provinces in accordance with law.
- (j) The Chief Minister or a Minister or any other member of Caretaker Governments shall, within three days from the date of assumption of office, submit to the Commission, a statement of assets and liabilities including assets and liabilities of his spouse and dependent children as on the preceding 30th day of June on Form B.

This issues with the approval of Election Commission of Pakistan.



(Omar Hamid Khan)
Secretary
Election Commission of Pakistan

Attested
[Signature]
District Education Officer (F)
Swat

GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT
(REGULATION WING)



No. SO (Policy) (E&AD) 1-4/2023
Dated Peshawar, the 29th May, 2023

To

1. Additional Chief Secretary P&D Department Govt. of Khyber Pakhtunkhwa
2. Senior Member Board of Revenue, Govt. of Khyber Pakhtunkhwa
3. Administrative Secretaries to Govt. of Khyber Pakhtunkhwa
4. All Divisional Commissioners in Khyber Pakhtunkhwa
5. All Heads of Attached Departments in Khyber Pakhtunkhwa
6. All Deputy Commissioners in Khyber Pakhtunkhwa

Subject: -


BAN ON POSTINGS AND TRANSFERS IN KHYBER PAKHTUNKHWA

Dear Sir,

I am directed to refer to the above cited subject and to convey that in view of the fragile fiscal position of the Provincial Government, the Hon'ble Chief Minister Khyber Pakhtunkhwa has been pleased to impose ban on inter-district posting and transfers of officers and officials under the Government of Khyber Pakhtunkhwa as per the following:

- i. There shall be complete ban on inter-district transfers in all the departments;
- ii. This ban shall not apply on transfers within the districts and within the Secretariat and Directorates. However, while proposing such transfers of officers/officials within the district, Directorates or the Secretariat, as the case may be, due diligence must be observed and tenure, suitability of the officers/officials for the posts and past performance must be taken into account;
- iii. In cases posting and transfer is necessitated due to some court orders or some administrative exigencies, ban relaxation will be obtained from Chief Minister through summary. For such posting/transfers, departments will put forth sound justifications. Subsequently in cases where NOC from Election Commission is required, cases will be taken up with ECP for ban relaxation by the concerned Administrative Departments.
- iv. This ban shall not apply on filling of vacant posts through recommendations of the Khyber Pakhtunkhwa Public Service Commission as Election Commission of Pakistan has already granted exemption in such cases.

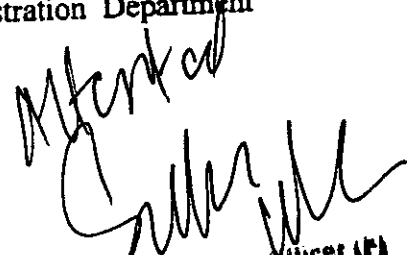
Yours sincerely,

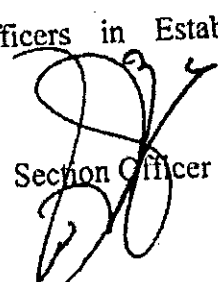

(Noor ul Haq)
Deputy Secretary (PS) 29/5/2023

ENDST: NO. & DATE EVEN

Copy is forwarded for information to:

1. Principal Secretary to Governor, Khyber Pakhtunkhwa
2. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa
3. CSO/PSO to Chief Secretary to Govt. of Khyber Pakhtunkhwa.
4. All Additional Secretaries/Deputy Secretaries/Section Officers in Establishment & Administration Department


District Education Officer (*)
Swat


Section Officer (Policy)

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

SERVICE APPEAL NO.360/2024

Dilshad Begum DM BPS-15

Govt; Girls Middle School Shinkad District Swat

.....(APPELLANT)

VERSUS

1. The Secretary Elementary & Secondary Education Government of Khyber Pakhtunkhwa Peshawar.
2. The Director E&SE Khyber Pakhtunkhwa Peshawar.
3. The District Education Officer(Female) Swat.
4. Javida DM BPS-15 Government Girls Middle School Rahim Abad.

.....(RESPONDENTS)

AUTHORITY LETTER

Mr.Sultan Nabi O/O DEO(F) Swat is hereby authorized to attend the Honble; KPK Service Tribunal in S.No.360/2024 on behalf of the Respondents Department till the finalization and decision of the instant Service Appeal.

SAMINA ALTAF

DIRECTOR

**ELEMENTARY & SECONDARY EDUCATION
KHYBER PAKHTUNKHWA PESHAWAR**

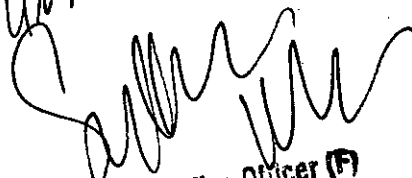
(Respondent No.2)

DR.SHAMIM AKHTAR

DISTRICT EDUCATION OFFICER(F)

SWAT

(Respondent No.3)

Javida

District Education Officer (F)
Swat