

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Execution Petition # 293&294/2024

In

Service Appeal # 409/2019

Mst. Gul Raj.....Appellant.

VERSUS

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

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Deponent

①

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Execution Petition # 293 & 294/2024

Khyber Pakhtunkhwa
Service Tribunal

In

Service Appeal # 409/2019

Diary No. 12896

Dated 21/5/24

Mst. Gul RajAppellant

VERSUS

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

REPLY IN THE EXECUTION PETITION APPLICATION ON BEHALF OF THE RESPONDENTS.

Respectfully Sheweth,

The Respondents submit as under:-

PRELIMINARY OBJECTIONS.

1. That as per Section-04 of Khyber Pakhtunkhwa Service Tribunal Act, 1974
"Any Civil Servant aggrieved by any final order, whether original or appellate made by a departmental authority in respect of any of the terms and conditions of his service may, within thirty days of the communication of such order to him or within six months of the Establishment of the appropriate Tribunal, whichever is later, prefer an appeal to the Tribunal having Jurisdiction in the matter"

In view of the ibid provision of Service Tribunal Act, mere the "Civil Servant" can avail the remedy of Service Tribunal. The petitioner filed the instant Execution Petition in representative capacity, as Chairperson of Management Cadre Officers Association, which does not come under the definition of aggrieved person and cannot avail the remedy of Service Tribunal in terms of Section-4 of Khyber Pakhtunkhwa Service Tribunal Act, 1974; hence, the instant Execution Petition is not maintainable & liable to be dismissed summarily.

2. That as per Section-10 of Civil Servant Act, 1973, the Competent Authority is empowered to transfer the Civil Servant anywhere in province in the best public interest. In light of the ibid Act, the Competent Authority are fully empowered to transfer a civil servant at any place as and when required, and no one should interfere in their authority as per as such action is taken in the best public interest. Moreover transfer and posting could not be claimed as matter of right and only could determine as to which officer was suitable for which place (2013 PLC (CS) 864 and 1991 PLC (CS) 374:) & Civil Servant could not claim posting at a particular station or at the place of his choice (2004 PLC (CS) 705.

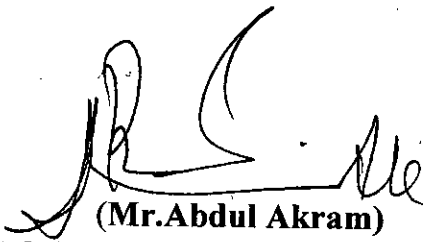
3. Those Respondents implemented the judgment dated 07-08-2019 in true letter and spirit. It is further stated that Provincial Government of Elementary & Secondary Education Department vide Notification No. SO(SM)E&SED/3-2/2016/SSRC of M.C dated 27-03-2019 notified the service rules for Management Cadre of E&SE Department. The ibid Service Rules reflects that the posts of Management Cadre Officers from (BPS-17) to (BPS-20) shall be filled from the Management Cadre Officers, **provided that if no suitable officers is available from Management Cadre Officers then by transfer of BPS-17 to BPS-20.** The teaching cadre's incumbents are posted against the Management Cadre posts due to shortage/non-availability of Management Cadre Officers (as reflected at Colum No.5 below) as stopgap arrangement. The incumbents of Teaching Cadre against the Management Cadre Officers will be replaced as and when Management Cadre Officers become available.

The details of Management Cadre Post are given below:-

| S# (C-1) | Nomenclature of Posts (C-2) | Sanctioned Strength (C-3) | Available Strength (C-4) | Vacant Position (C-5) |
|-------------|---|------------------------------|-----------------------------|--------------------------|
| 1 | Director (BPS-20) | 02 | 01 | 01 |
| 2 | District Education Officer/Additional Director (BPS-19) | 80 | 60 | 20 |
| 3 | Deputy DEO/Deputy Director (BPS-18) | 87 | 60 | 27 |
| 4 | SDEOs/Assistant Director (BPS-17) | 291 | 247 | 44 |

Prayer:

In view of above legal and factual position, it is humbly prayed that the instant Execution Petition may kindly be dismissed.


 (Mr. Abdul Akram)
 Additional Secretary (G), E&SED
 On behalf of
 Secretary E&SED
 (Respondents No-01&02)

BEFORE THE HON'BLE SERVICE TRIBUNAL PESHAWAR

Execution Petition# 293&294/2024

In

Service Appeal # 409/2019

Mst. Gui Raj Appellant

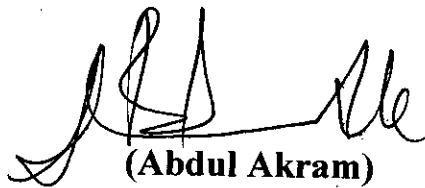
VERSUS

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

AFFIDAVIT

I, **Abdul Akram**, Additional Secretary (General), Elementary & Secondary Education, Department do hereby solemnly affirm and declare that the contents of the accompanying para-wise comments, submitted by the respondents, are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Court.

It is further, stated on oath that in this appeal the answering Respondents have neither been placed ex-parte nor has their defense been struck off.



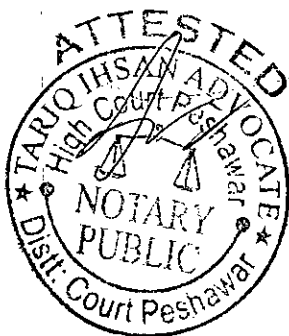
(Abdul Akram)

Additional Secretary (G), E&SED

On behalf of

SECRETARY E&SED

(Respondent No. 01&02)



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**GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION DEPARTMENT**

Block "A" Civil Secretariat, Peshawar

Phone No. 091-9211128

AUTHORITY LETTER

It is certified that **Mr. Sajid Ullah, Section Officer (Litigation-II)** Elementary & Secondary Education Department, Government of Khyber Pakhtunkhwa, Peshawar is hereby authorized to submit parawise comments on behalf of Secretary Elementary & Secondary Education Department Peshawar **Execution Petition No. 293 & 294/2024 in Service Appeal # 409/2019 Case Titled Mst. Gul Raj vs Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Department Khyber Pakhtunkhwa, Peshawar.**

(Abdul Akram)

Additional Secretary (G), E&SED

On behalf of

SECRETARY E&SED

(Respondent No. 01&02)

5



GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION DEPARTMENT

Block "A" Civil Secretariat, Peshawar

Phone No. 091-9211128

Dated Peshawar, the 29-04-2024

NOTIFICATION

NO.SO(Lit-II)/E&SED/1-5/2021. The undersigned (Masood Ahmad, Secretary Elementary & Secondary Education Department) is pleased to authorize Mr. Abdul Akram, Additional Secretary General, Elementary & Secondary Education Department to sign parawise comments, replies, implementation reports, objection petitions, civil miscellaneous applications etc on my behalf for submission before various courts of law/tribunals in the best public interest.

(MASOOD AHMAD)

SECRETARY

Elementary & Secondary Education
Department, Khyber Pakhtunkhwa

Ends: No. _____

Dated _____

Copy forwarded to the:-

1. Chief Secretary Khyber Pakhtunkhwa.
2. Advocate General Khyber Pakhtunkhwa.
3. Secretary Law Department.
4. Registrar Peshawar High Court Peshawar (with one each spare copy for the Honorable Judges).
5. Registrar Service Tribunal Peshawar (with one each spare copy for the Honorable Chairman/Members)
6. All Section Officers (Litigation) E&SE Department.
7. PS to Secretary E&SE Department.
8. PA to Additional Secretary (General) E&SE Department.
9. PAs to Deputy Secretary (Legal-I&II) E&SE Department.

(SAJID ULLAH)
SECTION OFFICER (Lit-II)

Sajid Ullah
29/04/24

**GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION DEPARTMENT**

(Annex-A)


NOTIFICATION


Peshawar, dated the March 27, 2019

NO.SO(SM)E&SED/3-2/2016/SSRC of M.C: In pursuance of the provision contained in sub-rule (2) of rule-3 of the Khyber Pakhtunkhwa Province Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 and in supersession of this Department's Notification No. SO(SM)E&SED/3-2/2016/SSRC of MC dated 03-07-2018, the Elementary & Secondary Education Department, in consultation with the Establishment Department and the Finance Department, hereby lays down the method of recruitment, qualification and other conditions specified in Column No. 3 to 5 of the Appendix to the Notification which shall be applicable to the posts of Schools Management Cadre under the Directorate of Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar and Directorate of Curriculum & Teachers Education Khyber Pakhtunkhwa Abbottabad as specified in Column No. 2 of the said Appendix.

APPENDIX

| S# | Nomenclature of the Post | Minimum Qualification for Appointment by Initial Recruitment or by Transfer | Age Limit | Method of Recruitment |
|----|--------------------------|---|-----------|---|
| 1 | 2 | 3 | 4 | 5 |
| 1 | Director (BPS-20) | | | <p>By promotion, on the basis of seniority-cum-fitness, from amongst the <u>District Education Officers</u> and Additional Directors (Male and Female) with at least five year service in BPS-19 as such and having successful completion of Senior Management Course;</p> <p>Provided that if no suitable officer is available for promotion then by transfer of BPS-20 officer.</p> <p>Note: For the purpose of promotion, a joint seniority list of District Education Officers and Additional Directors (Male and Female) shall be maintained.</p> |


 Section Officer (Promotion-III)
 Elementary & Secondary Edu. Deptt.
 Govt. of Khyber Pakhtunkhwa



| | | | | |
|---|--|---|-------------------|--|
| 7 | District Education Officer/ Additional Director (BPS-19) (Male and Female) | | | <p>"By promotion, on the basis of seniority-cum-fitness, from amongst the Deputy District Education Officers and Deputy Directors(Male and Female) with at least seven year service in BPS-18 or twelve year service in BPS-17 and above and such officer shall undergo six weeks post promotion training on the following modules, namely:</p> <ol style="list-style-type: none"> i. Financial Management; ii. HR Management; and iii. Information Technology: <p>Provided that if no suitable officer is available for promotion then by transfer of BPS-19 officer".</p> |
| 3 | Deputy District Education Officer/Deputy Director (BPS-18) (Male and Female) | <ol style="list-style-type: none"> i. M.Phil in Education from recognized University with three years teaching or administrative experience in Government recognized educational institutions or offices; or ii. at least Second Class Master's Degree or BS (four years) and Bachelor's Degree of Education from recognized University with five years teaching or administrative experience in BPS-17 and above in Government recognized educational institutions or offices; or iii. at least Second Class M.A/M.Sc with Second Class M.Ed./M.A (Education Planning and Management) or equivalent qualification from a recognized University with at least five years teaching or administrative experience in Government recognized educational institutions or offices. | 25 to 45 years | <p>(a) Eighty Percent by promotion, on the basis of seniority-cum-fitness, from amongst the Sub-Divisional Education Officers and Assistant Directors (Male/Female) with at least five year service as such and such officers shall undergo six weeks post promotion training on following modules, namely:</p> <ol style="list-style-type: none"> i. Financial Management; ii. HR Management; and iii. Information Technology: <p>Provided that if no suitable officer is available for promotion then by transfer of BPS-18 officer"; and</p> <p>(b) twenty percent by initial recruitment.</p> |
| 4 | Sub-Divisional Education Officer/Assistant Director (BPS-17) (Male and Female). | <ol style="list-style-type: none"> i. At least Second Class M.A/M.Sc or BS (four years) from recognized University; ii. at least Second Class Bachelor's of Education from a recognized University; and iii. three years teaching or administrative experience in Government recognized institutions or offices. | 21 to 40 years | <p>(a) Eighty percent by promotion, on the basis of seniority-cum-fitness, from amongst the Assistant Sub-Divisional Education Officers and Assistant District Education Officers (Male & Female) with at least five years' service:</p> <p>Provided that if no suitable officer is available for promotion then by transfer of BPS-17 officer; and</p> <p>(b) Twenty percent by initial recruitment.</p> |

Secretary
Elementary & Secondary Education
Govt. of Punjab


| | | | | |
|---|--|---|----------------|--|
| 5 | Assistant Sub-Divisional Education Officer/ Assistant District Education Officer (BPS-15) (Male and Female) | i. At least Second Class Bachelor's Degree or BS (four years) from a recognized University; ii. at least Second Class Bachelor's Degree of Education from a recognized University ; and iii. five years teaching or administrative experience in Government recognized institutions or offices. | 25 to 35 years | "By initial recruitment: Provided that if no suitable officer is available then by transfer of Secondary School Teacher (BPS-16) of Teaching Cadre. Note: On induction, all such officers shall undergo six weeks post induction training on the following modules, namely: i. Financial Management; ii. HR Management; and iii. Information Technology" |
|---|--|---|----------------|--|

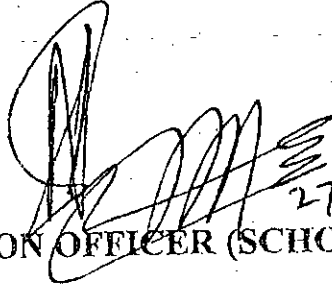
SECRETARY TO
GOVERNMENT OF THE KHYBER PAKHTUNKHWA
ELEMENTARY AND SECONDARY EDUCATION DEPARTMENT

Endst: of even No. & Date:-

Copy forwarded to the:

1. All Administrative Secretaries to Govt. of Khyber Pakhtunkhwa.
2. Secretary to Governor, Khyber Pakhtunkhwa.
3. Secretary to Chief Minister, Khyber Pakhtunkhwa.
4. Chairman Khyber Pakhtunkhwa Public Service Commission, Peshawar.
5. Directorate of Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.
6. Directorate of Curriculum and Teachers Education Khyber Pakhtunkhwa Abbottabad.
7. All District Education Officers (Male/Female) in Elementary & Secondary Education Khyber Pakhtunkhwa.
8. Director Information Khyber Pakhtunkhwa Peshawar with the request to give vide publicity.
9. Manager Government Printing Press Peshawar for publication in the next issue of Govt. Gazette.
10. PS to Advisor to Chief Minister for E&SE Department Khyber Pakhtunkhwa Peshawar.
11. PS to Secretary E&SE Department, Khyber Pakhtunkhwa, Peshawar.
12. PS to Special Secretary E&SE Department, Khyber Pakhtunkhwa, Peshawar.
13. PA to Additional Secretary (Estab) E&SE Department, Khyber Pakhtunkhwa, Peshawar.
14. PA to Deputy Secretary (Admn) E&SE Department, Khyber Pakhtunkhwa, Peshawar.
15. All Section Officers E&SE Department Khyber Pakhtunkhwa, Peshawar.
16. Director EMIS E&SE Department with the request to upload the same on the web site of the Department.


 Section Officer (Administrative-II)
 Elementary & Secondary Education Deptt.
 Govt. of Khyber Pakhtunkhwa


 27-03-19
 for SECTION OFFICER (SCHOOLS MALE)