

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

**Service Appeal # 615/2024**

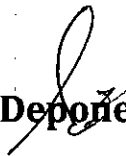
**Mst. Saima.....Appellant.**

**VERSUS**

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

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**Deponent**

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

Service Appeal No. 615/2024

Mst Saima .....Appellant.

VERSUS

Chief Secretary to Govt of KPK Peshawar..... Respondents.

**PARAWISE COMMENTS ON BEHALF OF THE RESPONDENTS NOS. 01 & 02.**

Respectfully Sheweth,

**Preliminary Objections:-**

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 13480

Dated 13/6/24

1. According to the Khyber Pakhtunkhwa Civil Servants (appeal) Rules 1986 in Rule-03(1) "A Civil Servant aggrieved by an order passed or penalty imposed by the competent authority relating to the terms and conditions of service may, within thirty days from the date of communication of the order to him, prefer an appeal to the appellant authority". Moreover, as per Section-22(1) of Khyber Pakhtunkhwa Civil Servant Act, 1973 "where a right to prefer an appeal or apply for review in respect of any order relating to the terms and condition of his service is provided a Civil Servant under any rules applicable to him, such appeal or application shall, except as may be otherwise prescribed be made within thirty days of the date of such order. **THE APPELLANT FILED DEPARTMENTAL APPEAL ON 25-01-2024 AGAINST ORDER DATED. 24-11-2023** which was time barred representation and cannot be condoned under the relevant law, therefore without going into the merits of the case in appeal the same liable to be dismissed under preposition & Ignorantia Facti excusat, Ignorantia juris non-Excusat.
2. According to the verdict of this Honorable Tribunal in judgment dated 02-10-2023 while disposing of the appeal of private respondent no. 03, it has categorically mentioned that "None of the parties should suffer otherwise than due course of policy" in light of the said verdict the competent authority examined the official record of both appellant as well as respondent no. 03 and restored notification dated 17-04-2023 in the best interest of public.
3. That the appellant is estopped to sue by her own conduct, because the law facilitates the vigilant and not the indolent.
4. That the appellant is just wasting the precious time of this Honorable Tribunal by the instant time barred appeal for which she is liable for compensatory costs.
5. That the appellant is not an aggrieved person in the eye of law & is just satisfying her ego by engaging the department in un-necessary litigations rather than concentrating on her duties.
6. That the respondent has adopted the proper law and procedure by exercising powers u/s 10 of Civil Servant Act, 1973 in the best public interest.
7. That according to Central Administrative Tribunal-Delhi in the case of Sh. Jawahar Thakurvs-Union of India held on 19<sup>th</sup> June, 2015 that it is more than stare decisis that transfer is an incidence of service and it is for the executive/administration to decide how to and where to use its employees subject to the conditions of their appointment in the best interest of the

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organization and public service. It is not always possible and feasible to record strong reasons for allowing an officer to continue at a particular station for a few years or more or less.

8. The Honorable Supreme Court in Mrs. Shilpi Bose and Others vs State of Bihar and others 1991 Supp.(2)SCC-659 went into in the issue of guidelines and has upheld the transfer orders of the employee in the following words:-

**“In our opinion, the Courts should not interfere with a transfer order which are made in public interest and for administrative reasons (unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fid. A Government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violated any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the Courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the Department. If the Courts continue to interfere with day to day transfer orders issued by the Government and its subordinate authorities, there will be complete chaos in the Administration, which would not be conducive to public interest. The High Court over looked these aspects in interfering with the transfer orders”**

Therefore, in light of the above situation the present appeal is not maintainable and liable to be dismissed with costs.

9. In an another famous case, The State of U.P. and Others vs Goverdhan Lal, : 2004 (3) SLJ 244 (SC) it has been held this:

**“It is too late in the day for any Government servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of a civil servant is an essential condition of service in the absence of any specific indication to the contra, in the law governing or conditions of service”**

#### On Facts

1. Pertains to record.
2. Pertains to record.
3. Pertain to record. However, this post has already been agitated and resolved in previous 12(2) CPC petition of the appellant. (Annex- A & B).
4. Pertains to record. However, notification dated 17-04-2023 is in accordance with law and in best public interest.
5. Pertains to record. However, the same is a past and closed transection, which needs no clarification here.
6. Incorrect, hence denied, however this fact is not in issue before this Honorable Tribunal. Moreover, most of the facts in the present appeal has already been discussed in previous round of litigation between the parties.
7. Pertains to record.
8. Incorrect, hence denied. The false statement is just repetition of facts from previous 12(2) petition, which are not allowed at this forum and cannot be permissible as per law.


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9. Pertains to record. However, admitted as the competent authority has obeyed the order dated 02-10-2023 in true letter and spirits.
10. Incorrect, hence denied. The order dated 24-11-2023 was in the knowledge of the appellant and she willfully omitted to file the departmental representation within the stipulated time period, therefore, the present appeal is not maintainable in the eye of law. The appellant is just wasting the time of this Honorable Tribunal like every Civil Servant, she is bound to serve anywhere throughout the Province, wherever she might be given the task. That according to Central Administrative Tribunal-Delhi in the case of Sh. Jawahar Thakur-vs-Union of India held on 19<sup>th</sup> June, 2015 that it is more than stare decisis that transfer is an incidence of service and it is for the executive/administration to decide how to and where to use its employees subject to the conditions of their appointment in the best interest of the organization and public service. It is not always possible and feasible to record strong reasons for allowing an officer to continue at a particular station for a few years or more or less.
11. Incorrect, in the present case the competent authority has acted in accordance with law. That the appellant is not an aggrieved person in the eye of law & is just satisfying her ego by engaging the departmental in un-necessary litigations rather than on concentrating on her duties.
12. In response of para-12 it is stated that neither the Execution Petition was competent nor the present appeal is competent being a time barred and meritless.
13. Incorrect, neither the appellant is an aggrieved person nor the appeal before the departmental was within time, therefore, the present appeal is not maintainable.

**On Grounds:**

- A. Incorrect, the appellant has been treated in accordance with law.
- B. Incorrect, hence denied. The detail reply has been given the foregoing para's of factual objections.
- C. Incorrect, the appellant is just misleading this Honorable Tribunal. That the appellant is not an aggrieved person in the eye of law & is just satisfying her ego by engaging the departmental in un-necessary litigations rather than on concentrating on her duties.
- D. Incorrect, hence denied, the appellant is duty bound to obey the orders of the competent authority is also bound to serve anywhere throughout the Province as per law.
- E. Incorrect and not permissible the appeal is liable to be dismissed summarily

**It is therefore, most humbly requested that the application being non-maintainable may kindly be dismissed with cost.**

  
Anand Akram  
Authorized Officer  
Additional Secretary (General)  
E&SE Department  
SECRETARY E&SED  
(Respondent No. 01&02)

(5)

**BEFORE THE HON'BLE SERVICE TRIBUNAL PESHAWAR**

**Service Appeal # 615/2024**

**Mst. Saima..... Appellant**

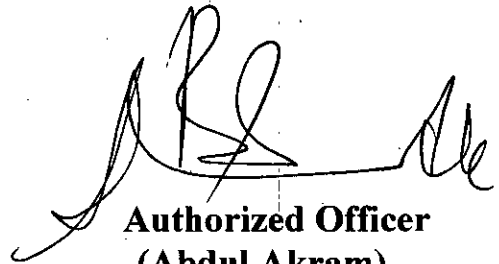
**VERSUS**

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

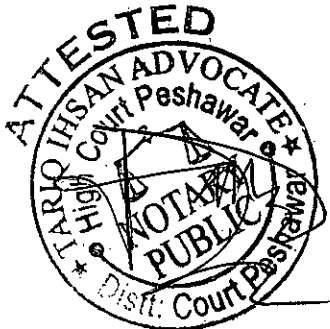
**AFFIDAVIT**

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.**



**Authorized Officer  
(Abdul Akram)  
Additional Secretary (General)  
E&SE Department  
(Masood Ahmad)  
SECRETARY E&SED  
(Respondent No. 01)**





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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 in **Service Appeal # 615/2024 Case Titled Mst. Saima vs Government of Khyber Pakhtunkhwa** through Secretary Elementary & Secondary Education Department Khyber Pakhtunkhwa, Peshawar.

**Authorized Officer  
(Abdul Akram)**

**Additional Secretary (General)  
E&SE Department  
(Masood Ahmad)  
SECRETARY E&SED  
(Respondent No. 01)**

(S) A



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

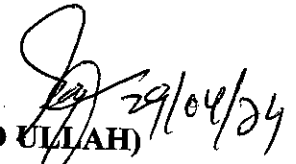
Elementary & Secondary Education  
Department, Khyber Pakhtunkhwa

Endst: 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)

"B"

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.  
JUDICIAL COMPLEX (OLD), KHYBER ROAD, S.B  
PESHAWAR.

No.

Appeal No. 12 (2) No. 257 of 20 23

Mst: Saima Appellant/Petitioner

Versus

Govt. of KPK Chief Secy. Respondent

Respondent No. 4

Notice to: The Secretary R&SE KPK Peshawar  
Civil Sect. Peshawar.

WHEREAS an appeal/petition under the provision of the Khyber Pakhtunkhwa Province Service Tribunal Act, 1974, has been presented/registered for consideration, in the above case by the petitioner in this Court and notice has been ordered to issue. You are hereby informed that the said appeal/petition is fixed for hearing before the Tribunal \*on 18/5/2023 at 8.00 A.M. If you wish to urge anything against the appellant/petitioner you are at liberty to do so on the date fixed, or any other day to which the case may be postponed either in person or by authorised representative or by any Advocate, duly supported by your power of Attorney. You are, therefore, required to file in this Court at least seven days before the date of hearing 4 copies of written statement alongwith any other documents upon which you rely. Please also take notice that in default of your appearance on the date fixed and in the manner aforementioned, the appeal/petition will be heard and decided in your absence.

Notice of any alteration in the date fixed for hearing of this appeal/petition will be given to you by registered post. You should inform the Registrar of any change in your address. If you fail to furnish such address your address contained in this notice which the address given in the appeal/petition will be deemed to be your correct address, and further notice posted to this address by registered post will be deemed sufficient for the purpose of this appeal/petition.

Copy of appeal is attached. ~~Copy of appeal has already been sent to you vide this office Notice No. .... dated.....~~

Given under my hand and the seal of this Court, at Peshawar this 5th

Day of May 20 23

ASG for Reply  
9/5/23

So (Lit-11)

SECRETARY DIARY  
No. 1139  
Dated 9/5/23

Registrar,  
Khyber Pakhtunkhwa Service Tribunal,  
Peshawar.

Note: 1. The hours of attendance in the court are the same that of the High Court except Sunday and Gazetted Holidays.  
2. Always quote Case No. While making any correspondence.




12.03.2024

Learned counsel for the petitioner present. Mr. Mehran, Assistant alongwith Mr. Asad Ali Khan, Assistant Advocate General for respondents No. 2 & 3 present and sought further time for implementation of the order dated 02.10.2023. Adjourned. Last opportunity given. To come up for implementation of the order under execution on 17.04.2024 before the S.B. Parcha Peshi given to the parties.

RECORDED  
K.P.S.T  
Peshawar

\*Naeem Amin\*

  
(Salah-ud-Din)  
Member (J)

17.04.2024

01. Counsel for the petitioner present. Mr. Asif Masood Ali Shah, DDA alongwith Tauseefur Rehman, Assistant and Mehran Assistant for the respondents present.

02. Reply to the Execution Petition alongwith notification dated 17.04.2023 received through office. Learned counsel for the appellant stated that the petitioner has already taken over charge in the light of the above notification.

03. In the light of the above, this petition has become infructuous. Consign.

04. *Pronounced in open Court at Peshawar and given under my hand and the seal of the Tribunal on this 17<sup>th</sup> day of April, 2024.*

  
(FARZEEN PAUL)  
Member (E)

\*Fazle Subhan, PS\*