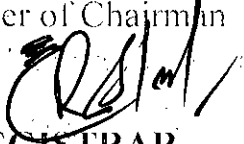


FORM OF ORDER SHEET

Court of _____

Appeal No. 863/2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	24/06/2024	<p>The appeal of Mst. Saima Gul presented today by Mr. Akhtar Hussain Qureshi Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on 24.06.2024. Parcha Peshi given to the counsel for the appellant.</p> <p>By the order of Chairman  REGISTRAR</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
CAMP COURT DERA ISMAIL KHAN

CM No. _____-D/2024

In Service Appeal No. 88/2024

Saima Gul Versus The Govt. of KPK & others

SERVICE APPEAL

APPLICATION FOR EARLY FIXATION


Respectfully Sheweth:

The petitioner humbly submits as under:-

1. That the above titled service appeal is being filed before this Honourable Tribunal.
2. That as the matter is of very urgent nature in service appeal because the respondents are intending to act upon the impugned transfer order and if appeal titled is not fixed as early as possible then the petitioner will suffer irreparable loss.
3. That matter is very urgent nature; hence, the appeal titled above may kindly be fixed as early as possible before the Camp Court Dera Ismail Khan.

It is therefore, humbly requested that on acceptance of this application, the case may please be fixed as early as possible.

Date: 24/06/2024

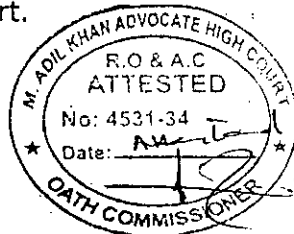

Your humble Appellant

Saima Gul
Through Counsel

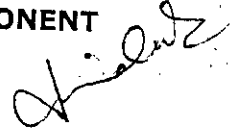

Akhtar Hussain Qureshi
Advocate High Court

AFFIDAVIT:

I, **Saima Gul**, the appellant, do hereby solemnly affirm and declare on Oath that contents of this application are true and correct to the best of my knowledge and belief and that nothing has been deliberately concealed from this Hon'ble court.



DEPONENT



BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR

In service Appeal No. 863 /2024

Saima Gul
(Appellant)

VERSUS

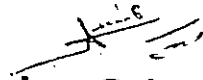
Govt. of KPK etc
(Respondents)

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3.	Copy of CNIC	A	12 — 0
4.	Copy of the impugned notification dated 20/03/2024	B	13 — 0
5.	Copy of the impugned transfer notification dated 20/03/2024	C	14 — 0
6.	Copies of writ petition and judgment dated 03/06/2024	D & E	15 — 24
7.	Copy of notification dated 13/03/2023	F	25 — 0
8.	Copies of the notifications dated 22/03/2024	G	26 — 29
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Dated 24/06/2024

Humble Appellant


Saima Gul
Through Counsel

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR

Service Appeal No. 863 /2024

Mst. Saima Gul wife of Sami Ullah Khan r/o Mohallah Jumma Shah City Dera Ismail Khan presently serving as Principal GGHS No.8 (Sherazi) District Dera Ismail Khan.

(APPELLANT)

VERSUS

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

(RESPONDENTS)

4. **Mst. Tasleem Fatima** presently service as Principal GGHS Dheri Saidan, District Bannu.

..... **Private Respondent**

APPEAL UNDER SECTION 4 OF THE KPK SERVICES

TRIBUNAL ACT, 1974 AGAINST THE ILLEGAL,

POLITICAL BASED POSTING TRANSFER

NOTIFICATION#SO(S/F) E&SED/4-

16/2024/POSTING/TRANSFER DATED 20/03/2024

VIDE WHICH THE APPELLANT WAS TRANSFERRED AND

POSTED AT GGHS GHORIWALA BANNU.

PRAYER

On acceptance of this service appeal the impugned posting transfer notification SO(S/F) E&SED/4-16/2024/Posting/Transfer DATED 20/03/2024 and notification No. SO(S/F) E&SED/4-16/2023/Posting/Transfer Dated 20/03/2024, issued by the respondent#2 may kindly be declared as illegal, without jurisdiction, without law full authority and based on mala-fide and political victimization, hence, liable to be cancelled.

Any other relief deemed appropriate in the given circumstances may also be granted to the appellant in the large interest of justice.

Note: Addresses given above shall suffice the object of service. All necessary and proper parties have been arrayed in the panel of respondents.

Respectfully Sheweth;

Appellant humbly submits and request as under:-

1. That the appellant was appointed in the Education Department Dera Ismail Khan and since then appellant has been performing her duties with great zeal and zest and to the entire satisfaction of his high-ups. Copy of CNIC of the appellant is enclosed as **Annexure-A**.
2. That the appellant was transferred and posted as Principal GGHSS No. 8 (Sherazi) Dera Ismail Khan and performed her duties with entire satisfaction of her high-ups.
3. That appellant was performing her duties with dedicatedly but ironically the respondent#2 issued a political based Transfer notification No. SO(S/F) E&SED/4-16/2024/Posting/Transfer Dated 20/03/2024 vide which the appellant was transferred from GGHSS No. 8 (Sherazi) Dera Ismail Khan to GGHSS

Ghoriwala District Bannu without any lawful justification and the private respondent Mst, Tasleem Fatima is appointed against the post of appellant. Copy of the impugned notification dated 20/03/2024 is annexed as **Annexure-B**.

4. That appellant is an experienced person in her field of and has been performing her duties as Principal GGHSS No. 8 (Sherazi) Dera Ismail Khan according to the entire satisfaction of her superiors. In this respect service record of the appellant is evident.
5. That ironically, the official respondents issued the impugned notification No. SO(S/F) E&SED/4-16/2024/Posting/ Transfer Dated 20/03/2024 vide which the service of appellant is transferred from Dera Ismail Khan to District Bannu and the private respondent (**Mst. Tasleem Fatima**) was posted against the post of Principal GGHSS No.8 (Sherazi) Dera Ismail Khan vide notification No. SO(S/F) E&SED/4-16/2023/Posting/Transfer Dated 20/03/2024 without any legal justification. Copy of the impugned transfer notification dated 20/03/2024 of private respondent is annexed herewith as **Annexure-C**.
6. That the appellant is an experience employee in the department and is fit for Principal GGHSS NO. 8 (Sherazi) Dera Ismail Khan (BPS-19) but unfortunately the official respondents transferred the private respondents against the post of appellant upon the directions of political God fathers, hence, the impugned transfer order is liable to be set aside being political victimization. Pertinent to mention here that BPS-19 is compulsory for the post of principal while the private respondent is serving in BPS-18, hence, on this sole ground the impugned transfer orders are not tenable in the eye of law.
7. That earlier the petitioner approached to the Honourable Peshawar High Court Bench Dera Ismail Khan through writ

petition No. 127-D/2024 in which initially status quo was granted in favor of petitioner and later on the Honourable High Court was pleased to dispose of the writ petition vide judgment dated 03/06/2024 with direction to approach the proper forum. Copies of writ petition and judgment dated 03/06/2024 are annexed as **Annexure-D & E**.

8. That the appellant does not have any efficacious remedy, except to invoke the appellate jurisdiction of this Honourable Tribunal, inter alia, the following grounds.

GROUND:-

- A. That the impugned transfer notifications dated 20/03/2024 are against the Constitution, Service Laws, Rules, Departmental Policy, and natural justice.
- B. That the impugned transfer notifications are issued upon the wishes of political figure are not tenable in the eyes of law. The appellant performed her duties in far-flung Hard Areas of the province, hence, the impugned transfer order is ineffective over the rights of appellant and is liable to be set aside.
- C. That it is noteworthy that by elections of national assembly NA-44 is going to be held on 21/04/2024 and in this respect the election commission of Pakistan banned on transfer posting through notification No. F.8 (1)/2024-Coord-M/F(4) dated 13/03/2023. Even then the respondent#2 upon the directions of political figure, issued the impugned notifications, hence, the same are not tenable in the eye of law. Copy of notification dated 13/03/2023 is annexed as **Annexure-F**.
- D. That the respondents/Education Department also issued some other transfer notifications which were noticed by the District Monitoring Officer/Additional Deputy Commission Dera Ismail

Khan and issued a letter for cancellation of the above mentioned transfer notification and the respondents/department hold in abeyance the transfer order, hence, on this sole ground the present impugned notifications are also liable to be set aside. Copies of the notifications dated 22/03/2024 are annexed as **Annexure-G**.

- E. That transfer of Govt. Employees can't be made on the interference of political figures which is offensive to the Constitution and the law on the subject because Ministers, MPA's, MNA's and Senators, all are under oath to discharge their duties in accordance with the Constitution and Law.
- F. That the impugned transfer notifications are in violation of section 5 & 230 (2)(F) of Election Rules as well as the notification issued by the Election Commissioner of Pakistan. As the valuable constitutional rights of appellant are being infringed, hence, this Honourable court has got vast and ample powers to entertain the instant writ petition.
- G. That as the appellant is a woman and is unable to travel a long distance daily. Beside this the appellant is a household woman and the welfare, pampering/look after of the children/family is being suffered.
- H. That it is humanly impossible for a woman in the milieu of Pakistani society to look after her family and carry out her professional obligations at the same time under such circumstances.
- I. That act of the official respondents is without jurisdiction based on mala fide hence liable to be declares as null and void by this Honourable Court.


K. That Counsel for the appellant may please be allowed to raise additional grounds during the course of arguments.

It is therefore respectfully prayed that On acceptance of this service appeal the impugned posting transfer notification SO(S/F) E&SED/4-16/2024/Posting/Transfer DATED 20/03/2024 and notification No. SO(S/F) E&SED/4-16/2023/Posting/Transfer Dated 20/03/2024, issued by the respondent#2 may kindly be declared as illegal, without jurisdiction, without law full authority and based on mala-fide and political victimization, hence, liable to be cancelled.

Any other relief deemed appropriate in the given circumstances may also be granted to the appellant in the large interest of justice.

Dated 26/06/2024.

Humble Appellant


Saima Gul
Through Counsel


Akhtar Hussain Qureshi
Advocate High Court

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR

In service Appeal No. _____/2024

Saima Gul
(Appellant)

VERSUS

GOVT of KPK etc
(Respondents)

CERTIFICATE

Certified that appellant have not filed an appeal regarding the subject controversy, earlier in this august Court.

Dated 29/06/2024


Appellant

NOTE:

Appeal with annexure along-with required sets thereof are being presented in separate file covers.

Dated 29/06/2024


Appellant's counsel

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR

In service Appeal No. _____/2024

Saima Gul
(Appellant)

VERSUS

GOVT of KPK etc
(Respondents)

AFFIDAVIT

I, **Saima Gul**, the appellant herein, do hereby solemnly affirm on oath:-

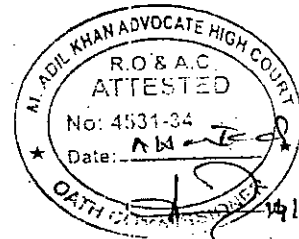
1. That the accompanying appeal has been drafted by counsel following my instructions;
2. That all parawise contents of the appeal are true and correct to the best of my knowledge, belief and information;
3. That nothing has been deliberately concealed from this Honourable Court, nor anything contained therein is based on exaggeration or distortion of facts.

Dated 20/06/2024

[Signature]
Deponent

Identified By:-

[Signature]
Akhtar Hussain Qureshi
Advocate High Court



**BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR**

CM No. _____/2024

In service Appeal No. _____/2024

Saima Gul **VERSUS** Govt. of KPK etc

**APPLICATION FOR INTERIM RELIEF BY SUSPENDING THE
OPERATION OF IMPUGNED POSTING TRANSFER
NOTIFICATION SO(S/F) E&SED/4-
16/2024/POSTING/TRANSFER DATED 20/03/2024 AND
NOTIFICATION NO. SO(S/F) E&SED/4-16/2023/POSTING/
TRANSFER DATED 20/03/2024 TILL FINAL DECISION OF
THE INSTANT SERVICE APPEAL.**

Respectfully Sheweth,

1. That the above titled service appeal is being filed before this Honourable Tribunal and the instant application may kindly be considered as part of it.
2. That the appellant has prima facie case and balance of convenience is also tilts in favour of the appellant.
3. That the respondents are intending to transfer the appellant on political victimization and if the operation of impugned transfer order is not suspended then the appellant will face irreparable loss and instant appeal will become futile.
4. That this honourable tribunal has got vast and ample powers to entertain the application in hand.

It is, therefore, humbly requested that in view of the above submissions, the interim relief may kindly be issued in favour of appellant till the final decision of the instant service appeal.

Dated 29/06/2024

Humble Appellant


Saima Gul
Through Counsel


Akhtar Hussain Qureshi
Advocate High Court

Akhtar Hussain Qureshi
Advocate High Court
Dera Ismail Khan

Handwritten signature
Akhtar Hussain Qureshi

Holder's Signature	05.03.2018	05.03.2018
Date of Issue	28.04.1979	12101-9917889-4
Date of Birth	PAKISTAN	
Gender	Country of Birth	
Holder's Name		



PAKISTAN
National Identity Card

Annex = (A)

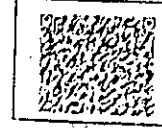
(12)



GOVT. OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION DEPARTMENT
 Email: sectionofficerse@gnoll.com
 091-9223588

Dated Peshawar (10 March 20th, 2024

NOTIFICATION



NO. SO(S/F)E&SED/4-16/2024/Posting/Transfer: Mst. Saïma Gul CIPE (BS-19) working against the post of Principal (BS-19) at GGSS No.8 Shirazi D.I Khan is hereby transferred and posted at GGSS Ghoriwala Bannu against the vacant post of CIPE (BS-19) in the best public interest, with immediate effect.

SECRETARY TO GOVT. OF KHYBER PAKHTUNKHWA
E&SE DEPARTMENT

Endst: of even No. & date:

Copy forwarded to the:

1. Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. Director, E&SE, Khyber Pakhtunkhwa, Peshawar.
3. District Education Officer (Female) concerned.
4. District Account officer concerned.
5. Director EMIS, E&SE Department for uploading at official website at the earliest.
6. PS to Minister for E&SE Department, Khyber Pakhtunkhwa.
7. PS to Secretary, E&SE Department.
8. Teacher concerned.
9. Office order file.

Attended

[Signature]

Akhtar Hussain Qureshi
 Advocate High Court
 Dera Ismail Khan

[Signature]
 SECTION OFFICER (S/F)

20/03/2024



GOVT. OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION DEPARTMENT

Email: sectionofficers@gkpk.com

091-9223588

Dated Peshawar the March 20th, 2024



CORRIGENDUM

NO.SO(S/F)E&SED/4-16/2023/Posting/Transfer: In partial modification of this Department's Notification of even No. Dated 19.02.2024 the place of posting in respect of Mst. Tasleem Fatima SSS Mathematics (BS-18) appearing at S.No. 197 may be read as GGHSS No.8 Shirazi D.I Khan against the vacant post of Principal (BS-19) in OPS instead of GGHSS Dheri Saidan Bannu after actualization her promotion for one day at GGHSS Shamsi Khel Bannu against the vacant post of Principal (BS-18).

SECRETARY TO GOVT. OF KHYBER PAKHTUNKHWA
E&SE DEPARTMENT

Endst; of even No.& date:

Copy forwarded to the:

1. Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. Director, E&SE, Khyber Pakhtunkhwa, Peshawar.
3. District Education Officer (Female) concerned.
4. District Account Officer concerned.
5. Director EMIS, E&SE Department for uploading at official website at the earliest.
6. PS to Minister for E&SE Department, Khyber Pakhtunkhwa.
7. PS to Secretary, E&SE Department.
8. Officers/Official Concerned.
9. Office order file.

Akhtar

Hussain

Akhtar Hussain Qureshi
Advocate High Court
Dera Ismail Khan

SECTION OFFICER (S/F)
20/03/2024

15

Annex = 1 (D)

BEFORE THE HONOURABLE PESHAWAR HIGH COURT

DERA ISMAIL KHAN BENCH

Writ Petition No. _____ / 2024

FILED TODAY
28 MAR. 2024
Additional Registrar

Mst. Saima Gul wife of Sami Ullah Khan r/o Mohallah Jumma
Shah City Dera Ismail Khan presently serving as Principal
GGHSS No.8 (Sherazi) District Dera Ismail Khan. _

(PETITIONER)



VERSUS

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

(RESPONDENTS)

4. **Mst. Tasleem Fatima** presently service as Principal GGHS Dheri Saldan, District Bannu.

..... Private Respondent

WRIT PETITION UNDER ARTICLE 199 OF THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF PAKISTAN 1973, AGAINST THE ILLEGAL, POLITICAL BASED POSTING TRANSFER NOTIFICATION#SC(S/F) E&SED/4-16/2024/POSTING/TRANSFER DATED 20/03/2024 VIDE WHICH THE PETITIONER WAS TRANSFERRED AND POSTED AT GGHS GHORIWALA BANNU.

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Handwritten signature
08.6.24
EXAMINOR
Peshawar High Court Bench,
Dera Ismail Khan

WP No.127-D 2024 (Grounds)

Prayer:-

On acceptance/issuance of this Writ petition by declaring the impugned posting transfer notification SO(S/F) E&SED/4-16/2024/Posting/Transfer DATED 20/03/2024 and notification No. SO(S/F) E&SED/4-16/2023/Posting/Transfer Dated 20/03/2024, issued by the respondent#2 as illegal, without jurisdiction, without law full authority and based on mala-fide and political victimization, hence, liable to be cancelled.

Any other relief deemed appropriate in the given circumstances may also be granted to the petitioner in the large interest of justice.

Note:

That addresses of the parties are sufficient for the purpose of service.

Respectfully Sheweth;

Petitioner humbly submits and request as under:-

FILED TODAY
28 MAR 2024
Additional Registrar

1. That the petitioner was appointed in the Education Department Dera Ismail Khan and since then petitioner has been performing her duties with great zeal and zest and to the entire satisfaction of his high-ups. Copy of CNIC of the petitioner is enclosed as Annexure-A.
2. That the petitioner was transferred and posted as Principal GGHSS No. 8 (Sherazi) Dera Ismail Khan and performed her duties with entire satisfaction of her high-ups.
3. That petitioner was performing her duties with dedicatedly but ironically the respondent#2 issued a political based Transfer notification No. SO(S/F) E&SED/4-16/2024/Posting/Transfer Dated 20/03/2024 vide which the petitioner was transferred from GGHSS No. 8 (Sherazi) Dera Ismail Khan to GGHSS Ghoriwala District Bannu without any lawful justification and the private respondent Mst, Tasleem Fatima is appointed against the post of petitioner. Copy of the

Handwritten signature/initials

EXAMINOR
Peshawar High Court Bench,
Dera Ismail Khan

WP No.127-D 2024 (Grounds)

impugned notification dated 20/03/2024 is annexed as **Annexure-B.**

4. That petitioner is an experienced person in her field of and has been performing her duties as Principal GGHSS No. 8 (Sherazi) Dera Ismail Khan according to the entire satisfaction of her superiors. In this respect service record of the petitioner is evident.
5. That ironically, the official respondents issued the impugned notification No. SO(S/F) E&SED/4-16/2024/Posting/ Transfer Dated 20/03/2024 vide which the service of petitioner is transferred from Dera Ismail Khan to District Bannu and the private respondent (**Mst. Tasleem Fatima**) was posted against the post of Principal GGHSS No.8 (Sherazi) Dera Ismail Khan vide notification No. SO(S/F) E&SED/4-16/2023/Posting/Transfer Dated 20/03/2024 without any legal justification. Copy of the impugned transfer notification dated 20/03/2024 of private respondent is annexed herewith as **Annexure-C.**
6. That the petitioner is an experience employee in the department and is fit for Principal GGHSS NO. 8 (Sherazi) Dera Ismail Khan (BPS-19) but unfortunately the official respondents transferred the private respondents against the post of petitioner upon the directions of political God fathers, hence, the impugned transfer order is liable to be set aside being political victimization. Pertinent to mention here that BPS-19 is compulsory for the post of principal while the private respondent is serving in BPS-18, hence, on this sole ground the impugned transfer orders are not tenable in the eye of law.
7. That it is settled law, when impugned Act or Action has been protected by a Constitutional Provision by ouster clause, the superior Courts still have the jurisdiction to interfere with 03 categories of the cases, namely, without jurisdiction, Coram non iudice and mala fides.

FILED TODAY
28 MAR 2024
Additional Registrar

EXAMINOR
08.06.24
Peshawar High Court Bench,
Dera Ismail Khan

WP No.127-D 2024 (Grounds)

10

8. That the petitioner does not have any efficacious remedy, except to invoke the Constitutional jurisdiction of this Honourable court, Inter alia, the following grounds.

GROUND:-

A. That the impugned transfer notifications dated 20/03/2024 are against the Constitution, Service Laws, Rules, Departmental Policy, and natural justice.

B. That the impugned transfer notifications are issued upon the wishes of political figure are not tenable in the eyes of law. The petitioner performed her duties in far-flung Hard Areas of the province, hence, the impugned transfer order is ineffective over the rights of petitioner and is liable to be set aside.

C. That it is noteworthy that by elections of national assembly NA-44 is going to be held on 21/04/2024 and in this respect the election commission of Pakistan banned on transfer posting through notification No. F.8 (1)/2024-Coord-M/F(4) dated 13/03/2023. Even then the respondent#2 upon the directions of political figure, issued the impugned notifications, hence, the same are not tenable in the eye of law. Copy of notification dated 13/03/2023 is annexed as **Annexure-D.**

D. That the respondents/Education Department also issued some other transfer notifications which were noticed by the District Monitoring Officer/Additional Deputy Commission Dera Ismail Khan and issued a letter for cancellation of the above mentioned transfer notification and the respondents/department hold in abeyance the transfer order, hence, on this sole ground the present impugned notifications are also liable to be set aside. Copies of the notifications dated 22/03/2024 are annexed as **Annexure-E.**

E. That transfer of Govt. Employees can't be made on the interference of political figures which is offensive to the Constitution and the law on the subject because Ministers, MPA's, MNA's and Senators, all are under oath to discharge their duties in accordance with the Constitution and Law.

F. That the impugned transfer notifications are in violation of section 5 & 230 (2)(F) of Election Rules as well as the notification issued by the Election Commissioner of Pakistan. As the valuable constitutional rights of petitioner are being infringed, hence, this Honourable court has got vast and ample powers to entertain the instant writ petition.

G. That as the petitioner is a woman and is unable to travel a long distance daily. Beside this the petitioner is a household woman and the welfare, pampering/look after of the children/family is being suffered.

FILED TODAY
26 MAR 2024
Additional Registrar

EXAMINOR
Peshawar High Court Bench,
Dera Ismail Khan

WP No.127-D 2024 (Grounds)

- H. That it is humanly impossible for a woman in the milieu of Pakistani society to look after her family and carry out her professional obligations at the same time under such circumstances.
- I. That act of the official respondents is without jurisdiction based on mala fide hence liable to be declares as null and void by this Honourable Court.
- J. That notices are being duly served under the dictates of procedural law of Honourable Peshawar High Court. Copies of the notices along with postal receipts are enclosed.
- K. That Counsel for the petitioner may please be allowed to raise additional grounds during the course of arguments.

It is therefore respectfully prayed that on acceptance/issuance of this Writ petition by declaring the impugned posting transfer notification SO(S/F) E&SED/4-16/2024/Posting/Transfer DATED 20/03/2024 and notification No. SO(S/F) E&SED/4-16/2023/Posting/ Transfer Dated 20/03/2024, issued by the respondent#2 as illegal, without jurisdiction, without law full authority and based on mala-fide and political victimization, hence, liable to be cancelled.

Any other relief deemed appropriate in the given circumstances may also be granted to the petitioner in the large interest of justice.

Dated 27/03/2024

FILED TODAY
28 MAR 2024
Additional Registrar

Humble Petitioner

Saima Gul
Saima Gul
Through Counsel

Malik Hidayat Ullah Malana
Advocate Supreme Court

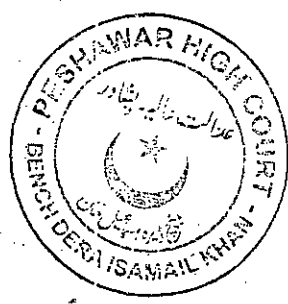
M. H. Malik
08.6.24
EXAMINOR
Peshawar High Court Bench,
Dera Ismail Khan

WP No.127-D 2024 (Grounds)

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT, D.I.KHAN BENCH
(Judicial Department)

W.P No. 127-D/2024 with
C.M Nos. 143 and 178-D/2024

Mst. Saima Gul
Vs
Government of Khyber Pakhtunkhwa
Through Secretary Elementary &
Secondary Education Peshawar and others



For petitioner Malik Hidayatullah Malana, Advocate
For respondents Mr. Inamullah Khan Kundi, Asstt. Advocate General
Muhammad Saced Bhutta, Advocate
Date of hearing 03.6.2024

JUDGMENT

Dr. Khurshid Iqbal, J.-

1. Mst. Saima Gul (Petitioner) is an employee of the Education Department (respondent-Department). Presently, she has been working as the Principal GGHSS No. 8 (Sherazi) of Dera Ismail Khan (DIK). The respondent-Department has transferred her from her present position to GGHSS Ghoriwala, Bannu vide notification dated 20.3.2024. Owing to the impending general elections, no posting and transfer in public department could be ordered.

2. The petitioner is aggrieved of her transfer. She has moved this petition under article 199 of the constitution in which she has called into question the impugned notification. Her contention, as stated in her petition, is that she has served as Principal GGHSS No. 8 (Sherazi), DIKhan, for a long time. She was transferred from D.I.Khan by a Notification dated 20.3.2024. Her transfer is prompted by what she calls "political victimization and mala fide on the part of the respondents"-Department. She further asserts that there is no complaint

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08.6.2024
EXAMINOR
Peshawar High Court Bench,
Dera Ismail Khan

against her. She has prayed before us to declare the impugned notification as illegal, unjustified and without lawful authority.

3. We have heard Malik Hadiyatullah Malana, learned counsel for the petitioner and Inarnullah Khan Kundi, Asstt. Advocate General at length and perused the record available before us with their valuable assistance.

4. A preliminary objection the Assistant Advocate General raised is that the petition is not maintainable owing to the bar laid down in Article 212 of the constitution. He explained that the petitioner is a civil servant, and the impugned transfer relates to the terms and conditions of the petitioner's service. He further explained that as a civil servant, the petitioner has to approach her Departmental Authority and then to the Service Tribunal.

5. There could be no escaping from the fact that the petitioner is a civil servant. There is also no doubt at all that the impugned notification of her transfer relates to the terms and conditions of her service. Section 10 of the Civil Servants Act, 1973 provides that a civil servant can be transferred anywhere in the province. The provision reads as under:-

"10. Posting and transfers. - every civil servant shall be liable to serve anywhere within or outside the province in any post under the Federal Government; or any Provincial Government or local authority, or a corporation or body set up or established by any such Government:

Provided that nothing contained in this section shall apply to a civil servant recruited specifically to serve in a particular area or region:

Provided further that where a civil servant is required to serve in a post outside his service or cadre, his terms and conditions of service as to his pay shall not be less favourable than those to which he would have been entitled if he had not been so required to serve"

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6. The law, however, doesn't put a clog on a civil servant to question a transfer order made, on the ground of mala fide, such as, political victimization. The law, then, provides the Service Tribunal as the forum before which a civil servant can vindicate his/her grievance. It needs not to be mentioned that

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08.6.04
EXAMINOR
Peshawar High Court Bench,
Dera Ismail Khan

the Service Tribunal is a constitutional forum established under Article 212, having exclusive jurisdiction in matters relating to the terms and conditions of a person who is or has been in the service of Pakistan. Despite this express constitutional barrier, civil servants do seek their remedy before other courts, notably the High Court and the Supreme Court. The higher courts thus have dealt with the question in numerous cases which have built vast jurisprudence on issue of jurisdictional competency of the courts. We deem it pertinent that reference to a few cases may be sufficient for the purpose of proper understanding of the issue in hand. In 2007 SCMR 54 titled Peer Muhammad vs. Government of Baluchistan through Chief Secretary and others, the Supreme Court held:

It is well-settled by now that the question of posting of a Government servant squarely falls within the jurisdictional domain of the Competent Authority subject to law and rules made thereunder. The question of posting/transfer relates to terms and conditions of a Government servant and Service Tribunal would have exclusive jurisdiction to dilate upon and decide such matters and Constitutional jurisdiction cannot be invoked to get such controversies resolved. We have also adverted to the question of mala fides which according to the learned Advocate Supreme Court could have been dilated upon in Constitutional jurisdiction which is not correct because the provisions as contained in Article 212 of the Constitution of Islamic Republic of Pakistan ousts jurisdiction of all other Courts and orders of the departmental authority even though without jurisdiction or mala fide can be challenged only before the Service Tribunal and jurisdiction of Civil Court including High Court is specifically ousted. The plea of mala fide does not confer upon High Court jurisdiction to act in the matter in view of the Constitutional ouster as contained in Article 212 of the Constitution of Islamic Republic of Pakistan and learned Service Tribunal has full jurisdiction to interfere in such-like matters.

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The case titled as "*Chief Secretary Government of Punjab, Lahore and others vs. Ms. Shamim Usman*" may be

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 EXAMINOR
 Pesnawar High Court Bench,
 Dera Ismail Khan

termed as the latest, having been decided in the year 2021 (2021 SCMR 1390). The court ruled that:-

"The High court had no jurisdiction to entertain any proceedings in respect of terms and conditions of service of a civil servant which could be adjudicated upon by the Service Tribunal. The High court as a constitutional court should always be mindful of the jurisdictional exclusion contained under Article 212 of the Constitution. Any transgression of such constitutional limitation would render the order of the High court void and illegal.

7. An adequate and efficacious remedy is available to the petitioner under the law in the form of filing service/departmental appeal and then the Service Tribunal for redress of her grievance. It follows that this petition is not maintainable. In this behalf reliance can be placed on the judgment reported as "Messrs OPI Gas (Private) Limited v. Government Holding (Pvt) Limited and others" (2021 MLD 1916 Islamabad), wherein it was held that "*when an alternative and equally efficacious remedy is open to a litigant, he should be required to pursue that remedy and not invoke the constitutional jurisdiction of the High Court for the issuance of a writ*".

8. It is also by now settled that when law provides a remedy to another authority fully competent to give relief, any indulgence to the contrary by High Court is likely to produce a sense of distrust in those authorities and to cause an underserved reflection on their integrity and competency and may defeat legislative intent. If the remedy sought for, is in substance a remedy, which is available under the ordinary law, then the resort is to the proper forum, and not the extraordinary remedy, provided by Article 199 of the Constitution.

9. For the reasons stated-above, in view of the bar contained in Article 212 (2) of the Constitution, this writ petition held as not maintainable. However, the petitioner

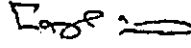
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Munir
08.06.2021
EXAMINOR
Peshawar High Court Bench,
Dera Ismail Khan

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would be at liberty to approach the proper forum, if so advised.

Announced
June 3, 2024
Hasnain/*



JUDGE

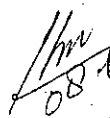


JUDGE

office
08/06/2024.

(D.B)

Hon'ble Mr. Justice Fazal Subhan
Hon'ble Mr. Justice Dr. Khurshid Iqbal


08/06/2024
EXAMINOR
Peshawar High Court Bench,
Dera Ismail Khan

G.R.No. 2040.
Application Received on 04-06-24
Copying Fee demanded Rs. _____
No of Papers 10 P.
Copying Fee 04/9
Urgent Fee _____
Total Fee _____
Copy ready for theory 08-06-24
Copy delivered on 08-06-24
Signature of Examiner _____

Certified to be true Copy
Mr. T. Q. Khan 6/24

EXAMINER
Peshawar High School
Authorised Signature
D. I. Khan
07/06/24

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Annex = (F)

ELECTION COMMISSION OF PAKISTAN

NOTIFICATION

Islamabad the 13th March, 2024



No.F.8(1)/2024-Coord-M/F(4).- In pursuance of Article 218(3) of the Constitution of Islamic Republic of Pakistan read Sub-Section 4 of Section 5 and Section 181 of the Elections Act, 2017, the Election Commission of Pakistan is hereby pleased to direct that:

- (i) No Government or authority shall post or transfer any officer in the districts, where schedule for bye-elections has been issued on 13th March, 2024, till the publication of name of returned candidate.
- (ii) No Government functionary or elected representative(s) including a local government functionary or elected representative shall announce any development scheme for the constituencies, where bye-elections are under process till 21st April, 2024.

By order of the Election Commission of Pakistan

MASU
 13-03-2024
 (Muhammad Nasir Khan)
 Deputy Director (Coord)

The Manager,
Printing Corporation of Pakistan Press,
Islamabad.

[For publication in the Gazette of Pakistan,
Extraordinary (Part-III) of today's date.]

Attended
Akhtar
 Akhtar Hussain Qureshi
 Advocate High Court
 Dera Ismail Khan

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Annex = (G)



OFFICE OF THE
DISTRICT MONITORING OFFICER/
ADDL: DEPUTY COMMISSIONER
(GENERAL) DERA ISMAIL KHAN
Phone #: 0966-9200179/ Fax #: 0966-9200110

No. 178 /ADC/ (General)/Bye Election-2024

Dated DIKhan the 22 / 03 /2024


To

The Section Officer (Schools Male),
E&SE Department Khyber Pakhtunkhwa, Peshawar.

Subject: CANCELLATION OF ORDERS DUE TO BYE-ELECTION 2024 CONSTITUANCY NA-4-I DISTRICT DIKHAN.

Reference to the Notification No.F.B (1)/2024-Coord-M/F(4) dated 13-03-2024, regarding ban on posting/transfers and leaves of officers and officials issued by the Election Commission of Pakistan. In this context, it has come to the notice of the undersigned that you have issued three (3) office orders No. SO(S/M)/E&SED/Appointment/HM/Male/5-17-2024 dated 19-03-2024, followed by Corrigendum No. SO(SM) E&SED/5-17/2023/PT/HM/SS dated 20-03-2024 and followed by Notification No. SO(S/M)/E&SED/5-18/2024/PT/ dated 21-03-2024, regarding posting/transfers of the officials under your preview, which is the violation of Section 5 and Section 230(2) (f) Election Rules as well as Notification issued by the Election Commission of Pakistan.

Therefore, you are hereby requested to withdrawn above mentioned notifications with immediate effect without concurrence of the Election Commission of Pakistan.

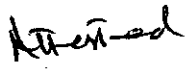
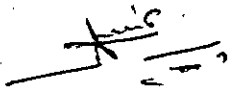

DISTRICT MONITORING OFFICER/
ADDL: DEPUTY COMMISSIONER,
DERA ISMAIL KHAN

Encls No. Date & Evns:

Copy forwarded to the:

1. Secretary to Government of Khyber Pakhtunkhwa, E&SE Department Peshawar.
2. Commissioner DIKhan Division DIKhan.
3. District Returning Officer/Deputy Commissioner, DIKhan.
4. Deputy Director (Coord) Election Commissioner of Pakistan.
5. Regional Election Commissioner, DIKhan.
6. District Election Commissioner, DIKhan.


DISTRICT MONITORING OFFICER/
ADDL: DEPUTY COMMISSIONER,
DERA ISMAIL KHAN



Akhtar Hussain Qureshi
Advocate High Court
Dera Ismail Khan

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GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY AND SECONDARY EDUCATION DEPARTMENT
Block-"A" Opposite MPA's Hostel, Civil Secretariat Peshawar
Phone No. 091-9210626

Dated: 22nd March, 2024

NOTIFICATION

NO.SO(MC)E&SED/1-1/2024/Misc: In pursuance of Election Commission of Pakistan Notification No. F.3(1)/2024-Coord-M/F(4), dated 13-03-2024, the posting transfer Notification No. SO (S/M)/E&SED/Appointment/HM/Male/5-17-2024, dated 19-03-2024 to the extent of Serial No. 11 & 39, Corrigendum No. SO (S/M) E&SED/5-17/2023/PT/HM/SS, dated 20-03-2024 regarding posting of Mr. Muhammad Ilyas and posting Notification, SO(S/M)/E&SED/5-18/2024/PT, dated 21-03-2024 issued by this department are held in abeyance till the notification of returned candidates in Bye-Election 2024.

SECRETARY TO THE GOVT. OF KHYBER PAKHTUNKHWA
E&SE DEPARTMENT

Endst. of even No. & date:

Copy forwarded for information to the:

1. Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. Director, E&SE Khyber Pakhtunkhwa, Peshawar.
3. Director EMIS, E&SE Department with the request to upload the same on the official website of the department.
4. District Education Officers (Male) concerned.
5. District Account Officer concerned.
6. Additional Deputy Commissioner (General), D.I. Khan.
7. PS to Secretary, E&SE Department, Khyber Pakhtunkhwa.
8. Officers concerned.
9. Master file.

Ahmed

Hussain
Akhtar Hussain Qureshi
Advocate High Court
Dera Ismail Khan

Arsalan Ahmed

(ARSALAN AHMED)
SECTION OFFICER (Management Cadre)



The District Monitoring Officer,
Additional Deputy Commissioner,
Dera Ismail Khan

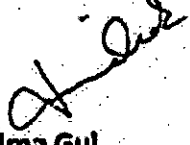
Subject: - **APPEAL FOR CENCELATION OF TRANSFER ORDER**

Memo,

Reference transfer order Notification No. SO(S/F) E&SED/4-18/2024/Posting/transfer dated Peshawar 20-03-2024, Issued vide Secretary E&SE Department Peshawar.

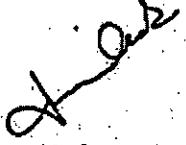
It is requested in your king honour that the undersigned is been worked as Principal at GGHSS No.8 Sherazi DIKhan, now I have transferred from District DIKhan to GGHSS Ghouri Wala District Bannu vide above said Notification No & dated.

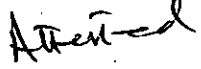
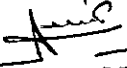
It is further informed to you that election Commission has banned all kind of posting/transfer vide his Notification No. F-8(1/2024-COORD-M/F (4) dated 13-04-2024. My transfer order was issued during the ban date. So my kindly are cancelled the transfer order.


Salma Gul
Principal GGHSS No.8 Sherazi
District Dera Ismail Khan

Copy to the:-

1. Secretary E&SE Department KPK Peshawar.
2. Director E&SE Department KPK Peshawar


Salma Gul
Principal GGHSS No.8 Sherazi
District Dera Ismail Khan



Akhtar Hussain Oureshi
Advocate High Court
Dera Ismail Khan



OFFICER OF THE
**DISTRICT MONITORING OFFICER/
 ADDL. DEPUTY COMMISSIONER**
 (GENERAL) DERA ISMAIL KHAN
 Phone No. 09992201707 Fax No. 0999 9301110

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No. 125/ADD/ (General)/Hyd Election-2024

Dated Dikhan the 22/03/2024

To

The Section Officer (Schools/Vocable),
 B&SB Department RPK Postwar.

**Subject: CANCELLATION OF ORDERS DUE TO HYD-ELECTION 2024 CONSTITUENCY
 NA-11 DISTRICT DIKHAN.**

Please refer to the subject cited above and to state that this office has received a complaint/application from Mrs. Sabna Gul, Principal G.G.H.S. No. 8 Sherazi District DI Khan on 26-03-2024, that your office has issued a Notification No. SO(S/P) B&SB/4-16/2024/Posting/Transfer dated 20-03-2024. Copy of complaint alongwith orders are attached for ready reference.

In this regard, it is pertinent to mention here that the Honorable Election Commission has imposed ban on all kinds of postings/transfers across the country where Hyd Election are being held vide Notification No. E.I (1)/2024-Coord-M/P(4) dated 13-03-2024, (copy attached).

In light of the above, you are therefore required to explain your position regarding the instant matter within 02 days to proceed further, accordingly.

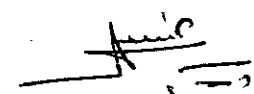

**DISTRICT MONITORING OFFICER/
 ADDL. DEPUTY COMMISSIONER,
 DERA ISMAIL KHAN**

Indst No., Date & Byom
 Copy forwarded to file:

1. Secretary to Government, B&SB, Department RPK,
2. Regional Election Commissioner, DI Khan;
3. District Returning Officer/Deputy Commissioner, DI Khan.
4. District Election Commissioner, DI Khan.


**DISTRICT MONITORING OFFICER/
 ADDL. DEPUTY COMMISSIONER,
 DERA ISMAIL KHAN**

Attached


Akhtar Hussain Qureshi
 Advocate High Court
 Dera Ismail Khan

To

The Worthy Chief Secretary,
Khyber Pakhtunkhwa Peshawar.

Subject: DEPARTMENTAL APPEAL/REPRESENTATION
AGAINST THE POLITICAL BASED CANCELLATION
NOTIFICATION NO. SO(S/F) E&SED/4-
16/2023/POSTING/ TRANSFER DATED 20/03/2024
ISSUED BY THE SECRETARY ELEMENTARY &
SECONDARY EDUCATION DEPARTMENT KHYBER
PAKHTUNKHWA PESHAWAR.

Respected Sir,

Appellant humbly submits as under,

1. That the appellant was appointed in the Education Department Dera Ismail Khan and since then appellant has been performing her duties with great zeal and zest and to the entire satisfaction of his high-ups.
2. That the appellant was transferred and posted as Principal GGHSS No. 8 (Sherazi) Dera Ismail Khan and performed her duties with entire satisfaction of her high-ups.
3. That appellant was performing her duties with dedicatedly but ironically the respondent#2 issued a political based Transfer notification No. SO(S/F) E&SED/4-16/2024/Posting/Transfer Dated 20/03/2024 vide which the appellant was transferred from GGHSS No. 8 (Sherazi) Dera Ismail Khan to GGHSS Ghoriwala District Bannu without any lawful justification and the private respondent Mst, Tasleem Fatima is appointed against the post of appellant. Copy of the impugned notification dated 20/03/2024 is annexed.
4. That appellant is an experienced person in her field of and has been performing her duties as Principal GGHSS No. 8 (Sherazi) Dera Ismail Khan according to the entire satisfaction of her superiors. In this respect service record of the appellant is evident.

Admitted
[Signature]

Akhtar Hussain Qureshi
Advocate High Court
Dera Ismail Khan

5. That ironically, the Secretary E&SE KPK issued the impugned notification No. SO(S/F) E&SED/4-16/2024/Posting/ Transfer Dated 20/03/2024 vide which the service of appellant is transferred from Dera Ismail Khan to District Bannu and one **Mst. Tasleem Fatima** was posted against the post of Principal GGHSS No:8 (Sherazi) Dera Ismail Khan vide notification No. SO(S/F) E&SED/4-16/2023/Posting/Transfer Dated 20/03/2024 without any legal justification. Copy of the impugned transfer notification dated 20/03/2024 of Tasleem Fatima is annexed herewith.
6. That the appellant is an experience employee in the department and is fit for Principal GGHSS NO. 8 (Sherazi) Dera Ismail Khan (BPS-19) but unfortunately the official respondents transferred the private respondents against the post of appellant upon the directions of political God fathers, hence, the impugned transfer order is liable to be set aside being political victimization. Pertinent to mention here that BPS-19 is compulsory for the post of principal while the said Tasleem Bibi is serving in BPS-18, hence, on this sole ground the impugned transfer orders are not tenable in the eye of law.
7. That as the appellant is a woman and is unable to travel a long distance daily. Beside this the appellant is a household woman and the welfare, pampering/look after of the children/family is being suffered.
8. That it is noteworthy that by elections of national assembly NA-44 is going to be held on 21/04/2024 and in this respect the election commission of Pakistan banned on transfer posting through notification No. F.8 (1)/2024-Coord-M/F(4) dated 13/03/2023. Even then the respondent#2 upon the directions of political figure, issued the impugned notifications, hence; the same are not tenable in the eye of law. Copy of notification dated 13/03/2023 is annexed.
9. That the respondents/Education Department also issued some other transfer notifications which were noticed by the District Monitoring Officer/Additional Deputy Commission Dera Ismail Khan and issued a letter for cancellation of the above mentioned

Attended
Hussain

Akhtar Hussain Qureshi
 Advocate High Court
 Dera Ismail Khan

transfer notification and the respondents/department hold in abeyance the transfer order, hence, on this sole ground the present impugned notifications are also liable to be set aside. Copies of the notifications dated 22/03/2024 are annexed.

10. That your good self has got vast powers to accept the instant Departmental appeal.

It is therefore, humbly requested that the impugned notification No. SO(S/F) E&SED/4-16/2024/Posting/Transfer Dated 20/03/2024 may kindly be set aside.

Dated: 23/03/2024

Annexed
Akhtar Hussain Qureshi
Akhtar Hussain Qureshi
Advocate High Court
Dera Ismail Khan

Yours Humble
Saima Gul
Mst. Saima Gul
Principal GGHS No.8 (Sherazi)
District Dera Ismail Khan
Contact No. _____

