

BEFORE THE HONORABLE KHYBER PAKHATUNKHWA SERVICE
TRIBUNAL PESHAWAR AT CAMP COURT ABBOTTABAD.

Service Appeal No: 1136/2023

Rafique Javeed.....Appellant

VERSUS

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

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(SAMINA ALTAF)
DIRECTOR
E&SE Department Khyber
Pakhtunkhwa, Peshawar.

**BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE
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SA No. 1136/2023

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PARA WISE COMMENTS ON BEHALF OF RESPONDENTS NO. 01 & 02

Respectfully Sheweth:

Para wise comments on behalf of respondents are submitted as under:

Preliminary Objections:

1. That the Appellant did not come to this Honorable Tribunal with clean hands hence, not entitled for any relief.
2. That the Appellant has got no cause of action/locus standi to file the instant Service Appeal against the answering respondents.
3. That the instant Service Appeal has been filed just to pressurize the respondents.
4. That the appellant filed earlier Service Appeal No. 887/2019 having the same cause of action and the same was disposed of on 24-09-2020 with the direction to the respondent No. 01 to decide departmental appeal of the Appellant and the respondent No. 01 rejected the departmental appeal of the Appellant on 03-03-2023 whereas, affidavit of Service Appeal was attested by Notary Public on 03-05-2023. Hence, instant Service Appeal is hopelessly time barred and appellant did not file application for condonation of delay. Resultantly, Service Appeal is liable to be dismissed without any further proceedings.
5. **That the impugned Notification dated 03-03-2023 was issued by the competent authority hence, appellant has no vested rights to challenge the same before this Honorable Tribunal.**

6. That the appellant is estopped to sue through his own conduct.
7. That the present Service Appeal is not maintainable due to non-joinder and mis-joinder of necessary parties.
8. That the Appellant has concealed & distorted the material facts from this Honorable Tribunal hence, not entitled for any relief.
9. That the Principal GHSS No. 1 Mansehra assigned the duty to appellant on temporary basis as Incharge Library as the Principal concerned has not been impleaded in the instant appeal. Moreover, Principal is not competent / appointing authority for appointment in BPS-17 as the respondent No. 1 is the competent / appointing authority through recommendations of Public Service Commission. Hence, appellant neither applied for said post nor recommended by Public Service Commission.
10. That the appellant is serving as Secondary School Teacher (SST G) BPS-16 which is a Teaching Cadre post while the post of Librarian is Non Teaching Cadre Post and appellant cannot be promoted / absorbed under the rules and policy.
11. That the Identical nature Service Appeal Nos. 885/2015 & 1084/2016 have been decided by this Honorable Tribunal in favor of respondent department on 18-09-2017 & 19-03-2018 and judgments of this Honorable Tribunal were upheld by the August Supreme Court of Pakistan in CP No. 4813/2017 and 2097/2019. Hence, instant Service Appeal may also be dismissed accordingly.
12. That as per the recruitment rules vide Notification dated 21-09-2023, appointment against the post in question comes under the purview of Khyber Pakhtunkhwa Public Service Commission by initial recruitment.

Factual Objections:

1. That the Para No. 1, of the Service Appeal pertains to service record hence, need no further comment.

2. That the Para No. 2 of the Service Appeal Pertains to academic qualification of the appellant hence, need no further comment.
3. That the Para No. 3, of the Service Appeal pertains to record hence, need no comment.
4. That the Para No. 4, of the instant Service Appeal pertains to record hence, need no comment.
5. That Para No. 5, of the Service Appeal as composed is incorrect hence, denied and not admitted. Appellant was mutually transferred at GHS No. 1 Mansehra vide Endstt No. 2416-20 dated 10-03-2014 . (Copy of the said mutual transfer order has already been annexed as **Annexure "H"** Page 28 with instant Service Appeal)
6. That Para No. 6, of the Service Appeal as composed is incorrect hence, denied and not admitted. Principal is not competent /appointing authority of the Librarian (BS-17) as Principal GHSS No. 1 Mansehra assigned the duty to appellant on temporary basis as Incharge Library as the Principal concerned has not been impleaded in the instant appeal. Moreover, Principal is not competent / appointing authority for appointment in BPS-17 as the respondent No. 1 is the competent / appointing authority through recommendations of Public Service Commission. Hence, appellant neither applied for said post nor recommended by Public Service Commission. (Copy of the recruitment rules dated 21-09-2023 for the post of Librarian BS-17 are annexed as **Annexure "A"**)
7. That Para No. 7, of the Service Appeal as composed is incorrect hence, denied and not admitted as appellant is not eligible for the post of Librarian BS-17 without the recommendations of KP Public Service Commission.
8. That Para No. 8, of the Service Appeal pertains to record hence, need no comment.
9. That Para No. 9, of the Service Appeal is correct to the extent that the competent authority rejected the departmental appeal of the appellant

vide letter dated 03-03-2023, while rest of the Para as composed is incorrect hence, denied.

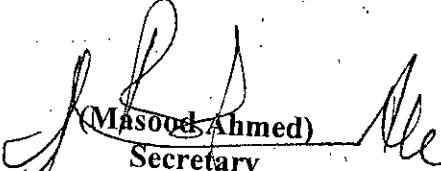
GROUND:


- a. That ground a, of the Service Appeal as composed is incorrect hence, denied and not admitted as appellant is not eligible for pay and other emoluments of BS-17 as no proper order has been passed by the competent authority.
- b. In reply to ground b, of the Service Appeal it is submitted that Principal is not competent authority to issue such type of certificates as it is the domain of appointing / competent authority. Hence, in the instant case no certificate was issued by the competent authority.
- c. That ground c, of the Service Appeal as composed is incorrect hence, denied. As per recruitment rules the post of Librarian BS-17 is to be filled by initial recruitment through KP Public Service Commission hence, instant Service Appeal is against the Recruitment Rules / Policy.
- d. That ground d, of the Service Appeal as composed is incorrect hence, denied. Appellant cannot be appointed against the post of Librarian without recommendations of KP Public Service Commission.
- e. That ground e, of the Service Appeal as composed is incorrect hence denied. Comprehensive reply has already been given in Para 06 of the factual objections:
- f. That ground f, of the Service Appeal as composed is incorrect hence, denied.
- g. That ground g, of the Service Appeal as composed is incorrect hence, denied as appellant has received his salaries against his original post.
- h. In reply to ground h, of the Service Appeal it is submitted that appellant is not entitled for any relief as the similarnature Service Appeal Nos. 885/2015 & 1084/2016 have been decided by this Honorable Tribunal in favor of respondent department on 18-09-2017 & 19-03-2018 and judgments of this Honorable Tribunal were upheld

by the August Supreme Court of Pakistan in CP No. 4813/2017 and 2097/2019. Hence, instant Service Appeal may also be dismissed accordingly.

- i. In reply to ground i, of the Service Appeal it is submitted that appellant is not entitled for relief as the similar cases have been decided by this Honorable Tribunal And August Supreme Court of Pakistan.
- j. In reply to ground j, of the Service Appeal it is submitted that letters of the Finance Department Regulation Wing are not applicable in the instant case as appellant has not been appointed on the higher post by the competent authority.
- k. That ground k, of the Service Appeal as composed is incorrect hence, denied and not admitted. Comprehensive reply has already been given in preceding Paras
- l. No comment.
- m. That the respondents seek leave of this Honorable Tribunal to raise additional grounds/points during the course of arguments.

It is, therefore, in the light of above stated facts and circumstances very humbly prayed that the Service Appeal in hand may please be dismissed with cost.


 (Masood Ahmed)
 Secretary
 E&SED Khyber Pakhtunkhwa
 Peshawar
 (Respondent No. 01)


 (Samina Altaf)
 Director
 E&SE Khyber Pakhtunkhwa
 Peshawar
 (Respondent No. 02)

BEFORE THE HONORABLE KHYBER PAKHATUNKHWA SERVICE
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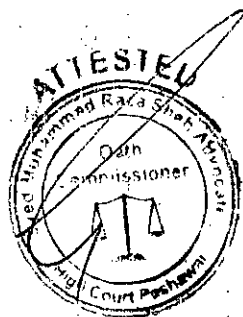
Rafique Javeed.....Appellant

VERSUS

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

AFFIDAVIT

I, Samina Altaf, Director E&SE Department Khyber
Pakhtunkhwa, do hereby solemnly affirm & declare on oath that the contents
of the instant para wise Comments are true & correct to the best of my
knowledge & belief. It is further stated on oath that in this appeal the
answering Respondents have neither been placed Ex-Parte nor their defense
has been struck off/cost.



Samina Altaf
DEPONENT
SAMINA ALTAF
DIRECTOR
E&SE Khyber Pakhtunkhwa
Peshawar

19 APR 2024



07

GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION
DEPARTMENT

NOTIFICATION

Peshawar, dated the 21/09/2023

No.SO(B&A)E&SE/1-18/SSRC/LIBRARIAN 04-TIER/2023. In pursuance of the provisions contained in sub-rule (2) of rule 3 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, the Elementary and Secondary Education Department, in consultation with the Establishment Department and Finance Department, hereby lays down the method of recruitment, qualification and other conditions specified in Column No. 3 to 5 of the Appendix to this Notification, which shall be applicable to the posts in the Librarian Cadre in the Elementary and Secondary Education Department, Khyber Pakhtunkhwa, specified in Column No. 2 of the said Appendix.

APPENDIX

S.No.	Nomenclature of the post.	Qualification.	Age Limit.	Method of recruitment.
1.	2.	3.	4.	5.
1.	Chief Librarian (BPS-20).	---	---	By promotion, on the basis of seniority-cum-fitness, from amongst the holders of the post of Deputy Chief Librarian (BPS-19), with at least seventeen (17) years service in BPS-17 and above.
2.	Deputy Chief Librarian (BPS-19).	---	---	By promotion, on the basis of seniority-cum-fitness, from amongst the holders of the post of Senior Librarian (BPS-18) with at least - (a) seven (07) years service in BPS-18 in case of persons initially appointed in BPS-18; or (b) twelve (12) years service in BPS-17 and above.
3.	Senior Librarian (BPS-18).	(a) Ph.D Degree in the subject of Library and Information Sciences or its equivalent qualification from a recognized University; or (b) M.Phil/MS in the subject of Library	25 to 45 years. (in case of initial recruitment)	(a) Ninety percent (90%) by promotion, on the basis of seniority-cum-fitness, from amongst the holders of the post of Librarian (BPS-17), with at least five years service as such; and (b) Ten percent (10%) by initial recruitment.

S.No.	Nomenclature of the post.	Qualification.	Age Limit.	Method of recruitment.
1.	2.	3.	4.	5.
		<p>and Information Sciences or its equivalent qualification from a recognized University, with at least three (03) years experience as Librarian in a recognized University, College, School, Institute, Regional Professional Development Centre (RPDC), Directorate of Professional Development (DPD) or Directorate of Curriculum and Teachers Education (DCTE); or</p> <p>(c) at least Second Class Master's Degree/BS (four (04) years) Degree in the subject of Library and Information Sciences or its equivalent qualification from a recognized University, with at least five (05) years experience as Librarian in a recognized University, College, School, Institute, Regional Professional Development Centre (RPDC), Directorate of Professional Development (DPD) or Directorate of Curriculum and Teachers Education (DCTE).</p>		
4.	Librarian (BPS-17).	At least Second Class Master's Degree/BS (four (04) years) Degree in the subject of Library and Information Sciences or its equivalent qualification from a recognized University.	21 to 35 years.	By initial recruitment.

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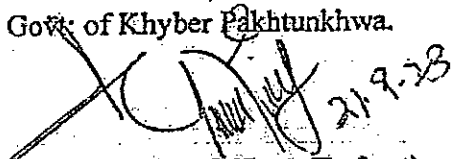
2. On Notification of these rules, the post of Librarian as reflected against Serial No. 6, in the Appendix to this Department's Notification No. SO(S) Service Rules/85/III, dated: 21.01.1987 alongwith all entries thereof, shall stand deleted.

Secretary
Government of Khyber Pakhtunkhwa,
Elementary and Secondary Education Department

Endst of even No. & Date.

Copy is forwarded to:

1. Additional Registrar High Court Abbottabad Bench Abbottabad.
2. Accountant General, Khyber Pakhtunkhwa.
3. Principal Secretary to Governor Khyber Pakhtunkhwa.
4. Principal Secretary to Chief Minister Khyber Pakhtunkhwa.
5. Secretary to Govt of Khyber Pakhtunkhwa, Establishment, Administration, Finance & Law Departments.
6. Special Secretary (Reg) to Govt of Khyber Pakhtunkhwa, Establishment Department.
7. Secretary, Khyber Pakhtunkhwa Public Service Commission Peshawar.
8. PSO to Chief Secretary, Govt of Khyber Pakhtunkhwa.
9. Additional Secretary (R), Govt of Khyber Pakhtunkhwa, Finance Department.
10. Additional Secretary (G), Govt of Khyber Pakhtunkhwa, Law Department.
11. Director E&SE, Director DPD, Director DCTE, Director NMAs Education Khyber Pakhtunkhwa.
12. All Deputy Commissioners in Khyber Pakhtunkhwa.
13. Chief Planning Officer Elementary & Secondary Education Department Khyber Pakhtunkhwa.
14. Director FMIU Finance Department.
- ✓ 15. Director (EMIS) Elementary & Secondary Education Department.
16. The Manger Govt Printing Press Peshawar for publication of the above notified service rules in the Govt gazette.
17. Budget Officer-V & Budget Officer-NMD-II, Finance Department Govt of Khyber Pakhtunkhwa.
18. All District Education Officers in Elementary & Secondary Education Department Khyber Pakhtunkhwa.
19. All District Accounts Officers in Khyber Pakhtunkhwa.
20. All Section Officers in E&S Education Department.
21. Section Officer Cabinet, Administration Department, Govt of Khyber Pakhtunkhwa.
22. Section Officer (Policy), Section Officer (O&M) & Section Officer (Reg-I) Establishment Department.
23. Section Officer Lit-III, E&S Education Department.
24. PSs/PAs to Secretary / Special Secretaries/ Additional Secretaries/ Deputy Secretaries in E&S Edu: Department Govt of Khyber Pakhtunkhwa.
25. Office order file.


Section Officer (Budget)
Elementary & Secondary Education Department
Govt Of Khyber Pakhtunkhwa



**DIRECTORATE ELEMENTARY & SECONDARY EDUCATION
KHYBER PAKHTUNKHWA, PESHAWAR.**

AUTHORITY LETTER

I, Samina Altaf, Director (E&SE) Khyber Pakhtunkhwa Peshawar do hereby authorized Mr. Sohail Ahmad, Litigation Officer in District Education Office Abbottabad for submission of Joint parawise comments in **Service Appeal No. 1136/2023** case titled **Rafiq javeed VS Government of Khyber Pakhtunkhwa & others**, hence, an authority letter is hereby issued in favor of the above-named officer.


(Samina Altaf)
DIRECTOR

E&SE Department Khyber
Pakhtunkhwa, Peshawar