FORM OF ORDER SHEET

Court of____

Appeal No.

947/2024

Order or other proceedings with signature of judge S.No. Date of order proceedings 3 1 05/07/2024 1-The appeal of Mr. Noushad Khan presented today by Mr. M.Muazzam Butt Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on 10.07.2024. Parcha Peshi given to the counsel for the appellant. By the order of Chairman

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BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHUWA Appeal No = 947/2024

Naushad Khan

V/S

Government of KP & others

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О́САТЕ A D V

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHUWA

In Ref to

 $\mathbf{K}(\vec{n})$

Service Appeal No____947 /2024

Naushad Khan Son of Abdul Ghafoor Khan Resident of Tehsil & District Mardan

Designation: Primary School Head Teacher at District Education officer (Male) Takht Bhai Mardan

VERSUS

- 1) Secretary to Government of Khyber Pakhtunkhwa, Establishment Department, Civil Secretariat, Peshawar
- 2) Secretary to Government of Khyber Pakhtunkhwa, Elementary and Secondary Education Department, Civil Secretariat, Peshawar
- 3) Director Elementary and Secondary Education Department

.....Respondents

.....Appellant

SERVICE APPEAL UNDER SECTION 4 OF KPK SERVICE TRIBUNAL ACT 1974, AGAINST THE IMPUGNED NOTIFICATION BEARING NO.SO(POLICY)E&AD/1-312020, DATED 06/08/2020, COMMUNICATED TO RESPONDENT NO. 2 VIDE LETTER DATED 06/06/2023, WHEREIN IT WAS STATED THAT SUB RULE 5 OF RULE 7 OF KHYBER PAKHTUNKHWA CIVIL SERVANTS (APPOINTMENT, PROMOTION AND TRANSFER) RULES, 1989 STANDS DELETED

PRAYER:

1.

ON ACCEPTANCE OF INSTANT SERVICE APPEAL, THE IMPUGNED NOTIFICATION BEARING NO: SO (POLICY) E&AD/1-312020, DATED 06/08/2020, COMMUNICATED TO RESPONDENT NO. 2 VIDE LETTER DATED 06/06/2023, MAY BE DECLARED AND ORDERED TO BE STRUCK DOWN BEING VOID AND ULTRA VIRES TO THE CONSTITUTION OF PAKISTAN AND FUNDAMENTAL PRINCIPLES OF NATURAL JUSTICE AND AGAINST THE RIGHTS OF APPELLANT.

ANY OTHER RELIEF WHICH THIS HONOURABLE TRIBUNAL DEEMS FIT AND PROPER IN THE CIRCUMSTANCES OF THE CASE MAY ALSO BE GRANTED TO THE APPELLANT.

RESPECTFULLY SHEWETH:

That the Respondents Department appointed the Appellant as Primary School Head Teacher.

Copy of Monthly Salary account is annexed as Annexure A

That as per Khyber Pakhtunkhwa (Appointment/ Promotion/ Transfer) Rules, 1989, as well as in other sister services of the other Provinces and Federation as well, availing of promotion by the employees is always optional and the employees as a matter of right may avail or forego their promotion and the next employee in seniority list is to be promoted.

- 2 -

That some employees specifically have foregone their promotion as they could not serve in the areas where there is no facility of accommodation and no houses of their elders are available to look after them in far-flung and solitary mountainous hard areas, and as per Section 25 of per KP Civil Servant Act, 1973, rules to the extent of terms and condition is framed by the Chief Minister and such promotion rules are not made applicable with retrospective effect. The rules framed are published in the Gazette notification and part and parcel of KP Civil Servant Appointment, Transfer and Promotion Rules 1989.

That Government of K.P without following the rules position mentioned in Para 6 above promulgated Notification No. SO (Policy) E&AD/1 3/2020, dated 06/08/2020, communicated to Respondent No.2 vide letter dated 06/06/23 wherein it has been made mandatory to the employees to avail the promotion, otherwise, disciplinary action shall be taken against the employees. The impugned Notification is reproduced as under:-

> "Furthermore, those officers/officials who do not comply with promotion order of the competent authority or try to evade promotion through different means shall be proceeded against under Khyber Pakhtunkhwa Civil Servants (Efficiency Discipline) Rules, 2011, please".

That as per notification No. SD (Policy) /EDAD/1- 3/2020 dated 06/08/2020, the right of foregoing of promotion was withdrawn and the Government of Khyber Pakhtunkhwa Establishment Department (Regulation Wing) deleted Rule 7(5) in the Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 vide notification no SOR-VI (E & AD)/1-2/2020 dated 06-08-2020.

Copy of notification No. SD (Policy) EV AD/1-3/2020 dated 06/08/2020 is attached as <u>Annexure B</u>

That the Directorate of Elementary & Secondary Education Khyber Pakhtunkhwa Peshawai' asked, for guidance regarding deletion of Rule 7(5) in Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 in respect of which the respondent No. 1 vide its letter No. SO(Policy) E&AD/1-3/2020 dated Peshawar the June 06th, 2023 directed the respondent No 3 (Directorate of Elementary & Secondary Education) that Rule 7(5) in the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 has been deleted vide notification dated 06-08-2020 and ,therefore, no provision exists to decline or forgo promotion and it is obligatory upon every civil servant to accept promotion under every condition.

Copy of Impugned Letter dated June 06th, 2023 is attached as Annexure C

7. That thereafter the meeting was also held in the office of Additional Secretary Establishment on 06-07-2023 in which it was decided to examine the case properly and submit a self-contained/ consolidated case for onward submission to the Establishment Department for further necessary action.

Copy of Minutes of Meeting dated 06-07-2023 is attached as <u>Annexure D</u>

8. That the Respondent No.3 i-e. Directorate of Elementary & Secondary Education Khyber Pakhtunkhwa also wrote a letter to the office of Establishment & Administrative Department vide No SO(Primary-M) E&SED/2-2/Appointment

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Rule/2023 dated 23-08-2023 to reconsider the amendment made in Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 as it had negatively affected a large number of teachers and especially female teachers. Copy of Cetter dated 23-08-2023 is attached as <u>Annexure E</u>

That the respondent vide its letter dated 07th of September 2023 directed the Directorate of Elementary & Secondary Education Khyber Pakhtunkhwa that necessary guidance has already been provided to the department and therefore no provision exists to decline or forgo promotion and those teachers who do not comply with the promotion order of the competent authority or try to evade promotion through different means shall be proceeded under the Khyber Pakhtunkhwa Civil Servant (Efficiency & Discipline) Rules, 2011. Copy of Impugned letter dated 07-09-2023 is attached as <u>Annexure F</u>

- 10. That the petitioner feeling aggrieved, filed Representation to the respondents in person, and also approached to respondents through APTA President but the grievances of the appellant have not so far been redressed. Copy of Representation against the said notification is annexed as <u>Annexure G & H</u>
- 11. That feeling aggrieved from the letters dated 06-06-2023 and 07-09-2023 and the deletion of Rule 7(5) in the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989; the petitioners filed this Hence, the instant service appeal is filed on the following grounds:-

GROUNDS:-

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NN 9.

- a. That as per various judgments it is established and settled principle that executive notifications cannot be given retrospective effect. A valid Notification which confers rights is always applicable with prospective effect, however, if an amendment notification that adversely effects the interests of the employees, or causes disadvantage to the employee is not tenable in the eyes of law. The notification/ guidance dated 06/08/2020 06/06/2023 are liable to be set-aside.
- b. That there are no terms and conditions of service mentioned in the appointment order of the appellant wherein, availing of promotion is mandatory. It is further submitted that employees in the past, have foregone their promotion along with their posting. It is submitted that when domestic and other personal issues do not permit the employees/appellant to avail the promotion order and in that case, the employees who foregone their promotion were allowed not to avail the promotion for a period or 04 years and on second refusal the employees were permanently debarred from availing the facility of promotion during their entire service. Hence the employees himself/herself forebear agonies of foregoing their promotions. As a result, junior to the appellant according to the order of seniority cum fitness are granted promotion to next rank.
- c. That as per Civil Servant laws, promotion is a kind of appointment which is always optional to get promotion or not, hence the impugned notification is void, illegal and against the law and the same to the extent of the appellant is liable to be set-aside.
- d. That it is further submitted that on account of grant of promotion, some employees who are suffering from severe medical ailment or facing acute domestic issues cannot avail promotion with transfer in other areas, therefore, no employee can be compelled to accept the promotion compulsorily which is not beneficial to the employee but if an employee does not avail and get benefit of her promotion it must be optional for the employees as to whether to avail or forego the benefits. Any promotion without willingness of employee is illegal and liable to be setaside.

e. That hon-availing of promotion and foregoing thereof does not cause loss to the government exchequer and in consequence of foregoing promotion, pave way to the next employee in seniority, aspiring for promotion could be promoted.

- 4-

f. That the impugned promotion Notification dated 06/08/2020 communicated on 06/06/2023 is perverse, discriminatory, against the law, pungent and is a blunt blow of hammer on the rights of the appellant. It is not out of place to mention here that the appellant are teachers and have to look after their children as well as ailing dependent family members and in these circumstances in the presence of impugned Notification dated 06/08/2023 communicated on 06/06/23 would not be able to serve in the department and which shall amount to the snatching of bread and butter of the poor employees

It is, therefore, humbly prayed that on the acceptance of the instant Service Appeal; the impugned Notification bearing No. SO (POLICY) E&D/1-3 1-2020 DATED 06/08/2020, communicated to Respondent No.2 by Respondent NO.1, vide letter dated 06/06/2023, may please be declared and ordered to be struck down being Void, Ultra vires to the Constitution of Pakistan and against the fundamental principles of natural justice.

It is further prayed that no penal action as proposed and envisaged in letter dated 06/06/2023 may be declared as unlawful, illegal and without having any legal effect.

Any other relief, which this honorable Tribunal deems fit and proper in the circumstances of the case, may also be granted to the appellant.

Through

AFFIDAVIT:

n Is

I Naushad Khan Son of Abdul Ghafoor Khan Resident of Tehsil & District Mardan that the contents of foregoing application are true and correct to the best of my knowledge' and belief and nothing has been concealed therein from this Honourable Court

relati Deponent

Appellant

Muhammad Muazzzam Butt Advocate Supreme Court

Buit

Muhammad Adeel Butt Advocate High Court

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Bassam Ahmad Siddiqui Advocate High Court LL.M- Human Rights

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHUWA

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C.M No_____-P of 2024 In Ref to

Service Appeal No_____/2024

VERSUS

Secretary to Government of Khyber Pakhtunkhwa, & others

APPLICATION FOR SUSPENSION OF IMPUGNED NOTIFICATION BEARING NO. SO (POLICY) E&D/1-3/2020 DATED 06/08/2020, COMMUNICATED TO RESPONDENT NO.2 BY RESPONDENT NO.1, VIDE LETTER DATED 06/06/2023 TILL THE FINAL DISPOSAL OF CASE IN HAND.

Respectfully Submitted:- • ...

- 1. That the instant application may be treated as part and parcel of service appeal of the appellant.
- 2. That the appellant has brought a good prima facie case and balance of convenience also lies in favor of the appellant.
- That there is likelihood success of the appellant in the lis. And if the notification bearing No. So (Policy) E&D/1-3/2020 Dated 06/08/2020, communicated to Respondent No.2 by Respondent No.1, Vide Letter Dated 06/06/2023 is not suspended the appellant would suffer irreparable loss.
- 4. That valuable rights of the appellant is involved in the case.

Deponent

In view of the reasons, it is humbly requested that the notification bearing No. So (Policy) E&D/1-3/2020 dated 06/08/2020, communicated to Respondent No.2 by Respondent No.1, Vide Letter Dated 06/06/2023 may kindly be suspended till the final disposal of the main appeal in hand.

AFFIDAVIT:

I (appellant) do hereby solemnly stated on oath that the contents of foregoing application are true and correct to the best of my knowledge and belief and nothing has been concealed therein from this Honourable Court

Through

Appellant

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Muhammad Muazzzam Butt Advocate Supreme Court

Muhammad Adeel Butt Advocate High Court

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GOVERNMENT OF KHYBER PAKHTUNKHWA ESTABLISHMENT DEPARTMENT (REGULATION WING)

NOTIFICATION

Dated Peshawar the, 06/08/2020

In exercise of the powers conferred by section 26 of the Pakhtunkhwa Civil Servants Act, 1973(Khyber Pakhtunkhwa Act No XVIII) the chief Minister of Khyber Pakhtunkhwa is pleased to direct that in the Khyber Pakhtunkhwa Civil Servants (Appointment Promotion and Transfer) Rules 1989, the following further amendment shall be made, namely:

AMENDMENT

In rule 7, sub-ruler (5) shall be deleted.

CHIEF SECRETARY

5

GOVERNMENT OF THE KHYBER PAKHTUNKHWA

(ANDS): & EVEN DATE

Copy is forwarded to :-

- 1. Additional Chief Secretary, Govt of Khyber Pakhtunkhwa. Planning & Development Department)
- 2. The Senior Member Board of Revenue, Khyber Pakhtunkhwa.
- 3. All Administrative Secretaries to Govt of Khyber Pakhtunkhwa.
- 4. The Principal Secretary to Governor, Khyber Pakhtunkhwa.
- 5. The Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
- 6. All Divisional Commissioners in Khyber Pakhtunkhwa.
- 7. All Heads of Attached Departments in Khyber Pakhtunkhwa.
- 8. All Autonomous/Semi Autonomous Bodies in Khyber Pakhtunkhwa.
- 9. All Deputy Commissioners in Khyber Pakhtunkhwa.
- 10. The Registrar, Peshawar High Court, Peshawar.
- 11. The Registrar, Khyber Pakhtunkhwa Service Tribunal, Peshawar
- 12. The Secretary, Khyber Pakhtunkhwa Public Service Commission, Peshawar.
- 13. The Deputy Director (IT), E&A Department.

14. All Section Officers in Establishment & Administration, Department.

- 15. The Section Officer (Admin), Administration Department with the request to arrange 20 gazette copies.
- 16. The Caretaker, Administration Department.

(WARDAH LATIF) DEPUTY SECRETARY (POLICY)

GOVERNMENT OF KHYDER PARTTUNKHWA

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The Oovernment of Kligher Pakhundhwa, Hiemeninty & Secondary Renewion Department

Subjecti

IDANCE REGAUDING DELETION OF RULE 715) IN THE YDER PARTUNICIWA GIVIL NERVANTS (APPOINTMENT, OMOTION AND TRANSFERR BULES, 1989, <u>OUIDANCE</u>

ESTABLISHMENT DEPARTMENT

Nn. SO[l'oll=y)[[&AD/]+3/2020 Daled Pealinwar flip June 06, 2023

I am directed in Jeier to Jour letter No. SO(Primary-M)/Telestill/2-2/Appaintment/2023 dated 18.04.2023 on the subject noted above and to stole that Sub-Role Dear Sit. (5) of Rule-7 of Knyber Pakhtunking Civil Scivints (Appointment, Promotion and Transfer) andilles, 1989 stands deleted vivo tills department notification duted 06.08.2020; thus, no provisión axists lo decline or fargo promailen.

The basic reliance whind the deletion of the told rule is almost at preventing a civil servent from temptation for Mich gain by sucking to a single lucretive post/position or to prevent those who tend to forge promotion in evole posting/transfer or show tack of especity to tackle higher responsibilities in case of promotion. Therefore, it is obligatory upon every civil servent to accept promotion in every condition.

Furthermore, those officers/afficials who do not comply with promotion prior of the competent authority or try to evade promotion through different means shall be proceeded agalast under Klyber Pakhmakium Civil Servents (Efficiency & Discipline) Rules,

2011, please.

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Yours followilly, 4 mand Khan) fficer (Polley)

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Copy forwarded to that-

1. PS to Special Secretary (Reg.); Establishment Department. 2. PA to Additional Secretary (Reg.)), Establishment Department. 3. FS to Doputy Secretary (Policy), Establishment Department.

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WP4447-2023 AZIZULLAH VS GOVT OF PG43

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*1*0, The Government of Khyber Pakhtunkhwa, Elementary & Becondary Education Department. SUBJECT : GUIDAINCE REGARDING DELETION OF RULE 7(5) IN THE KHYBER PARHTUNKHINA CIVIL SERVIQNIE APPOINTMENT, PROMOTION AND TRAINSFER) RULES 1989.

-/0-

BC

Dear Bir, Jam directed to refer to your letter NO. 20 (Primary M) / EEpBED/2 - 2/Appointment /2023 dated 18.04.2023 on the subject noted above and to state that SUB- Rule (5) of Rule - 7 of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Tranifor) Rules, 1989 stands deleted vide this department notification dated 06.08.2020; thus, no provision exists to decline or forgo promotion.

The basic rationale behind the deletion of the ibid nale is aimed to preventing a civil servant from temptation for illicit gain by sticking to a single Luciative post/position or to prevent those who tend to forgo promotion to evade parting/transfer on thow Tack of capacity to tackle higher responsibilities, in cuse of promotion. Therefore, it il obligatory upon every civil servant to accept promotion In every condition.

Faithermore, those officers / officials who do not comply with promotion order of the competent authority of try to evade peromotion through different means shall be proceeded against under Khyber Pakhtunkhwa civil Servants (Efficiency: E, Discipline) Rules, 2011, please. WP4442-2023 AZIZULLAH VS BOVT OF PG43

Yours faithfully, (Issa Muhammad Khan) dection officer (Policy)

- B/C-

- Endst. Of even No Ep date
- Copy forwarded to the :-
- 1. PS to Special Secretory (Reg), Establishment
- Pepartment.
- 2- PA to Additional Secretory (Reg-II) Ectublishment pepartment.

-11-

- 3. Pd to Deputy Secretary (Bling), Establishment
 - Department.

Section Officer (Policy)

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-overnment of Mmyber Parmtunkhwa ELEMENTARY AND SECONDARY EDUCATION DEPARTMENT CIMIL SECRETARIAT PESHAWAR (Phone No.091-9223587)

No.SO (Primary-M)/E&SED/2-5/2023 Dated Peshawar Ibc. June 25",2023

361613

The Director Elementary & Secondary Education Department Khyber Pakhlunkhwa, Peshawar.

Aziz Ullah Khan President All Primary Teacher's Association, KP

Subject:

Τo

t: <u>GUIDANCE REGARDING DELETION OF RULE 7(5) IN THE KHYBER</u> <u>PAKHTUNKHWA CIVIL SERVANTS (APPOINTMENT, PROMOTION</u> AND TRANSFER) RULES, 1989.

a letter of Establishment Department letter No. SO (Policy)E&AD/1-3/2020 dated 06 June, 2023 and to state that the subject meeting is to be held on 06 July, 2023 at 11:00 AM in this department under the Chakmanship of Additional Secretary (Estab) E&SE Department in his office.

2. You are, therefore, requested to depute a representative of your respective Department to attend the meeting on a date, time & venue as mentioned above, please.

Encl: AA

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(MUHAMMAD ISHAQ) SECTION OFFICER (PRIMARY MALE)

Copy forwarded to line:

1. PS to Secretary, E&SE Department Khyber Pakhlunkhwa.

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SECTION OFFI

WP4442-2023 AZIZULLAH VS GOVT OF PG43

No SG (Primary-M)/E&SED/2-6/2023 Dated Peshawar the June 25th 2023

То

The Director

- Elementary & Secondary Education Department Khyber Palditunkhwa, Peshawar
- Aziz Ullah Khan Prasident President
- All Primary Teacher's Association, KP

Subject:

GUIDANCE REGARDING DELETION OF RULE 7(5) IN THE KHYBER PAKHTUNKHWA CIVIL SERVANTS (APPOINTMENT, PROMOTION AND TRANSFER) RULES, 1989.

I am directed to refer to the subject noted above and to enclose here with a letter of Establishment Department letter No. SO (Policy)E&AD/1-3/2020 dated 06 June, 2023 and to state that the subject meeting is to be held on 06 July, 2023 at 11:00 AM in this department under the Chairmanship of Additional Secretary (Estab) E&SE Department in his office.

2. You are, therefore, requested to depute a representative of your respective Department to attend the meeting on a date, time & venue as mentioned above, please,

EnclaAA

(MUHAMMAD ISHAQ) SECTION OFFICER (PRIMARY MALE)

Copy forwarded to the:

1. PS to Secretary, E&SE Department Khyber Pakhtunkinwa.

SECTION OFFICER (PRIMARY MALE)

WP4442-2023 AZIZULLAH VS GOVT CF PG43

MINUTES OF THE MEETING REGARDING APPLICATION SUBMITTED BY MR. AZIZ ULLAH PROVINCIAL PRESIDENT ALL PRIMARY TEACHERS ASSOCIATION KHYBER PAKHTUNKHWA REGARDING OF DELETION OF RULE 7(5) IN THE CIVIL SERVANT (APPOINTMENT, PROMOTION & TRANSFER RULES 1989).

A meeting regording the subject matter was held on 06-07-2023 of 11:00 AM under the Chairmonship of Additional Secretary Establishment in his office. The following attended the meeting.

5

5#	NAME	DESIGNATION		
1	i Mr. Fazal Wahld	Deputy Director Establishment of Otrectorate Elementory & Secondary Education Department		
2	Mr. Aziz Ullah	Provincial President All Primary Teachers Association Khyber Pakhlunkhwa		
3	Mr. Ralagal Ullah	General Secretary APTA Peshawar		
4	Muhammad Ishoq	Section Officer (Primary) E&SE Department Civil Secretariot Khyber Pakhtunkhwa Peshawar		

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2. The meeting started with recitation from the Holy Quran. The chair welcomed the participants. The Deputy Director (Establishment) of Directorate of Elementary 2 Secondary Education briefed the forum regarding agenda item in detail.

3. After threadbare discussion if was decided that Directorate of Elementary 2 Secondary Education Department may examine the case properly and submit a self-contained/consolidated case for anward submission to Establishment Department for further necessary action.

The meeting ended with a vole of thanks from the Chair.

(Ar JAniz Ullah) (Mr. Fazal Wahld) Provincial President Deputy Director-KII Frimory Teachers Association E2SE Depariment Khyper Pakhlunkhiwa (Muhammad Ishaq) (Mr. Relagat Uligh) Section Officer (Primary-Male) General Secretary APTA E&SE/Deportment Peshowor (Abdullah) Addillonal Secretary (Establishmoni) E&SE Department

WP4442-2023 AZIZULLAH VS GOVT CF PG43

MINUTES OF THE MEETING REGARDING APPLICATION SUBMITTED BY MR AZIZ ULLAH PROVINCIAL PRESIDENT ALL PRIMARY TEACHERS ASSOCIATION KHYBER PAKHTUNKHWA REGARDING OF DELETION OF RULE 7(5) IN THE CIVIL SERVANT (APPOINTMENT, PROMOTION & TRANSFER RULES 1989).

A meeting regarding the subject matter was held on 06-07-2023 at 11:00 AM under the Chairmanship of Additional Secretary Establishment in his office. The following attended the meeting

5//	NAME	DESIGNATION
1.	Mr. Fazal Wahid	Deputy Director Establishment of Directorate Elementary & Secondary Education Department
. 2.	Mr. Azlz Ullah	Provincial President All Psimary Teachers Association: Khyber Pakhtunkhwa
Э.	Mr. Rafaqat Ullah	General Secretary APTA Peshawar
4	Muhammad Ishaq	Section Officer (Primary) E&SE Department Civil Secretarial Khyber Pakhtunkhwa Peshawar

2. The meeting started with recitation from The Holy Quran. The chair welcomed the participants. The Deputy Director (Establishment) of Directorate of Elementary & Secondary Education briefed the forum regarding agenda item in detail.

3. After threadbare discussion it was decided that Directorate of Elementary & Secondary Education Department may examine the case properly and submit & self-contained/consolidated case for onward submission to Establishment Department for further necessary action.

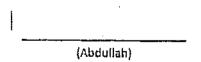
The meeting ended with a vote of thanks from the Chair.

(Mr. Fazal Wahld) Deputy Director-1 E&SE Department

Provincial President All Primary Teachers Association Khyber Pakhtunkhwa

(Mr. Rafaqat Ullah) General Secretary APTA Peshawar

(Muhammad Ishaq) Section Officer (Primary-Male) E&SE Department



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APRILIAN SASEREARY (FARAPIER PRAD)

-16 Khyber Pakhtunkhwa, Peshawar /F.No. 34/SST/M/General Cases Doled 2-1 - 2023 Phone: 091-9225344 Email: establsilimentmale1@graff.com $T\sigma$ The Section O∬icer (Primary-Mulc), Elementary & Secondary Education Department, Kliyber Pakhtunkhwa Peshawar., Subject: -MINUTES OF THE MEETING Dear Sir, 1 am directed to refer to the latter No.SO(Primary-M)E&SED/5-17 G.Mixe/Minutes of the Meeting/PST/2023 dated 10-07-2023 on the subject clied above and in present hrief history about the background of the case as under: That Government of Kleyber Pakhtunkhwa Establishment Department (Regulation Wing) deleted Rule 7(5) in the Civil Servants (Appalatment, promotion & Transfer Rules 1989) vide notification No. No. SOR-VI (E&AD)/1-3/2020 dated 06-08-2020. That this office sought guidance from your good office in the following words vide letter No.6987 dated 06-02-2023. Now it is abligatory upon the civil servant to accept Promotion in every condition. *a*} (ii) It is the prerogative of the civil servent to either accept or turn down the affer of promotion. That youn good office forwarded the same to the quarter concerned vide letter No.5() (Primary-M) E&SED/2-2/Appointment/2023 for necessary guidance. That the Government of Khyber Pokhtunkhwa Establishment Department (Regulation Wing) vide letter No.SO (Policy) E&AD/1-3/2020 doted 6-06-2023 categorically stated that there exists no provision to decline or forgo promotion. It is obligatory upon every civil servant to occupt promotion under every condition. The same was received by this office from your good office vide letter No.SO (Primary-M) E&SED/2-2/Appainiment/2023 dated 12-06-2023. That, in the fight of the admites of meeting dated 6-07-2023, held under she Chairmanship of Hon, Additional Secretary Establishment at his office this office has heen asked for submission of consolidated ense. In view of the above, this office is af considered apinion that the deletion of Rules 7(5) have offected degotively a large minihers of Female Teachers. Thus it is proposed that Teachers helaw BPS-16 may be exempted of implications of the amendment in the rules lbid pravided they submit their written refusal prior to conduction of the meeting of Departmental Promotion Committee. The case is submitted for perusal and necessary actions please. Æ 2013 Assisting Direlfor (Estab M-I) mentary & Secondary Education Khyber Pakhminkhwa Éndst: No Capy of the abave is lot-

PA to Director Local Directorale.
Master Capy.

4442-2023 AZIZULLAH VS GOVT OF PG43

Assistant Director (Estabil-1) Elementary & Secondary Education Klyber Pakhtunkhwa

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DIRECTORATE 위 ELEMENTARY & SECONDARY. EDUZATION, KAPK (Eret-1-12)

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Section Officer (Rimary Male). Elementary & Secondary Education Departmond. 14912, Peshawar.

Subject . Minutes of Meeting

Drai Sir; 3 am diverted Minutes of meeting 1/37/2022 dated 10-7-2023 on subject ater history, about to refer background to Letter No. (So Rimon -M) E & SED /S-1/G. Mile oiled above 620 ب ن

: That delated rule 7(5) Cloven mand of in Civil Servents (Appintment, pomotion of Timufor £ SDR-VI(ESAD)1-3/2020 dated Japad of crux us uncern Establishmand depentment (Regulation Wing) Establishmand depentment (Regulation Wing) 06-08-2020.

Note with goting No. 140. . That this office sought y That this office sought y The از سالان ÷, yetekilde 90 particle 2865 lithed ob-our normality, lithour and seawant to accept providentian. your good office in the following

Male Letter No. S (ii) Strig prevegative of civil of fey yood office forwarded the came to questes No. So (Minory-M) EGSED/2-2/Applintment-(2023 Ρ. pomotion. Scavard to either accept/turndown the concerned

ĝ EGAD 1-3/2020 dated That the government of provision to decline forge monution. a)Napule 6-06-7013 KP-ED (Regulation Wing) vide letter No. SO (Policy) ecitermicaal Huppingers i tra Stated 1727 theore for necessary 2

Semant to accept held That in Dight വവ്മം 놂 15 -fr Portion of minutes of under enry condition f the meding duted 6-27-2023 upon every divil

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High members 1l-u сђ, deletion មាស សា Female "reachers Rules the abave Howe, This y office is maganialy `-20 considered Ω huge opinin

please T Z (ale 不' SUbmitted \$0 periol and hecessary action

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14442-2023 AZIZULLAH VS GOVT OF PGA:

ELEMENTARY AND SECONDARY EDUCATION DEPARTMENT CIVIL SECRETARIAT PESHAWAR (Phone No.091-9223587)

> No. SO(Primary-M)E&SED/2-2/Appointment-Rule /2023 Peshawar Dated 23rd August, 2023

The Becristary to Govl. of Khyber Pakhlunkhwa, Establishment & Administration Department, Peshawar

-18.

SUBJECT: - GUIDANCE REGARDING DELETION OF RULE 7(5) IN THE CIVIL SERVANT (APPOINTMENT, PRPMOTION & TRANSFER RULES 1989).

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1 am directed to refer to your letter No. 50(Policy)/ E&AD/ 1-3/2020 dated 567 June 2023 and to state that after deletion of rule 7(5) Khyber Pakhtunkhwa Civil Servare (Appiontment, Promotion & Transfer Rules 1989) It has been intimated that those officers/ officials who do not comply with promotion order of the competent authority or by to evade promotion through different means shall be proceed under Khyber Petrizunkinwa Civil Servant (Efficiency & Discipline) Rules, 2011.

2 In this connection it is submitted that in some cases lady teacher of primary level who avail such promotions have to face serious inconvience while they have to perform ducies in the remotest station with no residential or transport facility. Most of them are married with kids and elder father of mother-in-law who need care. In such cases, there are negative effects on service delivery.

3. In view of the above, the said amendment may be reconsidered to the " restant of lady teacher in primary schools.

WP4442-2023 AZIZULLAH VS GOVT OF PG43

SECTION OFFICER TPRIMARY HALE

MUHAMMAD ISHAK

SECTION OFFICER

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Copy forwarded to the: 1. Director E&SE Khyber Pakhtunkhwa. Z. / PS to Secretary, ERSE Department Knyber Pakhtunkhwa.

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- 21 catter of locat post post of the product ant in view of above, the sould ammendment may be reconsidered to effects on service delivery. Matter in fall who need age in such case there are regative Most of them are manied with bills and elder father of istudioof teapenert / sinchestices on itter cretters tratemer ant ni satub molecie de such that which some to proform duttes of avoir restament hous avoir and level who avoir framming for salaret In this connection it is submitted that in some cases lady (In' servort (Efficiency and Discipline) Rule 2011. different means shall be proceed under Khyber Pakhtunkhun Aquant nortement shows at but to princitly a tradegroup with to those officers officials who do not comply with promption order tant lastamitri resid var -12 (P8P1 relianor) and rationary deletion of Rule 7(S) Khyber Richtuncheus Civil Serverit (Apprintens) with with state of long sceranutible potode aros (E-E)

Decor Sir, 9 am directed to refer to your letter No. Solicity) IEGAD

Peshawern. SUBJECT: Quidance regonding deletion of Rule 7(S) in the QVI Servant (Appointment, Romation & Transfer Rules

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The secretary to commant of Khybeo Rikhlunbhuer.

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GOVERNMENT OF KHYBER PAKHTUNKHWA ESTABLISHMENT DEPARTMENT No. SO(Policy)E&AD/1-3/2020 Dated Peshawar the September 07, 2023

The Secretary to Government of Khyber Pakhtunkhwa, Elementary & Secondary Education Department. GUIDANCE REGARDING DELETION OF RULE 7(5) IN THE

Subject: -

Dear Sir,

KHYBER PAKHTUNKHWA CIVIL SERVANTS (APPOINTMENT, PROMOTION AND TRANSFER) RULES, 1989. I am directed to refer to your letter No. SO(Primary-M)/E&SED/2-

Yours faithfully,

Section

ber (Policy)

2/Appointment-Rule/2023 dated 23.08.2023 on the subject noted above and to state that necessary guidance has already been tendered to your good office vide this department letter of

even-No. dated 06.06.2023 (copy enclosed).___

Endst. Of even No & date

Copy forwarded to the:-

- 1. PS to Special Secretary (Reg), Establishment Department. PA to Additional Secretary (Reg-II). Establishment Department.
- PS to Deputy Secretary (Policy), Establishment Department.

GOVERNMENT OF KHYBER PAKHTUNKHWA ESTABLISHMENT DEPARTMENT No. SO(Policy)E&AD/1-3/2020 Dated Peshawa: the September 07, 2023

The Secretary to Government of Khyber Palchtunkhwa, Elementary & Secondary Education Department.

Subject: - GUIDANCE REGARDING DELETION OF RULE 7(5) IN THE KHYBER PAKHTUNKHWA CIVIL SERVANTS (APPOINTMENT, PROMOTION AND TRANSFER) RULES, 1989.

Dear Slr. 💡

To

I am directed to refer to your letter No. SO(Primary-M)/E&SED/2- 2/Appointment-Rule/2023 dated 23.08.2023 on the subject noted above and to state that necessary guidance has already been tendered to your good office vide this department letter of even No. dated 06.06.2023 (copy enclosed).

WP4442-2023 AZIZULLAH VS GOVT CF PG43

Yours faithfully,

Section Officer (Policy)

Endst, Of even No 12 date

Copy forwarded to the:-

PS to Special Secretary (Reg), Establishment Department.
PA to Additional Secretary (Reg-II), Establishment Department.
PS to Deputy Secretary (Policy), Establishment Department.

Section nicer (Policy)

1) Secretary to Government of Khyber Pakhtunkhwa, Establishment Department, Civil Secretariat, Peshawar

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- 2) Secretary to Government of Khyber Pakhtunkhwa, Elementary and Secondary Education Department, Civil Secretariat, Peshawar
- 3) Director Elementary and Secondary Education Department

REPRESENTATION AGAINST. THE IMPUGNED NOTIFICATION BEARING NO.SO(POLK_)E_AD/1-312020, DATED 06/08/2020, COMMUNICATED TO SECRETARY TO GOVERNMENT OF KHYBER PAKHTUNKHWA, ELEMENTARY & SECONDARY EDUCATION DEPARTMENT VIDE LETTER D06/06/2023, WHEREIN IT WAS STATED THAT SUB RULE 5 OF RULE 7 OF KHYBER PAKHTUNKHWA CIVIL SERVANTS (APPOINTMENT, PROMOTION AND TRANSFER) RULES, 1989 STANDS DELETED

Sir/ Madam:-

To,

Your Honorable authority promulgated Notification No. SO (Policy) E&AD/1 3/2020, dated 06/08/2020, communicated to Elementary & Secondary Education vide letter dated 06/06/23 wherein it has been made mandatory to the employees to avail the promotion, otherwise, disciplinary action shall be taken against the employees. That, as per notification No. SD (Policy) /EDAD/1- 3/2020 dated 06/08/2020, the right of foregoing of promotion was withdrawn and the Government of Khyber Pakhtunkhwa Establishment Department (Regulation Wing) deleted Rule 7(5) in the Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 vide notification no SOR-VI (E & AD)/1-2/2020 dated 06-08-2020. That the Directorate of Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar asked for guidance regarding deletion of Rule 7(5) in Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 in respect of which the Establishment Department vide its letter No. SO.(Policy) E&AD/1- 3/2020 dated Peshawar the June 06th, 2023 directed the Directorate of Elementary & Secondary Education that Rule 7(5) in the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 has been deleted vide notification dated 06-08-2020 and ,therefore, no provision exists to decline or forgo promotion and it is obligatory upon every civil servant to accept promotion under every condition. That Directorate of Elementary & Secondary Education Khyber Pakhtunkhwa also wrote a letter to the office of Establishment & Administrative Department vide No SO(Primary-M) E&SED/2-2/Appointment Rule/2023 dated 23-08-2023 to reconsider the amendment made in Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 as it had negatively affected a large number of teachers and especially female teachers. In the meanwhile, the department vide its letter dated 07th of September 2023 directed the Directorate of Elementary & Secondary Education Khyber Pakhtunkhwa that necessary guidance has already been provided to the department and therefore no provision exists to decline or forgo promotion and those teachers who do not comply with the promotion order of the competent authority or try to evade promotion through different means shall be proceeded under the Khyber Pakhtunkhwa Civil Servant (Efficiency & Discipline) Rules, 2011.

It is, therefore, humbly prayed that on the acceptance of the instant representation; the Notification bearing No. SO (POLICY) E&D/1-3 1-2020 DATED 06/08/2020, communicated to vide letter dated 06/06/2023, may please be declared and ordered to be struck down being Void, Ultra vires to the Constitution of Pakistan.

Best Regards

Abustakin

Naushad Khan Son of Abdul Ghafoor Khan Resident of Tehsil & District Mardan

-23-Khyber Pakhtunkhwa Verz Otlah Khau apra Prosidant APTA House: Govt. Primpry School No.4, Gulbahar Postawar City, 0 0333404 LAAAR oxizulah1970@genall.com ox apin%plt . . آل پراتمری کیچرز ایسوی ایشن (ایٹا) خیبر پختو تخوا بماني : ميكرلول المنتوى مد سيكندوى المبو تميش فيبر يتغونوا مبالب اكل يراتموكما ليجدد الدى التن فيريخونها جات بال كزادش ب كم برو وشخر بر ادارت ش وت عد او كم مركارى اادم ك شراش اول ب بردموشر كا ذيك تافرن دراكر تا تداكر بر طاوم الك وكركى بجود کے تحت ایک دلد پردمو منز در لی تود دی استده باد سال تک پردم منز میں اے تک حق مطلب باد سال تک پر اس ک پردم منز میں ادعن من محر ای تالون عمد توال دعايت دكامك جاد سال دال بات متم كر وى ك مد اكر ايك خادم ايك مال يرو موثن تد لين و دود مرد مرال ف مكاب ال ما وی من طوری مراجعہ او من میں وہ جات میں من من مند مرد میں ماد ہوا ہیں من پرد و من سر من و دور او سر سر میں سے س لیکن اب ایک اور الم مرد موض خرار کی سے اگر مکن کیں کے 9 میں سے خلاف الی بند لول دولا کے مطابق کا دوالی کرنے کا کہ کیا ہے دراصل یہ اور الملکین بلادی المال حول کی محل طالب دروی ہے سور یک اور مداد اور چاول طالق من خاص کر خوا تمکن اسالاء کو انتخاب کا مامنا کرنا پڑے کا جکمہ حام مالات بن می ذہروت پردموش ادر وردوال بعینا می بناول السانی متول کی نداف وروک ب کوک فير بخو تو المل بد تستی سے فاعدال و شمان می الل ب ايس مالات عن به ظالم العيش جر E&SE ك كانيكس فيزك جراب عن كيا كيا ب جرب شك ادر بدادتى المال "ول ك المال - ج الم ال 2 ملاف الول وادا يول كا ال الى محفوظ وكم ال بدائم آب بے مدراند اول کرتے وں کہ کو لولیمیش کو داہی لیا جات یا ای ش تر مم ارک پر امرک ایماند، کر (Relaxation) ویا جات ادر ان کو ورد من دوموش لي كا بملك ان ارم من ب لي وا ماسة اور پرومشن مديلين كى سودستا ندر، بالالد، بالد كما خاس الكن يه (بروكى مدكى جات اس سلسل بن آب جلد از بلد تمام (DEOs) الا الاكر ايك فمومى مراحله بادى كيا جات جاك امنان من ب ميل /لييل براترك اماتده كوذان المت الد نادج ك م علياً ماسك كوك فوليكيش بادك ادب علا براتمرك المائذ كودين طوير الدج كرب كاسلند شردرا الافكاب بدائم براتن وعمة على كر آب ساحان لودى اليمن لكر مور جر مح واترى امات، فسوسا ليول واترى اماتد، كو اى دائق الديت ب عبات دالك ب شكريس . مزيزالله خالنا سوباتي سدر آل پرائمری کیچرز ایسوی ایش نیبر پخوننوا WP4442-2023 AZIZULLAH VS GOVT OF PG43

07.05.2024

1. Learned counsel for the appellant present.

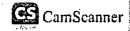
-24

2. Let a pre-admission notice be issued to the respondents through TCS for submission of reply/comments. Appellant is directed to deposit TCS expenses within three days. To come up for reply/comments as well as preliminary hearing on 10.06.2024 before S.B. P.P given to learned counsel for the appellant.

03. Alongwith the service appeal there is an application for suspension of Notification dated 06.06.2023 and letter dated 23.08.2023 till the final disposal of main service appeal. In the meanwhile, no adverse action shall be taken against the appellant till next date of hearing.

Certified to be the copy(Muhammad Akbar Khan) // Member (E)

Date of Processistics of Acalization 10-12 Number 1'er Total Nom2141+ 13 (pagoff you go Date of Lieffy



NAKALAT NAMA

-25-

BEFORE THE SERVICE TRIBUNAL PESHAWAR

Versus

Appellant

Government of KP & others

Respondents

" . I (the Appellant)

do hereby appoint and retain

MUHAMMAD MUAZZAM BUTT ASC. MUHAMMAD ADEEL BUTT AHC BASSAM AHMAD SIDDIQUI AHC &

ASSOCIATES OF MUAZZAM LAW FIRM

to act and appear for me in the above Suit and on my behalf to conduct and prosecute (or defend) the same and all proceedings that may be taken in respect of any petition connected with the same or any decree or order passed therein and Applications for review to file and obtain return of documents, and to represent me/us and to take all necessary steps on my/our behalf in the above matter.

l agree to ratify all acts done by the aforesaid Advocate in pursuance of this Authority.

APPELLANT

ACCEPTED

But

MUHAMMAD MUAZZAM BUTT Advocate Supreme Court

MUHAMMAD ADEEL BUTT Advocate High Court

BASSAM AHMAD SIDDIQUI Advocate High Court