

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR CAMP COURT ABBOTTABAD.

Service Appeal No. 469/2024

Muhammad IlyasAppellant

VERSUS


Govt of Khyber Pakhtunkhwa through Chief Secretary, Peshawar.....Respondent

Parawise Comments on behalf of Respondents No. 01 to 04

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Dated: ___/08/2024


(Iftikhar Ul Ghani)
District Education Officer (M)
Abbottabad
(Respondent No. 04)

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
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Respectfully Sheweth:

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

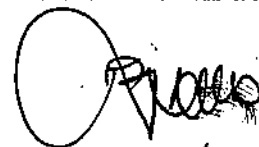
PRELIMINARY OBJECTIONS:-

1. That the appellant has no cause of action to file the instant service appeal.
2. **That appellant in his first round of litigation filed Writ Petition No. 801-A/2023 before Hon'ble Peshawar High Court Abbottabad Bench and impugned the same transfer order dated 09-05-2023 and Honorable Court converted the Writ Petition into Departmental Appeal filed before Chief Secretary Khyber Pakhtunkhwa Peshawar for consideration. Worthy Chief Secretary, Khyber Pakhtunkhwa being appellate authority dismissed the departmental appeal of the appellant vide order No. SO(SM)E&SED/7-1/2023/Muhammad Ilyas dated 24-01-2024 and appellant badly failed to challenge this Notification before this Honorable Tribunal. Hence, instant appeal is not maintainable and liable to be dismissed on this score alone.**
3. That appellant did not prefer any appeal to Department Authority, rather directly approached Honorable High Court regarding cancellation of his



transfer order which is contrary to the provision of Section-3 of Khyber Pakhtunkhwa Civil Servants Appeal Rules 1986.

4. That as per Section 10 of Civil Servant Act 1973, 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 any local authority or a corporation or body set up or established by any such Government. Hence, it is not vested right of Civil Servant to get posting of his choice.
5. That the appellant has no locus standi to file the instant service appeal.
6. That the appellant did not come to this Honorable Tribunal with clean hands hence, not entitled for any relief.
7. That the instant service appeal is not maintainable in its present form and also hopelessly time barred.
8. That the appellant concealed and distorted the material facts from this Honorable Tribunal.
9. That the instant service appeal has been filed just to pressurize the respondents.
10. That order dated 09-05-2023 issued by the competent authority as well as in best interest of the public service hence, same is liable to be maintained and order dated 24-01-2024 has not been challenged by the appellant and is still in field and attained its finality.
11. That the instant service appeal is liable to be dismissed due to non-joinder & mis-joinder of necessary parties.
12. That Posting/ Transfer is an exclusive domain of the executive and competent authority is fully empowered to transfer a civil servant anywhere according to the exigency of service. This Honorable Tribunal dismissed the identical nature Service Appeal No. 345/2024 titled Muhammad Ayaz Vs



Director E&SE & others dated 04-06-2024. Hence, instant Service Appeal is also liable to be dismissed accordingly.

Factual Objections:-

1. That Para No. 01, of the instant service appeal relates to record.
2. That Para No. 02, of the instant service appeal relates to record.
3. That the Para No. 03, of the instant service appeal as composed is incorrect hence, denied. As per Section 10 of Civil Servant Act 1973, 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 any local authority or a corporation or body set up or established by any such Government. Hence, it is not vested right of Civil Servant to get posting of his choice. Moreover, appellant has already complied with the transfer order dated 09-05-2023 and took over the charge on 05-12-2023. (Copy of Charge Report is annexed as Annexure "A")
4. That Para No. 4, of the service appeal is correct.
5. That Para No. 5, of the service appeal is correct to the extent of filing of COC and disposal while rest of the Para as composed is incorrect hence, denied as the direction of the Honorable High Court dated 14-06-2023 has been implemented in its true letter and spirit. The departmental appeal of the appellant has been dismissed by the Worthy Chief Secretary Khyber Pakhtunkhwa being appellate authority vide order No. SO(SM)E&SED/7-1/2023/Muhammad Ilyas dated 24-01-2024 and **copy of the same has been intimated** to appellant but he badly failed to challenge this Notification before this Honorable Tribunal. Hence, instant appeal is not maintainable and liable to be dismissed on this score alone. (Copy of order No. SO(SM)E&SED/7-1/2023/Muhammad. Ilyas dated 24-01-2024 is annexed as Annexure "B")
6. That Para No. 06 of the instant appeal as composed is incorrect hence, denied. Appellant did not prefer any appeal to Department Authority



rather directly approached Honorable High Court regarding cancellation of his transfer order which is contrary to the provision of Section-3 of Khyber Pakhtunkhwa Civil Servants Appeal Rules 1986. However, Honorable Court converted the Writ Petition into Departmental Appeal filed before Chief Secretary Khyber Pakhtunkhwa Peshawar for consideration. Worthy Chief Secretary, Khyber Pakhtunkhwa being appellate authority dismissed the departmental appeal of the appellant vide order No. SO(SM)E&SED/7-1/2023/Muhammad Ilyas dated 24-01-2024 and appellant badly failed to challenge this Notification before this Honorable Tribunal. Hence, instant appeal is not maintainable and liable to be dismissed on this score alone.

GROUND:-

- a. **denied and not admitted.** Posting/ Transfer is an exclusive domain of the executive and competent authority is fully empowered to transfer a civil servant anywhere according to the exigency of service. This Honorable Tribunal dismissed the identical nature Service Appeal No. 345/2024 titled Muhammad Ayaz Vs Director E&SE & others dated 04-06-2024. Hence, instant Service Appeal is also liable to be dismissed accordingly.
- b. **denied and not admitted.**
- c. **denied and not admitted.** Comprehensive reply has been given in preceding paras.
- d. **denied and not admitted.** Comprehensive reply has been given in preceding paras.
- e. **denied and not admitted** instant service appeal is not maintainable under section 4 of Khyber Pakhtunkhwa Service Tribunal Act 1974 as appellant did not prefer departmental appeal against the impugned order dated 09-05-2023. Moreover, appellant did not challenge the order dated 24-01-2024 whereby departmental appeal of appellant was dismissed by the Worthy Chief Secretary being the appellate authority.



- f. That the respondents seek leave of this Honorable Court to raise additional grounds at the time of arguments.

In view of the above noted submissions, it is very humbly requested that this Honorable Court may very graciously be pleased to dismiss the instant appeal with cost in favour of the respondents. Further relief to which the respondents are otherwise entitled though not specifically prayed for, may also be granted in favour of the respondents against the appellant.



(Mr. Faiz Alam)

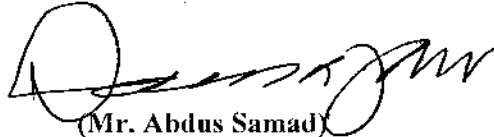
Additional Secretary (Establishment), E&SED

On behalf of

(Masood Ahmed)

Secretary E&SED

(Respondent No. 01 & 02)



(Mr. Abdus Samad)

Deputy Director (Legal), Directorate of E&SE

On behalf of

(Samina Altaf)

Director (E&SE) Khyber Pakhtunkhwa

Peshawar

(Respondent No. 03)



(Ifjilkar Ul Ghani)

District Education Officer (M)

Abbottabad

(Respondent No. 04)

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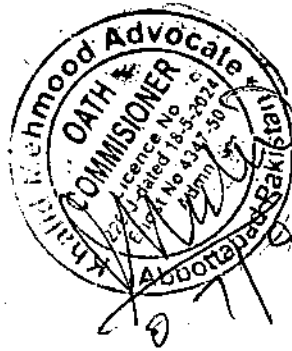
Govt of Khyber Pakhtunkhwa through Chief Secretary, Peshawar.....Respondent


Parawise Comments on behalf of Respondents No. 01 to 04

AFFIDAVIT

I, Mr. Iftikhar Ul Ghani, District Education Officer (M), Abbottabad of Elementary & Secondary Education Khyber Pakhtunkhwa, do hereby affirm and declare that the contents of forgoing Comments are correct and true according to the best of my knowledge and belief and nothing has been suppressed from this Honorable Tribunal.

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




 (Iftikhar Ul Ghani)
 District Education Officer (M)
 Abbottabad
 (Respondent No. 04)

(7)

Annex 'A'

OFFICE OF THE PRINCIPAL GHSS BODLA ABBOTTABAD

CHARGE REPORT

Mr. MUHAMMAD ILYAS (IPE) BS 17 has taken over charge on 05/12/2023 F/N.

In compliance vide order No/ Notification No .SO(S/M)E&SED/5-17/2023/PT/SS:
Peshawar dated 09/05/2023.

Signature of Relieved Vacant Post

Govt: Servant _____

Designation _____

Station: GHSS BODLA Abbottabad

Signature of Receiving Charge Muhammad Ilyas

Govt: Servant Muhammad Ilyas

Designation _____ IPE

Endst: No 139-1 Dated 05/12/23 GHSS BODLA ATD

Copy of the above is forwarded to the:

1. District Education Officer (M) Abbottabad.
2. District Account Officer Abbottabad.
3. Officer Concerned.

Principal
Principal

GHSS Bodla Abbottabad

Principal
GHSS Bodla
Abbottabad



(8)

Annex 'B'

GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION DEPARTMENT
Block-"A" Opposite MPA's Hostel, Civil Secretariat Peshawar
Phone No. 091-9223533 Email: sschoolmale@gmail.com

Peshawar Dated: 24.01.2024

ORDER

NO.SO(SME&SED7-1/2023/Muhammad Ilyas: WHEREAS Muhammad Ilyas IPE (BS-17) was transferred vide this department Notification NO.SO(SM)E&SED/5-17/2023/PT/G dated 14.04.2023 from GHSS Bodla Abbottabad to GHSS No.1 Abbottabad.

2. AND WHEREAS: Feeling aggrieved from the transfer Notification ibid, Mr. Wali Ullah Khan IPE (BS-17) filed departmental appeal which was accepted and notified vide Notification bearing NO.SO(SM)E&SED/5-17/2023/PT/G dated 09.05.2023.

3. AND WHEREAS: Feeling aggrieved from the Notification dated 09.05.2023, Mr. Muhammad Ilyas IPE (BS-17) impugned the same before the Hon'ble Peshawar High Court Abbottabad Bench in W.P No. 801-A/2023.

4. AND WHEREAS: The Honorable Peshawar High Court Abbottabad Bench vide Judgment dated 14.06.2023 disposed of the Writ Petition on the following terms:

"We accordingly order conversion of this writ petition into departmental appeal filed before Chief Secretary Khyber Pakhtunkhwa Peshawar. Office is directed to send a copy of this petition along with this order to Chief Secretary Khyber Pakhtunkhwa Peshawar for consideration in accordance with law"

5. AND WHEREAS: The petitioner was heard personally on 30.10.2023 and perusal of the relevant record it was found that the departmental appeal is devoid of merit on the following grounds:-

- i. The petitioner did not prefer any appeal to Departmental Authority rather directly approached High Court regarding cancellation of his transfer order which is contrary to the provision of Section-3 of Khyber Pakhtunkhwa Civil Servants Appeal Rules 1986.
- ii. Petitioner after cancellation of transfer from GHSS NO.1 Abbottabad neither relinquish the charge nor reported to GHSS Bodla Abbottabad, thus disobeying the orders of the Competent Authority which tantamounts to misconduct under the E&D Rules, 2011.
- iii. The Petitioner is a Civil Servant and as per section 10 of Civil Servant Act, 1973 "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 any local authority, or a corporation or body set up or established by any such Government".
- iv. It is not vested right of Civil Servant to get posting of his choice.

6. NOW, THEREFORE, The Competent Authority (Chief Secretary) after considering the personal hearing, departmental appeal, judgment of the Hon'ble Court & material available on record hereby rejects the appeal with direction as "I am of the considered opinion that merits of this case do not require any interference from the undersigned in the capacity of the appellant authority and the instant appeal being without merits is dismissed. Appellant is directed to report for duty at his new place of posting".

**CHIEF SECRETARY
KHYBER PAKHTUNKHWA**

Endst: of even No. & Date

Copy forwarded to the:

1. Registrar, Peshawar High Court, Abbottabad Bench.
2. Director, Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
3. District Education Officer (M) concerned.
4. District Accounts Officer concerned.
5. Section Officer (Lit-IV), E&SED.
6. PS to Secretary, E&SE Department, Khyber Pakhtunkhwa.
7. Petitioner/Applicant concerned.

8- EMMS.

(SAJID ULLAH)

SECTION OFFICER (SCHOOLS MALE)

(3)

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AUTHORITY LETTER

It is certified that Mr. Sohail Ahmed Zeb, Litigation Officer, District Education Officer (Male) Abbottabad is hereby authorized to submit parawise comments on behalf of District Education Officer (M) Abbottabad in Service Appeal No. 469/2024 titled Muhammad Ilyas Vs Director (E&SE) Khyber Pakhtunkhwa Peshawar.


(Iftikhar Ul Ghani)
District Education Officer (M)
Abbottabad
(Respondent No. 04)



GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION DEPARTMENT

Block "A" Civil Secretariat, Peshawar

Phone No. 091-9211128

Dated Peshawar, the 24-07-2024

NOTIFICATION

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

(MASOOD AHMAD)

SECRETARY
Elementary & Secondary Education
Department, Khyber Pakhtunkhwa

Endst: No. _____

Dated _____

Copy forwarded to the:-

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

SECTION OFFICER (Lit-II)



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**DIRECTORATE OF ELEMENTARY & SECONDARY EDUCATION
DEPARTMENT KHYBER PAKHTUNKHWA PESHAWAR**

NOTIFICATION

I, Samina Altaf, Director Elementary & Secondary Education Department Khyber Peshawar do hereby authorize, Mr. Abdus Sammad, Deputy Director (Legal) Directorate of Elementary & Secondary Education to sign parawise comments, replies, implementation report, objection petitions, civil miscellaneous application etc on my behalf for onward submission before the courts of law/tribunals as the case may be, with immediate effect in the interest of public service.

DIRECTOR

Elementary & Secondary Education
Khyber Pakhtunkhwa Peshawar

Endst. No. 2633-L13 /F.No. AD(Lit-II)/E&SED/Office Correspondence/Vol-II/2024
Dated Peshawar the 26/07/2024.

Copy of the above is forwarded for information & n/action to the:

1. Chief Secretary Khyber Pakhtunkhwa.
2. Advocate General Khyber-Pakhtunkhwa.
3. Secretary Law Department Khyber Pakhtunkhwa.
4. Learned Registrar High Court Peshawar (with one each spare copy for the Honorable Judges).
5. Learned Registrar Khyber Pakhtunkhwa Service Tribunal Peshawar (with one each spare copy for the Honorable Chairman/Members).
6. All Section Officers E&SE Department Khyber Pakhtunkhwa, Peshawar.
7. All District Education Officer (Male/Female) Khyber Pakhtunkhwa.
8. PS to Secretary E&SE Department Khyber Pakhtunkhwa, Peshawar.
9. PA to Additional Secretary (General) E&SE Khyber Pakhtunkhwa, Peshawar.
10. PA to Director E&SE Department Khyber Pakhtunkhwa, Peshawar.
11. Master File.


(SAMINA ALTAF)
DIRECTOR

Elementary & Secondary Education
Khyber Pakhtunkhwa Peshawar