

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

Execution Petition No.822/2024

In

Service Appeal No# 7208/2021

Diary No. 15802

Dated 18-9-24

Muhammad Arif.....

Appellant.

VERSUS

Secretary, Govt: of Khyber Pakhtunkhwa E&SE Department & Others.....Respondents.

**APPLICATION FOR VACATION OF STATUS QUO GRANTED VIDE ORDER 06.08.2024.**

Respectfully Sheweth,

**Preliminary Objections**

1. That the appellant has filed the Executing Petition No.822/2024 in S.A No.7208/2021 titled Muhammad Arif Vs Secretary E&SED and Others along-with application for restraining the respondents from holding DPC meeting till final decision of the ibid Execution Petition. (Annex-A).
2. That this Honorable Service Tribunal vide Order-sheet dated 06.08.2024 has granted interim stay and extended the same to the next date of hearing i.e. 20.09.2024. (Annex-B).

**Grounds:-**

A. That the petitioner filed Service Appeal No.7208/2021 titled "Muhammad Arif Vs Govt of Khyber Pakhtunkhwa" which was disposed vide order dated 02.05.2024 (Annex-C) in the terms of similar nature service appeal No.231/2022 titled "Rehana Yasmin Vs Education Department" The relevant paragraph of the order/judgement dated 27.07.2023 is as under:- (Annex-D)

"At the very outset learned counsel for the appellant produced copy of notification dated 29-04-2014 and contended that vide this notification the promotion of the appellant and others, mentioned in the notification from the post of Director Physical Education (BPE) (BPS-16 to BPS-17) on regular basis was given effect from 13-11-2007 instead of 19-05-2009. Learned counsel for the appellant submitted that in the impugned seniority list of 02-03-2021 the date of promotion of the appellant was still written as 19-05-2009 instead of 13-11-2007 and submitted that the appeal might be disposed of with the direction to the official respondents to incorporate the date of promotion of the appellant from BPS-16 to BPS-17 as 13-11-2007 in the impugned seniority list. The learned Additional Advocate General when confronted with the situation submitted that the department ought to have mentioned the correct date of promotion in the notification. The appeal is thus disposed of in the above terms"

B. That Respondents/Elementary & Secondary Education Department filed application/petition under Section 12(2) of Civil Procedure Code, 1908, against the order/judgement dated 27.07.2023 in Service Appeal No.231/2022 titled "Rehana Yasmin Vs Education Department, the Service Tribunal decided vide judgment dated 07-11-2023 in the following terms :- (Annex-E)

**“The simply requested for incorporation of the date of promotion to BPS-17 from BPS-16 in the seniority list which have nothing to do with determination of seniority and has to be dealt with in accordance with Rule 17 of (Appointment, Promotion and Transfer) Rules 1989. Mere mentioning of “date of promotion” in the seniority list in no case, means that respondent will be senior to petitioners until and unless place senior at due place and position. As mentioning date of promotion into the seniority list have no concern with actual seniority”**

- C. That from the aforementioned explanation of Honorable Service Tribunal, it is crystal clear that the order dated 02.05.2024 in Service Appeal No.7208/2021 titled “Muhammad Arif Vs Govt of Khyber Pakhtunkhwa” 5 regarding the determination of seniority position or promotion of neither petitioner nor private respondent, but just to modify the date of regular award of BPS-17 as on 13.11.2007 instead of 15.06.2009, against S.No.107 at column No. 7, in the impugned seniority list of Senior Instructor Physical Education (Male) BPS-18 as stood on 26-06-2019.

**It is therefore, most humbly requested that, the interim relief already granted on 06.08.2024 may kindly be recalled in favor of the department/respondent.**



**(Mr. Fiaz Alam)**

**Additional Secretary (Establishment)**

**On behalf of**

**SECRETARY**

**Elementary & Secondary Education Department  
(Respondent No. 01)**



**GOVERNMENT OF KHYBER PAKHTUNKHWA  
ELEMENTARY & SECONDARY EDUCATION DEPARTMENT**

**Block "A" Civil Secretariat, Peshawar**

**Phone No. 091-9211128**

Dated Peshawar, the 27-08-2024.

**NOTIFICATION**

**NO.SO(Lit-II)/E&SED/1-5/2021.** I, Mr. Masood Ahmad, Secretary Elementary & Secondary Education Department is pleased to authorize Mr. Fiaz 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.

**(MASAOOD AHMAD)  
SECRETARY TO THE**

**GOVERNMENT OF KHYBER PAKHTUNKHWA**

Endst: of even No. & date.

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. PA to Deputy Secretary (Legal-I&II) E&SE Department.

**SECTION-OFFICER (Lit-II)**

**BEFORE THE KPK SERVICE TRIBUNAL, PESHAWAR**

In re;  
Implementation Petition No. \_\_\_\_\_/2024  
IN  
Service Appeal No. 7208/2021

Muhammad Arif.....Appellant

**VERSUS**

Govt. of Khyber Pakhtunkhwa through  
Secretary E&SE and others .....Respondents

*Application for restraining the respondents  
from holding DPC meeting with respect to till  
final decision of titled implementation  
application.*

**Respectfully Sheweth:**

Appellant humbly submits as under:-

1. That the applicant/ appellant earlier filed Service Appeal No. 7208/2021 before this Hon'ble Tribunal.
2. That appeal of the appellant came up for hearing on 02.05.2024, and this Hon'ble Tribunal was pleased to allow/ dispose-of the appeal in light of an order passed by this hon'ble Tribunal in another similar Appeal No. 231/2022 titled "Rehana Yasmin ..Vs.. Education department.
3. That after announcement of judgment dated 02.05.2024, the appellant send the attested copy of the said judgment to the respondents, furthermore,

approached the respondents personally time and again for its implementation, but in vain.

4. That now the appellant has come to know that the respondents are going to held DPC meeting in nature future, wherein matter of promotion with respect to various employees/ junior to appellant will be considered while as per the order, the appellant is required to be placed at the top of the seniority list.
5. That the balance of convenience lies in favour of the petitioner as he is having a good prima-facie case.
6. That if the respondents are not retrained from holding the upcoming DPC meeting, the appellant will suffer great loss.

It is therefore, humbly requested to please direct respondents not to held the upcoming DPC meeting till final decision of the accompanying Civil Misc; for impleadment.

M. Arif

Appellant  
through

Fazal Shah Mohmand  
Advocate  
Supreme Court of Pakistan

**AFFIDAVIT**

I, do hereby affirm and declare on oath that the contents of accompanying Application are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble court.

M. Arif  
Deponent




(Annexure - B)

06<sup>th</sup> August, 2024 Learned counsel for the petitioner present. Notice be issued to the respondents through TCS, the expenses of which shall be deposited by the petitioner within 03 days.

To come up for implementation report on 23.08.2024 before the S.B.

Alongwith memorandum of execution petition, the petitioner has also filed an application for restraining the respondents from holding DPC meeting till final decision of the instant execution petition. Notice of the same be also issued to the respondents for the date fixed. In the meanwhile, status-quo be maintained till the date fixed.

Parcha Peshi given to learned counsel for the petitioner.

  
(Aurangzeb Khattak)  
Member (Judicial)

\*Naeem Amin\*