FORM OF ORDER SHEET

Court of		
Appeal No.	1347/2024	

S.No.	Date of order proceedings	Order or other proceedings with signature of judge			
1	2 :	3			
1-	04-Sep-24	The appeal of Mr. Ali Haider submitted today by			
		Mr. Muazam Butt Advocate. It is fixed for preliminary			
		hearing before Single Bench at Peshawar on 13.09.2024			
		Parcha Peshi given to counsel for the appellant.			
		By the order of Chairman			
		1081 J			
	-	RECISTRAN			
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BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHUWA

in Ref to

Service Appeal No / 3 4 7 /2024

Ali Haider

V/S

Government of KP & others

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ADVOCATE

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHUWA

In	R	ef	to
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Service Appeal No 1347/2024

Ali Haider Son of Muhammad Jan, PSHT,

GPS NO Dohdher Tehsil & District Swabi

.....Appellant

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

SERVICE APPEAL UNDER SECTION 4 OF KPK SERVICE THE IMPUGNED AGAINST: TRIBUNAL ACT NO.SO(POLICY)E&AD/1-3/2020. NOTIFICATION BEARING 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 (APPOINTMENT, SERVANTS PAKHTUNKHWA CIVIL STANDS RULES, 1989 TRANSFER) PROMOTION AND DELETED

PRAYER:

ON ACCEPTANCE OF INSTANT SERVICE APPEAL, THE IMPUGNED NOTIFICATION BEARING NO: SO (POLICY) E&AD/1-3/2020, DATED 06/08/2020, COMMUNICATED TO RESPONDENT NO. 2 VIDE LETTER DATED 06/06/2023, MAY BE DEC. A. ED 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 <u>Annexure A</u>

- 2. 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.
- 3. 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.
- 4. 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".

- 5. 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 Annexure B
- 6. 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 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 Annexure D
- 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 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 Letter 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 Annexure F
- 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 Annexure G & H
- 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:-

- 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 setasive.

- e. That non-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.
- 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/1-3/2020 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.

AFFIDAVIT:

NAG

I, Ali Haider solemnly declare 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

Muhammad Muazzzam Butt Advocate Supreme Court

Muhammad Adeel Butt Advocate High Court

Bassam Alimad Siddiqui Advocate High Court LLM- Human Rights

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHUWA

C.M No	P of 2024
In Ref to	
Service Appeal No	/2024
	Ali Haidar

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.
- 3. 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.

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 Mo.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 Ali Haider 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

ponent

Through

Muhammad Muazzzam Butt Advocate Supreme Court

nammad Adeel Butt ocate High Court

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Dist. Govt. KP-Provincial District Accounts Office Sawahi Monthly Salary Statement (January-2024)





Personal Information of Mr ALI HAIDER d/w/s of MUHAMMAD JAN

Personnel Number: 00234228

Ci.iC: 1620204053745

Date of Birth: 22.02.1967

Entry into Govt. Service: 30.03.1986

NTN: 0

Length of Service: 37 Years 10 Months 003 Days

Employment Category: Active Permanent

Designation: PRIMARY SCHOOL HEAD TEACH

GPF A/C No: EDUSB000574 / GPF Interest applied

80004527-DISTRICT GOVERNMENT KHYBE

DDO Code: SU6130-Government Primary Schools (Male) Swabi

Payroll Section: 003

3 N 16

GPF Section: 001

Cash Center: 36

GPF Balance:

648,528.00 (provisional)

Vendor Number: -

Pay and Allowances:

Pay scale: BPS For - 2022

Pay Scale Type: Civil BPS: 15

Pay Stage: 25

	Wage type	Amount		Wage type	Amount
0001	Basic Pay	73,420.00	1001	House Rent Allowance 45%	3,524.00
1210	Convey Allowance 2005	2,856.00	1300	Medical Allowance	1,500.00
<u>1505</u>	Charge Allowance	40.00	2148	15% Adhoc Relief All-2013	985.00
2199	Adhoc Relief Allow @10%	659.00	2316	Teaching Allowance 2021	3,224,00
2341	Dispr. Red All 15% 2022KP	7,007.00	2347	Adhoc Rel Al 15% 22(PS17)	7,007.00
2378	Adhoc Relief All 2023 35%	25,004.00			0.00

Deductions - General

	Wage type	Amount	mount Wage type		Amount
3015	GPF Subscription .	-4,290.00	3501	Benevolent Fund	-1,200.00
3609	Income Tax	-3,303.00	3990	Emp.Edu. Fund KPK	-135.00
4004	R. Benefits & Death Comp:	-600.00			0.00

Deductions - Loans and Advances

				7
Loan	Description	Principal amount	Deduction	Balance
6505	GPF Loan Principal Instal	. 700,000.00	-19,445.00	427 70.00

Deductions - Income Tax

Payable:

51,601.38

Recovered till JAN-2024:

22,191.00

Exempted: 12899.48

Recoverable:

16,510.90

Gross Pay (Rs.):

125,226.00 Deductions: (Rs.):

-28,973.00

Net Pay: (Rs.):

96,253.00

Payee Name: ALI HAIDER Account Number: 521-6

Bank Details: NATIONAL BANK OF PAKISTAN, 231972 ZAIDA BRANCH ZAIDA BRANCH, SWABI

Leaves:

Opening Balance:

Availed:

Balance:

swabi

Permanent Address: SWABI

City: SWABI

Domicile: NW - Khyber Pakhtunkhwa

Housing Status: No Official

ำ เลp. Address: City:

Email: alihaiderpsh@gmail.com

System generated document in accordance with APPM 4.6.12.9(232428/25.01.2024/v3.0)
* All amounts are in Pak Rupees
* Errors & omissions excepted (SERVICES/02.02.2024/20:11:08)

OFFESTED Deeuty, Sechetanty Policy The Carender, Administration Departmentarrange 20 gazetté copies. Angeren Officer (Admin), Administration Department with the request to The Registrat, Khyber Pakhunkhwa Public Service Commission, Puchawar, Philason, Philas The Registrar Peshawar High Court Peshawar All Deruly Commissioners in Khyber, Palahunkhwa. 6 All Anionous/Semi Anionomous Bodies in Khyber Pakhunkhwa All Hearls of Artaciled Departments in Karyber-Pakhiunkliva. All Divisional Commissioners in Khyber pulbimkhwa. The Principal Sceretary to Chief Minister, Kayber Palchunkhwa. The Peting has Secretary to Covernor Khyber Pakhunkhwe. All Administrative Sequencing Govic of Kryber Publindhwa. The Sentor Member Board of Revunde, Khyber Pakhunkhwa. Alditional Effet Secretary, Clovi, of Khyber Pakhtunkhyla, Planning -: of hab throng high TIVO NUNT SON TISO GOVERNMENT OF THE IDEYDER PARTITURENTS CHIPE SECUENAUA in rule 7, sub-rule (2) shall be deletted. Nomen tability ad likite inambitariu tadhiji giralika. VINTUNDWENT the state of the solution of decreed for the solution of the s The transmitter of Khyber-Phyliphikitwa is pleased to diseithat in the Khyber with the Khyber The think that the solvents are the state of the solvents of the section of the s in entirelae uf the powers conferred by section 25 of the USOST-8 1 00 pall turildan H Dajn Co NOTTADMUTON THE CHILLION WING! real and the contraction of the WHANGTEDLY LIBRILL COMPRIMENT OF

-9-

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
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)

ATTESTED

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MEGICAS SOS VEISULLANT GEOVT OF POLIC

Phy to Additional Secretary (Regall), Batabilitanent Department. नीनाताम्बन्धि किनामेशिवनानी (विन्ती) एम जिन्ह । शिक्ति है का छन्

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FOVERNMENT OF MAYBER PARKTUNKHWA ELEMENTARY AND SECONDARY EDUCATION DEPARTMENT CIVIL SEGRETARIAT PESHAWAR

(Financ No.091-9223587)

No.SO (Primary-M)/E&SED/2-5/2023 Daled Peshavar Inc. June 25th, 2023

To

The Director

Elementary & Secondary Education Department

Khyber Pakhlunkhwa, Peshawar.

Aziz Ullah Khan

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, 1988.

am directed to refer to the subject noted above and to enclose here with a letter of Establishment Department letter No. SO (Policy)E8AD/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.

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

Engl: AA

(MUHAMMAD ISHAQ) SECTION OFFICER (PRIMARY MALE)

Copy forwarded to the:

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

AP4442-2733 AZIZULLAH VS GOVT CF PG43

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

Τe

The Director Elementary & Secondary Education Department Khyber Pakhtunkhwa, Peshawar

-12-

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

Subjects

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

Encl: AA

(MUHAMMAD ISHAQI SECTION OFFICER (PRIMARY MALE)

Copy forwarded to the

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

SECTION OFFICER (PRIMARY MALE)

WP4442-2023 AZIZULLAH VS GOVT CF PG43

MINUTES OF THE MEETING REGARDING APPLICATION SUBMITTED BY MR. AZIZ ULLAH PROVINCIAL BRESIDENT 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 an 04-07-2023 at 11:00 AM under the Chairmanship of Additional Secretary Establishment in his office. The following attended the meeting.

<u> </u>				
Mr. Fazai Wahld Mr. Aziz Ullah		DESIGNATION		
		Deputy Director Establishment of Directorale Elementary & Secondary Education Department		
		Provincial President All Primary Teachers - Association - Khyber Pokhlunkhwa		
3	Mr. Ralagal Ullah	General Secretary APTA Peshawar		
/4	Muhammaa Ishaq	Section Officer (Primary) ELSE Department Civil Secretarial Khyber Pakhlunkhwa Peshawar		

- 2. The maring started with recitation from the Holy Ouron, the chair welcomed the participants. The Deputy Director (Establishment) of Directorate of Elementary & Secondary Education briefed the forum regarding agenda item in stetals.
- 3. After threadbare discussion it 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.

(Mr. Fazai Wahid)
Deputy DirectorE&SE Department

(Mr. Rolagal Ullah) General Secretary APTA Peshawar (Mr.Aziz Uilah)
Provincial President
All Primary Teachers Association
Khyber Pakhlunkhwa

HUUSUUK

(Muhammad ishoq)
Section Officer (Primary-Male)
ELSE Department

(Abdullah)
Addillonal Secretary (Establishment)
E&SE Department

WP4442-2023 AZIZULLAH VS GOVT OF PG43

ATTESTED

MINUTES OF THE MEETING REGARDING APPLICATION SUBMITTED BY MR AZIZ ULLAH PROVINCIAL PRESIDENT ALL PRIMARY TEACHERS ASSOCIATION KHYBER PAKHTUNKHWA REGARDING OF DELETION OF HULE 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

S# NAME	DESIGNATION
1 Mr. Fazal Wahid	Deputy Director Establishment of Directorate Elementary & Secondary Education Department
2. Mr. Aziz Ullah	Provincial President All Primary Teachers Association: Khyber Pakhtunkhwa
3. 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. Rafaget L'" h)- General Secretary APTA	• •
Peshawar	
(Muhammad Ishaq)	
Section Officer (Primary-Male)	•
E&SE Department	<u> </u>
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	(Abdullah)
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The Section Officer (Primary-Male), Elementary & Secondary Education Department, Khybar Fashiumkhwa Pestiawar.

Subject; -Dear Sir.

<u> MINUTES OF THE MEETING</u>

I am Hirethal to cafer to the latter No.50(Primary-At) 50550/3-1/ G.Misc/Ministes of the Healths/PST/2023 dated 10-07-2023 on the subject cited above and to present brief history above like background of the case as uniter:

- That Government of Klyber Pakhtunkhwa Establishment Department (Royaletton Wing) duleted Rule 7(1) in the Civil Servants (Appaintment, promotion & Transfer Rules 1989) vido notification No. No. SOR-VI (E&AD)/1-1/2020 dated 06-08-2020.
- That this office sought guidance from your good office in the fallowing words vide letter No.6987 dated 04-92-2023.
 - Now it a obligatory upon the civil servant to accept Propolion in every condition. (ii) It is the prerogative of the civil servant to ofther accept or turn down the offer of
- promotion.

 That your god affice forwarded the same to the quarter concerned vide litter No.50 (Primory M) E&SED/2-2/Appointment/2011 for necessary guidance.
- That the Coveriment of Knyber Pakhtunkhiya Establishment Department. (Regulation Wing) vide letter No.80 (Policy) E& D/1-3/2020 dated 6-06-2023 categorically stated that there exists no provision to decline or forgo promotion. It is obligatory upon every civil servant to decept promotion under every condition.
- The same was received by this affice from your good office vide latter No.50 (Primary-M) S&SED/2-2/Appainment/2073 dated 12-06-2023.
- That, in the light of the minutes of meeting dated 6-07-2023, held under the Cholemanship of iton, Additional Secretary Establishment of his office this office that heen asked for submission of consolidated case.

In well of the above, this office is of considered opinion that the deletion of Rules The view of the university of huge numbers of Female Teachers. Thus it is proposed that Teachers below DPS-16 may be exempted of implications of the amondment in the rules ibid provided they culmit their written refusal prior to conduction of the meeting of Departmental Female Committee.

The species submitted for perusal and necessary actions please.

Assistant Director (Estab AI-D) Glomontory & Secondary Education Khyber Pakhtunkhwa

Endst: No.

Copy of the above is to:-

- 1. PA to Director Local Directorate.
- 2. Master Capy.

Assistant Director (Establish) Sienwaary de Socondary Ethication Klyher Pakhtinikhwa

442-2023 AZIZULLAH VS GOVT CF PG43

DIRECTORATE OF ELEMENTARY & SECONDARY EDUCATION, KPK

To:

PESHALIAD [21-7-2013]

Section Officer (Primary Male).
Elementopy & Secondary Education Department.
KPK, Peshawai.

Subject : Minutes of Meeting

Dear Sir; I am directed to refer to letter No. (50 Primary -M) E & SED/5-1/GMEL/ Minutes of meeting 1857/2023 dated 10-7-2023 on subject cited above and to present batef history, about background of care as under:

* Threat Government of EP Establishment dependment (Regulation Whys)

deleted rule 7(5) In Civil Servants (Appointment, paration of Transfer Rules 1989)

vide notification No. No. SDR-VI(ESAD)1-3/2020 dated 06-08-2020.

That this office sought guidance from your good office in the following words vide letter No. 6987 older ob-oursess

(i) Place it is obligatory upon civil second to accept promotion.

(ii) Eltis presopative of civil servent to either accept/terndown the

offer of promotion.

Thest your good office forwarded the come to quarter concerned vide with of hw. So (Principle) EGSED/2-2/Appointment (2023 for necessary guidonce.

- EGAD 1-3 2070 dated 6-06-2023 categorically stated that there exists no provision to decline forgo promotion. It is obligatory upon every civil servent to accept proposition under energy condition.
 - held under the Chairmanship of the meeting dated 6-07-202]

 ment at his office. This office has been asked for submission of consolidated case.

In view of the above, this office is of considered opinions that the deletion of Rules 7(5) have affected negatively a huge members of Febrale teachiers.

The case is "submitted for person and necessary actions

Copy of the cibeve to;

- 1. PA to Director Local Directorate
- 2. Master Copy

Accidented Director
Elementary & Secondary Education
Khylines Rechlorichium.

WP4447-2023 AZIZULLAH VS GOVT OF PG43

ATTESTED



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

Honexure

The Georgiary to Govil of Khyber Pakhlunkhwa. Establishment & Administration Department. Peshaviar

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

Car Sil

I am directed to refer to your letter No. SO(Policy)/ E&AD/ 1-3/2020 dated 067 June 2023 and to state that after deletion of rule 7(5) Khyber Pakhtunkhwa Civil Servers (Applioniment, Promotion & Transfer Rules 1989) it has been infilmated 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 Kityber Pelmounking Givil Servant (Efficiency & Discipline) Rules, 2011.

In this connection it is submitted that in some cases lady teacher of primary level with a sail such promotions have to face serious inconvience while they have to perform duties 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.

In view of the above, the said amendment may be reconsidered to the extent of lady leacher in primary schools.

MUHAMMAU ISE SECTION OFFICER TPRIMARY HALE)

. Copy forwarded to the:

1. Director E&SE Khyber Pakhbinkhwa. PS to Secretary, EBSE Department Khyber Pakhtunkhwa.

SECTION OFFICER (EN

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WP4442-2023 AZIZULLAH VS GOVT CF PG43

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The Secretary to Government of Khyloo Betherophwa. Establishment and Administration Department.

SUBJECT: Quidance regarding deletion of Rule 7(5) in the Quidance regarding deletion of Rules (Paper Rules)

Dem Sir,

Quenting a corn directed to refer to your letter No. Softmerny of 12-3/2012 dested to refer to your letter No. Softmerny deletion of Rule 7(S) khyber hithmorphuse Civil Sentant (Appointment) franchion of Rule 1(S) khyber hithmorphuse Civil Sentant (Appointment) of his consider ond (rongles 1989) of his been intimated that the officials who do not comply with promotion order of the competent of the other of the competent of the conficult of the confideration though of the confideration though of the confideration thought of the confideration of the confideratio

In this connection it is submitted that in some cases lacky to deacher of minery level who avoil such promotion there to be serious incoverience while they have to people duties in the remotest stations or mith no residential trongest feeding them one that a lack duties of their one to their duties of their who residential that and established to sente delivery of the such of the sould ammendment may be reconsidered to the station of lock texter in full of obove the sould ammendment when of locky texter in principles of the stational station of the stational s

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GOVERNMENT OF KHYBER PAKHTUNKHWA ESTABLISHMENT DEPARTMENT

No. SO(Policy)E&AD/T-3/2020 Dated Peshawar the September 07, 2023

The Secretary to Government of Khyber Pakhtunkhwa, 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 Sir.

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).

Yours faithfully,

Section Officer (Policy)

Endst. Of even No & date

Copy forwarded to thes-

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



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GOVERNMENT OF KHYBER PAKHTUNKHWA ESTABLISHMENT DEPARTMENT No. SO(Policy)E&AD/1-3/2020

Dated Peshawar the September 07, 2023

To

The Secretary to Government of Khyber Pakhtunkhwa, 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 Sir.

I am directed to refer to your letter No. SO(Primary-M)/E&SED/2- 2/Appointment-Rule/2023 dated 23.06.2023 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).

Yours faithfully,

Section Officer (Policy)

Endst. Of even No & date

Copy forwarded to the:-

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

Section nicer (Policy)

WP4447-2023 AZIZULLAH VS GOVT OF PG43

ATTESTED

Dated: 16-03-2024

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

REPRESENTATION AGAINST THE IMPUGNED NOTIFICATION BEARING NO.SO(POLICY)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:-

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/1-3/2020 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

Ali Haider Son of Muhammad Jan, PSHT,

Tehsil & District Swabi

ATTESTED

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Khyber Pakhtunkhwa

Learned counsel for the appellant present.

Let a pre-admission notice be Issued to the respondents through TCS for submission reply/comments. Appellant is directed to deposit PCS expenses within three days. To come up for réply/comments as well as preliminary hearing on --10.06,2024 before S.B. P.P given to learned counsel for the appellant.

Alongwith the service appeal there is an application for suspension of Nouffication dated 06.06.2023 and letter dated 23.98.2023 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.

Gertified to be true copy(Muhammad Akbar Khijn): Member (E)

Date of Presentation of Application 10 - 12 15

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Date of inchessy of Copy-

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MUHAMMAD MUAZZAM BUTT & AS	SOCIATES O	<u>F MUAZZAM 1</u>	AW FIRM	
to act and appear for me in the above Suit an defend) the same and all proceedings that connected with the same or any decree or ord to file and obtain return of documents, and to steps on my/our behalf in the above matter.	t may be tal er passed the	ken in respec	t of any petition)II
l agree to ratify all acts done by the aforesaid A	Advocate in p	ursuance of th	is Authority.	
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