FORM OF ORDER SHEET

Court of_

1349/2024 Appeal No. Order or other proceedings with signature of judge S.No. Date of order proceedings 3 2 1 1-The appeal of Mr. Musafar Khan submitted today 06-Sep-24 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 R

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHUWA

In Ref to

1

Service Appeal No_1349_/2024

Musafar Khan

V/S

Government of KP & others

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ADVOCATE

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHUWA

In Ref to

Service Appeal No 1849 /2024

Musafar Khan Son of Shamshad Khan, PSHT,

GPS No 1 Sherdarra Tehsil & District Swabi

.....Appellant

` V E R S U S

- 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 TRIBUNAL ACT 1974, AGAINST 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, WHEREIN IT WAS STATED THAT SUB RULE 5 OF RULE 7 OF KHYBER PAKHTUNKHWA CIVIL SERVANTS (APPOINTMENT. AND TRANSFER) RULES, PROMOTION 1989 STANDS 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 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:

1. 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.

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.

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 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. Th Es

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 Rule/2023 dated 23-08-2023 to reconsider the amendment made in Khyber

2.

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5.

6.

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 <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:-

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.

9.

- 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.
- 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/1-3/2020 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.

Appellant AFFIDAVIT: I Musafar Khan solemnly declare Through that the contents of foregoing application are true and correct to the Muhammad Muazzzam Butt best of my knowledge and belief and Advotate Supreme Court nothing has been concealed therein from this Honourable Court. Muhammad Adeel Butt Deponent Advocate High Gourt ((Bassam Ahmad Siddiqui Advocate High Court LL,M-Human Rights

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHUWA

C.M No_____-P of 2024 In Ref to

Service Appeal No____/2024

Musafar Khan

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:-

- 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 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 Musafar Khan 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

Deponent

Mir Appellant

Through

Muhammad Muazzzam Butt Advocate Supreme Court

Mahammad Adeel Butt Advocate High Court



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Mr. Mr. Spain PPS OF in Handby adjunted at SPS, Sheikhan in the

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H. TAYON IN ALLOWING "

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ATTESTEL

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SUB DIVISIONAL BOUCADION OPPICER (MALS) NOWSHERA

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GRS NO 1 Sherdarra emis 23416 Musofor Khan PSHT

Dist. Govi, NWFP-Provincial District Accounts Office Sawahi Monthly Salary Statement (April-2024)

GPS Sherdarra musafar Kha PSHI



المغرث والمالي

Balance:

Persunal Information of Mr MUSAFAR KHAN d/w/s of SHAMSHAD KHAN Personnel News Personnel Number: 00235696

Date of Birth: 01.02,1970 NTN: 0 Entry Into Clavt. Service: 04.11.1990 Length of Service: 33 Years 05 Months 028 Days

Employment Category: Vocational Permanent Designation: PRIMARY SCHOOL HEAD THACH

DDO Cude: SU6303-Government Primary Schools (Male) Razzar, Swabi 80595750-DISTRICT GOVERNMENT KITYBE

Payroll Section: 003

- OPP Section: 001 GPF A/C No: EDUNR000252 - Interest Applied: Yes Cash Center: 28 Vendor Number: -**GPF** Balance: Pay and Allowances:

Pay scale: BPS For - 2022 Pny Scale Type: Civil BPS: 15

Pay Stage: 23

841,989.00

Wage type	Amount	Wage type	Amount
0001 Basic Pay	69,460.00	1001 House Rent Allowance 45%	3,524,00
1210 Convey Allowance 2005	2,856.00	1300 Medical Allowance	1,500.00
1505 Charge Allowance	40.00	2148 15% Adhoe Rollef Alf-2013	919.00
2199 Adhae Relief Allow (#10%	614,00	2316 Teaching Allowance 2021	3,224.00
2341 Dispr. Red All 15% 2022KP	6,608.00	2347 Adhoc Rel AI 15% 22(PS 7)	6,608.00
2378 Adhoc Relief All 2023 35%	23,618,00		0.00

Deductions - General

	Wage type	Amount		Wage type	Amount
3015	GPF Subscription	-4,290.60	3501	Benevolent Fund	
3609	Income Tax	-2,716.00	3990	Emp.Edu. Fund KPK	-135.00
1004	R. Benefits & Death Comp:	-600.00			0.00
4004	K. Benelits & Death Comp:	<u> </u>	<u> </u>	<u> </u>	

Deductions "Loans and Advances

a47.2314 $\mathbf{U}_{i} \in \mathcal{V}$ Balânce Principal amount Description Deduction Luan Deductions - Income Tax

Recovered till April-2024: 26,235.00 Exempted: 10553.78 5,430.10 Recoverable: , Payable: 42,218.88

Deductions: (Rs.): -8,941.00 Net Pay: (Rs.): 110,030.00 Gross Pay (Rs.): 118,971.00

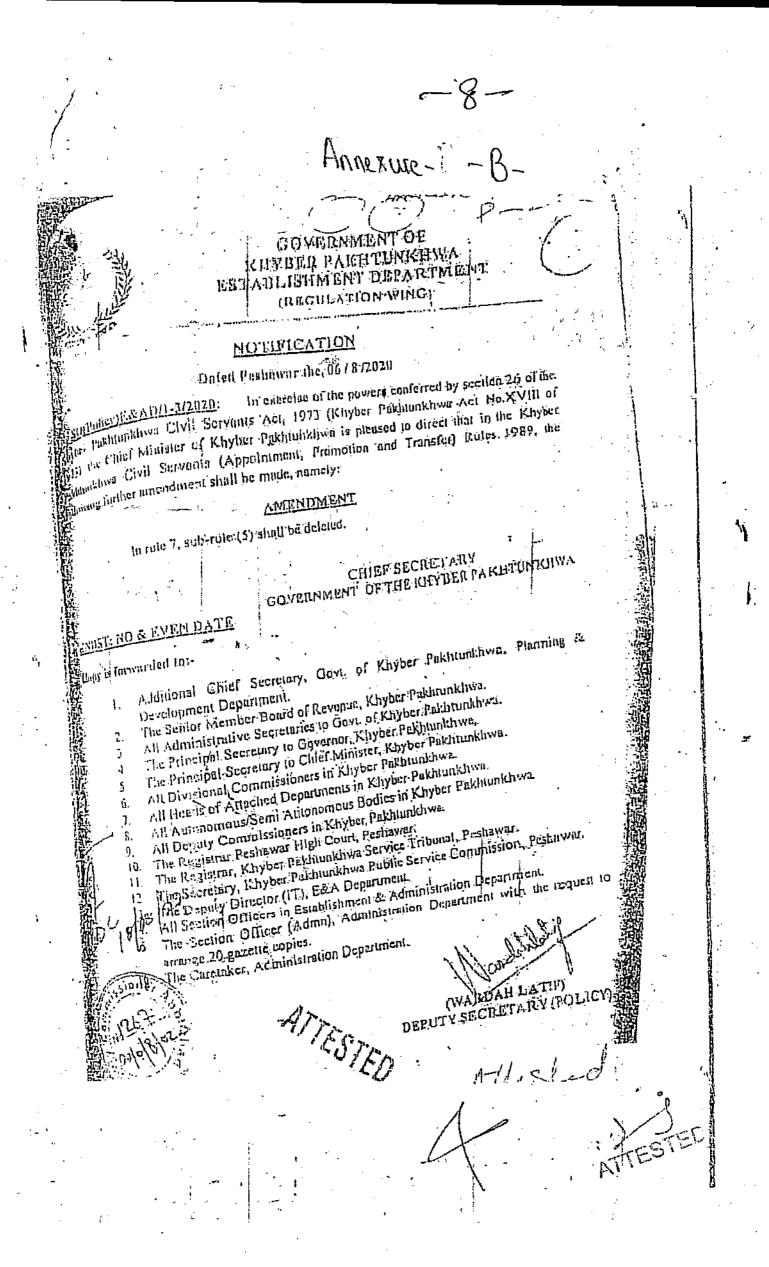
Payee Name: MUSAFAR KHAN Account Number: 1166-8 Bank Details: NATIONAL BANK OF PAKISTAN, 231870 TORLANDAI BRANCH SHWA ADA SWABI TORLANDAI BRANCH SHWA ADA SWAB, SWABI

Opening Balance: Leaves: Permatient Address: SWABI Housing Status: No Official City, SWABL Domicile: NW - Khyber Pakhtunkhwa Temp. Address: Cuy: Email:

Earned:

(232428/27.04.2024/17:26.26) 2) All amounts are in Pak Rupeer 3) Errors & omissions excepted

Availed:



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 ¹⁹⁶

AMENDMENT

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

CHIEF SECRETARY GOVERNMENT OF THE KHYBER PAKHTUNKHWA

(ANDS): & EVEN DATE

11 !

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)

ATTESTER

7.7 AVIDINUTURAL WILYIN WARTUNKUTUN AUXONAH

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Ton The Govenment of Khyber Pakhtunkhwa, Elementary & Secondary Education Department. BUBJELT : GUIDANCE REGARDING DELETION OF RULG '9(5) TN THE KHYBER PAKHTUNKHINA CIVIL SERVANTS (APPOINTMENT, PROMOTION RIND TRANSFER) RULES 1989.

BC

Dear Bir, Iam directed to refer to your letter No. SD (Primary-ML) / EE, SED/2 - 2/Appointment /2023 dated 18-04-2023 on the cubicit noted above and to state that Sub-Rule (5) of Rule - 7 of Khyber Pakhtunkhwa Civil Servants (Appointments Promotion and Traniful) Rules, 1989 stands deleted vide this department notification dated 06.08-2020; thus, no provision exists to decline or forgo promotion.

The: basic rationale schind the duction of the ibid scale is almed to preventing a civil servant from temptation for illicit quin by sticking to a single Lucrative post/position or to prevent those who tend to forge promotion to evade parting/transfer on show Tack of capacity to tackle higher responsibilities in case of promotion. Therefore, it is obligatory upon every civil servant to accept promotion in every condition.

Furthermore, those officers / officials who do comply with promotion order of the competent not authority or try to evade personotion through different means shall be proceeded against under Khyber livit Lervants (Efficiency E. lakhtunkh wa Disciplene) Rules, 2011, please

dection 0fficer (Policy)

Department.

3. Pd to Heputy Secretary (Piliy), Ertablishmant

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Endet. Of even No E date

Gergen officer (Policy) (Esso Muhammad Kham) (Isso Muhammad Kham)

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-Overniment of Knyber Parntunkhwa ELEMENTARY AND SECONDARY EDUCATION DEPARTMENT CIVIL SECRETARIAT PESHAWAR (Finotic No.091-9223587)

> Min.SO (Primary-M)/EESED/2-6/2023 Loted Peshawar Inc. June 26",2023

> > 36/6/23

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

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

Subject:

Τo

GUIDANCE REGARDING DELETION OF RULE 7(5) IN THE KHYBER PAKHTUNKHWA CIVIL SERVANTS (APPOINTMENT, PROMOTION AND TRANSFER) RULES, 1909.

& 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.

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

ébove, please.

Ensl: AA

(MUHAMMAD ISHAO

SECTION OFFICER (PRIMARY MALE)

Copy forwarded to the:

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

nc.

ALE SECTION OFFICER 7:2

ATTESTE

WP4442-2713 AZIZULLAH VS GOVT OF FG43

No SO (Primary-M)/6&560/2-6/2023 Dated Peshawar the June 25th 2023

To

The Director Elementary & Secondary Education Department Khyber Pakhtunkhwa, Peshawar

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

Subject:

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

Blc

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.

 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 ISHAQ) SECTION OFFICER (PRIMARY MALE)

Copy forwarded to the:

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

SECTION OFFICER (PRIMARY MALE)

WP4442-2023 AZIZULLAH VS GOVT OF PG43

ATTESTEL

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

A meeting regolding 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.

511	ŇAMĘ	DESIGNATION
, 1	Mr. Fozal Wahld	Depuly Director Establishment of Directorate Elementary 1. Secondary Education Department
2	i Mr. Aziz Ulloh	Frevincial President All Primory Teachurs Association Khyber Pakhlunkhwa
3	Mr. Ralagal Ullah	General Secretary APTA Peshawar
4	Muhammad Ishaq	Secilari Olilcei (Pilmory) ELSE Deportment Civil Secretariai Khyber Pakhlunkhwa Peshawar

2. The ineeting 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 2. Secondary Education Department may examine the case property and submit a self-contained/consolidated case for anword submission to Establishment Department for turther necessary action.

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

(Mr. Fozal Weh Įч Deputy Director-I EZSE Department

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(Mr. Ralagal Ullah) General Societary APTA Peshawol

(Mr. Aziz Ullah) **Provincial President** Primary Teachers Association Khyber Pokhlunkhvio

HAMENING

ATTESTEL

I:

(Muhammad Linda) Section Officer (Primory-Mole) ELSE Department

(Abciullah) Addillanai Secretary (Estabilshmeni) E&SE Departmeni

WP4442-2023 AZIZIILLAH 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

50 NAME	DESIGNATION
1. Mr. Fezel Wahid	Oeputy Director Establishment of Directorate Elementary & Secondary Education Department
2. Mr. Aziz Ullah	Provincial Prosident All Primary Teachers Association: Khyber Pakhtunkhwa
3. Mr. Rafaqat Ullah	General Secretary APTA Peshawar
4 Muhammad Ishaq	Section Officer (Primäry) 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 & selfcontained/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

> (Abdullah) Adduliahi Sasakanaki (keelikaha)

ATTEST

Pliones 091-9915144 1200 - 2- 1- 2 Paloo Khyber Pakinnihia, Peshapar,

צום צמקלטון משריג (הנושמטריאומוס)י

Eloman Bry & Secondory Education Department. Kiyber Podanakhwa Pestiawor.

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ערצמחו הרוט ווונוסוץ מנושו ווע למכלערמוות טן ווע כמזה מז אחונרו: כ. אוגבראלא אוני אונג אוני אונגערטוות אוגערט אמומע ווע במזה מז אחונרו: גערגמחו ארוט אוגערט איז אוני אוגערט איז אוגערט איז אוווגערט איז געוויגערט איז גערט איז איז איז איז איז איז איז

doleted Rula 7(5) initio Civil Servents (Appalniment, promotion & Transfer Rules 1989) Tint Doverment of Klyber Pakininkhwa Estoblishenent Departmant (Republic n Ving)

'5202-20-90 Pares 1800'ON That this affice tought midance from som good affice in the fellowing words wide letter That this affice to the south of t

(נון) או אז אמון ארפרטאמוליג טרט ווא באיזן גפריטאו זה מנצבאו ררסשטונטה וה באפרט בהתטונוטה. (נון) או אז אוג ארפרטאמוליג טרט ווא באיזן גפריטאו זה מנוואר מכבאו איר ווורה אמיטיא ואם קובר טל

Rendolicity of the formation the same to the quarter concerned vide letter Na.50 (Arthon-Art) E&SED(2-2)/Appointment/2022 for necasory unidance.

The ite Coverhant of Kinyber Poklanchina Esteblishment Depertment (Regulation

ווינות) עולם וכוויני אסגנס (הטווטא) בעיונטיו בער לסופט אינטטוטטי וו וב סטווקטורסווא גוטיטו ווינות וויכום בגנאל עם אומעוגוטע וח לככוומי סר לסרפט אינסאטוטה. וו וב סטווקטורטי אומסה בעכוץ כועון בבריטאו נקסברסט ווימעוטו אחלכר בעכוץ במתלוומא.

The rame with received by this office from your good office with letter No.SO

(Primary-M) 525507-2747ppainiment/2023 doted 12-06-2023.

been asked for submission of consultated ense. דוותו, וה וותן וומוו תו ווב שומשני סן שביותה נסומל 6-07-2022 וויות מווב הווב וות ברמות המתגוון הן נוחוי תו ווב שומשני בנמני בנמנות ווחומים מי ווב מווב מווב מוובב וויוב אים

Teachers below DP5-16 may be exempled of implications of the amandment in the miles thid 7(5) lime offected regarders, this office is of constructed opinion that that the teleston of Kules 7(5) lime offected regarders of Femole Teachers. Thus it is proposed that

The date is submitted for persual and necossary oclians please.

אר אואפר וייאווגווגווגוועם בוסווסמוסטי ע ביכסטעסטי בקורטווסט אזצרוקטו בונבקסו (בזוסף או-נו) אוגרוקטו בונבקסו לבועם או-נו IICO L

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Kino with PA to Director Local Directorois.

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CETEETER

DIRECTORATE OF

Ta:

ELEMENTORY & SECONDARY EDUCATION, KPK

PESHALUAR 121-7-2013

18'

Section Officer (Rimary Male)

Elementary & Secondary Education Department KPK, Peshawar.

Subject : Minutes of Meeting

Dear Sir;] an directed to refer to Letter No. (SD Rimmy - M) E & SED / S-1/GANIEL/ Minutes of meeting PST/2023 dated 10-7-2023 on subject cited above and to present biling history, about background of care as under.

" That Government of HP Establishout dependment (Regulations Wing) deleted rule 7(5) in Civil Servoists (Appointment, promotions, Transfer Rules 1989) Vide notification No. NO. SDR-VI(EGAD)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 at ar 2013

(i) Now it is obligatory upon avil servinut to decept promotion.

(ii) STB presogative of civil servent to either accept/tumdows the

offer of promotion. • Their your good office for unded the come to questes concerned vide letter No. So (Primary 14) EGSED/2-2/Appointment (2023 for necessary

. That the government of KP-ED (Regulation Wing) vide letter No. SO (Policy) EGAD (1-3/2070 dated 6-06-2073 categorically stated that there exists no provision to decline forgo monotion. It is obligatory upon every civil servicent to ciccept pomotion under and condition.

. That in light of the minutes of the meeting dated 6-07-2023 held under the Chainmanship of Hon. Additional Secretary Establish -ment at his office. This office has been alked for submission of

In view of the above, this office is of considered opinions they the delation of Rules 7(5) have affected negatively a huge members of Pernale tractions.

The case is submitted for period and necessary actions please.

WP4442-2023 AZIZULLAH VS GOVT CF PG43

Copy of the above to;

1. PA to Director Local Directorate

Automated Director Elementary & Secondary Elicates Khyber Richtonkhun.

2. Master Copy

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ELEVENTARY AND SECONDARY EDUCATION DEPARTMENT CIVIL SECRETARIAT PEBHAWAR (Phone No.091-9223587)

140. SO(Primary-M)EESED/2-2/Appointment-Rule /2023 Peshawar Dated 23rd August, 2023

Annexure

The Becratary to Govi, of Khyber Pakhlunkhwa, Establistenent & Administration Department, Peshaviar

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

Geer Sir,

I am directed to refer to your letter Ho. SO(Policy)/ EBAD/ 1-3/2020 dated 05" June 2023 and to state that after deletion of rule 7(5) Khyber Pakhtunkhwa Civil Servent (Applionement, 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 , Pekrimunkinwa Civil Servant (Efficiency & Discipline) Rules, 2011.

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 2. 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 reed care. In such cases, there are negative effects on service delivery.

In view of the above, the said amendment may be reconsidered to the 3. enters of leaf leacher in primary schools.

SECTION OFFICER PRIMARY HALE

Copy forviarded to the:

1. Director ERSE Khyber Pakhbunkhwa. 2. PS to Secretary, EBSE Department Khyber Pakhtunkhwa.

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ATTESTEL

WP4442-2023 A2IZULLAH VS GOVT CF PG43

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SECTION OFFICER (PRI

et 30 for Sucretional E & SE Permanant Kleinershall and the Second (Munamian) אררדי - 5 ב גושיה איירייי (Vista lamontain) iat promotion to -21 cards of lody teacher in primary schered s. in view of above, the said annorational may be reconsitioned to effects an service delivery. ארמוזיבע-וח-גבונו וייאים הפבל בקוב (דו בנכלה בקובו לויציר ביד הפלבואות fort of them are manied with bids and elder father of in the required / with an resident / the resident frances and ril satus major of anot build shirly snowing and such of every restament who avoid and such promining to variable In this connection it is submitted that in some cases lacky

Civil Servant (Efficiency and Discipline) Rule 2012. different means shall be proceed under Khyber Richtun alguerity nonternord shows at but to ethoritan trustagmen with to these officers officials who do not comply with promotion order tart between mod ind -12 (1892 estudi referrent) for rentoment deletion of Rule 7(S) Khydranthana Civil Servary (Apprintment, with task states of long erar and the petale aros 18-21 Answirth oz.on with the point of refer of lowing) (Paris) (Paris)

(6867 Civil Servicit (Apphitment, Romation & Transfer Rules ant on (2) F shall of mortably pritoring support SubJECT:

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Pesheren. Establishment and Achministration Dependences, The secretary to communit of Khyba Rikhundhwa.

' גרבה צויר,

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Pertrum Dated 2214 August 2013. NO.56 (Princery - M) = 5,5=1) 4. - 2. 01

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Breating



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.

Subject: -

Dear Sir.

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 your letter No. SO(Primary-M)/E&SED/2-2/Appointment-Rule/2023 doted 23:08:2023 on the subject noted above and to state that nucessary 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 Secretary (Reg). Establishment Department.
- PA to Additional Secretary (Reg-II), Establishment Department.
- PS to Deputy Sucretary (Policy), Establishment Department.

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 KHYBER PAKHTUNKHWA CIVIL SERVANTS (APPOINTMENT, PROMOTION AND TRANSFER) RULES, 1969.

Dear Sir.

Subject -

Τp

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

Section nicer (Policy)

ATTESTE

WP4442-2023 AZIZULLAH VS GOVT OF PG4:

ANNER URE "4"

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:-

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/1-3/2020 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 11,00

Musafar Khan Son of Shamshad Khan, PSHT,

ATTEST

Tehsil & District Swabi

الأبخرية فأقالا معاللة فالأأد فأ ידי קרי הור אות. س ((بالا س)، حسب المله (ما لا بزانه الانيان (يتر الربي بزانه الأنيان في من من عبوه الآما حاضه مشيا كرمة يتو دي حسنة علم مست علم المالي مثله الماسي فريه منه الما الربيزان الانيان الا تسالاية حيتها كالقر יורי בגאאיי איי יון ויורו חיעול היהן היה הרבונה ער ביה הרולי אול היוי היי היותו הואו הבוויו לו היא אייו היי היו איי היא היו אר ביר ון דוג זמו המה ביר ה הו מו וה ביות וק היא ון ה במת ול זון דירי ון דוג זמו המה ביר א מו ברב ון ה היא ון ה בו מעול الالك من الله عد المرح عن الله المرجع وقد جد المال مالة المركة المال المالية المراجعة المسمد من من المالية ال حمله ومرجع الا و مندور اس ות ות וידו לזור צ תוסרת וזי וחזו רלו היא מייל ליזור ואוי ול איזור וליאל ת ארו די איז לי יא איזו לי יידו יידו יי הת זה יות איזור איז תוסרת וזי וחזו רלו היא מייל ליזור ואוי וליאל ת ארו די איזו איזו איזו איז אי מייל איזו יידו י ر¶ ⊷ ⊑ن · المج ميز من الدار الد موار المراج الم ואיבי עק היה צורויהל מראקורו לי ייאי HADRENWE -الجبرة ببجة منتج (1; 1) سيرة الكيمة الأسية الأمسيراش له אףדא אפטצפו ספער דיומונויץ פרווסט' אקא. סטונאויניר דפואטשאר כווא. elde und a donta stev אלהשלי ואמציות ונוינשות -47-

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NAKALAT NAMA

BEFORE THE SERVICE TRIBUNAL PESHAWAR

Musafar Khan

Versus

Appellant

WGovernment 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.

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

APPELLANT

ACCEPTED

МИНАММАД МИАZZAM ВИТТ Advocate Supreme Court

MUHAMMAD ADKEL BUTT Advocate High Court

BASSAM-AHMAD SIDDIQUI Advocate-high Court