· FORM OF ORDER SHEET

Court of		•

Appeal No. 1372/2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	. 3
1-	06-Sep-24	The appeal of Mr. AMANULLAH KHAN
ė.		presented today by Mr. MUHAMMAD MUAZZAM BUTT Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on 13-Sep-24. Parcha Peshi given to counsel for the appellant.
		By order of the Chairman REGISTRAR

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHUWA

AMAN ULAH KAN

V/S

Government of KP & others

INDEX

S#	DESCRIPTION OF THE DOCUMENTS	ANNEX	PAGES
1.	Appeal and Verification	*	1-4
2.	Application for suspension	*	5
3.	Copy of Monthly Salary account	Α.	6-8
4.	Copy of notification No. SD (Policy) EV AD/1-3/2020 dated 06/08/2020	В.	9-10
5.	Copy of Impugned Letter dated June 06th, 2023	····C.	11-15
6.	Copy of Minutes of Meeting dated 06-07-2023	D.	16 - 19
7.	Copy of Letter dated 23-08-2023	E.	20-22
8.	Copy of Impugned letter dated 07-09-2023	F.	23-24
9.	Copy of Representation against the said notification and representation made by APTA President	. С&Н	25, 26 27
10.	Wakalat Nama	,	28/

ADNOCATE
M. Muazzam But

BEFORE THE-SERVICE TRIBUNAL KHYBER PAKHTUNKHUWA

Service Appeal No. 1372 /2024

Aman Ullah Khan Son of Fazli Rahman PSHT, GPS Naran Ji District SwabiAppellant

VERSUS

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

.....Respondents

SERVICE APPEAL UNDER SECTION 4 OF KPK SERVICE 1974, AGAINST THE IMPUGNED ACT TRIBUNAL 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 SERVANTS (APPOINTMENT, CIVIL _ PAKHTUNKHWA_ TRANSFER) RULES, 1989 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 DECLARED AND ORDERED TO BE STRUCK DOWN BEING VOID AND ULTRA VIRES TO THE CONSTITUTION OF PAKISTAN AND FUNDAMENTAL PRINCIPLES OF NATURAL JUSTICE AND AGAINST THE RIGHTS OF APPELLANT.

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

RESPECTFULLY SHEWETH:

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

Copy of Monthly Salary account is annexed as Annexure A

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

- 9. 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 petitioner filed this 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.

- 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.

AFFIDAVIT:

TESTED

I Aman Ullah Khan 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 Honorable Court.

Through

eponent

Muhammad Muazzzam Butt Advocate Supreme Court

ppellaht

Muhammad Adeel Butt Advocate High Court

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

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHUWA

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, i	AMAN	DUAH	LAWN.
Service Appeal No-	/2024		
In Ref to		·•••	
(C.M No	P of 2024	f +.	

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.

epopent

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:

Court /

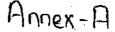
Through

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

Muhammad Muazzzam Butt Advocate Supreme Court

Muhammad Adeel Butt Advocate High Court

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





Personal Information of Mr AMAN ULLAH KHAN d/w/s of FAZLI RAHMAN

Personnel Number: 00236447

CNIC: 1620209627575

NTN: 0

Date of Birth: 11.02.1973

Entry into Govt. Service: 30.05.1994

Length of Service: 29 Years 08 Months 003 Days

Employment Category: Vocational Permanent

Designation: PRIMARY SCHOOL HEAD TEACH

DDO Code: SU6303-Government Primary Schools (Male) Razzar, Swabi

Payroll Section: 003

GPF Section: 001 · GPF Interest applied Cash Center: 13

GPF Balance:

80595750-DISTRICT GOVERNMENT KHYBE

347,455.00 (provisional)

Vendor Number: -

GPF A/C No:

Pay and Allowances:

Pay scale: BPS For - 2022

Pay Scale Type: Civil BPS: 15

Pay Stage: 22

Wage type		Amount		Wage type	Amount
0001	Basic Pay	67,480.00	1001	House Rent Allowance 45%	3,524.00
210	Convey Allowance 2005	2,856.00	1300	Medical Allowance	1,500.00
505	Charge Allowance	40.00	2148	15% Adhoc Relief All-2013	888.00
199	Adhoc Relief Allow @10%	594.00	2316	Teaching Allowance 2021	3,224.00
341	Dispr. Red All 15% 2022KP	6,408.00	2347	Adhoc Rel Al 15% 22(PS17)	6,408.00
378.	Adhoc Relief All 2023 35%	22,925.00			0.00

Deductions - General

	Wage type	Aniount		Wage type	Amount
3015	GPF Subscription	-4,290.00	3501	Benevolent Fund	-1,200.00
3609	Income Tax	-2,423.00	3990	Emp.Edu. Fund KPK	-135.00
1	R. Henefits & Death Comp:	-600.00	,		0.00

Deductions - Loans and Advances

Loan	Description	Principal amount	Deduction	Balance
6505	GPF Loan Principal Instal	600,000.00	-25,000.00	475,000.00

Deductions - Income Tax

Payable:

37,532.88

Recovered till JAN-2024:

16,036.00

Exempted: 9382.93

Recoverable:

Gross Pay (Rs.):

115,847.00

Deductions: (Rs.):

-33,648.00

Net Pay: (Rs.):

82,199.00

Payee Name: AMAN ULLAH KHAN Account Number: 0473486851001832

Bank Details: MCB BANK LIMITED, 240282 NAWANKILLI NAWANKILLI,

Leaves:

Opening Balance:

Availed:

Earned:

Balance:

Permanent Address: SWABI

City: SWABI.

· Domicile: NW - Khyber Pakhtunkhwa

Housing Status: No Official

Temp. Address:

City:

Email: amanullahbandioba@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/02.02.2024/20:12:09)

TREMINIOGER THYAS THAMIRY (MIAM) REDICTED NOTTANDA FORMERS BOY TO FOLLY

OFFICE ORDER.

Com mater dendi detes belonging to that constitution O(PE)6-1/91 of dated 2.3.1992, relating to new recruitment policy for the appointment of PTC teachers under it PTC teachers to the policy of the new recruitment policy shall be strictly on the basis of merit and only PTC methed persons will be recruited for vacanoiss within a provincial constituency. ON .: Snembinged noitesubl .4. W.W. To tammerton edt ditw enneildmes ml

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These appointments are purely temporary and liblato termination without assigning any reason and without any prior potice. They will have to produce the following certificates:-2. Medical number of restificate of physical fitness from the MB. DHQ Hospital Swabi. Verification of antecedents by the DSP Swabb/Labor. ii. They should not be handed over charge if their Age is below 18 or 3. above 25 years. They must take over chargo of the post within 14 days of the issue of this order thereafter the appointment will stand cancelled. In case of resignation they will have to submit 14 days prior notices. After tendering resignation, they will mot leave their jobs until the acceptance of their resignations by the competent authority nor shall . they be granted any leave. In case they leave their jobs withour, the acceptance of their resignations they wall be treated as absconders and disciplinary action will to initiated against them. The SDEDE/ASDEOs must check and verify their original documents. If any forgery is detected the case be registered with the Police for legal action. The SDEON/ASDED's will be held responsible for any lapse in this regard. Charge peport should be submitted to all concerned. Na: TA/DA/R3 in allowed. The following undertaking must be obtained from the candidates and be placed in their carvice books. I understand that my employment under Government at is temporary and that my service may be berminated by Government at any time, without assigning any reason, by giving a notice for a period not less than 14 days or payment in lieu of the notice, of a sum equivalent to my pay for 14 days or far for the period by which the notice falls short of 14 days of 14 days. I agree that if I wish to terminate my services under Government at any b. time, I shall resign in writing and shall thereafter continue to serve

until my resignation is accepted. I also understand that if I absent myself from duty without resigning

in writing or before the acceptance by Coverament of my minimate reduce to disciplinary action, which may involve dis-qualification from future employment under Government.

ATTESTED

(JAMANDOS KHAN) DISTRICT EDUCATION OFFICER (MALE) PRIMARY SWAHI

/F.No.31/Vol=IV/PT% Apptt:/Dated<u>29.5</u>

Ouples forwarded to the:-1. Additional Director I Directorate of Pry Education NWFP Hayar Abad Peshawar.

2. District Accounts Cificer Swali. 3-4. DSP Stabi and Labor with reference to the to S.No. 2 Sub: Para (ii) above. 5. Medieal Superintendent DHQ Hospital Swapi with reference to 5.No.2 sub: Para

(i) abovo. .7. Sub:Divisional Education Officers (M) Swabi & Labor

8. Superintendent Local Office.

9. Head Teachers of concerned schoole. 10. Candidates conserned.

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DISTRICT EDUCATION OFFICER (M) PRIMARY SWABI.

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GOVERNMENT OF KHYBER PAKHTUNKHWA ESTABLISHMENT DEPARTMENT (REGULATION WING)

NOTIFICATION

Dated Peshawar the, 06/08/2020

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

AMENDMENT

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

CHIEF SECRETARY
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)

ATTES/TED

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1. 193 to Special Secretory (Reg); Backlithment Department. 2. 186 to Additional Secretory (Reg-19, Eachbildment Department. 3. 125 to Doputy Secretory (Policy), Eachbilment Department.

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promotion in every condition. repensibilities in case of promotion. Therefore, it סא דינים לשכור סל נסיטוונא גם במכונה אילטונו tend to forge presention to evade poteng/transfer LUCTORIVE POLL (POLITION OF to prevent those who mare is almed to preventing a civil seavant si slure The basic rationale schind the alletion of the ital

exists to decline or forgo peromotion. most fraction dated 06.08.2020; thus, no providion Rules, 1989 stands deleted vide this department Civil Brunts (Appointment Bromotion and maniful) that sub- full (5) of rule -7 of Khyber Pakhunkhun - 18.04.2023 on the subject noted above and to state 80 (Primary M) [EE SED 2 - 21A pointment (2028 dated Men Ling from directed to refer to your letter No.

TRANSFER) RULES 1989. SERVINGUE (REPOINTMENT, PROMOTION ROW IN THE KHYBER PAKHTUNKHWA CIVIL

QUEIECT : QUIDANCE REGARDING DELETION OF KULE Elementary & Becondary Education Department The Government of Khyber Pakhtunkhuner,

-B|C-

Yours faithfully, (Isea Muhammad Khan) Gectlon Officer (Policy)

Endst. Of every No & date

Copy forwarded to the :-

- 1. Ps to special secretary (Reg) 1 Establishment
 Department.
- 2. PPL to Additional Secretary (Reg-II), Establishment pepartment.
- 3. Pd to Deputy Secretary (Bling), Establishment
 Department.

dection Officer (Policy)

WP4442-2023 AZIZULLĄH VS GOVT CF PG4

ATTESTED

4

FOVERNMENT OF MOVBER PARKTUNKHWA ELEMENTARY AND SECONDARY EDUCATION DEPARTMENT CIVIL SEGRETARIAT PESHAWAR (Phone No.091-9223507)

6'0.50 (Primary-M)IE&SED/2-6/2023

Ligled Peshaviar Inc. June 26",2023

The Director

Elementary & Secondary Education Department

Khyber Palihlunkhwa, Peshawar.

Aziz Ullah Khan President

All Primary Teacher's Association, KP

Subject:

GUIDANCE REGARDING DELETION OF RULE 7(5) IN THE KHYBER PAKHTUNKHWA CIVII. SERVANTS (APPOINTMENT,

AND TRANSFER) RULES, 1989.

I am directed to rater 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 05 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 ábove, please.

Encl: AA

(MUHAMMAD ISHAO SECTION OFFICER-(PRIMARY MALE)

Copy forwarded to the:

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

SECTION OFFICER

4442-9703 AZIZULLAH VS GOVT CF PB43

Blc

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

To

The Director Elementary & Secondary Education Department Khyber Pakhtunkhwa, Peshawar

Aziz Ullah Khon 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) RULES, 1989.

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

 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: ÅA

(MUHAMMAD ISHAQ) SECTION OFFICER (PRIMARY MALE)

Copy forwarded to the:

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

SECTION OFFICER [PRIMARY MALE]

WP4442-2023 AZÌZULLAH VS GOVT CF PG43

ATTESTED

A

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

A meeting regording the subject matter was held on 08-07-2023 at 11:00 AM under the Chairmanship of Additional Secretary Establishment in his office. The following attended the meeting.

5#	NAME	DESIGNATION
1 ,	Mr. Pazal Wahla	Deputy Director Ectablishment of Directorale Elementary & Secondary Education Department
2	i Mr. Azir Ulinh	Provincial Fresideni Ali Primory Teochers - Association / Khyber Pakhlunkhwa
1	Mr. Ralogal Ulloh	General Secretary AFTA Pashawar
4	Muhammad Ishaq	Section Officer (Primary) ESSE Department Civil Sectelorial Knyber Pakhlunkhwa Peshawar

2. The meeting storted with recitation from the Holy Ouran, the chair welcomed the earlicipants. The Deputy Director (Establishment) at Directorale of Elementary 2 Secondary Education briefed the forum regarding agenda item in detail.

3. After threadbare discussion it was decided that Directorate at Elementory & 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 vale of thanks from the Chair.

(Mr. Fazal Wahld)
Depoly Director-I
ESSE Department

All Primary Teachers Association Khyber Pakhlunkhvia

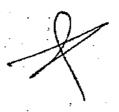
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_ '(Mr. Rologal Ullah) | Ganeral Sacretory APTA | Peshowar (Muhammat Ishda) Secilon Okicer (Primary-Maja) Esse Department

(Abdullah) Addillandi Sacretary (Establishmeni) E&SE Department

WP4442-2023 AZIZULLAH VS GOVT CF PG43

ATTESTED



- B/C-

MINUTES OF THE MEETING REGARDING APPLICATION SUBMITTED BY MR AZIZ ULIAH 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

SII- NAME	DESIGNATION
1. Mr. Fazəl Wahid	Deputy Olrector 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 Poshawar

- 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)	and the second
Deputy Director-1	
E&SE Department	
Provincial President	
All Primary Teachers Association	
Khyber Pakhtunkhwa	
<u> </u>	•
(Mr. Rafagat Ullah)	
General Secretary APTA	
Peshawar	
(Muhammad Ishao)	
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(Abdullah)

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The Section Officer (Primary-Idule), Elomon der & Secondary Education Department, Khyber Pathtunkhwa Peshawar.,

Subject: -Door Sir.

MINUTES OF THE MEETING

firected to refer to the latter No.SO(Primory-AA)E&SEDIS-11 G.Misc/Minister of the Healing/PST/2023 dated 10-07-2023 on the subject cited above and to present brief history about the background of the case as under:

- That Government of Khyber Pakinunkhwa Establishment Department (Regulation Wing) deleted Rula 7(1) in the Civil Servants (Appaintment, promotion & Transfer Rules 1989) vide notification No. No. SOR-VI (E&AD)/1-3/2020 dated 06-08-2020.

 That this office longht guidance from your good office in the following words vide letter . No.6987 dated 06-02-2023.
- - (i) It is the prerogative of the civil servant to accept Promotion in every condition.
- That your now office forwarded the same to the quarter concurred vide letter Na.SO (Primary-M) E&SED/3-1/Appointment/2021 for necessary guidance.
- That the Gove himent of Khyber Pakhtunkhwo Establishment Deportment (Regulation Wing) vide letter (la.50 (Palley) E&AD/1-1/2020 dated 6-06-2023 categorizally stated that there exists no provision to decline or forgo promotion. It is obligatory upon every civil xervant to accept promotion under every candillon.
- The same was received by this office from your good office wide lener No.50 (Primary-M) 56.550/2-2/Appointment/2023 dated 12-06-2023.
- That, in the light of the minutes of meeting violed 6-07-2023 held under the Chairmanshit of flow, Athillianal Secretary Establishment at his affice this office, has heen asked for silimission of consolidated case. In way of the above, this office is of considered opinion that the deletion of Rules

7(5) have affected regalively a large numbers of Female Toochers. Thus It is proposed that Teachers helms are-16 may be exempted of implications of the amondment in the rules ibid provided they subject their written refused prior to conduction of the meeting of Departmental Aramation Committee.

ose is submitted for perusal and necessary actions piease.

Asstrated Direttar (Estab MI-I) Elementary & Secondary Education Khyber Pakhtunkhwo .

Endst: No.

Copy of the above is in:

I. PA to Director Local Directorate.

Maxter Copy.

Assistant Director (Establif-1) Blementary & Secondary Education Kligher Pakhtunklava

4442-2023 AZIZULLAH VS GOVT CF PG43

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DIRECTURATE OF ELEMENTARY & SECONDARY EDUCATION, KPK

FESHBURR.

19K) Pushauran Elementagy & Secondary Education Department Section Office (Primary- Male)

Sulfect - Minute of Meeting

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present bites highing, about background of cous as under. Alinetes of meeting PTT/ISI dated to-F-of to Estate of the object of the soul of the soul Dear Eir) & am directed to refer to teller No. (50. Among -17) E & 670 (5-1/6 will)

wide notification (Vi. Nu. SDR-VI(EEAD) 1-3 [2020 dated ob 08-2020. delated released in civil servents (Apprintment, promotions Timps like 1989) (Brilly restabligers) treamfringed buentialdets 94 & treamfrished last "

Trust this office early the Gyas defice have four good office in the following transcription wide letter the 6983 deflet between the following

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white titled No. 53" (Romang M.) EG SED/2-2 Appointment- (2023 for necessary) o That your good office forwarded the come to quarter concerned

sential to ciccopi panishin under every condition. ind prevision to decline forgo mandion. It is abligatory upon every civil clais smilt tout betate your cross cross-so-2 botato usos/5-1/019.33 (Hall for government of 179-ED (Regulation Why) vide letter 16.50 (Policy)

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members of Temple forchers. entition beneatization to it south eather white white the wait is not the deliber of the south of the deliber of the south of the south of the delibert of the south of the so

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Phylon Richardning, Bernard & Seandary Educates Authora Director

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ELEMENTARY AND SECONDARY EDUCATION DEPARTMENT CIVIL SECRETARIAT PESHAWAR (Phone No.091-9223597)

Ho. SO(Primary-M)E&SED/2-2/Appointment-Rule /2023 Peshaviar Dated 23rd August, 2023

Hunexine

The Georgiany to Gord, of Khyber Pakhlunkhwa. Establishment & Administration Department. remetised.

SUBJECT: - SUIDANCE REGARDING DELETION OF RULE 7(5) IN THE CIVIL TRANSFER RULES APPOINTMENT, PRPMOTTON &

Geer Sir, I am directed to refer to your letter No. SO(Policy)/ EBAD/ 1-3/2020 dated 155" Durie 2023 and to state that after deletion of rule 7(5) Khyber Pakhtunkhwa Ovli Servert (Applionbrient, Promotion & Transfer Rules 1989) it has been intimated that those officers/ officials vitro do not comply with promotion order of the competent authority or by to evade promotion through different means shall be proceed under Khyber Pekribunkirwa Civil Servant (Efficiency & Discipline) Rules, 2011.

In this connection it is submitted that in some cases lady teacher of primary level, wind avail 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 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 Э. extent of ledy teacher in primary schools.

IMUHAMMAU SHAK SECTION OFFICER (PRIMARY HALE)

Copy (crurarded to the:

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1. Olrector EfrSE Khyber Pakhbunkhwa.

2 PS to Secretary, FBSE Department Knyber Pakhtunkhwa.

SECTION OFFICER

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4442-2023 AZİZULLAH VS GÖVT CF PG43

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Perhaner Dated 224 August J. | 18-18 | CESE | (M- Horning) 02.01/ ESOS | 2015 - Lumbridgell

Establishment and Administration Department, The Secretary to Government of Khyba Bikhlundhura.

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Civil Servant (Applitment, Analton & Transfer Rules' Guidance regrading deletion of Rule 7(5) in the SUBJECT:

and sevent (Efficiency and Discipline) Rule 2011. different means should be proceed under Khikhismikhun object resterning stones at yet to betrother bresponses at fo those officers officiall who do not comply with pronotion order toolt lostomitri asset sed 40 (P8PL sells elginor) bus rational deletton of Rule 7(5) Khyber Bilthinkhwa Civil Servant (Apprintment with tarit state of lara Ecus anut to potob acac /8-1/ Promission of selfer to your selfer No. Softmoney (Poper) (ESA) Dec Sir,

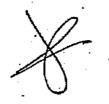
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GOVERNMENT OF KHYBER PAKHTUNKHWA ESTABLISHMENT DEPARTMENT

No. SO(Policy)E&AD/1-3/2020 Dated Peshawar the September 07, 2023

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

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 lendered 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 Secretary (Policy), Establishment Department.



B C-

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 PAIGITUNKHWA 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 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)

WP4442-2023 AZIZULLAH VS GOVT CF PG43

ATTEND

Annexure - G

Tο,

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

 Secretary to Government of Khyher Pakhtunkhwa, Elementary and Secondary Education Department, Civil Secretariat, Peshawar

3) Director Elementary and Secondary Education Department

Subject: 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 fetter 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. 5D (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 Pakhtankhwa 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 givil servant to accept promotion under every condition. That Directorate of Memontary & 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 a 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 Palchtunkhwa Civil Servant (Efficiency & Discipline) Rules, 2011.

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

Dated 06 /03/2024

PAMON ULLAH KHAN 510 FAZLI RAHMAN PSHT.

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Khuber Pakhitunkhwa

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07.05 2024

1. Learned counsel for the appellant present.

2. Let a pre-admission untice be issued to the respondents through TCS for submission of reply-comments. Appellant is threated to deposit TCS expenses within three days. To come up for reply-comments as well as preliminary bearing on 10.06,2024 before S.B. P.P given to tearned counsel for the appellant.

application for suspension of Notification dated 06.06.2023 and letter dated 23.98.2023 till the final disposad of main service appeal. In the meanwhile, no adverse action shall be taken against the appellant till next date of heaving.

dertified to be true copy(Muhammad Akbar Khan)

Member (F)

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Date of Presentation of Application 14 1/2 1-6

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JAKALAT NAMA

BEFORE THE SERVICE TRIBUNAL PESHAWAR

Aman Ullah Khan

Government of KP &others

Appellant

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Respondents

<u>.</u>

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.

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

APPELLANT

ACCEPTED

MUHAMMAD MUAZZAM BUTT

Advocate Supreme Court

-MUHAMMAD ADEEL BUTT

Advocate High Court

BASSAM AHMAD SIDDIQUI

Advocate-High Court