### FORM OF ORDER SHEET

Court of Appeal No. 1645 /2024 S.No. Order or other proceedings with signature of judge Date of order proceedings 3 1 27/09/2024 1-The appeal presented today by Mr. Muhammad Muazzam Butt Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on 03.10.2024. Parcha Peshi given to counsel for the appellant. By order of the Chairman AR

#### BEFORE T HE SEI

A-NO-1645/2024 Misbah Wlah Government of KP & others

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OCATE A D N M. Muassam Butt

2024

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.....Appellant

.....Respondents

In Ref to

1645 Service Appeal No

Misbah Ullah Son of Amin Ullah, PSHT GPS Prata Dheri, Tehsil & District Timargara

#### 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, Civil Secretariat Near MPA Hostel, Peshawar

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, PROMOTION AND TRANSFER) RULES, 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 BETTER 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 AUSO BE GRANTED TO THE APPELLANT.

#### **RESPECTFULLY SHEWETH:**

 That the Respondents Department appointed the Appellant as Primary School Head Teacher.
 Copy of Appointment letter is annexed as <u>Annexure A</u> 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 on forego their promotion and the next employee in seniority list is to be promoted.

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 Impugned 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 <u>Annexure C</u>

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 <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 23-09-2023 to reconsider the amendment made in Khyber

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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.

9.

That the potitioner 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.

c. 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.

-4-

E. 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:

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4, (the appellant) 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

onent

Muhamingd Muazzzam Butt Advocade/Supreme Court

Muhammad Adeel But Advocate High Court

Appellant

assan Ahmad Sidliqui 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\_\_\_\_\_

Misbah Ullah

#### VERSUS

Secretary to Government of Khyber Pakhtunkhwa, & others

/2024

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 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:** 

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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 Court Through

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Muhampiad Muazzzam Butt Advocate Supreme Court

Muhammad Adeel But Advocate High Court

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Dist. Govt. KP-Provincial District Accounts Office Dir at Timargar Monthly Salary Statement (August-2022)



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Personal Information of Mr MISBAHULLAH d/w/s of AMINULLAHPersonnel Number: 00259506CNIC: 10873001380Date of Birth: 14.02.1973Entry into Govt. Service: 03.08.1995

NTN: Length of Services

Length of Service: 27 Years 00 Months 030 Days

Employment Category: Active Temporary Designation: PRIMARY SCHOOL HEAD TEACH 80001409-DISTRICT GOVERNMENT KHYBE DDO Code: DA6140-GOVT. PRIMARY SCHOOLS (M) SAMARBAGH Payroll Section: 001 GPF Section: 001 Cash Center: 10 GPF A/C No: EDUDA010514 **GPF** Interest applied 791,818.00 (provisional) **GPF Balance:** Vendor Number: -Pay and Allowances: Pay scale: BPS For - 2022 Pay Scale Type: Civil BPS: 15 Pay Stage: 21

	Wage type	Amount	Wage type	Amount
0001	Basic Pay	65,500.00	1001 House Rent Allowance 45%	3,524.00
	Convey Allowance 2005	2,856.00	1300 Medical Allowance	1,500.00
	Charge Allowance	40.00	1923 UAA-OTHER 20%(1-15)	1,000.00
2148	15% Adhoc Relief All-2013	857.00	2199 Adhoc Relief Allow @10%	575.00
	Teaching Allowance 2021	3,224.00	2341 Dispr. Red All 15% 2022KP	6.607.00
2347	Adhoc Rel Al 15% 22(PS17)	6,608.00		0.00

**Deductions** - General

Wage type		Amount	Wage type		Amount
	GPF Subscription	-2.890.00	3501	Benevolent Fund	-1.200.00
3609	Income Tax	-793,00.	3990	Emp.Edu, Fund KPK	-125.00
4004	R. Benefits & Death Comp:	-600.00			0.00

Deductions -	Loans and	Advances
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Loan	μ	Descrip	tion	Principa	l amount	Deduc	:don	Balance
Deductions Payable:	Income Ta 12,687.28		till AUG-2022:	1,586.00	Exempted	: 3171.78	Recoverable:	7,929.50
Gross Pay (I	Rs.): 92	,291.00	Deductions: (Rs.):	-5,608.00		Net Pay: (Rs.	): 86,683.04	) .

Payee Name: MISBAHULLAH Account Number: PLS 3581-7

Bank Details: THE BANK OF KHYBER, 080029 TIMARGARA LOWER DIR TIMARGARA LOWER DIR, Lower Dir

Availed:

Leaves: Ope

D.

Opening Balance:

ant Address WILL STUNIA COLLAGO

Earned:

Balance:

City: DIR LOWER Temp. Address:	Domicile: NW - Khyber Pakhtunkhwa	Housing Status: No Official
City:	Email: misbahullahhpst@gmail.com	
		Section 2 - Sec.
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System generated document in accordance with APPM 4.6.12.9(288457/24.08.2022/v3.0) \* All amounts are in Pak Rupees \* Errors & omissions excepted (SERVICES/31,08.2022/20:04:32)

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#### GOVERNMENT OF KHYBER PAKHTUNKHWA ESTABLISHMENT DEPARTMENT (REGULATION WING)

#### **NOTIFICATION**

#### Dated Peshawar the, 05/08/2020

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 act

#### 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, Khyper 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)

Annexure

7.9

AVITNICTUNAT IMUVITN UD TNATAMBAVDD "VNATAAUIG TNATARIZI, UNATAMBAVDD 02021C, I/O/AMV(VILEI, UATAMBAVDD) 02021C, I/O/AMV(VILEI, UATAMBAVDD) CC02, 20 onut, oli tawadayi bəlaqi

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בועון בפרעמתו ום מככפטו קרפהמוסת וח מעברו במתלוולמה.

סר לאב במתקבובהו בעולהרותמנה, לאמוב מלאכנובילמתופות גיעונים לם אמן המתקלץ גיעות קרמתמוומת מולובר סר לאב במתקבובהו בעולהמונץ מר גוץ ום בעשלם מעוממונסת למרטוקט עותכרמתו ותבמוב בלומו אם מסכבבאסל מעוליבו עמובר צוועאבר ליסצווותאנוונית כויטו בברציותים (התלבובת אביבים לונוובה,

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WP4442-2023 AZIZULLAH VS GOVT CF PG43

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GOVERNMENT OF KHYBER PAKHTUNKHWA ESTABLISHMENT DEPARTMENT (REGULATION WING)

The Government of Khyber Pakhtunkhwa Elementary & Secondary Education Department.

Subject: <u>GUIDANCE REGARDING DELETION OF RULE 7(5) IN THE KHYBER PAKHTUNKHWA CIVIL</u> 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/2023) dated 18.04.2023 on the subject noted above and to state that sub-Rule(5) of Rule-7 of Khyber Pakhtunkhwa Civil Servants(Appointment, Promotion and Transfer) Rules, 1989 stands deleted vide this department a notification dated 06-08-2020; thus, no provision exists to decline or forgo promotion.

2. The basic rationale behind the deletion of the ibid rule is aimid to preventing a civil servant from temptation for illicit gain by sticking to a single lucrative post/position or to prevent those who tend to forgo promotion to eval, a posting/transfer or show lack of capacity to tackle higher responsibilities in case of promotion. Therefore, it is obligatory upon every civil servant to accept promotion in every a condition.

3. Further 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

> Yours faithfully, (Issa Muhammad Khan) Section Officer(Policy)

(Endst), of even No & date

Copy is forwarded to :-

1 PS to Special Secretary (Reg), Establishment Department.

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

Section Officer (POLICY)

To

DVERNIWERT OF FEMYBER PARHTUNKHWA ELEMENTARY AND SECONDARY EDUCATION DEPARTMENT CIVIL SECRETARIAT PESHAWAR (Phone Mo.091-9223587)

> h'n.SO (Primory-MyEESE0/2-6/2023 Dated Peshawar the, June 26<sup>th</sup>,2023

> > 26/6/23

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

- Aziz Ullah Khan President All Primaty Teacher's Association, KP

Subject: <u>GUIDANCE REGARDING DELETION OF RULE 7(5) IN THE ICHYBER</u> <u>PAICHTUNKHWA CIVIL SERVANTS (APPOINTMENT, PROMOTION</u> AND TRANSFER) RULES, 1988.

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.

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.

Enci: AA

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(MUHAMMAD ISHAO) SECTION OFFICER (PRIMARY MALE)

Copy forwarded to that

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

LE SECTION OFFICER

WP4442-PTEI AZIZULLAH VS GOVT GF PG43

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

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BIC

To

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1/1

The Director Elementary & Secondary Education Department Khyber Pakhtunkhwa, Peshawar

Aziz Ullah Khan President President

All Prevary Peacher's Association, KP

Subjact:

#### 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 & vonue as mentioned above, please.

Encl: AA

#### (MUHAMMAD ISHAD) SECTION OFFICER (PRIMARY MAIL)

Copy forwarded to thei

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

SECTION OFFICER (PRIMARY MALE)

#### WP4442-2023 AZIZULLAH VS GOVT CF PG43

2,

MINUTES OF THE MEETING REGARDING APPLICATION SUBMITTED BY MR. ATIZ ULLAH PROVINCIAL HRESIDENT ALL PRIMARY TEACHERS ASSOCIATION KHYBER PAKHTUNKHWA REGARDING OF DELETION OF RULE 7/SI IN THE CIVIL SERVANT (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 affice, The following attended the meeting.

58	NAME .	DESIGNATION
, I	Mr. Fozal Wahld	Deputy Director Establishment of Directorate Elementary & Secondary Education Department
2	i Mr. Aziz Ulioh	Provincial President All Frimary Teachers - Association Khyber Pakhlunkhwa
3	Mr. Rolagal Ulleh	General Secretary APTA Peshawar
: 4. i	Muhammad Ishaq	Section Officer (Primary) ELSE Department Civil Secretariai Khyber Pakhlunikhwa Peshawar

2. The meeting started with recitation from the Holy Ouran. The chair welcomed the participants. The Deputy Director (Establishment) of Directorate of Elementary 2 Secondary Education briefed the forum regarding agencia item in detail.

3. Alter threadbare discussion it was decided that Directorate of Bernentary 2. Secondary Education Department may examine the case property 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. Fazal Woh Deputy Directorease Department

4

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(Mr. Ralagat Ullah)

Ganeral Secretary APTA Peshowar

Aziz Ullon) Provincial President Kil Pilmary Teochers Association Khyber Pokhlunkhwa

(Muhammad Ishaq) Section Officer (Frimary-Mole) ELSE Deportment

Inne Nuxe

(Abciuliah) Addillanai Secretory (Etiablishmeni) E&SE Deparimeni

WP4442-2023 A232ULLAH VS GOVT CF F043

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).

- BIC-

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

Elf. I al a barr	
511 NAME	DESIGNATION
1 Mr. Fazal Wahld	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
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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. Rafaqat Ullah) General Secretary APTA Peshawar

(Muhammad Ishaq) Section Officer (Primary-Male) E&SE Department

> (Abdullah) 슈너리바이공공 문화가고유로 분만한바라다



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#### ELENENTARY AND SECONDARY EDUCATION DEPARTMENT CIVIL SECRETARIAT PESHAWAR (Phone No.091-9223587)

No. SC/Primary-M)E&SED/2-2/Appointment-Rule /2023 Peshawar Dated 23rd August, 2023

The Secretary to Govil of Khyber Pakhlunkhwa. Estephishment & Administration Department. Peshavar

-16 -

#### SUEDECT: - GUIDANCE REGARDING DELETION OF RULE 7/5) IN THE CIVIL SERVANT JAPPOINTMENT, PRPMOTTON & TRANSFER RULES 1989).

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ň, H

I am directed to refer to your letter No. SO(Policy)/ E&AD/ 1-3/2020 dated 55" June 2023 and to state that after deletion of rule 7(5) Khyber Pakhtunkhwa Civil Servers (Appliphiment, Promotion & Transfer Rules 1989) It has been intimated that those officers/ officiels who do not comply with promotion order of the competent authority or by to evade promotion through different means shall be proceed under Khyber Performankinwa 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 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 heed care. In such cases, there are negative effects on service delivery.

In view of the above, the said amendment may be reconsidered to the З. enters of locit teacher in primary schools.

MUHAMMAUTE SECTION OFFICER TRIMARY HALE)

Copy forwarded to the: ...

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

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SECTION OFFICER LERUI

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Annexure

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WP4442-2023 AZIZULLAH VS GOVT CF PG43



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(Muhammad Islacy) (Muhammad Islacy) (Manul)

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-21 carls y loady to the primary ships with In view of above, the said ammendment may be reconsiblered to אלמאנציריה-למנט מילים הניצע מאור כן אי בעכלה כקונג איינייג מידי הייצאלא effects on searce delivery hast of them are many love with bills and elder father of studioof teaperart / withous an ithus enotions tratamen ant mi satuto molega et avoit yett slutin suairavorri eueros goof of avoir righterment hous avoir on love to In this connection it is submitted that in some cores body teacher of Civil Servant (Efficiency and Discipline) Rule 2012. different means should be proceed under Khyber Rikhun About noticing a boys at but to through a trategines with to those officers officially who do not comply with promotion order tart between ind 121 42 (1892 29205) efternor) and rationary delettor of Rule 7(S) Khyber Rettornthwa Civil serient (Apprintment with tark state of long ereconstruction polog aros 18-21 OAR directed to refer to your letter No. Solucity) (ESAD

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(6857 Will Servicit (Apprintment, Romation & Transfer Rulles Quidance regarding deletion of Rule 7(5) in the Subject : 1

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Peshartea. Establishment and Administration bepartment, The Secretary to Government of Khyba Partition blues.

Pertomon Daved 23m Augusta 18-84 (13233 (M- Horinan 19.0%) 2.01

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	No. 8145 Khybert Pater First Klivya, Peskeawar No. 8145 M. No. 340577 Purceduard Cover Plante OF 9725344 Email: Edeblathered in all Company States		
	To Two Section Officer (Primary-Male), Elementary & Secondary Educution Department, Khyber Politikakiwa Pezhawor.		
	Subject: - <u>MINUT OF FTILE ALECTING</u> Dear Sir, J am Alectical to refer to the latter No.SOFFrimary-MDEASED/S-1/		
	O. Mixe/Ministas of the Healthy/PST/7023 dated 10-07-2023 on the subject clied above and in present brief history about the background of the case as under:		
	<ul> <li>That Governmeld of Klyber Pakhtunkhwa Establishment Depertment (Regulation Wing) delated Rule 7(1) in the Civil Servants (Appointment, promotion &amp; Transfer Rules 1989) vide notification No. No. SOR-VI (5&amp;AD)/1-3/2020 dated 06-08-2020.</li> <li>That this office dought guidance from your good office in the following words vide letter No.6987 dated 06-02-2023.</li> </ul>		
	<ul> <li>(i) Now it hob/lgotary upon the civil servant to accept Promation in every condition.</li> <li>(ii) It is the preparity of the civil servant to atther accept or turn down the affer of promotion.</li> </ul>		
	<ul> <li>That your 2014 diffica forwarded the same to the quarter concerned vide letter Na,50 (Primary-10) E&amp;EED/3-2/Appointment/2023 for necessory guidance.</li> <li>That the Gaventment of Khyber Pathtunktwo Establishment Department (Regulation IVing) vide letter HaSO (Polley) E&amp;AD/1-3/2020 dated 6-06-2023 categorically stated that there exists no provision in decline or fargo promotion. It is abligatory upon every</li> </ul>	ः व	
一次 一次 日 「日 「日 「日 「日 「日 「日 「日 「日 「日	civil servant to accept production under every condition. The same was received by this affect from your good office vide letter No.SO (Primory-M) 5:8550/3-2/Appainiment/2023 dated 12-06-2023. That, in the light of the minutes of meeting dated 6-07-2023, held under the Chairmanship of Han, Athilitianal Secretary Establishment of his affect this affect has		
	been asked for similation of consolidated case. In visit of the above, this office is of considered opinion that the deletion of Rules 7(5) have affected regatively a huge numbers of Female Teachers. Thus it is proposed that Teachers halow Drb-16 may be exempted of implications of the amendment in the rules ibid provided they still their written refused peter to conduction of the meeting of		
	Departmental Aradian Committee. The sase is submitted for perual and necessary actions please.	الم الم	
- <b>i</b> -	Assistant Director (Estito M-D) Elomentary & Secondary Education	•	
	Endst: No Copy of the above is to: I. PA to Director Local Directorple.		
	2. Master Copy.		 
•	Bismentary & Secondary Education Kingher Pakhninkhwa		
	WP4442-2023 AZIZURLAH V6 DOVT CF PG43		Ň
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	ATTESTED		
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Khylow Richlen Hander Elementary for Secondary Education

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Mide letter No. 55 (Principha) EGED/2-2/17/2011/20123 for marceleary

There your good office forwarded the come to quester concerned

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instanting types in the series for and granding to accept promotion.

Provide solder sought guddone and ballo the following

vide notification No. No. 50R-VI(EEAD)1-3/2020 deted ob 06-08-2020.

(1992 all referent provincer ( Angentingenty providenty Transfer 1200 1989) ( Prai Continnent of PP Establishment dependenters) (Regulation Willig)

present brief history, about backgrapial of and as under.

Alinates of meeting 127/222 deped 20-7-6-02 deped above and the 1000 824) I am divided to refer to heller rue. (50. Phinory IN) E & GED /5-1/6. Wind

Subject - Minutes of Meeting

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ארארי ליצהעושוי Herritory & Swondony Education Department Section Officer (Rindry- Male)

DIRECTORATE OF ELEMENTORY & SECONDARY EDUCATION, KPK

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GOVERNMENT OF KHYBER PAKHTUNKHWA ESTABLISHMENT DEPARTMENT No. SO(Policy)E&AD/1-3/2020 Dated Peshawar the September 07, 2023

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

Yours faithfully,

Section

Officer (Policy)

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

PROMOTION AND TRANSFER) RULES, 1989.

Subject: -

Dear Sir.

arn directed to refer to your letter No. SO(Primary-MI/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)....

Endst. Of even No & date

Copy forwarded to the:-

1. PS to Special Secretary (Reg), Establishment Department.

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

#### GOVERNMENT OF KHYBER PAKHTUNKHWA ESTABLISHMENT DEPARTMENT No. SO(Policy)E&AD/1-3/2020 Dated Peshawar the September 07, 2023

21-

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

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

Dear Sir,

To

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I am directed to refer to your letter No. SD(Primary-M)/E&SED/2- 2/Appointment-Rule/2023 dated 23.08.2023 on the subject poted 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,

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Section Officer (Policy)

#### Endst, Of even No & date

Section nlcer (Pollcy)

WP4442-2023 AZIZULLAH VS GOVT OF PE43

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

Annexute - G

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

-22

Subject: REPRESENTATION AGAINST THE IMPUGNED NOTIFICATION BEARING NO.SO(POLICY)E&AD/1-312020, DATED 06/08/2020, COMMUNICATED TO SECRETARY TO GOVERNMENT OF KHÝBER 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 respectof 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 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 fundamental principles of natural justice.

Dated 30 /03/2024

Hullen Misbah Ullah lo Amin Ullah SHT

-75

Rhyber Pakhtunkhwa Aziz Mihili Khan Prastani 0 033-04 (46) 0 0alullah 1973((ganali,com 5) aalabah a<u>pia</u> APTA Haveer Govi, Princery School No.4, Gulbohar Postawar City, سريخني تنوا Tل پراتمری ٹیچیرزایسوی ایشن (ایٹا) نیچ Annenure بهاب : ميكرال الطنول & مكنودك الجركيش ليبر يتنيقوا متجاب و آل پر اترک کچرو ایدی ایش نیم بخونو جتاب مال مزادش ب مد بردموشز بر الدادي عمد الدسة إلدا او مد مركار الدم ك شراعل ادنى ب بردموشز كا ويد تالون المراكر القاك بر طادم ويد الركى اجود کے تحت ایک وقد پرد موضور دلی 3 دو بر ال تحد باد سال تک پرد موضو میں سے تح سے مطلب باد سال تک بار مان کا پرد موشو میں ادعال مل ہوسید ست دید پردس مرد میں ودو مرد میں بد محمد بود میں مد پردس میں مدوس سے سے سلست پار میں تعدید مرد من وال کردس مجمر اس قالون میں تعرف دولات دولی کا جار منال دولی بات تحم کر دی تک کہ اکر ڈیک طلام ایک مال پردسوش نہ لین قردہ دوس سال کے ملکا ہے لیکن اب جم مال ہے ہوائی اب ہر طام پردسوش شورد کی کے اگر تحمل لیں کے 7 میں کے خلاف ای ید دلما یدلو کے مطابق کاردائی کر لے کا کہا کیا ہے روم اس بی دولا کالیک اب ہر طام پردسوش شورد کی کے اگر تحمل لیں کے 7 میں کے خلاف ای ید دلما ورد کو کہ دوائی کر کے کا کہا کہا ہے دامل ب الرى وليليش بداد المان حول كى كل طال دول ب موب كى دو دواد ادر بهذى طاق عن عامى كر فواتى اما تره كا البالي مشلات كا مامناکرتا یزے ک بجد مام مالات ش می فددس پردس اور در من اور دردرال بعیوا می دادی السالی مترل کی خات دردی ب کرک فیر بخونو ام ا عن برتسی ب عام ال و شنیان اس مالات ش می این مالات به در تسی ب عام ال و شنیان اس مالات می با در السال متول کا طال ب تم ال سے ظالب تالول باد، برل لا تن من من الد ور الل باد، برل لا تن من من الد است تال الله الله الله الله الله ا لإذا تم آب من مدوند الل كور لا لي من كو المي لا جامع الل عن قدم كر كار براترى اماتودكر (Relaxation) وإ جامع اور ان كو ا مرمن المدومة محد من لي كما بلسك الن كرم من الم الي وال بلب الم الد جرد من الد لي كما سودت الد، باتلاد بالذ لما جاسة المكن ب وجرد من و كما ياسة ال سليط تلاة أن معلد الدملد الع (DEOs) ال ال الدكو الد عسومى مراحل بادى كيا جائ الدامان عن ب ميل / لييل براتمول اماتد، كو وان المعتد ادر اد چ ك ... بها با ع میر کد لولیتین جاری است می براتری امان، موجد می براتری امان، موجد ان خود برنادی کرا مالد شرار موجد ب ابا ایم از قرق و یمن می کم ب ماحیان فردی ایکن بکر مور بمر سم براتری اسان، صورالیمی براترک امان، کو اس دین ایت ا شكرميه . 84 عزيزالله خاك مروياتي مررر TITCA کل پراترک نیچرز الدوی ایش خیر پخونوا WP4442-2023 AZIZULLAH VE GOVT GR/PG43

07.05 2024

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I Learned counsel for the appellant present.

2. Let a pre-admission notice be issued to the respondents through TCS for submission of reply/comments. Appellunt is directed to deposit FCS expenses within three days. To come up for reply/comments as well as preliminary hearing on 10.06.2024 before S.B. P.P given to learned counsel for the appellant.

03. Alongwith the service appeal there is an application for suspension of Notification 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 \*

Certified to be true cons(Muhammad Akbar Khan) Member (E)

next date of hearing.

174

Date of Presonation of Application 10 - 1/2 1-3 Number of " Convints - -Grgant. 52 Tesal..... Rame (i) -18-622-Date of Constant States 17-6-23 Date of October of Copy-



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# NAKALAT NAMA

## **BEFORE THE SERVICE TRIBUNAL PESHAWAR**

Misbah Wah

Versus

**Government of KP & others** 

Respondents

Appellant

## 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.

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

Iullah

PPELLANT

#### ACCEPTED

MUHAMMAD MUAZZAM BUTT Advocates upreme Court

MUHAMMAD ADEEL BUTT

Advocate High Court

BASSAM AHMAD SIDDIQUI Advocate High Court