# FORM OF ORDER SHEET

Court of			
Appeal No.	1654	/2024	

S.No.	Date of order proceedings	Order or other proceedings with signature of judge	
1	2	3	······································
1	27 /09/ <b>202</b> 4	The appeal presented today by Mr. I	Muhammac
		Muazzam Butt Advocate. It is fixed for prelimin	ary hearing
		before Single Bench at Peshawar on 03.10.2024. P	archa Pesh
		given to counsel for the appellant.	
		By order of the Chair	man
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## BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHUWA

A-No-1654/24 Muhammad Fayyaz

Government of KP & others

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ADNOCATE M-Muazam Butt

## BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHUWA

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Service Appeal No 1654 /2024

Muhammad Fayyaz Son of Sain Muhammad, PSHT

District Mansehra, Tehsil & District Mansehra

.....Appellant

### VERSUS

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

.....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, 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 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 Appointment letter 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".

- 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 Impugned 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 E
  - 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 setable.

- 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:

I, (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. - 1 2

Through

Muham And Muazzzam Butt Advocade Supreme Court

Muhammad Adeel But Advocate High Court

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	
	Muhammad fayyaz	

Secretary to Government of Khyber Pakhtunkhwa, & others

APPLICATION FOR SUSPENSION OF IMPUGNED NOTIFICATION BEARING NO. SO (POLICY) E&D/1-3/2020 DATED 06/08/2020, COMMUNICATED TO RESPONDENT NO.2 BY RESPONDENT NO.1, VIDE LETTER DATED 06/06/2023 TILL THE FINAL DISPOSAL OF CASE IN HAND.

Respectfully Submitted:-

- 1. That the instant application may be treated as part and parcel of service appeal of the appellant.
- 2. That the appellant has brought a good prima facie case and balance of convenience also lies in favor of the appellant.
- 3. That there is likelihood success of the appellant in the lis. And if the notification bearing No. So (Policy) E&D/1-3/2020 Dated 06/08/2020, communicated to Respondent No.2 by Respondent No.1, Vide Letter Dated 06/06/2023 is not suspended the appellant would suffer irreparable loss.
- 4. That valuable rights of the appellant is involved in the case.

Deponent

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 (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

Muhammad Muazzzam Butt Advocate Supreme Court

Muhammad-Adeel But Advocate High Court

Appellánt

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Annexue-GOVERNMENT CHYBRIA PAICHTUPICHY ESTABLISHMENT DEPARTMENT (REGULATION WING) NOTIFICATION Dafed Pushinent the 00 / 8-12020 The pure of the pures conferred by secular 26 of the pure conferred by secul Party Chief Minister of Khyber Pakhinhkhiwa is pleased to direct that in the Khyber Pakhinhkhiwa and Transfer that I have the Chief Servants (Appointment). Momotion and Transfer that (i) the times Civil Servection (Appointment). Promotion and Transfed Rules, 1989, the Mining futher unendment shall be made, namely: ANTENDMENT In rule 7, sub-rule (5) whall be deleted. GOVERNMENT OF THE IUTY DER PAKETUNKHWA NISTENO & EVEND Additional Chief Secretary, Covi. of Khyber Pakhtunkhwa. Planning & Copy is forwarded to: The Senior Member Board of Revenue, Khyber Pakhrunkliwa. All Administrative Sequenties to Govi. of Khyber: Pulchtunkhwa. The Principal Secretary to Governor Khyber Pakhtunkhwa. The Principal Secretary to Chief Minister, Khyber Pakhitunkhwa. All Divisional Commissioners in Khyber Pakhunkhwa All Hearis of Affactied Departments in Knyber Pakhlunkhiva. All Autonomous/Semi Autonomous Bodies in Khyber Pakhtunkhwa All Defauly Commissioners in Khyber, Pakhlunkhwa 6. The Registrar Peshawar High Court, Peshavar The Registrar, Khyber Pekhiunkhwa Service Tribunal, Peshawar, The Secretary, Khyber Pakhtunkhwa Bublic Service Compission, Pesturyar, The Deputy Director (IT), Each Department.

Administration Department. The Section Officer (Admn), Administration Department with the request to arrange 20 gazetta copiss. The Caretaker, Administration Department. DEBUTY SECRETARY POLIC ATTESTED

BC

#### 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 with the content of the co

#### **AMENDMENT**

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

ŊΔ

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)

MORUM



## COARTHPERS, OR CHARRIC SVICH LINKINAY estangishdert hepautanen? Ha, SO(Pol(cy)) (AAD) [-3/2020 Dated Perlinwer the June 06, 2022

62

The Covenances of Rhytics Pakhunkhwa. Blementary & Secondary Phincolon Department.

Subject: •

CHIDANCE REGARDING DELETION OF RULK 7(5) IN THE CHYPER PARTITIONALITY GIVIL HERVANDE TAPPOINTMENT. PROPOSITIONAND PRANSPERFRUITES, 1910.

Dent Sir.

I am threated in refer to your letter No. SO(Primary-M)/R&SUD/2-Wappointment/2013 plated (8.04.2023 un the ambject noted chove and to state that Sub-fluid (5) of Rule-7 of Khyper Pakhlunkhwa Clvit Servints (Appointment, Promotion and Transfer) Rules, 1987 stands deleted vido this department notification dated 06.08.2020; thus, no provisión exists to decilio or forgo promoilon.

- The basis retionals behind the deletion of the Ibid rule is almost at preventing a civil servent from temptation for Wiell Anto by sticking to a single inerative post/postifien or to prevent those who lend to forgo promotion to evode posting/transfer or show tack of expectly to lockly higher responsibilities in case of promotion. Therefore, it is obligatory upon every civil servent to accept promotion in overy candition.
- Furthermore, those officers/officials who do not comply with promotion order of the competent authority or try to evade plumation through different means shall be proceeded applicat under Khyter Pakhuinkhwa Civil Servents (Efficiency & Discipline) Rules, 2011, plons

Radsi: Of even No & ilale

Capy forwarded to that.

PN to Special Secretary (Reg); Erizbilitument Department.
PA to Additional Secretary (Reg. 11), Erabilitument Department.
PS to Deputy Secretary (Policy), Establishment Department.

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տարկ Khan) (Yalley)

Cifficer (Pollay)

WP4442-2023 AZIZOLLAH VS GOVT OF PG43

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

BC

Τo

The 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/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 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 evade 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 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)

(Enust), of even No & date

Copy is forwarded to :-

- 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)

ATTESTEL

## -Oveithment of Mayber Pakhtunkhwa ELEMENTARY AND SECONDARY EDUCATION DEPARTMENT CIVIL SECRETARIAT PESHAWAR

(Phone No.091-9223507)

Nn.80 (Primary-M)/EBSED/2-6/2023 Daled Pashawar the, June 254,2023

The Director

Elementary & Secondary Education Department

Khyber Palihlunkhwa, Peshawar.

Azlz Ullah Khan

President

All Primary Teacher's Association, KP

Subject:

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

AND TRANSFER) RULES, 1989.

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 2003 and to state that the subject meeting is to be held on 06 July, 2023 at 11:00 AM in this department under the Chalimanship 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 mealing on a date, time & venue as mentioned above, please.

<u>Encl: AA</u>

(MUHAMMAD ISHAO SECTION OFFICER (PRIMARY MALE)

Copy forwarded to the:

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

SECTION OFFICE

WP4442-7703 AZIZULLAH VS GOVT CF PG43

Blc

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

Ta

The Director Elementary & Secondary Education Department Khyber Palchtunkhwa, Peshawar

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

Subject:

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: A/

(MUHAMMAD ISHAQI SECTION OFFICER (PRIMARY MALE)

Copy forwarded to the:

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

SECTION OFFICER (PRIMARY MALE)

WP4442-2023 AZIZULLAH VS GOVT CF PG43

MINUTES OF THE MEETING REGARDING APPLICATION SUBMITTED BY MR. AZIZ ULLAH PROVINCIAL 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 regolding the subject mailer vias held on 04-07-2023 at 11:00 AW under the Chalmonship of Additional Secretary Establishment in his affice, the following attended the meeting.

5#	NAME	DESIGNATION
	Mr. Fazál Wahld	Deputy Director Extoblishment of Directorale Elementary & Secondary Education Department
2	i 상대 Ariy Ulioh	Provinciai President All Primary Teachers • Association Knyber Pakhtunkhwa
3	Mr. Ralagai Ullahi	General Secretary APTA Peshawar
4	Muhammad ishqq	Section Officer (Primary) ELSE Department Civil Secretarial Khyber Pakhlunkhwa 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 Directorale of Elementary 2. Secondary Education Department may examine the case properly and submit a self-contained/consolidated case for anward submission to Establishment Department for further necessary action.

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

(Mr. Fazal Wahld)
Deputy Director-l
EASE Department

naat Vilah)

(Mr. Relagal Ullah) General Secretory APTA Peshawar (Mr Aziz Ullah)
Provincial President
Ali Primary Teachers Association
Khyber Pakhlunkhwa

fune nixe

(Muhammad ishoq) Saction Officer (Primary-Male) EASE Deportment

(Abaallah) Addillanai Secretary (Establishment) E&SE Department

WP444Z-2023 AZIZULLAH VS GOVT CF PG43

-B/C-

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 06-07-2029 at 11:00 AM under the Chairmanship of Additional Secretary Establishment in his office. The following attended the meeting

SH 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

- 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. Fazai Wailid) * Deputy Director-1 E&SE Department	1
Provincial President All Primary Teachers Association Khyber Pakhtunkhwa	<u> </u>
(Mr. Rafaqat Ullah) General Secretary APTA Peshawar	<del></del> :
Muhammad Ishaq) Section Officer (Primary-Male) S&SE Department	

CIVIL SECRETARIAT PESHAWAR ELEUENTRAY MIO SECONDRAY EDUCATION DEPARTMENT

(TB25528-160.04 enor'd)

Peshawar Dated 23th August, 2023 ito. 50(Primary-M)E&SED/2-2/Appointment-Rule /2023

InaminensO nelleuzionitA S inaministice 2 THE SECRETARY TO GOVE OF KITYDES PERTIUNKITIVE,

(696) (APPOINTMENT, PREMOTION & TRANSFER BULES THAVABE SURBECT: - GUIDANCE REGARDING DELETION OF RULE 7(5) IN THE CIVIL

Paramakhus Gvil Servant (Efficiency & Discipline) Rules, 2011. to exade promotion through different means shall be proceed under Knyber officers! officials yith do not comply with promotion order of the competent authority or Szorti Jerli batamüni need zeri il (9891 selus relen Transfer & notiomoris, inscrindiote). TOT Start British to state that after defetion of rule 7(5) Khyber Pakhtunkhwa Civil I am directed to refer to your letter No. SO(Pollcy)/ EBAD/ 1-3/2020 dated 115 1830

then are married with ides and elder father of mother-in-law who reed care. In such o sectorm duties in the remotest station with no residential or bansplant facility. Most of of everl yearth elling admelivricional euchese ester of everl encohormorar rous lieves crisy laves Vieming to nechaest ybsi esses amos ni terit batifinduz et ti notosannos zirti rij

th view of the above, the said amendment may be reconsidered to the where are negative effects on service delivery.

. alooche yrambiq ni techesi (tel lo meste) .

Copy (cryinided to the:

1. Director Ease Khyber Pakhburkhwa. 2. Ps to Secretary, Ease Department Khyber Pakhburkhwa.

ELO OK HEDITAD HOITDES

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4442-2023 AZIZULLAH VS GOVT CF PG43

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Establishment and Administration Depositment, The Secretary to Government of Khyba Bikhbubhwa.

authorice regrading deletion of Rule 7(5) in the SUBJECT:

(6867 City Sevient (Appointment, Aonation & Transfer Rules.

and Servort (Efficiency and Dixiplitz) Rule 2011. different means shall be proceed under Khyber Akhbunkhun about noisement shows at but no ethorston breatsymes with to these officers officials who do not comply with promotion order tack betomitri used red 18 (1882 reals referred pro redoment deletion of Rule 7(5) Whyber Rithbonthwa Civil Sexions (Appointment) with task state or large escarantitle betak asas (8-1) and directed to refer to your letter No. 50 Princey) [E.AD] Decar Sir,

-21 calls transming oil valoat ybol of brother with in view of above, the sould ammendment may be reconstitled to Mather-in-law who need onse in such case threve are negative Most of them are married with kills and elder father of willing teaperact / Witcobizes on Alive Enothold teatomer with rif setub analysis they have to people alone to people duties deacher of primary level who avoir such promotion hove to In this connection it is submitted that in some cours lacky

(Muhammad Ishaq))

Section officer (Minny)

Janna Jack Drickin E & SE Khiban Renhukhung المهل بالمباشده المع

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Phone: 01-922144 STREE THE THIS STAND STAND STANDS OF ST

The Sochon Officer (Primery-Adule), Element by A. Secondary Education Department, Myber Pollitiniches Pestianer.

- Noblack

J. om Arrechen is refer to the letter No.2017-things. Assessing the subject chief above and to present brief listery as being the present brief listery about the background of the case as under: Dear Sir,

Makier Copy,

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TA to Director Lotal Directorate. Copy of the Above is lo:-

heen asked for submission of consultation case.

CHON TO TVOD EV HAJJUSISA 2505-2004

Gementary & Socouling Education Algiber Pakhitikhwa (I-) dabis) Tolovia Inchizak

Azelenful Direller (Estab 61-1)
Elementon & Secondon Education
Chyber Pokhmikhun

The gradis submitted for pertual and necastary octions picase:

provided thay kullink their vettien requisit princ to conduction of the mounts told. Departnessial transfer of the mouther of

In view of the above, this office is of considered opinion that the deletion of Rules (2) have affected degained a lunge manbers of Female Teachers. Thus it is proposed that (2) the affected degained of may be exempted of implications of the amendment in the rules like.

Tringty-M) Eighe of the minutes of morting doted 6-2023, high under the Cholymanskill influent Additional Secretary Ecobistiment of the office, has a cholymanskill influent decretary Ecobistiment of the office, has a cholymanskill influent of the minutes of morting doted 6-07-2023, high affects of consolidated costs.

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No. 6987 doted by conting appending of the civil servent to occept Promotion in every condition.

(1) Now it expligatory upon the civil servent to eccept Promotion in every condition.

(1) It is the profile of the civil servent to ellier occept or turn nown the affect of

That this office bought guidonce from your good office in the following words black letter

That Governmed of Khyber Pokhlunkiwa Exteblishment Depertment (Regulation Mings) dated a sule 7(2) in the Clvit Servents (Appolaiment, premotion & Tronder Rules 1989) vide hotflettles Me SOR-14 (E&AD)/1-2/2020 dated 06-08-2020.
The this office teaches multiment for the content of the conten

[21-7-102] PESHALIFIE DIRECTIONATE OF ELEMENTARY & SECONDARY EDUCATION, ICPK 기원 -

Elementicary & Schooldary Education Department Section Office (Princey- Male)

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Sulfect : Minutes of Meeting

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The case is eubmilled for period and necessary actions

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1. As to Director vocal Directorate

2. Master Capy

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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 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.



- B/C-

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

Τo

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.

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- 3. PS to Deputy Secretary (Policy), Establishment Department.

Section nicer (Policy)

WP4442-2023 AZIZULLAH VS GOVT OF PG43 ATTE

Annexure - G

To,

- 1) Secretary to Government of Khyber Pakhtunkhwa, Establishment Department, Civil Secretariat, Peshawar
- Secretary to Government of Khyber 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 Hogorable authority promulgated Notification No. SO (Policy) E&AD/1 3/2020, dated 06/08/2020, communicated to Elementary & Secondary Education vide n 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 O6th, 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 Khwoer 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  $^\circ$ 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) EED/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

STAD PSH

WP4442-2023 AZIZULLAH V8 GOVT CF PE43

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Thibber Pakhtunkhtua

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07.05 2024

- Learned counsel for the appellant present.
- Let a pre-admission untice be issued to the respondents through TCS for submission reply/comments. Appellant is directed to deposit TCS 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 23.08.2023 till the final disposal of main service appeal. In the meanwhile, no adverse action shall be taken against the appellant till next date of hearing.

deritied to be true copy(Muhammad Akbar Khan) Member (E)

Date of Presentation of Application La 1/2 Lg

Cogying 15

Date at ireland of capital 13-603

CS CamScanner

# IAKALAT NAMA

# BEFORE THE SERVICE TRIBUNAL PESHAWAR

Myhammad Jayyaz

Appellant

Government of KP & others

Respondents

## I (the Appellant)

do hereby appoint and retain

## MUHAMMAD MUAZZAM BUTT ASC, MUHAMMAD ADEEL **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 deferid) 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.

ACCEPTED

MUHAMMAD MUAZZAM BUTT

Advocate Supreme Court

MUHAMMAD ADKELBUTT

Advocate High Court

BASSAM AHMAD SIDDIQUI

Advocate High Court