

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR.

Service Appeal No. 564 /2024

Mr. Shahab Ullah, PST BPS-12 GPS Landi Khwar, District Dir Upper
..... (Appellant)


Versus

1. Director, Elementary and secondary Education Government of Khyber Pakhtunkhwa Peshawar.
2. District Education Officer (M) Dir Upper.

(Respondents)

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(Zulfiqar Ul Mulk)
District Education officer (M)
District Dir Upper
Respondent No. 2

1

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE
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2. District Education Officer (M) Dir Upper.

(Respondents)

**PARA WISE COMMENTS ON & FOR BEHALF OF
RESPONDENTS No.1, 2 & 3.**

Respectfully Sheweth:-

PRELIMINARY OBJECTIONS.

1. That the Appellant is not an "aggrieved" person with the meaning of section 4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974.
2. That the Appellant has got no cause of action /locus standi to file the instant appeal because the Appellant did not come on merit.
3. That the Appellant has not come to this Honorable court with clean hands.
4. That the Appellant is estopped by his own conduct.
5. That the instant service appeal is badly time barred
6. That the appeal is barred by law and limitation.
7. That the appeal in hand is barred by relevant provision of Law/Rules/Policy in field.
8. The appellant was initially engaged on an ad hoc/school basis for a limited term of one year. Whereas, the finance department issued a Notification dated 18, March 2021 mandating the issuance of NOC in certain circumstances. Applicant failed to obtain NOC. And Whereas, Subsequently, they were appointed to a newly advertised position of Primary School Teacher (PST), and their service was later regularized under the provisions of Section 3 of the Khyber Pakhtunkhwa Employees of the Education and Secondary Education Department (Appointment and Regularization of Service) Act, 2017.

ON FACTS.

1. Para -1 of the Service Appeal is correct to the extent of appointment of the appellant on ad hoc/ school based for the specific period of one year which is much clear from term and condition No. 3 of the appointment order 05/03/2016. "Appointment is purely on temporary basis initially for one year". Which is also further clarified in the terms and condition No.12. "His appointment is made on school based; he will have to serve at the place of posting and his service is not transferable to any other stations.
2. Para- 2 . of the service appeal is also correct that the appellant was initially appointed as PST on ad hoc/school basis for the period of one year, the Appellant applied for transfer many times against vacant post of PST lying in the domain of his residential, but the concerned authority reject his application due to his appointment on ad hoc/contract basis, meanwhile a new advertisement was floated by the department the appellant along with others colleagues applied for the said post of PST lying vacant near to his residential (without getting N.O.C as he was serving on an ad hoc/contract basis), after conducting the test the appellant was recommended and he was again appointed on the post of PST on ad hoc/school basis in the year 2017.
3. Para-3 of the Service Appeal is correct to the extent of regularization with Section 3 of The Khyber Pakhtunkhwa Employee of E&SE Department (Appointment & Regularization of Service) Act 2017, and the regularization orders of the Appellant was issued in accordance with the provisions of the Act ibid and all the contract employees were regularized from the day of their initial appointment. It is pertinent to mention here that the Appellant was appointed as ad hoc/contract/ school base for a probation period of one year which they had failed in getting NOC as per mandate of finance Notification. Copy of the Khyber Pakhtunkhwa Employee of E&SE Department (**Appointment and Regularization of Service**) Act 2017 is **annexed as "A"**)
4. Para- 4 is incorrect and misleading. The Honorable Khyber Pakhtunkhwa Service Tribunal had decided similar Appeals No. 7364/2021 vide Judgement dated 27/11/2023, whereby, the appeals were remitted to

Department for deciding fate of the appellant, which was disposed of by the competent authority as per direction of the Honorable Tribunal & later on the Execution Petition filed by the appellant in the afore-mentioned appeals was consigned.

a copy Notification and withdrawal order as Annexure B & C.

5. Para-5 of the facts is incorrect and misleading, as there is no evidence on record of a departmental appeal having been filed in this matter. Moreover, it is submitted that the appellant has brought this instant appeal with malice aforethought, actuated by a mala fide intention, and without any legitimate grounds or basis in law.
6. Para-6 of the facts is hereby denied, and it is further submitted that the Appellant has an alternate remedy available, namely filing an appeal or representation, to address any grievances they may have. Therefore, the current service appeal is not valid and is liable to be dismissed on this ground alone.

GROUND

A) Ground A of the service appeal, as presently constituted, is hereby denied as being wholly without merit, inasmuch as a comprehensive and exhaustive response has already been provided in Para No. 1 & 4 of the factual objections, fully addressing and refuting the allegations therein.

B) The aforementioned allegation is hereby denied as being wholly incorrect and without legal basis. The appellants have received treatment in accordance with the applicable laws and rules.

C) Incorrect, Ground C is hereby rejected as being entirely unfounded and without legal basis, and is accordingly denied in its entirety. As stated above, the reply is grounded in the Finance Notification dated 18/03/2021, specifically Para (ii) of the said Notification, which explicitly provides that the condition of applying through proper channel and being properly relieved by the appointing authority shall not apply in cases of regularization on the same post.

D) Incorrect, the contention of the appellant is hereby rejected as being wholly without merit, and the appellant has been treated in light of applicable law.

E) Incorrect, details have been submitted in the facts above.

F) Incorrect, details have been submitted in the facts above.

G) Legal, however the respondents also seek permission for additional grounds during arguments.

PRAYER.

In the view of the above made submission, it is requested that this Tribunal may very graciously be pleased to dismiss the instant service appeal with cost in favor of the Respondent Departments.



(Mrs. Samina Altaf)

Director,
Authorized Officer
Abdus Samad
Deputy Director
E&SE Peshawar
Respondent No. 1



(Zulfiqar Ul Mulk)
District Education officer (M)
District Dir Upper
Respondent No. 2



**DIRECTORATE OF ELEMENTARY & SECONDARY EDUCATION
DEPARTMENT KHYBER PAKHTUNKHWA PESHAWAR**

NOTIFICATION

I, Samina Altaf, Director Elementary & Secondary Education Department Khyber Peshawar do hereby authorize, Mr. Abdus Sammad, Deputy Director (Legal) Directorate of Elementary & Secondary Education to sign parawise comments, replies, implementation report, objection petitions, civil miscellaneous application etc on my behalf for onward submission before the courts of law/tribunals as the case may be, with immediate effect in the interest of public service.

DIRECTOR
Elementary & Secondary Education
Khyber Pakhtunkhwa Peshawar

Endst. No. 2633-413 /F.No. AD(Lit-II)E&SED/Office Correspondence/Vol-II/2024
Dated Peshawar the 26/07/2024.

Copy of the above is forwarded for information & action to the:

1. Chief Secretary Khyber Pakhtunkhwa.
2. Advocate General Khyber Pakhtunkhwa.
3. Secretary Law Department Khyber Pakhtunkhwa.
4. Learned Registrar High Court Peshawar (with one each spare copy for the Honorable Judges).
5. Learned Registrar Khyber Pakhtunkhwa Service Tribunal Peshawar (with one each spare copy for the Honorable Chairman/Members).
6. All Section Officers E&SE Department Khyber Pakhtunkhwa, Peshawar.
7. All District Education Officer (Male/Female) Khyber Pakhtunkhwa.
8. PS to Secretary E&SE Department Khyber Pakhtunkhwa, Peshawar.
9. PA to Additional Secretary (General) E&SE Khyber Pakhtunkhwa, Peshawar.
10. PA to Director E&SE Department Khyber Pakhtunkhwa, Peshawar.
11. Master File.


SAMINA ALTAF
DIRECTOR
Elementary & Secondary Education
Khyber Pakhtunkhwa Peshawar

Attached



**BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR.**

Service Appeal No. 564 /2024

Mr. Shahab Ullah, PST BPS-12 GPS Landi Khwar, District Dir Upper
..... (Appellant)

Versus

1. Director, Elementary and secondary Education Government of Khyber Pakhtunkhwa Peshawar.
2. District Education Officer (M) Dir Upper.

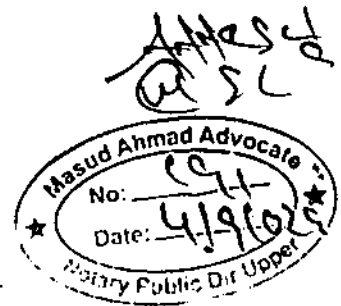
(Respondents)

Affidavit

I, Mr. **ZULFIQAR UL MULK** District Education Officer District Dir Upper do hereby solemnly affirm & declare on oath that the whole contents of the instant para wise Comments are true & correct to the best of my knowledge and belief. It is further stated on oath that in this appeal the answering Respondents have neither been placed Ex-Party nor their defense has been struck off/ cost.


Deponent
(Zulfiqar Ul Mulk)

Respondent No 2



**BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR.**

Service Appeal No. 564 /2024

Mr. Shahab Ullah, PST BPS-12 GPS Landi Khwar, District Dir Upper
..... (Appellant)

Versus

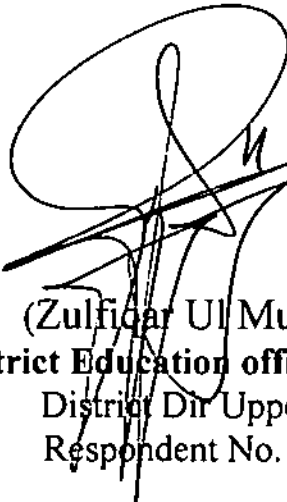
1. Director, Elementary and secondary Education Government of Khyber Pakhtunkhwa Peshawar.
2. District Education Officer (M) Dir Upper.

(Respondents)

AUTHORITY LETTER

I, Mr. ~~ZULFIQAR UL MULK~~ District Education Officer District Dir Upper do hereby authorized Mr. Syed Alamzeb Shah Assistant District Education Officer (Litigation) of this office for submission of Joint Para wise comments in Service Appeal No. 564/2024

Case Titled: Mr. Shahab Ullah, PST BPS-12 GPS Landi Khwar, District Dir Upper Vs Government Khyber Pakhtunkhwa & others fixed for hearing on 03-08-2024, hence, an authority letter is hereby issued in favor of the above-named officer.


(Zulfiqar Ul Mulk)
District Education officer (M)
District Dir Upper
Respondent No. 2

P-7

AN
ACT



to provide for the appointment and regularization of the services of certain employees appointed on adhoc or contract basis or appointed in certain projects in the Elementary and Secondary Education Department in the Province of the Khyber Pakhtunkhwa.

WHEREAS it is expedient to provide for the appointment and regularization of the services of certain employees appointed on adhoc or contract basis or appointed in certain projects in the Elementary and Secondary Education Department in the Province of the Khyber Pakhtunkhwa, in the public interest;

It is hereby enacted as follows:

1. **Short title, application and commencement.**—(1) This Act may be called the Khyber Pakhtunkhwa Employees of the Elementary and Secondary Education Department (Appointment and Regularization of Services) Act, 2017.

(2) It shall apply to all the employees in the Elementary and Secondary Education Department, as defined in clause (c) of sub-section (1) of section 2 of this Act.

(3) It shall come into force at once and it shall be deemed to have taken effect from the date of the initial appointment of the employees as referred to in clause (c) of sub-section (1) of section 2 of this Act.

2. **Definitions.**—(1) In this Act, unless the context otherwise requires,-

- (a) "Commission" means the Khyber Pakhtunkhwa Public Service Commission;
- (b) "contract appointment" means appointment of a duly qualified person for a specific period made otherwise than in accordance with the prescribed method of recruitment;
- (c) "employees" mean duly qualified persons,-
 - (i) who are appointed as teachers on adhoc or contract basis by the Government after 2013 through National Testing Service but does not include the teachers engaged on work charge basis or who are paid out of contingencies;
 - (ii) who are appointed in the projects on contract basis in accordance with the project policy; and
 - (iii) who are appointed as Junior Clerk in the Elementary and Secondary Education Department by Government after 2013 through National Testing Service;
- (d) "Government" means the Government of the Khyber Pakhtunkhwa;

Attested

- (e) "law or rule" means the law or rule for the time being in force governing the selection and appointment of civil servants;
- (f) "project" means,-
- (i) IT/Computer Teachers in Computer Labs Projects in Khyber Pakhtunkhwa (Phase-II);
 - (ii) establishment of five hundreds (500) IT Labs in Government High and Secondary Schools in Khyber Pakhtunkhwa; and
 - (iii) establishment of five hundreds (500) IT Labs in Government High Schools in Khyber Pakhtunkhwa (Phase-III); and
- (g) "teacher" means a teacher of primary, middle, secondary or higher secondary school.

(2) The expressions "ad hoc appointment" shall have the same meaning as respectively assigned to them in the Khyber Pakhtunkhwa Civil Servants Act, 1973 (Khyber Pakhtunkhwa Act No. XVIII of 1973).

3. **Regularization of services of employees.**—(1) Notwithstanding anything contained in any other law or rules, the employees, who hold posts till the commencement of this Act, shall be deemed to have been validly appointed on regular basis from the day of the initial appointment; provided that-

- (i) they possess the same qualification and experience required for a regular post;
- (ii) they have not resigned from their services or terminated from services on account of misconduct, inefficiency or any other ground, before the commencement of this Act; and
- (iii) the service promotion quota of all service cadres shall not be affected.

(2) The services of the employees shall be deemed to have been regularized only on the publication of their names in the official Gazette.

4. **Determination of seniority.**—(1) The employees whose service are regularized under this Act or in the process of attaining service at the commencement of this Act, shall rank junior to all other employees belonging to the same Cadre, who are in service on regular basis on the commencement of this Act, and shall also rank junior to such other persons, if any, who, in pursuance of the recommendation of the Commission made before the commencement of this Act, are to be appointed to the Cadre, irrespective of their actual date of appointment.

(2) The seniority inter-se of those employees, whose services are regularized under this Act within the Cadre, shall be determined on the basis of their continuous service in Cadre:

Provided that if the date of continuous service in the case of two or more employees is the same, the employee older in age shall rank senior to the younger one.

5. **Overriding effect.**--- Notwithstanding anything to the contrary contained in any other law or rules for the time being in force, the provisions of this Act shall have an overriding effect and the provisions of any such law or rules to the extent of inconsistency to this Act shall cease to have effect.

**BY ORDER OF MR. SPEAKER
PROVINCIAL ASSEMBLY OF KHYBER
PAKHTUNKHWA**

(INAMULLAH KHAN)
Secretary
Provincial Assembly of Khyber Pakhtunkhwa

A Khan



P-10

(B)

GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGULATION WING)

NO. FO (SOSR-1) 12-7/2014
Dated Peshawar the 6th February, 2014

To:

1. All Administrative Secretaries to Govt. of Khyber Pakhtunkhwa.
2. The Senior Member, Board of Revenue, Khyber Pakhtunkhwa.
3. The Secretary to Governor, Khyber Pakhtunkhwa.
4. The Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
5. The Secretary, Provincial Assembly, Khyber Pakhtunkhwa.
6. The Secretary Finance FATA, FATA Secretariat, Peshawar.
7. All Heads of Attached Departments in Khyber Pakhtunkhwa.
8. All Divisional Commissioners in Khyber Pakhtunkhwa.
9. All Political Agents / District & Sessions Judges in Khyber Pakhtunkhwa.
10. The Registrar, Peshawar High Court, Peshawar.
11. The Chairman, Public Service Commission, Khyber Pakhtunkhwa.
12. The Chairman, Services Tribunal, Khyber Pakhtunkhwa.
13. The Accountant General, Khyber Pakhtunkhwa, Peshawar.

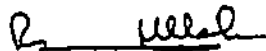
Subject: PROTECTION OF PAY OF CONTRACT EMPLOYEES ON
REGULARIZATION / APPOINTMENT ON REGULAR BASIS.

Dear Sir,

In pursuance to the Finance Division's Office Memorandum No.7(9)R-I/2012 dated 31st May, 2013, the competent authority is pleased to allow the pay protection to non-Gazetted contract employees on their regularization / appointment on regular basis with immediate effect subject to the following conditions:-

- i) That the contract appointment has been made on standard terms and conditions, circulated by this Provincial Government as amended from time to time.
- ii) That the contract employee has applied through proper channel and has been properly relieved by the appointing authority. This condition shall not apply in case of regularization on the same post.
- iii) That regularization / regular appointment has been made with the approval of competent authority.
- iv) That there is no break / interruption between contract service and regular service.
- v) That the service rendered on contract basis shall not qualify for pension / gratuity.
- vi) That in case of regular appointment in lower grade, pay shall not be protected.

Yours faithfully,


(RAZAULLAH KHAN)
Addl: Secretary (Regulation)

P.T.O

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Affected





P-11 (3)
GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT

Finance Department Civil Secretariat Peshawar: <http://www.finance.gkp.pk> [facebook.com/GoKPFD](https://www.facebook.com/GoKPFD) twitter.com/GoKPFD

NO. FD (SOSR-1) 12-2/2020(34323)
Dated Peshawar the: 18th March, 2021

To:

1. The Addl: Chief Secretary, P&D Department, Khyber Pakhtunkhwa.
2. The Addl: Chief Secretary, Merged Areas Sectt: Khyber Pakhtunkhwa.
3. The Senior Member, Board of Revenue, Khyber Pakhtunkhwa.
4. All Administrative Secretaries to Govt: of Khyber Pakhtunkhwa.
5. The Principle Secretary to Governor, Khyber Pakhtunkhwa.
6. The Principle Secretary to Chief Minister, Khyber Pakhtunkhwa.
7. The Secretary, Provincial Assembly, Khyber Pakhtunkhwa.
8. All Heads of Attached Departments in Khyber Pakhtunkhwa.
9. The Registrar, Peshawar High Court, Peshawar.
10. All District & Sessions Judges in Khyber Pakhtunkhwa.
11. The Chairman, Public Service Commission, Khyber Pakhtunkhwa.
12. The Chairman, Services Tribunal, Khyber Pakhtunkhwa.
13. All Deputy Commissioners, in Khyber Pakhtunkhwa.

Subject: PROTECTION OF PAY OF CONTRACT EMPLOYEES ON
REGULARIZATION / APPOINTMENT ON REGULAR
BASIS.

Dear Sir,

In pursuance to the Finance Division's Office Memorandum No.4(2)R-2/2014-237 dated 7th April, 2015, the Competent Authority (Provincial Cabinet) is pleased to allow the pay protection to gazetted contract employees on their regularization / appointment on regular basis subject to the following conditions:-

- i) That the contract appointment has been made in BPS on standard terms and conditions, circulated by this Provincial Government as amended from time to time.
- ii) That the contract employee has applied through proper channel and has been properly relieved by the appointing authority. This condition shall not apply in case of regularization on the same post.
- iii) That regularization / regular appointment has been made with the approval of competent authority.
- iv) That there is no break / interruption between contract service and regular service.

PTO

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P-12



(25/7)

**OFFICE OF THE DISTRICT EDUCATION OFFICER
MALE DIR UPPER**

PH No. 0944-881400-Fax-880411 E-mail deomdirupper@gmail.com



OFFICE ORDER

Pay protection order issued vide this office Memo: 7143-47 F.No120/DEO (M) Dir Upper Dated 29-03-2022 is hereby withdrawn from the date of its issuance ie 29.03.2022. In the light of Finance Department Notification No F.D (SOSR-1)12-2/2020(34323) dated Peshawar the 18.03.2021, under Para no (ii) stated (that the contract employee has applied through proper channel and has been properly relieved by the appointing authority this condition shall not apply in case of regularization on the same post) in the interest of public service.

**District Education Officer
(Male) Dir Upper**

No. 10559-62/F.No. 120/DEO(M)/ADO(P)ESTB: Dated Dir Upper 25/07/2022

Copy to:

- 01- District Accounts Officer Dir Upper.
- 02- The SDEOs Male concerned.
- 03- AP EMIS Local Office.
- 04- Officials Concerned.

**District Education Officer
(Male) Dir Upper**

Attested

**OFFICE OF THE DISTRICT EDUCATION OFFICER
MALE DIR UPPER**

P11 No. 0044-001400-Fax-000411 E-mail: deo@dirupper.gov.pk

OFFICE ORDER,

I am directed to grant sanction for protection of pay in respect of following PSTs appointed on Adhoc basis vide this office Notification No.8572-70 Dated 03/05/2014, No.0411-14 Dated 04/03/2014, No.868-75 dated 12-03-2015, and No.313-18 dated 05-03-2010 respectively and after that regularized against PST post from the date of their initial appointment. Before their appointment as PSTs, they were Adhoc employees of Education Department as PST's w.o. 03-05-2014 to 03-05-2017 without any break of service. Hence, they are hereby considered as regular employees from the date of their 1st appointment with all benefit as admissible to them under the rules.

S.#	Name & Designation	School	1 st appointment as PST	Date of Re-Appointment as PST	Date of regularization	Remarks
01.	Ismail Khan, PST	GPS, Loi Baba	03-05-2014	05-03-2018	21-03-2018	Pay protected
02.	Toll Rahman, PST	GPS, Bin (P) Barawal	03-05-2014	03-05-2017	do	do
03.	Irshad Ahmad, PST	GPS, Kass Chaper	03-05-2014	03-05-2017	do	do
04.	Ayan ullah, PST	GPS, Umratal (B)	04-08-2014	03-05-2017	do	do
05.	Imran ullah, PST	GPS, Chuklatan	12-03-2015	03-05-2017	do	do
06.	Sher Rahman, PST	GPS, Bekerey	12-03-2015	03-05-2017	do	do
07.	Inayatul Rahman, PST	GPS.S.S Khail	12-03-2015	05-03-2018	do	do
08.	Ibrahim Khan, PST	GPS, Samal War	12-03-2015	05-03-2018	do	do
09.	Muhammad Ilyas, PST	GPS, Bin Barawal	12-03-2015	03-05-2017	do	do
10.	Farhaid Khan, PST	GPS, Malook Banda	12-03-2015	07-03-2018	do	do
11.	Majeed Ullah, PST	GPS, Gul Shal Dheri war	12-03-2015	05-03-2018	do	do
12.	Dayeem Khan, PST	GPS, Umratal Bela	08-03-2018	03-05-2017	do	do
13.	Fakhri Alam, PST	GPS, Umratal (P)	05-03-2018	03-05-2017	do	do
14.	Rahat Khan, PST	GPS, Kotkal	05-03-2018	03-05-2017	do	do

Note: Necessary entry to this effect should be made in their service book accordingly.

(Signature)
(MUHAMMAD ASHRAF)
DISTRICT EDUCATION OFFICER
MALE DIR UPPER

No. 7143-97 E.No.120 /DEO (M)/Dir Upper

Dated Dir the 29/3/2022

Copy forwarded to the:-

01. District Accounts Officer Dir Upper
02. Sub: Divisional Education Officer Male concerned.
03. EMIS local office.
04. Officials concerned.
05. Master File.

(Signature)
DY: DISTRICT EDUCATION OFFICER

affixed

(Signature)