## FORM OF ORDER SHEET

| Court of   |           |
|------------|-----------|
| Appeal No. | 1963/2024 |

| S.No. | Date of order proceedings | Order or other proceedings with signature of judge          |
|-------|---------------------------|---|
| 1     | 2                         | 3   |
| 1-    | 15/10/2024                | The appeal presented today by Mr. Muhammad                  |
|       |                           | Muazzam Butt Advocate. It is fixed for preliminary hearing  |
|       |                           | before Single Bench at Peshawar on 23.10.2024! Parcha Peshi |
|       | ·                         | given to counsel for the appellant.                         |
|       |                           |   |
|       |                           | By order of the Chairman                                    |
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# ervice tribunal khyber pakhtunkhuwa ANO 1963 / M

MUSHTAQ KHAN

V/S

Government of KP & others

### INDEX

| `_S# }      | DESCRIPTION OF THE DOCUMENTS   | ANNEX | PAGES       |
|-------------|--|-------|-------------|
| 1.          | Appeal and Verification  | *     | 1-4         |
| 2.          | Application for suspension   | *     | 5           |
| 3.          | Copy of Monthly Salary account   | A.    | 6-8         |
| ·-<br>4.    | Copy of notification No. SD (Policy) EV AD/1-3/2020 dated 06/08/2020                           | В.    | 9-10        |
| `5 <i>.</i> | Copy of Impugned Letter dated June 06th, 2023  | C.    | 11-13       |
| 6.          | Copy of Minutes of Meeting dated 06-07-2023  | D.    | 14-17       |
| 7.          | Copy of Letter dated 23-08-2023  | E.    | 18 - 19     |
| 8.          | Copy of Impugned letter dated 07-09-2023   | F.    | 20 -21      |
| 9.          | Copy of Representation against the said notification and representation made by APTA President | G&H   | 22<br>23-24 |
| 10.         | Wakalat Nama   |       | 25          |

N. Miazam Butt

#### BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHUWA

| Ref |  |
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|     |  |
|     |  |
|     |  |

Service Appeal No 1963 /2024

Mushtaq Khan Son of Masood Khan, SPST
District Peshawar, Tehsil & District Peshawar

.....Appėllant

#### **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 Senior Primary School 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.
  - 4. That Government of K.P without following the rules position mentioned in Para 6 above promulgated Notification No. SO (Policy) E&AD/1 3/2020, dated 06/08/2020, communicated to Respondent No.2 vide letter dated 06/06/23 wherein it has been made mandatory to the employees to avail the promotion, otherwise, disciplinary action shall be taken against the employees. The impugned Notification is reproduced as under:-

"Furthermore, those officers/officials who do not comply with promotion order of the competent authority or try to evade promotion through different means shall be proceeded against under Khyber Pakhtunkhwa Civil Servants (Efficiency Discipline) Rules, 2011, please".

- 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 **Annexure E** 

- 9. That the respondent vide its letter dated 07th of September 2023 directed the Directorate of Elementary & Secondary Education Khyber Pakhtunkhwa that necessary guidance has already been provided to the department and therefore no provision exists to decline or forgo promotion and those teachers who do not comply with the promotion order of the competent authority or try to evade promotion through different means shall be proceeded under the Khyber Pakhtunkhwa Civil Servant (Efficiency & Discipline) Rules, 2011.

  Copy of Impugned letter dated 07-09-2023 is attached as Annexure F
- 10. That the petitioner feeling aggrieved, filed Representation to the respondents in person, and also approached to respondents through APTA President but the grievances of the appellant have not so far been redressed.
  Copy of Representation against the said notification is annexed as <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.
- 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:

110

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.

Deponent

Through

Muhamindd Muazzzam Butt Advocate/Supreme Court

pel(ant

Muhammad Adeel Butt Advocate High Court

Bassam Albnad Siddiqui Advocate High Court

LL.M- Human Rights

#### BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHUWA

| C.M No           | <u> </u> | P of 2024 |
|------------------|----------|-----------|
| In Ref to        |          |           |
| Service Appeal 1 | Vo       | /2024     |

MUSHTAD VERSUS

Secretary to Government of Khyber Pakhtunkhwa, & others

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

Respectfully Submitted:-

- 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.
- $^{lap{N}}$  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:

Through

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

Deponent,

Muhammad Adeel Butt

Muhammad Muazzzam Butt

Advocate Supreme Court

**Advocate High Court** 

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



Personal Information of Mr.MUSETAQ KHAN d/w/s of MASOOD KHAN

Personnel Number: 00048775 CNIC: 1730161774075

Date of Birth: 15.04.1974 Entry into Clovt. Service: 16.08,1997

. Length of Service: 26 Years 05 Months 017 Days

Employment Category: Vocational Temporary

Designation: SENIOR PRIMARY SCHOOL TEA

80696670-DISTRICT GOVERNMENT KHYBE

DDO Code: PW6574-Sub: Divisional Education Officer (Male) Town I Peshawar Payroll Section: 003

GPF Section: 001

Cash Center: 16

183,855,00 (provisional)

CPF A/C No: EDU 044404

-GPF Interest applied.

GPF Balance:

Vendor Number: -

Pay and Allowances:

Pay scale: BPS For - 2022

Pay Scale Type: Civil : BPS: 14....

| Wage type |                           | Ainount   | Wage type |                           | æ        | Amount         |
|-----------|---------------------------|-----------|-----------|---------------------------|----------|----------------|
| (XK)]     | Basic Pay                 | 60,810.00 | 1004      | House Rent Allow 45% KP21 |          | 8,640,00       |
|           | Convey Allowance 2005     | 2,856.00  | 1300      | Medical Allowatice        | <u> </u> | 1,500,00       |
|           | 15% Adhoc Relief All-2013 | 796.00    | 2199      | Adhoc Relief Allow @ 10%  | ,        | ····535.(X)··· |
|           | Tenching Allowance 2021   | 3,036.00  | 2341      | Dispr. Red All 15% 2022KP |          | 5,787,00       |
|           | Adhor Rel Al 15% 22(PS17) | 5,787.00  | 2.178     | Adhoc Relief All 2023 35% |          | 20.674.00      |

#### Deductions - General

|      | Wage type                 | Amount    | ; •  | Wage type         | Amount    |
|------|---------------------------|-----------|------|-------------------|-----------|
| 3014 | GPF Subscription          | -3,900,00 | 3501 | Benevolent Fund   | -1:200.00 |
|      | bicome Tax                | -1,914.00 | 3990 | Emp.Edu. Fund KPK | -135.00   |
|      | R. Henefits & Deith Comp: | -600.00   |      | mat a second      | 0.00      |

#### Deductions - Loans and Advances

| Particular annual Particular Rah |      |        | <br>19          |     |             |             |      |
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| · 1 (idital)                     | EDC4 | Balane | <br>angount : I | Pri | Description | 1           | Loan |

Deductions - Income Tax

Payable: 29,543.88

Recovered till JAN-2024:

Exempted: 7385.98

Gross Pay (Rs.):

110,421.00

- Deductions: (Rs.):

Payee Name: MUSHTAQ KHAN Account Number: 0010019215100019

Bank Details: ALLIED BANK LIMITED, 250315 Mewa Mandi Peshawar City. Peshawar

Opening Balance:

. Enraed:

Balance:

Permanent Address: PESH

City: Peshiwar

Domicile: NW - Khyber Pakhtunkhwo

Housing Status: No Official

Temp. Address: City:

Bmill: mk5804311@gmall.com

Annexue -CONBUIL PAICHTUNKHY AUDISHMENT DEPARTME (RECUEXTION VING) NOTHICATION Shipping Civil Servinia Act. 1973. (Kinder Detected by Section 26 of the The exercise of the powers conferred by seedled 26 of the powers confe The Parishing Minister of Khylter Pokhimkling is pleased to direct that in the Khyler his the Ciple Minister of Khylter Pokhimkling is pleased to direct that in the Khyler his the Civil Survents (Appointment products of Civil Survents (Appointment) the tiplet produced shall be made annulus. Redingtion and Transled Rules 1989, the white further amendment shall be made, namely: AMENDMENT in rule 7, suis-rule (5) shall be deleted. GOVERNMENT OF THE INTYBER PAKHTUNKHWA NISE NO & EVEN DATE Additional Chief Secretary, Ooyl, of Khyber Pakhtunkhwa, Planning & into a (movement 10):-The Sentor Member Board of Revonue, Khyber Pakhrunkhwa. All Administrative Segretaries to Gove of Khyber Politiculations. The Principal Secretary to Governor Khyber Pakhtunkhwa The Principal Secretary to Clifer Minister, Khyber Pakhtunkhwa, All Divisional Commissioners in Khyber Pakhrunkhwa All Heers of Anaclied Departments in Khyber Pakhlunkhwa. All Autonomous/Semi Autonomous Bodies in Khyber Pakhtunkhwa. All Deputy Comralssioners in Khyber Pakhunkhwa. The Registrar, Khyber Pakhunkhwa Service Tribunal, Peshawar. The Secretary, Ethyper Pakhtunkhwa Public Service Commission, Peshawu. 10. The Registrus Peshawar High Court Peshawar All Section Officers in Establishments Administration Department. The Scenion Office (Admin), Administration Department with the request-to. he Carcinker, Accininistration Department. arrange 20 gazette copies. DEPUTY SECRETARY (POLICY) ATTESTED

#### 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 1989.

#### **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 Registral, Peshawar High Court, Peshawar.
- 11. The Registrar, Khyber Pakhtunkhwa Service Tribunal, Peshawar
- 11. 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)





### OOVERNMENT OF KUYBER PARTITURICHYA establishment department No. SO(Policy) RADJ - 3/2020 Dated Pestinwar the June 06, 2023

62

The Clovernment of Klipfier Pakhulikhwa Elementary & Secondary Educoran Dapartment.

Subject: •

GUIDANGE RÉGARDING DIGLETION OF RULK 7(5) IN THE GUIDANGE PARITUNIQUES CIVIL SERVANTS JAFFOINTMENT, ENOMOTION AND TRANSPERD RULES, 1989.

I and directed in teler to your letter No. SO(Primory-MyTTacs HD/2-Dear Str. 2/Appointment/2022 plated 18.04.2022 but the subject noted above and to state that Sub-Itale (5) of Rule-7 of Kroper Pakhtunkhun Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 stands deleted vide this department neufficiation dated 06.08.2020; thus, no provisión exists to decilne or forgo promotion.

The basic rationals behind the delation of the ibili rate is almost at preventing a civil servent from temptation for tillelt gain by sticking to a single lucrative post/position or to Ž. prevent those who tend to forgo promotion to evade posting/transfer or show tack of capacity to tackle higher responsibilities in case of promotion. Therefore, it is obligatory upon every civil servant to accept promotion in overy condition.

Funkermore, those officers officials who do not comply with promotion order of the competent authority or try to evade promotion through different means shall be 3. ے proceedad against under Khyber Pakhinnkluva Givil Servants (Affialency & Discipline) العاجم,

2011, please.

Radst. Of even No & Hale

Copy forwarded to the;

PS to Special Secretary (Reg.); Establishment Department.
PA to Additional Secretary (Reg. 11), Establishment Department.
PS to Dapory Secretary (Policy), Establishment Department.

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Meer (Polley)

WP4442-2023 AZIZULLAH VS GOVT CF PG43

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## Overnment of Khyber Pakhtunkhwa ELEMENTARY AND SECONDARY EDUCATION DEPARTMENT · CIVIL SECRETARIAT PESHAWAR

(Frione No.091-9223587)

N'n.SO (Primary-M)/E&SED/Z-6/2023 Coled Peshavar Inc. June 26\*,2023

To

The Director

Elementary & Secondary Education Department

Khyber Pakhlunkhwa, Peshawar.

Aziz 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.

I am directed to refer to the subject noted above and to enclose hard with a letter of Establishment Department letter No. SO (Pollcy)E&AD/1-3/2020 dated 06 June, 2023 and to state that the subject meeting is to be held on 06 July, 3023 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 meeting on a date, time & venue as mentioned above, please.

Encl: AA

(MUHAMMAD ISHAO) SECTION OFFICER (PRIMARY MALE)

Copy forwarded to the:

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

SECTION OFFICE

4442-2723 AZIZULLAH VS GOVT CF PG43

TESTED

No S0 (Primary-M)/68/SED/2-6/2023 Dated Peahawar the June 25th 2023

To

The Director
 Elementary & Secondary Education Department
 Khyber Pakhtunkhwa, Peshawar

'Aziz Üliah Krian President 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.

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

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

Encl: AA

wite

(MUHAMMAD ISHAQ) SECTION OFFICER (PRIMARY MALE)

Copy forwarded to the:

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

SECTION OFFICER (PRIMARY MALE)

WP4442-2023 AZIZULLAH VS GOVT CF PG43

ATTESTED

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

A meeting regarding the subject matter was held on 04-07-2023 at 11:00 AM under the Chairmonship of Additional Secretary Establishment in his office. The following attended the meeting.

| 5# | NAME ,            | DESIGNATION   |
|----|-------------------|---|
| ٦  | Mr. Pazal Wahld   | Deputy Director Establishment of Directorate<br>Elementary & Secondary Education Department |
| 2  | ı Mr. Aziz Ullah  | Provincial President All Primary Teachers - Association - Khyber Pakhtunkhwa                |
| 3  | Mr. Ralagal Ullah | General Secretary APTA Peshawar   |
| 4  | Muhammad Ishaq    | Section Officer (Primary) E&SE Department Civil<br>Secretarial Khyber Fakhlunkhwa Peshawar  |

The meeting started with recitation from the Kaly Ouran. The chair welcomed
the participants. The Deputy Director [Establishment] of Directorate of Elementary &
Secondary Education briefed the forum regarding agenda (tem in detail).

3. After threadbare discussion it was decided that Directorate of Bernentary & Secondary Education Department may examine the case properly and submit a self-contained/consolidated case for anward submission to Establishment Department for further necessary action.

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

(Mr. Fozal Wahld)
Deputy Director-I
E&SE Department

(Mr. Relagat Ullah)
Ganeral Secretary APTA
Peshawor

(Mr Aziz Ullah)
Provincial President
Primary Teachers Association
Khyber Pakhlunkhwa

(Muhammod Lhoq)
Section Officer (Primary-Male)
E&SE Deportment

(Aboullah)
Addillonai Secretary (Establishment)
E&SE Department

WP4442-2023 AZIZULLAH VS GOVT CF PG43

ATTESTED

-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 06-07-2023 at 11:00 AM under the Chairmanship of Additional Secretary Establishment in his office. The following attended the meeting

| S# NAME              | DESIGNATION  |
|----------------------|--|
| 1. Mr. Fazal Wahld   | Deputy Director Establishment of Directorate Elementary & Secondary Education Department |
| 2 Mr. Aziz Ullah     | Provincial President Ali Primary Teachers Association:<br>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.

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| •                                     |       |
|---------------------------------------|-------|
| (Mr. Fazal Wahld)                     |       |
| Deputy Director-1                     |       |
| E&SE Department                       |       |
| • •                                   |       |
| Provincial President ,                |       |
| All Primary Teachers Associatio       | n     |
| Khyber Pakhtunkhwa                    |       |
| (Mr. Rafaqat Ullah)                   | · · · |
| General Secretary APTA                |       |
| Peshawar                              |       |
| (Muhammad Ishaq)                      |       |
| Section Officer (Primary-Male)        |       |
| E&5E Department                       | • 1   |
| ,                                     |       |
|                                       | •     |
| · · · · · · · · · · · · · · · · · · · |       |
|                                       |       |



Finall: estattsthatenticole t@forall.com

The Section Officer (Primary-Male), Elementer & Secondary Education Department, Klyber Pathiumbaya Peshawar...

MINUTES OF THE MEETING Subject: -Dear Sir,

Dear Sir.

Jam directail to refer to the latter No.SO(Primory-AOS&SED/3-1/
G.\Alize/Minutes of the Healthy/PST/2023 dated 10-07-2023 on the subject clicil above and in present brief litstory about the background of the case as under:

- That Government of Khyber Pakhtunkinva Establishment Department (Regulation Wing) delaied Rule 7(3) in the Civil Servants (Appaintment, promotion & Transfer Rules 1989) vide natification No. No. SOR-VI (E&AD)/i-3/2020 dated 06-08-2020.

  That this office dought guidance from your good office in the fallowing words vide letter
- No. 6987 dared 16-02-2023.
  - (i) Now it hobligatory upon the civil servant to accept Promotion in every condition. (ii) It is the prerogative of the civil servant to either accept or turn down the offer of
- That your good office forwarded the same to the quarter concerned vide letter No.50 (Primary A) E&SBD/3-2/Appointment/2023 for necessary guidance.
- The the Coveriment of Kliyber Pokhtunithwa Establishment Department (Regulation lying) vide letter No.SO (Policy) E&AD/1-3/2020 dated 6-06-2023 categorically stated that there exists no provision to decline or forgo promotion. It is obligatory upon every civil servant to accept promotion under every condition.

  The same with reactived by this office from your good office wide letter No.SO.
- (Primary-M) \$2550/2-2/Appointment/2013 dated 12-06-2023.
- That, in the light of the minutes of meeting dated 6-07-2023, held under the Chairmanship of Han, Additional Secretary Establishment at his office this office, has heen asked for submission of consolidated case.
  In view of the above, this office is of considered apinion that the deletion of Rules

7(5) have affected regalively a lunge numbers of Female Teachers. Thur it is proposed that Teachers below Pro-16 may be exempted of implications of the amendment in the rules ibid provided they within their written refusal prior to conduction of the meeting of Departmental proportion Committee.

. The case is submitted for perusal and necessary actions picase.

ALLLIGHT Direllor (Estab MI-D) Elementary & Secondary Education Khyber Pakhtunkhwa

Endst: No.

Copy of the thore is to:-

- al Directorole. I. PA to Director Lo
- Master Capy.

Assistant Director (Establi-1) Elementary & Secondary Education Khyber Pakhtankhwa

1442-2023 AZIZULLAH VS GOVT CF PG43

WP4442-2023 AZIZULLAH V8 GOVT CF PG43

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Cat sugges out to Ego by

Khyben Rachbridana Chantel & Seandary Education

Parithmy Director

- Dleau The case is "Elbrished for period and necessary; action - Evantous of Remole Hearthers entition borobic nos do is softly with some of the war it.

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To risissingue of bills office has been asked for themconsolidated case.

hald under the Chairmanship of then. Additional Secretary Establish. Cros-Fo-2 betab gribson alt fo esturier out to tribil in toalt.

seniors to accept paristion under energy condition. I'm's breaks maps brokeside si to crothering graft will be at noisened an Etanol tarit betale years eatermically stated that there evila . That the government of KP-ED (Regulation Willy) vide letter No. So (Palicy)

vide letter in. So (Prince A) EGED 12-2 Appointment (2023 for recessory

. Their your good office forwarded the come to quentes concerned offer of promotion.

ent mabriet / types of the of the transces in the suite occapitation of the city . Inthemoral types and scoulment to accept promethers.

prince of the following from you god wifte sit tother following to be stated in the following vide neitherties in the Me. 50R-VI(EEAD) 1-3/2020 dated ob-08-2020. delated in Civil Services (Apprintment, promotions, Timber of (2) Filler beloaded

(Brilly actioning) transformed department (Regulation Willy) present bitel history, about background of cour as unchas.

at bris svalo belie tosides no Esas-F-ol bath isas/Till British of soldrill Dear 817] & am divided to refer to Letter No (50 Aimay-17) E & SED/5-1/6-Will.

Subject : Minutes of Meeting

OL

KPK, Pishowar. Elementory & geondary Education Department Section Official (Rimary Male).

PESHALIAR. DIRECTIONATE OF ELEMENTARY & SECONDARY EDUCATION, KPK

CIVIL SECRETARIAT PESHAWAR FIRENTERA NO SECONDERY EDUCATION DEPARTMENT

(TB2ESS-160.0H onod9)

Instructed noteusiumbA S instructed The Gearlian to Govl of Khyber Pakhlunkhwa.

SERVANT (APPOINTMENT, PRPMOTION & TRANSFER RULES GUIDANCE REGARDING DELETION OF RULE 7(5) IN THE CIVIL

szorti ferti badsmüni nasod zeri JI (e8et zaiuя raizner T & notiomoriq: कुरुपानपूर्वपुष्टक) अञ्चरास्ट The Solds and to state that after deletion of rule 7(5) Khyber Pakhtunkhwa Ovli beneb 0202/E-1 (CLASS ((Pollcy)) ESAD) 1-3/2020 dated 115 125

TY to evade promotion through different means shall be proceed under Knyber officers of fide se who do not comply with promotion order of the competent authority or

Padraunione Civil Servant (Effidency & Discipline) Rules, 2011.

true of serviced with Mds and elder father of mother-in-law who heed care. In such o seriom duties in the remotest station with no residential or transport facility. Most of as sveri grant mind sometiment such seed or sveri should make the lieve only lavel Vieming to varisest ybei sasso amos ni terit battimdue el ti notosannos eirti ni

and od barablancoar ad yem inambhama blez and ,avode sett in walv ni Seed, tricte are negative effects on service delivery.

, sloothe yramhy of teacher total to matter

בססא נכתאופומפק יום pap:

2. PS to Secretary, East Department Mayber Pakhtunking. 1, Olfector E&SE Khyber Pakhbunkhwa.

SECTION OFFICER IPPRANT

RECTION OFFICER (FRANKIRA) MALEI RELUAMMAHUM)

Peshawair Dated 23th August, 2023

ESOSY, elua-indindriopolals-SOBERSEM-montententer (2023

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WP4442-2023 AZIZULLAH VS GOVT CF PG43

-B/c-

No.50 (Primary -M) ESSED /2-2/ Appointment -Rule 2023 Perhaumer Dated 23rd August, 2023.

T

The Secretary to Government of Khylos Pakhtunbhusa. Establishmost and Administration Depostment, Peshawas.

SUBJECT: Guidance regarding deletion of Rule 7(5) in the
Cirl Sexwant (Appointment, Romotion & Transfer Rules
1989)

Dear Sir,

9 am directed to refer to your letter No. Softmireny

11-3/2020 dated Bt June 2023 and to state that after

deletion of Rule 7(S) Khyber Pakhounkhiwo Ciril Servant (Appointment),

Promotion and Transfer Rules 1989) 9t has been intimated that

these officers officials who do not comply with promotion order

of the competerd authority or try to evade promotion though

different means shall be proceed under khyber Akhturikhwa

and Dixipline) Rule 2011.

In this connection it is submitted that in some cases lady teacher of principle level who avail such promotion have to face serious incoverience while they have to perform duties in the remotest stations with no residential/trompost facilities. Most of them are married with kilds and elder father of Mother-in-law who need asse. In such cases there are negative effects on service delivery in such cases there are negative in view of above, the said ammendment may be reconsidered to the extent of lady teacher in primary schools.

Copy forwarded to;

(Muhammad Istacy)
Section officer (Primary)

1 Director E& SE Khybo Pakhhirkhwa.

2. PS to Secretary, E & SE Deposition of Klanck At Boundred

ATTESTED



## 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,

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



- B/C-

#### GOVERNMENT OF KHYBER PAKHTUNKHWA ESTABLISHMENT-DEPARTMENT No. SO(Policy)E&AD/1-3/2020

Dated Peshawar the September 07, 2023

To

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

Subject: -

GUIDANCE REGARDING DELETION OF RULE 7(5) IN THE KHYBER 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 guildance 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:-

OWE

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

Section nicer (Policy

WP4442-2023 AZIZULLAH VS GOVT CA PROTECTION OF THE STED

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 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. SI) (Policy) /EDAD/1- 3/2020 dated 06/08/2020, the right of foregoing of promotion was withdrawn and the Government of Khyber Pakhtunkhwa Establishment Department (Regulation Wing) deleted Rule 7(5) in the Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 vide notification no SOR-VI (E & AD)/1-2/2020 dated 06-08-2020. That the Directorate of Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar asked for guidance regarding deletion of Rule 7(5) in Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 in respect of which the Establishment Department vide its letter No. SO.(Policy) E&AD/1- 3/2020 dated Peshawar the June 06th, 2023 directed the Directorate of Elementary & Secondary Education that Rule 7(5) in the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 has been deleted vide notification dated 06-08-2020 and therefore, no provision exists to decline or forgo promotion and it is obligatory upon every civil servant to accept promotion under every condition. That Directorate of Elementary & Secondary Education Khyber Pakhtunkhwa also wrote a letter to the office of Establishment & Administrative Department vide No SO(Primary-M) E&SED/2-2/Appointment Rule/2023 dated 23-08-2023 to reconsider the amendment made in 'Khyper 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 incanwhile, 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 <u>30</u>/0**4**/2024

, MUSHTAQ KHAN S/O MASOOD ICHAN, SPST

Elde Lapber Pakintunkhwa

mobilizare मामुख्य प्रमुख्य है। इस्

in Johns Training Jyof M Johns Graining Jyof Mila Tawaring Terladini

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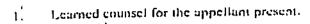
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WP4442-2022 AZIZULLAH VB GGVT CF PG43

07.05 2024



Let a pre-admission notice he issued to the respondents through TCS submission for ruply/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 fearned 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.

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

Date of Presentation of Application 10 1/2 LG

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CS CamScanner



## JAKALAT NAMA

## BEFORE THE SERVICE TRIBUNAL PESHAWAR

MUSHTAQ KHAN

Appellant

Versus

,, Government of KP & others

Respondents

## I (the Appellant)

do hereby appoint and retain

## MUHAMMAD MUAZZAM BUTT ASC. MUHAMMAD ADEEL BUTT AHC BASSAM AHMAD SIDDIQUI AHC

## ASSOCIATES OF MUAZZAM LAW FIRM

to act and appear for me in the above Suit and on my behalf to conduct and prosecute (or defend) the same and all proceedings that may be taken in respect of any petition connected with the same or any decree or order passed therein and Applications for review to file and obtain return of documents, and to represent me/us and to take all necessary steps on my/our behalf in the above matter.

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

ARPELLANT

ACCEPTED

MUHAMMAD MUAZZAM BUTT

Advocate Supreme Court

MUHAMMAD ADEEL BUTT

Advocate High Court

BASSAM AHMAD SIDBIQUI

Advocate High Court