

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

C.M.A No _____ of 2022

IN

Service Appeal No: 1291 of 2022

Afraiz Ahmed

Versus

The Director, Directorate of Elementary & Secondary Education
Department, Peshawar & two others.

Application for suspension of withdrawal order dated 10/07/2024

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Dated 26/07/2024

Afraiz Ahmed
(Afraiz Ahmed)
Applicant/ Appellant

Through

Shahzad Shakoor
(Counsel)

Shahzad Shakoor
Advocate High Court.

①

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

CM No _____ of 2023

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 14536

IN

Dated 26-07-2024

Service Appeal No: 1291 of 2023

Afraiz Ahmed S/O Karam Elahi Physical Education Teacher
(PET), Government Middle School Malkot District Abbottabad.

... Appellant

Versus

The Director, Directorate of Elementary & Secondary Education
Department, Peshawar and others.

... Respondents

**APPLICATION FOR SUSPENSION OF
WITHDRAWAL ORDER DATED 10/07/2024
ISSUED UNDER ENDORSEMENT NO 4901-09
BY THE RESPONDENT NO. 2 (DEO MALE
ABBOTTABAD).**

Respectfully Sheweth,

- 9) That appellant challenged promotion order dated 11/05/2023 to the extent of private respondents (his most juniors).
- 10) That respondents appeared on the basis of pre-admission notice, and respondent No 2, before filing para-wise comments, issued appellant's promotion office Order dated 26/03/2024 with immediate effect.
- 11) That after issuance of promotion order dated 26/03/2024, respondents filed their comments before this Tribunal, wherein they

categorically admitted the facts and attached promotion orders and charge reports of appellant with their Comments.

- 12) That on the date fixed i.e. 24/06/2024, before the Service Tribunal, Mr Tanveer Ahmad DEO (M) Abbottabad (respondent No 2) personally appeared and learned Tribunal, admitted the service appeals, and Tribunal in its admitting order dated 24/06/2024, mentioning the impugned order dated 11/05/2023, and promotion Order dated 26/03/2024 specifically, and referred the service appeal to DB for arguments on 23/09/2024.
- 13) That after passing 14 days, suddenly respondent no 2, issued withdrawal order dated 10/07/2024, without issuing any notice to the appellant, it was surprising for appellant but they filed their departmental appeals to appellate authority (respondent no 2). Copy of withdrawal order dated 10/07/2024 is Annexure "AA".
- 14) That office of respondent No 2 pressurizing the appellant to move back their previous post/position from Middle School Teacher (PET) to Primary School teacher (PSHT), on this scenario, appellant and others filed Constitutional Petition No 760-A of 2024, which was decided on 23/07/2024. Copy of Order along with writ petition is Annexure "BB".
- 15) That respondent no 2 himself personally appeared before the learned Tribunal on 24/06/2024 and admitting order was dictated in his presence, it is very outset to withdraw that order which was filed with comments, and the rights of respondents were became defunct, being subjudice/decided matter to the extent of seniority rights, but respondent no 2 illegally dragged once again in the quite clear issues.
- 16) That it is point of law for deciding this honorable Tribunal,
Whether respondent No 2 has any power to defeat, cancel the Tribunal admitting order dated 24/06/2024 by issuing subsequent illegal order dated 10/07/2024?

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PRAYER:

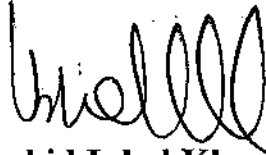
It is therefore respectfully prayed that withdrawal order dated 10/07/2024 may graciously be suspended and operation of said order may graciously be suspended/stayed till the disposal of Titled Service appeal.

Dated 26/07/2024

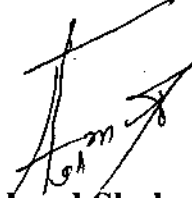
(Afraiz Ahmed)

Appellant

Through



(Rashid Iqbal Khan Jadoon)
Advocate IBC Islamabad
Abbottabad/ Attorney

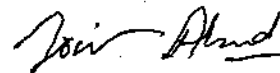
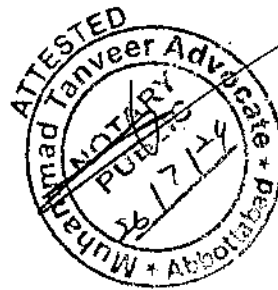


(Shahzad Shakoor)
Advocate High Court
Abbottabad.

AFFIDAVIT

I, Afraiz Ahmed S/O Karam Elahi Physical Education Teacher (PET), Government Middle School Malkot District Abbottabad, do here by affirm on oath that contents of foregoing application are correct and true according to my best knowledge and belief and nothing has been suppressed from this Honorable Tribunal.

Dated 26/07/2024



(Afraiz Ahmed)

Applicant/Appellant
DEPONENT

Annexure AA

4

OFFICE OF THE DISTRICT EDUCATION OFFICER (M) ABBOTTABAD



No. _____/Sports

Dated: ___/06/2024

☎ 0992-9310102, 0992-330131

✉ EDO.Education.Atd@gmail.com

WITHDRAWAL ORDER

In exercise of powers conferred under Section 21 of General Clauses Act, this office order bearing Endst: No. 1834-42/Sports/Promotion PSHT to PET dated 26-03-2024 is hereby withdrawn ab-initio, which was issued inadvertently in the light of the judgment of Supreme Court of Pakistan in Civil Petition No. 225-P/2023 whereas said judgment is not applicable in the instant case.

- SA -

**DISTRICT EDUCATION OFFICER (M)
ABBOTTABAD.**

[Signature]

Dated: 10 ⁰⁷ /06/2024

Endst: No. 4901-09

Copy for information to:-

1. PA to Director E&SE Khyber Pakhtunkhwa Peshawar
2. PS to Secretary to Govt of Khyber Pakhtunkhwa, E&SEID Peshawar
3. Headmaster GHS Khaira Gali Abbottabad
4. Headmaster GMS Malkot Abbottabad.
5. District Comptroller of Accounts Abbottabad
6. District Monitoring Officer (EMA) Abbottabad
7. Sub Divisional Education Office (Male) Abbottabad
8. Assistant Director EIVIS Branch Local Office
9. Teachers Concerned

**DISTRICT EDUCATION OFFICER (M)
ABBOTTABAD.**

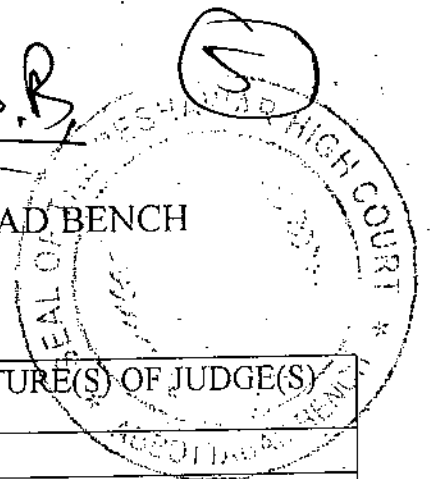
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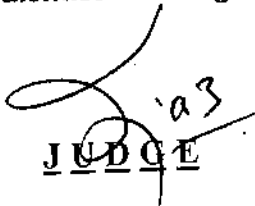
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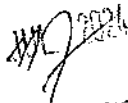
Annexure, B.B.

PESHAWAR HIGH COURT, ABBOTTABAD BENCH
FORM 'A'
FORM OF ORDER SHEET



Date of Order or Proceedings	ORDER OR PROCEEDINGS WITH SIGNATURE(S) OF JUDGE(S)
1	2
23.07.2024.	<p><u>IR in WP No. 760-A/2024</u></p> <p>Present:- Mr. Shahzad Shakoor, Advocate for petitioners.</p> <p style="text-align: center;">***</p> <p><u>MUHAMMAD IJAZ KHAN, J.</u>- At the very outset, learned counsel for the petitioners was confronted that the petitioners are civil servants and they have impugned the order of respondents whereby their promotion orders have been withdrawn and further when he was confronted that his service appeal is also pending before the Service Tribunal and that he has also filed a Departmental Appeal before the Authority against the impugned withdrawal order dated 10.07.2024, he thereafter stated that he may be allowed to avail their aforesaid remedy either before the Service Tribunal or before the Authority as the case may be.</p> <p>2. In view of the above, this writ petition is dismissed being not pressed.</p> <p style="text-align: right;"> JUDGE</p>

CSC
Attested


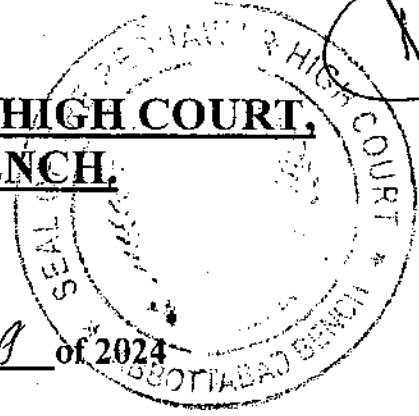
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EXAMINER
24

Peshawar High Court, Abbottabad Bench
Authenticated Under the Seal of the Court

(6)

(1)

BEFORE THE PESHAWAR HIGH COURT,
ABBOTTABAD BENCH.

Writ Petition No: 260 of 2024



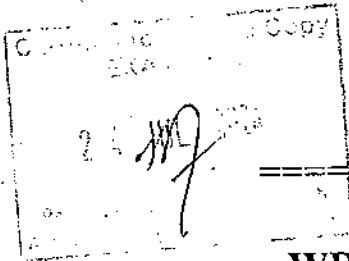
- 1) Waseem Ahmed S/O Muhammad Saleem Abbasi, Physical Education Teacher (PET), Government High School Khaira Gali District Abbottabad.
- 2) Afraiz Ahmed S/O Karam Elahi Physical Education Teacher (PET), Government Middle School Malkot District Abbottabad.

Petitioners

Versus

- CR*
Attorney
Khalid
- 1 The Government of Khyber Pakhtunkhwa through Secretary (Elementary & Secondary Education), Department, Peshawar.
 - 2 The Director, Directorate of Elementary & Secondary Education Department, Peshawar.
 - 3 The District Education Officer (Male), Elementary & Secondary Education Department, Abbottabad.

Respondents



WRIT PETITION UNDER ARTICLE 199 OF
THE CONSTITUTION OF ISLAMIC
REPUBLIC OF PAKISTAN,

FOR DECLARATION TO THE EFFECT THAT
UNDER THE LEGAL RIGHTS, PETITIONERS
ARE LEGALLY ENTITLED FOR SUSPENSION

FILED TODAY
4
ADD. REGISTRAR
PHC, ABBOTTABAD BENCH

19/11/2024

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OF IMPUGNED WITHDRAWAL ORDER
DATED 10/07/2024 ISSUED UNDER
ENDORSEMENT NO 4901-09 BY THE
RESPONDENT NO. 3 (DEO MALE
ABBOTTABAD)

TILL THE DECISION OF THEIR PENDING
DEPARTMENTAL APPEALS, FILED BY
PETITIONERS TO THE RESPONDENT NO. 2
(DIRECTOR, E & S EDUCATION
DEPARTMENT, PESHAWAR) OR

ON EXPIRY OF STATUTORY PERIOD OF 90
DAYS, IN CASE OF NON DECIDING
PETITIONERS' DEPARTMENTAL APPEALS.

CC
Attended
Khan

Respectfully Sheweth,

- 1) That petitioners joined Elementary & Secondary Education Department as PSTs (Primary School Teacher) in year 2005 and previously they were working in the capacity of PSHT (Primary School Head Teacher). Copy of relevant pages of appointment Order dated 09/04/2005 and promotion Notification dated 07/03/2020 are annexed as

Annexure "A" & "B".

- 2) That during their service, petitioners passed their higher professional qualification, MSc HPE (Health & Physical Education), which is higher professional qualification for the post of PET (Physical Education Teacher). Copies of

Certificate of Appointment
26/07/2024

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PHC, ABBOTTABAD BENCH

19/7/24

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Professional Educational Documents are annexed as Annexure "C".

3) That on 12/04/2023, respondent No 03, wrote a letter to all SDEO of District Abbottabad, wherein invited documents for promotion on seniority cum fitness, including petitioners' cadre, PSHT etc. to PET, and petitioners were informed/directed through their circle officer (ADEO) for submission of required documents, petitioners submitted their personal files for promotion. Copy of letter dated 12/04/2023 is annexed as Annexure "D"

4) That it came in to the knowledge of petitioners that promotion orders have been issued on 11/05/2023, wherein it found that their two most juniors have been promoted to the PET post by superseding the petitioners. Copy of Promotion Order dated 11/05/2023 is annexed as Annexure "E"

COC
checked
Fah

5) That petitioners after fulfilling the legal requirements, challenged the illegal promotion office order dated 11/05/2023 through Service Appeals No 1790 & 1791 of 2023 before KP Service Tribunal Peshawar, to the extent of petitioners. Copies of Service Appeals are annexed as Annexure "F" & "F-1" respectively.

Certified to be True Copy
EXAMINER
26/03/2024

6) That respondents appeared on the basis of pre-admission notice, and respondent No. 3, before filing para-wise comments, issued petitioners' promotion office Order dated 26/03/2024 with immediate effect, petitioners received the charge of PET posts. Copy of promotion orders dated 26/03/2024 is annexed as Annexure "G"

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PHC, ABBOTTABAD

12/7/24

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7) That after issuance of promotion order dated 26/03/2024, respondents filed their comments before Service Tribunal, wherein they categorically admitted the facts and attached promotion orders and charge reports of petitioners with their Comments. Copies of comments & charge reports are annexed as Annexure "H" & "H-1"

8) That before the Service Tribunal, on the date fixed i.e. 24/06/2024, Mr Tanveer Ahmad DEO (M) Abbottabad (respondent No 3) personally appeared and learned Tribunal admitted the service appeals mentioning the promotion Order dated 26/03/2024 in its admitting order dated 24/06/2024, sent the cases/service appeals of petitioners to DB and service appeal were fixed on 23/09/2024 for arguments. Copies of relevant Order sheets are annexed as Annexure "I" & "I-1"

CFC
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9) That after passing 14 days, suddenly respondent no 3, issued impugned withdrawal order dated 10/07/2024, without issuing any notice to petitioners, it was surprising for petitioners but under the law, they filed their departmental appeals to appellate authority (respondent no 2). Copies of impugned order dated 10/07/2024 and departmental appeals dated 12/07/2024 are annexed as Annexure "J" & "K".

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EXAMINER
2.4.2024
Personnel High Court at Bench
Abbottabad

10) That under the law, constitutional vested rights have accrued to the petitioners and can't denied to them and in the present scenario there is no other adequate, efficacious remedy provided by law is available to the petitioners, except to invoke extra ordinary Constitutional jurisdiction of this Honorable Court through instant writ Petition,

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19/7/24
JUD. REGISTRAR
HIGH COURT ABBOTTABAD BENCH II

(18) (5)

Hence this writ Petition inters-alia on the following grounds.

Grounds

a) That it is undoubted facts that petitioners were badly suffered/damaged from the arbitrary action of respondent no 3, issuing promotion order dated 11/05/2023 by superseding petitioners and gifted the unlawful rights to their juniors, which order was impugned in service appeal No 1790 & 1791 of 2023 pending before KP Service Tribunal and next date is 23/09/2024, further more despite of said litigation pending before the competent court of law, another unlawful mala-fide order dated 10/07/2024 which is being impugned in the instant writ petition, the position is documentarily proved that legal rights of petitioners are being illegally snatched in an uncivilized way in a very haste manner, which is against the canons of justice and there is no single example is available in the civilized society.

CSE Attended
Khan

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EXAMINER
2-4-2024
Registrar, Capital Court
Abbotabad Bench

b) That petitioners, being higher professional qualified (MSc HPE) for the post of PET, while minimum professional qualification is JDP (Junior Diploma of Physical, equal to intermediate level), under the law higher qualification could not be treated ineligibility, and the quite same point of law, was deciding by the Division Bench Mangora of this Honourable Court in W.P No 657-M of 2020 passed on 22/02/2023, which was upheld by Supreme

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ADD. REGISTRAR
PHC, ABBOTABAD BENCH
19/7/24

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Court of Pakistan in CPLA No 225-P of 2023 through order dated 11/12/2023, the author of said Order is Chief justice of Pakistan, which is much perusal, and petitioners are also factually legally entitled for same costs as imposed by Chief Justice of Pakistan in its order, moreover respondent no 3 itself referred it, in promotion office Order dated 26/03/2024 (Annexure G). Copy of Apex Court order dated 11/12/2023 is annexed as Annexure "L"

c) That petitioners are dragged into litigations two time, previously pending service appeals before Service Tribunal, and now through instant Writ Petition, thus the conduct of the respondents especially respondent no 3, is admittedly arbitrary capricious unjust and against all the norms of justice and as such requires indulgence of this Honourable Court by passing appropriate orders as well as awarding proper Cost to the respondent as imposed by Apex Court in CPLA 225-P of 2023.

d) That respondents ignored the provisions of Article 4 of the Constitution of Pakistan while exercising their illegal impugned office order and their exercising discretionary powers.

e) That under the Section-4 of KP Service Tribunal Act 1974, petitioners cannot challenge the impugned present withdrawal order dated 10/07/2024, unless and until, they got final order on

are attached
for

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EXAMBER
24/11/2024
ADDITIONAL REGISTRAR
ABOTTABAD BENCH

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ADDITIONAL REGISTRAR
ABOTTABAD BENCH

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their present departmental appeals (annexure K) which has to be passed by the appellate authority (respondent no 2) or on expiry of statutory period of 90 days, due to this reason instant writ petition is maintainable in spite of bar under Article 212 of the Constitution of Islamic Republic of Pakistan 1973.

PRAYER

It is, therefore, respectfully prayed that an appropriate Writ may graciously be issued in favour of petitioners against the respondents in the interest of justice.

CPC
Asst. Secy
[Signature]

Any other relief for which the petitioners are entitled, and the same is not prayed specifically, may very kindly be granted in favour of the petitioners.

INTERIM RELIEF

It is, further prayed that operation of Impugned Withdrawal Order dated 10/07/2024 issued under Endorsement No 4901-09 by the respondent no. 3 (DEO Male Abbottabad) may graciously be suspended till the final disposal of instant Writ petition.

Certified to be True Copy
EXAMINER
24/07/2024
[Signature]

Dated 15/07/2024

[Signature]
Through
(Rashid Iqbal Khan Jadoon)
Advocate IBC Islamabad
Attorney Abbottabad.

Petitioners
[Signature]
(Shahzad Shakoor)
Advocate High Court
Abbottabad.

FILED TODAY
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ADD REGISTRAR
P.O. ABBOTTABAD HIGH COURT

[Signature]