


FORM OF ORDER SHEET

Court of _____

Appeal No. 2181 / 2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	29/10/2024	<p>The appeal presented today by Mr. Muhammad Muazzam But Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on 06.11.2024. Parcha Peshi given to counsel for the appellant.</p> <p>By order of the Chairman</p> <p> REGISTRAR</p>

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHUWA

CM No _____ -P of 2024

In Ref to

Service Appeal No 2181 2024

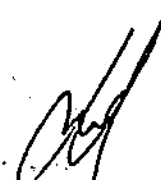
Malik Muhammad Sajid

VERSUS

Secretary to Government of Khyber Pakhtunkhwa, & others

INDEX

S#	DESCRIPTION OF DOCUMENTS	ANNEX	PAGES
1.	Appeal and Verification	*	
2.	Application for suspension	*	5
3.	Copy of Monthly Salary Account	A	6 - 9
4.	Copy of notification No. SD (Policy) EV AD/1-3/2020 dated 06/08/2020	B	10 - 11
5.	Copy of impugned letter dated June 6 th , 2023	C	12 - 14
6.	Copy of Minutes of meeting dated 06-07-2023	D	15 - 18
7.	Copy of Letter dated 23-08-2023	E	19 - 20
8.	Copy of Impugned letter dated 07.09-2023	F	21 - 22
9.	Copy of Representation against the said notification and representation made by APTA President	G & H	23 24 - 25
10.	Wakalat Nama		26


ADVOCATE

M. Muazzam Butt

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHUWA

In Ref to

Service Appeal No 2181 /2024

Malik Muhammad Sajid Son of Safi Ullah, PSHT (BPS-15)

Mohallah Chishtiabad, PO college doraha, labar kot, Tehsil and 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 SET 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**

2. 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 do 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".

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

2

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 Annexure G & H
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 executive notification that adversely affects 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 of 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 set-aside.

- 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 alling 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:

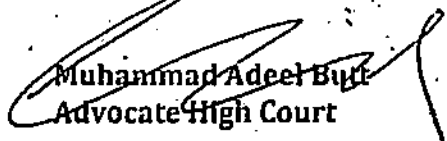
I, (the appellant) solemnly declare that the contents of foregoing application are true and correct to the best of my knowledge and belief and nothing has been concealed therein from this Honourable Court.



Deponent


Appellant

Through,


Muhammad Muazzam Butt
Advocate Supreme Court


Muhammad Adeel Butt
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

Malik Muhammad Sajid

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.
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

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 this Honorable Court.

Deponent

Appellant

Through

Muhammad Muazzam Butt
Advocate Supreme Court

Muhammad Adeel Butt
Advocate High Court

Account Number: 107542222
 Branch: NATIONAL BANK OF PAKISTAN - 21785 COLLECTOR CHOWK DUTT CHOWNS BANSHIRA

PAID

Payee Name: NATAR MOHAMMAD SAID
 Account Number: 107542222
 Branch: NATIONAL BANK OF PAKISTAN - 21785 COLLECTOR CHOWK DUTT CHOWNS BANSHIRA

Payable Date: 12/15/2024
 Amount: 12,785.00
 Deduction (TDS): 1,278.50
 Net Pay (TDS): 11,506.50

Code	Description	Amount	Balance
1505	CERT. ON PRECED. YEAR	200,000.00	15,000.00
1506	Interest	1,000.00	15,000.00

Code	Description	Amount	Balance
3015	CPI Selection	1,290.00	13,710.00
3005	Income Tax	9,845.00	3,865.00
4004	R.B. & Death Cont.	1,600.00	2,265.00

Code	Description	Amount	Balance
0001	Basic Pay	67,000.00	70,700.00
1210	Dear Allowance 20%	13,400.00	84,100.00
150	Chg. Allowance	40.00	84,140.00
2150	Adm. Allowance 15%	10,050.00	94,190.00
2411	Diary Allowance 20%	13,400.00	107,590.00
242	Adm. Allowance 20%	13,400.00	120,990.00
3231	Adm. Allowance 20%	13,400.00	134,390.00

Vendor Name: ...
 Govt. No: ...
 Date: ...

Signature: ...
 Date: ...

OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) PUNJAB

NOTIFICATION

Consequent upon their selection by the Departmental Selection Committee the District Education Officer (Male) Primary Manshira has been pleased to appoint the following trained T/O candidates at the schools to be notified against their names in JES-7 (No. 1400-S-2699) plus usual allowances on condition under the rules with immediate effect subject to the existing terms & conditions.

S. NO. NAME, FATHER'S NAME, D/O BIRTH NO. OF SCHOOL NAME, DISTRICT, RES. OFF. & ADDRESS. MERIT TESTED.

DISTRICT HEADQUARTERS

1.	Muhammad Saleem S/O 15.3.73 Saifullah R/O Dhangian.	03	G/S Ashwal	Vice Muhammad Haq	not selected on merit, hence terminated.
2.	Hidayat Ullah S/O 18.12.76 Azamullah R/O Jattal.	11	G/S Chapra Dala	Vice Ashiq Hussain	--do--
3.	Muhammad Hanif S/O 1.1.75 Khan, Niaz R/O Tarwal.	13	G/S Chatter Plain	Vice Ejaz Hussain Shah	--do--
4.	Saqib Farvez S/O 21.11.76 Muhammad Farvez R/O Manshira.	10	G/S Chatter Plain	Vice Dabht. Khan	--do--
5.	Muhammad Riaz Abbasi S/O 3.6.77 S/O Shah Nawaz R/O Kanshian.	14	G/S Dhanburi	Vice Zulfikar Ali Shah	--do--
6.	Muhammad Farvez S/O 10.10.72 Mir Zaman R/O Jogacha.	16	G/S Zandla	Vice Muhammad Fiaz	--do--
7.	Abdul Malik S/O 1.1.77 R/O Banda Gosach.	17	G/S Jala Ziarat	Vice Javed Hussain Shah	--do--
8.	Muhammad Munsif S/O 10.9.74 Muhammad Ullah R/O Kanshian.	18	G/S Jala Dal Gain	Vice Abdul Ghafoor Shah	--do--
9.	Tufail Muhammad S/O 7.3.75 Fazalur Rehman R/O Jattal.	19	G/S Khan	Vice Sajjad Hussain Shah	--do--
10.	Dashir Ahmad S/O 2.5.77 Gul Zaman R/O Kanshian.	22	G/S Janda Thalyan	Vice Abdul Qayyum	--do--
11.	Sajjad Ahmad S/O 5.9.74 Akber Khan R/O Shahdore.	23	G/S Chota Dala	Vice Ghulam Nabbi	--do--
12.	Malik Mohd Sajjad S/O 30.8.75 S/O Saifullah R/O Kanshian	24	G/S Halla Jabbar	Vice Ghulam Nabbi	--do--
13.	Akhtar Zeb S/O 15.3.74 Aurangzeb R/O Jajna.	26	G/S Andra	Vice Muhammad Hameed	--do--
14.	Maseer Ali Shah S/O 19.6.75 S. Chan Mohd Shah R/O Mohayan Khuri	25	G/S Gorian	Against Vacant post.	
15.	Fazal Haq S/O 2.5.72 Abdus Sattar R/O Daffa.	36	G/S Barnchar		--do--
16.	S. Maza Ali Shah S/O 29.6.76 Mukhtar Shah R/O Fairan.	37	G/S Ghora Kalam		--do--

Continued page No. 2.

ATTESTED

CONSTITUENCY MERIT.

P.F-45.

Sl. No.	Name	Date	Post	Remarks
17.	Tahir Hussain Shah S/O S. Amir Shah R/O Jai Jala.	20.4.70	10 GFS Tareeda	Vice Guldad not selected on merit hence terminated.
18.	Tufail Muhammad S/O Taj Muhammad R/O Jatta.	1.1.76	12 GFS Mohri	Vice Javed Iqbal --dc--
19.	Jostan S/O Gohar Aman R/O Jagori.	1.5.75	14 GFS Jalo Jahhar	Vice Ghulam Hassan --dc--
20.	Rafaqat Ali S/O Abdul Qayyum R/O Banda Gesach.	7.4.76	16 GMS Kalsan	Vice Qaiser Jauif --dc--
21.	Muhammad Yusuf S/O Abdul Manan R/O Khabbal.	10.1.72	17 GMS Deval	Vice Muhammad Usaid --dc--
22.	Faham Anwar S/O Anwar Rashid R/O Jabbori	1.4.78	18 GFS Balahar No.2	Vice Muhammad Zaheer --dc--
23.	Muhammad Ghayyur S/O Manzoorus Samad R/O Jaida.	1.1.77	20 GFS Jala Sarbland	Vice Muhammad Liaqat --dc--
24.	Muhammad Kaleem S/O Umar Khitab R/O Kanog, Jabbori	13.4.76	22 GFS Hilkote	Vice Talib Hussain --dc--
25.	Siraj Muhammad S/O Muhammad Israr R/O Malookra.	1.12.72	24 GFS Malookra	Vice Muhammad Aslam --dc--
26.	Fazalur Rehman S/O Khan Jee R/O Kayan.	18.5.75	23 GFS Chota Jala	Vice Gul Hiaz --dc--
27.	Abdul Qayyum S/O Miskeen R/O Giar Sacha	2.4.72	26 GFS Jalo Sadat	Vice Majeed Ahsad --dc--
28.	Muhammad Intesar S/O Ali Mardan R/O Shamdhora	3.11.76	28 GFS Tareeda	Vice Akbar Nawaz --dc--
29.	Muhammad Javed S/O Sharab Khan R/O Chela Bala	1.3.74	30 GFS Katha Bala	Vice Muhammad Aslam --dc--
30.	Muhammad Taufiq S/O Mushtaq Ahmad R/O Jaida	28.4.74	31 GFS Surbanj	Against Vacant Post.
31.	Shahid Hussain Shah S/O S. Maqbool Shah R/O Dambori.	06.6.68	32 GFS Said Abad	--dc--
32.	Shah Jehan S/O R/O Khabal Bala	26.6.72	35 GFS Kayan	--dc--
33.	Naseeb Khan S/O Noor Zaman R/O Khabal Fain	15.3.73	36 GMS Reen Mala Naka	--dc--

CONSTITUENCY MERIT.

P.F-42.

34.	M Arshid Mahmood S/O Muhammad Younis R/O Mansehra.	20.3.71	05 GFS Mohawalian	Vice Anwar Zeb not selected on merit, hence terminated
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CONSTITUENCY MERIT.

P.F-43.

35.	Abdul Latif S/O Muhammad Hussain R/O Ghanool.	23.4.75	10 GFS Kund	Vice Muhammad Akmal not selected on merit, he terminated.
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Continued Page No. 3.

ATTESTED

TERMS & CONDITIONS.

1. They will be governed by such rules and regulations as may be prescribed by the Govt. from time to time for the category of the Govt. servant to which they belong.
2. Their services will be liable to termination on one month notice from either side. In case of resignation without notice, one month pay will be forfeited in lieu thereof.
3. They should join the posts within one month of the issue of this notification.
4. Their inter-seniority will be determined in accordance with the merit of the departmental selection committee.
5. Charge reports should be submitted to all concerned.
6. They will be on probation for a period of two years and will have to pass the departmental examination. In case a candidate fails to qualify the departmental examination, he will be given one more chance. If he fails again then his services will be terminated. On arrival/availability of trained teachers, the services of untrained teachers occupying the posts shall be terminated.
7. Their original certificates/degrees should be checked and verified from the concerned university/BISE/ADE and Islamic Madrassas before handing over the charge.
8. Service books of the teachers must be prepared complete in all respect before handing over the charge.
9. The declaration of assets should be obtained from them immediately and placed on record.
10. They are required to produce health & age certificate from medical authorities concerned before handing over the charge.
11. Charge reports should be submitted to all concerned & charge should not be given to overage candidates until their cases for age relaxation be sent to the concerned quarters.
12. Efforts should be made for transfer before the completion the tenure will dis-qualify him from service.
13. No. TA/D. is allowed.
14. An under taking shall be obtain from Master & degree holders etc that they will serve the department for at least five years while they are selected by the public service commission for any post.
15. In case of person appointed as an untrained teacher, he will have to pass the requisite training examination within a period of four years failing which his services will be terminated.

NOTE:-

Complete information of appointees in consolidated lists on the prescribed proformas (Attached) alongwith charge reports be submitted by the lower offices to the Director Primary Education/D.E.O. (M) Primary Mansehra within a week positively.

(Signature)
(MOHAMMAD SAHAR ANJUM) 26/6
DISTRICT EDUCATION OFFICER,
(M.A.L.) PRIMARY MANSEHRA.

Endst: No. 1678-1713 /G.B/G-I/1997. Dated Mansehra the 26.6. /1997

Copy forwarded for information to the:-

1. Director Primary Education N.F. Peshawar.
2. Sub Divisional Education Officer (Male) Mansehra.
3. District Account Officer Mansehra.
4. All the candidates concerned.
39. Office Order File.

(Signature)
DISTRICT EDUCATION OFFICER,
(M.A.L.) PRIMARY MANSEHRA.

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:

AMENDMENT

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

CHIEF SECRETARY
GOVERNMENT OF THE KHYBER PAKHTUNKHWA

(ANDS): & EVEN DATE

Copy is forwarded to :-

1. Additional Chief Secretary, Govt of Khyber Pakhtunkhwa. Planning & Development Department)
2. The Senior Member Board of Revenue, Khyber Pakhtunkhwa.
3. All Administrative Secretaries to Govt of Khyber Pakhtunkhwa.
4. The Principal Secretary to Governor, Khyber Pakhtunkhwa.
5. The Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
6. All Divisional Commissioners in Khyber Pakhtunkhwa.
7. All Heads of Attached Departments in Khyber Pakhtunkhwa.
8. All Autonomous/Semi Autonomous Bodies in Khyber Pakhtunkhwa.
9. All Deputy Commissioners in Khyber Pakhtunkhwa.
10. The Registrar, Peshawar High Court, Peshawar.
11. The Registrar, Khyber Pakhtunkhwa Service Tribunal, Peshawar
12. The Secretary, 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)

~~ATTESTED~~

Annexure - C



GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT
No. SO(Polcy)/I&AD/1-3/2020
Dated Peshawar the June 06, 2023

62

To: The Government of Khyber Pakhtunkhwa,
Elementary & Secondary Education Department.

Subject: GUIDANCE REGARDING DELETION OF RULE 7(E) IN THE
KHYBER PAKHTUNKHWA CIVIL SERVANTS (APPOINTMENT,
PROMOTION AND TRANSFER) RULES, 1989.

Dear Sir,
I am directed to refer to your letter No. SO(Polcy-MY/AS/107/2/2023) 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 said rule is aimed at preventing a civil servant from temptation for ill-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. 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.

Yours faithfully,

(Isha Dildar Ahmad Khan)
Section Officer (Policy)

ASSE
7/6

Encl. 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.

Section Officer (Policy)

ATTESTED

GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY AND SECONDARY EDUCATION DEPARTMENT
CIVIL SECRETARIAT PESHAWAR
(Phone No.091-9223587)

Mn.SO (Primary-M/E&SED/2-6/2023
Dated Peshawar the. June 26th, 2023

To

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

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

26/6/23

Subject: GUIDANCE REGARDING DELETION OF RULE 7(6) IN THE KHYBER
PAKHTUNKHWA CIVIL SERVANTS (APPOINTMENT, PROMOTION
AND TRANSFER) RULES, 1988.

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

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

Encl: AA

(MUHAMMAD (SHAO)
SECTION OFFICER (PRIMARY MALE)

Copy forwarded to the:

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

SECTION OFFICER (PRIMARY MALE)
26/6/23

~~ATTESTED~~

14
B/c
No SO (Primary-M)/E&SED/2-6/2023
Dated Peshawar the June 25th 2023

To
The Director
Elementary & Secondary Education Department
Khyber Pakhtunkhwa, Peshawar

Aziz Ullah Khan 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.

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

Encl: AA

(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 OF PG43

~~ATTESTED~~

MINUTES OF THE MEETING REGARDING APPLICATION SUBMITTED BY MR. AZIZ ULLAH
PROVINCIAL PRESIDENT ALL PRIMARY TEACHERS ASSOCIATION KHYBER PAKHTUNKHWA
REGARDING 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.

Annexure

①

Sl	NAME	DESIGNATION
1	Mr. Fazal Wahid	Deputy Director Establishment of Directorate Elementary & Secondary Education Department
2	Mr. Aziz Ullah	Provincial President All Primary Teachers Association Khyber Pakhtunkhwa
3	Mr. Razaqat Ullah	General Secretary APTA Peshawar
4	Muhammad Ishaq	Section Officer (Primary) E&SE Department Civil Secretariat 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 a self-contained/consolidated case for onward submission to Establishment Department for further necessary action.

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

(Mr. Fazal Wahid)
Deputy Director-1
E&SE Department

(Mr. Aziz Ullah)
Provincial President
All Primary Teachers Association
Khyber Pakhtunkhwa

(Mr. Razaqat Ullah)
General Secretary APTA
Peshawar

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

(Abdullah)
Additional Secretary (Establishment)
E&SE Department

ATTESTED

-B/C-

MINUTES OF THE MEETING REGARDING APPLICATION SUBMITTED BY MR AZIZ ULLAH PROVINCIAL PRESIDENT ALL PRIMARY TEACHERS ASSOCIATION KHYBER PAKHTUNKHWA REGARDING DELETION OF RULE 7(3) 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 Wahid	Deputy Director Establishment of Directorate Elementary & Secondary Education Department
2.	Mr. Aziz Ullah	Provincial President All Primary Teachers Association: Khyber Pakhtunkhwa
3.	Mr. Razaqat Ullah	General Secretary APTA Peshawar
4.	Muhammad Ishaq	Section Officer (Primary) E&SE Department Civil Secretariat 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 a self-contained/consolidated case for onward submission to Establishment Department for further necessary action.

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

(Mr. Fazal Wahid)
Deputy Director-1
E&SE Department

Provincial President
All Primary Teachers Association
Khyber Pakhtunkhwa

(Mr. Razaqat Ullah)
General Secretary APTA
Peshawar

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

(Abdullah)

Additional Secretary (Establishment)

ATTESTED



No. 8145

Khyber Pakhtunkhwa, Peshawar

UF No. 34/SST/UG General Category

Dated 21-7-2023

Phone: 091-9233344

Email: estab@menilabid@gmail.com

To

The Section Officer (Primary-Male),
Elementary & Secondary Education Department,
Khyber Pakhtunkhwa Peshawar.


Subject: - MINUTES OF THE MEETING

Dear Sir,

I am directed to refer to the letter No. SO (Primary-M) E&SED/3-1/ G.Misc/Minutes of the Meeting/PST/2023 dated 10-07-2023 on the subject cited above and to present brief history about the background of the case as under:

- That Government of Khyber Pakhtunkhwa Establishment Department (Regulation Wing) deleted Rule 7(5) in the Civil Servants (Appointment, promotion & Transfer Rules 1980) vide notification No. No. SOR-VI (E&AD)/1-3/2020 dated 06-08-2020.
 - That this office sought guidance from your good office in the following words vide letter No. 0987 dated 16-02-2023.
 - Now it is obligatory upon the civil servant to accept promotion in every condition.
 - It is the prerogative of the civil servant to either accept or turn down the offer of promotion.
 - That your good office forwarded the same to the quarter concerned vide letter No. SO (Primary-M) E&SED/3-1/Appointment/2023 for necessary guidance.
 - That the Government of Khyber Pakhtunkhwa Establishment Department (Regulation Wing) 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 was received by this office from your good office vide letter No. SO (Primary-M) E&SED/3-1/Appointment/2023 dated 12-06-2023.
 - That, in the light of the minutes of meeting dated 6-07-2023 held under the Chairmanship of Hon. Additional Secretary Establishment at his office this office has been asked for submission of consolidated case.
- In view of the above, this office is of considered opinion that the deletion of Rules 7(5) have affected negatively a huge numbers of Female Teachers. Thus it is proposed that Teachers below APS-16 may be exempted of implications of the amendment in the rules provided they submit their written refusal prior to conduction of the meeting of Departmental Promotion Committee.

The details submitted for perusal and necessary actions please.


Assistant Director (Estab A-1)
Elementary & Secondary Education
Khyber Pakhtunkhwa

Encl: No.

Copy of the above is to:-

1. PA to Director Local Directorate.
2. Master Copy.

Assistant Director (Estab A-1)
Elementary & Secondary Education
Khyber Pakhtunkhwa

~~ATTESTED~~

ATTESTED

WP4443-2023 AZIZULLAH VS GOVT OF POKS

Copy of the above to:
1. PA to Director Local Directorate
2. Master Copy

please. The case is submitted for perusal and necessary action members of female teachers. In view of the above, this office is of considered opinion that the deletion of Rules 7(S) have effected negatively a huge consolidated case.

That in light of the minutes of the meeting dated 6-07-2023 held under the chairmanship of Hon. Additional Secretary Education at his office. This office has been asked for submission of

no provision to clarify/forgo promotion. It is obligatory upon every civil servant to accept promotion under every condition. That the government of KP-ED (Regulation Wng) vide letter No. SO (P/ED) EQAD/1-3/2020 dated 6-06-2023 correspondingly stated that there exists

That your good office forwarded the same to quarters concerned vide letter No. SO (P/ED) EQAD/2-2/Appointment/2023 for necessary guidance.

That the office sought guidance from your good office in the following vide notification No. SO SR-VI (EQAD) 1-3/2020 dated 06-08-2020. The Government of KP Establishment department (Regulation Wng) dated rule 7(S) in Civil Servants (Appointment, Promotion, Transfer, etc) 1997

Minutes of meeting PST/2023 dated 10-7-2023 on subject cited above and to present brief history, also background of case as under.

Dear Sir, I am directed to refer to letter No. (SO P/ED) EQAD/5-1/G/M/1/

Section Officer (Primary-Male),
Elementary & Secondary Education Department,
KPK, Peshawar.

PESHAWAR
(21-7-2023)

DIRECTORATE OF ELEMENTARY & SECONDARY EDUCATION, KPK

- B/C -



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

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

Annexure
E

The Secretary to Govt. of Khyber Pakhtunkhwa,
Establishment & Administration Department,
Peshawar

**SUBJECT: - GUIDANCE REGARDING DELETION OF RULE 7(5) IN THE CIVIL
SERVANT (APPOINTMENT, PROMOTION & TRANSFER RULES
1989).**

Dear Sir,

I am directed to refer to your letter No. SO(Policy)/ EBAD/ 1-3/2020 dated 05th June 2023 and to state that after deletion of rule 7(5) Khyber Pakhtunkhwa Civil Servant (Appointment, Promotion & Transfer Rules 1989) it has been intimated that those officers/ officials who do not comply with promotion order of the competent authority or try to evade promotion through different means shall be proceed under Khyber Pakhtunkhwa Civil Servant (Efficiency & Discipline) Rules, 2011.

2. In this connection it is submitted that in some cases lady teacher of primary level who avail such promotions have to face serious inconvenience while they have to perform duties in the remotest station with no residential or transport facility. Most of them are married with kids and elder father of mother-in-law who need care. In such cases, there are negative effects on service delivery.

3. In view of the above, the said amendment may be reconsidered to the extent of lady teacher in primary schools.

(MUHAMMAD ISHAQ)
SECTION OFFICER (PRIMARY MALE)

Copy forwarded to the:

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

(Signature)
SECTION OFFICER (PRIMARY MALE)
23/8/23

Scanned with CamScanner

WP4442-2023 A212UL04H VS GOVT CF PG43

ATTESTED

- B/c -

- 12 -

No. 50 (Primary - M) E&SE/PA-A/
Appointment - Rule/2023

Peshawar Dated 23rd August, 2023.

To

The Secretary to Government of Khyber Pakhtunkhwa,
Establishment and Administration Department,
Peshawar.

SUBJECT: Guidance regarding deletion of Rule 7(S) in the
Civil Servant (Appointment, Promotion & Transfer Rules
1989)

Dear Sir,

I am directed to refer to your letter No. 50 (Policy) / E&AD
/1-3/2020 dated 8th June 2023 and to state that after
deletion of Rule 7(S) Khyber Pakhtunkhwa Civil Servant (Appointment,
Promotion and Transfer Rules 1989) it has been intimated that
those officers/officials who do not comply with promotion order
of the competent authority or try to evade promotion through
different means shall be proceed under Khyber Pakhtunkhwa
Civil Servant (Efficiency and Discipline) Rule 2012.

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

Copy forwarded to;

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

(Muhammad Ishaq)
Section Officer (Primary)

ATTESTED

Annexure - F



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(S) IN THE
KHYBER PAKHTUNKHWA CIVIL SERVANTS (APPOINTMENT,
PROMOTION AND TRANSFER) RULES, 1982.

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 rendered to your good office vide this department letter of
even No. dated 06.06.2023 (copy enclosed).

Yours faithfully,

Section Officer (Policy)

Encl. 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.

ATTESTED

WP442-2023 AZIZULLAH VS GOVT OF PGPS

- 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 PAIKHTUNKHWA 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)

Encls. 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

Section Officer (Policy)

~~ATTESTED~~

Annexure - G

To,

- 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

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

W 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. SO (Policy) /E&AD/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 Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 as it had negatively affected a large number of teachers and especially female teachers. In the meanwhile, the department vide its letter dated 07th of September 2023 directed the Directorate of Elementary & Secondary Education Khyber Pakhtunkhwa that necessary guidance has already been provided to the department and therefore no provision exists to decline or forgo promotion and those teachers who do not comply with the promotion order of the competent authority or try to evade promotion through different means shall be proceeded under the Khyber Pakhtunkhwa Civil Servant (Efficiency & Discipline) Rules, 2011.

It is, therefore, humbly prayed that on the acceptance of the instant representation; the Notification bearing No. SO (POLICY) E&AD/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 1/04/2024



MALIK MUHAMMAD SATID
SON OF
SAFI ULLAH
PSHT

07.06.2024



1. Learned counsel for the appellant present.

2. Let a pre-admission notice be issued to the respondents through TCS for submission of 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. Along with 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.

Certified to be true copy (Muhammad Akbar Khan)
Member (I)

[Handwritten signature]
13/6/24

Date of Presentation of Application 10-6-24
 Number of 1
 Copies 5
 Urgent 5
 Total 5
 Name of ---
 Date of 13-6-24
 Date of 12-6-24

~~ATTESTED~~

VAKALAT NAMA

BEFORE THE SERVICE TRIBUNAL PESHAWAR

MALIK MUHAMMAD SAJID
Versus

Appellant

Government of KP & others

Respondents

I (the Appellant)

do hereby appoint and retain

MUHAMMAD MUAZZAM BUTT ASC. MUHAMMAD ADEEL BUTT AHC

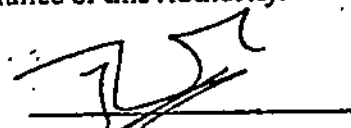
BASSAM AHMAD SIDDIQUI AHC

&

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.



APPELLANT

ACCEPTED



MUHAMMAD MUAZZAM BUTT
Advocate Supreme Court



MUHAMMAD ADEEL BUTT
Advocate High Court



BASSAM AHMAD SIDDIQUI
Advocate High Court