FORM OF ORDER SHEET

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	<u>Ap</u> ,	peal No. ス/8/5 /2024
S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	. 2	3
1.	29/10/2024	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.
		By order of the Chairman
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BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHUWA

C.M.No	P of 2024
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In Ref to	2126
Service Appeal No	<u>^ しろり</u> 2024

Muhammad Ashraf

VERSUS

Secretary to Government of Khyber Pakhtunkhwa, & others

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9.	Copy of Representation against the said notification and representation made by APTA President	G&H	20,21
10.	<u> </u>		23

ADVOCATE

M. Muazzam Butt

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHUWA

In	Ref	to
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Service Appeal No 2/85 /2024

Muhammad Ashraf son of Abdul Rehman, PSHT (BPS-15)

PO Gharhi, Habib ullah, bara kot, Tehsil Balakot, District Mansehra

......Appellant

VERSUS

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

SERVICE APPEAL UNDER SECTION 4 OF KPK SERVICE TRIBUNAL ACT 1974. AGAINST THE IMPUGNED NOTIFICATION BEARING NO.SO(POLICY)E&AD/1-3/2020. DATED 06/08/2020. COMMUNICATED TO RESPONDENT NO. 2 VIDE LETTER DATED 06/06/2023. WHEREIN IT WAS STATED THAT SUB RULE 5 OF RULE 7 OF KHYBER PAKHTUNKHWA CIVIL SERVANTS (APPOINTMENT, PROMOTION AND TRANSFER) RULES, 1989 STANDS DELETED

PRAYER:

ON ACCEPTANCE OF INSTANT SERVICE APPEAL, THE IMPUGNED NOTIFICATION BEARING NO: SO (POLICY) E&AD/1-3/2020, DATED 06/08/2020, COMMUNICATED TO RESPONDENT NO. 2 VIDE LETTER DATED 06/06/2023, MAY BE DECLARED AND ORDERED TO BE STRUCK DOWN BEING VOID AND ULTRA VIRES TO THE CONSTITUTION OF PAKISTAN AND FUNDAMENTAL PRINCIPLES OF NATURAL JUSTICE AND AGAINST THE RIGHTS OF APPELLANT.

ANY OTHER RELIEF WHICH THIS HONOURABLE TRIBUNAL DEEMS FIT AND PROPER IN THE CIRCUMSTANCES OF THE CASE MAY ALSO BE GRANTED TO THE APPELLANT.

RESPECTFULLY SHEWETH:

 That the Respondents Department appointed the Appellant as Primary School Head Teacher.
 Copy of Appointment letter is annexed as <u>Annexure A</u>

- 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 could not serve in the areas where there is no facility of accommodation and no houses of their elders are available to look after them in far-flung and solitary mountainous hard areas, and as per Section 25 of per KP Civil Servant Act, 1973, rules to the extent of terms and condition is framed by the Chief Minister and such promotion rules are not made applicable with retrospective effect. The rules framed are published in the Gazette notification and part and parcel of KP Civil Servant Appointment, Transfer and Promotion Rules 1989.
- That Government of K.P without following the rules position mentioned in Para 6 above promulgated Notification No. SO (Policy) E&AD/1 3/2020, dated 06/08/2020, communicated to Respondent No.2 vide letter dated 06/06/23 wherein it has been made mandatory to the employees to avail the promotion, otherwise, disciplinary action shall be taken against the employees. The impugned Notification is reproduced as under:

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

- 5. That as per notification No. SD (Policy) /EDAD/1- 3/2020 dated 06/08/2020, the right of foregoing of promotion was withdrawn and the Government of Khyber Pakhtunkhwa Establishment Department (Regulation Wing) deleted Rule 7(5) in the Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 vide notification no SOR-VI (E & AD)/1-2/2020 dated 06-08-2020. Copy of Impugned notification No. SD (Policy) EV AD/1- 3/2020 dated 06/08/2020 is attached as <u>Annexure B</u>
- 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 httpugged Letter dated June 06th, 2023 is attached as Annexure C
- That thereafter the meeting was also held in the office of Additional Secretary Establishment on 06-07-2023 in which it was decided to examine the case properly and submit a self-contained/ consolidated case for onward submission to the Establishment Department for further necessary action.

 Copy of Minutes of Meeting dated 06-07-2023 is attached as Annexure D
 - 8. That the Respondent No.3 i-e. Directorate of Elementary & Secondary Education Khyber Pakhtunkhwa also wrote a letter to the office of Establishment & Administrative Department vide No SO(Primary-M) E&SED/2-2/Appointment Rule/2023 dated 23-08-2023 to reconsider the amendment made in Khyber

Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 as it had negatively affected a large number of teachers and especially female teachers. Copy of Letter dated 23-08-2023 is attached as <u>Annexure E</u>

- 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 Inpugned letter dated 07-09-2023 is attached as Annexure F
- 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 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.
- 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:

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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 Honograble Court.

Through

Muham Med Muazzzam Butt Advocate/Supreme Court

Appellant

Muhammad Adeel But Advocate High Court

Bassam Alanad Siddiqui Advocade High Court

LL.M- Human Rights

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHUWA

C.M No	P of 2024		
In Ref to			
Service Appeal No _	_2024 -		

Muhammad Ashraf

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.

Through

AFFIDAVIT :

t (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

Muhammad Muazzam Butt Advocate Supreme Court

Muhammad Adeel Butt Advocate High Court Payes Name: MUHAMMAD ASHRAF Account Namber: 0665003093888304 Barl Demil: MATIONAL BANK OF PAKISTAN, 230665 GARHI HABIRULLAH GARHI HABIRLILAH, MANSEHRA Grau Tay (Ra.): 129,082.00 PRICE 11- ((all)) tenedlessiball Deciption

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GOVERNMENT OF KHYBER PÄKHTUNKHWA 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
- 16. The Caretaker, Administration Department.

(WARDAH LATIF DEPUTY SECRETARY (POLICY)

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-очегимент от мичвек ракитиркима ELEMENTARY AND SECONDARY EDUCATION DEPARTMENT CIVIL SECRETARIAT PESHAWAR

(Phone No.091-9223587)

r'n.SO (Primary-M)/E8SED/2-6/2023 Colled Peshaviar the June 25",2022,

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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 JAPPOINTMENT, PROMOTION

AND TRANSFER) RULES, 1989.

I am directed to reter 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 Chalimanship of Additional Secretary (Estab) ESSE 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.

Engl: AA

(MUHANMAD ISHAO) SECTION OFFICER (PRIMARY MALE)

Copy forwarded to the:

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

4442-7903 AZIZULLAH VS GOVT CF PG43

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 Primory 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. 5D (Policy)E&AD/1-3/2020 dated 06 June, 2023 and to state that the subject meeting is to be held on D6 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

(MUHAMMAD ISHAQ) SECTION OFFICER (PRIMARY MALE)

Copy forwarded to the:

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

SECTION OFFICER (PRIMARY MALE)

WF4442-2023 AZIZLILLAH US GOVT OF PG43

MINUTES OF THE MEETING REGARDING APPLICATION SUBMITTED BY MR. AZIZ ULLAH PROVINCIAL PRESIDENT ALL PRIMARY TEACHERS ASSOCIATION KHYBER PAKHTUNKHWA REGARDING OF DELETION OF RULE 7(51 IN THE CIVIL SERVANT (APPOINTMENT; PROMOTION & TRANSFER RULES 1989).

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

S#	NAME	DESIGNATION
1	Mr. Pozal Wahld	Deputy Director Establishment of Directorale Elementory & Secondary Education Department
2	Mr. Azir Uliph	Provincial President All Primory Teachars Association Khyber Pakhlunkhwa
. 3	Mr. Rologal Wish	General Secretary APIA Poshowar
4	Muhammad Ishaq	Section Officer (Pilmory) EASE Department Civil Secteborial Khyber Pakhtenkhwa Peshawar

 The meeting started with recitation from the Holy Quran, the chair welcomed the aarticipants. The Deputy Director [Establishment] of Directorate of Elementary & Secondary Education bristed the forum regarding agendo item in detail.

3. Alter threadbare discussion it was decided that Directorate of Elementary & Secondary Education Department may examine the case property 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.

(Mi. Fazal Wohld)
Deputy Director-I
ELSE Department

11.

(Mr. Rolagal Ullah) General Secretary APTA Peshawar (Mr. Aziz Ullah)
Provincial President
All Frimary Teachers Association
Khyber Pakhlunkhyra

(Muhammad Litica) Sacilon Officer (Primary-Male) E&SE Department

(Abaullah) Addillanai Secretary (Establishmeni) E&SE Deparlmeni

WP4142-2023 AZIZULLAH VS GOVT CF PG43

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MINUTES OF THE MEETING REGARDING APPLICATION SUBMITTED BY MR AZIZ ULLAH PROVINCIAL PRESIDENT ALL PRIMARY TEACHERS ASSOCIATION KHYBER PAKHTUNKHWA REGARDING OF DELETION OF RULE 7151 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

SII NAME I	DESIGNATION
1 Mr. Fazal Wahld	Deputy Director Establishment of Directorate Elementary & Secondary Education Department
2. Mr. Aziz Ullah	Provincial President All Primary Teachers Association: Khyber Pakhtunkhwa
3. Mr. Aafaqat 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.

(Personal ferritary (Earlings)

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The Seeffort Officer (Primary-Male).

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The daze is submitted for pertital and necessary actions please.

provided they enhant their weiten refuel into to conduction of the meeting of Departmental theoretical Teachers below of the source of implications of the month of maint assistant to the rules leld

hain asked (d) submission of consolidated case.
In vice of the above, this office is of considered opinion that the deletion of Rules
7(5) have officeed regulatly a huga anothers of Fearlo Teachers. Thus it is proposed that

That, in the light of the minutes of meeting doted 6-07-2022 itsed under the Chairmansing office that office, has

noting storegumen of sayoer regimensings established the portment (regulation letting) vide let of ho.SO (Policy) E&ADVI-17030 doted 6-06-2023 colegarically stated libra cater on provision in decilie or jurge promotion. It is obligatory upon every condition.

Ceri secreon the eccept premotion under every condition.

The same with faceled by, this office from your good office vide letter Wo.SO.

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(A-thourst, 1.1. faceled the same with the faceled 12-06-102).

Thei your cost effice forgooded the tome to the quarter concerned vide letter heaves for accessing guidence.

deleted Rule 7(1) in the Chail Servent (Appalning in premiulan & Transfer Rules 1989)

Their this office sough was 50 R-VI (E&AD)/1-1/2020 dated 06-88-2020.

Their this office sough guidence from your good office in the following worth vides letter 10,000 Ao. 0987 doted 16-02-2023.

(1) Now it cohigatery upon the civil servent to etterpt from other in every condition.

(1) Now it cohigatery upon the civil servent to either accept or turn down the right of the internation.

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<u>ภูมาสสิทธิสเทราใช้ อัน รมหากับ</u> Kliyber Pallitunithya Perlimear...

Elamen bry & Secondary Education Department.

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PA 10 Director Legal Directorete.

CHOR TO TVOO EV HALJUSISA CCOS-611144

Stenenary & Socondary Ethicador. Klober Pakhumklora Asstrant Director (Establi-I)

Elementory & Secondary Education

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- 5/2 -

DIRECTORATE OF ELEMENTIARY & SECONDARY EDUCATION, KPK

(21-7-2023) MECHANINE

19th Perhauser Elementroy & Secondary Education Department. Section Official Princips Nales)

Subject : Minute of Meeting

at his sould belle tradies no Esse- F-or bank traf [2] Britisher to estimit Dear 877) & am directed to refer to letter No. (50: Primary -17) & 8 50 /5-1/6, While

(Brilly continued of the Establishman department (Rogulation Willy) present bild hidling about background of come as unchair

Principle of the safety and a delay of party god uffice in the following interesting No. No. SDR-VI(EERAD)1-3/2020 dated ob-or-1070. (1890 all Alen I mortionary, tournest (Applicational prantitional lists of (2) Ester balable

internal to obligation. Upon and scould to accord to according

ent ausbruck/ Hasso realls of trovers lives to evitogerary Ei-Pelis

offer of promotion.

• That you good office forwarded the come to quarter concerned

Alde letter No. 50 (Princeth) EGSED/2-2/Appointment (2023 for marketony)

seniors to ciccept parisher under energy cardition. linis from any trade the sold of the containing graft substance of constraint on etailes must tout betoke ymanimentos eras-20-2 batab ucas = 10A33 That the government of KP-ED (Regulation Why), vide letter No. So (Policy)

hald uncles the Chairmanship of them. Additional Secretary Establish Cros-Fo-2 batab gribam ant to calcular ant to imply in hant

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The case is exbristled for period and recessary action

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ं भगानितारात्राचा स्वकृतित Elementory of Secondary Educator Heisthad Director

Proster Copy After Director Local Directorate Cupy of the chave to:

WP4443-2023 AZIZULLAH V5 GOVT CF PG43



EMENTERY 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

DUVERME

The Georgiary to Gord of Khybor Pakhtunkhwa, Esteblishment & Administration Department. Pechevier

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

رماق الطيشر)

I am directed to refer to your letter Ho. SO(Policy)/ E&AD/ 1-3/2020 dated (%) June 2023 and to state that after deletion of rule 7(5) Khyber Pakhtunkhwa Ovil Servers (Appliantment, Promotion & Transfer Rules 1989) it has been intimated that those officers/ officers vito do not comply with promotion order of the competent authority or ער ער בייסלים promotion through different means shall be proceed under Khyber Paramunicaria Civil Servant (Efficiency & Discipline) Rules, 2011.

In this connection it is submitted that in some cases lady teacher of primary leviel witho avail such promotions have to face serious inconvience 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-lavi who reed care. In such . ्टाइस्ट, फेल्डर are negative effects on service delivery.

3. \ In view of the above, the sald amendment may be reconsidered to the ್ರಾಕ್ಷಣ್ಯ of lau) teacher in primary schools.

SECTION OFFICER (PRIMARY MALE)

Copy largarded to the:

1. Director ERSE Khyber Pakhbinkhwa. 2. PS to Secretary, EBSE Department Knyber Pakhtunkhwa.

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P4447-2023 AZIZULLAH VS GOVT CF PG43

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etable braining of rational books with by Mell of above, the said ammendment may be reconsiblised to

effects on service delivery Mether-in-law who need agge In such again there are negative Most of them gre mained with bills and elder father of intillisely teaperact / withous an office interest stationer saft of satub analosa of such yearly alich someons energe oref of every of primary level who givest framather to contact In this connection it is submitted that in some cases body

Civil Servant (Efficiency and Discipline) Rule 2011. different means shall be proceed under Khyber fakhtunkhun about notioning shows at but to ethoritup bustigmen with fo those officers officialls who deniet comply with promotion order toath bestomitti need earl 40 (1982) sellis separat boo notional delation of Bule 7(5) Whyler Buthauthling civil several (Application) wifte torit state of large scarsanit to betak acos /8-1/ Prominthos on relies to your debter No. Solbinmy (Policy) (Et AD Decar Sir,

Civil Servent (Asportingent, Monotion & Transfer Rules with ril (2) F slust for mitaloh, prubrigar asmobilip SUBJECT:

אבונגעים. Establishment and Administration begannings,

The secretary to Government of Khylia Pakhambhua.

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

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

Subject: -

GUIDANCE REGARDING DELETION OF RULE 7(5) IN THE KHYBER PAKHTUNKHWA CIVIL SERVANTS (APPOINTMENT, PROMOTION AND TRANSFER) RULES, 1989.

Dear Sir,

I am directed to refer to your letter No. SO(Primary-M)/E&SED/2-2/Appointment-Rule/2023 dated 23.08.2023 on the subject noted above and to state that necessary guidance has already been tendered to your good office vide this department letter of even No. dated 06.06.2023 (copy enclosed).

Yours faithfully,

Section (Policy)

Endst. Of even No & date

Copy forwarded to the:-

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

- B/C-

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

To

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

Subject: -

GUIDANCE REGARDING DELETION OF RULE 7(5) IN THE KHYBER PAICHTUNKHWA CIVIL SERVANTS (APPOINTMENT, PROMOTION AND TRANSFER) RULES, 1989.

Dear Sir.

I am directed to refer to your letter No. 50(Primary-M)/E&SED/2- 2/Appointment-Rule/2023 dated 23.08.2023 on the subject noted above and to state that necessary guidance has already been tendered to your good office vide this department letter of even No. dated 06.06.2023 (copy enclosed).

Yours faithfully,

Section Officer (Policy)

Endst, Of even No & date

Copy forwarded to the:-

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

Section nicer (Policy

WP4442-2023 AZIZULLAH VS GOVT OF PG43

To.

1) Secretary to Government of Kliyber Pakhtunkhwa, Establishment Department, Civil Secretariat, Peshawar

Secretary to Government of Khyber Pakhtunkhwa, Elementary and Secondary Education Department, Civil Secretariat, Peshawar

Director Elementary and Secondary Education Department

Subject: REPRESENTATION AGAINST THE IMPUGNED NOTIFICATION BEARING 06/08/2020. COMMUNICATED NO.SO(POLICY)E&AD/1-312020. DATED 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. SD (Policy) /EDAD/1-3/2020 dated 06/08/2020, the right of foregoing of promotion was withdrawn and the Government of Khyber Pakhtunkhwa Establishment Department (Regulation Wing) deleted Rule 7(5) in the Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 vide notification no SOR-VI (E & AD)/1-2/2020 dated 06-08-2020. That the Directorate of Elementary & Secondary Education Khyber Pakhtunkhwa Poshawar 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 Peshawal 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) SE&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 a 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 Kliyber Pakhtunkhwa Civil Servant (Efficiency & Discipline) Rules, 2014.

It is, therefore, humbly prayed that on the acceptance of the instant representation; the Notification bearing No. SO (POLICY) EED/1-3 1-2020 DATED 06/08/2020, communicated to vide letter dated 06/06/2023, may please be declared and ordered to be struck down being Void, Ultra vires to the Constitution of Pakistan and against the fundamental principles of natural justice.

Dated 16__/03/2024

MUHAMMAD ASHRAF SIO ABDUL REHMAN

Wester 2017 AZIZULLAN VIS GOVT CF PG43

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Kilyber Pakhitunkhwa

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Learned counsel for the appellant present.

2. Let a pre-admission notice be usued to the respondents through TES for submission of reply/comments. Appellant is directed to depose ICS expenses within three days. To come up for raphy/comments as will as preliminary bearing on 10.06.2024 before S.H. D.P given to learned comosil for the appellant.

Alongwith the service appeal there is an application for suspension of Nutification 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 bestaken against the appellant till next date of bearing.

Gertified to be true capy(Muhammad Akbar Khan)
Member (E)

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UNKALAT NAMA

BEFORE THE SERVICE TRIBUNAL PESHAWAR

MUHAMMAD ASHRAF

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.

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

APPELLANT

ACCEPTED

MUHAMMAD MUAZZAM BUTT

Advocate Supreme Court

MUHAMMAD ADEEL BOTT

Advocate High Court

BASSAM AHMAD SIDDIQUI

Advocate-fligh Court