# FORM OF ORDER SHEET

Court of\_\_\_\_\_

# Appeal No. 2232 /2024

Date of order Order or other proceedings with signature of judge proceedings

30/10/2024

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5.No.

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The appeal presented today by Mr. Muhammad Muazzam Butt 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

the Contra

## BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHUWA

C.M No \_\_\_\_\_-P of 2024

In Ref to Service Appeal No \_\_\_\_\_2024

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### Mahboob Khan

## VERSUS

## Secretary to Government of Khyber Pakhtunkhwa, & others

S#	DESCRIPTION OF DOCUMENTS	ANNEX	PAGES
1.	Appeal and Verification	*	1-4
2.	Application for suspension	•	5
3.	Copy of Monthly Salary Account	A	6
4.	Copy of notification No. SD (Policy) EV AD/1-3/2020 dated 06/08/2020	В	7-8
5.	Copy of impugned Letter dated June 6 <sup>th</sup> , 2023	С	9-11
6.	Copy of Minutes of meeting dated 06-07-2023	D	12-15
7.	Copy of Letter dated 23-08-2023	Ę	16 - 17
8.	Copy of Impugned letter dated 07.09-2023	F	18 - 19
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ADVOCATE

M. Muazzam Butt

## **BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHUWA**

In Ref to

Service Appeal No.

Mahboob Khan son of Yaqoot Khan PSHT (BPS-15)

Khandar Nagri, Tehsil Mandanr, District Bunir

### VERSUS

.....Appellant

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- 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

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 IUSTICE 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.
- 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 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 Impugned Letter dated June 06th, 2023 is attached as <u>Annexure C</u>

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

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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

**w**?.

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 Impugned letter dated 07-09-2023 is attached as <u>Annexure F</u>

10. That the petitioner feeling aggrieved, filed Representation to the respondents in person, and also approached to respondents through APTA President but the grievances of the appellant have not so far been redressed. Copy of Representation against the said notification is annexed as <u>Annexure G & H</u>

11. That feeling aggrieved from the letters dated 06-06-2023 and 07-09-2023 and the deletion of Rule 7(5) in the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989; the petitioners filed this Hence, the instant service appeal is filed on the following grounds:-

#### GROUNDS:-

<sup>•</sup>9.

- 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 on 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.

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.

- 4 -

f. That the impugned promotion Notification dated 06/08/2020 communicated on 06/06/2023 is perverse, discriminatory, against the law, pungent and is a blunt blow of hammer on the rights of the appellant. It is not out of place to mention here that the appellant are teachers and have to look after their children as well as ailing dependent family members and in these circumstances in the presence of impugned Notification dated 06/08 /2023 communicated on 06/06/23 would not be able to serve in the department and which shall amount to the snatching of bread and butter of the poor employees

It is, therefore, humbly prayed that on the acceptance of the instant Service Appeal; the impugned Notification bearing No. SO (POLICY) Ë&D/1-3 1-2020 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 60/06/2023 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. M Jul Klan

Through

#### AFFIDAVIT:

I Mahboob Khan Son of Yaqoot Khan Resident of Tehsil Mandansher District Buner do hereby solemnly affirm and 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

Muhammad Muazzzam 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

-5-

C.M No\_\_\_\_\_/2024

In

Service Appeal No\_\_\_\_\_/2024

#### 'Mahboob Khan

## v/ş`

## Government of KP & others

## APPLICATION FOR SUSPENSION OF IMPUGNED NOTIFICATION SO. (POLICY)E&AD/1-3/2020 NO. DATED 06/08/2023 AND PROMOTION ORDER DATED 29/08/2023 TILL FINAL DISPOSAL OF MAIN SERVICE APPEAL.

**Respectfully Sheweth:-**

- 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 favour
- 3. There is likelihood of success of the appellant in the lis. The impugned notification dated 06/06/2023 is against Section 25 of KP Civil Servant Act, 1973 and promotion order dated 29/08/2023 of the appellant/applicant is also to be set-aside.
- 4. That valuable right of the appellant is involved.

In view of the above it is humbly prayed that notification No. SO(POLICY)E & Ad/1-3/2020, dated 06/06/2023 and promotion order dated 29/08/2023 to the extent of appellant/applicant may graciously be ordered to be suspended till final disposal of the main service appeal.

through

AFFIDAVIT:

I Mahboob Khan Son of Yaqoot Khan Resident of Tehsil Mandansher District Buner do hereby solemnly affirm and 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 . Appellant

Muhammad Muazzam Butt Advocate Supreme Court

Muhammad Adeel Butt Advocate High Court

Deponent

Dist. Govt: KP-Provincial **District Accounts Office Bunnir at Dauga** Monthly Salary Statement (January-2024)



Personal Information of Mr MARBOOD KITAN d/w/s of YAQUT KHAN Personnel Number: 00274682 CNIC: 1510103438343 Date of Birth: 04.03.1972 Entry into Govt, Service: 20.04.4999

' NTN: 0

Length of Service: 24 Years 09 Months 013 Days

Employment Category: Active Permanent 80642790-DISTRICT GOVERNMENT KHYBE Designation: PRIMARY SCHOOL HEAD TEACH DDO Code; BD6233-District Buner Cush Center: H Payroll Section: 001 GPE Section: 001 GPF A/C Not EDUBRODI901 **GPF** Interest applied GPF Botance: 657,520.00 (provisional) Vendor Number: -Pay and Allowances: Pay scale: BPS For - 2022 Pay Scale Type: Civil BPS: 15 · Pay Stage: 18 Wage type Amount Wuge type Amount DVV) I II. . . . II. 560 (9) 17911 11-0 516 sa i m

	Basic nav		1 mari	THOUSE MEIN MINIMARIE 4374	
1210	Convey Allowance 2005	2,856,00	1300	Medical Allowance	1,500.00
1505	Charge Allowance	-40,00	1911	Compen Allow 20% (1-15)	1,000,00
2148	15% Althoc Relief All-2013	705.00	2199	Adhoc Relief Allow @10%	476,00
2316	Teaching Allowance 2021	3,224.00	2341	Dispr. Red All 15% 2022KP	5.610.00
2347	Adhuc Ret A1 15% 22(PS17)	5,610,00	2378	Adlux Relie( All 2023 35%	20,153,00

Deductions - General

Wage	lype	Amount	T T	Wage type	i	Amount
3015 GPF Subscription		-1,290.00	3501	Benevolent Fund		-1.200.00
3609 Income Tas	,	-1,337.00 /	3990	Enip.Edu. Fund KPK		-135.00
4004 R. Benefits & Dea	th Comp:	-600.00	- `			0.00

Deductions - Loans and Advances

Loun.	Description		Princip	thunma la	Dedu	ction	Balance
Deductions - Income Tax Payable: 20,149,38	Recovered till JAN-2024:	8,431.0	N)	Exempted:	5036.63	Recoverable	: c: `6,681.75

Net Pay: (Rs.): 496,696.00 Gross Pay (Rs.): 104,258.00 Deductions: (Rs.1: -7,562.00

Payee Name: MAHBOOB KHAN Account Number: PLS-7259

Bank Details: MCB BANK LIMITED, 240318 MCB DAGGARBUNIR MCB DAGGAR BUNIR,

**Opening Balance:** Leaves: Availed: Carned: Balance: Permanent Address: Chy: BUNER Domicile: NW + Khyber Pakhumkhwa Housing Status: No Official Temp. Addres Email: mahboobk339@gmail.com City:

ZAM BUTT M. MUAZ Advocate Supreme Court

System generated document in accordance with APPM 4.6.12.9(50070993/24.01.2024/v3.0) \* All annums are in Pak Rupers \* Errors & omisfions excepted (SERVICES/02.02.2024/20:10:23) +

Annexure . GOVERNMENT OF KITY BER PAKETUNKENA ESTAULISHMENT DEPARTME (REQUESTION WING) NOTUTICATION Daleit Peshiwur the 00 / 8-12020 entited with the second of the powers conferred by second 26 of the second second by second 26 of the second secon In exercise of the powers conferred by section 26 of the When the Civil Servants (Acti 1971) (Klivber Pokhtänkhive Act No.XVIII of. (Klivber Pokhtänkhive Acti No.XVIII of Khyber (Klivber Pokhtänkhive is pleased jo. direct likal In the Khyber (Klivber Civil Servants (Appointment, Proinglion and Transfer) (Kules, 1989; the interthing Civil Servants hall be made namely: Ficherknive anondment shall be made, namely: AMENDMENT in rule 7. sub-rule (5) shall be delend. GOVERNMENT OF THE KEYDER FAKETUNKHIVA MISTENO & EVEN DATE Additional Ghief Secretary, Oavi of Khyber Pakhunkhwa. Planning Cups of forsvurided to:ľ The Senior Member Board of Revenue, Khyber Pakhunkinka. All Administrative Secretaries 10 Gast. of Khyber: Poliptunkhwa. Development Department. The Principal Secretary to Gavarior, Khyber Pakhlunkhwa The Principal Secretary to Child Minister, Khyber Pakhtunkhwa An Divisional Commission in Khehm Polyhunkhwa -2 All Divisional Coramissioners in Khyber Pakhunkhwa. All Heads Of Attached Departments in Khyber Pakhiunkhwa. All Autonomous/Sami Autonomous Bodies in Khyber Pakinunkhwa 4. All Deputy Commissioners In Khyber, Pakhlunkhwi i ne Registrar: Peshawar High Court, Peshawar. The Registrar, Khyber: Pakhtunkhwa Service Tribunal, Peshawar. The Registrar, Khyber: Pakhtunkhwa Public Service Commission, Peshawar. The Secretary, Khyber: Pakhtunkhwa Public Service Commission, Peshawar. The Deputy Director (17); ESA Bepartment. All Section Officers in Establishment & Administration Department. All Section Officer (Admin), Administration Department with the registra The Registrar Peshawar High Court, Peshawar, I 9. The Section Officer (Admin), Administration Department with the request to 10. 11. Caretaker, Administration Department. arrange 20 Bazelle copics. ۱ħ SATIN DAH.I ARY POLICY (W) DBEDTY ESTEL ATT. Slad M. MUAZZAM BUTI dvocate Supreme

-8-

### 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 of B) 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)

M. MUA Advocate Supremi ount

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÷ Annexure GOVEDNAIRAT OF KUSINKA PARATUNKAIWA ÷ USPAGLISHAIRNT DRUARTAIRNT 62 Nor Sifiliality) IRADI (-1/2020 Dated Perbawar dia Jana 06, 2013 ę The Cloverament of Hittine Politicus Liven Hiementary & Secondary Educe Int Dapaitment, -<u>HIMPANCE INCOMENTS INC. INCOMENTS</u> <u>KILVINER PARTIMENTIANETER HILLES, 1289</u>, <u>HIMPANTER INCOMENTS</u> NTH APPOINTAISHT Sobjeen -I am directed to retur to your letter No. SD(Primary-M)massuma-: 2/Appolatmen/2023 dated 18.04.2023 un the subject acted above and to state that Sub-Rule Dear Strag (3) of Rule-7 of Rhyber Pakhunkintu Cleri Serenis (Appointment, Promotion and Transfer) Rulles. 1989 stands delated vite this deportment multicultur deted 06.08.20201 thus, no . provisión exists lo decilie er force promotion. The balle rollogelo behind the deletter of the lold rule is afreed at prevention o elvil servant from temptation for tilleti gain by sticking to a single furmitive post/position or to Χ.: prevent those who lend to forgo premation to evade posting/transfer or show lack of capazity ŝ to tackin higher responsibilities in case of promotion. Therefore, it is obligatory upon every . civil servent to accept promotion in every condition. Funkermore, these officerstafficials who do not comply with promotion order of the competent authority or try to evade piramilon through different means shall be proceeded against under Khyber Pathtunkinna Civil Servents (fifficienzy & Disciplina) Ridez, Yours falibility, 2011, please. i Khan) m ព្រះទ (Folloy) Radst? Of even No A date Copy forwarded to that-1. 95 to Special Secretary (Reg.) Bitabilihmeni department Z. PA to Additional Secretary (Reg. I), Estabilihmeni Department J. PS to Departy Secretary (Policy), Estabilithmeni Department. dures (pollon) m .71.6 H ð ł . ATTESTE 4, M. MUAZZAMBUTT Advocate Supreme Court MAA2-2023 AZIZINIAH VE GOVT CE PG43 5 ٤. 2 -17 

OVERNMENT OF MAYBER PARATUNKAWA ELEMENTARY AND SECONDARY EDUCATION DEPARTMENT CIVIL SECRETARIAT PESHAWAR (Phone No.001-9223587)

> No.SO (Primary-M)/E8SED/2-6/2023 Dated Peshaviar the, Juna 26, 2023

> > 54/6/23

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

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

Subject: 1

GUIDANCE REGARDING DELETION OF RULE 7151 IN THE KHYBER PAKHTUNKHWA CIVIL SERVANTS (APPOINTMENT, AND TRANSFER RULES, 1988,

I am directed to refer to the subject noted above and to enclose here with a letter of Establishmant Departmant lettar No. SO (Policy)EBAD/1-3/2020 dated 06 June, 2023 and to state that the subject meeting is to be held on 06 July, 2023 at -11:0D 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 allend the meeting on a data, time & venue as mentioned above, please.

Encl: AA

ATTESTED .

M. MUAZZAM BUTT

ense Court

Advocation

(MUHAMMAD ISHAO) SECTION OFFICER (PRIMARY MALE)

SECTION OFFICER

Copy forwarded to the:

1. PS to Secretary, E&SE Department Khyber Pakhiunkhwa-

WP4442-2023 AZIZULLAH VS GOVT CF PG4D

nc.

ţ 11 1 1 No S0 (Primary-M)/E&SED/2-6/2023 Dated Peshawar the june 25+ 2023 1 To The Director 1 : - t Elementary & Secondary Education Department ÷., 1 Khyber Palditunkhwa, Peshawar -. :: 2 í Azlz Ullah Khan President President • <u>, 1</u> All Primary Teacher's Association, KP, : ÷ 1.1 i Subjects 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 ۰. Establishment Department letter No, SD (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 of 11:00 AM in this department under the ۰. Chairmanship of Additional Secretary (Estab) E&SE Department in his office. : Ż 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) ÷ 1 Ş Copy forwarded to the : ţ ÷ 1. P5 to Secretary, E&SE Department Khyber Pakhtunkhwa. î ÷. l . • : SECTION OFFICER (PRIMARY MALE) t : ¢ ۰. λ. . Annan ł l ATTEST WP4442-2023 AZIZULLAH VS GOVT CF PG43 M. MUAZZAM BUTT Advocate Supreme Court .

Annexure

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

A meeting regarding the subject matter was held on 06-07-2023 at 11:00 AM under the Chairmonship of Additional Secretary Establishment in his attice. The following attended the meeting.

s# j	NAME	DESIGNATION
1	Mr. Fazel Wahld	Deputy Director Establishment of Directorete Elementary & Secondary Education Department
2	Mr. Aziz Ullah	Provincial President All Primary Teachers Association Khyber Pakhlunkhwa
3	Mr. Rafaqal Vilah	General Lecislary AFTA Pashowar
4	Muhammad ishaq	Secilan Olilcer (Primary) ELSE Department Civil Secretariai Khyber Fakhtunkhwa Peshawar

 The macting storied with raciation from the Kely Quran. The chair welcomed the participants. The Deputy Director (Establishmant) of Directorate at Elementary 2 Secondary Education bileted the forum regarding agando item in detail.

3. Alter hreadbare discussion II was decided that Directorate at Bementary 2 Secondary Education Department may examine the case property and submit a self-contained/consolidated case for privated submission to Establishment Department for further necessary oction.

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

(Mr. Fazal Wahld) Daputy Dispetari Ease Deportment

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(Mr. Relayat Ullah) General Socretary APTA Peshawat

للنا (Mr Antz Ullah) Provincial President 1 E Pilmary Teachers Association Khyber Pathlunkhwa

(Muhah) Linda Socian Olicer (Primary-Male) ELSE Department

ATAF

M. MUAZŽANI BUTT

Advocate Supreme Court

(Abdußah) Addilanci Secretery (Estabäshment) E&SE Department

WP4442-2023 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 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

5//	NAME	DESIGNATION
	Mr. Fazal Wahld	Deputy Director Establishment of Directorate Elementary & Secondary Education Department
2	Mr. Aziz Uliań	Provincial President All Primary Teachers Association: Khyber Pakhtunkhwa
3.	Mr. Rafaqat Ullah	General Secretary APTA Peshawar
4.	Muhammad  shaq	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 porticipants. The Deputy Director (Establishment) of Directorate of Elementary & Secondary Education briefed the forum regarding agenda item in detail.

3. After threadbare discussion it was dacided that Directorate of Elementary & Secondary Education Department may examine the case properly and submit & selfcontained/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 Wahld) Deputy Director-1 E&SE Department

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Provincial President All Primary Teachers Association Khyber Pakhtunkhwa

(Mr. Rafaqat Ullah) General Secretary APTA Peshawar

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

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ATTR M. MUAZZAM B Advocate Sapreme Court

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MTR53/11X 1 են ուսություն ու հերաներում հերանություն հերաներում (1-14dais) Solovia indiata 2. Master Capy. ו' וע ום מתבבוםו דסכטן מויברומוסור Copy of the above is to:-Ξ. 5 'on tubu3 . • בנקובטיוסט פינסטענט איזערטער איזערטער איזערטער איזערטער איזערטער איזערטער איזערטער איזערטער איזערטער גערער איזע דומאראנערער איזערטער איזערערטער איזערטערער איזערטערער איזערטערער איזערערערער איזערערערער איזערערערערערערערערערע ł דווב במנה א ואמתווונק לפו מורשוטן בחל הבכבונטוץ מבוומתו אורסוב. דווב םכמת וחוכחומן פרטחומוסם למחתוווכפ. לכסרוקרה להבינה להבסוויבנים ליותנה וועותה וועות ליותם להמסור ובסרוריה. דוותה וו זר הרסוסורים וותח (הכסרוקרה ל דכסרוקרה להנחה ברולה לה מהף לה בקבתה לה לה שלובטו היום להם המהמתמיבות וה גות יותה ולו לה היום לו לה היום לו לה הרסטוקרה להרומי לה מואקות למחוש לביוילוגנה בקוובט ברומה לו כמה מממרמים היום וותה לה היום או לה היום לו לה היום ל הרסטוקרה להיום להמתמונים למחוש לביוילוגנים לא היום ליום היום להם המהמתמיבות לה היום או לה היום לו להיום לו להיו ۰. וע אוכא סן ועד מעטעדנטט מן במעמונסנס כמודי על במענות כמודי של מועו אוב קרובווסט מן אמורי ערכע מדיר על אופי ער א ערכע מדירק או געוף מעטער און און און געון געון געון געון געויי או געון אוב און אוב און אופי און אוויי און אוויי ۰. זותה. זה ואב וובאו מל ואב שותשונין אי שבצוותה למוכל 6-01-2021 אבול טתלבר ואב כרטוריוריים עולוט מל ואב שותשונין אי אבצוותה למוכל 6-01-2021 אבול טתלבר אתו ŀ בנאון צבעמטן זה מבנאו אנסמסונט חניקבר בפרא במעקונטיי ואידו וניכנם בצרלה עם אנסמסונט חניקבר בפרא במעקונטיי וו זו סטונצמומיא חשמש בגבוא ואידו וניכנם בצרלה עם אנסארים על מכונט מי לפניס אנסמיוסטיי וו זו סטונצמומיא חשמש בגבוא ואומן) אולם ובוובר אם CS (Policy) באא D/I-1/2020 למוכם 6-06-2023 כמוכקסרוכבווף גומופל i. Tuqi ile Covernment of Klybar Rabinuturin Eriabilisiment Department (Regulation. אסי לט (נינוינאלי אין בעיצבואי-זוין אטטועועונטונטון זפו עבניצופול ונוקטעבני ÷ נות אמוע במות לווכם למשאמו מין ועם צמשה וס ועם מחמורו במעביעובם אוקר ונוורו ומן אמום במער מוונים ליווים כנאון גבואמא ום מוווים מככלא אימוטומה וה פאכטי כמתלוומה. -עוו גע געמימומה עון אימא נו ע מער מוווים ליווים כנאון גבואמא ום מוווים מככלא מי ועדה ממשה ווים מוובר מן . עון אימא נו ע מער מחורה לייווים כנאון גבואמא ום מוווים מככלא מרכנלא מר ועדה ממשה ווים מוובר מן . ł "IZOZ-20-00 PAIOP LEOD ON וונג מלוכם במולאו עווקטענה לרשה אשעי במסם פלוכה וח ואם למוומאות וומנים אומה וווני וויוי מיווגי עלב אםון כמוומה אב אם 208-ען (באל מאו-1,2020 למופל 05-08-2020 מפורוכם אחום לנו) וע ועם כומן צבריטמונ (אףחטומובתו, מימחטומה כב Tronsfer Rules ופאט) .... c -1 Thoi Dovermet of Klyber Pokhunkhwa Establichmen Deportment (Regulation IVing) • ; present brief literory about the background of the case as water:  $^{34}$ ן מש מורפנופט נס רפלבר וס ואם למוכר אס.50 (איזשמוץ-או) במכבט/א-ו/ Dear Sir, - Nooldu2 VIINTES OF THE MEETING בוכותכתוברץ אי Sccandory במובחומת Drportment. אוצטבר Pathunthan Petluaver. The Section Officer (Primary-Male). **ч** . נו במנבז Dated גמסוגי ניוסאנוומכונמנמכוני (אממשול בסח HOUSE 061-651234H וצ'איי ז ווצצוואית כיוונוסן כיוונ 5202 -L-5418 עוואספר פראוווואאוי אַפּצוים אים א -47-

CADE TO THE EV HAJJUZISA COR-SAMP

TUS MAZSAUM .M hud amanque ajimovbA

DIRECTORATE OF ELEMENTARY & SECONDARY EDUCATION, KPK

·BC·

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

Subject : Minutes of Meeting

To:

Dear Sir; 9 and directed to refer to letter No. (SO Borray -M)E & SED /S-1/GAMEL/ Minstes of meeting /PST/2023 dated 20-7-2023 on subject cited above and to present bilef history, about backgrand of are as under.

\* That Government of KP Establishment deportment (Regulation Wing) deleted nulle 7(5) in Civil Services (Minpointment, promotions, Transfer, Edia 1959) vide notification No. No. SOR-VI(ESAD) 1-3/2020 dated 06-08-2020.

That this office saight guidance from your good office in the following words vide latter No. 5987 dated abour 2013.

(i) Now it is obligatory upon civil seavoint to accept promotion. (ii) SIT is prevegative of civil servant to accept/tumdars the

offer of promotion. • That your good office forwarded the same to gruentes concerned vide letter (N. So (Animory 14) EGSED/2-2/Appointment (2023 for nucessary guidonce.

• That the government of KP-ED (Regulation Wing) vide letter No. SD (Policy) ES.AD (1-3)2020 dated 6-06-2023 categorically stated that there exists no provision to decline (forgo promotion. It is abligating upon every civi) Servent to accept ponotion under emerged condition.

• That in light of the mainutes of the meeting dated 6-07-2023 held under the Chairmonship of them. Additional Secretary Establishmont at his effice. 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 members of Reviale teachers.

The case is submitted for person and necessary actions

Copy of the chove to; 1. PA to Director Local Directorote 2. Master Copy Alistand Director Elementary & Secondary Education Khylas Rachlankhung.

ATTESTED

M. MIXAZAM BUTT

Edie Court

PESHAWAR

(21-7-1023)

7-2023 AZIZULLAH VS GOVT GF POLS

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	ELEMENTARY AND SECONDARY EDUCATION DEPARTMENTINE CIVIL SECRETARIAT PEGHAWAR (Phone No.091-8223587)	
	145. 5O(Primary-M)E&SED/2-2/Appointment-Rule /2023 Peshawar Dated 23 <sup>rd</sup> August, 2023	
	The Becratory to Gort, of Khyber Pakhtunkhwa. Esteblishment & Administration Department. Peshawar	
	SUBJECT: - <u>GUIDANCE REGARDING DELETION OF RULE 7(5) IN THE CIVIL</u> SERVANT (APPOINTMENT, PREMOTION & TRANSFER RULES 1989).	
	Crear Str. I am directed to refer to your latter No. SO(Policy)/ EBAD/ 1-3/2020 dated GGF June 2023 and to state that after delation of rule 7(5) Khyber Pakhtunkhwa CMI	
	Comments and the second s	
	Servers (responsion in the server of the competent authority or officiers) officiers, officials who do not comply with promotion order of the competent authority or by to evade promotion through different means shall be proceed under Knyber Pathounidryna, Civil Servant (Efficiency & Discipline) Rules, 2011.	
	the structure is the extention of primary	
	level who avail such promotions have to face senous inconvience who due the	
	them are married with kids and elder loute of marries and	
	in view of the above, the said amendment may be recursioned to	
	S. Interne of lady teacher in primary schools.	
	Conv forwarded to the:	
	1. Director E&SE Kinyber Pakhunkiwa. 2. PS to Secretary, E&SE Department Kinyber Pakhtunkiwa.	
	SECTION OFFICER IPRIMATO ALEI	
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	WP4442-2023 AZIZULLAH VS GOVT CF FG43 MUAZZAM BUT Advocate Supreme Court	г
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- B/C-No.55 (Rrimmy - M) F&SED /8-21/ Appointment - Rule/2023 Pedrawar Dated 23rd August, 2023.

The Secretary to Government of Khybo Pakhhumbhura. Establishment and Administration Depostment, Peshawar.

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

Dear Sir,

To

9 am directed to refer to your letter No. So(Privery) (EGAD) 1-3/2020 dated Bth June 2023 and to state that after

Ideletion of Rule 7(S) Khyber Paktitunkhive Civil Servant (Appointment, Romotion and Tronsfer Rules 1989) It has been instimated that these officers officials who do not comply with promotion order of the competent authority or try to evade promotion though different means shall be proceed under Khyber Pakhtonkhiva Civil Servant (Efficiency and Discipline) Role 2011.

In this connection it is submitted that in some cases lady teaches of primary level who avail such promotion have to face serious incovenience while they have to perform duties in the remotest stations with no residential / transport facilities. Mast of them are married with kids and elder father of Mother-in-law who need are. In such cases there are negative effects on service delivery.

the extent of lody teacher in primary schools.

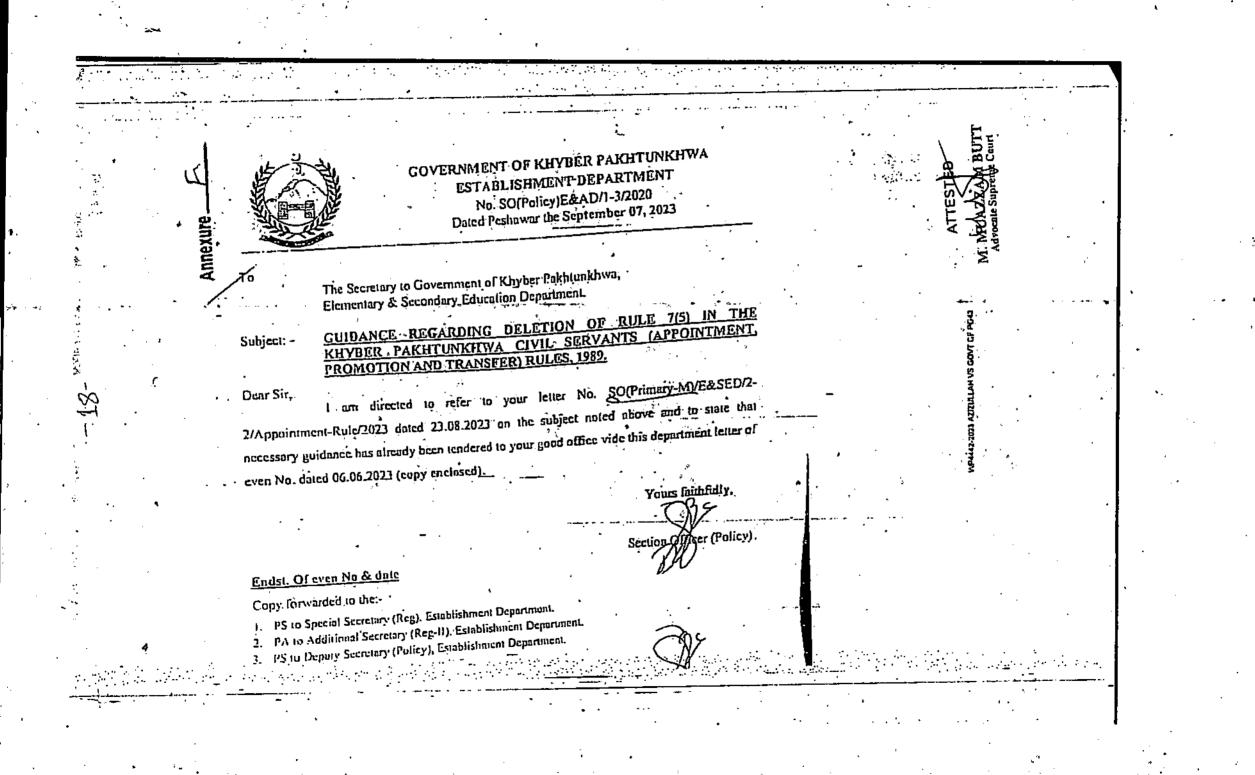
2 Director E & SE Llyto like harkhura.

(Muhammad Ishaq) (Muranny) Section officer (Princip) Male)

ATTESTED

M. MUAZZAM BUTT Advocate Supreme Court

2. PS to Secretary, E & SE Perportment Months Attation to secretary



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		The Secretary	to Course	ent of Khube	r Pakhtunkhu	Ňa.				
	. ,	<ul> <li>The Secretary Elementary 8</li> </ul>	, Secondary E	ducation De	partment	•			Į.	
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		RHYBER PA	AND TRAN	SPER) RULE	s, 1989.	1	•		11	
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	Dear Sir.			•						
	Lam	directed to ref	er to your let	tor No. SO(P	rimary-M)/E	&SED/2-2//	ppointment-		: : :	
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	No. dated 0	6.06.2023 (cop	7 enclosed).					-		
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Dated: <u>26-01-2024</u>

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

Annexure

- 2) Secretary to Government of Khyber Pakhtunkhwa, Elementary and Secondary Education Department, Civil Secretariat, Peshawar
- 3) Director Elementary and Secondary Education Department

REPRESENTATION AGAINST THE IMPUGNED NOTIFICATION BEARING NO.SO(POLICY)E&AD/1-312020. DATED 06/08/2020. COMMUNICATED TO SECRETARY TO GOVERNMENT OF KHYBER PAKHTUNKHWA. ELEMENTARY & SECONDARY EDUCATION DEPARTMENT VIDE LETTER D06/06/2023. WHEREIN IT WAS STATED THAT SUB RULE 5 OF RULE 7 OF KHYBER PAKHTUNKHWA CIVIL SERVANTS (APPOINTMENT, PROMOTION AND TRANSFER) RULES, 1989 STANDS DELETED

Sir/ Madam:-

Your Honorable authority promulgated Notification No. SO (Policy) E&AD/1 3/2020, dated 06/08/2020, communicated to Elementary & Secondary Education vide letter dated 06/06/23 wherein it has been made mandatory to the employees to avail the promotion, otherwise, disciplinary action shall be taken against the employees. That, as per notification No. 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 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&D/1-3 1-2020 DATED 06/08/2020, communicated to vide letter dated 06/06/2023, may please be declared and ordered to be struck down being Void, Ultra vires to the Constitution of Pakistan.

Best Regards 🛛 \Lambda

Nahbod De Mahboob Khan

M. MUAZZANI BUTT Advocate Supreme Court

Son of Yaqoot Khan

Resident of Tehsil Mandansher District Buner

÷., 21-Annexure\_ Khyber Pakhtunkhwa a. Nela Minh Khan Prasidant apta APTA Housel Covil: Primbry School No.4, Guibebar Pashawar City, ាលារារ-លារ 4648 ប បាររ-លារ 4648 ប សាលាសារ 073(ញក្នុសលើ,com ព សាលាស្រុង . آل پراتمری میچرز ایسوی ایش (اپنا) خیبر پختونخوا بالب : ميكرارل الملتوك ٥ متلط دل ابجر كيش فيبر بتوانوا -منهب اكل يراقرى ليجدد عوى ايتن فير بتوالم يتاب مال 1-21500 بکہ مام مالک عن محک اور س مراج الد دہیداد الیما الی مالک حول کی نقال مدل ہے کہ تک فیر بلون آدا تی د حسّ سے نامدانی د علیم کا اسل نے دیے ملک عمل میں اور لیکھیل جر 1848 کی محلومی اور کا جرب عن کو کیا ہے جد بدل اس مؤل کا البال متول کی تلاف نے اور اسم آپ سے حداد ایک کرتے لاک کر کر والیکھیل کو بالدہ کی ایک علی کر کی کو کر کر کا درائدہ المال مدول کا نتائے موال ہم آپ سے حداد ایک کرتے لاک کر کر والیکھیل کو بالدہ کی ایک علی کر کی کر کی کو المال میں الدی المال مدول کا تلاف کے اور الدی میں مدول کا تلاف ہے ١., ار دید الم در ان این کا مال ان ا مرمن می این این این از مرمن می این الد ان الم مرمن می این الد ان الد ان الد م اند پذشن در این کا مردستا عل ۱۳۷۰، الا لیا بلد عین و درد آن د کا بات ال سليل ال اب جلد الاجلال (1020) (1) الما الا / ايك خوسى موامل بالمك يك جلسة عاكم امتلما عن ب بيل / لعبيل براترك الماتا، / ذال المت الم يحري كحسب بتايا بلسط کرک و لیکیٹن جل است علی است علی مراکز کو دانل طور جرح میں کا الل طور جرج کرلے کا سلسل طریل جربا ہے ۔ وواج بے فرق دیکتے ہی کہ کب سامیل فریک ایکش لیکر سمبہ جرے پراکٹری اسکتر، ضمرما لیمیل پراکٹری اسکتہ کو ایک البیب سے مجانہ دان کی ک يحربه الإلاالله خالنا موباكي مدور FUILE آل بدائمرى ليمرز ايسوى ايش عير بمتو فوا ۰. ٠, ł Ξ. 1.4 4 ••• . į, • ÷ M. MUAXZAM BUTT Advocate Supreme Court WP4442-2023 AZIZULLAH VS GOVT GF PG43 ł, ..... ÷.,



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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. Alongwith the service appeal there is an application for suspension of Notification dated 06.06.2023 and lener 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.

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

<u>-1.</u>` 1-4 Date of Presentation of Application Ľv. Martin e. Copylian Tinal ..... Same 61 -13-6-25-DagofC offic Date of Delivery of

TTEST **1 BUTT** M. MUA' denente Supre he Court

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# **BEFORE THE SERVICE TRIBUNAL PESHAWAR**

KALAT NAM

## MAHBOOB KHAN

Versus

Appellant

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Government of KP & others

Respondents

I (the Appellant)

do hereby appoint and retain

MUHAMMAD MUAZZAM BUTT ASC. MUHAMMAD ADEEL BUTT AHC

BASSAM AHMAD SIDDIOUI 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.

Librod Khan .. APPELLANT

MUHAMMAD ADEEL BUTT

MUHAMMAD MUAZZAM BUTT Advocate Supreme Court MUHAMMAD ADEEL BUTT

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CCEPT/ED

BASSAM AHMAD SIDDIQUI Advocate High Court