FORM OF ORDER SHEET

	Court	of					
Appeal No. 2265 /2024							
S.No.	Date of order proceedings	Order or other proceedings with signature of judge					
. 1	2'	3					
1.	30/10/2024	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.					
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•		By order of the Chairman					
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BEFORE THE SERVICE TRIBUNAL KHYBER PA

Ç.M No	P of 2024			
In Ref to	sold .			
In Ref to Service Appeal No	2024			
	/.			

Farhana Jabeen

VERSUS

Secretary to Government of Khyber Pakhtunkhwa, & others

S#	DESCRIPTION OF DOCUMENTS	ANNEX	PAGES
<u>.</u> 1'.	Appeal and Verification	* .	1-4
2.	Application for suspension	•	5
З.	Copy of Monthly Salary Account	А	¢
4.	Copy of notification No. SD (Policy) EV AD/1-3/2020 dated 05/08/2020	В	7 - 8
5.	Copy of impugned Letter dated June 6 th , 2023	Ċ	9-11
6.	Copy of Minutes of meeting dated 06-07-2023	D	12-15
7.	Copy of Letter dated 23-08-2023	E	16 - 17
8.	Copy of Impugned letter dated 07.09-2023	F	18-19
9.	Copy of Representation against the said notification and representation made by APTA President		20 121 22
10.	Wakalat Nama		23

INDEX

2.

ADVOCATE

M. Muazzam Butt

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHUWA

In Ref to

Service Appeal No

Farhana Jabeen wife of Ghulam Muhammad, SPST (BPS-14)

PO Postal Colony, Mohallah Lalazar Colony, Usman Ghani, Peshawar

VERSUS

.....Appellant

Page | 1

- 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 JUSTICE AND AGAINST THE RIGHTS OF APPELLANT.

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

RESPECTFULLY SHEWETH:

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

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 Impugned 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:-

9.

10.

- 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.³
- 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.

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 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 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.

AFFIDAVIT:

I Farhana Jabeen w/o Ghulam Muhammad Resident of Peshawar 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

Through

Appellant

Muhammad Muazzzam Butt Advocate Supreme Court

Muhammad Adeel Butt Advocate High Court

ddig

Bassam Ahmad Siddiqui Advocate High Court LL.M- Human Rights

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHUWA

/2024

C.M No____/2024

Service Appeal No_____

Farhana Jabeen

V/S

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.

AFFIDAVIT: 12 through i Farhana jabeen w/o Ghulam Muhammad Resident of Peshawar 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 Muazzam Butt Advocate Supreme Court

Muhammad Adeel Butt Advocate High Court Dist. Goyt. KP-Provincial District Accounts Office Peshawar Dist.



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### Annexure

### OVICENMENT OF KHY BLINPALCHTUNKEWA ESTABLISHMENT DEPARTME VΤ (REGULATION WING)

### NOTIMEATION

## Dafett Pealinwar the, 00/ 8 12020

The Industry of Khylier Pakhiniskiins in the powers conferred by secility 26 of the powers confe In cultation of the powers conferred by secilion 26 of the the Chief Minister of Khylter Pokhiultkljun is pleased jo dired ikat in the Khyber (i) the Liner section of Englishing and Institute (Appointment), Promotion and Transfee) Rules, 1989; the ing lunher umondinent shall he made, namely:

AMENDMENT in rule 7, sub-rule (5) sivil ba deleud.

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### CHIEF SECRETARY THE ICEYDER PAKHTUNKHWA GOVERNMENT OF

### NO & RVEN

# Additional Chief Secretary, Oavi, of Khyber Pakhumkhwa. Planning Re Imvarded 101-

The Sentar Member Board of Revolue, Khyber Pakhrunkliwa. Development Department. All Administrative Secretaries to Gove of Khybershalb tinkhwa.

The Principal Secretary to Governor, Khyber Pakhtunkhwa, The Principal Secretary to Chief Minister, Khyber Pakhtunkhwa, The Principal Secretary to Chief Minister, Khyber Pakhtunkhwa,

All Divisional Commissioners in Khyber pakhunkhwa

All Heads of Attaclied Departments in Knyber Pakhunkhwa. All Autonomous Semi Autonomous Bodies in Khyber Pakhunkhwa. All Deputy Commissioners in Khyber, Pachlunkhys The Registrar Peshawar High Court, Peshawar а.

TESTEL

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. 10.

The Registrar, Khyber, Pakhunkhwa Service Tribunal, Peshawar, The Registrar, Knyber Hakhlunkhwa Service Enbunal, Peshawar, No Secretary, Knyber Pekhlunkhwa Bublic Service Commission, Peshawar, Me Deputy Director (17), Bea Department. Mi Section Officers in Establishmento: Administration Department The Section Officer (Admn), Administration Department with the The Section Officer (Admin), Administration Department with the request to 11. 12

arrange 20 gazz lie copies. Careinker Administration Department. 6.

WARDAH LATER CRETARY (POLIC DEPUT-Y.S

Thislie

ATTESTED M. MÜAZZA Advocate Supreme

### **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 of 8) 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,
- All Administrative Secretaries to Govt of Khyber Pakhtunkhwa. З.
- The Principal Secretary to Governor, Khyber Pakhtunkhwa. 4.
- 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.
- All Autonomous/Semi Autonomous Bodies in Khyber Pakhtunkhwa. 8.
- All Deputy Commissioners in Knyber Pakhtunkhwa. 9.
- 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. MUAZ

Advocate Suprem

### 10.0 C Annexure UOVRIDMENT OF REPORT PARTUMICITYA PETABLISHIBERT DEPARTMENT 62 No. SO(Polley) (AAD/1, 3/1020 Dated Perhawar the June 06, 2013 Į The Government of Khylier Pakhimidiwa, Hiementary & Secondary Bineratan Depailment, ٣o GUIDANCE UBGAUDING HELETION OF HULE 7/5) IN THE RITYDRIL FARITUNKINYA - GIVIL SKIVANTS (APPOINTAIENT UDOMITTUN AND THANNERIN RULES, 1989. Subject: -1 am dliceted to teles to your letter No. SOCPrimary-MyTASHIDA-2/Appolnimen/2023 dated 18,04,2023 un the indicet noted abave and to stole that Sub-ilula Dear Shij (5) of Rule-7 of Khyber Pathamilinu Civil Servinit (Appaintment, Promation and Transfer) Rules, 1989, stands delated vide this department notification dated 06.08.2010; thus, an . • provisión exists to decline or forgo promotion. The basic rationale behind the dolution of the ibid rule is almed at preventing a civil servant front templotion for titicit gain by sucking to a single literative post/position or to prevent those who lead to forgo promotion to evade posiing/transfer or show tack of capacity to tackle higher responsibilities to case of promotion. Therefore, it is obligatory upon every civil servent to accept promotion in every condition. Funkenmore, these officerstofficials who do not comply with promotion order of the competent authority or try to evade primation through different means shall be proceeded against under Khyber Pakhunkinen Civil Servands (Rifleieney & Discipline) Rules, · ; ours falthfully, 1011, please. 7 Khun) in: (Liss 🕅 (Pelley) fille ٨ï <u>Badst. Di even Na A ilala</u> Copy forwarded to the:py to Parelal Secretary (Reg): Bushilibran Department PA to Additional Secretary (Reg): Databilibran Department PA to Additional Secretary (Reg-II), Bathilibran Department PS to Deputy Secretary (Polley), Establishment Department. I. 2. 3. diffeer (holloy) . with y alon' 62.7 216 41 л. ľ, M. MUAZŽAM Advocate Supreme 43-2023 AZIZULLAH VE GOVY OF PG43

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LINE SECTION AND A 5.4  $\tilde{c}$ OVERNMENT OF HAVBER PARATUNKIWA ELEMENTARY AND SECONDARY EDUCATION DEPARTMENT CIVIL SECRETARIAT PESHAWAR (Phone No.091-9223587) No.50 (Primary-M)/E&5E0/2-6/2023 Daled Peshaviar Inc. June 26, 2023 ĩc The Directo: . Elementary & Secondary Education Department Khyber Pakhlunkhwa, Peshawar. 34.16123 Aziz Ullah Khan President All Primary Teacher's Association, KP GUIDANCE REGARDING DELETION OF RULE 7(5) IN THE KHYBER PAKHTUNKHWA CIVIL SERVANTS (APPOINTMENT, PROMOTION Subject: . AND TRANSFER) RULES, 1969. I am directed to reter to the subject noted above and to enclose here with 1 a letter of Establishment, Department letter No. SO (Policy)E8AD/1-3/2020 dated j, OF June, 2023 and to state that the subject meeting is to be held on OF July, 2023 at 1 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 ŝ - 1 Tabove, please. Encl: AA (MUHAMMAD ISHAO) . SECTION OFFICER (PRIMARY MALE) Copy forwarded to tha: 1. PS to Secretary, E&SE Department Khyber Pakhtunkhiva. nc. SECTION OFF M. MUAŽZXM 42-2023 AZIZULLAH VS GOVT CF PG43 Advocate Supreme Col

No SO (Primary-M)/E&SED/2-6/2023 Dated Poshawar the June 25* 2023 Section

The Director Elementary & Secondary Education Department Khyber Polchtunkhwa, Peshawar

Aziz Ullah Klion President President All Primory Teacher's Association, KP

Subject: GUID

Tò ,

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

BIC

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.

> (MUHAMMAD ISHAQ) SECTION OFFICER (PRIMARY MALE)

Copy forwarded to the

Encl: AA

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

SECTION OFFICER (PRIMARY MALE)

ATTESTED M. MUAZZAMB Advocate Supreme Co

WP4442-2023 ASIZULLAH VS GOVT OF PG43

Annexure

D

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

and the second of the second of the second of the second second

A meeting regording the subject matter was hald on 06-07-2023 of 11:00 AM under the Chairmonship of Additional Secretary Establishment in his office, the tollowing offended the meeting.

5#	NAME	DESIGNATION
	Mr. Foral Wohld	Deputy Director Extabilishment of Obectorate Elementary & Secondary Education Department
2	i Mr. Aziz Ulloh	Provincial President All Primary Teachers Association Khyber Pakhlunkhwa
3	Mr. Rologal Ulloh	General Secretary AFTA Feshawar
<i>,</i> '4	Mutommod Ishon	Saction Oliferr (Pilmary) ELSE Department Civil Secretariat Khyber Pokhlunkhwa Peshawar

2. The meeting started with recitation from the Haly Ouran. The chair welcomed the participants. The Deputy Director (Establishment) of Directorate of Elementary 2 Secondary Education bilated the larum regarding agenda item in detail.

3. After threadbare discussion it was decided that Directarate at Bementary & 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.

(Mr. Fozal Wahld) Daputy Director-1 E2.SE Department

(Mr. Rologat Villah) General Secretary APTA Peshawar

Mit Autz Wilch) Provincial President imary Teachers Association Khyber Pathlunkhyia

(Muhanimoo Lihoo) Section Officer (Primary-Melo) EASE Deportment

(Abdullah) Addillanal Secretary (Establishmani) E&SE Department

M. MUAZZAM Advocate Supreme (

WP4442-2020 AZIZULLAH VS GOVT CF PG43

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

A meeting regarding the subject matter was held on 05-07-2023 at 11:00 AM under the Chairmanship of Additional Secretary Establishment in his office. The following attended the meeting

511	NAME +	DESIGNATION
	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. Rafaqat Ullah 🌯	General Secretary APTA Peshawar
4	Muhammad Ishaq	Section Officer (Primary) E&SE Department Civil Secreterial Khyber Pakhtunkhwa Poshawar

• 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 threadbard 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.

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

Provincial President All Primary Teachers Association Khyber Pakhtunkhwa

(Mr. Rafaqat Ullah) General Secretary APTA -Peshawar

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



VERMS-2013 AZIZULLAH VS GOVT CF PGA3 TTUS MASSAUM .M . ĨĨŠĴĨÌ₩ γμητική το δοτοματίου το δοτοματίου Βεταλομίουν το δοτορισίουν Ετίμεσητου Arstern Director (Establicit) Master Cops Ť רא ום Director Local Directorole. Copy of the above is (0... ON JUNUT אל געשאינו וסרדוווודעות בעובטווטע פורטווטע אין געשאיני אין געשאיני אין אין געשאיני געערטווטע דום כמנה זי יוורמווונק למו שבנתונהן מוק שבכיצמא מבוומניו שובטצב: * Departmental Promotion Committee. provided they submit their written rejural prior, to conduction of the meeting of in view of the abave, this office is of considered opinion that the deletion of Rules עכבע סודרם לפג זוומשונדופוו על כטניפוןקטובת במורי -ראסונשטיזיניוט טן ונטוי אמאוונטעסו בכביבופא ביומטוניטשנטו פו גיוז סוובג ונידי ונידי ונידי ונידי Think in the fight of the minutes of meeting dated 6-07-2023 lield under the (ניקוומו)-או בעבבוענת אי ואוז פוווב ועמו אטור במסק מוובב אעב וכוובר אס.50 (ניקוומו)-או בעבבוענת אי ואי 201 קטוב ועמו אי 201 ÷ כואון צברגמען (ם מכבפלו לגמשמוןטע חותבו באבוא במתקוומטי וויםן וערום כדורום עם ערמאוומת ום קבכווטי מן למנכם נתמשמומר זו זר מעווצמומוא אמש בגבנא עות (נוופר אס.50 (Policy) באַאַטאון אומנט לפובל ל-6-2012 כסובקטרוכמווא גוטופט (אות) אוט אוט אוט אוט אוט אוט או דושו זיטות ביול בעלובה למילטילט לוא נמות ום ואם קטמונר כמהכביהכל שולב לנווני אם גרו (רלומיטי-גיו) בעבבבעלי?ואקאסורומותו/2021 למי מכבענטיץ בטולמהכי. דומן וור למיריהמנו סן אושטיר הלומותאלמס בנומנונווותנו לבקירותנו לא במוסונים או איי אייז אייז אייז אייז אייז איי promotion. "FZOZ-ZO-90 Palop 2869"ON דאמו ואנו מלוכר גמוצאו משלמתכר לרמה צמור בממל מלוכר לה ואם למומאותך ורמרלב שלמר לרוורו לכן הים ולוכתוומה אם בואון לבריסתו (אמים המוכב בריסתונים לב המשנומה לב ורמתלבר אווב ואאל) דולב הסולוכתוומה אם אם לא אל בראון (בפאם)/ו-1/2010 למוכם 26-08-2020. Πιαι Government of khyber Pokhumkhwo Eucohlishacat Department (Rogulation Wing) present brief littlery about the background of the case as under: C. Misch Minnes of the Meeting Prost acted 10-07-2023 on the subject clied above and to ן מעו מונסבונים ום נסלנג ום ואה והוובר אסיצטנגנושות-אובנגבעאבוא. ו Dear Sir, **DNEESEN SILL SO SELENTIN** - :IsalduZ Khyber Pakhunkhan Perlaman. Πια Socilan Officer (Primary kiele), Έλαφεκιστη & Socondary Εφικαίτωn Dopartmant, 19 Phone: 091-923144 SSTIPAUCenteral Cares 5418 Kliyber Pakhtinkhwa, Peshawar al Barton - Constantination and the statement of the Alexandration and Section & Section of 

DIRECTORATE OF ELEMENTARY & SECONDARY EDUCATION, KPK

-Ble-

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Section Officer (Primary Male)

Elementary & Secondary Education Department KPK, Peshowar.

Subject : Minutes of Meeting

Dan Sirj I am directed to refer to letter No. (SO Rinning -TV) E & SED /S-1/G.Mill/ Ministes of meeting 1857/2023 dated 30-7-2023 on subject cited above and to present brief history, about background of cure as under.

* That Government of KP Establishment depentment (Regulation Wing) deled rule 7(5) in Civil Servants (Appaintment, promotion of Timistor Rule 1989) Vide notification No. NU. SOR-VI(ESAD)1-3/2020 clashed 06:08-2020.

That this office saight guidance from your good uffice in the following words vide letter No. 5987 dicted ob-or 2022 (1) NOLD it is obligatory upon avil servent to accept promotion.

- (ii) St B presegative of civil sesuant to ether accept/tumdown the
- Offer of promotion. That your good office forwarded the came to quarter concerned vide letter No. So (Princing M) EGSED 12-2/Appointment (2023 for recessory

That the government of KP-ED (Regulation Willing) vide letter No. SO (Beliey) EGAD (1-2)2070 dated 6-06-2073 categorically stated that there exists no provision to decline (forgo promotion. It is ablighting upon every civi). servant to ciccept pomotion under energy condition.

• That in fight of the minutes of the meeting dated 6-07-2023 held under the Chairmanship of tion. Additional Secretary Establish -ment at his affice. This office has been asked for submission of

In view of the above, this office is of considered opinions. that the deletion of Rules 7(5) have affected negatively a huge members of Female teachers.

The case is submitted for persol and necessary please . action

47-2023 AZIZULLAH VS GOVT OF PG43

Copy of the above to;

Accelerated Director Elementary & Secondary Education Khyles Rachburkhurs.

1. PA to Director Local Directorate 2. Master Copy

M. MUXZZAM B Advocate Saprenie Cou

PESHALIMA

[21-7-2023]

Annexure

ELEVENTARY AND SECONDARY EDUCATION DEPARTMENT CMIL SECRETARIAT PESHAWAR (Phone No.091-8223587)

> Ho. 50(Primary-M)E&SED/2-2/Appointment-Rule /2023 Peshawar Dated 23rd August, 2023

したたわれ

The Georgiary to Govi, of Khyber Pekhlunkhwa, Existikahmeni & Administration Department, Pekhawar

#### SUBJECT: - GUTDANCE REGARDING DELETION OF RULE 7(5) IN THE CIVIL SERVANT (APPOINTMENT, PRPMOTION & TRANSFER_RULES 1989).

Gener Su,

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I am directed to refer to your letter No. 50(Policy)/ EBAD/ 1-3/2020 dated 05° June 2023 and to state that after deletion of rule 7(5) Khyber Pakhtunkhwa OVI Servare (Appiontment, Promotion & Transfer Rules 1989) It has been intimated that those officers/ officials who do not comply with promotion order of the competent authority or 177 to evode promotion through different means shall be proceed under Khyber Petricunianwa Gvil. Servant (Efficiency & Discipline) Rules, 2011.

2. In this connection it is submitted that in some cases lady teacher of primary's level who avail such promotions have to face serious inconvisince 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.

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

2023 AZIZULLAH VS GOVT CF PG43

Copy lorinarded to the:

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

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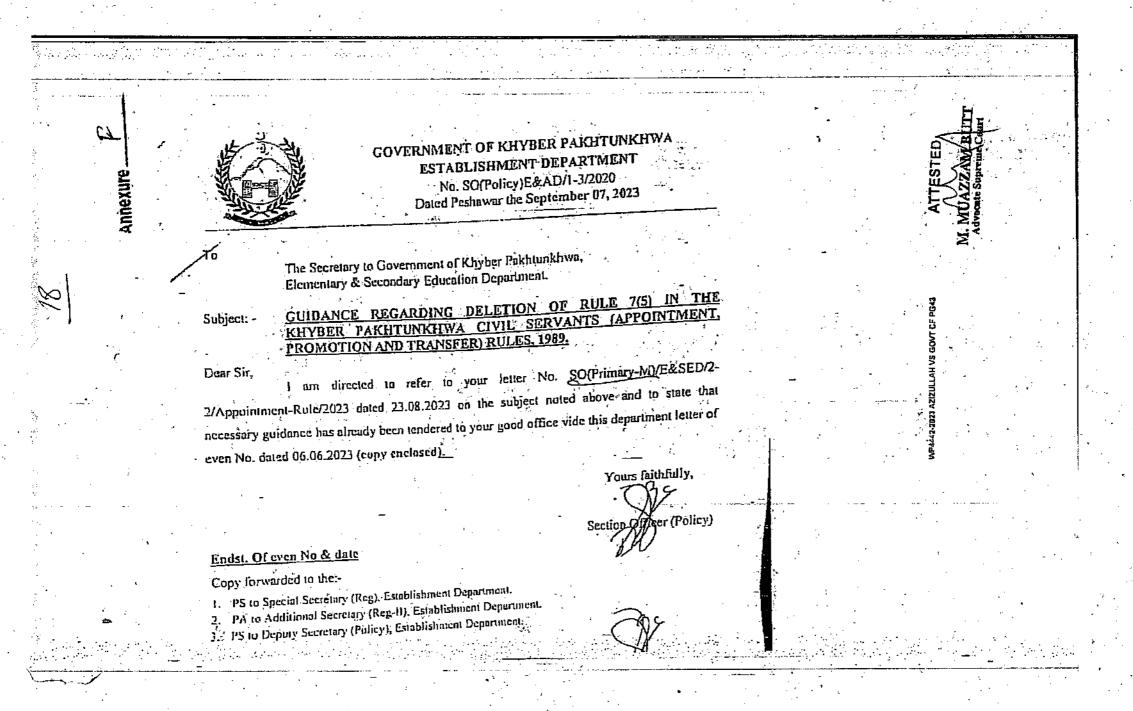
M. MUAZZAM

Advocate Supreme Codri

(MUHAMMATI ISENIO) SECTION OFFICER (PRIMARY MALE)

SECTION OFF

Idus Midorde ∕ZZ¥Ū™.M IALISAINA 4333 photo 10 photo 20 photo 2 Section officer (Ramany אינבאיי 32 צייני ובצאיויייצויייני. (Munimud Isbary) of promotion fider -stands of lody teacher in primary scheres with in view of above, the sold ammandment may be reconsidered to effects an service delivery. ארפאויביד-יות-לסנט ויאילים הפשר סאוב לה בנוכל כקובו אליפיר סוד הסבשאות to reach of them are manual cities below for the tradit istudiof requirer / bothobiese on Athu enotites testomer with it series inconstruct with sight such such as property is such of avoil righternery this avoir avoir such promised by isotrat Lin this connection it is submitted that in correctored lody וסואן צבאסעב (באליטבעבע קיוב ואבוגניב) ובעב ציונו different means shall be proceed under khyber fakhtunkhun Apoint nortement above at but to provide protogram with to titrose officially who do not complet with promotion order tait betanits and red 121 -12 (1882 result equals and rediened deletion of Rule 7(S) Khyder Rithtunktun Civil servant (Apprintments, when tout state at lone ever and the petrop aros (E-1) (A23) (Histof) Horierted to refer to Have Keller No. Solarito mo P (Yi2 M9Q (6867 with reference & notiferral transfirgth traves in Guidance regarding deletion of Rule 7(2) In the : 7JJ (Bug) Peshauana. Establishment and Administration Reportments. -The secretary to Government of Kryba Rekterinbling. Castering Dated 224 August 299 No.56 (Pringer - M) EESED for Al 1 - צור



### 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.

Sublect:

To

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).

P4442-2023 AZIZULLAH VS GOVT CF PG43

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 (Pollcy), Establishment Department.

Section nicer (Policy)

M. MUAZZAM BUT Advocate Supreme C

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Annexure

Dated: 26-01-2024

- 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

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:-

тð;

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 O6th, 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

Farnana Jabeen

M. MUAZZAM Advocate Supreme

w/o Ghulam Muhammad

Resident of Peshawar

End of a content of temperature for the content of the STREEME LITTLE 2 in Reads Ŀ Annexure Khyber Pakhtunkhwa : vzlz Uthli Khan a<u>pτa</u> 4 Prostdent APTA Houses Govi, Printery Believi No.4, Guilantar Feshawar Gity, 0 0333-0114648 v 0333-0114648 v 0323-0114648 D 080-90 ÷. آل پراتمری شیچرز ایسوی ایشن (اپنا) خیبر بختوشخوا . المالب : ميكرارى الملتول ٥ ميتدارل المرجمين عبر التوانوا مَهْلِبِ الله يراترك لمجرد عدى ايش فير بخونها جاجب مالي کو اول ب کر برد موضوع معاجب عمد احد الل 11 کر مرکز ک علام کی محافق اول ب برد موضوع ایک قال دوا کر تاقاک جر ملام ایک دار عمل • بجمعه ی تحت ایک ولد برد موضوع ای کی قدن کار آستان با ملک تک برد موضوع محک ب حسط باد سال تک برد اس کی برد موضو محک اند تک تک م اس اللو عد توال دمايت دل ك بار مال دان بد متر من ك ك مد اكم ايد ايم ايك مل بدووش ف لين ودد امر س مال ر عك ب ليكن لب ايك بلت بيل ايك ادر (لييمين اداب جم کے معالی اب پر عام پردس شرد ہی کے اگر نی کی کے 7 می کے نقالہ ای بعدلل دراؤے معان کاردانی کرنے کا کی کی ہے۔ حاصل بہ 5 وی فیکیٹی بیادی الدان حرق کی کی مقالہ دوان ہے سرب کی دور دونا اور پروی ماؤں یم خاص کو فواتی اماؤہ کا اتبال مشکار ک 1 cm Jul بجد مام مالات بن مكالدوك مرم من الد معدالة بحيا من بإدار المال مول كا خلف مدل ب كرك فير منوم اعداد ومن عادان وعدين کا الل ب اي ملك عن ب ظافر المجنى بر BSB ك الطالى الزك برا مرى مي كيا ب بر بدان الدال مترت ك منال ب ی من ج مع معد من ورور مین ، محمد ما مع ما در مرد مع مع مر بر مرب من و وب در ما الد ورا من ما من ما معد من من م ام اس کے نظار الال مراج مرد الل کر اللہ الال کا دائم لا بار عالم الا من من قريم کر ہے پر الال ما تک الم اللہ ال لاا ہم آپ ے حداد الل مراح الل کر کر لاللیشن کر دائم لا بار عاد اس عن قريم کر ہے پر اتر ک ماتک کر (Relaxation) دا بار الن ک المريد اير يروك _ ما باع 1 کوک فیلیسین بالمکا است تل پراتری امالا، کو اتل خود جرج کست کا ملل شرورا جریا ب بوانم یه فوتل دیک آب مناحال فولل ایکش چکر معد جرک برای امالا، ضوما لیمیل پراترک امالا، کو اتل الدے سے فہار دائ ک 3 ٤ مزيزاتلد خلن موبال مدر AULER آل پراتمرکا کیمرز ایسوس ایش قیم، پخونوا g) i. ATTESTE M. MUAZZAM Advocate Supreme ÷ WP4442-2023 AZIZULLAH VS GOVT CF PG43

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07.05 2024

1.

Learned counsel for the appellant present.

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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 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.

Contribution to the true enps(Muhammad Akbar Khan) Member (E)

10-f. 1-5 Date of Procentation of Application Number of a Cosyst Urgan Date of  $f^{(1)}$  is a set of  $f^{(2)}$  and  $f^{(2)}$  ane

ATTESTED M. MUA Advocate Supremé

CS CamScanner

BEFORE THE SERVICE TRIBUNAL PESHAWAR

FARIHANA JABEEN.

NAM

Government of KP & others

Respondents

Åppellant

14

I (the Appellant)

do hereby appoint and retain

MUHAMMAD MUAZZAM BUTT ASC. MUHAMMAD ADEEL BUTT AHC BASSAM AHMAD SIDDIQULAHC

> & 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

MUHAMMAD MUAZZAM BUTT Advocate Supreme Court MUHAMMAD ADEEL BUTT Advocate High Court

ddigm. BASSAM AHMAD SIDDIQUI Advocate High Court