FORM OF ORDER SHEET

Court of	
Appeal No.	2217/2024

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 Pesh
		given to counsel for the appellant.
		By order of the Chairman
,		RECIPIRAR
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BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHUWA

4C.M No	P of 2024
In Ref to	
. Service Appeal	No 72/7-2024

Muhammad Shafi

VERSUS

Secretary to Government of Khyber Pakhtunkhwa, & others

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BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHUWA

In	R	ρ	£	to
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Service Appeal No. 2217 /2024

Muhammad Shafi son of Habib Ullah, PSHT

Resident of Tehsil Dagra District Buner

...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

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, MÃY 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 Primary പടിച്ച് Head Teacher.
Copy of Appointment letter is annexed as Annexure A

- 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 Annexure B
- 6. That the Directorate of Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar asked for guidance regarding deletion of Rule: 7(5) in Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer). Rules, 1989 in respect of which the respondent No. 1 vide its letter No. SO(Policy) E&AD/1-3/2020 dated Peshawar the June 06th, 2023 directed the respondent No. 3 (Directorate of Elementary & Secondary Education) that Rule 7(5) in the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 has been deleted vide notification dated 06-08-2020 and ,therefore, no provision exists to decline or forgo promotion and it is obligatory upon every civil servant to accept promotion under every condition.

 Copy of impugned Letter dated June 06th, 2023 is attached as Annexure C
- 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>

- 9. That the respondent vide its letter dated 07th of September 2023 directed the Directorate of Elementary & Secondary Education Khyber Pakhtunkhwa that necessary guidance has already been provided to the department and therefore no provision exists to decline or forgo promotion and those teachers who do not comply with the promotion order of the competent authority or try to evade promotion through different means shall be proceeded under the Khyber Pakhtunkhwa Civil Servant (Efficiency & Discipline) Rules, 2011.

 Copy of Impugned letter dated 07-09-2023 is attached as Annexure F
- 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 anently debarred from availing the facility of promotion during their entire set vice. 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.

- 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 blunt blow of hammer on the rights of the appellant. It is not out of place to merico, 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 Muhammad Shafi Son of Habib Ullah Resident of Tehsil Dagra 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

Through

Muhammad Muazzzam Butt Advocate Supreme Court

Appellant

Muhammad Adeel Butt Advocate High Court

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

BEFORE THE SERVICE TRIBUN		FY 1 7 A
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C.M No	/2024		
In	٠.		
Service Anneal No	•	/2024	

Muhammad Shafi

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:

I Muhammad Shafi Son of Habib Ullah Resident of Tehsil Dagra 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

through

Mulammad Muazzam Butt Advocate Supreme Court

Mulanimad Adeal But Advocate High Court

Appellant

Peponent

Dist. Govt. KP-Provincial District Accounts Office Bungir at Dagga Monthly Salary Statement (December-2023)





Personal Information of Mr MUHAMMAD SHAFT d/w/s of HABIB ULLAH

Personnel Number: 00272645

Date of Birth: 09.06.1972

CNIC: 1510103680541

Entry into Govt. Service: 13.06.1995

Length of Service: 28 Years 06 Months 020 Days

Employment Category: Active Permanent

Designation: PRIMARY SCHOOL HEAD TEACH

81225088-DISTRICT GOVERNMENT KHYBE

DDO Code: BD6333-Buner

GPF A/C No: EDUBR001552

Payroll Section: 001

GPF Section: 001 **GPF** Interest applied Cash Center: 14

GPF Balance:

819,401.00 (provisional)

Vendor Number: -

Pay and Allowances:

Pay scale: BPS For - 2022

Pay Scale Type: Civil

BPS: 15

Pay Stage: 22

	Wage type	Amount		Wage type	Amount
0001	Basic Pay	67,480.00	1001	House Rent Allowance 45%	3,524.00
1210	Convey Allowance 2005	2,856.00	1300	Medical Allowance	1,500,00
	Compen Allow 20% (1-15)	1,000,00	2148	15% Adhoc Relief All-2013	880.00
	Adhoc Relief Allow @10%	591.00	2316	Teaching Allowance 2021	3,224.00
	Dispr. Red All 15% 2022KP	6,408.00	2347	Adhoc Rel Al 15% 22(PS17)	6,408.00
	Adhoc Relief All 2023 35%	22,925.00	T		0.00

Deductions & General

	Wage type	Amount		Wage type	Amount
3015	GPF Subscription	-4,290.00	3501	Benevolent Fund	-1,200.00
3609	Income Tax	-2,512.00	3990	Emp Edu. Fund KPK	-135.00
4004	R. Benefits & Death Comp:	-600.00			0,00

Deductions - Loans and Advances

		¥		
I Tann	Description	Dutantant amount	Deduction	Balance
_Loan	Description	Principal amount	Dengenon	DRINKEE
	-			•

Deductions - Income Tax

Payable:

38,956.38

Recovered till DEC-2023:

14,147.00

Exempted: 9738.76

Recoverable:

15,070,62

Gross Pay (Rs.):

116,796.00

Deductions: (Rs.):

-8,737.00

' Net Pay: (Rs.):

108,059.00

Payee Name: MUHAMMAD SHAFI

Account Number: 3949-8

Bank Details: HABIB BANK LIMITED, 220349 DEWANA BABA DEWANA BABA, PESHAWAR

Leaves:

Opening Balance:

Availed:

Earned;

Balance:

Permanent Address:

City: BUNER

Domicile: NW - Khyber Pakhtunkhwa

Housing Status: No Official

Temp. Address: City:

Email: shafi13695@gmail.com

Advocate Suppeme Court

System generated document in accordance with APPM 4.6.12.9(50070993/24.12.2023/v3.0)

* All amounts are in Pak Rupees

* Errors & omissions excepted (SERVICES/31.12.2023/18:09:21)

OFFICE OF THE DISTRICT GOUCATION OFFICER (M)PRY: BUNER COMAFI APPOINTMENT

Appointments of the following PTC Trained candidates hereby ordered against the posts of PTC on Temporary Unit # Re-1488 P.K plus usual allowances in BP9 No-7, 1 o 1088 0)
2685 as admissible under the rules at the install against each in the interest of public service w.c.f the date of their taking over charge.

A MO Hams & Ossignation/Address Posted at Mohammadoshafi s/O Habibullah GMPS VIlliGumbat (Chagharzai) Asharal Sar (Chaghorzal)

Remarks V:Post.

TERMS AND CONDITIONS.

Their appointments are punely temporary and liable to termination at any time with out any assigning/reason or natioe.

2. In case of resignation they will have to submit one month prior notice to the department or forefeit one month pay and lieu there of to the Government.

3: They ere required to produce health and age certificates from NedTowle authority concerned before, taking over

charge provide they are not in Government Servant.

I have should not be allowed to take over charge if their is less than 18 years on above 38 years.

They appointment are subject to further conditions that they are domicils of District Budger.

they are domicile of District Buger, and Comicile certificates afould he throughly checked before handing over offeres, and if necessary they should be verified from the institution. soneerned.

one of the regelpt of these orders the offer of appointment hall be automatically stand cancelled be . so To/DA/TB +to elloyed.

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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 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. MUAZZAM BUT

Annexure



COVERNMENT OF KDYDER PARTTURKTIVA establishment department No. 50(Polley)[[&ADI] -3/2020 Unicil l'edinwar ilie dune 06, 2023

62

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The Government of Klipber Pakingathwa Elementary & Secondary Policollan Dapailment.

Subject: •

GUIDANGE URGAUDING URLETTON OF HUILE 7(5) IN THE RUYDER PARITUNICIVA GIVIL BERVANTS (APPOINTMENT, BROMOTION AND TRANSFER BULLESS, 1989,

i ant directed to refer to your letter No. SO(Primary-Myntasup). NAppolatment/2023 dated 16.04.2023 un the subject noted above and to state that Sub-stude Dear Str. (5) of Rule-7 of Khyber Pakhiunkhnu Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 stands deleted vide title department northeoling dated 06.08.2020; thus, no provisión exists to decline or forgo promotion.

- The basic rationals behind the detailor of the libid rule is almost at preventing a civil servant from templation for littell pain by sucking to a single lucrative postsposition of the breacut those who reng to toldo browelless to easile best judicurvetes or many juck of cobaches to tackle higher responsibilities in case of promotion. Therefore, it is obligatory upon every civil servant to occupi promotion in every condition.
- Furthermore, those officers/officials who do not comply with promotion order of the competent outlindly or tily to evade promotion through different means shall be proceeded against under Khyber Pakhimbinun Civil Servents (Afficiency & Disciplina) Rules, AGRLT [e|IIItip]]A 2011, filease.

Radst: Of even No & date

Copy forwarded to the:-

PS-to Special Secretary (Reg.): Untabilibinent Department.
PA-to Additional Secretary (Reg. 11), Untabilibinent Department.
PS-to Deputy Secretary (Policy), Establishmani Department.

mmed Khan) Meer (Polley)

Micer (holloy)

Advocate Supreme Court

WP4442-2023 AZIZULLAH VS GOVT CF PG43

OVERNMENT OF MAYBER PARATUNKAWA ELEMENTARY AND SECONDARY EDUCATION DEPARTMENT CIVIL SECRETARIAT PESHAWAR

(Phone No.091-9223587)

No.SO (Primary-M)/ESSED/2-6/2023 Daled Peshawar the, June 26th, 2023

Tο

The Oirector

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 (APPOINTMENT, PROMOTION AND TRANSFER) RULES, 1989.

I am directed to refer to the subject noted above and to enclose here with a teller of Establishment Department teller 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 11:00 AM in this department under the Chalimanship 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 ábove, please.

Encl: AA

(MUHAMMAD ISHAO) SECTION OFFICER (PRIMARY MALE)

Copy forwarded to tho:

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

SECTION OFFICER (PRIMA

WP4442-2023 AZIZULLAH VS GOVT CF PG43

Advocate Supreme Court

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

T

The Director Elementary & Secondary Education Department Khyber Paiditunkhwa, Peshawar

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

Subject: -

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

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

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

Encl: AA

(MUHAMMAD ISHAQ) SECTION OFFICER (PRIMARY MALE)

.Copy forwarded to the:

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

SECTION OFFICER (PRIMARY MALE)

WP4442-2023 AZIZULLAH VS GOVT CF PG43

M. MUAZZAMBUN Advocate Supreme Court 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 Chairmonship of Additional Sacretary Establishment in his office. The following attended the meeting.

\$#	NAME	DESIGNATION
1	Mr. Pozal Wahld	Deputy Director Establishment of Directorate Elementary & Secondary Education Department
2	i Mr. Aziz Ulloh	Provincial President Alt Primary Teachers - Association Khyber Pakhlunkhwa '
3	Mr. Rolagal Vileh	General Secretary AFTA Pashawar
. 4	Muhammad Ishaq	Section Officer (Primary) E&SE Department Civil Secretarial Khyber Fokhlunkhwa Perhawar

- 2. The meeting started with recitation from the Hoty Ouran. The chair welcomed the participants. The Deputy Director (Establishment) of Directorate at Elementary, & Secondary Education briefed the forum regarding agenda item in detail.
- 3. After threadbare discussion it was decided that Directorate of Elementary 2 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. Foral Wohld) Deputy Director-I ESSE Department

(Mr. Rafagal Ullah) General Sacratory APTA Peshawar (Mr Aziz Ullah)
Provincial President
All Primary Teachers Association
Khyber Pakhlunkhyra

(Muhahimad Lihaq) Secilon Officer (Primary-Male) E25E Department

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

WP4442-2023 AZIZULLAH VS GOVT CF PG43

M. MUAZZAM BUTT
Advocate Supreme Court

-B|C-

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

SII	NAME ;	DESIGNATION
	Mr. Fazal Wahld	Deputy Director Establishment of Directorate Elementary & Secondary Education Department
2.	Mr. Aziz Uliah	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 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-

(Mr. Fazal Wahld) Deputy Director-1 E&SE Department		
Provincial President All Primary Teachers Associat Khyber Pakhtunkhwa	lon	·
(Mr. Rafaqat Ullah) General Secretary APTA Peshawar		· · · · · · · · · · · · · · · · · · ·
(Mühammad Ishaq) Section Officer (Primary-Male E&SE Department	:) <u>.</u>	
•		
No. of the last of	Vatiliani Vatiliani	(tepsylekes3/ADE30282 (R

ATTESTED



Klıyber Paklıtı:nklıwa, Peshawar Dated 2-1 /F.No. 14/SST/)-UGeneral Cover

Plione: 091-9275344

Email: estebbilimentmale!@gniall.com

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

Subject: -Dear Sir.

MINUTES OF THE MEETING

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

- That Government of Klyber PakhtunDiwo Establishment Department (Regulation Wing) deleted Rule 7(5) in the Civil Servants (Appaintment, promotion & Transfer Rules). vide natification No. No. SOR-VI (E&AD)/1-1/2020 dated 06-08-2020.
- That this office sought guidonec from your good office in the following words vide letter No.6987 dated 06-02-2023.
 - (i) Now it is obligatory upon the civil servant to occupt Promotion in every condition. (ii) It is the prerogotive of the civil servant to either accept or turn flown the affer of
- That your goof office forwarded the same to the quarter concerned vide letter No.50 (Primary-M) E&SED/2-2/Appointment/2021 for necessary guidance.
- That the Government of Kleyber Paklaunkhwa Establishment Department (Regulation Wing) vide letter No.SO (Policy) E&A D/1-3/2020 dated 6-06-2023 categorically stated that there exists no provision in decline or forgo promotion. It is obligatory upon every: civil servant to accept promotion under every condition.
- The same was received by this office from your good office wide letter No.50 (Primary-M) E&SED/2-2/Appainiment/2023 dated 12-06-2023.
- That, in the light of the minutes of meeting dated 6-07-2023, held under the Chairmanship of Hun, Athlitinnal Secretary Establishment of his office this office has heen asked for submission of consolidated ease.

In view of the above, this office is af considered opinion that the deletion of Rules 7(5) have affected negatively a huge numbers of Female Teachers. Thus it is proposed that Teachers below BPS-16 may be exempted of implications of the amendment in the rules thid provided they submit their written refusal prior to conduction of the meeting of Depurtmental Promotion Committee.

The case is submitted for perusal and necessory delians please.

Assistant Director (Estab MI-I) Elementary & Secondary Education Khyber Pakhtunkhwa

Endst: No.

Copy of the above is to:-

PA to Director Local Directorate.

Master Capy.

Assistant Director (Eslabil-I) Elementary & Secondary Education Klipher Pakhtiinkhwa

4442 ZAZS AZIZULLAH VS GOVT CF PG43

M. MUAZZAM BUTT Advocate Supreme Court

-Blc-

DIRECTORATE OF ELEMENTARY & SECONDARY EDUCATION, KPK

To:

PESHALUAR (21-7-1013)

Section Officer (Primary Male).
Elementiciny & Secondary Education Department.
ICPK, Peshawar.

Subject: Minutes of Meeting

Dear Sir; I am directed to refer to letter No. (50' Aimany -M) E & SED/5-1/GAMEL/ Minster of meeting/PST/2023 defed 10-7-2023 on subject cited above and to present backfround of case as under:

* That Government of EP Establishmond dependment (Regulation Wing)

delided rule 7(5) in Civil Servants (Appointment, promotions, Transfer Rules 1989)

vide notification No. No. 50R-VI(ESAD)1-3/2020 classed ob-08-2020.

· That this office sought guidance from your good office in the following words vide letter No. 6987 defect ob-orzers

(i) Now it is obligatory upon civil servent to accept promotion.

(ii) It is presigative of civil servant to either accept/terndown the offer of promotion.

· That you good office forwarded the same to gruentes concerned wide letter No. So (Prinony-M) E&SED/2-2/Appointment (2023 for necessary guidonce.

- That the government of KP-ED (Regulation Wing) vide letter No. So (Policy) EG-AD (1-3) 2070 dated 6-06-2013 categorically stated that those exists no provision to decline forgo promotion. It is obligatory upon every civil semant to accept pomotion under every condition.
- That in light of the trainites of the meeting deted 6-37-2015 held under the Chairmanship of Hon. Additional Secretary Establishment at his effice. This office has been asked for submission of consolidated case.

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 Febrale teachers.

The case is submitted for person and necessary actions

Copy of the above to;

1. PA to Director Local Directorate

2. Master Copy

Accident Director

Elementary & Secondary Education,

Khylics Richlinkhula.

WR4442-2023 AZIZULLAH VS GOVT GF PG43

AUTESITED M. MUAZZAM BUTT

Advocate Supreme Court



ELEMENT AND SECONDARY EDUCATION DEPARTMENT CIVIL SECRETARIAT PEGHAWAR (Phone No.091-9223587)

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

The Georgiany to Govil of Khyber Pakhlunkhwa, Establishment & Administration Department, Peshaviai

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

Cast Sir,

t am directed to refer to your letter No. SO(Policy)/ EBAD/ 1-3/2020 dated 75" June 2023 and to state that efter deletion of rule 7(5) Khyber Pakhtunkhwa Civil: Servare (Applicatment, Promotion & Transfer Rules 1989) It has been intimated that those officers/ officials who do not comply with promotion order of the competent authority or by to erade promotion through different means shall be proceed under Khyber Pakrisunkhwa Gizli Servant (Efficiency & Discipline) Rules, 2011.

- In this connection it is submitted that in some cases lady teacher of primary level vino avail such promotions have to face serious inconvience while they have to perform duties in the remotest station with no residential or transport facility. Host 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 3. votenx of lady teacher in primary schools.

(MUHAMHAU ISI) SECTION OFFICER (PRIMARY MALE)

Copy Convianded to the:

1. Director E&SE Khyber Pakhbunkhwa.

2. PS to Secretary, EBSE Department Khyber Pakhtunkhwa.

SECTION OFFICER (ER

. Scanned with CamScanner

WP4442-2023 AZIZULLAH VS GOVT OF PG43

M. MUAZZ RUT

No.5 (Aimony -M) ESSED 19-31

Peshaum Dated 23rd August 32673.

To

The Secretary to Government of Khybo Pakhhunbhua. Establishment and Administration Depostment, Peshaueur.

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

Dear Sir,

9 am directed to refer to your letter No. Softmany 11-3/2020 dated B1 June 2023 and to state that after deletion of Role 7(5) Khyber Paktobunkhua Civil Servanot (Appointment) Romotion and Transfer Rules 1989) It has been intimated that... those officers officials who do not comply with promotion order of the competeral authority or try to evade promotion. through different means shall be proceed under khyber lakhtunkhun Civil Servant (Efficiency and Discipline) Rule 2011.

In this connection it is submitted that in some cases lady teacher 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. Most of them are married with kills and elder father of Mother-in-law who need age in such cases there are negative effects on service delivery. In view of above, the said ammendment may be reconsidered to the extent of locky teacher in primary schools:

COPY formanded to;

Dructin EE SE Klishis Pakintinkhwa

PS to Secretary, E & SE Depositional March 18 depositional March 1

(Muhammad Ishay) Section officer (Primary)

M. MUAZZAM BUTT Advocate Supreme Court



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.

I am directed to refer to your letter No. SO(Primary-M)/E&SED/2-Dear Sir, 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 (cupy enclosed).

Yours faithfully,

Section (Policy)

Endst. Of even No & date

Copy forwarded to the:-

- PS to Special Secretary (Reg), Establishment Department.
- PA to Additional Secretary (Reg-II). Establishment Department.
- 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

Ta

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 Str.

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

Yours faithfully,

Section Officer (Policy)

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 GGVT GF PG43

M. MUAZZANI BUTI Advocate Supreme Court To.

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:-

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 Frederica asked for guidance regarding deletion of Rule 7(5) in Khyber Pakhtunkhwa their so vants (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

Muhammad Shafi Son of Habib Ullah Resident of Tehsil Dagra District Buner Khyber Pakhtunkhwa

Nele, Uttirli Klimi Prootdom © 0333-0414648 • ozizuloh1973@gmali.com



،آل پراتمری فیجیرزایسوی ایشن (اینا) نیبر پختونخوا

بهاب: ميكول والمنزى ه ميكادي ايميش فيريخونوا مَهَابِ اكُل يِرامَرِكَ لِيرِدِ الله كَا اليَّنَ نِيرِ يَحْوَكُمُ لِمَا

لزادتى ب ك برد موشز بر اللعب على بوسة إلى إذ كر موكادى الله ك فراش اللّ ب بردم شز كا ايك قالن وزاكر الناكر بر عادم ايك اكركمي میں کے قت ایک داند پرام شزد لی وور مر اتھ ، باد سال عد برام فنزنیں ساتے تے مطب باد سال عد بار اس ک برام شز فنی ادعان حل مراس الله على قود ك دوايت وك كل بد مل ولل بلت فتم كروك كل كر اكر ايك علام ايك مال يرد وفي ند لي قرود دوم مل ال مكا ب لیکن اب ایک ہنت پہلے ایک ادر (لیفیشن ہوا ہے

جن کے مطابق اب ہر عام پدوم ٹن خرور کی کے اگر فیل کی کے 7 وں کے ناف ال دول کے مطابق الدوائل کے الاک الاس کے واصل ہے الوی لوللیٹن بیادل السال حزل کی کمل علا سائ ہے سے کی دو مال اور بھی ماقی عل تام کر فرائی اما تو کر انبال سکااے کا ماحاكرنا پزے كا

جکہ عام مالات عل می ایدو ک پروس ٹی الد دروولا میجا می باری السال منزل ک خال وروک ہے کیے کے نیر بہنو الم ایک بدھی ہے خال و شخص

الدوكا بدوكا بالم كاعلة ال كركات لي را بل

اد پردمشن د لین کا مورت ند اقاد، الالیابات لیکن به دیرا گان ک بات س مليا على آب بلد الا بلد قام (DEOs) الك الداكر الك ضرى مراسل بادى كيا باسة عكر الناما على ب كل السيل بدائرى الماذه كر دائل المت ادر ہر تک سے بھایا جانے

كرك وليكيش بدلادر ع براقرى اساقة كراي فود برجر كرا كاسلا فراما وياب للائم يه وقي ديمة هاك كب ساحان لودل ايكن لكر موب بر ك براقرال الماذ، نسوسانييل براقرال اسان، كر اي لاي الرب سا بات والي ك

> څکرب آل پراتمرک ٹیمرز ایس کایٹن خیر پخونوا

> > M. MUA Advocate Supreme Court

NP4442-2023 AZIZULLAH VS GOVT CF PG43

07.05.2024



- Learned counsel for the appellant present.
- Let a pre-admission notice be issued to the respondents through TCS for submission reply/comments. Appellant is directed to deposit TCS expenses within three days. To come up for reply/comments as well as preliminary hearing-off 10.06.2024 before S.B. P.P given to learned counsel for the appellant.
- Alongwith the service appeal there is an application for suspension of Notification dated 1.06.06.2023 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.

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

Date of Presentation of Application 10-12 1-6

Name of 🕒

Date of Company by a

M. MUAZZAM I Advocate Supreme Court

JAKALAT NAMA

BEFORE THE SERVICE TRIBUNAL PESHAWAR

MUHAMMAD SHAFI

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 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.

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

APPELLANT

ACCEPTED

MUHAMMAD MUAZZAM BUTT

Advocate Supreme Court

MUHAMMAD ADEEL RUTT

Advocate High Court

BASSAM AHMAD SIDDIQUI

Adyocate High Court