FORM OF ORDER SHEET

Court of_____

Appeal No. 22/3/2024

 S.No.
 Date of order proceedings
 Order or other proceedings with signature of judge

 * 1
 2

1- 30/10/2024

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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.

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By order of the Chairman

REGISTRAR

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BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHUWA

C.M No ________P of 2024

In Ref to

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Service Appeal No 2213 2024

Muntazir Khan

VERSUS

Secretary to Government of Khyber Pakhtunkhwa, & others

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S#	DESCRIPTION OF DOCUMENTS	ANNEX	PAGES
1.	Appeal and Verification	*	1-4
2.	Application for suspension	*	5
3.	Copy of Monthly Salary Account	A	6-7
4.	Copy of notification No. SD (Policy) EV AD/1-3/2020 dated 06/08/2020	В	8-9
5.	Copy of impugned Letter dated June 6 th , 2023	с	10-12
6.	Copy of Minutes of meeting dated 06-07-2023	D	13 -16
7.	Copy of Letter dated 23-08-2023	£	17-18
8.	Copy of Impugned letter dated 07.09-2023	F	19-20
9.	Copy of Representation against the said notification and representation made by APTA President	G & H	21, 22 23
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ADVOCATE

M. Muazzam Butt

.Appellant

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHUWA

In Ref to

2213 Service Appeal No_ /2024

Muntazir Khan Son of Salawar Khan PSHT (BPS-15)

Shingrani Kalpani, Tehsil Gagra, district Bunir

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. 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 Primary School Head Teacher.

Copy of Appointment letter is annexed as <u>Annexure A</u>

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.

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 Annexure C

7. That thereafter the meeting was also held in the office of Additional Secretary Establishment on 06-07-2023 in which it was decided to examine the case properly and submit a self-contained/ consolidated case for onward submission to the Establishment Department for further necessary action. Copy of Minutes of Meeting dated 06-07-2023 is attached as <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

3

2.

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

That the petitioner feeling aggrieved, filed Representation to the respondents in person, and also approached to respondents through APTA President but the

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:-

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.
- 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.

- 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) 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 unlawfui, 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.

Through

AFFIDAVIT:

I Muntazir Khan Son of Salawar Resident of Gakra 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

pulo lug

Appellant

Muhammé d Muazzzam Butt Advogare Supreme Court

Muhammad Adeel Butt Advocate High Court

Abinad Skiddiqui Rabeat Advocate High Court

LLM- Human Rights

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BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHUWA

C.M No	/2024
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Service Appeal No_____/2024

Muntazir Khan

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 prime 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 Muntazir Khan Son of Salawar Resident of Gakra 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 Menne

Muhammad Muazzem Butt Advocate Supreme Court

Muhammad Adeel Butt Advocate High Court

Dist. Govt. KP-Provincial District Accounts Office Bunair at Dagga Monthly Salary Statement (January-2024)



Erson in Information of Mr M	UNTZAIR KHAN d/w/s of SALAWAR
Personnel Number: 00274996	CNIC: 1510159970259
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NTN:

Length of Service: 28 Years 08 Months 004 Days Date of Birth: 02.04.1975 Entry into Govt. Service: 29.05.1995 **Employment Category: Active Permanent** 80000554-DISTRICT GOVERNMENT KHYBE Designation: PRIMARY SCHOOL TEACHER DDO Code: BD6009-Payroll Section: 001 GPF Section: 001 Cosh Center: 902,814.00 (provisional) GPF A/C No: GPF Interest applied GPF Balance: Vendor Number: - -Pay Scale Type: Civil BPS: 15 Pay scale: BPS For - 2022. Pay Stage: 18 Pay and Allowances: Wage type Amount Wage type Amount 59,560.00 1001 House Rent Allowance 45% 3,524.00 0001 Basic Pay 1210 Convey Allowance 2005 2,856.00-1300 Medical Allowance 1,500.00 1,000.00 2148 15% Adhoc Relief All-2013 740.00 1911 Compen Allow 20% (1-15) 2199 Adhoc Relief Allow @10% 501,00 2316 Teaching Allowance 2021 3,224.00 Dispr. Red All 15% 2022KP 5,610.00 2347 Adhoc Rel Al 15% 22(PS17) 5,610.00 2341 2378 Adhoc Relief All 2023 35% 0.00 20,153.00 Deductions - General ÷. Wage type Wage type Amount Amount **GPF** Subscription 3015 4,290.00 3501 Benevolent Fund 1,200.00 3609 Income Tax 1,339.00 <u>3990</u> Emp.Edu, Fund KPK 135.00 4004 R. Benefits & Death Comp: 600.00 0.00 **Deductions - Loans and Advances** Loan Description Principal amount Deduction Balance 300,000.00 -6505 **GPF Loan Principal Instal** -10.000.00 290,000.00 **Deductions - Income Tax** Recoverable: 6,692.20 Recovered till JAN-2024: 8,443.00 Exempted: 5044.18 Payable: 20,179.38 104,278.00 Gross Pay (Rs.): Deductions: (Rs.): -17.564.00Net Pay: (Rs.): 86,714.00 Payee Name: MUNTZAIR KHAN Account Number: PLS 5810-6 Bank Details: HABIB BANK LIMITED, 220932 SAWARI, BUNER, SAWARI, BUNER, BUNER **Opening Balance:** Availed: Earned: Balance: Leaves: Permanent Address: ' City: BUNER Domicile: NW - Khyber Pakhtunkhwa Housing Status: No Official Temp. Address: Email: khanmuntazir150@gmail.com City: M. MUAZZAN BUTT Advocate Supreme Court

System generated document in accordance with APPM 4.6.12.9(50070993/24.01.2024/v3.0) * All amounts are in Pak Rupees * Errors & omissions excepted (SERVICES/02.02.2024/20:10:34)

OFFICE OF THE DISTRICT EDUCATION OFFICER(M)PRIMARY BUNER AT SOWARI APPOINTMENT. Appointment of the following PTC Trained candidate by ordered against the posts of PTC on temporary @ Rs=1480 P.M.pi usual allowance in BPS No.7 i.e. 1480-81-2695 as admissible under the reles at the institution noted against each in the interest of public service w.e.f. the date of their taking over charge. S.No.Name & Designation/Address. Posted at. Remarks. Muntazir Khan 3/0 Salawer Khan Vill;Kalpani. GMPS, Raj Wand Against V; Post. (Chagharzai) TERMS AND CONDITIONS. 1-Their appointment are purely temporary and liable to termination at any time with out any assigning/reason or notice. 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 are required to produce health and age certificates I from Medical authority concerned bafore taking over charge provide they are not in Governement servant. ţ 4-They should not be allowed to take over charge if their age is less then 18 years or above 30 years. 5-Their appointment ere subject to further conditions that they are domicile of District Buner. 6-All Educational character and domicile certificates should 15 be throughly checked before handing over charge and if nerver necessary they should be verified from the institution Katser concerned. 4 7-If they fail to take over charges of the posts within 14 days of the receipt of these orders the offer of appointment shall 鹄 014 be automatically stand cancelled is. 8-No TA/DA/TG etc allowed. . . . Ľ (SULTAN HUSSAIN) DISTRICT EDUCATION OFFICER(M) PRIMARY BUNER AT SOWARI. 11.2 Endst;-110, Sos-B_/F.No.25/DEO/Supdt; Dated; - 28 5. /1995. Copy of the abover is forwarded for information and N/action, <u>,</u> Л. 175 to the;-1-The Director Primary Education NWFP Peshawar. 2-Sub Divisional Education Officer(%)Dargar. 3-District Accounts Officer Buner at Daggar. A-Candidates concerned. EDICATION OFFICER(M) DIST ATTESTE BUNER AT SOWARI. PRIMARY M. MUAZZAM BUTT Advocate Supreme Court

Annexure OP GOVERNMENT KITYBER PAICHTUNKHSWA ESTABLISHMENT DEPARTME 17 10 (REGULATION-WING) ģ Ű -5 NOTHPICATION 12.5 1 1 1 1 The chief Minister of Khylser Pokhlukkiwa is pleased to direct likat in the Khylser Pokhlukkiwa and Transfert Rules toeb and the second reading to the second reading to the second reading the second reading the second reading the second reading to the second reading the second r Daled Perunwarthe, 00 / 8/2020 Kin the Civil Servenis (Appointment, Promotion and Transfer) Rules. 19eb, the anis further amendane: it shall be made, namely: 疳! AMENDMENT in rule 7, sub-rule (5) shall be detend. GOVERNMENT OF THE KHYDER PAKHTUNKHWA CHIEF SECRETARY MISEND & EVEN DATE Additional Chief Secretary, Oovi. of Khyber Pakhtunkhwo. Planning ľ, Capy of forwarded to:-The Schlor Member Board of Revonue, Khyber Pathrunkhwa. All Administrative Secretaries to Gove of Khyber Palatinkhwa. ۱. The Prinsipal Secretary to Governor, Knyber, Pakhjunkhwa, The Prinzipal Societary to Ogvarion, Nitven ravijunkniwa, 2 All Divisional Commissioners in Khyber Pukbrunkhwa All Her's of Attached Departments in Knyber Pikhlunkhwa. 3 All Auffinomous/Semi Autonomous Bodies in Khyber Pakliunkhwa 4. 5. All Defility Commissioners in Khyber, Pakhtunkhwa 6. The R. gistrar, Khyber Bakhunkhwa Service Tribunal, Peshawar, 10. The RELISTRE Peshawar High Court, Peshawar. The Registrer, Knyber Rakhlunkhwa Service Loounal, resnawar. NhoSistetery, Khyber Pakhlunkhwa Public Service Commission, Peshiwar, Nte Dispity Diructor (17), E&A Department. All Section Officer (Admn), Administration Department with the request The Section Officer (Admn), Administration Department with the request 7. s. The Section Officer (Admn), Administration Department with the request to 11 12 he Caretaker, Administration Department. arrange 20 gazette copies. (WALLAH LATIF) DEPUTY, SECRETARY (POLICY ATTESTED MAIS BÁM BUTT a dvocate Supreme Court tri j:. í۳, у¢, s

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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 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.

GOVERNMENT OF THE KHYBER PAKHTUNKHWA

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(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.

ATTESIED M. MUAZZAMBUTT Advocate Supreme Court

(WARDAH LATIF) DEPUTY SECRETARY (POLICY)

÷ 10 -6 Annexure: 4 GOVRINNERST OF REPERL PARTTUNKINA ESTABLISUMENT DEPARTMENT 62 • No. 50(Polley)IIAAD/1-2/2020 Dated Pestinwar the June 06, 1823 ţ The Government of Kin her Prechundlows, Elementary & Scenadary Pelmentan Department, CUIPANCE RECARDING IIELEDTON OF HULF 7/51 IN THE CUIVER PARTEURING CIVIL SERVANTS (APPOINTERENT, EUROPTION AND THANSPERID RULES, 1989. • Subjecti -÷* 1 can directed to teler to your felter No. SO(Primary-M)/T&SUD/2. ÷., Į ۰. 2/Appointment/2023 dated 18.04.2023 un the subject noted above and to state that Sub-Itula (3) of Rule-T of Khyber Pakhunkhuu Civil Servanis (Appointment, Promotion and Transfer) Rules. 1989 stands deleted vide, this department maiffentine dated 00.08.2020) thus, co provisión axists to decline or forgo promotion. The basic mitoasic behind the deletion of the told rate is simpl of preventing a civil servant from temptation for illicit gain by sucking to a single iterative postposition or to prevent those who that is force pramoties to evade possing/transfer or show tack of capacity to lackle higher responsibilities in case of promotion. Therefore, it is obligatory upon every civil servent to secon promotion in every condition. Fundemane, these afficerstativelies who do not camply with promotion order of the competent estimatily or up to evade promotion through different means shall be л. proceeded opplast under Khyber Pakhtunkinna Civil Servents (Ifficiency & Disciplina) (tules, ÷ , . ~ folihfully, 2011, please. \$7 3 ¢, վ քեսո) aπts (] att]) (Palley) . Me 150 è ۰. Radsi. Of even No & Jale Copy forwarded to those -. 1. PS to Special Secretary (Res): Buibblishment Department. 2. PA to Additional Secretary (Res): Buibblishment Department. 3. FS to Departy Secretary (Policy), Eurobildement Department. (differ (Polloy) 卿 . nettali uliai) 71.61 19 M. MUAZŽAM ВИТТ Advocate Supreme Court 142-2033 AZIZVLLAH VS GOVT OF PG43 è :

VERNMENT OF KHYBER PAKHTUNKHWA ELEMENTARY AND SECONDARY EDUCATION DEPARTMENT CIVIL SECRETARIAT PESHAWAR (Phone No.001-9223507)

No.SO (Primary-M)/E&SED/2-6/2023 Daled Peshaviar the, June 25⁶,2023

56/6/23

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

Aziz Ullah Khan Presideni Ali Primary Teachar's Association, KP

Sybject: -

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t: <u>GUIDANCE REGARDING DELETION OF RULE 7(5) IN THE KHYBER</u> <u>PAKHTUNKHWA CIVIL SERVANTS (APPOINTMENT, PROMOTION</u> AND TRANSFER) RULES, 1988.

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 05 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 data, time & vanue as mentioned

ábove, please.

Encl: AA

(MUHAMMAD ISHAQ) SECTION OFFICER (PRIMARY MALE)

Copy forwarded to that

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

E١ SECTION OFFICER

M. MUAZZAM BUTT Advocate Supreme Court

AP4442-2023 AZIZULLAH VS GOVT CF PG43

2 BIC No 50 (Primary-M)/6&56D/2-6/2023 Dated Peshawar the June 25th 2023 łţ То The Olrector Elementary & Secondary Education Department 2 Khyber Polchtunkhwa, Peshawar Aziz Uliah Khan President ł President All Primary Teacher's Association, KP i ÷ . . Subject: GUIDANCE REGARDING DELETION OF RULE 7(5) IN THE KHYBER 1 2.1 PAKHTUNKHWA CIVIL SERVANTS (APPOINTMENT, PROMOTION :, ٠, AND TRANSFER) RULES, 1989. . ÷ I am directed to refer to the subject noted above and to enclose here with a letter of Establishment Department latter 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. ł. You are, therefore, requested to depute a representative of your respective 2 Department to attend the meeting on a date, time & venue as mentioned above, please, Encl: AA (MUHAMMAD ISHAQ) i SECTION OFFICER (PRIMARY MALE) Copy forwarded to the: : 1. PS to Secretary, E&SE Department Khyber Pakhtunkhwa. -2 į I SECTION OFFICER (PRIMARY MALE) ì TESTE M. MUAZZAM BUTT Advocate Supreme Court ł WP4442-2023 AZIZULLAH VS GOVT CF PG43 ġ ÷

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

A meeting regarding the subject matter was hald on 06-07-2023 at 11:00 AM under the Chairmonship of Additional Secretary Establishment in his office. The following othended the mealing,

28	NAME .	+ DESIGNATION
1	Mr. Fazal Wahid	Deputy Director Establishment of Directorate Elementary 4 Secondary Education Department
2	í Mr. Asir Ulloh	Provincial Prosident All Filmary Teachers
3	Mr. Ratagol Ullah	General Secretary APIA Peshawar 1
4	Muhammad Ishaq	Section Olilcar (Primary) ELSE Department Civil . Secretarial Khyber Pakhlunikhwa Peshawar

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

Aller Ihreadbore discussion il was decided that Directorate of Elementary 2 3. 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 mealing ended with a vote of thanks from the Chair.

(Abduliah) Addillanai Secretary (Establishmani) E&SE Department

WP4442-2023 AZIZULLAH VS GOVT CF PG43

(Mr. Fozal Wahld) Deputy Directord E2SE Department

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(Mr. Rolaget Ullah) General Societary APTA Peshowor

(Mr Aziz Wath) Provincial President rimory Teachers'Association Khyper Pathlunkhwa

(Muhaba

Section Officer (Primary-Mole)' E&SE Department

тΕ AT M. MUAZZXM Advocate Supreme Court

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Annexure

MINUTES OF THE MEETING REGARDING APPLICATION SUBMITTED BY MR AZIZ UILAH 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 05-07-2023 at 11:00 AM under the Chairmanship of Additional Secretary Establishment in his office. The following attended the meeting

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Sti	NAME i	DESIGNATION
1.	Mr. Fazal Wahld	Deputy Director Establishment of Directorate Elementary & Secondary Education Department
2	Mr. Aziz Ullah	Provincial President All Primary Teachers Association: Khyber Pakhtunkhwa
3.	Mr. Refagat Ullah	General Secretary APTA Peshawar
4.	Muhammad Ishaq	Section Officer (Primary) EBSE Department Civil Secretarial Khyber Pakhtunkhwa Pashawar

2. The meeting started with resitation from The Holy Quran. The shalr 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.

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E&SE Department	Ì	I			
(Muhammad Ishaq) Section Officer (Primary-M	lale)	· · · ·			
(Mr. Rafaqat Ullah) General Secretary APTA Peshawar		:	· · ·	- · ·	
Provincial President All Primary Teachers Assoc Khyber Pakhtunkhwa	dation		• •		
(Mr. Fazal Wahld) Deputy Director-1 E&SE Department			<u>_</u>	• •	· î

Kliyber Pakhtunkliwa, Peshawar 81<u>45</u> F.No. JHSST/WGeneral Cases Dated 2-1--7-- 2023 le l@gmall.con Phone: 691-9223144 Email: establishing 1 ۰. Τо 2 The Socillan Officer (Primary-Male), ł, Elementary & Secondary Education Department, Klyber Pakhtunkinya Peshawar... MINUTES OF THE MEETING Subject: -Dear Sir, I am directed to refer to the latter NaSO(Primary-ADE&SED/J-I/ G.Misc/Minutes of the Masting/IST/2023 dated 10-07-2023 on the subject citeil abave and to present brief history about the background of the case as under: That Government of Khyber Pakhtunking Establishment Department (Regulation Wing) deleted Rula 7(3) in the Civil Servants (Appaintment, pramation & Transfer Rules 1989) vide notification No. No. SOR-VI (E&AD)/1-1/2020 dated 06-08-2020. That this office sought guidance from your good office in the following words vide letter No. 6987 dated 06-02-2023. (1) Now It is obligatory upon the civil servant to accept Promotion in every condition. (11) It is the prerogative of the civil servant to either accept or turn down the offer of promotion, That youn good affice forwarded the same to the quarter concerned vide letter No.SO (Primary-M) E&SED/1-1/Appaintment/2021 for necessary guidance. They the Government of Khyber Pakhumkhwa Establishment Department (Regulation -• P Wing) vida latter No.SO (Palley) E&AD/1-1/2020 dated 6-06-2023 categorically stated that there exists no provision to decline or forgo promotion. It is abiligatory upon every . civil servant to accept promotion under every condition. The same was received by this office from your good affice wide letter No.50 (Primary-M) E&SED12-2/Appolniment/2023 dated 12-06-2023. • That, in the light of the minutes of meeting dated 6-07-2023 held under the Chairmonship of Han, Autilianal Secretary Establishment at his office this office has - - heen asked for submission of consulidated case. ÷., , In view of the above, this office is of considered opinion that the deletion of Rules 7(5) have affected negatively a luge numbers of Female Teachers. Thus it is proposed that Teachers below BPS-16 may be exempled of implications of the amendment in the rules ibid provided they subpit their vertiten refusal prior to conduction of the meeting of Departmental Promotion Committee. The case is submitted for persial and necessary actions please. ۲ 12013 Assistant Director (Estud M-I) -١, þ Elementary & Secondary Education Ŕ . Endst: No. Copy of the above is to :-1. PA to Director Local Directorais. 2. Master Copy. Aisistons Director (Establi-I) Elementary & Secondary Education Klipher Pakhtunkhuro . - 14 442-2023 AZIZU VH VS GOVT OF PG4: F BUTT M. MUAZZAM Advocate Supreme Court

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DIRECTORATE OF ELEMENTARY & SECONDARY EDUCATION, KPK

PESHBURD

(21-7-1013)

To:

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Section Officer (Primary Male)

Etementicity & Secondary Education Department 14PK, Peshowar.

Subject : Minutes of Meeting

Dear Sir; 9 an directed to refer to letter No. (SO. Among - TV) E & SED / S-1/GN/184/ Minstes of meeting (PST/2012 dated 10-7-2023 on outject cited above and to

present brief history about background of cure as under. That Covernment of KP Established dependment (Regulations Whyg) delided rule 7(5) in Civil Servints (Appintment, pomotion of Transfer Rils 1909) vide notification No. No. SDR-VI(ESAD)1-3/2020 dated ob-08-2020.

That this office sought suidance from your good office in the following words vide latter No. 5987 dated ob-or-2012

- is Now it is abligatory upon civil screament to accept promotion. (i) Still presignitive of civil servant to ether accept/turndown the
- offer of promotion. That you good office forwarded the came to quarter concerned Mde letter No. So (Primary 1) E& SED 12-2 /Appointment (2023 for necessary

. That the government of KP-ED (Regulation Wing) vide letter No. So (Reliey) EGAD (1-3)2070 dated 6-06-2073 categorically stated that there evids no provision to decline forgo promotion. It is abligatory upon every civil servent to accept panetin, under emply condition.

. That in light of the mainutes of the meeting dated 6-07-2023 held under the Chairmanship of Hon. Additional Secretary Establish -ment at his office. This office has been asked for submission of

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

The case is submitted for persol and necessary actions please.

· Copy of the closue to; 1. PA to Director Local Directorate

2. Master Copy

Autohud Director Elementary & Secondary Education Khyles Richhonkhula.

ATTESTED

M. MUAZZAM BUTT Advocate Supreme Court

WF4442-2023 AZIZUTLEAH VS GOVT OF PG43

	Appovuso E
	Annexure
	ELEVENTARY AND SECONDARY EDUCATION DEPARTMENT
	(Phone Ho.091-9223587)
	1/0. SO(Primary-M)EaSED/2-2/Appointment-Rule /2023
1 () () () () () () () () () (Peshawar Dated 23rd August, 2023
	The Secretary to GovL of Khyber Pakhtunkhwa, Esteblishment & Administration Department.
	Pochawa
	SUBJECT: - GUIDANCE REGARDING DELETION OF RULE 7(5) IN THE CIVIL SERVANT (APPOINTMENT, PREMOTION & TRANSFER RULES
	1989).
	Sear Su,
· • · ·	J am directed to refer to your latter No. 50(Policy)/ EBAD/ 1-3/2020 dated
	1557 June 2023 and to state that after deletion of rule 7(5) Khyber Pakhtunkhwa Civil
	Servare (Appionement, Promotion & Transfer Rules 1989) It has been intimated that those
	officient officies who do not comply with promotion order of the competent automity or
	by to evade promotion through different means shall be proceed under knyber
	Petanburkhwra Civili Servent (Efficiency & Discipline) Rules, 2011.
	2. In this connection it is submitted that in some cases lady teacher of primery
	in and anothers have in face serious inconvience while only have to
	the sector state with an residential of validation for the sector of the
	the are married with kids and eider father of momentality with press
1	the set of the set of the set of set and the set of the
	a in view of the above, the said amendment may be reconsidered to the
	3. In view of the block hools.
	interst of lady teacher in primary schools.
	(HUHAH HAD ISHAD) SECTION OFFICER (PRIMARY MALE)
	SECTION OF TOP T
	Copy (covarded to the:
	1. Director EBSE Knyber Pakhtunktwa.
	1. Director EELSE Knyber Pakhtunkhwa. 2. PS to Secretary, EBSE Department Knyber Pakhtunkhwa.
۱. <u>.</u>	TO (TOHOARY NALE)
	SECTION OFFICER (BARE AALE)
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	ATTESTED
	WP4447-2073 AZIZULLAH VS GOVT CF PG43
	M. MUAZZAM BUT'?' Advocate Supreme Court
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No.55 (Primary -M) ESSED (3,-2) Appendment - Rule (2023 Pedrawar Doted 23rd August, 2023.

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

SUBJECT :

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Quidance regarding deletion of Rule 7(5) in the Civil Servant (Appointment, Promotion & Transfer Rules (1989)

Dear Sir,

General And Antiparties of the selected to refer to your letter No. Solfminning 11-3/2020 dated 6th June 2023 and to state that after delettor of Rule 7(S) Khyber Pathtunkhuno Civil Servant (Appointment, Pomotion and Transfer Rules 1989) 9t has been instimated that those officers officials who donat comply with promotion order of the competent authority or try to evade promotion though different means shall be proceed under Khyber Pakhtunkhung Civil Servant (Efficiency and Discipline) Role 2012.

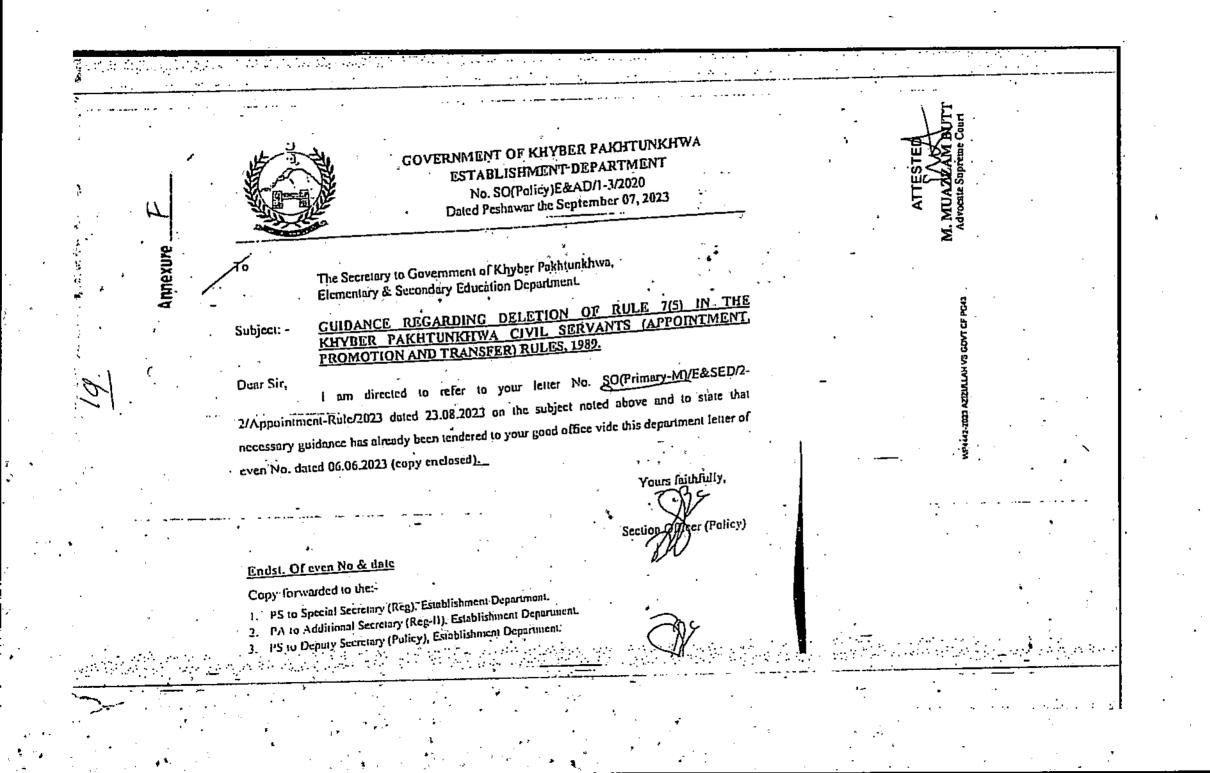
In this connection it is submitted that in some cases lady teacher of primary level who avail such promotion have to face serious incovenience while they have to perform duties in the remotest stations with no residential / transport facilities. Mast of them are married with kills and elder father of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

L Director ESSE Ktybe Hightherthura

Unuhammad Ishay) (Muhammad Ishay) Section officer (Rhinap) Male)

> M. MUAZZAM BUT Advocate Supreme Court

PS to Secretary, E & SE Deportment Kinder Astronomizer



GOVERNMENT OF KHYBER PAKHTUNKHWA ESTABLISHMENT DEPARTMENT No. SO(Policy)E&AD/1-3/2020 Dated Peshawar the September 07, 2023 Į î То The Secretary to Government of Khyber Pakhtunkhwa, Elementary & Secondary Education Department GUIDANCE REGARDING DELETION OF RULE 7(5) IN THE Subject -KHYBER PAIOITUNKHWA CIVIL SERVANTS (APPOINTMENT, PROMOTION AND TRANSFER) RULES, 1989. : ÷ Déar 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). ł, Yours faithfully, Section Officer (Policy) ! Endst. Of even No & date ł 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. ы ^тун Section nicer (Policy) ATTESTED . M. MUAZZAM BY WP4442-2023 AZIZULLAH VS GOVT CF PG43 Advocate Supreme Court ; . ; j,

To,

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

Annexure.

Dated: 26-01-2024

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- 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 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 Knyber 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

Mensie

Muntažir Khan Son of Salawar Resident of Gakra District Buner

Advocate 🎂

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ATTESTED M. MUAZZAW BUTT

or suite Court

The second second second and constant Point and Khyber Pakhtunkhwa A ziz, I. Minfi (Chan) President O 0333-0314648 - oztavoan1973@ganall.co O naipigk apta APTA House) Gove Primory School Ne Guibahar Peshawar City <u> اَل رِاتمزی محمر دایسوی ایش (ایٹا) جسر ب</u> مخيرا Annexure بمالب : ميكرلدا المنزل ٥ ميكناد لا الم كيش فيم يتواود مال الديراترك لم وعوى التي فير يتوك جاب مال مخده فى ب كر برا موشو ير الله ب يى ير 1 1 1 كر مريكول بدم كى خاص الل ب بردم شوكا ايك تاوى الداكر عالم الك الرمى -بجدير في فعن الك دالد برا موضو د لمى ودد بكر التحد بالرسال تك بردم خنو فيم ال تك يحد مدال تك بالرام ك برد موشو تعم الد عن حم جم ، ، حال تب بر عام پُدوم شود علی ، اگر تین کی ، ۲ جس کے تلاف ادا بندان دولا کے معان کاردانی کر اے کا کی ہے : دواصل نے 1 فرق الملیکی بادی الدانی حقل کا کمل عناف دول سے صرب کی دو دولا اور پہلی منا آف تک تک خواتی اسکاد کو ات 6-2000 ایک مام ماللت یم کا ایمد کا پرد من او مصللا میما یک بادی المانی حول کا طلل مدی به کرار فیم پختر فرا ی بر حق ے نایدانی ، خدیں " کا اس به ایک ماللت یم ب ظار بیکیش بر Ease کا میدند برک جراب یم کی بجاج ، برک او بادی المانی موق کا خلال به الد مرود من ورود المرود المرود و مرود المرود ال مرود المرود الم س سليط عن آب بلو الدين (DEOs) الى الى الدار كرايك فسوى مرامل بادى كيا جلسة عكد النابي عن ب كل / لييل براترى اماك، كر ذال المعد الدحرك م ينا باع ÷. مرحد ولينين وادكا ور على يرام ما المان كر وتن طور جر مرك مسلمة شرعا مريكا ب دواجم و فرق وكمة الدكر قب ماميان فوق المحش الكر معد جرك براتم ل المكان فسرما فيول براتم ل المان، كر الما وال الد t. *شکری* مزن الله شان مربالى مدر FUIL ال باترى تجرز ايرى اين خير بتونوا ATTESTED M. MUAZZAM BUTT Advocate Supreme Court WP4442-2023 AZIZULLAH VE GOVT CF PG43

07.05.2024

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Learned counsel for the appellant present.

Let a pre-admission notice be issued to the 2. 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 fearned counsel for the appellant.

05. Alongwith the service appeal there is an application for suspension of Notification dated 06,06,2023 and letter dated 23,08,2023 fill the final disposal of main service appeal. In the meanwhile, no adverse action shall be taken against the appellant till next date of hearing.

Certified to be true cons(Muhammad Akbar Khan) Member (E)

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10-1-1-6 of Analisation. Date of Pro Number e. Convisit Ungani --------Ĵ, Tatal..... Date of Constant Constant 13-6-25-Nume of a Date of Cr

M. MUAZZAM B Advocate Supreme Co

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JAKALAT NAMA

BEFORE THE SERVICE TRIBUNAL PESHAWAR

MUNTAZIR KHAN

Versus

Government of KP & others

I (the Appellant)

do hereby appoint and retain

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

ASSOCIATES OF MUAZZAM LAW FIRM

to act and appear for me in the above Suit and on my behalf to conduct and prosecute (or defend) the same and all proceedings that may be taken in respect of any petition connected with the same or any decree or order passed therein and Applications for review to file and obtain return of documents, and to represent me/us and to take all necessary steps on my/our behalf in the above matter.

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

APPELLANT

÷,

Appellant

Respondents

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MUHAMMAD MUAZZAM BUTT Advoçate Supreme Court MUHAMMAD ADEEL BUTT

BASSAM ANDIAD STDDIQUI Advocate High Court