FORM OF ORDER SHEET

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	Appeal No. 2214/2024						
S.No.	Date of order proceedings	Order or other proceedings with signature of judge					
1.	2	3					
1-	30/10/2 024	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					
	e en	given to counsel for the appellant.					
	<u>-</u>	By order of the Chairman					
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BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHUWA

- C.M No	P of 2024
In Ref to	•
Service Appea	1 No 7 2/4 2024

Muhammad Ilyas

VERSUS

Secretary to Government of Khyber Pakhtunkhwa, & others

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ADVOCATE

M. Muazzam Butt

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHUWA

In Ref to				
			•	
		Service Appeal No_	b	/2024

Muhammad Ilyas son of Muhammad Yousaf, SPST (BPS-15)

Lalo Bandi, PO Mansehra, Tehsil and District Mansehra

.....Appellant

VERSUS

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

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 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.
- That Government of K.P without following the rules position mentioned in Para 6 above promulgated Notification No. SO (Policy) E&AD/1 3/2020, dated 06/08/2020, communicated to Respondent No.2 vide letter dated 06/06/23 wherein it has been made mandatory to the employees to avail the promotion, otherwise, disciplinary action shall be taken against the employees. The impugned Notification is reproduced as under:-

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

- 5. That as per notification No. SD (Policy) /EDAD/1- 3/2020 dated 06/08/2020, the right of foregoing of promotion was withdrawn and the Government of Khyber Pakhtunkhwa Establishment Department (Regulation Wing) deleted Rule 7(5) in the Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 vide notification no SOR-VI (E & AD)/1-2/2020 dated 06-08-2020. Copy of Impugned notification No. SD (Policy) EV AD/1- 3/2020 dated 06/08/2020 is attached as Annexure B
- That the Directorate of Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar asked for guidance regarding deletion of Rule 7(5) in Khyber Pakhtunkhwa Givil 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

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 F</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
- 10. That the petitioner feeling aggrieved, filed Representation to the respondents in person, and also approached to respondents through APTA President but the grievances of the appellant have not so far been redressed.

 Copy of Representation against the said notification is annexed as Annexure 6 & 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:-

GRÖUNDS:-

- 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.

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

It is, therefore, humbly prayed that on the acceptance of the instant Service Appeal; the impugned Notification bearing No. SO (POLICY) E&D/1-3/2020 DATED 06/08/2020, communicated to Respondent No.2 by Respondent NO.1, vide letter dated 06/06/2023, may please be declared and ordered to be struck down being Void, Ultra vires to the Constitution of Pakistan and against the fundamental principles of natural justice.

It is further prayed that no penal action as proposed and envisaged in letter dated <06/06/2023 may be declared as unlawful, illegal and without having any legal effect.

Any other relief, which this honorable Tribunal deems fit and proper in the circumstances of the case, may also be granted/to the appellant.

APPIDAVIT:

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

Muhamidad Muazzzum Butt Advocate/Supreme Court

Appellant

Muhammad Adeel Bigt Advocate High Court

Bassam Alfmad Siddiqui Advocate High Court

LL.M- Human Rights

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHUWA

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

Muhammad Ilyas

VERSUS

Secretary to Government of Khyber Pakhtunkhwa, & others

APPLICATION FOR SUSPENSION OF IMPUGNED NOTIFICATION BEARING NO. SO (POLICY) E&D/1-3/2020 DATED 06/08/2020, COMMUNICATED TO RESPONDENT NO.2 BY RESPONDENT NO.1, VIDE LETTER DATED 06/06/2023 TILL THE FINAL DISPOSAL OF CASE IN HAND.

Respectfully Submitted:-

- 1. That the instant application may be treated as part and parcel of service appeal of the appellant.
- 2. That the appellant has brought a good prima facie case and balance of convenience also lies in favor of the appellant.
- 3. That there is likelihood success of the appellant in the lis. And if the notification bearing No. So (Policy) E&D/1-3/2020 Dated 06/08/2020, communicated to Respondent No.2 by Respondent No.1, Vide Letter Dated 06/06/2023 is not suspended the appellant would suffer irreparable loss.
- 4. That valuable rights of the appellant is involved in the case.

Déponent

In view of the reasons, it is humbly requested that the notification bearing No. So (Policy) E&D/1-3/2020 dated 06/08/2020, communicated to Respondent No.2 by Respondent No.1, Vide Letter Dated 06/06/2023 may kindly be suspended till the final disposal of the main appeal in hand.

AFFIDAVIT

I (the appellant) do hereby solemnly, stated on oath that the contents of foregoing application are true and correct to the best of my knowledge and belief and nothing has been concealed therein this Honorable Court.

Through

Muhammad Muazzam Butt Advoçate Supreme Court

Appellant

Muhammad Adeel Butt Advocate High Court

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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) 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, Knyber 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, Reshawar 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)

A



GOVERNIGENT OF GUYUKE PAKITUNKUWA ESTABLISHARM' DEPARTAINAT Na. SO(Palley) lite ADJ (-1/2029) Dated Pestiawas the June 06, 2023

The Covernment of Kin ber faktionalism. Elementary & Secundary Jelifeb Lan Pepartment.

Subject: •

GUIDANCE BEGARDING DICETTON OF BULK 715)
GUYDEL PAIGITUNICIWA CIVIL BEILVARTH (AUPOI
PHOMOTION AND THANSPELL BULES, 1982,

I on altested to telet to your letter No. SOffrimory-Mystacsup)2-Dear Str. VAppointment/2023 thated 18,04,2923 no the subject noted above and to stole that Sub-Rule (5) of Rule-7 of Chyper Publishing Clvs Servings (Appolational, Promotion and Transfer) Rules, 1919 stands deleted vide this department notificultus dated 06.08.2020; thus, no provision exists to dealine or forgo promotion.

- The basic milenale nehind the detection of the ibid role is almost at preventing a civil servent from temptation for litted gain by steking to a single lucrative post/position or to brevent those who lend to forto mountains in evade hasting/transfer or show lock of ecosetty. to tackle higher emponsibilities in case of promotion. Therefore, it is obligatory upon every sivil servent to accept promotion in every candition.
- Funkermore, those officers officials, who do not comply with promotion order of the competent authority or try to evado framellon through different means shall be proceeded against under Klyber Pakhingkings Civil Servents (Efficiency & Discipline) Rules, Yours faithfully. ZOLL, picose.

Undst. Of oven Na & fale

Copy forwarded to that-

1. PB to Special Secretary (Reg.); Establishment Department.
2. PA to Adultional Secretary (Reg. II), Establishment Department.
3. PS to Depart Secretary (Policy), Establishment Repartment.

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WP4447-2073 AZIZINLAH VS GOVT CF PG43

-Overnment of Koyber Pakhtunkhwa ELEMENTARY AND SECONDARY EDUCATION DEPARTMENT CIVIL SECRETARIAT PESHAWAR

(Financial Mo.091-9223587)

NO.SO (Primary-MHEGSED/2-6/2023 Lialed Poshaviar the, June 26*,2023

The Director

Elementary & Secondary Education Department

Khyber Pakhlunkhwa, Peshawar.

Aziz Ullah Khan President

All Primary Teacher's Association, KP

Subject:

GUIDANCE REGARDING DELETION OF RULE 7(5) IN THE KHYBER PAKHTUNKHWA CIVIL SERVANTS (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. 50 (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 11:08 AM in this department under the Chalimanship of Additional Secretary (Estab) E&SE Department in his office.

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

Engl: AA

MUHAMMAD ISHAO SECTION OFFICER (PRIMARY MALE)

Copy forwarded to the:

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

SECTION OFFICER

42-2923 AZIZULLAH VS GOVT OF PG43

BIC

No SO (Primary-M)/E&SED/2-6/2023 Dated Peshawar the June 254 2023

To

The Director
Elementary & Secondary Education Department
Khyber Paiditunkhwa, Peshawar

Aziz Ullah Khan 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 Malii)

Copy forwarded to the:

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

SECTION OFFICER (PRIMARY MALE)

WP4442-2023 AZIZULLAH VS GOVT CF PG43

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MINUTES OF THE MEETING | REGARDING APPLICATION SUBMITTED BY MR. AZIZ UILAN PROVINCIAL PRESIDENT ALL PRIMARY TEACHERS ASSOCIATION XHYBER PAXHTUNXHWA REGARDING OF DELETION OF RULE 7(9) 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 Chalmanship of Additional Secretary Establishment in his office. The tollowing attended the meeting.

SB	NAME	DESIGNATION
) 	Mr. Pazol Wahld	Deputy Director Establishment of Otrectorale Elementary & Secondary Education Department
2	i Mr. Azir Ullah	Provincial President All Primary Teachers Association Khyber Pakhlunkhwa
3	Mr. Ralagal Ullah	General Secretary APTA Pashawar
4	Muhammad Ishaq	Socion Olicer (Primary) ESSE Department Civil Sociolarial Khyber Pakhlunkhwa Peshawar

The meeting started with recitation transition the Haty Ouran, the chair welcomed
the participants. The Geputy Director (Establishment) of Directorate of Elementary &
Secondary Education briefed the forum regarding agenda tiem in detail.

3. After threadbare discussion it was decided that Otreclarate at Elementary & Secondary Education Department may examine the case property and submit a self-contained/consolidated case that anward submission to Establishment Department for further necessary action.

ine meeting ended with a vale of thanks from the Chair.

(Mr. Fazal Wohld) Dapuly Obselor-l EASE Department

(Mr. Rajagal Ullah) General Secretary APTA Peshawar (Mr Axiz Ullah)
Provincial President
All Primary Teachers Association
Khyber Pathlunkhwa

(Muhammad (Mag)
Section Officer (Primary-Male)
EESE Department

(Abdullah) Addillanal Sacralary (Establishment) E&SE Department

WP4447-2023 AZIZULLAH VS GOVT CF PG43

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

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

SII NAME I	DESIGNATION
1. Mr. Fazal Wahld	Deputy Director Establishment of Directorate Elementary & Secondary Education Department
2 Mr. Aziz Ullah	Provincial President All Primary Teachers Association: Khyber Pakhtunkhwa
3. Mr. Rafaqat Ullah	General Secretary APTA Pashawar
4 Muhammad Ishaq	Section Officer (Primary) E&SE Department Civil Secretarial 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 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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(Mr. Fazal Wahld)		
Deputy Director-1		
E&SE Department		1
Provincial President		
All Primary Teachers Association		
Khyber Pakhtunkhwa	. •	
(Mr. Rafaqat Ullah)		
General Secretary APTA		. •
Peshawar		
(Muhammad Ishaq)	. *.*	.
Section Officer (Primary-Male)	·	
E&SE Department		
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DIRECTORATE OF ELEMENTARY & SECONDARY EDUCATION, KPK

To:

PESHAWAR (21-7-1013)

Section Officer (Primary Male) Elementory & Secondary Education Department LPK, Peshowar.

Subject: Minutes of Meeting

Down Sir; I am directed to refer to letter No. (SO. Rimany - TV) E & SED /5-1/GMill Minutes of meeting [PST/2023 dated 10-7-2023 on subject cited above and to present bold history, about background of cure as under.

. That Government of LP Establishment department (Regulation Wing) deleted rule 7(5) In Civil Servonts (Applintment, permitting Transfer Pules 1989) vide notification, No. No. SDR-VI(EZAD) 1-3/2020 dated 06-08-2020.

· That this office sought guidance from your good office in the following words vide letter No. 6987 dicted objections

(i) Now it is obligatory upon and sensont to accept momentum. (ii) It is prerogative of civil sevent to elliner accept/terndown the

offer of promotion.

• Their your good office forwarded the came to appoint concerned wide letter No. So (Primary M.) EGSED/2-2/Appointment (2023 for necessary)

- . That the government of KP-ED (Regulation Why) vide letter No. 50 (Policy) EGAD 1-3/2070 dated 6-06-2073 categorically stated that there exists no provision to decline forgo promotion. It is obligatory upon every civil sement to accept paration under every condition.
- . That in light of the mainutes of the meeting duted 6-07-202) held under the Chairmonship 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 applican that the delation of Rules 7(5) have affected negatively a huge members of Female tecitions.

The case is submitted for person and necessary actions please.

Copy of the above to;

1. PA to Director Local Directorate

2. Master Copy

Authord Director Elementary & Secondary Education Khybes Rachbunkhula.

447-2023 AZIZULLAH VS GOVT GF PG43



Pliane: 021-9275344 -

Kliyber Paklitunkliwa, Peshawar

No. 14/55T/hUGaheral Coses

Empli: establellimentinale (@goustl.com

The Section Officer (Primary-Male). Elementer & Secondary Education Department, Khyber Palluunkhwa Peshawar.,

Subject: -Dear Sir.

MINUTES OF THE MEETING

Dear Sir.

Jam Greeted to refer to the letter No.50[Primary-60]E&SED/3-1/
G.Mise/Minutes of the Healing/PST/3073 dated 10-07-2073 on the sulffest effect above and to present brief history about the background of the case as under:

- That Government of Klyber Pakhtunkhwo Establishment Department (Regulation Wing) deleted Rule 7(4) in the Civil Servanir (Appaintment, premotion & Transfer Rules 1989)
 vide halficultaring No. No. SOR-VI (E&AD)/I-1/2020 dated 06-08-2020.
 That this office south guidance from your good office in the following words vide letter
 No.6987 dated 06-02-2023.
- - (i) Naw it troubligatory upon the civil servent to accept Promotion in every candition.

 (ii) It is the prerogative of the civil servent to other accept or tuen down the offer of
- pramoi en. youn golf office forwerded the rame to the quarter concerned vide letter Notico (Prima H-M) E&SED/2-2/Appointment/2023 for necossary putdance.
- That the Gave himent of Khyber Pakhaunkhive Establishment Department (Regulation Wing) vida letter No.SO (Policy) E&AD/1-1/2020 dated 6-06-2023 categorically stated that there exists no provision to 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 Na.50 (Primary-M) E&SEO/2-2/Appointment/2021 doted 12-06-2021.
- That, in the light of the minutes of meeting dated 6-07-2023 held under the Chairmanship of Han, Additional Secretary Establishment at his office this office, has heen asked for submission of consolidated ense.
- In way of the above, this office is of considered opinion that the deletion of Rules 7(5) have affected regulively a large manhers of Female Teachers. Thur is is proposed that Teachers below 018-16 may be exempted of implications of the amendment in the rules laid provided they submit their welten refusal prior to conduction of the meeting of Depurtmental framation Committee.

ase is submitted for permal and necessary actions please.

Austrulai Direttar (Estat M-1) Elementary & Secondary Education Khyber Pokhamkhwa

Endst: Na.

Copy of the libove is to:-

- PA to Director Local Directorate.
- Moster Copy.

Arststaut Director (Establit-1) Elementary & Secondary Education Kligher Paklitunkhwa

4442-2023 AZIZULLAH VS GOVT CF PG43



ELEMENTARY AND SECONDARY EDUCATION DEPARTMENT CIVIL SECRETARIAT PESHAWAR (Phono No.091-8223587)

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

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The Georgiany to Gord, of Khyber Pakhtunkhwa. Establishment & Administration Department, Peshaviai

GUIDANCE REGARDING DELETION OF RULE 7/5) IN THE CIVIL (APPOINTMENT, PROMOTION & TRANSFER RULES <u>19891</u>.

Come Sir,

I am directed to refer to your letter No. 50(Policy)/ E&AD/ 1-3/2020 dated 06" June 2023 and to state that after deletion of rule 7(5) Khyber Pakhtunkhwa Ovil Servent (Appliantment, Promotion & Transfer Rules 1989) It has been infimated that those officers/ officials vitro do not comply with promotion order of the competent authority or by to evade promotion through different means shall be proceed under Khyber Pearity unkirka Civil Servant (Efficiency & Discipline) Rules, 2011.

In this connection it is submitted that in some cases lady teacher of primary level vimo avail such promotions have to face serious inconvience while they have to perform duties in the remotest station with no residential or transport facility. Most of them are married with kids and elder father of mother-in-law who reed care. In such ැයය, there are negative effects on service delivery.

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

> MUHAHAM SI SECTION OFFICER (PRIMARY HALE)

Copy (crystrded to the:

1. Director EPSE Khyber Pakhbunkhwa.

2. PS to Secretary, EBSE Department Knyber Pakhtunkhwa.

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WP4442-7073 AZIZULLAH VS GOVT CF PG43

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In this connection it is submitted that in some coust body

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Civil Servant (Appointment, Armstion & Transfer Rules! Quidance regrading, deletion of Rule 7(2) in the

SUBJECT: Peshausia. Establishment and Administration Department,

The secretary to command of Khyba Pakhambhua.

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

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

Subject: -

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

Dear Sir,

I am directed to refer to your letter No. SO(Primary-M)/E&SED/2-2/Appointment-Rule/2023 dated 23.08.2023 on the subject noted above and to state that necessary guidance has already been landered 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.

- B/c-

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

To '

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

Subject: -

GUIDANCE REGARDING DELETION OF RULE 7(5) IN THE KHYBER PAIGITUNKHWA 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 GOVT CF PG43

Annexure - G

Τo,

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

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

3) Director Elementary and Secondary Education Department

Subject: 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-Sh (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 Pushawar asked for guidance regarding deletion of Rule 7(5) in Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 in respect of which the Establishment Department vide its letter No. SO.(Policy) E&AD/1-3/2020 dated Peshawar the June 06th, 2023 directed the Directorate of Elementary & Secondary Education that Rule 7(5) in the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 has been deleted vide notification dated 06-08-2020 and therefore, no provision exists to decline or forgo promotion and it is obligatory upon every civil servant to accept promotion under every condition. That Directorate of Elementary & Secondary Education Kligher 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 Rhyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 as a had negatively affected a large number of teachers and especially female teachers. In the meanwhile, the department vide its letter dated 07th of September 2023 directed the Directorate of Elementary & Secondary Education Khyber Pakhtunkhwa that, necessary guidance has already been provided to the department and therefore no provision exists to decline or forgo promotion and those teachers who do not comply with the promotion order of the competent authority or try to evade promotion through different means shall be proceeded under the Khyber Pakhrunkhwa Civil Servant (Efficiency & Discipline) Rules, 2014.

It is, therefore, humbly prayed that on the acceptance of the instant representation; the Notification bearing No. SO (POLICY) 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 and against the fundamental principles of natural justice.

Dated 1_70472024

X

MUHAMMAD ILYAS
SON, OF
MUHAMMAD YOUSAF
SOCT

Kligher Palehitunkhana

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WP4442-2023 AZIZULLAH VS GOVT CP PG43

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Learned counsel for the appellant present.

2. Let a pre-admission notice be usued to the respondents through TCS for submission of reply/comments. Appellant is directed to deposit TCS expenses within three days. To come up for toply/comments as well as preliminary hearing on 10.00.2024 before S.B. P.P given to learned counselfor the appellant.

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

derrified to be tene capy(Muhammad Akbar Khan)

Member (E)

Date of Proportion of Australian 12 To 1-6

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Date of stone of the conferment

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JAKALAT NAMA

BEFORE THE SERVICE TRIBUNAL PESHAWAR

MUHAMMAD ILYAS

Appellant

Government of KP & others

Respondents

I (the Appellant)

do hereby appoint and retain

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

ASSOCIATES OF MUAZZAM LAW FIRM

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

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

APPELLANT

ACCEPTED

MUHAMMAD MUAZZAM BUTT

Advocate Supreme Court

MUHAMMAD ADEEL BUTT

Advocate High Court

BASSAM AHMAD SIDBIQUI