## FORM OF ORDER SHEET

Court of	<u> </u>
Appeal No.	2295 /2024

· 11		peal No. <u>12245</u> /2024
S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	05/11/2024	The appeal presented today by Mr. Muhammad
		Muazzam Butt Advocate. It is fixed for preliminary hearing
		before Single Bench at Peshawar on 12.11.2024. Parcha Pesh
		given to counsel for the appellant.
		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

Service Appeal No 2295 2024

### Shafi Ullah Jan

## VERSUS

## Secretary to Government of Khyber Pakhtunkhwa, & others

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a,	Appeal and Verification	#	1 - 1/4
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4.	Copy of notification No. SD (Policy) EV AD/1-3/2020 dated 06/08/2020	В	7-8
5.	Copy of impugned Letter dated June 6 <sup>th</sup> , 2023	C.	9-11
6.	Copy of Minutes of meeting dated 06-07-2023	D	12-10
7. ——	Copy of Letter dated 23-08-2023	. E	16-1
8.	Copy of Impugned letter dated 07.09-2023	F	18 19
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ADVOCATE

M. Muazzam Butt

## BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHUWA

In Ref to

Service Appeal No 2295 /2024

Shafi Ullah Jan Son of Mira Jan, PSHT

GPS Wanda Sher Dil, Tehsil & District Lakki Marwat

.....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
- 3) Director Elementary and Secondary Education Department, Civil Secretariat Near MPA Hostel, Peshawar

.....Respondents

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:

 That the Respondents Department appointed the Appellant as Primary School Head Teacher.

Copy of appointment letter is annexed as Annexure A

- 2. That as per Khyber Pakhtunkhwa (Appointment/ Promotion/ Transfer) Rules, 1989, as well as in other sister services of the other provinces and federation as well, availing of promotion by the employees is always optional and the employees as a matter of right may avail or forego their promotion and the next employee in seniority list is to be promoted.
- 3. That some employees specifically have foregone their promotion as they could not serve in the areas where there is no facility of accommodation and no houses of their elders are available to look after them in far-flung and solitary mountainous hard areas, and as per Section 25 of per KP Civil Servant Act, 1973, rules to the extent of terms and condition is framed by the Chief Minister and such promotion rules are not made applicable with retrospective effect. The rules framed are published in the Gazette notification and part and parcel of KP Civil Servant Appointment, Transfer and Promotion Rules 1989.
- That Government of KP 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:-

 $\eta B$ 

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"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 Pdilittinidiwa Batabilianment 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
- 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 \$\mathbf{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 Annexure D
- 8. That the Respondent No.3 i-e. Directorate of Elementary & Secondary Education Rhyber Pakhtunkhwa also wrote a letter to the office of Establishment & Administrative Department vide No SO(Primary-M) & 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 provided a state to desiline or forget proposition and those taschers 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 C & 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 sorvice appeal is filed on the following grounds:

#### **GROUNDS:-**

416

. :

- 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.
- h. 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 will 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.
- That it is distinct submitted that on although 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 exchaquer and in consequence of foregoing promotion, pave way to the next employee in seniority, aspiring for promotion could be promoted.
- f. That the impugned promotion Notification dated 06/08/2020 communicated on 06/06/2023 is perverse, discriminatory, against the law, pungent and is a blunt blow of hammer on the rights of the appellant. It is not out of place to mention here that the appellant are teachers and have to look after their children as well as ailing dependent family members and in these circumstances in the presence of impugned Notification dated 06/08 /2023 communicated on 06/06/23 would not be able to serve in the department and which shall amount to the snatching of bread and butter of the poor employees

It is, therefore, humbly prayed that on the acceptance of the instant Service Appeal; the impugned Notification bearing No. SO (POLICY) E&D/1-3/2020 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.

Through

AFFODAVIT: 1

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I, (the appellant) solemnly 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.

fand |

Deponent

Muham rifid Munzzzam Butt Advocate Supreme Court

Λppellant

Muhammad Adeel But Advocate High Court

Bassam Alanad Sidliqui Advocate High Court

LL.M- Human Rights

#### BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHUWA

C.M No	P of 2024	
In Ref to		
Service Appr	eal Ne2024	

#### Shafi Ullah Jan

#### 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, GOMMUNIGATED 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.

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 Advocate Supreme Court

Appellant

Muhammad Adeel Butt Advocate High Court

Deponent

## District Accounts Office Lakki

Monthly Salary Statement (January-2024)





Personal Information of Mr SHAFI ULLAH JAN d/w/s of MIRA JAN

Personnel Number: 00297448

CNIC: 1120132066781

Date of Birth: 01.01.1967 Entry into Govt. Service: 24.09.1987 NTN:

Length of Service: 36 Years 04 Months 009 Days

**Employment Category: Active Permanent** 

Designation: PRIMARY SCHOOL HEAD TEACH

80003025-DISTRICT GOVERNMENT KHYBE

DDO Code: LK6004-

Payroll Section: 001

GPF Section: 001

Cash Center: 19

437,741.00 (provisional)

Vendor Number: -Pay and Allowances:

GPF A/C No: **GPF** Interest Free

Pay scale: BPS For # 2022

Pay Scale Type: Givil

GPF Balance:

BPS: 15

Pay Stage: 25

<del></del>	<del></del>				
Wage t	уре	Amount		Wage type	Amount
0001 Basic Pay	<del></del>	73,420.00	1001	House Rent Allowance 45%	3,524.00
1210 Convey Allowance	2005	2,856.00		Medical Allowance	1,500,00
1505 Charge Allowance		40.00		15% Adhoc Relief All-2013	845.00
2199 Adhoc Relief Allov	v@10%	659.00		Teaching Allowance 2021	3,224,00
2341 Dispr. Red All 15%		7,007.00		Adhoc Rel Al 15% 22(PS17)	
2378 Adhoc Relief All 20	023 35%	25,004.00	1	1370 22(1317)	7,007.00
			<del></del>	<u> </u>	

#### Deductions - General

<u> </u>	Wage type	Amount		Wage type	Amount
3015	GPF Subscription	-4.290.00	3501	Benevolent Fund	-1,200,00
3609	Income Tax	-3,289.00	4004	R. Benefits & Death Comp:	-600.00

#### Deductions - Loans and Advances

Loun	Description	Principal amount	Deduction	Balance
•				DHINDCE

Deductions - Income Tax

Payable:

51,391.38

Recovered till JAN-2024:

22,099.00

Exempted: 12847.68

Recoverable:

16,444.70

Gross Pay (Rs.):

125,086.00

Deductions: (Rs.):

-9,379.00

Net Pay: (Rs.):

115,707.00

Payee Name: SHAFI ULLAH JAN

Account Number: 5457-5

Bank Details: NATIONAL BANK OF PAKISTAN, 230964 NBP SERAI NAURANG NBP SERAI NAURANG, LAKKI

MARWAT

Leaves:

Opening Balance:

Availed:

Earned:

Balance:

Permanent Address: LAKKI

City: LAKKI

Domicile: NW - Khyber Pakhtunkhwa

Housing Status: No Official

Temp. Address:

City:

Email: shafiullahjanpsht@gmail.com

Edlig Planky

Notion Banginjad document in accordance with ARFN1 4.6.19.9(3) 8039/34.61.3034/43.0)

\* All amounts are in Pak Rupees

\* Errors & amissions excepted (SERVICES/02.02.2024/20:99:39)]

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As recommended /desired by the minister for Edu: N.W.F.D. Valle itte memur Ne. Lithephille-Selete, dated 8.8.1087, the foolowing appointment of the untrained PTC Teachers are hereby ordered in BPS-7 plus usual allewances as admisible under the existing, rules with effect from re-opening of school after Summer Vacation

MORE CONTROL OF THE C	· •		
So.No. Name of Candidate.	Miress.	Hame of School	Rham
	******	where posted.	******
Jemil Ahmad S O. Akbar Zemen.	Wanda Ch: Wansour. Lakki Tehsil.	GPS, Gul Badin- Landidak.	Vacuntally
2. Mohd Saleem S/O .Baqi Khan.	Vill: Landiwah.	PS, Malik Shahi- Jani Khel.	-do
3. Payo Khan S/O	Mir Azam Michan Khel	L. PS, Wazir Abad.	-do

Mira Jan.

Mohsim Khan.

Sinsal Khan S/o Sh: Khunda Balhsh. " Tan Nowaz Bondin id:cl. -do-Khan Khawaja.

6. Sharifullah Nan S/O Vill; E.A. Khen. " Musharof Jani Khel. Gul Bahib Khan.

NOTES:-

- 1. Charge report should be submitted to all concurred.
- 2. NO.TA-DA is allowed by one.
- 3. The candidates should produce their Health and ago contidicate from Medical Supd: D. H. Q. Hospital, Pannu.
- The appointment is purely on toup: behis and liable to termination without any reason or notice.
- to. The candidates take over charge within 15 days from the isone of this ord
- 6. The candidates should not leave the Mlu:Deptt: ( service without prior matter one mouth notice or forfiting one month's pay.
- The candidates should not be a aded over charge if their age exceeds 25 years or less than 18 years. nath Pires Countrios).

bistt: Edu: Office' Endst: No. A-2 PTC dated Banne, the Copy for infermation to page sinistan for Edu: warP, with wife to -his Memo: No. cited above plante.

SUEO(M,) Banen. For nec; action pl;

Cendidates concerned.

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OF STED DITOUR KULTURE LA KOLICA (POLICE The Curenter, Actinination Departmentarrange 20 garette, copies. Of Rauper of the Mannier of the Section Department with the request of the Section Department of the Section Department of the Section of the Anamaras L. notigistamba. Solosmusidas and the bearing youque of the solution Munder Grossing Service Service Commence of the Service o The Registrar, Peshawar High Court, Peshawar, The Registrary of the Registrary Peshawar, Peshawar, Peshawar, Peshawar, Physical International Court, Pashawar, Propositional Court, Pashawar, Peshawar, Peshaw 6 A Antonomous Sedies in Khyber Pakhiunlchwa All House of Anached Department in Klyber pethiumoliva All Divisional Commissioners in Khyber Pakhunkhwa. The Principal-Secretory to Chief Minister, Kayber Polchnikhwa. The principal Action of Covernor, Klyber, Pakhiunkiwa, Evaluated isolation in Jeon of solutions by iterizing the interior in The Scinot Mender Bond of Revunds, Khyber Pakhunkliva. -ไกรศากษฤร G. เกรคฤษกระ(เ Auditional Ehief Secretary, Covi. of Khyber Pokhtunkhwa. Planning & -: 01 habanarah ki (nu) ATAUMANA OR DE GOVERNMENT' OF THE IUFYLER PAKET YIIA IZUDƏS AZIND :bulolob be dinle (2) whith-due , I often al Minister and the state of the multiple namedy: TNEWDWENT Rich inc. 1997 Servants (Appointment, Trainotion and Transfeld Rules, 1989, the με (The Minister of Khylter Phyliphklywi is pleased to direct that in the Khylter Minister of Khylter Phyliphklywi is pleased to direct that in the Khylter Minister of Khylter Phyliphklywi is pleased to direct that in the Khylter Minister of Khylter of Kh Millimestrick Minister of Khylter Pakhunkhwa Act Bo. XVIII of the standard of the Anthunkhwa Act Bo. XVIII of on it entirelas of the puwers conferred by section 26 of the 05021-8 \ 50 ode tienfiden f beln. песпеудроммиксь CHARLIN PACETURALISM COMERNERAL DE - wing kure

# 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 is further amendment shall be made, namely: \*\*\*

#### **AMENDMENT**

In rule 7, sub-ruler (5) shall be deleted.

CHIER SÉCRETARY
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 Tribunai, 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 cooles.
- 16. The Caretaker, Administration Department.

(WARDAH LATIF)
DEPUTY SECRETARY (POLICY)

1:

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### COVERNMENT OF COVERY PARCETURICITYA establishment departable Ho. Stiffedley)il&A(M-3/2020 United Pealmwar the June 06, 2023

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The Covernment of Kingher Produmbilion Blementary & Secondary Hilmendon Dapaitment,

Subject: \* : CHIDANCE RECARDING: DELETION OF HULE MS IN THE REPORTMENT.

RESPECT FAIGHTUNICINA GIVIL BEREVANDE CAPPOINTMENT.

PROMUTION AND TRANSPERS BUILDES. 1982.

I am affected to refer in last letter Mr. 20(hipman-Wallering). VAppointment/2023 dated 18.04.2023 on the subject noted above and to state that Sub-Rule , Dear Str. (1) Phillest of Rhyper Publiculation Clvd Services (Appointment, Promotion and Transfer) Rulpt. 1989 stands deleted vide tide saperiment soufficities which occomitozo; thus, no provision exists to decide or long promotion.

- The bulls retinuels helded the defenden of the iblit colo is elected at preventing a elvil rerupni from templation for little gain by sticking to a single inerative postition or to prevent those who read to forgo promotion to avails postingfriensies or show lack of expectly to tachia higher responsibilites in case of promotion. Therefore, it is obligatory upon overy civil servani to accept pramotion in every condition.
- Funhermore, those officers officials who do not comply with promotion order of the competent authority or my to evade promotion through different means shall be prozecidad opologi under Kligher Pakigunktura Civil Servants (Efficiency & Discipline) Autes, 2011, pleme.

Radal. Of even No ex date

Copy forwarded to the:-

PS to Special Secretary (Res), Catabilitanent Department. 2. PA to Additional Secretary (Regall), Balabilidanant Department.
3. PS to Ospary Secretary (Policy), Establishment Repartment.

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MP4442-2023 AZIZIRLAH VS'GOVT CF PG43

### -Overnment of Unyber Ракитинкима ELEMENTARY AND SECONDARY EDUCATION DEPARTMENT CIVIL BECRETARIAT PESHAWAR

(Financi No.091-9223507)

Fin. RO (Primary-M)/E&SED/2-6/2023 Colod Pashaviai tho. June 26\*,2023

TΩ

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

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

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

I am directed to refer to the subject noted above and to enclose here with a letter at Belabilishment Department letter No. 50 (Policy)E&A0/1-3/2020 dated 06 June, 2023 and to state that the subject meeting is to be held on 08 July, 2023 at 11:00 AM in this department under the Chalimanship of Additional Secretary (Estab) E&SE Department in his office.

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

Encl: AA

(MUHANMAD ISHAO) SECTION OFFICER (PRIMARY MALE)

Copy forwarded to the:

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

SECTION OFFICE

WP4442-?100 AZIZULLAH VS GOVT GF PG43

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

To

The Director Elementary & Secondary Education Department Khyber Pakhtunithwa, Peshawar

Aziz Uliah IChan President President Ali Primary Teacher's Association, KP

Subject

GUIDANCE REGARDING DELETION OF RULE 7(5) IN THE KRYBER PAKHTUNKHWA CIVIL SERVANTS (APPOINTMENT, PROMOTION AND TRANSFER) RULES, 1909.

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 D6 June, 2023 and to state that the subject meeting is To be held on O6 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 Mala)

Copy forwarded to the:

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

SECTION OFFICER (PRIMARY MALE)

WP4442-2023 AZIZULLAH VS GOVT CP PG43

A

TRANSFER RULES TYRYL RECEARDING OF DELETION OF BULE 7(5) IN TRECTVIL SEBVANT (APPOINTMENT, PROMOTION A HALLIE OF THE MEETING 18TG ARPLICATION SUBMITTED BY MR. AND ULLAR AND MINISTER PARTITIONAL MANAGES INSTALLABLE MANAGES INSTALL

under the Chalmanship of Additional Secretory Establishment in his office. The At OC:11 to CCOS-50-40 no bied zow relitom toeldus ent gnibloges gnifeem A

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Secielarla Mikyber Fokniunkhwo Perhawar	podzi bommoduM J	,
General Secretary ATTA Peshawat	Mr. Balagal Ullah:	E
tion/2021 Vioiniis ila insbisori laisnivori nalioisetta ownishi ila indylä	Mr. Azk Ullah	1 Z
Depuly Discrict Eticbilitaneni of Discrictor Elementary & Secondary Education Department	Mr. Fozol Wohld	! (
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Secondary Education biteled the laws regarding agends fleshin The porticipants. The Deputy Director (Estabilishment) of Directorate of Elementary & 2. .. The meeting slatted with rectalion train that Holy Owan, the chair welcomed

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The meeting ended with a vale of thanks from the Chair. Deportment for further necessory action.

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(Pathal BonnedariuM)

[nem]roos() 3523 Doputy Director-I (Mr. Fozot Wohld)

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Addillonal Socialay (Ellobbhmeni) EASE Deparmeni (ApliviodA)

WE4442-2023 AZIZULLAH VE GOVT CF PG43

MINUTES OF THE MEETING REGARDING APPLICATION SUBMITTED BY MR AZIZ ULLAH PROVINCIAL PRESIDENT TALL 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 ettended the meeting

5#	NAME I	DESIGNATION
1.	Mr. Fazal Wahld	Deputy Director Establishment of Directorate Elementary & Secondary Education Department
2.	Mr. Aziz Uilah	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 preparty and submit & said 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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Khyber Pakhtunkhwa, Peshawar yf. Va. 178577þVGáltáról Cases 1991114

The Socion Officer (Primers-Idule), Elementary & Secondary Education Department, Klyber Pakhtunkhwa Peshawar...

MINUTES OF THE MEETING Subject: 3. Door Sir.

I am directed to refer to the latter No.SO(Frimary-M)E&SED/3-1/ G.Mixe/Minutes of the Masting/PST/2023 dated 10-07-2023 on the subject alice above and in present brief history about the background of the case as under:

- That Government of Klyber Pakhtunkhwa Establishment Depurtment (Rojallation Wing) deleted Rule 7(3) imite Civil Servents (Appelatment, promotion & Transfer Rules 1989) vide notification No. No. SOR-VI (E&AD)/1-3/2020 dated 06-08-2020.
- That this office rought guidence from your good office in the following words vide latter No.6987 dated 16-02-2025.
  - Now it modificatory upon the civil servant to accout Promotion in every condition. (ii) It is the pre-regative of the civil servant to althor accept or turn down the affer of promotion.
- That your golf diles forwarded the same to the quarter concerned vide letter No.50 (Primary-M) E&SED/2-3/Appointment/2021 for necessory guidance.
  That the Gave imput of Klyber Fokhtunkinso Establishment Department (Regulation
- Ifing) vide later No.SO (Polley) &&AD/1-1/2020 dated 6-06-2023 categorically stated that there exists no provision in decline or forgo promotion, it is obligatory upon every civil servent tenescopt promotion under every condition.

  The same wis facelyed by this office from your good office wide latter No.50
- (Primary-M) E&SED/2-2//ppplaiment/2023 dated 12-06-2023.
- That, in the light of the minutes of meeting tholod 6-07-2023, held under the Chairmanshi af lian, Additional Secretary Establishment of his office this office, has been asked for submission of consultated case.

in view of the above, this office is of conshiered opinion that the deletion of Rilles 7(5) have affected regatively a large numbers of Female Teachers. Thus it is proposed that Teachers helder Dr.5-16 may be exempted of implications of the amundment in the rules libid provided they pullful their written refusal polar to conduction of the meeting of Bentrimental gradient Committee.

ase is submitted for perusal and necessory actions please.

Assistanti Director (Estab Al-I) Elementary & Secondary Education Khyber Paklitunkhwa .

Endst: No.

Copy of the libere is to:-

- Laçal Directorate. PA to Director
- 2. Maxter Copy.

Assistant Director (Establif-i) Elementary & Specialary Education Kligher Paklaunkhwa

WP4442-2023 AZIZULLAH VS GOVT CF PG43

-BIC-

DIRECTORATE OF ELEMENTARY & SECONDARY EDUCATION, KPK
PESHBURG
(21-7-1083)

Section Officer (Primary Male)
Elementary & Secondary Education Deportment

Super : Minutes of Meeting

To:

Dear Sir; I am directed to refer to Letter No. (SO Princey-M) E & SED /S-1/GAPIEL/ Minister of meeting /BST/2023 dated 10-7-2023 on subject cited above and to present but history, about background of care as under:

That Government of KP Establishment dependment (Regulation Whys)

deleted rule 7(5) In Civil Servent (Appointment promotions, Transfer Rule 1909)

vide notification No. No. SDR-VI(ESAD)1-3(2020 deleted 06-08-2010.

That this office sought guidence from your good office in the following words vide letter No. 6987 defed ob-orrary

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

(ii) It is presignive of civil second to alter ourself timedown the

(i) BT) prengative of civil second the ether consept/timidous the offer of promotion.

Theat you good office forwarded the came to quaster concerned whe letter No. So (Prince 14) E&SED/2-2/Appointment (2073 for recessory guidonce.

- That the government of KP-ED (Regulation Wing) vide letter No. So (Pricy)

  EGAD 1-3/2020 dated 6-06-2023 categorically stated that there exists

  no provision to checkine forgo mountain. It is obligating upon every civil

  Servent to accept pomotion under energy condition.
- o That in light of the minutes of the meeting dated 6-07-2027 held uncles the Chairmanship of thon. Additional Secretary Establishment at his office. This office has been asked for submission of consolidated case.

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

The case is submitted for person and necessary actions

Cipy of the colone to;

1. PA to Director Local Directorate

2. Master Copy

Accident Director

Elementary & Secondary Education

Khates Rachbankhung.

WP4442-2023 AZIZULLAH VA GOVT CF PG43



#### ELEMENTARY AND SECONDARY EDUCATION DEPARTMENT CIVIL SECRETARIAT PESHAWAR (Phono No.091-9223587)

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

DUVEXUIE

The Becrelary to Govt of Khyber Pakhlunkhwa. Establishment & Administration Department, Peshavia

#### SUBSECT: - GUIDANCE REGARDING DELETION OF RULE 7(5) IN THE CIVIL SERVANT (APPOINTMENT, PRPMOTION & TRANSFER RULES 19891.

Case Su,

I am directed to refer to your letter No. SO(Policy)/ EBAD/ 1-3/2020 dated 057 June 2023 and to state that after deletion of rule 7(5) Khyber Pakhtunkhwa Ovil Servant (Appliantment, Promotion & Transfer Rules 1989) It has been intimated that those officers/ offices virio do not comply with promotion order of the competent authority or by to evade promotion through different means shall be proceed under Knyber Fazirounkirwa Civil Servant (Efficiency & Discipline) Rules, 2011.

In this connection it is submitted that in some cases lady teacher of primary العُرَاجِ السَّمَ عَرَامًا suct promotions have to face serious inconvience while they have to Desform 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 ट्यास्त्र, there are negative effects on service delivery.

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

SECTION OFFICER (PRIMARY MALE)

Copy (critarded to the:

1. Olrector ERSE Khyber Pakhbunkhwa.

2. PS to Secretary, ERSE Department Knyber Pakhtunkhwa.

SECTION OFFICER

Scanned with ComScanner

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WP4447-2023 AZIZULLAH VS GOVT CF PG43 💡

Pedrama Dated 234 Auguston Manghand Cast State 18-18-18-18

The secretary to consmiss of Khylon Bakhambhum.

Peshoussa. Establishment and Administration Depostments.

(6867) Carl Servans (Asportament, Romalion & Transfer Rules. SUBJECT: - Guidance reginding deletion of Rule 7(5) in the

Civil Servant (Efficiency and Discipline) Rule 2011. different means shall be proceed under Khyber Akhhunkhun algueral markermong stans of but no extension broadsymes with to those officers officials who do not comply with promition order toth balanital need red 4e (P891 salls referred by prop rectional deletten of Rule 7.(5) Khyber Roltdunkhwa Civil Servant (Apparathment) with tart state or large Economicate potos acos (E-1) Opp directed to reflet to your letter No. Softweet 164.00 New Six,

Mather-in-law who need agre. In such aske there are negative Then one married with titis and elder father of , withlials teaperant / Sixtrabition on Alive Enothers teatonion with ril estub majes of such their high some to people duties teacher of mirrory level who given gich promother to In this connection it is submitted that in some coust lady

-21 cools braming oil valoat ybol & truetes eith in view of above the sould ammendment may be reconsistered to effects on service delivery

4. Secretary, E. & SE Depoison Highward Mitchentinger (Muhammu) Section offices (Aman) שאונלא ב ב צר צרילים ולציאיה לאייני. tot berunded tos

## GOVERNMENT OF KHYBER PAKHTUNKHWA ESTABLISHMENT DEPARTMENT

Nb. SO(Policy)E&AD/1-3/2020 DatedPeshawar the September 07, 2023

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

Subject: -

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

Deep Sir.

I am directed to refer to your letter No. SO(Primary-M)/EASED/2-2/Appnintment-Rule/2023 dated 23:08:2028 on the subject noted above and to state that newssary guidance has already been tendered to your good office vide this department letter of even No. dated 06.06.2023 (copy enclosed)\_

Yours faithfully,

zer (Policy)

Endst. Of even No & date

Ozpy forwarded to their

- L. PS to Special Secretary (Reg), Establishmen Department.
- 2 PA to Additional Secretary (Reg-II), Estatisshment Depurtment
- 1 PS to Deputy Secretary (Policy), Establishment Department.

- B/c-

#### GOVERNMENT OF KHYSER 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 ICHYBER 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 GOVT CF PG43

Annexure - G

To,

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

 Secretary to Government of Khyber 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

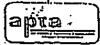
Sir/ Madam:-

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. SD (Policy) /BDAD/1-3/8080 dated 66/46/3696, the Fight of foreigning of promotion was withdrawn and the Government of Khyber Pakhtunkhwa Establishment Department (Regulation Wing) deleted Rule 7(5) in the Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 vide notification no SOR-VI (E & AD)/1-2/2020 dated 06-08-2020. That the Directorate of Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar asked for guidance regarding deletion of Rule 7(5) in Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 in respect of which the Establishment Department vide its letter No. SO.(Policy) E&AD/1- 3/2020 dated Peshawar the June 06th, 2023 directed the Directorate of Elementary & Secondary Education that Rule 7(5) in the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 has been deleted vide notification dated 06-08-2020 and therefore, no provision exists to decline or forgo promotion and it is obligatory upon every civil servant to accept promotion under every condition. That Directorate of Elementary & Secondary Relication Khybor Pakhtunkhwa also wrote a latter 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 Palditunkhwa 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) EED/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.

SHAFI ULLAH JAN SIO MIRA JAN PSHT Diyber Pakhtunkhwa

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آل پراتمری هیچرز ایسوی ایش (ابٹا) نیبر پختونخوا

Annexure - H

بهامپ : میکولیل ایکنٹوی ۱۵ میکنٹوں ایم نمیش کیم پیٹوئٹوا میجائب اکال پرائری کیرو احدی ایٹن فیر پیٹونم مناس مال

مخلاق ہے کہ برومونز پر المانے علی اور تھ اللہ الد کہ مرائیل الائے کہ نمائش اللّ ہے بردمونز کا ایک تالون اڈا کر جاتھ کے جر ملام ایک اگر کس بجد اسکے قصت ایک داند بردموفز د لیمن فردہ کم اسماء باد سال تک پردموفز لیمن سے بیکنے ہے مطلب باد سال تک جر اس کی برامونز کیں او سمل میں کے مجر اس تافون عمل قمول دھانے دکا کل باد مثال دلل بات فیم کر دل کل کر ایک ملام ایک سال بردموش نے لیمن فرد وردمرے سال سے سکتا ہے۔ میں اب ایک دور بیک اللہ بات کی اب ایک دائٹ بات میں ان کے بات بہتے ایک الد فریکھیٹن اور ا

جمل کے مطابق آپ پر عام پدم ٹی خرم کی گے اگر تھی گی کے 7 اس کے نقال اللہ علی اداؤے مطابق کر آپ کی گئی ہے۔ معامل نے آفری دیلیکی بیادی السائل حول کی کل نقالہ اللہ ہے مسے کی سد اللہ اللہ پھالی ناد تائیں کی تراقین اسائڈہ کر انہائل مشاہد ہا ماماکرہ بڑے کا

جَا مام مالات الل الحراق بردم في الد سسلة مجمع على بليل الملل متول كي ناهد روى به كوك فير بختر م الدن به متع الدال رشين من سل به ليه مالات على ما الم الميكن بم قاهمة كي بيل كي براب عن مي كياب عرب كن الديار المال متول كي نااز به

لمد کا بدم تن کے کا علے ان کرس سے کیے وہ بات لاد بدم من نہ کے کی مست ند ہاتاہ ، الا باسے حین پر دی ۔ ک بات

ال سلط شان آب مل الدبلد لام (DEO) ال الا كا الا كا الدين مراسل بادك كا بلسط عال اللها عن ب على البيل بدا أول الما يا أو الله

کے کے کولیے ٹی بغلاہ کے کا باقری اساتاء کو دائل طور ہائی کرنے کا سلط طریق ہوبکا ہے ولائا ہم یہ فرق مکے ہیں کر کب صامیان فوق ایکٹن لیکر مسب ہو کے ہشائری اساتاء ضوصا لیسیل پرائری اساتاء کو اس اٹل الیت سے نجات دلایک کے

عُرِّهُ اللَّهُ خَانَ مِهِ إِلَّى مِدِدُ الْمُحْرِينَ الْمُعْرِدُ الْمُحِرَدُ الْمُحِرَدُ الْمُحِرَدُ الْمُحْرَدُ الْمُحْرِدُ الْمُعُمُ الْمُحْرِدُ الْمُعْمِ الْمُحْرِدُ الْمُحْرِدُ الْمُحْرِدُ الْمُحْرِدُ الْمُحْرِدُ الْمُعْمِ الْمُعْمِدُ الْمُعْمِ الْمُعْمِ الْمُعِمُ الْمُعْمِ لِمُعْمِ الْمُعْمِ الْمُعْمِي الْمُعْمِ الْمُعْمِ

WP4442-2023 AZIZULLAH VE GOVT GF PG-13

## JAKALAT NAMA

## BEFORE THE SERVICE TRIBUNAL PESHAWAR

SHAFI ULLAH JAN Versus

Appellant

anvernment of KP & others

Minuanaquent

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.

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

\_\_\_\_\_

APPELLANT

ACCEPTED

MUHAMMAD MUAZZAM BUTT

Advacate Supreme Court

MUHAMMAD ADEEL BUTT

Advocate High Court

BASSAM AHMAD SIDDIQUI

Advocato-High Court