## FORM OF ORDER SHEET

| Court of  |            |
|-----------|------------|
| Appeal No | Z383 /2024 |

|       | Court                     | of  |
|-------|---------------------------|---|
|       | <u>Ap</u>                 | peal No. 2383 /2024   |
| S.No. | Date of order proceedings | Order or other proceedings with signature of judge  |
| 1     | 2                         | 3   |
| 1-    | 06/11/2024                | The appeal presented today by Mr. Muhammad Muazzam Butt Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on 14/11,2024. Parcha Peshi given to counsel for the appellant. |
|       |                           | By order of the Chairman RECISTRAR  |
|       |                           |   |

## BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHUWA

Sher Zaman

5.4 No:-2383/24

V/S

#### Government of KP & others

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ADVOCATE

#### BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHUWA

| In | Re | ef | to |
|----|----|----|----|
|----|----|----|----|

Service Appeal No 2383 /2024

Sher Zaman Khan Son of Asal Din Resident of Tehsil & District Mardan

Designation: Primary School Head Teacher at GPS Akbar Abad Katlang

.....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

.....Respondents

SERVICE APPEAL UNDER SECTION 4 OF KPK SERVICE **IMPUGNED** THE AGAINST 1974, ACT TRIBUNAL NO.SO(POLICY)E&AD/1-312020, NOTIFICATION BEARING 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 (APPOINTMENT, SERVANTS <u>PAKHTUNKHWA</u> CIVIL PROMOTION AND TRANSFER) RULES, DELETED

#### PRAYER:

ON ACCEPTANCE OF INSTANT SERVICE APPEAL, THE IMPUGNED NOTIFICATION BEARING NO: SO (POLICY) E&AD/1-312020, 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 Monthly Salary account 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.
- 3. That some employees specifically have foregone their promotion as they could not serve in the areas where there is no facility of accommodation and no houses of their elders are available to look after them in far-flung and solitary mountainous hard areas, and as per Section 25 of per KP Civil Servant Act, 1973, rules to the extent of terms and condition is framed by the Chief Minister and such promotion rules are not made applicable with retrospective effect. The rules framed are published in the Gazette notification and part and parcel of KP Civil Servant Appointment, Transfer and Promotion Rules 1989.
- 4. That Government of K.P without following the rules position mentioned in Para 6 above promulgated Notification No. SO (Policy) E&AD/1 3/2020, dated 06/08/2020, communicated to Respondent No.2 vide letter dated 06/06/23 wherein it has been made mandatory to the employees to avail the promotion, otherwise, disciplinary action shall be taken against the employees. The impugned Notification is reproduced as under:-

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

- 5. That as per notification No. SD (Policy) /EDAD/1- 3/2020 dated 06/08/2020, the right of foregoing of promotion was withdrawn and the Government of Khyber Pakhtunkhwa Establishment Department (Regulation Wing) deleted Rule 7(5) in the Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 vide notification no SOR-VI (E & AD)/1-2/2020 dated 06-08-2020. Copy of notification No. SD (Policy) EV AD/1- 3/2020 dated 06/08/2020 is attached as Annexure B
- 6. That the Directorate of Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar asked for guidance regarding deletion of Rule 7(5) in Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 in respect of which the respondent No. 1 vide its letter No. SO(Policy) E&AD/1-3/2020 dated Peshawar the June 06th, 2023 directed the respondent No 3 (Directorate of Elementary & Secondary Education) that Rule 7(5) in the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 has been deleted vide notification dated 06-08-2020 and ,therefore, no provision exists to decline or forgo promotion and it is obligatory upon every civil servant to accept promotion under every condition.

  Copy of Impugned Letter dated June 06th, 2023 is attached as Annexure C
- 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 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 **Annexure E** 

- 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 E
- 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 <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:-**

- 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 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 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 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.

#### AFFIDAVIT:

I Sher Zaman Khan Son of Asal Din Resident of Tehsil & District Mardan that the contents of foregoing application are true and correct to the best of my knowledge and belief and nothing has been concealed therein from this Honourable Court

Through

Deponent

Muhammad Muazzzam Butt Advocate Supreme Court

hopellant

Muhammad Adeel Butt Advocate High Court

Bassam Ahmad Siddiqui Advocate High Court

LL.M- Human Rights

## BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHUWA

| C.M No                | , |
|-----------------------|---|
| In Ref to             |   |
| Service Appeal No2024 |   |

Sher Zaman

#### **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.

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

Muhammad Adeel Butt Advocate High Court

ad Bull

ppellant

egonent

#### Dist. Govl KP-Provincial District Accounts Office Martin Monthly Salary Statement (Jenuary-2224)

Annexure



Personal Information of Mr SHER ZAMAN KHAN don't of ASAL DIN

Personnel Number: 00122622 CNIC: 1610101745835

Date of Birth: 07.04.1965

Entry Into Govt. Service: 20.10.1913

Mito

8066)756-DISTRICT GOVERNMENT KITYDE

Length of Service: 40 Years 03 Months 013 Days

Employment Category: Vocational Temperary

Designation: PRIMARY SCHOOL HEAD TEACH

DDO Code: MR6435-District MARDAN Payroll Section: 003

GPF Section: 001

Cath Center: 11

GPF Balances

976,907.00 (contained)

GPF A/C No: EDUMRO04504 GPF Interest applied

Vendor Number: • Pay and Allemantes:

Pay scale: BPS For - 2022

Pay Scale Type: Civil BPS: 15

Pay Stage: 28

| Wage type                      | Ameast     | W                  | ege tree        |          |
|--------------------------------|------------|--------------------|-----------------|----------|
| 0001 Basic Pay                 | 79,160,00_ | 1001 Home Rent A   | Howance 45%     | 3,524 00 |
| 210 Convey Allowance 2005      | 2,856.00   | 1300 Medical Allor | w price         | 1,500.00 |
| 505 Charge Allowance           | 40 00      | 2148 15% Adhoc B   | telief All-2013 | 1,090.09 |
| 199 Adhoc Relief Allow @10%    | 727.00     | 2116 Teaching Alle | wance 2011      | 3,274.00 |
| 1341 Dispr. Red AT 15% 2022KP  | 7,601.00   | 2347 Adhoc Rel Al  | 1514 22(7517)   | 7,605,00 |
| 2378 Adher Relief All 2023 35% | 27.08) 00  |                    |                 | 009      |

#### Deductions - General

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| 1015 GPF Subscription           | 4,290,00 | 1501 Resemblest Food     | -120000 |
| 3609 Income Tex                 |          | 1990 Erre Fels. Ford KPK | 000     |
| ACOA IN THEORETT & Death Corner | 460,00   | <u></u>                  | - T. T. |

#### Detections - Losss and Advances

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| Lass      | Description | Principal amount | Deduction | Belance |

Deductions - Locume Tax

Payable:

65,643,38 Recovered till JAN-2024: 21,351.00

Exempted: 16420.13

Recoverable:

20,912.20

Gress Fay (RA):

134,414.00

Dedattion: (RL):

-10,403.00

Net Part (RA):

124296.00

Payer Name: SHER ZAMAN KHAN

DESCRIPTION OF PAKISTAN, 230884 KATLONG, MARDAN KATLONG, MARDAN, MARDAN

Leaves:

Opening Dalapre:

Availed:

Extect .

Balance

Permisons Address: VILO SITERI BAITAFO KATLONG MARDAN

City: MARDAN

Temp. Address:

Domicile: NW - Kbyber Palhombhwa

Housing Statute No Official

City:

Email: sher.zumas7465@gmail.com

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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, Khyber Pakhtunkhwa.
- 5. The Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
- 6. All Divisional Commissioners in Khyber Pakhtunkhwa.
- 7. All Heads of Attached Departments in Khyber Pakhtunkhwa.
- 8. All Autonomous/Semi Autonomous Bodies in Khyber Pakhtunkhwa.
- 9. All Deputy Commissioners in Khyber Pakhtunkhwa.
- 10. The Registrar, Peshawar High Court, Peshawar.
- 11. The Registrar, Khyber Pakhtunkhwa Service Tribunal, Peshawar
- 12. The Secretary, Khyber Pakhtunkhwa Public Service Commission, Peshawar.
- 13. The Deputy Director (IT), E&A Department.
- 14. All Section Officers in Establishment & Administration, Department.
- 15. The Section Officer ( Admin), Administration Department with the request to arrange 20 gazette copies.
- 16. The Caretaker, Administration Department.

(WARDAH LATIF)
DEPUTY SECRETARY (POLICY)





#### COVERNMENT OF COLUMN PARCOTUNICITYA REPARTMENT DEPARTMENT No. Ritificality) [[RAD1] -3/2020 Daled Ferlinver the June 06, 2023

62

٦'n

The Covernment of Khyber Pakhinghhum, Memeniniy & Secondary Educoran Dopartment.

Subject: •

OUIDANGE REGARDING DELETION OF RULE 7(5) IN THE RUYDER PARTITUNIONA GIVIL SERVANTS (APPOINTMENT) PROMOTION AND TRANSPER RULES, 1982.

I am directed to relay to Jour letter No. KO(l'chmary-M)/Recountre-Dear Sit. VAppointmenV2023 dated 18.04.2023 on the subject noted above and to state that Sub-itule (5) of Rule-7 of Khyper Pakhtunkinus Chal Jereunts (Appaintment, Promotion and Transfer) Rules, 1989 stands deleted vide this department an'ification dated 06.08.2010; thus, an provisión exists to decibie or forgo promotion.

- The basic restonate achieve detection of the this is almost at preventing a civil servant from tempisting for tilicit gein by sticking to a single literative post/position or to prevent those who tend to fergo promotion to evode posting/transfer or show lock of capacity to tacklo higher sesponsibilities in case of promotion. Thatofoto, it is obligatory upon every civil servant to occupt promotion in every condition.
- Funkermore, 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 Pakhunkhwa Civil Servants (Efficiency & Discipline) Rules, 20( ), please.

Undst.: Of even No & state

Copy forwarded to that-

1. PS-to Special Scentury (Reg.); Untablishment Department
2. PA to Additional Secretary (Reg. 11), Untablishment Department
3. IS to Dapaty Secretary (Policy), Establishment Department

Achus Collegallà mmod Khan) Meet (Polley)

Micer (Polley)

WP4442-2023 AZIZULLAH VS GOVT CF PG43



#### FOVERNMENT OF MOYBER PARKTUNKOWA ELEMENTARY AND SECONDARY EDUCATION DEPARTMENT CIVIL SECRETARIAT PESHAWAR (Phone No.091-9223507)

Mo.SO (Primary-M)/E&SED/2-6/2023 Daled Poshaviar Inc. June 26th, 2023

To

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. 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.

Engl: AA

(DAHEL DAMMAHUM) SECTION OFFICER (PRIMARY MALE)

Copy forwarded to the:

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

SECTION OFFICER

WP4442-2023 AZIZULLAH VS GOVT CF PG43

BIC

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

To

The Director

Elementary & Secondary Education Department
Khyber Paichtunkhwa, Peshawar

Aziz Ullah Khan President President Ali Primary Teacher's Association, KP

Subject:

GUIDANCE REGARDING DELETION OF RULE 7(5) IN THE KHYBER PAICHTUNKHWA 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.

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

Encl: AA

(MUHAMMAD ISHAQ) SECTION OFFICER (PRIMARY MALE)

Copy forwarded to the

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

SECTION OFFICER (PRIMARY MALE)

WP4442-2023 AZIZULLAH VS GOVT CF PG43



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

A meeting regarding the subject matter was held on 06-07-2023 of 11:00 AM under the Chairmanship of Additional Secretary Establishment in his office. The following attended the meeting.

| 5#       | NAME              | DESIGNATION  |
|----------|-------------------|--|
| <u>.</u> | Mr. Fozol Wahld   | Deputy Director Establishment of Directorate Elementary & Secondary Education Department   |
| 2        | i Mr. Azlı Ullah  | Provincial President Alt Primary Teachers  - Association  Khyber Pokhtunkhwa               |
| 3        | Mr. Rologal Viloh | General Secretary APTA Peshawar  |
| 4        | Muhammad Ishaq    | Section Officer (Primary) ELSE Department Civil<br>Secretarial Khyber Pakhlunkhwa Peshawar |

- The meeting started with recitation from the Holy Ouran. The chair welcomed
  the participants. The Deputy Director (Establishment) of Birectorate of Elementary &
  Secondary Education bileted the forum regarding agenda item in detail.
- 3. After threadbare discussion it was decided that Directorate of Bernantary & Secondary Education Department may examine the case property and submit a self-contained/consolidated case for anward submission to Establishment Department for further necessary action.

The meeting ended with a vote of thanks from the Chair.

(Mr. Fozal Wahld)
Dapuly Pirociar-I
E2SE Department

(Mr. Rolagal Vilah) General Secretary APTA Peshawar (Mr Azir Vilah)
Provincial President
Ni Primary Teachers Association
Khyber Pakhtunkhwa

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

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

WP4442-2023 AZIZULLAH VS GOVT OF PG43

ATTESTED

## - B/C-

MINUTES OF THE MEETING REGARDING APPLICATION SUBMITTED BY MR AZIZ ULLAH PROVINCIAL PRESIDENT ALL PRIMARY TEACHERS ASSOCIATION KHYBER PAKHTUNKHWA REGARDING OF DELETION OF RULE 7(S) IN THE CIVIL SERVANT (APPOINTMENT, PROMOTION & TRANSFER RULES 1889).

A meeting regarding the subject matter was held on 06-07-2023 at 11:00 AM under the Chairmanship of Additional Secretary Establishment in his office. The following attended the meeting

| SII      | NAME i            | DESIGNATION  |
|----------|-------------------|--|
| 1.       | Mr. Fazal Wahid   | Deputy Director Establishment of Directorate Elementary & Secondary Education Department   |
| 2.       | Mr. Aziz Ullah    | Provincial President All Primary Teachers Association:<br>Khyber Pakhtunkhwa               |
| <u> </u> | Mr. Rafaqat Ullah | General Secretary APTA Peshawar  |
| 4.       | Muhammad Ishaq    | Section Officer (Primary) E&SE Department Civil<br>Secretarial Khyber Pakhtunkhwa Peshawar |

- 2. The meeting started with recitation from The Holy Quran. The chair welcomed the participants. The Deputy Director (Establishment) of Directorate of Elementary & Secondary Education briefed the forum regarding agenda item in detail.
- 3. After threadbare discussion it was decided that Directorate of Elementary & Secondary Education Department may examine the case properly and submit & self-contained/consolidated case for onward submission to Establishment Department for further necessary action.

The meeting ended with a vote of thanks from the Chair.

| (Abdullah)<br>१९३५परीपिस्डनी/काराजाशस्त्र दिस्र |
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| · <u>·</u>                                      |
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WP4442-2012 AZIZULLAH VS GOVT CF PG43

ALSELIN

Elementary & Socontiory Ethicotlon Allyber Pokhtunkhiro (I-14dolt3) solverid inelatify

> Maxièr Copy. PA to Director Local Directorate.

> > Copy of the above is to:-

דווקנן: אסי

Бістолісту & Secondary, Ефисаціон

אוזעות און ביות (ביותף אוריו)

The case is submitted for pertual and necessary actions please.

Departmental Promotlon Committee.

do goilogin the guident collision refusol privat la conduction of the meeting do bidi talin adi ni inambnomo odi to tralicaliqui to baiqinere se quin 01.7.70 vinisd arrest 7(5) have affected hegalively a linge minibers of Female Teachers. Thur it is proposed than th view of the above, this office is of considered opinion that the deletion of fluies heen asked for submission of consolidated ense.

Choirmonthly of Hon. Additional Secretory Establishment at his office this affice has

That, in the light of the minutes of meeting dated 6-07-2023 held under the (Primary-14) E&SEO/2-2/Appoinimeni/2021 dated 12-06-2023.

OZ.nN ratiol ship soifte boog wery most soifte this yet besteam and onth

civil servant to accopt prountion under every condition. that there exists no provision to decline or Jorgo promotion. It is obligatory upon every

Wing) vide letter, No.SO (Polley) & A.NI-17070 dated 6-06-2052 cotegorically stated Tigt the Government of Alyber Politimithwo Establishment Department (Regulation

No.50 (Primary-M) E&SED/2-2/Appointment/2022 for necossary guidance. That youn pool office forwarded the same to the quarter concerned vide letter

(ii) It is the presentive of the civil servent to eliber accept or turn down the affec of

(1) Now it is obligatory upon the civil servant to occept Promotion in every condition. .2502-50-00 baidb 7800.0V

That this solling injuries the same and apply of the particular solling ingues as the letter vide hatification Wa. No. SOR-VI (E&AD)/1-3/2020 dated 06-08-2020.

deleted Rulo 7(5) in the Civil Servents (Appointment, promotion & Transfer Rules 1989) The Covernment of Klyber Pakhunthara Entablishment Department (Regulation IVing)

present brief littiony about the background of the case as under: O. Mischklinutes of the Mosting/PST/1913 dated 10-07-2013 on the subject efted above and to I am dirocted to refer to the lotter No.50(Primary-4.)E&SED/S-IV

םפסר גור, - Youlduck -

<u> VINNTES OF THE MEETING</u>

Klyber Pakhimkinya Peshawar. Elemeniery & Secondary Education Department, Tie Socilon Officer (Primary-Mule),

Realli establitation in a sale i (Appointed and Appointed Phone: 091-9225344 וד אם שווצבדוףוו במוכנם כמום Doled 2-1-7-2025 Klıyber Paklıtınklıwa, Peshawar

-B/c-

DIRECTORATE OF ELEMENTARY & SECONDARY EDUCATION, KPK

To:

PESHAUTAR [21-7-2013]

Section: Officer (Primary Male). Elementary & Secondary Education Department 14PK, Peshawar.

Subject : Minutes of Meeting

Dear Sir; I am directed to refer to letter No. (So Airmony-M) E & SED /5-1/GANIEL/ Ministes of meeting /PST/2023 defed 10-7-2023 an subject cited above and to present both history, about background of cure as under:

\* That Government of HP Establishment department (Regulation Wing)

deleted rule 7(5) In Civil Servants (Appointment, promotion of Transfer Rules 1989)

vide notification No. No. SDR-VI(EGAD)1-3/2020 dated 06-08-2020.

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

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

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

• That you good office forwarded the same to questes concerned wide letter No. So (Primary M.) E&SED/2-2/Appointment (2023 for racessary guidonce.

- That the government of KP-ED (Regulation Wing) vide letter No. 50 (Policy) EGAD 1-3 2070 dated 6-06-2023 categorically stated that there exists no provision to decline forgo promotion. It is obligatory upon every civil servent to accept promotion under energy condition.
- o That in light of the minutes of the meeting dated 6-07-202) held under the Chairmanship of Hon. Additional Secretary Establishment at his effice. This office has been asked for submission of consolidated case.

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

The case is submitted for person and necessary actions

Copy of the cubive to;

- 1. PA to Director Local Directorate
- 2. Master Copy

Accidented Director

Elementary & Secondary Education

Khylico Rathlankhula.

WP4442-2023 AZIZULLAH VS GOVT GF PG43







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

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

The Georgiary to Govi, of Khyber Pakhlunkhwa. Extablishment & Administration Department. **Feshavar** 

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

Dest Sir, I am directed to refer to your letter No. SO(Policy)/ E&AD/ 1-3/2020 dated 1957 June 2023 and to state that after deletion of rule 7(5) Khyber Pakhtunkhwa Civil Servers (Applicatment, Promotion & Transfer Rules 1989) It has been intimated that those officers/ officials who do not comply with promotion order of the competent authority or by to evade promotion through different means shall be proceed under Khyber Pakinounkitwa Gvil Servant (Efficiency & Discipline) Rules, 2011.

In this connection it is submitted that in some cases lady teacher of primary level who 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 need care. In such cases, there are negative effects on service delivery.

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

> (MUHAMMAU ISHAO) SECTION OFFICER (PRIMARY MALE)

SECTION OFFICER JERN

Copy forwarded to the:

1. Director EBSE Knyber Pakhtunkhwa.

2. PS to Secretary, EBSE Department Knyber Pakhtunkhwa.

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WP4442-2023 AZIZULLAH VS GOVT GF PG43



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Pethruna Dated 224 Highest 12 No.50 (Ringay - M) E & 5ED | 8-81 <u>e1</u>

Peshecean. Establishment and Administration Department, The Secretary to Government of Khyba Bakharnbhum.

Quidance regarding deletion of Rule 7(5) in the : 7.33(BUB)

(6867 Will Several (Applitment, Romation & Transfer Rules

Civil Servant (Efficiency and Discipline) Rule 2012. different means should be proceed under Khyber fiskhankhung Appends noistering of shows at but to ethorstern treated must sold those officers officials who do not comply with promotion order tant balanitai road 221 40 (P821 22011) estimor) bus rectioned deletion of Rule 7(5) Khyber Bildunkhwa Civil Servans (Apprintment) wifto tast state or larp Ecanonicate betak works-bl om directed to refer to your letter No. Softimenty (Roperty) (Et 4D) Dear Sir,

-21 calls branning oil valport ybol of tracks with in New of above, the sould ammendment may be reconsidered to effects on service delivery. Mather-in-law who need agre. In such case there are negative Most of them one married with kills and elder father of , with sof fragisment / sociotisms on offine 2 months tratomer and int satub enalisa of such that they have to people duties of such rathermory hous suovo and soval graning to realisat In this connection it is submitted that in some cases lady

(Muhammad Istray) Section offices (Puham) Punde)

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CHEST TO SECRETARY OF SECRETARY SECRETARY SECRETARY OF SECRETARY S חלינבלה ב ב צרצילים ובציחיייצחייה. of promoted to

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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 Pakhtunkhiva,

Elementary & Secondary Education Department.

Subject: -

CUIDANCE REGARDING DELETION OF RULE 7(5) IN THE KHYBER PAKHTUNKHWA CIVIL SERVANTS (APPOINTMENT,

PROMOTION AND TRANSFER) RULES, 1989.

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

Yours faithfully,

ger (Policy)

## Endst. Of even No & date

Copy forwarded to the:-

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



- B/c-

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

To

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 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)

NP4442-2023 AZIZULLAH VS GOVT OF PG43

s.

To,

Dated: 22-01-2024

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

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

3) Director Elementary and Secondary Education Department

REPRESENTATION AGAINST THE IMPUGNED NOTIFICATION BEARING NO.SO(POLICY)E&AD/1-312020. DATED 06/08/2020. COMMUNICATED TO SECRETARY TO GOVERNMENT OF KHYBER PAKHTUNKHWA. ELEMENTARY & SECONDARY EDUCATION DEPARTMENT VIDE LETTER D06/06/2023. WHEREIN IT WAS STATED THAT SUB RULE 5 OF RULE 7 OF KHYBER PAKHTUNKHWA CIVIL SERVANTS (APPOINTMENT. PROMOTION AND TRANSFER) RULES. 1989 STANDS DELETED

Sir/ Madam:-

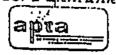
Your Honorable authority promulgated Notification No. SO (Policy) E&AD/1 3/2020, dated 06/08/2020, communicated to Elementary & Secondary Education vide letter dated 06/06/23 wherein it has been made mandatory to the employees to avail the promotion, otherwise, disciplinary action shall be taken against the employees. That, as per notification No. SD (Policy) /EDAD/1- 3/2020 dated 06/08/2020, the right of foregoing of promotion was withdrawn and the Government of Khyber Pakhtunkhwa Establishment Department (Regulation Wing) deleted Rule 7(5) in the Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 vide notification no SOR-VI (E & AD)/1-2/2020 dated 06-08-2020. That the Directorate of Elementary & Secondary Education Khyber Pakhtunkhwa 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 Education Khyber Pakhtunkhwa also wrote a letter to the office of Establishment & Administrative Department vide No SO(Primary-M) E&SED/2-2/Appointment Rule/2023 dated 23-08-2023 to reconsider the amendment made in Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 as it had negatively affected a large number of teachers and especially female teachers. In the meanwhile, the department vide its letter dated 07th of September 2023 directed the Directorate of Elementary & Secondary Education Khyber Pakhtunkhwa that necessary guidance has already been provided to the department and therefore no provision exists to decline or forgo promotion and those teachers who do not comply with the promotion order of the competent authority or try to evade promotion through different means shall be proceeded under the Khyber Pakhtunkhwa Civil Servant (Efficiency & Discipline) Rules, 2011.

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

Best Regards

Sher Zaman Khan Son of Asal Din Resident of Tehsil & District Mardan Khyber Pakhtunkhwa

A ziz Attichi Khien Proditions D 0332-04 (4648 C ozizutah1973@gmall.com El apinkali



APTA House: GovL Primary School No.4, Gulbohar Poshawar City,

آل پراتمری میچرزایسوی ایشن (اپنا) نیبر بختونخوا

بهاب: میکر فرل اسلمنزی ۵ میکناری ایم نمین کیم پیخونوا منهاب اکسایراتمری کیرو ایموی ایشن قیر پیخونم جنب مال

کزادٹی ہے کہ برہ موشنز ہر ادارے علی ہوتے ہیں او کہ مرکارٹی ہارم کی خماش ہوٹیا ہے پردم شنز کا ایک تافون اوا کر تافیا کہ جر نازم ایک اگر کمی مجروبے تحت ایک ولد پردم شنز دکیں تو دو بھر اسمان بیار سائل تک پردموئنز ٹیمل ہے تیجے بھر سٹل بیار سائل تک بھر اس بجر اس تافون علی حولی دمایت دک کیا جاد مثال دائل بات عم کر دی گئ کہ اگر ایک مائل برہ موثن نے لیمن قروہ دو مرسہ سائل لے سکتا ہے لیکن اب ایک وزیر ہیں۔ لیکن اب ایک وزیر لیکنیشن ہوا ہے۔

جم کے منابق اب ہر مام پروسٹی خردد لیں کے اگر تھی گی کے 7 می کے نلاف الل عالی مائن کاروائی کرنے کا کہ کہا کیا ہے معاصل نے آفری لولیکیٹن بلیادی المنائی حول کی کھل طالب دول ہے صوب کی دود دواو اور پہلی طاقوں تیں خاص کو فواتین اسا کا م کا انتہائی مشکات کا مامنا کرنا ہے کا

جکہ مام مالات کی مجی زبروئی پروس میں اور ووروں میں ایک بلیاں المالی خول کی خلاف وول ہے کوک نیر پہنوائم کی بدنش سے خاندانی وشدیل مجی اور کی اور کی ہوئی ہے مالات عمل نے خالے المجھٹی میں 1888 کی کا تیل کی جراب عمل کیا گیا ہے جر بدنگ اور بنیاری انسانی موق کی خالف ہوں اور کی جراب عمل کا تن مجی محفوظ و کے جن

للاایم آپ ے حدول اتل کرتے ال کر کر الیکیٹن کر رائی لا جائے یا اس نی تریم کرے پر اگری اما ذر کر (Relaxation) ریا جاتے ادر الن کر الرائم اللہ علی کا علیت علی کر میں ہے لیے دیا جائے

ارد پرومٹن نے لینے کی مورث علی الاہ والا لیا بائے لیکن نے اہرو کی نے ک بات

سرت المستوجة المنظمة المنظمة

عروالله خان سربال سدر مراک سدر آل المحال ال

WP4442-7073 AZIZULLAH VS GOVT CF PG43

ATTESTED

07.05.2024



- Learned counsel for the appellant present. 1.
- Let a pre-admission notice be issued to the respondents through TCS for submission of reply/comments. Appellant is directed to deposit TCS expenses within three days. To come up for reply/comments as well as preliminary hearing on 10.06.2024 before S.B. P.P given to learned counsel for the appellant.
- Alongwith the service appeal there is an 03. application for suspension of Notification dated 06.06,2023 and letter dated 23.08.2023 till the final disposal of main service appeal. In the meanwhile, no adverse action shall be taken against the appellant till next date of hearing.

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

Date of Presymption of Application 10-12 1-5 Mantier of 1

Convince. Urgan ----

Date of Order of the Copy 12-6-13



CS CamScanner

JAKALAT NAMA

## BEFORE THE SERVICE TRIBUNAL PESHAWAR

SHER ZAMAN Versus

**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.

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

APPELLANT

ACCEPTED

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

BASSAM AHMAD SIDDIQUI Advocate High Court