BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHUWA

C.M No _____-P of 2024

In Ref to

Service Appeal No <u>2314</u>2024

Nadar Khan

VERSUS

Secretary to Government of Khyber Pakhtunkhwa, & others

S#	DESCRIPTION OF DOCUMENTS	ANNEX	PAGES
1.	Appeal and Verification	*	1-4
2.	Application for suspension	*	5
3.	Copy of Monthly Salary Account	Α	6 - 6-1
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 th , 2023	С	9-11
6.	Copy of Minutes of meeting dated 06-07-2023	D	12-15
7.	Copy of Letter dated 23-08-2023	E	16 - 17
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INDEX

ADVOCATE

M. Muazzam Butt

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BEFORE THE SERVICE TRIBUNAL KHYDER PAKHTUNKHUWA

in Ref to

Service Appeal No_2314___/2024

Nadar Khan son of Mir Was Khan SPST (BPS-14)

Dolat Khel, Dodher, PO Khas, Tehsil and District Swabi

VERSUS

.....Appellant

- 1) Secretary to Government of Khyber Pakhtunkhwa, Establishment Department, Civil Secretariat, Pashawar
- 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:

1. That the Respondents Department appointed the Appellant as Senior Primary School Teacher. Copy of Appointment letter is annexed as <u>Annexure A</u> That as per Khyber Pakhtunkhwa (Appointment/ Promotion/ Transfer) Rules, 1989, as well as in other sister services of the other Provinces and Federation as well, availing of promotion by the employees is always optional and the employees as a matter of right may avail or forego their promotion and the next employee in seniority list is to be promoted:

(_

That some employees specifically have foregone their promotion as they could not 3. 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 06/08/2220, 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 impland 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*.

That as per notification No. SD (Policy) /EDAD/1- 3/2020 dated 06/08/2020, the 5. 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. Gopy of Impugned notification No. SD (Policy) EV AD/1- 3/2020 dated 06/08/2020 is attached as Annoxice B

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

Copy of Impugned Letter dated June 06th, 2023 is attached as Annexure C.

- That thereafter the meeting was also held in the office of Additional Secretary 7. 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>
- That the Respondent No.3 i-e. Directorate of Elementary & Secondary Education 8. Rhyber 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

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

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

Copy of impugned letter dated 07-09-2023 is attached as Annexure F $_{
m ext}$ $^{\prime}$

- 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:-

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- 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 whild 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.

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- 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 forther 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.

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e. That non-availing of promotion and foregoing thereof does not cause loss to the next employee in seniority, aspiring for promotion could be promoted.

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. 60 (POLICY) BAD/1-5/2020 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. Natanka

Appellant AFFIDAVIT: i, (the appeliant) solemnly declare Through that the contents of foregoing application are true and correct to the Muham**ny**d Muazzzam Butt hest of my knowledge and helief and Advocate/Supreme Court nothing has been concealed therein from this Honourable Court. Vadar Deponent Muhammad Adeel Burk Advocate High Court Bassam Alfinad Sidiliqui Advocate High Court LL.M- Human Rights 11/1

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BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHUWA

C.M No ______-P of 2024

In Ref to

Service Appeal No _____ 2024

Nadar Khan

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. Madarly Deponent

Through

Nadav Kb. Appellant

Muhammad Muazzam Butt Advocate Supreme Court

Aked BAL

Muhammad Adeel Butt Advocate High Court

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Dist. Govt. KP-Provincial District Accounts Office Sawabi Monthly Salary Statement (May-2024)

A Annexure

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Personal Information of Mr NADAR KH	AN d/w/s of MIR V	VAS KHAN	
Personnel Number: 00233888 CNIC: 16	520208713637	NTN: 0	
Date of Birth: 05.05.1965 Entry into	o Govt. Service: 21.	06.1987 Length of Service: 36 Years 11 M	lonths 012 Days
Employment Category: Active Permanent	T	н.,	
Designation: SENIOR PRIMARY SCHOOL	LTEA	80004527-DISTRICT GOVERNMENT KHYBE	
DDO Code: SU6130-Government Primary S	Schools (Malé) Swal	bi 🗸	
Payroll Section: 003 GPF Secti		Cash Center: 36	
GPF A/C No: EDUSB 02038 GPF Inter	est applied	GPF Balance: 836.220.00	(provisional)
Vendor Niimberi -	e: BPS For - 2022		nge: 28
Wage type	Amount	Wage type	Amount
0001 Basic Pay	71,250,00	1001 House Rent Allowance 45%	3,321.00
1210 Convey Allowance 2005	2,856.00	1300 Medical Allowance	1,500.00
2148 15% Adhoc Relief All-2013	980.00	2199 Adhoc Relief Allow @10%	654.00
2316 Teaching Allowance 2021	3,036.00	2341 Dispr. Red All 15% 2022KP	6,840.00
2347 Adhoc Rel Al 15% 22(PS17)	6.840.00	2378 Adhoc Relief All 2023 35%	24,328.00
Deductions - General		· · ·	,
Wage type	Amount	Woge type	Amount
iola of ESubscription	3,900.00	3501 Benevalent Fund	-1,200.00
2543 P., Jessianal Tax	-1,200.00	3609 Income Tax	-2,963,00
one care Land E.PK	-135.00	4004 R. Benefits & Death Comp.	-ñ00.00
Defluctions - Loans and Advances			
Loan Description		Principul amount Deduction	Balance
Deductions - Income Tax Payable: 46,319.88 Recovered till A	MAY-2024: 31,7	78.00 Exempted: L1579.44 Recoverable:	2,962.44

111,607.00 Net Pay: (Rs.): Grass Pay (Rs.): 121,605.00 Deductions: (Rs.): -9,998.00

Payee Name: NADAR KHAN

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Account Number: 68-6 Bank Details: NATIONAL BANK OF PAKISTAN, 231972 ZAIDA BRANCH ZAIDA BRANCH, SWABI

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Earned: Balance: Availed: **Opening Balance:** Leaves:

Permanent Address: SWABI		· · ·	•	,
City: SWAB1	Domicile: NW	V - Khyber Pakhtunkhwa		Housing Status: No Official
Temp. Address:				
City:	Email: nodark	han1965@gmail.com		

System generated document in accordance with APPM 4.6.12.9(232428/26.05.2024/v3.0) * All amounts are in Pak Rupees * Errory & omissions excepted (SERVICES/03.06.2024/23:14:19)

-Aſ, OFFICE OF THE DISTRICT SDUCATION OFFICER (MALE) MARDAN. APPOINTMENT: -. Appointment of the following person,s is/are hereby - 2 on tempenary and ordered against the Post of P.M.Fixed plus usual allowances adhoo basis @ Hs._ as admissible under the rules in the APS No. Rupees. on or his/their own pay and grade, which is benefical to him/them at the school noted against t : each names : -S.No. Name Qualification & Address Posted at Remarks. 11- Nuclear Eban S/O Hir Was Ithan B.A. (292) VPO Fother Tehril Surbi District Herden. (MPS. Half-Hohd Bands A.d.O.Post. (Brab1). Barkin Bir CONDITION OF LODOINTMUNUI-His/Their Services is/are liable to termination/revertion 1. at any time without any reason being assigned. Incase of resignation He/They will have to submit one month prior notice to the Deptt: of forefiet one month,s pay in lieu thereof to Government. 2. 3. He/They should not be allowed, to take over charge if has/ their age is/are less than 18 years and above 25 years. .1 He/They is/are required to produced Health and Age certifics. from Medical Supdt:D.H.Q.Hospital Mardan before taking 4. 60 over charge. 5:- Charge reports should be submitted to all concerned. 6:- If/He/They fails to take over charge of the post within 14 days after the issue of these orders the over of appointment shall stand cancelled. 71- Certificates should checked before handing over charge. (GUL ZAMAN KHAN) strict Education Officer (Male) Mardan. Dated Mardan the 98 Endst:No £7. Copy forwarded for information and n/action to the: Sub-Divisional Education Officer(Male)_ 1:4 H Guabi. Head Master/H. Teacher concerned. 2: **a**:⊥ Uandidate concerned. ON OFFICER HARDAN. 0adim/++ 1451987. m/+++

OF ISTILLY DEPUTY SECRETARY (POLIC LHACH (AW) (ILLY רואב נישואכר, אילימיוחזיותוסח Deperment-ייימייקפ עו אמיילי אייייייי ואר ביבווא הורכוסו (11), באא שכטוואותווע. ג'אא שכטוואותווע ביבווא הירטו (11), באא שכטוואותווע ביבווא שנייא שניי און גאיזויא סווגכבי וה בכיטוואותכוואג אלוואואוגווהווסה בראשור אינה ובקשרה וס דוב צבבווסה שנוגע אלוואא אלוואגישונים שבאשרוח אינה שנייא אלווא ווי The Demonstration of the Advisor of the Service Contrainstration Prehimiting a יווים אריאנים אויים אריא אריא אריא אריא אריא אריאני איין אייים אייניין אריא אריא אריאני אריאני אריאני אריאני א U1 ידואר גענצוצורער פראשאבי אופוי כסותי פראשאיניי. אדער גענצוצורער פראשאבי אופוי בסותי פראשאיניי. 10 און הפאווא כסתענוצנוסטבר וח צראאפנר הערטורעראש 6 S און והביוב סן אנוסלוכק הכשתחתכוני א אואטמי בשלאוטולאיש Ľ All Divisional Commissioners in Whyber Pollonana The Principal Secretury to Chiel Minister, Khyber Paldinnkhwa. אין אין אין ארברביער ני פאיפרחסר אואטרנר אין אווחולאאא. Ľ. լրը Senior Member Bond of Revunue, Khyber Pakhunkhina. Brimmig . awhilmunber . Pakirunkhwa. Pakirunkhwa. Pakirunkhwa. -tor helvanrent is the ATAU NOVA & ON JAW COVERNMENT OF THE ILVER NEED FAMILY PARTY CHIEF SECRET. ATTY 1 .buiele 7, sub-role:(2) and Vieleico. ะร่อกายก เอมพัก วดี ไไม่ประประทับการกาม ระกัญญา TNEWDNEWY יוו פאניפועה ען ואב אטאבופ בטענפורכון אי אכבוומה אל סו שמי 02021-8 1 30 colling minimal point. NOLLVOLALON ไอพูเพกพดใสสมบาย MUN VING INSMUSITEVESI KHAINFILHIVA THREAT CONTRAMENTO 5 JULY SUM

GOVERNMENT BE KHYBER PAKHTUNKHWA ESTABLISHMENT DEPARTMENT (REGULATION WING)

-8-

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:⁴⁴

AMENDMENT

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

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CHIER SECRETARY GOVERNMENT OF THE KHYBER PAKHTUNKHWA

(ANDS): & EVEN DATE

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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 Commissionars 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)

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ODVERMMENT OF RUYING PARITUM KUWA ESTADLISUMENT DEPARTATENT Ŵ 62 Ha.S()[l'olley)[[&A[3]] -3/2020 Tratel (Jaliawar the Juna 06, 2033 ¥. The Covening of Rhylier (Schunkhum, Elementary & Secondary Education Department, ĩ٥ 7 Subject: A CHUIDANCE INTOAILDING INCENTION OF MULE 765 IN THE RUYDEN PARTINICIUMA CIVIL NEWYANTS (APPOINTMENT, PROMUTION AND TRANSPERI HULPS, 1903. I am directed in rates to your failer No. SO(Primory-M)714-SUD73- ΛB Dear Sli DAppointment/2022 dated 18.04.2022 on the subject noted shows and to stote that Sub-Rule i. (3) of Rule-7 of Khyper Pakhumidaw Civil Servanis (Appolitiment, Piomotion and Transfer) ¢ Rules, 1989 stands deleted vide this depertment antification dated 06.08.2020; thus, an pravisian exists to decline or forgo promotion. The basic failonais builted the delation of the lold of a long of a prevention of albii safvani ficin temptellan for titlett min by sucking to a single incruitvo postposition or to prevent those who read to force promotion to avade matting/ilentitet of allow look of esparity to lackic higher responsibilities in case of pramation. Therefore, it is obligatory upon every civil servant to accept promotion in every condition. ٩. Furthermore, those officers/officials who do not comply with promotion order of the competent authority or up to evade promotion through different means shall be prozeciel against under Kinyber Pakhunteinup Civil Servints (fiffelency & Discipline) Ruics, Yours follofully. 2011, pircer 7 famul (Chan) նկյ () เมน ที่ไ Meet (Polley) اعتلام Radit. Of even No & date يلز Capy forwarded to that-PS to Special Secretary (Reg); Establishment Bepariment. ١. PA to Additional Secretary (Aco-II), Establishment Department, PS to Additional Secretary (Aco-II), Establishment Department, PS to Deputy Secretary (Policy), Establishment Department. h, 2 з. dmccr (Polloy) ndin radiale . XQPC ċ .7.16 ï 13 . 4. 1 WP4447-2073 AZIZI/LLAH V5'GOVT CF PG4

-Overniment of Rayber Pahatunkawa ELEMENTARY AND SECONDARY EDUCATION DEPARTMENT CIVIL SECRETARIAT PESHAWAR (Phono No.001-9223507)

> Nu.SO (Primary-M)/E6SED/2-6/2020 Galad Peshaviai the. June 26".2023

> > 26.161

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The Director Elementary & Secondary Education Department Khyber Pakhlunkhwa, Poshowar.

Aziz Ullah Khan President-All Brimary Tasakar's Assessments KP

Subject:

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

I am directed to reter 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 Chalimanship of Additional Secretary (Estab) E&SE Department in his office.

You are, literatore, requested to depute a representative of your respective Department to allend the meeting on a date, time & venue as mentioned

ébove, please.

Encl: AA

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(MUHAMMAD JEHAO SECTION OFFICER (PRIMARY MALE)

Copy forwarded to tha:

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

PRIM SECTION OFF

WP4412-773 AZIZULLAH VE GOVT OF PG43

No SO (Primary-M)/E&S5D/2-6/2023 Dated Peshawar the June 26th 2023 1

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То

The Director Elementary & Secondary Éducation Department Khyber Pakhtunichwa, Peshawar

Aziz Uliah Khan Prosident President Ali Primary Teacher's Association, KP

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

(am directed to refer to the subject noted above and to enclose here with a letter of Establishment Department letter No. SO (Policy)&&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) &&SE Department in his office.

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

Ench AA

(MUHAMMAD ISHAQ) SECTION OFFICER (PRIMARY MALE)

Copy forwarded to the:

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

SECTION OFFICER (PRIMARY MALE)

WP4442-2023 AZIZULLAH VS GOVT CP PG43

MINUTES OF THE MEETING | REGARDING APPLICATION SUBMITTED BY MR. AZIZ UILAH PROVINCIAL PRESIDENT ALL PRIMARY TEACHERS ASSOCIATION KHYBER PAKHTUNKHWA REGARDING OF DELETION OF RULE 7(3) IN THE CIVIL SERVANI (APPOINTMENT, PROMOTION & TRANSFER RULES 1989).

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A meeting regolding the subject matter was held on 06-07-2023 of 11:00 AM under the Chalmonship of Additional Secretary Establishment in his affice, the following attended the meeting,

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5#	ŇAMĘ	DESIGNATION
۱.	Mr. Pozol Wohld	Deputy Director Ettablishment of Obeclarate Elementary & Secondary Education Department
2	i Mr. Azir Ulloh	Flävindisi Flävideni Ali Filmisiy Tääähöis Association Khyber Pakhlunkhwa
3	Mr. Rolagal Ullah	General Secretary APTA Perhawar
4 Muhammad Ishaq		Section Officer (Pilmery) ELSE Department Civil Secretariat Khyber Pakhtunkhwa Peshawar

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

3. After Inteododre discussion il was decided that Directorate of Elementary & Secondary Education Department may examine the case property and submit a sell-contained/consolidated case for anword submission to Establishment Department for further necessary action.

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

ß (Alt Asts Ulloh) (Mr. Fozal Wohld) Provincial President Primary Teachers Association Deputy Director-I ELSE Department Khyber Pathlunkhvia, 22 (Muhammor Linga (Mr. Relagal Vilah) Section Officer (Primary-Malo) E&SE Deportment General Secrolory APTA . Peshawar (Abdullah) Addillonal Sacrelary (Establishment) EASE Department WP4442-2023 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 (APPDINTMENT, PROMOTION & TRANSFER RULES 1989).

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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 Wahld	Deputy Director Establishment of Directorate Elementary & Secondary Education Department
2. Mr. Aziz Ullah	Provincial President All Primary Teachers Association: Khyber Pakhtunkhya
3. Mr. Bafaqot Ullah	Genoral Secretary APTA Pashawar
A Muhammau unuq	General Secretary APTA Pëshawar Bectlah Officer (Krimary) CBBC 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.

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3. After threadbare discussion it was decided that Directorate of Elementary & Secondary Education Department may examine the case properly and submit & selfcontained/consolidated case for onward submission to Establishment Department for further necessary action.

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

(Mr. Fazal Wahld) Deputy Olrector-1 E&SE Department

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> Provincial President All Primary Teachers Association Khyber Pakhtunkhwa

(Mr. Rafaqat Ullah) General Secretary APTA Peshawar

(Muhammad Ishaq) Section Officer (Primary-Male) EBSE Deportment

> (Abdullah) (Abdullah) جون (Abdullah) جون (Abdullah) (Abdullah) (Abdullah) (Abdullah) (Abdullah) (Abdullah) (Abdullah) (Abd

i 5 Kliyber Pakittunkliwa, Peshawar 山島 Phane: 01 9923144 al Carar. Email: estableillatenimain (Qividi, Car Datel 2 Ta ž The Sector Officer (Primary-Male), Elementary & Secondary Education Deportment, Khyber Pakhtunkhya Peshawar... AUNUTIN AR YOR AURITAN вніцарні 4. Dear Sir. Dear Sir. _ I am firscient to refer to the latter No.SO(Primary-hOB&SED/S-1/ G.Mixe/Ministan of the flashing/PST/2023 dated 10-07-2023 on the subject clied above and to present helef litery about the background of the case as under: That Governmell of Klyber Pathiunthys Establishment Department (Regulation Wing) deloied Rulo 7(4) in the Civil Servants (Appointment, premation & Transfer Rules 1989) vide hatification No. No. SOR-VI (EdAD)/I-3/2020 dated 06-08-2020. That this office banglu guidance from your good office in the following words vide buter (i) It is the percentile of the civil servent to either accept a time form the order of the offer. (i) Now it the light of the civil servent to either accept at time the offer of ranialian, That youn Roff office farierdad the same to the quarter concerned vide letter No.50 (Primot-4) E&SED/2-3/Appointment/2021 for accessory guidance. That the Gave lument of Klyber Politonibuve Establishment Department (Regulation 21 (Ving) vide inter No.SO (Policy) E&AD/1-1/2020 dated 6-06-2023 categorically stated (Primary-M) EdSED72-2/Appalaiment/2023 dated 12-05-2023. That, in the light of the minutes of meeting dated 6-07-2023, held under the Chairmonship of How Additional Secretary Establishment at his office this office, has heen asked for submission of consolidated case, ÷ In weat of the above, this office is of considered opinion that the dolesion of Rules 7(5) have affected regatively a linge numbers of Female Teachers. Thus it is proposed that Teachers below Dr5-16 may be exempted of implications of the amandment in the rules ibid provided they public their written refuted prior to conduction of the meeting of Departmental frankation dominities. ase is submitted for perusal and necessory actions please. The 2813 L a. 1 X /n.l Assistant Director (Estab bi-D) Elementary & Secondary Education Khyber Pakhtankhwa . Endst: No. Copy of the above is to :-PA to Director Lotal Directorole. 1. Master Copy. 2. Assistant Director (Estabol-I) Elementary & Socoulary Education Kligher Paktuunkinen - : 2.4 1 4442-2073 AZIZIILLAH VS GOVT CF PG43 ×

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DIRECTORATE OF ELEMENTORY & SECONDARY EDUCATION KOK

Gertion Officer (Rimary- Male)

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Kok, Peshawar Elementary & seandary Education Department.

Minster of meeting 127/202 dated 20-7-602 an engiest alled above and to Buffed 1. MENTER of Meeting

delated rule 7(5) in Civil Serverts (Americaning providenty (2) Provided Alle prosent by by the highly and beckhand of and as welder.

Prantition of the sanger of the part of the same provided and the following vide notification No. No. 50R-VI(EEAD) 1-3/2020 dated ob 08-2020.

alt another the suits of this to svite prised (19(1)) . mothermorphy to the provide state of the current of the current in

Attomate of promotion.

· That your good office forwarded the coine to quarter concerned

sensitify to ciccept paration inder and and then. ind frave may the find and an appropriate and with the provider of the provide First the government of KP-ED (Regulation Why) vide leter No. So (Beliey) Eq. AD (1-2)2070 deted 6-06-2073 equipmenting) vide leter No. So (Beliey)

to missuraus at hales rad with suffer with suffer and to tramconsolidated case hald under the Chaimonship of them. Additional Secretary Establish. Cros-Fo-2 hat of the maintifes of the meeting detad in both o

members of Pearole Acadiers. autique bondizeros for i sittle states produced the considered in the spinite states of (2) Fisher of the product of the second of the second

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WEAKST3023 AZIZULLAH VE GOVT GF PERS

ELEVENTARY AND SECONDARY EDUCATION DEPARTMENT CIVIL SECRETARIAT PEBHAWAR (Phone No.091-8221587)

140. SO(Primary-M)E&SED/2-2/Appointment-Rula /2023 Peshawar Dated 23rd August, 2023 2.4

Annexure

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The Secretary to Gord, of Khyber Pakhlunkhwa, Esteblishment & Administration Department, Peshavar

SUBJECT: - GUTDANCE REGARDING DELETION OF RULE 7/5) IN THE CIVIL SERVANT (APPOINTMENT, PREMOTION & TRANSFER RULES <u>1989)</u>

Const Sir,

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) am directed to refer to your letter No. SO(Policy)/ EBAD/ 1-3/2020 dated 155* June 2023 and to state that after deletion of rule 7(5) Khyber Pakhtunkhwa Ovil Servent (Applionbment, Promotion & Transfer Rules 1989) It has been intimated that those officers/ officials who do not comply with promotion order of the competent authority or try to evade promotion through different means shall be proceed under Khyber $2\pi^{\frac{K}{2}}$ Padmunidarya Civil Servant (Efficiency & Discipline) Rules, 2013.

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

In view of the above, the said amendment may be reconsidered to the З. entent of lacy teacher is primary schools.

Copy lorvraided to the:

1. Director EPISE Khyber Pakhbunkhwa. 2. PS to Secretary, EASE Department Knyber Pakhtunkhwa.

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MUHANBAR 5 BEDTICH OFFICER (PRUMARY MALE)

SECTION OFFICER

WP4442-2023 AZIZULLAH VS GOVT CF PG43

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stears by locky teacher in primary scheepes with in vieu of above, the scored ammendment may be reconsidered to בלורכאז בט בבמורה מברותה Matter in law need 092 (1) such case they are regative Mast of them are manied with Kills and elder father of while traductor / while on rithin inother tratomer and it ratub milerer of such trait with summarian in every subof every restanced into avoir grant frammer for heart In this connection it is submitted that in some cases lady

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and servent (Efficiency and Discipline) Rule 2011. different means should be proceed under Khyber fakhtunkhun Appoint noitemore above at but to through a bready with to total officers official who durate complete with promotion order tart between ind 12 (1892 2010) when an originary delettor of Rule 17(5) Khyder Rithtuntheuro Civil Servicint (Approximente, with tark state of long scarsmulth by tab aror 18-21 Granding of a strate of the provident of the section of the sectio

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(6857 Civil Servicint (Apphiliment), hometion & Transfer Rulles SUBJECT: -- Gildonce reginding deletion of Rule 7(5) in the

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Pesherens.

Establishment and Administration by contraction The secretary to government of Khyle Buchandhund.

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

KHYDER PAKHTUNKFIWA CIVIL SERVANTS (APPOINTMENT,

The Sevenary to Government of Khyber Pakhlunkhwa, Elementary & Secondary Education Department. GUIDANCE REGARDING DELETION OF RULE 7(5) IN THE

PROMETION AND TRANSFER) RULES, 1989.

Subject: -

Dear Sir,

I am directed to refer to your letter No. SO(Primary-MI)/E&SED/2-2/Appointment-Rule/2023 dated 23:08:2023 on the subject noted above and to state that nucessary guidance he already been rendered to your good office vide this department letter of

even No. dated 06.062023 (copy enclosed).____

Yours faithfully,

Section

fiser (Policy)

Endst. Of even No & date

Copy forwarded to fiet-

- 1. PS to Special Scenary (Reg), Establishment Department,
- PA to Additional Secretary (Reg-11). Establishment Depurtment
- PS to Deputy Seconary (Policy), Establishment Department.

GOVERNMENT OF KHYBEP PAKHTUNKHWA ESTABLISHMENT DEPARTMENT No. 80(Pelicy)&&AD/1-8/8039 Dated Peshawar the September 07, 2023

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

5ubject • GUIDANCE REGARDING DELETION OF RULE 7(5) IN THE ICHYBER PAICHTUNICHWA CIVIL SERVANTS (APPOINTMENT. PROMOTION-AND TRANSFER) RULES, 1989.

Dear Sir.

Τo

I am directed to refer to your letter No. SO(Primary-M)/E&SED/2- 2/Appointment-Rula/2029 dated 29.08.2029 on the subject nated above and to state that Researchy guidance has already been tendered to your good office vide this department letter of even No. dated 06.06.2023 (copy enclosed).

Endst. Of even No & date

Copy forwarded to their 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)

Yours faithfully,

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Section Officer (Policy)

2-2023 AZIZULLAH VS GOVT CF PG4

Τo,

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

Annexure - G

- Secretary to Government of Khyher Pakhtunkhwa, Elementary and Secondary 2) – Education Department, C(vi) Secretariat, Peshawar
- Director Elementary and Sécondary Education Department 31 -

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 DELECED

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 06-00-2020. That the Directorate of Elementary & Secondary Education Khyber Palditunktiwa Poshawar asked for guidance regarding deletion of Rule, 7(6) in Khyber Pakhtankhwa 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 Bementary & 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 Khyher 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 Darectorate 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 fupresentation; the Notification bearing No. SO (POLICY) $_{\rm N}$ 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 26/01/2024

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NADAR KHAN SIO MIR WAS KHAN SPST

21-Rhyber Pakhtunkhwa Astz Dühli Khan President O 0333-04 (2628 Statzung) 1075@gmoll.com a<u>pta</u> APTA House) Govi, Printery School No. Buildebar Peshewar Clin. noinabpu وي اليثن (اينا) فيسر يعطنوه طوا ی تیجرزایے J٣ Annenne المام : ميكولوك المنتوك الاستكتادي الج كمين تجبر بتوالوا ميلفي اكل يراقرى لمجرز الموى التى فيبر بتولي جاب طال مزادش ب کر مدد مشتر بر ادامی عما است ال 11 کر مرکامل عادم کا توانش اول ب بردم شرکا ایک تالن ادا کر تا تاک ۶ عادم ایک اکر ک مجروری قد ایک دقد برد موفتو د لی و دو ایم اسحد بد مال تک بردموفتو مین سا خط سط منطب باد مال تک بم اس کا پردموفتو شک اوکن گ م اس الدن عد وملك دمان و الماكن بد مال وله بلد تم كر الك ك اكر أيك بادم ايك مال بدو وف و اين و درد در مرك مال ف سك ب لين اب ايك والتد يميل ايك الد ويطيع من ابي على ليكن اب ايك والتد يميل ايك الد ويطيع من ابي على یس سے مثابی اب بر عام پردس شرط عی سے اگر تھی تھی ہے 7 اس سے خلاف ال یہ لل دولا سے مثابی تارانی کر 2 کا کہ کی ب دمامل بے آفری فیکیش خادی الملک مثل کا کلا ظالہ عذل ہے سربے کہ دند دولا اند پہذل طاقل عن خاص کر فراغن امانتہ کہ انجائی مشکلہ ب مانا کو بات کا ای ای در ای در ای اید دستاد ایرا کا دانا کو بات ۲ اجد مام مالات ای ای اید می مدم ان اید دستداد ایرا کی داران المان از کا ناات درول ب کواکد ایر بخوانها ای د همی ب م الله ب الي مالات على به ظال يعين ج Bass ك تجليلى لي كابر عاب على كيا كياب عد بديَّة الد بلادك المال "وق ك ظال ب ו קוי ש יוו אל אי גלא יי אי אנונצ וו لاا بم آب ے حداد الل كرت ف كر وليمين كر دائى لا باب الى بى ويم كر ؟ براترى دائد، كر (Reinsation) دا بات الدان ك دروته موجع كما مليه الا ارمن - الج وابله الد بدامش در الي كا مودت عن إقامد، بلا لما باسة على بد ايدو كا د كا باسة اس مليك شالة آب مود 11 ماد الدول الما الداك الما الداكم المد فعر من مراحل مادل كما جاسة عاكر امنادا عن ب عل العيل براتارى اما ذه كر ذال الت او مرو ك ، ما باع كوكد وليطين بلول الدع تا براعمل امات كر ابن فدو او كرام المل غراما اوبنا ب الله ام بر المن ومك إلى كر قب ساميل لود المحلى ليكر معد مرك بدايم ل الماك، عسوما ليميل برايم ل الماك، كر اس الل الديت ال المال ل ^شكري_ي مزيدانكه لملك موبالى مدر FULL آل پراتمرک ٹیمرڈ الہوک ایٹن نیم، پکڑتوا _QD WP4442-2023 AZIZULLAH VS GOVT OF PG43 ١. ŀ 11.15

NAKALAT NAMA

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BEFORE THE SERVICE TRIBUNAL PESHAWAR

NA:DAR KHAN

Government of KP & others

n /-

Respondents

Appellant

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I (the Appellant)

Versus

do hereby appoint and retain

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

> <u>&</u> 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 Advocatesupreme Court

MUHAMMAD ADEEL BUTT Advocate High Court

BASSAM AHMAD SIDDIQUI Advocate High Court

FORM OF ORDER SHEET Court of___ 2314 /2024 Appeal No. S.No. Date of order Order or other proceedings with signature of judge proceedings 3 2 1 05/11/2024 1.-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 Peshi given to counsel for the appellant. By order of the Chairman