FORM OF ORDER SHEET

	Court o	of
	Apr	peal No. 2323 /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
ı		given to counsel for the appellant.
	-	By order of the Chairman
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BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHUWA A - No = 2323 2024

Aqil Nawab

v/s

Government of KP & others

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ADVOCATE

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHUWA

-1-

In Ref to

Service Appeal No_2323_/2024

Aqil Nawab Son of Gul Nawab Resident of Tehsil & District Mardan

Designation: Primary School Head Teacher at District Education Officer (Male)

.....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 THE IMPUGNED ACT 1974, _ AGAINST 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 SERVANTS (APPOINTMENT, CIVIL PAKHTUNKHWA PROMOTION AND TRANSFER) RULES, 1989 STANDS 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.

2.

- 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 4. 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".

- 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. Copy of notification No. SD (Policy) EV AD/1- 3/2020 dated 06/08/2020 is attached as <u>Annexure B</u>
- That the Directorate of Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar asked for guidance regarding deletion of Rule 7(5) in Khyber 6. 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 Annexure D
- That the Respondent No.3 i-e. Directorate of Elementary & Secondary Education 8. Khyber Pakhtunkhwa also wrote a letter to the office of Establishment & Administrative Department vide No SO(Primary-M) E&SED/2-2/Appointment Rule/2023 dated 23-08-2023 to reconsider the amendment made in Khyber

Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 as it had negatively affected a large number of teachers and especially female teachers. Copy of Letter dated 23-08-2023 is attached as <u>Annexure 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 Khyber Pakhtunkhwa Civil Servant (Efficiency & Discipline). Rules, 2011. Copy of Impugned letter dated 07-09-2023 is attached as <u>Annexure F</u>
- 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 exchequer and in consequence of foregoing promotion, pave way to the next employee in seniority, aspiring for promotion could be promoted.

-4-

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

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

It is further prayed that no penal action as proposed and envisaged in letter dated 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:

1 Aqil Nawab Son of Gui Nawab 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

Dep6nent

Muhammad Muazzzam Butt Advocate Supreme Court

nellant

Muhammad Adeel Butt Advocate High Court

horse

Bassam Ahmad Siddiqui Advocate High Court LL.M- Human Rights

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHUWA

C.M No _____-P of 2024

In Ref to

Service Appeal No _____2024

Aqil Nawab

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.

Depónent

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

Idel

Appellant

Muhammad Adeel Butt Advocate High Court

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GOVERNMENT OF KHYBER PAKHTUNKHWA ESTABLISHMENT DEPARTMENT (REGULATION WING)

NOTIFICATION

Dated Peshawar the, 06/08/2020

In exercise of the powers conferred by section 26 of the Pakhtunkhwa Civil Servants Act, 1973(Khyber Pakhtunkhwa Act No XVIII) the chief Minister of Khyber Pakhtunkhwa is pleased to direct that in the Khyber Pakhtunkhwa Civil Servants (Appointment Promotion and Transfer) Rules 1989, the following further amendment shail be made, namely:

AMENDMENT

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

CHIEF SECRETARY GOVERNMENT OF THE KHYBER PAKHTUNKHWA

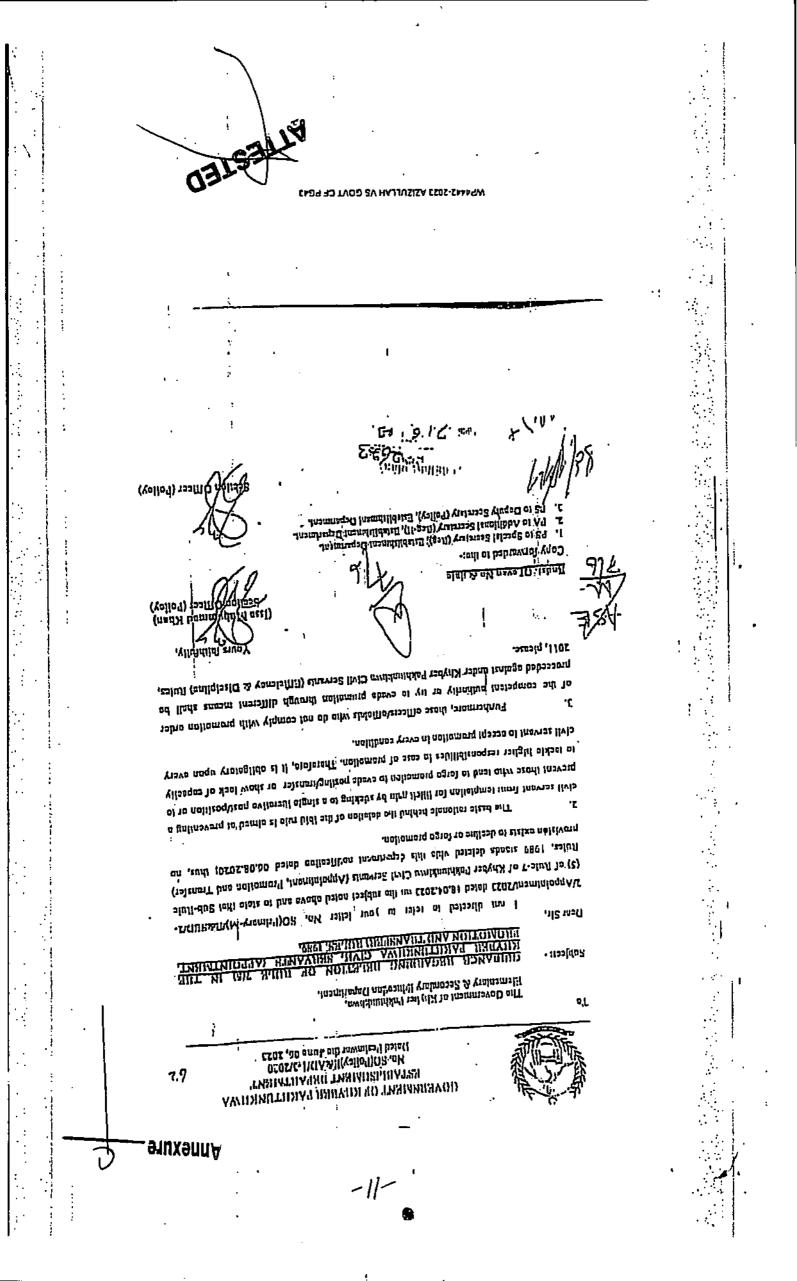
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Copy is forwarded to :-

- 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 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 coples.
- 16. The Caretaker, Administration Department.

(WARDAH LATIF) DEPUTY SECRETARY (POLICY)

STER



DVERNWENT OF MAYBER PARATUMICHWA ELEMENTARY AND SECONDARY EDUCATION DEPARTMENT CIVIL SECRETARIAT PESHAWAR (Phone No.091-9223587)

12

No.SO (Primary-M)/E&SED/2-6/2023 Dalad Peshawar Inc. June 25**,2023

36/6/23

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

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

Subject:

Τo

AND TRANSFERI 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.

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

Encl: AA

(MUHAMMAD ISHA'O) SECTION OFFICER (PRIMARY MALE)

Copy forwarded to the:

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

10

SECTION OFFICER

W#24442-2023 AZIZULLAH VS GOVT CF PG43

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No S0 (Primary-M)/B&SED/2-6/2023 Dated Peshawar the June 25th 2023

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The Director Elementary & Secondary Education Department Khyber Palchtunichwa, Peshawar

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

Subjecta

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

- 13 B|C

I am directed to refer to the subject noted above and to enclose here with a letter of Establishment Department letter No. SO (Pollcy)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 2. 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 Khyber Pakhtunkhwa.

SECTION OFFICER (PRIMARY MALE)

WP4442-2023 AZIZULLAH VS GOVT CF PG43.

TESTED

Annexure.

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MINUTES OF THE MEETING REGARDING APPLICATION SUBMITTED BY MR. AZIZ ULLAH PROVINCIAL PRESIDENT ALL PRIMARY TEACHERS ASSOCIATION KHYRER 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 Chairmonship of Additional Secretary Establishment in his office. The following attended the meeting.

5#	NAME	DESIGNATION
'	Mr. faza) Wahld	Depuiy Director Establishment of Directorate Elementary & Secondary Education Department
2	Mr. Aziz Ullah	Provincial President All Primary Teachers - Association Khyber Pakhjunkhwa
3	Mr. Ralàgal Ullah	General Secretary APTA Pethowar
4	Muhammad Ishaq	Section Officer (Primary) ELSE Department Civil Secretarial Khyber Pakhtunkhwa Peshawar

2. The meeting started with rectation from The Koly Ouran. The chair welcomed the participants. The Deputy Director (Establishment) of Directorole of Elementary & Secondary Education bileted 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 property and submit a self-contained/consolidated case for anward submission to Establishment Department for further necessary action.

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

Q (Mr. Fazal Wahld) Deputy Director-E&SE Department

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(Mr. Relegal Ullah) General Secretary APTA Peshawar

Vir Jaziz Ullah) Provincial President vimary Teachers Association Khyber Pakhlunkhwa

(Muhammad (Juhaa)

TESTED

Saclian Officer (Primary-Mala) ELSE Department

(Abdullah) Addillanal Secretary (Ertoblishment) E&SE Department

WP4442-2023 AZIZULLAH VS GOVT OF PG43

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

-15---B|C-

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

SII NAME I	DESIGNATION
1 Mr. Fazəl Wahid	Deputy Director Establishment of Directorate Elementary & Secondary Education Department
2. Mr. Azlz Ullah	Provincial President All Primary Teachers Association: Khyber Pakhtunkhwa
3. Mr. Refaqat Ullah	General Secretary APTA Peshewar
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 weicomed 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,

(Mr. Fazal Wahid) Deputy Director-1 E&SE Department

į

Provincial President All Primary Teachers Association Khyber Pakhtunkhwa

(Mr. Rafaqat Ullah) General Secretary APTA Peshawar

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

> (Abduliah) 슈뢰슈티인에서 동문대대자(Fetablishpeapt)



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-17--BIC-DIRECTORATE OF ELEMENTARY & SECONDARY EDUCATION, KPK To: PESHAWAR Section Officer (Primary-Male) (21-7-20W) Elementary & Secondary Eclacotion Department KPK, Peshowar. Subject 1. Minutes of Meeting Dear Sir; I am directed to refer to letter No. (SO. Annony -M)E & SED/S-1/GMBL/ Minutes of meeting PST/2023 dated 20-7-2023 on subject cited above and to present bilef history, about backgrand of cure as under. * That Government of KP Establishment depentment (Regulation Why) deleted rule 7(5) in Civil Servisions (Appointment, promotions, Transfer Rules 3809) vide notification No. NO. SDR-VI(ESAD)1-3/2020 classed ob-08-2020. · That this office sought guidance from your good uffice in the following words vide latter No. 6987 dated ob-our 202] is Now it is obligatory upon civil scovent to accept promotion. (i) Still presogative of civil servent to ether accept/tumdan the offer of promotion. • That your good office for worded the same to questes concerned vide letter NU. So (Animary 14) EGSED/2-2/Appointment (2023 for necessary . That the government of KP-ED (Regulation Wilty) vide letter No. SO (Policy) EGAD (1-3)2070 dated B-06-2073 categorically stated that there exists no provision to decline forgo promotion. St is obligatory upon every civi) servint to accept ponotion under any condition. . That in light of the mainutes of the meeting dated 6-07-2022. held under the Chairmanship of Hon. Additional Secretary Establish. -ment at his office. This office has been asked for submission of In view of the above, this office is of considered opinions that the deletion of Rules 7(s) have affected negatively a huge members of Female teachiers The case is submitted for period and necessary actions please. Copy of the clove to; Accelerated Director 1. PA to Director Local Directorate Elementary & Secondary Educates Khyber Rachbonkhule. 2. Master Copy WP4447-2023 AZIZULLAH VS GOVT CF PG43 STED



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

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

The Secretary to Govi, of Khyber Pakhtunkhwa, Esteblishment & Administration Department, Peshawar

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

CARE SU,

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I

J am directed to refer to your letter No. SO(Policy)/ E&AD/ 1-3/2020 dated 1967 June 2023 and to state that after deletion of rule 7(5) Khyber Pakhtunkhwa Civil Servant (Applochment, 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 Pakhounkinva Civil Servant (Efficiency & Discipline) Rules, 2011.

2 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 heed care. In such cases, there are negative effects on service delivery.

3. In view of the above, the seld amendment may be reconsidered to the internet of lady teacher in primary schools.

Copy forvarded to the:

Director E&SE Knyber Pakhtunkhwa.
 PS to Secretary, E&SE Department Knyber Pakhtunkhwa.

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(MUHAMMAN ISHAD) SECTION OFFICER (PRIMARY MALE)

SECTION OFFICER

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WP4442-2023 AZIZULLAH VS GOVT CF PG43

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Ble No.5 (Primary -M) ESSED 12-21 Appointment - Rule 2023 Pesticium Dated 23rd August, 2023.

-202-

Τō

The secretary to Government of Khybe Pakhhundhusa. Establishment and Administration Depostment, Peshauer.

SUBJECT :

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

- JD -

Dear Sir.

9 and directed to refer to your letter No. So(Princip) |E&AD 11-3/2020 dated Bth June 2023 and to state that after deletion of Rule 7(S) Khyber Bithtunkhua (Ni) Servant (Appointment, Romotion and Transfer Rules 1989) 91 has been intimated that these 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 Pakhtunkhua Civil Servant (Efficiency and Discipline) Role 2011. In this connection it is submitted that in some cases lady teacher of primary level who avail such promotion have to face serious incovenience while there have to perform duties In the remotest stations with no residentical / transport facilities. Most of them one manied with kids and elder father of Mother-in-law who need age. In such cases there are negative effects on service delivery. In view of above, the said ammendment may be reconsidered to the esterat of locky teacher in primary schools.

- Copy forwarded to;
- 1_ Director ES SE Ktybe Richardhura.

2. PS to Secretary, E & SE Depostment (but X) Astronutines

(Muhammad Istacy) Section officer (Rimay)

Male)



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

Yours faithfully,

Section

ser (Policy)

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

Subject: -

Annexure

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 your letter No. SO(Primary-MI)/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).____

Endst. Of even No & date

Copy forwarded to the:-

- 1. PS to Special Secretary (Reg), Establishment Department.
- PA to Additional Secretary (Reg-I)), Establishment Department.
- PS to Deputy Secretary (Policy), Establishment Department. 3.

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

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

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

Dear Sir.

То

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,

3

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.

WP4442-2023 AZIZULLAH VS GOVT CF PG43

ATTESTED

Section nicer (Policy)

14 - -54 - 2 17

,23 -Annexure.

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:-

To,

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 Vold, Ultra vires to the Constitution of Pakistan.

Best Regards

Aqil Nawab Son of Gul Nawab Resident of Tehsil & District Mardan



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CHOR 40 TYOO BY HAJJUSISA CS05-SHIPPIN

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Learned counsel for the appellant present.

2. Let a pre-admission notice be issued to the tespondents through TCS for submission of reply/comments. Appellant is directed to deposat 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 coursel for the appellant.

03. Atongwith the service appeal there is an 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.

decified to be (one copy(Muhammad Akbar Khan)

AVEN DAR Taktarada Member (E)

Date of Procession of Application 19-FE 1-6 Number of State 1-P Number of 1 Convert United Date of Circo and States 13-6-23-Date of October 201 States 12-6-1-5



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AQIL NAWAB

Appellant

Versus

JAKALAT NAMA

BEFORE THE SERVICE TRIBUNAL PESHAWAR

Government of KP & others

Respondents

I (the Appellant)

do hereby appoint and retain

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

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