FORM OF ORDER SHEET

	Court o	of
	<u>Ap</u>	peal No. 2343 /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

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BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHUWA

Sardar Hussain

5.AND: 2343/24

V/S

Government of KP & others

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ADVOCATE

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHUWA

In Ref to

.

Service Appeal No 2343 /2024

Sardar Hussain Son of Imran Ullah Resident of Tehsil & District Mardan

Designation: Primary School Head Teacher at GPS Railway Station

.....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 AGAINST THE ACT 1974, TRIBUNAL NOTIFICATION BEARING NO.SO(POLICY)E&AD/1-312020, 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 PAKHTUNKHWA CIVIL 1989 STANDS 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.

2.

-2-

- 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 <u>Annexure B</u>
- 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 <u>Annexure D</u>
- 8. That the Respondent No.3 i-e. Directorate of Elementary & Secondary Education Khyber Pakhtunkhwa also wrote a letter to the office of Establishment & Administrative Department vide No SO(Primary-M) E&SED/2-2/Appointment Rule/2023 dated 23-08-2023 to reconsider the amendment made in Khyber

ł.

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>

-3

- 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.

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- 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.
- 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 Sardar Hussain Son of Imran Ullah Resident of Tehsil & District Mardan that the contents of foregoing appeal are true and correct to the best of my knowledge and belief and nothing has been concealed therein from this **Honourable Court** Deponent

Through

Muhammad Muazzzam Butt Advocate Supreme Court

Muhammad Adeel Butt Advocate High Court

assa Siddiqui

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

PAGE 5

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHUWA

C.M No _____-P of 2024

In Ref to

Service Appeal No _____2024

Sardar hussain

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.
- 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.

Deponent

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 Honorabia Court. Through

Muhammad Muazzam Butt Advocate Supreme Court

Muhammad Adeel Butt Advocate High Court

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GOVERNMENT OF KHYBER PACHTUNKHSWA ESTABLISHMENT DEPARTMENT (REGULATION WING)

NOTIFICATION

Dated Jeshäwnr the, 06 / 8/2020

Rentingen and Servents Act. 1973 (Klyber Pokhuakhwa Act. No.XVIII. of Kill in Chief Minister of Khyber Pakhinkliwn is pleased to direct that in the Khyber (i) ind child Servaris (Appointment, frainalian and Transfer) Rules. 1989, the ite made, namely:

AMENDMENT

in rule 7, sob-rule (S) shall be deleted.

GOVERNMENT OF THE IGEYDER PAKETUNKHWA CHIEF SECNETARY

NISE NO & EVEN DATE

Cupy of forwarded 10:-

- Additional Chief Secretary, Oovi. of Khyber Pakhtunkhwa.
- Developrioni Depariment.
- The Senior Member Board of Revenue, Khyber Pakhrunkhwa. All Administrative Secretaries to Gove of Khyber Palatunkhwa. The Principal Secremry to Governor Khyber Pakhtunkhwa,
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- All Divisional Commissioners in Khyber Pakbrunkhwa 3. 4.
- The Principal Secretary to Chilef Minister, Knyber Pakhninkhwa. All Heads of Anaclied Departments in Kityber Pakhlunkhwa. All Autonomous/Semi Autonomous Bodics in Khyber Pakhiunkhwa 5
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- **]**. The Registrar Peshawar High Court, Peshawar .S.
- All Deputy Commissioners in Khyber, Pakhunkhwa.
- 9.
- 10. 11.
- The Registrar, Khyber Pakhunkhiya Service Tribunal, Peshawar The Secretary, Khyber Pakhtunkhwa Bublic Service Commission, Pesbiyur. All Section Officers in Establishmenter Administration Department. indic request The Section Officer (Admn), Administration Department wit
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- - arran 20 gazelle copies. The Larensker, Administration Department.

ATTESTEL

(WADDAH LATTI) DBEUTY SECRETARY POLI

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GOVERNMENT OF KHYBER PAKHTUNKHWA ESTABLISHMENT (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.
- 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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תטובג. 1989 גובתלה עבובוכו אולם וואז לכורמאומלחו הם-חכסווסם עמוכם 00.08.2020ן ואטג, חם (1) of Rule.7 of Khyber Pekhunkhunkhunkhing (Appolation), Promotion and Transfer) sluft-dug tert) alote of the evode later taylan eit an CCOC.40.61 haloh CCOC.Anintogravit

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כועון גבועמען ום פכבלאן אנטשטונטע וח פענטי כטחגונוסא.

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

BUBJECT : GUIDANCE REGARDING DELETION OF RULE 7(5) IN THE KHYBER PAKHTUNKHINA CIVIL BERVANIS APPOINTMENT, PROMOTION AND TRANSFER) RULES 1989.

Deor Bir, Jam directed to refer to your letter No. SO (Primary. M) / EE SED/2 - 2/Appointment (2023 dated 18.04.2023 on the cubicit noted above and to state that Sub-Rule (5) of Rule - 7 of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Tranifue) Rules, 1989 stands deleted vide this department notification dated 06.08.2020; thus, no provision exists to decline or forgo promotion.

The basic rationale schind the duetion of the isid rule is almed to preventing a civil servant from temptation for illicit gain by sticking to a single Lucrative post/position or to prevent those who tend to forgo promotion to ivade parting/transfer on show Tack of capacity to tackle higher responsibilities in cuse of promotion. Therefore, it is obligatory upon every civil servant to accept promotion in every condition.

Furthermore, those officers / officials who do comply with promotion order of the competent not authority of try to evade peromotion -through different means shall be proceeded against under Khyber Pakhtunkhwa livil servents (Efficiency & Disciplime) Rules, 2012 please.

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ATTESTER

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(ESTON OFFICER (BOILD) (ESTON MAMMONDA KHON) (ESTON MAMMONDA KHON) - D/D-- J/D-



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POVERNMENT OF MMYBER PARMTUNKHWA ELEMENTARY AND SECONDARY EDUCATION DEPARTMENT **CIVIL SECRETARIAT PESHAWAR** (Phone Mo.001-9223507)

No.SO (Primary-M)/E&SE0/2-6/2023 Daled Peshawar Inc. June 26", 2023

> 2 1612

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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.

Encl: AA

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(MUHAMMAD ISHAD) SECTION OFFICER (PRIMARY MALE)

Copy forwarded to that

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

nc.

ALE) SECTION OFFICER

WP4442-2023 AZIZULLAH VS GOVT OF PG43

ATTESTER

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

The Director Elementary & Secondary Education Department Khyber Palditunkhwa, Peshawar

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

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

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

Blc

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

Encl: AA

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(MUHAMMAD ISHAQ) SECTION OFFICER (PRIMARY MALE)

Copy forwarded to the:

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

SECTION OFFICER (PRIMARY MALE)

WP4442-2023 AZIZULLAH VS GOVT CF PG43

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Annenure"D

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

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

5#	NAME	DESIGNATION
1	Mr. Pazal Wahld	Deputy Director Establishment of Directorate Elementary & Secondary Education Department
2	i Mr. Azir Ullah	Provincial President All Primary Teachers Association Khyber Pakhlunkhwa
3	Mr. Raiagal Ullah	General Secretary APTA Peshawar
4	Huhammad Ishaq	Section Officer (Primary) E&SE Department Civil Secretariai Khyber Pakhlunkhwa Peshawar

 The meeting started with recitation from the Haly Ouran. The chair welcomed the particippints. The Deputy Director (Establishment) of Directorate at Elementary & Secondary Education briefed the forum regarding agendo item in detail.

3. After threadbare discussion it was decided that Directorate of Bementory 2 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.

G (Mr. Fazal Wohld) Deputy Director-I E&SE Department

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(Mr. Rofaqat Ullah) General Sacretary APIA Peshawar

(Ar JAriz Ulloh) Provincial President Plimory Teachers Association Khyber Pathlunkhwo

(Muhammad Lu

Section Officer (Primary-Male) E&SE Department

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

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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 at 11:00 AM under the Chairmanship of Additional Secretary Establishment in his office. The following attended the meeting

5//	NAME	DESIGNATION
1	Mr. Fazal Wahld	Deputy Director Establishment of Directorate Elementary & Secondary Education Department
2	Mr. Aziz Ullah	Provincial President All Primary Teachers Association: Khyber Pakhtunkhwa
3.	Mr. Rafaqet Ullah	General Secretary APTA Peshawar
4	Muhammad Ishaq	Section Officer (Primary) E&SE Department Civil Secretarial Khyber Pakhtunkhwa Peshawar

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

3. After threadbare discussion it was decided that Directorate of Elementary & Secondary Education Department may examine the case 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 Wahld) Deputy Director-1 E&SE Department

Provincial President All Primary Teachers Association Khyber Pakhtunkhwa

(Mr. Rafaqat Ullah) General Secretary APTA Peshawar

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

> المطالفة) (Abdullah) موطاناتمها Ssscretary (Establish posst)

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~	עון זפראמטן נס פוועמי שבכבטון שי נווגע קטאט ועס עלפר על בואן צבראמטן נס סוועמי שבכבטון שי נווגע קטאט ועס עלווסטי	o oyi ja anyabasasi ayi si it (ji)	
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	ια την του	l am directed to refer	
		Subject: - <u>AUNUTES OF THE MEET</u>	
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	الملاقة). مرابطية: (ماليك المرابع	To The Section Officer (Prima Elementary & Secondary	
	א אווו: נגופאווואגמושטין ושמט ווואגמור א א א א א א א א א א א א א א א א א א א	rrrstto: 061-60	

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PESHAWAR

(21.7-2023)

-BIC-DIRECTORATE OF ELEMENTARY & SECONDARY EDUCATION, KPK

To:

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

Subject: Minutes of Meeting

Dear Sir; I am directed to refer to letter No. (SO Annony -M)E & SED/S-1/GMEL/ Minutes of meeting /PST/2023 dated 20-7-2023 on subject cited above and to present bulif history, about background of cure as under.

* That Government of KP Establishment depentment (Regulation Wing) deleted rule 7(5) in Civil Servents (Apprintment, promotion of Transfer Rules 1989) vide notification No. No. SDR-VI(ESAD) 1-3/2020 clarked 06-08-2010.

· That this office sought guidance from your good uffice in the following words vide letter No. 6987 defled ob-our 2023

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

(ii) It is presogative of civil servant to either accept/turndawn the

• That your good office forwarded the same to quarter concerned vide letter No. So (Prinary M) E&SED/2-2/Appointment (2023 for necessary

• That the government of KP-ED (Regulation Wing) vide letter No. SO (Policy) ESAD [1-3] 2070 dated 5-06-2023 categorically stated that there exists no provision to decline forgo promotion. It is abligatory upon every civi) Servent to accept promotion under any condition.

• That in light of the minutes of the meeting dated 6-07-2023 held under the Chairmonship of them. Additional Secretary Establishment at his office. 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(s) have affected negatively a huge members of Female reachers.

The case is submitted for persol and necessary actions please.

Copy of the clove to; 1. PA to Director Local Directorate 2. Master Copy Acceleration Director Elementary & Secondary Education Khyber Richtenkhus.

WP4442-2023 AZIZULLAH VS GOVT CF PG43



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

> 140. SO(Primary-M)EBSED/2-2/Appointment-Rule /2023 Peshawar Dated 23rd August, 2023

The Secretary to Gov, of Khyber Pakhlunkhwa, Establishment & Administration Department. Peshavar

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

GEBI SIL,

 $\overline{\cdot}$

1 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 Ovil Servant (Appionement, Promotion & Transfer Rules 1989) It has been intimated that those officers/ officials who do not comply with promotion order of the competent authority or ケィ い さいさつき promotion through different means shall be proceed under Khyber Perimounking a Givil Servant (Effidency & 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 2 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.

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

Copy forwarded to the:

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1. Director ELSE Khyber Pakhtunkhwa. 2. PS to Secretary, EBSE Department Knyber Pakhtunkhwa.

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(MUHAMMAU ISH SECTION OFFICER TRAMARY MALE)

SECTION OFFICER

WP4442-2023 AZIZULLAH VS GOVT CF PG43

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-20,-- B/c-No.So (Primary - M) FESED 13-31 Appointment - Rule 2023 Perhauner Dated 23rd August, 2073.

Τð

The secretary to Government of Khybo Rikhlunbhua. Establishment and Administration Department, Pesherera.

Quidance regarding deletion of Rule 7(5) in the SUBJECT : Civil Servant (Appointment, Promotion & Transfer Rules 1989)

Dear Sir,

(Policy) (E&AD 9 an directed to refer to your letter No. So(Princing) 11-3/2020 dated Bth June 2023 and to state that after deletion of Rule 7(S) Khyber Pathtunkhur Civil Servant (Appointment, Promotion 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 Rikhtunkhua Civil Servant (Efficiency and Discipline) Rule 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 they have to perform duties in the remotest stations with no residentical / transport facilities. Mast of them one manied with kills 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

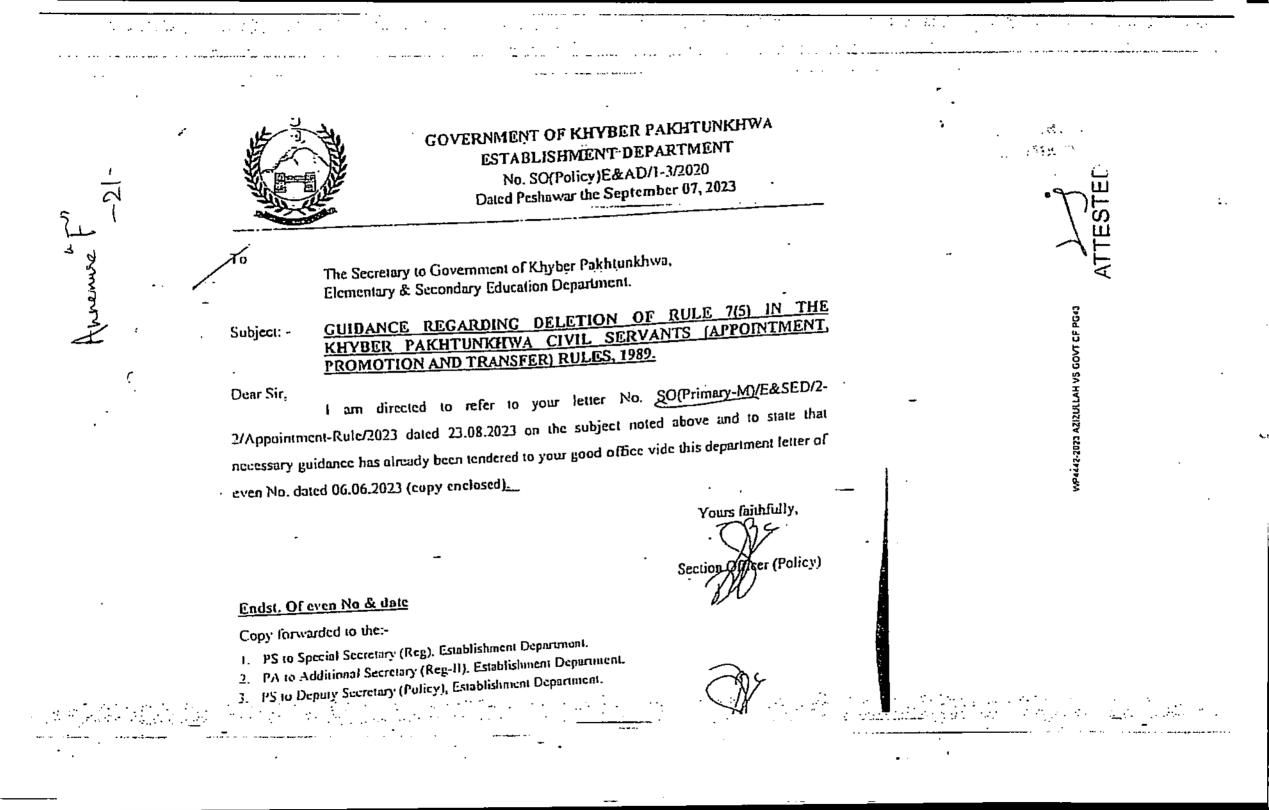
the extent of lady teacher in primary schools. Copy forwarded to;

1 Director EE SE Ktybes Rechtorkhura.

(Muhammaun -Section officer (Rimand Male)

2. PS to Secretary, E & SE Deportment litertex Attation thready

ATTESTE



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.

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

Dear SIr.

To

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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,

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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

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3. PS to Deputy Secretary (Policy), Establishment Department

Section nicer (Policy) ·:

ATTESTEL

WP4442-2023 AZIZULLAH VS GOVT CF PG43

Τo.

Hnnew Dated: 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

Sardar Hussain Son

Sardar Hussain Son of Imran Ullah Resident of Tehsil & District Mardan

-24 4 Khyber Pakhtunkhwa Mnenure Nele Minh Khan President apita APTA Houses Qovi, Primery Selice) No.4, Guibeber Peshawar City, CO 0333-0414648 Collabilit1973@gnoll.com Fi notnyoli Tل مراتمری ٹیچیرز ایسوی ایشن (اپٹا) نیسبر پیختوننو ا بماجب وسيكرار الملتوى الاستبنادي الجرمين تحيير بنتو نوا مُؤْجد الله يراتمرك ليجرد الدوى التن فيبر بخوالها جاب عالى كراوش ب كر برد موشر بر المادب على اوت الى 18 كر مركادل الدم ك تواش اول ب برد موشركا ايك قاول اداكر القاكر جر عادم ايك اكرك مجود ب قت ایک داند پردموشز د لی ودد بر اسمر اسمد، باد سال تک پردموشز نین نے تلخ سے مطلب چار سال تک بر اس ک پرد موشز منین اد عن من م اس تادن عن قواى دمايد. وى كل جد ملى وال بات مو من وى كن كر اكر ايك مال يدا وش د في 7 10 10 مريد مل ال مكاب لكن اب ايك والتربيل ايك اور وليفيش وواب جم م مطابق اب بر الم پرومون شرور لمى م اكر فين لي م 7 م م خلال الان الدائد مطابق كاردان كر الاكاب ب ددامل بد افرى ويليش بدادى الدال حول كا مكل طال دول ب موج ك دود دولا اد بدادك الأول عد نام كر فواعن اماتد كر انتال مكاات كا 5-27 جا۔ مام مالات من می دیرد می پرد موٹن اور دوروند ایم می بادل المال حول ک طاف دروی بامی مد مر باد مرا می د حس ے ماعال د شنیا کا ال ب اي مالت عن يد ناار ايمين جر Base كا مخدلس ليزك براب عن كيا كياب جربزة الد بادل الدان مول ك ظاف ب ام ای کا تالی کے ایک میں ہے والی کا تالی تالی تالی کا تن کی منوع دکتے ہی۔ اہم آپ سے حداث اہل کرتے ہی کہ کر لیکیشن کر داہی لیا جاتے یا ای ٹی تر ہم کرتے پر اقراب امانڈ، کر (It claxation) دیا جاتے ادر ان کر ارد ت بدومن في كا علية ان كوم ش ب في دا با 4 ادر پرامش نه اين ك مورسة ١٦، ١٦ ما ١٠ ما لا لا فاع الكوا يه وبروى د ك باع اس سليل عن آب جلد ال جلد قام (DEOs) إلى إلى إدار كم ايك فسرس مراسل جلدى كيا جلسة فاكر المتكار عراب سيل / ليبيل براترول امان، كرذان الت الد الد تحديث س بمايا باسط مح تد العظيمين بادى اوت على براقرى امات، كرابى طود برجرج كرا تا سلسلد شرامة الرباع الدائم يدفق ومحت ول ك أب ساحان فردى ايمن فكر مور مر مح بداعرى المارد فسوسا ليول براقرى المارد وان دائى الدين مد المار ال ش*كري* فزيزالله مان مرماكي مدر آل پراتمری کیمرز ایسوی ایش خیر بخونوا WP4442-2023 AZIZULLAH VS GOVT CF PG43

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1. Learned counsel for the appellant present.

2. 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.

03. Alongwith 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.

Certified to be to be copy(Muhanmad Akbar Khan) Member (E)

Date of Programmica of Amaligation 10-12 1-6 Number of 1-1 Course 1 Urgan ----Name of a Date of the operation of the second of the second states of the second s

ATTESTER





BEFORE THE SERVICE TRIBUNAL PESHAWAR

SARDAR HUSSAEN Versus

Appellant

Government of KP & others

Respondents

-26-

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.

CO1

APPELLANT

ACCEPTED

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

BASSAM AHMAD SIDDIQUI Advocate High Court