


FORM OF ORDER SHEET

Court of _____

Appeal No. 2376 /2024

| S.No. | Date of order proceedings | Order or other proceedings with signature of judge |
|-------|---------------------------|---|
| 1 | 2 | 3 |
| 1- | 06/11/2024 | <p>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.</p> <p>By order of the Chairman</p> <p> REGISTRAR</p> |

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHUWA

Gohar Ali


V/S

Government of KP & others

S. ANo:- 2376/24

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ADVOCATE

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHUWA

In Ref to

Service Appeal No. 2376 /2024

Gohar Ali Son of Rahim Khan Resident of Tehsil & District Mardan

Designation: Senior Primary School Teacher at GPS Kalo

.....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 TRIBUNAL ACT 1974, AGAINST 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, 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/1-312020, 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:

1. That the Respondents Department appointed the Appellant as Senior Primary School Teacher.
Copy of Monthly Salary account is annexed as Annexure A

2. That as per Khyber Pakhtunkhwa (Appointment/ Promotion/ Transfer) Rules, 1989, as well as in other sister services of the other Provinces and Federation as well, availing of promotion by the employees is always optional and the employees as a matter of right may avail or forego their promotion and the next employee in seniority list is to be promoted.
3. That some employees specifically have foregone their promotion as they could not serve in the areas where there is no facility of accommodation and no houses of their elders are available to look after them in far-flung and solitary mountainous hard areas, and as per Section 25 of per KP Civil Servant Act, 1973, rules to the extent of terms and condition is framed by the Chief Minister and such promotion rules are not made applicable with retrospective effect. The rules framed are published in the Gazette notification and part and parcel of KP Civil Servant Appointment, Transfer and Promotion Rules 1989.
4. That Government of K.P without following the rules position mentioned in Para 6 above promulgated Notification No. SO (Policy) E&AD/1 3/2020, dated 06/08/2020, communicated to Respondent No.2 vide letter dated 06/06/23 wherein it has been made mandatory to the employees to avail the promotion, otherwise, disciplinary action shall be taken against the employees. The impugned Notification is reproduced as under:-

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

5. That as per notification No. SD (Policy) /EDAD/1- 3/2020 dated 06/08/2020, the right of foregoing of promotion was withdrawn and the Government of Khyber Pakhtunkhwa Establishment Department (Regulation Wing) deleted Rule 7(5) in the Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 vide notification no SOR-VI (E & AD)/1-2/2020 dated 06-08-2020. Copy of notification No. SD (Policy) EV AD/1- 3/2020 dated 06/08/2020 is attached as **Annexure B**
6. That the Directorate of Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar asked for guidance regarding deletion of Rule 7(5) in Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 in respect of which the respondent No. 1 vide its letter No. SO(Policy) E&AD/1-3/2020 dated Peshawar the June 06th, 2023 directed the respondent No 3 (Directorate of Elementary & Secondary Education) that Rule 7(5) in the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 has been deleted vide notification dated 06-08-2020 and ,therefore, no provision exists to decline or forgo promotion and it is obligatory upon every civil servant to accept promotion under every condition. Copy of Impugned Letter dated June 06th, 2023 is attached as **Annexure C**
7. That thereafter the meeting was also held in the office of Additional Secretary Establishment on 06-07-2023 in which it was decided to examine the case properly and submit a self-contained/ consolidated case for onward submission to the Establishment Department for further necessary action. Copy of Minutes of Meeting dated 06-07-2023 is attached as **Annexure D**
8. That the Respondent No.3 i.e. Directorate of Elementary & Secondary Education Khyber Pakhtunkhwa also wrote a letter to the office of Establishment & Administrative Department vide No SO(Primary-M) E&SED/2-2/Appointment Rule/2023 dated 23-08-2023 to reconsider the amendment made in Khyber

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

9. That the respondent vide its letter dated 07th of September 2023 directed the Directorate of Elementary & Secondary Education Khyber Pakhtunkhwa that necessary guidance has already been provided to the department and therefore no provision exists to decline or forgo promotion and those teachers who do not comply with the promotion order of the competent authority or try to evade promotion through different means shall be proceeded under the Khyber Pakhtunkhwa Civil Servant (Efficiency & Discipline) Rules, 2011. Copy of Impugned letter dated 07-09-2023 is attached as Annexure F
10. That the petitioner feeling aggrieved, filed Representation to the respondents in person, and also approached to respondents through APTA President but the grievances of the appellant have not so far been redressed. Copy of Representation against the said notification is annexed as Annexure G & H
11. That feeling aggrieved from the letters dated 06-06-2023 and 07-09-2023 and the deletion of Rule 7(5) in the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989; the petitioners filed this Hence, the instant service appeal is filed on the following grounds:-

GROUND:-

- 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 of 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.
- 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.

Gohar Ali
Appellant

AFFIDAVIT:

I Gohar Ali Son of Rahim Khan 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

Gohar Ali
Deponent

Through

Muhammad Muazzam Butt
Muhammad Muazzam Butt
Advocate Supreme Court

Muhammad Adeel Butt
Muhammad Adeel Butt
Advocate High Court

Bassam Ahmad Siddiqui
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

Gohar Ali

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.

Gohar Ali
Deponent

Gohar Ali

Appellant

Through

Muhammad Muazzam Butt
Advocate Supreme Court

Adeel Raza
Muhammad Adeel Butt
Advocate High Court

OFFICE OF THE EXECUTIVE DISTRICT OFFICER (Schools & Welfare) MARDAN.

APPOINTMENT ORDER:

-6- Annexure A

Consequent upon the advertisement published in the Daily Mashriq Peshawar dated 07-02-2004 and resulted interview held on 25-02-2004 by the District Recruitment/Selection Committee. The District Coordination officer Mardan (Competent Authority) is pleased to appoint/approve the following PST (Male) on contract basis for three years only in BPS-07 (Rs.2220-158-5820 P.M) plus usual allowances as admissible to them under the rules against the vacant PST Post at the school noted against each with effect from the date of their taking office subject to the following conditions: public service subject to the following existence terms and conditions:

75% UNION COUNCIL WISE.

G.C. - S.S. - 1437

| S.No | R.No | Name | Father Name | Name of Union Council | Grand Total | Address | Name of School where posted |
|-------------------|------|-------------------|-------------------|-----------------------|-------------|-------------------|-----------------------------|
| UC Ato | | | | | | | |
| 1 | 337 | Inayat Ullah Shah | Sarwar Shah | Ato | 55.24 | Ato | Pipal Bagh Khei |
| 2 | 1246 | Muhammad Amin | Muhammad Ali | Ato | 54.55 | Balochan Ato | Pipal Bagh Khei |
| 3 | 1173 | Faizur Rehman | Fazli Manan | Ato | 54.06 | Ato | Pipal |
| UC Babaini | | | | | | | |
| 4 | 623 | Zahid Hussain | Saida Khan | Babaini | 55.54 | Khudai Noor Kill | Babaini |
| 5 | 627 | Nisar Ahmad | Abdul Sattar | Babaini | 53.89 | Charbanda | Yahya Jaded |
| 6 | 1350 | Ilhtiaq Ahmad | Rouf Khan | Babaini | 53.82 | Barichan Babaini | Khudai Noor Kill |
| 7 | 1238 | Muhammad Ilyas | Mir Muhammad Khan | Babaini | 53.72 | Dheri Kill Mardan | Khudai Noor Kill |
| 8 | 1273 | Akbar Khan | Bacha Khan | Babaini | 52.00 | Shagal Babaini | Shankar (Babaini) |
| 9 | 303 | Nousher Khan | Rahimul Khan | Babaini | 51.96 | Babaini | Babaini |
| 10 | 1604 | Akhter Baid Shah | Gul Daud Shah | Babaini | 51.92 | Babaini | Naseer Kill |
| 11 | 493 | Darwesh Khan | Samandar Khan | Babaini | 51.28 | Nabir Kill | Naseer Kill |
| 12 | 131 | Ayaz Khan | Multan Khan | Babaini | 51.08 | Babaini | Naseer Kill |
| 13 | 455 | Rasheed Ahmad | Ali Rahman | Babaini | 50.76 | Dheri Koroon | Naseer Kill |
| 14 | 1829 | Rouf Ullah | Rahim Daud Khan | Babaini | 50.11 | Naseer Kill | Shagal Noor |
| 15 | 1070 | Fazal-E-Subhan | Noor Gill | Babaini | 49.88 | Shankar | Shankar Koroon |
| 16 | 2177 | Fazli Qayum | Khan Qaz | Babaini | 48.99 | Naseer Kill | Shagal No. 2 |
| 17 | 1259 | Alan Zeb | Akhter Muhammad | Babaini | 48.23 | Shankar | Shenda |
| 18 | 622 | Razi Khan | Anwar Khan | Babaini | 48.19 | Khudai Noor Kill | Shenda |
| 19 | 1225 | Fazle Haq | Fazli Rabi | Babaini | 48.05 | Khudai Noor Kill | Khudai Noor Kill |
| 20 | 624 | Irshad Muhammad | Anwar Khan | Babaini | 47.43 | Khudai Noor Kill | Mir Akbar Kill |
| 21 | 1728 | Atta Ullah | Saeed Ullah | Babaini | 47.37 | Saddar Kill | Mir Akbar Kill |

S/MSO = 268

TESTED

[Handwritten Signature]

| | | | | | | | | |
|---------------------|------|------------------|------------------|------------|-------|-------------------|-----|----------------------|
| 357 | 1621 | Muhammad Jamil | Ghulam Nabi | Shamal Pur | 48.84 | Sowariyan | GPS | Rirdous Abad |
| 358 | 480 | Mhboob ur Rehman | Aziz ur Rehman | Shamal Pur | 48.24 | Sawar Yan | GPS | Anwar Khan Kill |
| 359 | 1553 | Wali Muhammad | Gul Muhammad | Shamal Pur | 48.07 | Jabba Mani Khela | GPS | Zor Mandi |
| UC Shamo Zai | | | | | | | | |
| 360 | 216 | Noorul Basar | Mian Zar Khan | Shamo Zai | 52.77 | Chappal Abad | GPS | Pilagi |
| 361 | 959 | Muhamraiz Khan | Sher Ali Khan | Shamo Zai | 52.08 | Chapal Abad | GPS | Chapal Abad |
| 362 | 904 | Mohammad Tahir | Zameen Gul | Shamo Zai | 51.45 | Ghumko | GPS | Chapal Abad |
| 363 | 901 | Dakht Zada | Gul Zada | Shamo Zai | 50.95 | Ghumko | GPS | Chapal Abad |
| 364 | 203 | Sabaz Ali Shah | Shah Pur | Shamo Zai | 50.75 | Chapal Abad | GPS | Landi Shoh |
| UC Sher Garh | | | | | | | | |
| 365 | 531 | Lila Muhammad | Muhammad Akbar | Sher Garh | 56.18 | M. Shah kalyan | GPS | Haji Nadar Sher Kill |
| 366 | 398 | Hakeem Khan | Nousher Khan | Sher Garh | 55.21 | Sher Garh | GPS | Haji Nadar Sher Kill |
| 367 | 1452 | Asmat Ullah | Abdul Hameed | Sher Garh | 51.41 | Faqir Abad | GPS | Haji Nadar Sher Kill |
| 368 | 1317 | Muhammad Zulmir | Said Zar Khan | Sher Garh | 52.10 | Babru Sher Garh | GPS | Ahmad Gul Kill |
| 369 | 585 | Hidayat Ullah | Said Azim Khan | Sher Garh | 51.67 | Faqir Abad | GPS | Ahmad Gul Kill |
| 370 | 1453 | Aziz ur Rahman | Abdul Hameed | Sher Garh | 51.66 | Faqir Abad | GPS | Khan Muhammad Kill |
| 371 | 2126 | Habib Shah | Awal Shah | Sher Garh | 50.82 | Sher Garh | GPS | Khan Muhammad Kill |
| UC Toru | | | | | | | | |
| 372 | 1614 | Intiaz Ali | Muhammad Anwar | Toru | 55.67 | Toru | GPS | Kala Khel |
| 373 | 2191 | Ashfaq Ahmad | Shamsul Qamar | Toru | 55.16 | Toru | GPS | Sultan Abad |
| 374 | 230 | Khan Zeb | Aurang Zeb | Toru | 54.91 | Jouresh Kill | GPS | Shoukat Abad |
| 375 | 1915 | Akram Hussain | Muhammad Hussain | Toru | 51.56 | Nodah Toru Mardan | GPS | Shamshad Abad |
| 376 | 1498 | Muhammad Younas | Khan Bahadar | Toru | 53.64 | Haji Abad Toru | GPS | Nodah Toru |
| 377 | 1652 | Fazal Wahab | Abdur Raziq | Toru | 53.12 | Khair Abad | GPS | Shoukat Abad |

[Handwritten Signature]

TERMS AND CONDITIONS:-

- 1- Their appointments are made purely on contract basis for three years and are liable to termination at any time without any notice or reason.
- 2- They will perform their duty at the same station during the whole three years contract service.
- 3- Their contract can be renewed after three years if their performance is found excellent as per required purity of the time.
- 4- They are required to produce health and age certificate from the concerned Medical Superintendent before taking over charge.
- 5- They are not allowed to take over charge if their age is less than 18 years and above 45 years.
- 6- They are required to sign contract agreement on judicial paper before taking over charge.
- 7- Their educational/professional certificates/degrees should be verified from the concerned Board/University before drawl of pay and pay should not be released if not verified.
- 8- In case of bogus testimonials pointed out later on, P.T.C. will be registered against the candidate concerned.

15/11/17

GOVERNMENT OF
KHYBER PAKHTUNKHWA
NSI ESTABLISHMENT DEPARTMENT
(REGULATION WING)

P-1
-110-
Annexure "B"

NOTIFICATION

Dated: Peshawar, the 06/08/2020

In exercise of the powers conferred by section 26 of the
Khyber Pakhtunkhwa Act, No. XXVIII of
1973 (Khyber Pakhtunkhwa) is pleased to direct that in the Khyber
Pakhtunkhwa Civil Services (Appointment, Promotion and Transfer) Rules, 1989, the
following further amendment shall be made, namely:-

AMENDMENT

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

**CHIEF SECRETARY
GOVERNMENT OF THE KHYBER PAKHTUNKHWA**

LIST NO & REVENUE DATE

Copy forwarded to:
Govt. of Khyber Pakhtunkhwa, Planning &

1. Additional Chief Secretary, Govt. of Khyber Pakhtunkhwa, Development Department.
2. The Senior Member, Board of Revenue, Khyber Pakhtunkhwa.
3. All Administrative Secretaries in Khyber Pakhtunkhwa.
4. The Principal Secretary to Government, Khyber Pakhtunkhwa.
5. The Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
6. The Principal Secretaries in Khyber Pakhtunkhwa.
7. All Divisional Commissioners in Khyber Pakhtunkhwa.
8. All Heads of Attached Departments in Khyber Pakhtunkhwa.
9. All Autonomous Bodies in Khyber Pakhtunkhwa.
10. All Deputy Commissioners in Khyber Pakhtunkhwa.
11. The Registrar, Khyber Pakhtunkhwa Public Service Commission, Peshawar.
12. The Registrar, Khyber Pakhtunkhwa Public Service Commission, Peshawar.
13. The Registrar, Khyber Pakhtunkhwa Public Service Commission, Peshawar.
14. The Registrar, Khyber Pakhtunkhwa Public Service Commission, Peshawar.
15. The Registrar, Khyber Pakhtunkhwa Public Service Commission, Peshawar.
16. The Registrar, Khyber Pakhtunkhwa Public Service Commission, Peshawar.
17. The Registrar, Khyber Pakhtunkhwa Public Service Commission, Peshawar.
18. The Registrar, Khyber Pakhtunkhwa Public Service Commission, Peshawar.
19. The Registrar, Khyber Pakhtunkhwa Public Service Commission, Peshawar.
20. The Registrar, Khyber Pakhtunkhwa Public Service Commission, Peshawar.



ATTESTED

MAJID UL HASAN
DEPUTY SECRETARY (REGULATION)

ATTESTED

-11-

**GOVERNMENT OF
KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT
(REGULATION WING)**

NOTIFICATION
Dated Peshawar the, 06/08/2020

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

AMENDMENT

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

**CHIEF SECRETARY
GOVERNMENT OF THE KHYBER PAKHTUNKHWA**

(ANDS): & EVEN DATE

Copy is forwarded to :-

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

**(WARDAH LATIF)
DEPUTY SECRETARY (POLICY)**


ATTESTED

-12- Annexure "C"



GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT
No. 50(Polcy) & ADI-5/2020
Dated Peshwar (the June 06, 2023)

62

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

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

Dear Sir,
I am directed to refer to your letter No. 50(Polcy-MYI&SUD/2-Appointments/2023 dated 18.04.2023 on the subject noted above and to state that Sub-Rule (S) of Rule-7 of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 stands deleted with this department notification dated 06.06.2023. Thus, no provision exists to decline or forgo promotion.

2. The basic rationale behind the deletion of the said rule is aimed at preventing a civil servant from temptation for illicit gain by seeking to a single lucrative post/position or to prevent those who tend to forgo promotion to evade posting/transfer, or show lack of capacity to tackle higher responsibilities in case of promotion. Therefore, it is obligatory upon every civil servant to accept promotion in every condition.

3. 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.

Yours faithfully,

(Iqbal Hussain Khan)
Section Officer (Policy)

ASE
7/6

Encls. 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.

SE/...

2023
21/6/23

Section Officer (Policy)

ATTESTE

-13-

B/C

To, The 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,
I am directed to refer to your letter No. 80 (Primary-M) /EE&ED/2-2/Appointment/2023 dated 18.04.2023 on the subject noted above and to state that sub-Rule (5) of Rule-7 of Khyber Pakhtunkhwa Civil Servants (Appointments, Promotion and Transfer) Rules, 1989 stands deleted vide this department notification dated 06.08.2020; thus, no provision exists to decline or forgo promotion.

2. The basic rationale behind the deletion of the said rule is aimed 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 evade posting/transfer or show lack of capacity to tackle higher responsibilities in case of promotion. Therefore, it is obligatory upon every civil servant to accept promotion in every condition.
3. 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.

WP-1442-2023 AZIZULLAH VS GOVT OF PK


ATTESTED





No. 8145 /F.No. 34/SST/UGeneral Cases
Phone: 091-9223344

Khyber Pakhtunkhwa, Peshawar

Dated: 21-7-2023

Email: establishmentmale@gmail.com

To

✓
The Section Officer (Primary-Male),
Elementary & Secondary Education Department,
Khyber Pakhtunkhwa Peshawar.

Subject: MINUTES OF THE MEETING
Dear Sir,

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

- That Government of Khyber Pakhtunkhwa Establishment Department (Regulation Wing) deleted Rule 7(5) in the Civil Servants (Appointment, promotion & Transfer Rules 1989) vide notification No. No. SOR-VI (E&AD)/1-3/2020 dated 06-08-2020.
- That this office sought guidance from your good office in the following words vide letter No. 6987 dated 06-02-2023.
 - (i) Now it is obligatory upon the civil servant to accept Promotion in every condition.
 - (ii) It is the prerogative of the civil servant to either accept or turn down the offer of promotion.
- That your good office forwarded the same to the quarter concerned, vide letter No. SO (Primary-M) E&SED/2-2/Appointment/2023 for necessary guidance.
- That the Government of Khyber Pakhtunkhwa Establishment Department (Regulation Wing) vide letter No. SO (Policy) E&AD/1-3/2020 dated 6-06-2023 categorically stated that there exists no provision to decline or forgo promotion. It is obligatory upon every civil servant to accept promotion under every condition.
- The same was received by this office from your good office vide letter No. SO (Primary-M) E&SED/2-2/Appointment/2023 dated 12-06-2023.
- That, in the light of the minutes of meeting dated 6-07-2023 held under the Chairmanship of Hon. 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 opinion that the deletion of Rules 7(5) have affected negatively a huge numbers of Female Teachers. Thus it is proposed that Teachers below DPS-16 may be exempted of implications of the amendment in the rules ibid provided they submit their written refusal prior to conduction of the meeting of Departmental Promotion Committee.

The case is submitted for perusal and necessary actions please.

Assistant Director (Estab M-1)
Elementary & Secondary Education
Khyber Pakhtunkhwa

Encls: No. _____
Copy of the above is to:-

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

Assistant Director (Estab M-1)
Elementary & Secondary Education
Khyber Pakhtunkhwa

ATTESTED

ATTEST

WP447-2023 AZIZULAH VS GOVT OF PUNJ

Richard Director
Elementary & Secondary Education
Lahore, Pakistan

Copy of the above to:
1. PD to Director Local Directorate
2. Master Copy

In view of the above, this office is of considered opinion that the decisions of Rules 7(S) have affected negatively a huge members of Female teachers. The case is submitted for perusal and necessary action please.

That in light of the minutes of the meeting dated 6-07-2023 held under the Chairmanship of Hon. Additional Secretary, Establishment of his office. This office has been asked for submission of consolidated case.

- That the government of KP-ED (Regulation Wing) vide letter No. SO (P&M) EQAD/1-3/2020 dated 6-06-2023 correspondingly stated that there exists no provision to decline / forgo promotion; it is obligatory upon every servant to accept promotion under every condition.
- That your good office forwarded the same to quater concerned vide letter No. SO (P&M) EQAD/2-2/Appointment/2023 for necessary guidance.
- That the government of KP-ED (Regulation Wing) vide letter No. SO (P&M) EQAD/1-3/2020 dated 06-08-2023 sought guidance from your good office in the following words vide letter No. 6983 dated 06-07-2023.
 - (i) Now it is obligatory upon civil servant to accept promotion.
 - (ii) It is prerogative of civil servant to either accept/reject the offer of promotion.
- That Government of KP Establishment department (Regulation Wing) vide notification No. SO R-VI (EQAD) 1-3/2020 dated 06-08-2023 decided rule 7(S) in Civil Servants (Appointment promotion) (Regulation) (1997) present but history, about historical of case as under:
 - Minutes of meeting PST/2023 dated 10-7-2023 on subject cited above and to
 - I am directed to refer to letter No. SO (P&M) EQAD/1-3/2020 dated 06-08-2023

Dear Sir,
I am directed to refer to letter No. SO (P&M) EQAD/1-3/2020 dated 06-08-2023 on subject cited above and to

To: Section Officer (Primary Male)
Elementary & Secondary Education Department
KPK, Peshawar.

PESHAWAR
(21-7-2023)

DIRECTORATE OF ELEMENTARY & SECONDARY EDUCATION, KPK

- B/C -

-20-

ATTESTED

Version: 2023 4212ULLAH VS GOVT CP: PG43

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SECTION OFFICER (PRIMARY/MALE)

1. Director ERSE Khyber Pakhtunkhwa
2. PS to Secretary, ERSE Department Khyber Pakhtunkhwa

Copy forwarded to the:

SECTION OFFICER (PRIMARY/MALE)

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

2. In this connection it is submitted that in some cases lady teacher of primary level who avail such promotions have to face serious inconvenience 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 or mother-in-law who need care. In such cases, there are negative effects on service delivery.

I am directed to refer to your letter No. SO(Policy)/ERAD/1-3/2020 dated 07 June 2023 and to state that after deletion of rule 7(5) Khyber Pakhtunkhwa Civil Servant (Appointment, Promotion & Transfer Rules 1989) it has been indicated 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 Pakhtunkhwa Civil Servant (Efficiency & Discipline) Rules, 2011.

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

The Secretary to Govt. of Khyber Pakhtunkhwa
Establishment & Administration Department,
Peshawar

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

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



Amwarsa E

ATTESTE

[Signature]

(Municipal School)
Section Officer (Primary)
Rajkot

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

Copy forwarded to:
In view of above, the said amendment may be recognized to the extent of lady teacher in primary schools.
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Most of them are married with kids and elder father of
in the remotest stations with no residential/hospital facilities
face serious inconvenience while they have to perform duties
teacher of primary level who avail such promotion have to
In this connection it is submitted that in some cases lady
different means shall be proceed under Khyber Pakhtunkhwa
Civil Servant (Efficiency and Discipline) Rule 2012.
of the competent authority or try to evade promotion through
those officers/officials who do not comply with promotion order
Promotion and Transfer Rules 1989) it has been intimated that
deletion of Rule 7(S) Khyber Pakhtunkhwa Civil Servant (Appointment,
1-3/2020 dated 8th June 2023 and to state that after
I am directed to refer to your letter No. SO (Primary) (E&AD)
Dear Sir,

SUBJECT: Guidance regarding deletion of Rule 7(S) in the
Civil Servant (Appointment, Promotion & Transfer Rules
(1989))
Peshawar.

The Secretary to Government of Khyber Pakhtunkhwa,
Establishment and Administration Department,
Peshawar.

To
No. SO (Primary - M) E&SE D/19-8/1/
Appointment - Rule/2023
Peshawar Dated 23rd August 2023

- 22 -
- B/C -

VAKALAT NAMA

BEFORE THE SERVICE TRIBUNAL PESHAWAR

GOHAR ALI
Versus

Appellant

Government of KP & others

Respondents

I (the Appellant)

do hereby appoint and retain

MUHAMMAD MUAZZAM BUTT ASC. MUHAMMAD ADEEL BUTT AHC

BASSAM AHMAD SIDDIQUI AHC

&

ASSOCIATES OF MUAZZAM LAW FIRM

to act and appear for me in the above Suit and on my behalf to conduct and prosecute (or defend) the same and all proceedings that may be taken in respect of any petition connected with the same or any decree or order passed therein and Applications for review to file and obtain return of documents, and to represent me/us and to take all necessary steps on my/our behalf in the above matter.

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

APPELLANT

ACCEPTED

MUHAMMAD MUAZZAM BUTT
Advocate Supreme Court

MUHAMMAD ADEEL BUTT
Advocate High Court

BASSAM AHMAD SIDDIQUI
Advocate High Court