# FORM OF ORDER SHEET

	Court	
	<u>Ap</u>	peal No. 2355 /2024
S.No.	Date of order	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 REGISTRAR

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# BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHUWA

Muhammad Rehman

S.AN0:-2355

V/S

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Government of KP & others

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BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHUWA

In Ref to

Service Appeal No. 2355 /2024

Muhammad Rehman Son of Muhammad Ghulam Resident of Tehsil & District Karak

Designation: Primary School Head Teacher at GPS Bergal

.....Appellant

### VERSUS

- Secretary to Government of Khyber Pakhtunkhwa, Establishment Department, Civil 1) Secretariat, Peshawar
- Secretary to Government of Khyber Pakhtunkhwa, Elementary and Secondary 2) Education Department, Civil Secretariat, Peshawar
- Director Elementary and Secondary Education Department 3)

.....Respondents

SERVICE APPEAL UNDER SECTION 4 OF KPK SERVICE <u>TRIBUNAL</u> ACT <u>1</u>974, AGAINST THE **IMPUGNED** NOTIFICATION BEARING NO.SO(POLICY)E&AD/1-3/2020. DATED 06/08/2020, COMMUNICATED TO RESPONDENT NO. 2 VIDE LETTER DATED 06/06/2023, WHEREIN IT WAS STATED THAT SUB RULE 5 OF RULE 7 OF KHYBER PAKHTUNKHWA CIVIL SERVANTS (APPOINTMENT, PROMOTION AND TRANSFER) RULES, 1989 STANDS DELETED

PRAYER:

ON ACCEPTANCE OF INSTANT SERVICE APPEAL, THE IMPUGNED NOTIFICATION BEARING NO: SO (POLICY) E&AD/1-3/2020, DATED 06/08/2020, COMMUNICATED TO RESPONDENT NO. 2 VIDE LETTER DATED 06/06/2023, MAY BE DECLARED AND ORDERED TO BE STRUCK DOWN BEING VOID AND ULTRA VIRES TO THE CONSTITUTION OF PAKISTAN AND FUNDAMENTAL PRINCIPLES OF NATURAL JUSTICE AND AGAINST THE RIGHTS OF APPELLANT.

ANY OTHER RELIEF WHICH THIS HONOURABLE TRIBUNAL DEEMS FIT AND PROPER IN THE CIRCUMSTANCES OF THE CASE MAY ALSO BE GRANTED TO THE APPELLANT.

### **RESPECTFULLY SHEWETH:**

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

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- 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 <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<sup>®</sup>vide No SO(Primary-M) E&SED/2-2/Appointment Rule/2023 dated 23-08-2023 to reconsider the amendment made in Khyber

2.

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>Anriexure E</u>

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- 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 <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/1-3/2020 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: Muhammad Rehman Son of Muhammad Ghulam Resident of Tehsil & District Karak 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 Deponent

Through

Muhammad Muhzzzam Butt Advocate Supreme Court

Appellant

Muhammad Adeel Butt Advocate High Court

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

78.

## BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHUWA

-5-

C.M No\_\_\_\_\_-P of 2024 In Ref to

Service Appeal No\_\_\_\_\_/2024

# Muhanmad Rehman 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 (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 from this Honourable Court

Through

Muhammad Muazzzam Butt Advocate Supreme Court

opellant

Muhammad Adeel Butt Advocate High Court

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Annexue-1 - R GOVERNMENT OF CHYBRA PAICHTUNKESYA ESTAILISHMENT DEPARTME (RECULATION WING) NOTHACATION Daled Pentinwar the, 06 / 8 12020 The international of the powers conferred by secilidin 26 of the powers conferred by seciliding the cruce mentation of Anyuer rightulikition is pleased to direct that in the Khyber Civil Servenia (Appointment, Promotion and Transfer) Rules. 1989, the Tenting further uncondinent shall be mille, namely: ANGENDMENT in rule 7, sub-rule (5) shull be deleted. GOVERNMENT OF THE IUFYDER PAKHTUNUIWA MALEND & EVEN DATE Additional Chief Secretary, Oovi, of Khyber Pakhtunkhwa. Planning & Lupy is impounded to:-The Senilor Member Bonid of Revenue, Khyber Pathrunkinva. All Administrative Secretaries to Gove of Kityber: Palbrunkhwa. ١. The Prinsipal Secretary to Governor, Khyber, Pathtunkliwe, The Principal Scoreiary to Chilef Minister, Knyber Paktinunkhwa. 2. All Divisional Commissioners in Khyber Pakhunkhwa З. All Hereis of Anachied Departments in Klyber Pakhlunkhwa. All Autonomous/Semi Autonomous Bodies in Khyber Pakhiunkhwa J. ŧ, All Deputy Commissioners in Knyber, Pakhunkhwa ú. The Registrar, Khyber Bakhlunkhwa Service Tribunal, Peshawar, The Rugistrur, Peshawar Higli Court, Reshawer Who State ary, Khyber Pakhunkhwa Ruble Service Complission, Justin War. ŝ. Proposition y, Mary weiter menung and an and a second seco ŋ The Section Officer (Admn), Administration Department with the request to 10. 11 12 he Caretaker, Actininiatration Department. arrange 20, gazene, copies. (WA)WAH LATIF) DEPUTY SECRETARY (POLIC ATTESTED Allista

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

-8

#### NOTIFICATION

#### Dated Peshawar the, 06/08/2020

In exercise of the powers conferred by section 26 of the Pakhtunkhwa Civil Servants Act, 1973(Khyber Pakhtunkhwa Act No XVIII) the chief Minister of Khyber Pakhtunkhwa is pleased to direct that in the Khyber Pakhtunkhwa Civil Servants (Appointment Promotion and Transfer) Rules 1989, the following further amendment shall be made, namely <sup>2</sup>

#### AMENDMENT

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

CHIER SÉCRETARY GOVERNMENT OF THE KHYBER PAKHTUNKHWA

### (ANDS): & EVEN DATE

Copy is forwarded to :-

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- 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)

TESTED

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CHOR TO TUOD OV HAJJUSISA ESOE-SHARAW 1 -ر، ۱۰ r 67 2.1 (បញ្ជីកំ បំណូរគ្នា , • (វុសលេវ) ។១១រវាប៉ុ רים נים שרבוין פרנינותא (ענטן: פרוראווואתנה לוגיעות הריבוי בי נים שרבוין ארנינותא לענטן: פריגותא לענטן: פריגותא הב נים שרבוין בנבוגותא (תרבויון: פרוראוואתניתי שרבויאראיניתי פריגותא לא אראיניתי אין איי אייני גער אייניין איינ אייני גער שרבוין אייניגוניא (פריגונט (פרטורא), פרוראוויאתניתי שרבויאראיניגוניא אייניגוניאראיניגוניאראייניגוניאר ۲. ۱ Copy forwarded to the:• <u>ارمايا. 10 معدم كام ط الماد</u> Manad (Colley) dif529 1/102 بادمتخت לפווני נפונטניינאי אסכככלכם מבמותו שמנבר ולהליבד Pokitunkburg CIVII Serventi (תחכובהבע ל: Diseipline) ונטוכה, סן ואב בסתקבונטן מטואחאוץ מי וון ום בעילם אנטמטוסה לאסטקה לוולברבאו סובטיום גאמוו אב רעמאבתמסוב, לנסצב סולוכרוליםון מאנג זילום עם מט כטמקוץ זילונג קרסהסוומת סיגובר בואון דבריומון ום מככבעי אנטשטונסג וע טינהי במתווטה. נס ומכוור לובוינו ובסמחולוווננו ות נשוב סו הנמתסומה. דמשומטה, וו ע סטוותמיטוע טאמה בעבוץ אובעבעו אומזב ואים ובשק נס נפולם לומשטובנו ום באשק לשזווטלאוששוניו מו אומוא ושבת כן ברלשבווא נוסו אבריאמו המווגמק האוומים מומחו או אולצוע אל מורה אל מורה וומקום וונרחו או מחוו או איז או או או או איז איז א a fine basic contonate prefind the deletion of the fold rule is eliment at preventing a חינשיונואה באוצנג ום טככווהכ סו נכופס הופווסה. תחודה, 1969 גומחלה שלכובע אוטם וואו לבקדתההות ותיאולכטונסם למובל 06,08.2020 לועד, הס Pluil-due toti otois of has even bales totics of an croc.so.81 bale centinanialang Als ו מוו מונכבובת וט וכובד אח למת ובוובר אטי אסלוויוושטוא-אאאוועדאוואווי טיבעו צווי שיייבן. ההנסטווגרוא עאו בתיעאזהנות וחויהיבי ואוטי מחוביור בינוחטיעכת התתיעות אונואע באחר אונאעעגא נייהטוועגעבי מחוביור בינוחטיעכת התתיעותוועת וותיקבותוע טה החוויג אוט וא בווט דעם לבסיבוועוראי אל זעה ליא אומולעיים. זור מסיבווערא אל גברממעטר עראניאנמולעיים. 0,L Ì Talet Verlayer the Hun 06, 2023 02021C, ) אחר גענע און אין גענע און אין גענעניט און אין גענע אין גענע אין גענע אין גענע אין גענע אין גענע אין ANNIVARIYANG ANNIVIISIANYASS 7.9 AVHORMETING DEMENDENCE DEMENDENCE HNARKI D

-Overniment of Mnyber Panntunkowa ELEMENTARY AND SECONDARY EDUCATION DEPARTMENT **CIVIL SECRETARIAT PESHAWAR** (Fnono No.091-9223507)

N'n.60 (Primary-M)/E8SED/2-6/2023 Laled Peshawar Inc. June 26", 2023

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# The Director Elementary & Secondary Education Department Khyber Pakhtunkhwa, Poshawar.

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

Subject:

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## GUIDANCE REGARDING DELETION OF RULE 7151 IN THE KHYBER PAKHTUNKHWA CIVIL SERVANTS (APPOINTMENT, PROMOTION 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 Chatmanship of Additional Secretary (Estab) E&SE Department in his office.

You are, literefore, requested to depute a representative of your respective Department to attend the meeting on a date, time & vanue as mentioned

above, please.

<u>Encl: AA</u>

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(MUHAMMAD ISHAO) SECTION OFFICER (PRIMARY MALE)

Copy forwarded to the:

1. PS to Secretary, E&SE Department Khyber Pekhlunkhwa. SECTION OFF

1442-7923 AZIZULLAH VS GBVT GF PG43

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

The Director Elementary & Secondary Education Department Khyber Pakhtunkhwa, Peshawar

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

Subjects

То

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

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 D6 june, 2029 and to state that the subject meeting is To be held on O6 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 & vonue as mentioned above, please.

Encl: AA

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### (MUHAMMAD ISHAQJ SECTION OFFICER (PRIMARY MALE)

Copy forwarded to thei

1. P5 to Secretary, E&SE Department Khyber Pakhtunidiwa.

SECTION OFFICER (PRIMARY MALE)

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WP4442-2023 AZIZULLAH VS GOVT CF PG43

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MINUTES OF THE MEETING REGARDING APPLICATION SUBMITTED BY MR. AZIX UILAH PROVINCIAL PRESIDENT ALL PRIMARY TEACHERS ASSOCIATION KHYBER PAKHTUNKHWA REGARDING OF DELETION OF RULE 715) IN THE CIVIL SERVANT (APPOINTMENT, PROMOTION & TRANSFER RULES 1989).

A meeting regarding the subject matter was held an 06-07-2023 at 11:00 AM Under the Chalimanship of Addillonal Secretary Establishment in his office. The following attended the meeting.

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5#	NAME	DESIGNATION
۱	Mr. Pozol Wohld	Dapuly Director Establishment of Okeclorate Elementary & Secondary Education Department
2	i Mr. Aziz Ulloh	Provincial Prosident All Primery Teochers Association Khyber Pakhlonkhwa
J	Mr. Rologal Ullah	General Secretary APTA Feshawar
4	Muhammad Ishaq	Socilon Officer (Primary) ELSE Department Civil Secretarial Khyber Pathlankhwa Poshawar

 The meeting started with racitation from the Holy Ouron. The chair welcomed the particippents. The Deputy Director (Establishment) of Directorate of Dementary & Secondary Education briefed the forum regarding agenda item in detail.

3. After threadbare discussion it was decided that Directorole of Bernenlary & 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 vole of thanks from the Chair.

6 Ante Ullah) (Mi. Fozal Wahld) Provincial President Deputy Director-I Primory Teachers Association E&SE Deparlment Khyber Pathlunkhvia (Muhamman Linga) (Mr. Relogat Ullah) Socilon Olicer (Primary-Male) Géneral Sacrelory APTA E&SE Deportment Peshowor (Abdullah) Addillonal Secretary (Establishment) EASE Deportment , WP4442-2023 AZIZULLAN VS GOVT CF PO43



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MINUTES OF THE MEETING REGARDING APPLICATION SUBMITTED BY MR AZIZ ULLAH PROVINCIAL PRESIDENT TALL PRIMARY TEACHERS ASSOCIATION KHYBER PAKHTUNKHWA REGARDING OF DELETION OF RULE 7(5) IN THE CIVIL SERVANT (APPOINTMENT, PROMOTION & TRANSFER RULES 1980).

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

SU NAME	DESIGNATION
1 Mr. Fozal Wahld	Deputy Director Establishment of Directorate Elementary & Secondary Education Department
2 Mr. Aziz Ulleh	Provincial President All Primary Teachers Association: Khyber Pakhtunkhwa
3. Mr. Rafaqat Ullah	General Secretary APTA Peshawar
4. Muhammad Ishaq	Saction Officer (Primary) E&SE Department Civil Secretariai Khyber Pakhtunkhwa Poshawar

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

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

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Provincial President All Primary Teachers Association Khyber Pakhtunkhwa

(Mr. Rəfaqat Ullah) General Secretary APTA Peshawar

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

> (Abdullah) Addiligga) Sastrany (Estabilishaccot)

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F.

Klivber Pakhtunkhwa, Peshawar 8. 'n. 45 P.No. 34/SETINUGalieral Cases Doled Za al Casor Email: establishmistiling of Againtil.com Plianci 091-9275344 Ta The Social Officer (Primary-Mule), Elementary & Secondary Education Department, Klyber Pakhunkhwa Pethawar. MINUTIS OF THE MEETING Subject: 4. Dear Sh. Correst, I am directati to refer to the latter No.SO(Primary-34)565550/5-1/ G.Mixe/Minutas of the Heathy/PST/2023 datasi 18-07-2023 on the subject clied above and in present brief listory above the background of the case os under: That Governme it of Klyber Pakhtunkhwa Establishment Department (Royulailon Wing) dalated Rula 7(2) Initia Civil Bervants (Appaintment, premation & Transfer Rules 1989) vide half/caller N4, No. SOR-VI (Ed.AD)/1-1/2020 dated 05-08-2030. Thai this affice tought guidance from your good affice in the fallowing words vide lotter No.6987 dated 16-02-2023. Now it hohligotary upon the civil servant to accept Promotion in every condition. (ii) It is the prevoyative of the civil servent to either accept or turn down the offer of promosion That youn got diffeo forwarded the same to the quarter concerned vide letter No.50 (Primat-A) E&SED/2-2/Appointment/2023 for necessary guidance. 77 The Ine Government of Klyber Pakhunkhwo Establishment Deportment (Regulation Wing) vide letter Na.SO (Policy) E&AD/1-3/2020 dated 6-06-2023 categorically stated that there exists no provision to decline ar forgo premotion. It is obligatory upon every civil servant to accept promotion under every condition. The same why facelyed by this office from your good office wide letter No.SD (Primary-M) EduSED/2-2/Appaintment/2023 dated 12-06-2023. That, in the light of the minutes of meeting dated 6-07-2023, held under the Choirmonshift of Hun, Additional Secretory Establishment at his office this office, has t submission of consultated case. heen asked fe In view of the above, this office is of considered opinion that the deterion of Riles 7(5) have affected degotively a inige numbers of Female Teachers. Thus it is proposed that Teachers holdin pPS-16 may be esempted of implications of the omondment in the rules like provided they submit their written refuel prior to conduction of the meeting of Departmental framation Committee. ose is submitted for perusal and necessary actions please. The 1313 L Assisting Direlar (Estab AI-D Elementary & Secondary Education Khyber Paklinuthan Endst: No., Copy of the phone is int-1. PA to Director Local Directoroic. Mester Cony. 2 Assistant Director (Establi-I) Elementary & Socondary Education Klyber Pakluunkhwa : • Ń ÷ . WP4442-2023 AZIZULLAH VS GOVT CF PG43 THESTER -2

THUMBHSH :01 DIRECTORATE OF ELEMENTARY & SECONDARY EDUCATION, KOK

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Section Officed (Rindoy- Male)

KPK, Perhause. בושוושיא ל לבסתלשיע בלטרמאנה שבתחווישו

Subjed : Minute to Heeting

present bild history, about background of cure as under. Alinetes of meeting 127/2022 dated 20-7-5-02 an edged alead above and to 

vide notification No. No. 50R-VI(EEAD)1-3/2020 dated 06-2020. (1992 and American (American (American (American ) in (2) Palin below · That continued of HP Establishment dependence (Rogulation Wing)

Prais this office sarght guidence from your good uffice in the fallowing

alt mushmut (toss in the trunces ins the subogrand Ei-B (ii) instrument types is the context the context to accept promotion.

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· That your good office for worded the come to quarter corrected

sentition to accept ponsition under energy condition. ind prove may broken in the containing on the debug of more and EGADIL- Hart het als guarication erar-20-2 bottop aracle-2109,73 . That the government of KP-ED (Regulation Wing) vide letter No. So (Beliey)

the missionales of build road with single suit of the twenthald under this Chaimonship of them Adittand Secretary Establish. Cros-fe-2 betab griteren ant te valurien ant to high i hant .

members of Remale to contrary. while the defense of the above this office is of considered applying

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CHER TO THE RY HALLUSISA (SOC-SMARAW

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	ELEVENTARY AND SECONDARY EDUCATION DEPARTMENT CIVIL SECRETARIAT PEGHAWAR (Phone No.091-8223587)	• • •	
···	Ho. SO(Primary-M)EaSED/2-2/Appointmen Peshawar Dated 23**	nt-Rulá /2023 August, 2023	_
<b>7</b> 2	The Becretary to Gove of Knyber Pathlunkhwa.		
. '	Estebheiment & Administration Department, Peshavrar		
Subdect: -	GUIDANCE REGARDING DELETION OF RULE 7(5) IN SERVANT (APPOINTMENT, PRPMOTION & TRANS 1989).	<u>I THE CIVILES</u>	

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Geer Su,

I am directed to refer to your latter No. SO(Policy)/ EBAD/ 1-3/2020 dated (55- June 2023 and to state that after deletion of rule 7(5) Khyber Pakhbunkhwa Civil Servant (Appiontment, Promotion & Transfer Rides 1989) It has been intimated that those officers/ citiques who do not comply with promotion order of the competent authority or try to evade promotion through different means shall be proceed under Khyber Pakrounkinva Civil 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 perform duties in the remotest station with no residential or transport fadility. Most of them are married with kids and elder father of mother-in-taw who preed cara. In such cases, there are negative effects on service delivery.

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

Copy forwarded to the:

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

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Annexure

WP4442-2023 AZIZULLAH VS GOVT CF PG43

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MUHAMBAU ISEMOT SECTION OFFICER (PRIMARY MALE)

SECTION OFFICER

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Preshauren. BuBJECT: -- Civitance reginding deletion of Rule 7(5) hi the

(PSRA), Decor Sir, GRAB) (President) (President No. Solline AD) (President) Horrighton No. Solline AD) (President No. Solline AD)

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In this connection it is submitted that in same ares dady teacher of princing level who avail such promotion have to in the remotent stations with no veridential transport father of the verious incoverience while they have to peoform dutes of the verious incoverience with no veridential transport father of the verious of the normal with have are be reconstructed to the verious of logy teacher in such are be reconstructed to the extended of the solid anneration of the reconstruction of the service delivert.

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

KHYBER PAKHTUNKHWA CIVIL SERVANTS (APPOINTMENT,

Yours faithfully,

Section

ser (Policy)

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

PROMOTION AND TRANSFER) RULES, 1989.

Subject: -

## Dear Sir,

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).\_\_\_

# 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.

#### GOVERNMENT OF KHYSER 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 ICHYBER PAICHTUNICHWA CIVIL SERVANTS (APPOINTMENT, PROMOTION-AND TRANSFER) RULES, 1989.

#### Dear Sir.

'Ta

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

Section nicer (Policy

WP4442-2021 AZIZULLAH VS GOVT OF P

To,

Annexure

Dated: 28-02-2024

- 1) Secretary to Government of Khyber Pakhtunkhwa, Establishment Department, Civil Secretariat, Peshawar
- 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 Servante (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 one 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

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Muhammad Rehman Son of Muhammad Ghulam Resident of Tehsil & District Karak

 $2|_{-}$ Rhyber Pakhtunkhwa A sta Uttich Khorin Prooleon 0 003-00 (4648 5 datautich 1077)(algematicom 5 optologia apira -TA Houses WL Privery Betroel No. آل پرائمری شیچرز ایسوی ایش (ایٹا) نیبر پختونخوا Annerwe بهاب : ميكرلولى المنتول الاستكناء لما ايج كميش فيهر يتتزينوا المكبب اللبي الركما فيجرو اعدى التن فيمر بتؤلخها بالدحدة مندوش ب مد بدوموشز در عدمت عما دمد الل 10 مرم مر مکملا الدم کا عمامت دول ب ورم شوکا ایک تالن دادا کر تاق کر ۶ ملام ایک اکر می مجدور یک قص ایک داد. برد موشوند کمی و ۵۱ مکر استود باد مال تک بردام مشر وی ساخت سے منظب باد مال تک مر اس کا پرد موشوشی دو سکل ک کم اک تلخت میں و ملک دمان میں جارہ ہے ہے جس معدد میں اور ایک اکر ایک خاص معدد میں میں میں میں میں میں میں میں م کم اک تلخت میں و معلک دمان مد ملک کا جار سال دان اللہ احد قتم کر دان کا ک اکر ایک خالم ایک مال پر دمرش ند میں مال لے سکا ب جس کے مطابق اب ہر طام پردم میں شمارد کھی کھا کہ کہ کھی کے 7 اس کے ظالب ایک خالمان دان کے مطابق کر کے کا کہ کیا ہے اماس - افرال والعين بداد المال حول كاكل الله ملك ب معب ك مد ملا الد يندى طاقون عن عام كر فراتين امات كر المال مشار با مامناکره بناسه ۲ بجد مام ملات الم می فرد من مردم أن الد ورود الم يوا مى الدى المان "قرل ك خلف ودلى ب كوك فير بخوام، عل بد فتى الدان والدن وال لااتم آب - حدك الل كرت إلى كرك وليون كروائي لا جليع إلى في ومم كر ؟ براترى اماتداك (Iteinxation) وإ بات الد ال ال سليل ثانة آلية محلد الدملد المم (DEOD) إلى إلا كم أيك تعم من مراحل بادل كيا بلت تأكد الثال عن ب كل /ليبيل براتمرل المات، كدان المرت الدجرج تك منه تبليا جلسط ا مح محد فو ليصين بلوى الد على بالمرك المات كو والى فود بالذي كر فا مسلل شرار الديك ب اللايم يد فرق مصف الله كما الما المحق ليكر معد بمرك بدائر المائد، ضوما لميل براتم كا المائد، كو الل الدين ت مجات الأك ك شكربي مريداند مان سوالى مدر FULLE آل پرائرل کچرز الدوی آیش نیچ بکترنوا <sub>д</sub>р WP4442-2023 AZIZULLAH VS GOVT OF FG43 ١ ATTESTER Ľ  ${}_{\rm IV}G$ 

NAKALAT NAMA

# BEFORE THE SERVICE TRIBUNAL PESHAWAR

\* MUHAMBARD REHMAN

Appellant

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£

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Versus

Government of KP & others

 $N^{II}$ 

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.

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

APPELLANT

### ACCEPTED

MUHAMMAD MUAZZAM BUTT Advocite Supreme Court

MUHAMMAD ADEEL BUTT Advocate High Court

BASSAM AHMAD SIDDIQUI Advocato High Court