FORM OF ORDER SHEET

Court of		
Appeal No.	2352	/2024

	App	Jean No. ペン)(文 / ZUZ4
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.
		given to counsel for the appendix.
<u> </u>		By order of the Chairman REGISTRAR
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BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHUWA

C.M No	P of 2024
In Ref to	Ä
Service Appeal N	10@35×2024

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· Najib Ullah

VERSUS

Secretary to Government of Khyber Pakhtunkhwa, & others

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ADVOCATE

M. Muazzam Butt

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHUWA

In	Re	ef	to

Service Appeal No 2352 /2024

Najib Ullah son of Sami Ullah SPST (BPS-14)

Shakolai, Tehsil Puran, District Shangala

.....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 Blementary and Secondary Education Department, Civil Secretariat Near MPA Hostel, Peshawar

.....Respondents

SERVICE APPEAL UNDER SECTION 4 OF KPK SERVICE TRIBUNAL ACT 1974. AGAINST THE IMPUGNED NOTIFICATION BEARING NO.SO(POLICY)E&AD/1-3/2020. DATED 06/08/2020. COMMUNICATED TO RESPONDENT NO. 2 VIDE LETTER DATED 06/06/2023. WHEREIN IT WAS STATED THAT SUB RULE 5 OF RULE 7 OF KHYBER PAKHTUNKHWA CIVIL SERVANTS (APPOINTMENT. PROMOTION AND TRANSFER) RULES. 1989 STANDS DELETED

PRAYER:

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

ANY OTHER RELIEF WHICH THIS HONOURABLE TRIBUNAL DEEMS FIT

AND PROPER IN THE CIRCUMSTANCES OF THE CASE MAY ALSO BE

GRANTED TO THE APPELLANT.

RESPECTFULLY SHEWETH:

1. That the Respondents Department appointed the Appellant as Senior Primary School Teacher.

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Copy of Appointment letter 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.
- 1. 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 Impugned 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 Pransfer) itules, 1969 as it had negatively affected a large number of teachers and especially female teachers. Copy of Letter dated 23-08-2023 is attached as <u>Annexure E</u>

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

 Copy of impugned letter dated 07-09-2023 is attached as Annexure F
- 10. That the petitioner feeling aggrieved, filed Representation to the respondents in pursual also appreached 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:-.

GROUNDS:-

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- a. That as per various judgments it is established and settled principle that executive notifications cannot be given retrospective effect. A valid Notification which confers rights is always applicable with prospective effect, however, if an amendment notification that adversely effects the interests of the employees or causes disadvantage to the employee is not tenable in the eyes of law. The notification/guidance dated 06/08/2020 06/06/2023 are liable to be set-aside.
- b. That there are no terms and conditions of service mentioned in the appointment order of the appellant wherein, availing of promotion is mandatory. It is further submitted that employees in the past, have foregone their promotion along with their posting. It is submitted that when domestic and other personal issues do not permit the employees/appellant to avail the promotion order and in that case, the employees 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.

- c. 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.
- 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 hutter 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 Veld, Ultre Vires to the Senetitution 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:

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that the contents of loregoing application are true and correct to the best of my knowledge and belief and nothing has been concealed therein from this Honourable Court.

Through

Deponent

Muhammad Muazzzam Butt Advocate/Supreme Court

Wuhammad Adeel But Advocate High Court

Appellant

Bassam Allmad Sidliqui 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	

Najib Ullah

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.

Through

Muhammad Muazzam Butt Advocate Supreme Court

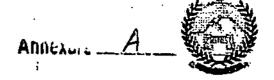
pellant

Muhammad Adeel Butt Advocate High Court

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Deponent

Dist. Govt. KP-Provincial District Accounts Office Shangla Monthly Salary Statement (April-2023)



Personal Information of Mr NAJIBULLAH d/w/s of SAMTULLAH

Personnel Number: 00204176

CNIC: 11375089682 🐰

Date of Birth: 01.04.1975

Entry into Govt. Service: 01.03.2000

NTN:

Length of Service: 23 Years 02 Months 001 Days

Ampleyment Getegory: Vocational Temporary

Designation: SENIOR PRIMARY SCHOOL TEA

80654297-DISTRICT GOVERNMENT KHYBE

DDO Code: SH6147-District Shangla

Payroll Section: 001

GPF Section: 001

GPF Interest applied

Cash Center: 60

191,735.00 (provisional)

Vendor Number: -

GPF A/C No:

Pay and Allowances:

Pay scale: BPS For - 2022

Pay Scale Type: Civil BPS: 14

GPF Balance:

Pay Stage: 20

·	Wage type	Amount	•	Wage type	Amount
0001	Bosic Pay	57,330.00	1001	House Rent Allowance 45%	3,321.00
1210	Convey Allowance 2005	2,856.00	1300	Medical Allowance	1,500.00
1911	Compen Allow 20% (1-15)	1,000,00	2148	15% Adhoc Relief All-2013	766.00
2199	Adhoc Relief Allow @10%	515.00	2316	Teaching Allowance 2021	3,036.00
2341	Dispr. Red All 15% 2022KP	5,611.00	2347	Adhoc Rel Al 15% 22(PS17)	5,612.00

Deductions - General

	Wage type	Amount		· Wage type	Amount
3014	GPF Subscription	-2,620.00	3501	Benevolent Fund	-1,200.00
3609	Income Tax	-591.00	3990	Emp.Edu. Fund KPK	-135.00
4004	R. Benefits & Death Comp:	-600.00			0.00

Deductions - Loans and Advances

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	Loan	Description	Principal amount	Deduction	Balance

Deductions - Income Tax

Payable:

9,246.58

Recovered till APR-2023:

5,753.00

Exempted: 2311.64

Recoverable:

1,181.94

Gross Pay (Rs.):

81,547.00

Deductions: (Rs.):

Availed:

-5,146.00

Net Pay: (Rs.):

76,401.00

Payee Name: NAJIBULLAH

Account Number: 4327-4

Bank Details: MCB BANK LIMITED, 240968 MCB ALLOCH SHANGLA MCB ALLOCH SHANGLA, SHANGLA

Leaves:

Opening Balance:

Earned:

Balance:

Permanent Address: SHIKOLAI PURAN SHANGLA

City: SHANGLA

Domicite: NW - Khyber Pakhtunkhwa

Housing Status: No Official

Temp. Address:

City:

Email: najibullahpst@gmoil.com

System generated document in accordance with APPM 4.6.12.9(580886/19.04.2023/v3.0)

* All amounts are in Pak Rupees

* Errors & omissions excepted (SERVICES/03.05.2023/20:46:43)



OFFICE OF THE G-A-DISTRICT EDUCATION OFFICER



DUTY CERTIFICATE

It is certified that Mr. /Miss.	ajbullali slovuo Sanzillali having
CNIC#15505-15442863	appointed vide Directorate E&SE Endtt: No. 6053-93 _
date: <u>pl-03-2000</u> is working	as SPST at GPS Bollmi Bonon
Department: E&SE Khyber Pakhtur	الم Skhawa since 6 8 – 03 – 13 till date. Lalways found him/her المادة
sincere and devoted to his/her ass	gned task.
•	
DISTRICT EDUCATION OFFICER MALE/FEMALE	PRINCIPAL/HEADHASTER/MISTRESS/HEADTEACHER IN SPECIAL SHEADY
No	Date: <u>85-10-2024</u>
Copy forwarded to:	
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GÖVERNMENT 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.

CHIER 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)

A



HOVEHHARM OF KNYDKIL PAKHTHRICHWA ESTABLISHMENT DEPARTATION Ma.SO[Polley]H&ADJ (2/2020 Unted Perlmwar the June 06, 2021

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The Clavermann of Kligher Publisherships Elementary & Secondary Panco-on Prepariment.

Subject: 4: CHIDANCE INCOMPINE DESCRIPTION OF HULL 7(5) IN THE CHYDEN PARTITION OF HULL 7(5) IN THE PROMOTION AND TRANSPERFURES, 1989.

I am directed to teles in your letter No. SO(Primory-Mynkeshup)/2-2/Appainiment/2023 dated 18.04,2023 on the embject nated above out to state that Sub-Rule Dear Sle. (5) of Rule-7 of Khyper Pukhimikhno Civil Services (Appolitment, Promotion and Transfer) Rulps, 1989 stands deleted vide this department milficultum dated 00,08.2020; thur, no provision exists to decline or forgo promotion.

The basic redonate behind the deletion of the ibid rule is almost at preventing a civil dervant from templation for tiltelt have by sticking to a single inentive postiposition or to provent those with lend to total promotion to evade porting/houries or show lock of expectly to tockle higher responsibilities in case of promotion. Therefore, it is obligatory upon every civil servent to accept promotion in every condition.

Funhermore, those officers/officials who do not comply with promotion order of the competent authority or try to evada protocolon through different means thall be proceeded against under Khyber Pakhjunkhwa Civil Servents (fithelency & Obselphine) Rules, 2011, pisese..."

Radst. Of even Na & date

Copy forwarded to the:-

1. PB to Special Scenetary (Reg); Bitabilibintos Department. PA'to Additional Secretary (Rep. 41), Establishment Department.
To to Copuny Secretary (Policy), Establishment Organization.

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aur falthfully. fimed (Chan) Meer (Polley)

Meer (Pollay)

WP4447-2023 AZIZIALIAH VEIGOVT OF PO

-Overnment of Mayber Pahatunkawa ELEMENTARY AND SECONDARY EDUCATION DEPARTMENT CIVIL SECRETARIAT PESHAWAR

(Phone Mo.001-8223507)

No. RO (Pilmary-Myle&SEDIZ-6/2023 Caled Peshaviai the, June 25",2023

ŦG

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 08 July, 2023 at 11:00 AM in this department under the Chalimanship of Additional Secretary (Estab) E&SE Department in his office.

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

Engl: AA

(MUHANMAD ISHAO) SECTION OFFICER-(PRIMARY MALE)

Copy forwarded to the:

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

SECTION OFFICE

VIP4442-7953 AZIZULLAH VS GOVT CF PG43

ار اح

> No SD (Primary-M)/E65ED/2-6/2023 Dated Peshawar the June 25th 2023

Τo

The Director

Blumentary & Baconddry Baucation Department
Khyber Pakhtunkhwa, Peshawar

Aziz Uliah iChan President President Ali Primary Teacher's Association, KP

Subjects

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.

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

Ericl: AA

(MUHAMMAD ISHAQ) SECTION OFFICER (PRIMARY MALL)

Copy forwarded to the:

1. PS to Secretary, E&S6 Department Khyber Pakhtunkhwa.

SECTION OFFICER (PRIMARY MALE)

WP4442-2023 AZIZULLAH V5 GOVT CF PG43

4

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 motter was held on 06-07-2022 of 11:00 AM under the Chalmanship of Additional Secretary Establishment in his office. The following attended the meeting.

	•		
58	NAME	DESIGNATION	
1	Mr. Pazal Wahld	Deputy Director Extensishment of Directorals Elementary & Secondary Education Department	
2	ı Mr. Aziz Ullah .	Provincial Prosident All Primary Teachers - Association Khyper Fachtwaktwa	
3	Mr. Ralagal Ullah	General Secretary AFTA Poshawar	
4	Muhammad Ishaq	Section Officer (Primary) ELSE Department Civil Secretarial Khyber Pakhlunkhwa Perhawar	

- The meeting started with recitation from the Kaly Ouran, the chair welcomed the padicipants. The Deputy Director (Establishment) of Directorals of Elementary & Secondary Education billeted the forum regarding agenda tiem in detail.
- 3. After threadbare discussion it was decided that Directorate at Elementary & Secondary Education Department may examine the case property and submit a self-contained/consolidated case for anward submission to Establishment Department for further necessary action.

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

(Mr. Ford Would)
Deputy Director-1
EESE Department

(Mr. Relayal Ullah) Géneral Sacrelary APIA Peshawai

OWN

(Mr Astz Ullah)
Provincial President
All Primary Teachers Association
Khyber Pakhlunkhyla

(Muhammod Linga)
Sacilon Officer Primary-Male)
E&SE Department

(Abdullah) Addillanai Secretary (Sitabilihmeni) E&SE Daporimeni

WP4442-2023 AZIZLILLAH VS GOVT CF FO43

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-13--8/c-

MINUTES EN THE MEETING HEGARBING ABBLIFATION BUBMITTED BY MR ARIS ULLAM PROVINCIAL PRESIDENT ALL PRIMARY TEACHERS ASSOCIATION KHYBER PAKHTUNKHWA REGARDING OF DELETION OF RULE 7(5) IN THE CIVIL SERVANT (APPOINTMENT, PROMOTION & TRANSFER RULE 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

SII	NAME I	DESIGNATION
1	Mr. Fazal Wahid	Deputy Director Establishment of Directorate Elementary & Secondary Education Department
2	Mr. Aziz Uilah	Provincial President Ali Primary Teachers Association: Khyber Pakhtunkhiva
3.	Mr. Rafaqat Ullah	General Secretory APTA Peshawar
4	Muhammad Ishaq	Section Officer (Primbry) E855 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. Fazai Wahld) Deputy Director-1 E&SE Department	• •
Provincial President All Primary Teachers Associatio Khyber Pakhtunkhwa	ın :
(Mr. Rafaqet Ullah) General Secretary APTA Peshawar	
(Muhammad Ishaq) Section Officer (Primary-Male) B&SE Department	•
· 1	·
<u>.</u> '	(Abdullah) अरुक्युन्यसिकारी/प्राचनाराहरे (स्तर्गापिक





Plane: 01

Kliyber Paklitunkliway Peshawar IF No. 34/SST/AUGalieral Cours

Empli: establitaterilbalet@guittl.com

The Section Officer (Primary-Male), Elementary & Secondary Education Department. Klayber Pathunkhwa Perlawar...

MUNICIPE DE TUE MUTTINA

1-6533344

Dear Str. . J am directed to refer to the latter No.SO[Primery-M9.56.SED/3-1/ G.Mise/Michigas of the Meeting/PST/2023 dated 10-07-2023 on the subject cited above and to present hele history object he buckground of the case as under:

- That Government of Klyber Pathunkhwa Establishment Department (Royalation Wing) deleted Rule 7(1) Infile Civil Servents (Appointment, promotion & Transfer Rules 1989)
 vide hotification No. No. SOR-VI (&&AD)/1-1/2020 dated 06-08-2020.
 Thei this office taught guidenes from your good office in the following words wide letter
- No. 6987 Hated 16-02-2029.
 - (i) Nove it think ligatory upon the civil servant to accept Promotion in every condition.
 (ii) It is the prelogative of the civil servant to either occupt as turn down the offer of
- (ii) It is impressions of the even tervana to the accept to the interval vide letter primary of fiftee forgarded the same to the quarter concerned vide letter No.50 (Primary-b) E&SED/2-I/Appelatment/1923 for accessory guidance.

 That the Government of Klyber Pokhumkhwo Establishment Department (Regulation IV) of the later No.50 (Policy) E&AD/1-1/1020 dated 6-05-1923 categorically stated IV) of the later No.50 (Policy) E&AD/1-1/1020 dated 6-05-1923 categorically stated that illere estar no pravision to decline or force premation. It is chilipatory upon every civil servant to person pramation under every candition.
- The same with received by this office from your good office wide letter No.50 (Primary-M) EBSEDIZ-2/Appointment/2023 dated 12-08-2023.
- That, in the light of the minutes of meeting dated 6-07-2021 held under the Chairmanship of iten, Additional Secretary Establishment at his office this office, has

heen asked for sibmission of consolidated case,
in violated of the above, this office is of considered opinion that the deletion of Rilles
7(5) have affected regulively a huge muniters of Femala Teachers. Thus it is proposed that Teachers helds pro-16 may be exempted of laplicalisms of the amendacht in the rules told provided they pulpid their written refusal prior to conduction of the meeting of Departmental framation Committee.

are is submitted for perusal and necessary actions please.

Assimant Direllar (Estab Al-I) Elementary & Secondary Editection Khyber Pakluttakhwa

Endre No.

ï,

Copy of the bore is is:-

- Loral Directorale. 1. PA to Director
- Muster Copy.

Assistant Director (Establis) Elementary & Socondary Education Klyber Pakhtuakhwa

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WP4442-2023 AZIZULLAH VS GOVT CF PG43

DIRECTURATE OF ELEMENTARY & SECONDARY EDUCATION, KPK

स्ट्रम्यान्स् (११-५-१२)

KPK, Perhauser. Fernandon Scientifico Department Section office (himay-172le)

Subject to whiching of Heeting

2. Master Capy

Copy of the above to:

a. At to Diricha Local Directant

present piret highly, about background of come as writer.

(Regulation blockground of comming (Regulation Whys) Minister of meeting [27/20] defed 20-F-02 as Elected of boure and DOCH SIT 9 am directed to refer to teller No. (50 Aimong-M) E & SED /5-1/6-1944

with refigheding No. M. EDR-VI(EEAD)1-3/2020 dated ob 08-2020. delated relient provisionary, terringraph) travered livin in (2) Figure below

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Frat the government of KP-ED (Regulation Why) vide leter No. 50 (Robies)

Serving to cicced promition under engly condition. livis groves may Undergolds at 48 montheream genet suids set minimized an

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المد دماو أذ المستاله على العلاما عبم المددودهم مراقما - Please

, नग्रीमा निक्षामान स्वर्गन Demontory & Secondary Educate A مرائدهم المحاضة CHOOL TO TWO AV HALIUSISA ESOS-SPANIN





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

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

Annexuse

The Georgiany to Govi, of Khybar Pakhlonkhwa, Establishment & Administration Department. Peshaviar

SUBJECT: - GUIDANCE REGARDING DELETION OF RULE 7/5) IN THE CIVIL SERVANT (APPOINTMENT, PRPMOTTON & TRANSFER BULES 19891

Ger Sir,

) am directed to refer to your letter No. SO(Policy)/ EBAD/ 1-3/2020 dated (%) June 2023 and to state that after deletion of rule 7(5) Khyber Pakhtunkhwa Ovil Servent (Appioniment, Promotion & Transfer Rules 1989) it has been intimated that those officers/ officials vitro do not comply with promotion order of the competent authority or by to evade promotion through different means shall be proceed under Khyber Pakropunkriva Civil Servant (Efficiency & Discipline) Rules, 2011.

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

In view of the above, the said amendment may be reconsidered to the

खाद्यार (d lab) leacher in primary schools.

IMUHAMMAU ISELA SECTION OFFICER PRIMARY HALE

Copy forwarded to the:

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

SECTION OFFICER

Scannad with ComScanner

WP4442-2023 AZIZULLAH VS GOVT CF FG43

-17-

No.50 (Primary -M) EESED |2-21/ Appointment -Pulle 2023 Perhause Dated 23rd August, 2023.

To

The Secretary to Government of Khylon Pakhtunbhua. Establishment and Administration Depostment.

SUBJECT: - Gildonce regarding deletion of Rule 7(5) in the Civil Servant (Apprintment, Romation & Transfer Rules: 1989)

Dear Sir,

9 app directed to refer to your letter No. Softmany

11-3/2020 dated 6th June 2023 and to state that after

deletion of Rule 7(S) Khyber Politounkhus Civil Servant (Appointment,
Promotion and Transfer Rules 1989) 9that been intimated that
those officers officials who do not comply with promotion order

of the competent authority or try to evade promotion through
different means shall be proceed under khyber Pakhtunkhua

Civil Servant (Efficiency and Discipline) Role 2011.

In this connection it is submitted that in some cases lady teacher of primary level who avail such promotion have to foce serious incoverience while they have to perform duties in the remotest stations with no residential/trompost facilities. Most of them are married with kids and elder father of Moster-in-law who need apper In such cases there are negative effects on service delivery. In such cases there are negative in view of above, the said ammondment may be reconsidered to the extent of lady teacher in primary schools.

Capy forwarded to;

(Muhammad Ishay)
Section officer (Primary)

1 Director EGSE Klybo Pakhturkhura.

2. PS to Secretary, E & SE Pepartment Kturker Attorninger

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

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

Subject: -

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

Dear Sir,

I um 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,

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 Depurtment.
- PS to Deputy Secretary (Policy), Establishment Department.

- B/c-

GOVERNMENT OF KHYSER PAKHTUNKHWA ESTABLISHMENT DEPARTMENT No. SO(Policy)E&AD/1-3/2020 Dated Pashawar the September 07: 2028

Τa

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

Subject: -

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

Dear Str.

I am directed to refer to your letter No. SO(Primary-M)/E&SED/2- Z/Appointment-figure/2088 dated 25.00.2038 on the subject nated above and to state that necessary guidance has already been tendered to your good office vide this department letter of eventue. dated 06.06.2023 (copy enclosed).

Yours faithfully,

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 alcer (Policy)

V/P4442-2073 AZIZULLAH VS GOVT CF PG43,

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Annexure - G

Τo,

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

2) Secretary to Government of Khyher Pakhtunkhwa, Elementary and Secondary Education Department, Civil Secretariat, Peshawar

3) Director Elementary and Secondary Education Department

Subject: REPRESENTATION AGAINST THE IMPUGNED NOTIFICATION BEARING NO.SO(POLICY)E&AD/1-312020. DATED 06/08/2020. COMMUNICATED TO SECRETARY TO GOVERNMENT OF KHYBER PAKHTUNKHWA. ELEMENTARY & SECONDARY EDUCATION DEPARTMENT VIDE LETTER D06/06/2023. WHEREIN IT WAS STATED THAT SUB RULE 5 OF RULE 7 OF KHYBER PAKHTUNKHWA CIVIL SERVANTS (APPOINTMENT, PROMOTION AND TRANSFER) RULES. 1989 STANDS 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 Pashawar askad for guidance regarding deletion of Rule 7(5) in Khyber Pakhtankhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 in respect of which the Establishment Department vide its letter No. SO.(Policy) -E&AD/1- 3/2020 dated Peshawar the June 06th, 2023 directed the Directorate of Elementary & Secondary Education that Rule 7(5) in the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 has been deleted vide notification dated 06-08-2020 and therefore, no provision exists to decline or forgo promotion and it is obligatory upon every civil servant to accept promotion under every condition. That Directorate of 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, Promoțion and Transfer) Rules, 1989 as a had negatively affected a large number of teachers and especially female teachers. In the meanwhile, the department vide its letter dated 07th of September 2023 directed the 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 and against the fundamental principles of natural justice.

Dated 28/01/2024

X

NAJIB ULLAH SIO SAMI ULLAH SPST Tしょべん みいいひばった 光代

עולון בין ביייוו מון ליצעול לינולבי ביי געונה לינול בי אים ביבותו מון בי ליבותו מון בי ליבותו מון בי ליבותו לי (なり)はこれなることがり の出海はよれるの(cosの)もはんらしちんしょうなよるたいのころっとしたしょんいいい בו על ביני וויים ביני שו ווים ויבישור על בישר עותו בייול ביני לביני / ושבוינול בילר יקולים

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של של ווי אל איון לומו אים לו אים בב ב על אל יון בעל הווא וויוא איון לומו אים ליום ביום ورادا روايه مدير والمادان المالا سياع الا الا مدار جد المادان المادان

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MALA

BEFORE THE SERVICE TRIBUNAL PESHAWAR

NAJIB ULLAH

Appellant

Government of KP & others

11/16

Respondents

I (the Appellant)

do hereby appoint and retain

MUHAMMAD MUAZZAM BUTT ASC. MUHAMMAD ADEEL BUTT AHC. BASSAM AHMAD SIDDIOUI 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 SIDBIQUI Advocate-High Court