

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHUWA

Ashraf Ali


S.No:- 2457/2024

V/S

Government of KP & others

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ADVOCATE

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHUWA

In Ref to

Service Appeal No. 2457 /2024

Ashraf Ali Son of Khair Ullah Jan Resident of Tehsil & District Mardan

Designation: Senior Primary School Teacher at GPS Kandro Killi

.....Appellant

V E R S U S

- 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.



Appellant


AFFIDAVIT:

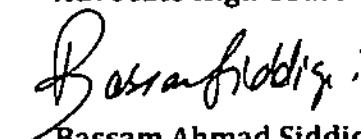
I Ashraf Ali Son of Khair Ullah Jan Resident of Tehsil & District Mardan that the contents of foregoing appeal are true and correct to the best of my knowledge and belief and nothing has been concealed therein from this Honourable Court


Deponent

Through


Muhammad Muazzam Butt
Advocate Supreme Court


Muhammad Adeel Butt
Advocate High Court


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

Ashraf Ali

V E R S U S

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

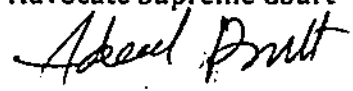
I [the appellant] do hereby solemnly stated on oath that the contents of foregoing application are true and correct to the best of my knowledge and belief and nothing has been concealed therein this Honorable Court.


Deponent


Appellant

Through


Muhammad Muazzam Butt
Advocate Supreme Court


Muhammad Adeel Butt
Advocate High Court

OFFICE OF THE DISTRICT EDUCATION OFFICER (Male) Mardan

APPOINTMENT:-

Appointment of the following persons is/are hereby ordered against the post of _____ on temporary and adhoc basis @ Rs. _____ p.m. fixed plus usual allowances as admissible under the rules in the BPS No. _____ on or his/their own pay and grade which is beneficial to him/them at the school noted against each names:-

S.No.	Name	Qualification	Address	Posted at	Remarks
02=	Mr. Ashraf	M.A. 2/3		GPS, Kandra Hill, A.T. No. 1 (Center Marga).	
	Mr. Shah	(bund Khway Teh Mardan)			

CONDITION OF APPOINTMENT:-

1. His/Their Services is/are liable to termination/reversion at any time without any reason being assigned.
2. In case of resignation He/They will have to submit one month prior notice to the Deptt. of forefiet one month, a pay in lieu thereof to Government.
3. He/They should not be allowed to take over charge if his/their age is/are less than 18 years and above 25 years.
4. He/They is/are required to produced Health and Age certifi from Medical Supdt: D.H.Q. Hospital Mardan before taking over charge.
- 5:- Charge reports should be submitted to all concerned.
- 6:- If/He/They fails to take over charge of the post within 7 days after the issue of these orders the order of appoint shall stand cancelled.
- 7:- Certificates should checked before handing over charge.

Sum: 3890-91 (GUL ZAMAN KHAN)
 District Education Officer
 (Male) Mardan.
 E.II/ 15/11
 Endst: No. / Genl Apptd / 25/11 Dated Mardan the
 Copy forwarded for information and n/action to the:-
 1:- Sub-Divisional Education Officer (Male) Mardan
 2:- Head Master/H. Teacher concerned
 3:- Candidate concerned.

ATTESTED
 DISTRICT EDUCATION OFFICER

ATTESTED

Handwritten signature/initials

DEPUTY SECRETARY (POLICY)
(MAJLIS HAJI LAYU)

ATTESTED



- 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 Chief Minister, Khyber Pakhtunkhwa.
- 5. The Principal Secretary to Govt. of 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, Khyber Pakhtunkhwa Public Service Commission, Peshawar.
- 11. The Registrar, Khyber Pakhtunkhwa Service Tribunal, Peshawar.
- 12. The Secretary, E&A Department.
- 13. The Deputy Director (IT), E&A Department.
- 14. All Section Officers in Establishment & Administration Department with the request to The Section Officer (Admn), Administration Department.
- 15. The Section Officer (Admn), Administration Department.
- 16. The Chief Secretary, Administration Department.

LIST NO & EVEN DATE

CHIEF SECRETARY
GOVERNMENT OF THE KHYBER PAKHTUNKHWA

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

AMENDMENT

In exercise of the powers conferred by section 26 of the Khyber Pakhtunkhwa Civil Servants Act No. XVII of 1973 (Khyber Pakhtunkhwa Act No. XVII of 1973) 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 amendment shall be made, namely:

Dated Peshawar the 06/08/2020

NOTIFICATION

GOVERNMENT OF
KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT
(REGULATION WING)

Handwritten signature/initials



8-

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



GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT
No. SO(Polcy)H&AD/1-3/2020
Dated Peshawar the June 06, 2023

9-
Annexure 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. SO(Polcy-MYP&HED/2-
2/Appointment/2023 dated 08.04.2023 on the subject noted above and to state that Sub-Rule
(5) of Rule-7 of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer)
Rules, 1989 stands deleted vide this department notification dated 00.08.2020; 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 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.

Yours faithfully,

(Isha Muhammad Khan)
Section Officer (Polcy)

ASSE
7/6

Instt. 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 (Polcy), Establishment Department.

SE/...

21.6.23

Section Officer (Polcy)

ATTESTED

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&SED/2-2/AAppointment/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.

WP4442-2023 AZIZULLAH VS GOVT CF PG43


ATTESTED

ATTESTED

[Signature]

WP4442-2023 AZIZULLAH VS GOVT OF POK

Section Officer
(Policy)

- Department.
3. PS to Deputy Secretary (Policy), Establishment
 2. PA to Additional Secretary (Reg-II), Establishment
 1. PS to Special Secretary (Reg), Establishment
- Copy forwarded to the :-
Encl. of even no & date

(Issa Muhammad Khan)
Section Officer (Policy)

Yours faithfully,

- B/c -



-12-

GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY AND SECONDARY EDUCATION DEPARTMENT
CIVIL SECRETARIAT PESHAWAR
(Phone No.091-8223587)

No.SO (Primary-M)/E&SED/2-6/2023
Dated Peshawar (hc), June 26th, 2023

To

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

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

[Handwritten Signature]
26/6/23

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

I am directed to refer to the subject noted above and to enclose here with a letter of Establishment Department letter No. SO (Policy)E&AD/1-3/2020 dated 06 June, 2023 and to state that the subject meeting is to be held on 06 July, 2023 at 11:00 AM in this department under the Chairmanship of Additional Secretary (Estab) E&SE Department in his office.

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

Encl: AA

[Handwritten Signature]

[Handwritten Signature]
(MUHAMMAD ISHAQ)
SECTION OFFICER (PRIMARY MALE)

Copy forwarded to the:

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

[Handwritten Signature]

[Handwritten Signature]
SECTION OFFICER (PRIMARY MALE)
26/6/23

[Handwritten Signature]
ATTESTED

B/c

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

To
The Director
Elementary & Secondary Education Department
Khyber Pakhtunkhwa, Peshawar

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

Subject: GUIDANCE REGARDING DELETION OF RULE 7(S) 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 attend the meeting on a date, time & venue as mentioned above, please.

Encl: AA

(MUHAMMAD ISHAQ)
SECTION OFFICER (PRIMARY MALE)

Copy forwarded to the:

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

SECTION OFFICER (PRIMARY MALE)


ATTESTED

-14-
Annexure 'B'

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


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

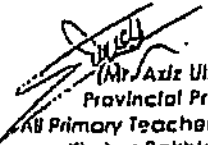
S#	NAME	DESIGNATION
1	Mr. Fazal Wahid	Deputy Director Establishment of Directorate Elementary & Secondary Education Department
2	Mr. Aziz Ullah	Provincial President All Primary Teachers Association Khyber Pakhtunkhwa
3	Mr. Razaqat Ullah	General Secretary APTA Peshawar
4	Muhammad Ishaq	Section Officer (Primary) E&SE Department Civil Secretariat Khyber Pakhtunkhwa Peshawar

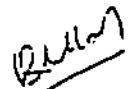
2. The meeting started with recitation from The Holy Quran. The chair welcomed the participants. The Deputy Director (Establishment) of Directorate of Elementary & Secondary Education briefed the forum regarding agenda item in detail.

3. After threadbare discussion it was decided that Directorate of Elementary & Secondary Education Department may examine the case properly and submit a self-contained/consolidated case for onward submission to Establishment Department for further necessary action.

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


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


(Mr. Aziz Ullah)
Provincial President
All Primary Teachers Association
Khyber Pakhtunkhwa


(Mr. Razaqat Ullah)
General Secretary APTA
Peshawar


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

(Abdullah)
Additional Secretary (Establishment)
E&SE Department

- B/C -

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

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

S/1	NAME	DESIGNATION
1	Mr. Fazal Wahid	Deputy Director Establishment of Directorate Elementary & Secondary Education Department
2	Mr. Aziz Ullah	Provincial President All Primary Teachers Association: Khyber Pakhtunkhwa
3	Mr. Razaqat Ullah	General Secretary APTA Peshawar
4	Muhammad Ishaq	Section Officer (Primary) E&SE Department Civil Secretariat 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 a self-contained/consolidated case for onward submission to Establishment Department for further necessary action.

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

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

Provincial President
All Primary Teachers Association
Khyber Pakhtunkhwa _____

(Mr. Razaqat Ullah)
General Secretary APTA
Peshawar _____

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

(Abdullah)
Additional Secretary (Establishment)


ATTESTED



-16-

Khyber Pakhtunkhwa, Peshawar
No. 8145 /F.No. 34/SST/M/General Cases Dated 21-7-2023
Phone: 091-9225344 Email: esabsthaentmale1@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/1-1/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 IVing) 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 IVing) vide letter No.SO (Policy) E&AD/1-3/2020 dated 6-06-2023 categorically stated that there exists no provision in 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 D/S-16 may be exempted of implications of the amendment in the rules if 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

ATTESTEE

- B/C -

DIRECTORATE OF ELEMENTARY & SECONDARY EDUCATION, KPK

PESHAWAR.
(21-7-2023)

To:

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

Subject: Minutes of Meeting

Dear Sir;

I am directed to refer to letter No. (SO Primary-M) E&SED/S-1/G/M/16/
Minutes of meeting/PST/2023 dated 10-7-2023 on subject cited above and to
present brief history, about background of case as under:

- That Government of KP Establishment department (Regulation Wing) deleted rule 7(S) in Civil Servants (Appointment, promotion, Transfer Rules 1989) vide notification No. No. SDR-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 06-07-2023
 - (i) Now it is obligatory upon civil servant to accept promotion.
 - (ii) It is prerogative of civil servant to either accept/turn down the offer of promotion.
- That your good office forwarded the same to quonies concerned vide letter No. SO (Primary-M) E&SED/2-2/Appointment/2023 for necessary guidance.
- That the government of KP-ED (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/forgo promotion. It is obligatory upon every civil servant to accept promotion under every condition.
- That in light of the minutes of the 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(S) have affected negatively a huge members of Female teachers.

The case is submitted for perusal and necessary actions please.

Copy of the above to;

1. PA to Director Local Directorate
2. Master Copy

Assistant Director
Elementary & Secondary Education
Khyber Pakhtunkhwa.


ATTESTED



ELEMENTARY AND SECONDARY EDUCATION DEPARTMENT
CIVIL SECRETARIAT PESHAWAR
(Phone No.091-8221587)

-18-
Annexure 'E'

No. SJ/Primary-M/E&SED/2-2/Appointment-Rule /2023
Peshawar Dated 23rd August, 2023

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

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

Dear Sir,

I am directed to refer to your letter No. SO(Policy)/ E&AD/ 1-3/2020 dated 05th June 2023 and to state that after deletion of rule 7(5) Khyber Pakhtunkhwa Civil Servant (Appointment, Promotion & Transfer Rules 1989) It has 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 Pakhtunkhwa Civil Servant (Efficiency & Discipline) Rules, 2011.

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

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

(MUHAMMAD ISHAQ)
SECTION OFFICER (PRIMARY MALE)

Copy forwarded to the:

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

(Signature)
SECTION OFFICER (PRIMARY MALE)
28/8/23

Scanned with CamScanner

(Signature)
ATTESTED

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

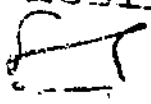
SUBJECT: Guidance regarding deletion of Rule 7(5) in the
Civil Servant (Appointment, Promotion & Transfer Rules
1989)

Dear Sir,
I am directed to refer to your letter No. S(Promotion)
(Policy) / E(AD) / 1-3/2020 dated 24th June 2023 and to state that after
deletion of Rule 7(5) Khyber Pakhtunkhwa Civil Servant (Appointment,
Promotion and Transfer Rules 1989) it has 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 Pakhtunkhwa
Civil Servant (Efficiency and Discipline) Rule 2012.

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

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

(Muhammad Ishaq)
Section Officer (Primary
Males)

ATTESTED


- B/c -
No. 50 (Primary-M) E&SED / 8-8 /
Appointment - Rule / 2023
Peshawar Dated 23rd August 2023.
- 19 -

-20-
u F
Annexure



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

ATTESTED

To
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 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,

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.

WP442-2023 AZIZULLAH VS GOVT CF PG43

- B/C -

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

To

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 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,

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 Officer (Policy)


ATTESTED

To,

Dated: /02/2024

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

REPRESENTATION AGAINST THE IMPUGNED NOTIFICATION BEARING NO.SO(POLICY)E&AD/1-312020, DATED 06/08/2020, COMMUNICATED TO SECRETARY TO GOVERNMENT OF KHYBER PAKHTUNKHWA, ELEMENTARY & SECONDARY EDUCATION DEPARTMENT VIDE LETTER D06/06/2023, WHEREIN IT WAS STATED THAT SUB RULE 5 OF RULE 7 OF KHYBER PAKHTUNKHWA CIVIL SERVANTS (APPOINTMENT, PROMOTION AND TRANSFER) RULES, 1989 STANDS DELETED

Sir/ Madam:-

Your Honorable authority promulgated Notification No. SO (Policy) E&AD/1 3/2020, dated 06/08/2020, communicated to Elementary & Secondary Education vide letter dated 06/06/23 wherein it has been made mandatory to the employees to avail the promotion, otherwise, disciplinary action shall be taken against the employees. That, as per notification No. SD (Policy) /EDAD/1- 3/2020 dated 06/08/2020, the right of foregoing of promotion was withdrawn and the Government of Khyber Pakhtunkhwa Establishment Department (Regulation Wing) deleted Rule 7(5) in the Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 vide notification no SOR-VI (E & AD)/1-2/2020 dated 06-08-2020. That the Directorate of Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar asked for guidance regarding deletion of Rule 7(5) in Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 in respect of which the Establishment Department vide its letter No. SO.(Policy) E&AD/1- 3/2020 dated Peshawar the June 06th, 2023 directed the Directorate of Elementary & Secondary Education that Rule 7(5) in the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 has been deleted vide notification dated 06-08-2020 and ,therefore, no provision exists to decline or forgo promotion and it is obligatory upon every civil servant to accept promotion under every condition. That Directorate of Elementary & Secondary Education Khyber Pakhtunkhwa also wrote a letter to the office of Establishment & Administrative Department vide No SO(Primary-M) E&SED/2-2/Appointment Rule/2023 dated 23-08-2023 to reconsider the amendment made in Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 as it had negatively affected a large number of teachers and especially female teachers. In the meanwhile, the department vide its letter dated 07th of September 2023 directed the Directorate of Elementary & Secondary Education Khyber Pakhtunkhwa that necessary guidance has already been provided to the department and therefore no provision exists to decline or forgo promotion and those teachers who do not comply with the promotion order of the competent authority or try to evade promotion through different means shall be proceeded under the Khyber Pakhtunkhwa Civil Servant (Efficiency & Discipline) Rules, 2011.

It is, therefore, humbly prayed that on the acceptance of the instant representation; the Notification bearing No. SO (POLICY) E&D/1-3 1-2020 DATED 06/08/2020, communicated to vide letter dated 06/06/2023, may please be declared and ordered to be struck down being Vold, Ultra vires to the Constitution of Pakistan.

Best Regards


ATTESTED



Ashraf Ali Son of Khair Ullah Jan
Resident of Tehsil & District
Mardan

Khyber Pakhtunkhwa

Aziz Ullah Khan
President
0333-0214618
azizullah1973@gmail.com
01 nain4pk



APTA House
Govt. Primary School No.1,
Quibahor Peshawar City.

آل پرائمری ٹیچرز ایسوسی ایشن (اپٹا) خیبر پختونخوا

جناب: سیکرٹری ریٹائرمنٹ و پنشن ڈیپارٹمنٹ خیبر پختونخوا
جناب: آل پرائمری ٹیچرز ایسوسی ایشن خیبر پختونخوا
جناب: مال

گزارش ہے کہ پروفیسر ہر اوہ سے ملے ہوئے ہیں کہ سرکاری ملازم کی خواتین کوئی ہے پروفیسر کا ایک قانون اور اگر تاقا کہ جو ملازم ایک اگر کسی
بیرہ وقت ایک اور پروفیسر میں تو وہ ہر آسٹہ ہر سال تک پروفیسر نہیں لے سکتے تھے مطلب ہر سال تک ہر اس کی پروفیسر نہیں ہو سکتی تھی
ہر اس قانون میں حوالہ دیا گیا ہے کہ ہر سال ایک ملازم ایک سال پروفیسر نہ لیں تو وہ دوسرے سال لے سکتے ہیں
لیکن اب ایک وقت پہلے ایک اور نوٹیفکیشن آیا ہے
جس کے مطابق اب ہر ملازم پروفیسر ضرور لیں گے اگر نہیں لیں گے تو اس کے خلاف ای ڈی او اور لا کے مطابق کارروائی کرنے کا کہا گیا ہے
حوالہ یہ آئی نوٹیفکیشن بنیادی انسانی حقوق کی کمی خلاف ورزی ہے سوئے کی دور دراز اور پھٹی علاقوں میں خاص کر خواتین اساتذہ کو انسانی مشکلات کا
سامنا کرنا پڑے گا
بیک عام حالات میں بھی لبروٹی اور پروفیسر اور دور دراز جیہاں بنیادی انسانی حقوق کی خلاف ورزی ہے کیونکہ خیبر پختونخوا میں بد قسمتی سے خواتین اور خلیوں
کی ہول ہے ایسے حالات میں یہ یا نوٹیفکیشن جو EASSB کی گائیڈ لائنوں کی تہا ہے جناب میں کیا گیا ہے جو بدلتی اور بنیادی انسانی حقوق کی خلاف ہے
ام اس کے خلاف قانونی طور پر اپنی حق میں محفوظ رکھتے ہیں
لہذا ہم آپ سے استدعا کرتے ہیں کہ نوٹیفکیشن کو واپس لیا جائے یا اس میں ترمیم کر کے پرائمری اساتذہ کو (Relaxation) دیا جائے اور ان کو
لبروٹی پروفیسر لینے کی ہلکے ان کو مرضی سے لینے دیا جائے
اور پروفیسر نہ لینے کی صورت میں باقاعدہ ہال لیا جائے لیکن یہ لبروٹی نہ کی جائے
اس سلسلے میں آپ جلد از جلد نام (DEO) ای ای او اور ایک قسم میں رابطہ جاری کیا جائے تاکہ اطلاع میں آپ سب اسٹیل پرائمری اساتذہ کو ذہنی
البت اور ہر جگہ سے بنایا جائے
کیونکہ نوٹیفکیشن جاری ہونے ہی پرائمری اساتذہ کو ذہنی طور پر ہر جگہ کے اسلسلہ شروع ہو چکا ہے
لہذا ہم یہ توقع رکھتے ہیں کہ آپ صاحبان کوئی ایجنٹ لبر سوئے ہر کے پرائمری اساتذہ، خصوصاً سٹیل پرائمری اساتذہ کو اس ذہنی البت سے ہمت دلائیں گے

شکر یہ

عزیز اللہ خان سرہانی صدر
آل پرائمری ٹیچرز ایسوسی ایشن خیبر پختونخوا

ATTESTEC

07.05.2024



1. Learned counsel for the appellant present.
2. Let a pre-admission notice be issued to the respondents through TCS for submission of reply/comments. Appellant is directed to deposit TCS expenses within three days. To come up for reply/comments as well as preliminary hearing on 10.06.2024 before S.B. P.P given to learned counsel for the appellant.
03. Alongwith the service appeal there is an application for suspension of Notification dated 06.06.2023 and letter dated 23.08.2023 till the final disposal of main service appeal. In the meanwhile, no adverse action shall be taken against the appellant till next date of hearing.

Certified to be true copy (Muhammad Akbar Khan)
Member (I)

[Handwritten signature]
13/5/24

Date of Presentation of Application 10-5-24
 Number of 1
 Copies of 1
 Urgent SI
 Total SI
 Name of SI
 Date of 13-5-24
 Date of Delivery of copy 12-5-24

[Handwritten signature]
ATTESTED

-25-

VAKALAT NAMA

BEFORE THE SERVICE TRIBUNAL PESHAWAR

ASHRAF 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