FORM OF ORDER SHEET

Court of	
	•
Appeal No.	2459/2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	. 2	3
1-	14/11/2024	The appeal of Mr. Israr Ali presented today by
		Mr. Muhammad Muazzam. It is fixed for preliminary hearing
		before Single Bench at Peshawar on 20.11.2024. Parcha Peshi
		given to counsel for the appellant.
		By order of the Chairman
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BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHUWA

Israr Ali

V/S

5.ANO.2459/24

Government of KP & others

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ADVOCATE

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHUWA

In Ref to	0	t	ef	R	π	1
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VERSUS

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

.....Respondents

SERVICE APPEAL UNDER SECTION 4 OF KPK SERVICE **IMPUGNED AGAINST** THE TRIBUNAL 1974, ACT NOTIFICATION BEARING NO.SO(POLICY)E&AD/1-312020, DATED 06/08/2020, COMMUNICATED TO RESPONDENT NO. 2 VIDE LETTER DATED 06/06/2023, WHEREIN IT WAS STATED THAT SUB RULE 5 OF RULE 7 OF KHYBER (APPOINTMENT, SERVANTS **PAKHTUNKHWA** CIVIL AND TRANSFER) RULES, 1989 PROMOTION DELETED

PRAYER:

ON ACCEPTANCE OF INSTANT SERVICE APPEAL, THE IMPUGNED NOTIFICATION BEARING NO: SO (POLICY) E&AD/1-312020, DATED 06/08/2020, COMMUNICATED TO RESPONDENT NO. 2 VIDE LETTER DATED 06/06/2023, MAY BE DECLARED AND ORDERED TO BE STRUCK DOWN BEING VOID AND ULTRA VIRES TO THE CONSTITUTION OF PAKISTAN AND FUNDAMENTAL PRINCIPLES OF NATURAL JUSTICE AND AGAINST THE RIGHTS OF APPELLANT.

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

RESPECTFULLY SHEWETH:

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

- That as per Khyber Pakhtunkhwa (Appointment/ Promotion/ Transfer) Rules, 1989, as well as in other sister services of the other Provinces and Federation as well, availing of promotion by the employees is always optional and the employees as a matter of right may avail or forego their promotion and the next employee in seniority list is to be promoted.
- 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:-

GROUNDS:-

- a. That as per various judgments it is established and settled principle that executive notifications cannot be given retrospective effect. A valid Notification which confers rights is always applicable with prospective effect, however, if an amendment notification that adversely effects the interests of the employees or causes disadvantage to the employee is not tenable in the eyes of law. The notification/ guidance dated 06/08/2020 06/06/2023 are liable to be set-aside.
- b. That there are no terms and conditions of service mentioned in the appointment order of the appellant wherein, availing of promotion is mandatory. It is further submitted that employees in the past, have foregone their promotion along with their posting. It is submitted that when domestic and other personal issues do not permit the employees/appellant to avail the promotion order and in that case, the employees who foregone their promotion were allowed not to avail the promotion for a period or 04 years and on second refusal the employees were permanently debarred from availing the facility of promotion during their entire service. Hence the employees himself/herself forebear agonies of foregoing their promotions. As a result, junior to the appellant according to the order of seniority cum fitness are granted promotion to next rank.
- c. That as per Civil Servant laws, promotion is a kind of appointment which is always optional to get promotion or not, hence the impugned notification is void, illegal and against the law and the same to the extent of the appellant is liable to be set-aside.
- d. That it is further submitted that on account of grant of promotion, some employees who are suffering from severe medical ailment or facing acute domestic issues cannot avail promotion with transfer in other areas, therefore, no employee can be compelled to accept the promotion compulsorily which is not beneficial to the employee but if an employee does not avail and get benefit of her promotion it must be optional for the employees as to whether to avail or forego the benefits. Any promotion without willingness of employee is illegal and liable to be setaside.

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*...

- e. That non-availing of promotion and foregoing thereof does not cause loss to the government exchequer and in consequence of foregoing promotion, pave way to the next employee in seniority, aspiring for promotion could be promoted.
- f. That the Impugned promotion Notification dated 06/08/2020 communicated on 06/06/2023 is perverse, discriminatory, against the law, pungent and is a blunt blow of hammer on the rights of the appellant. It is not out of place to mention here that the appellant are teachers and have to look after their children as well as ailing dependent family members and in these circumstances in the presence of impugned Notification dated 06/08 /2023 communicated on 06/06/23 would not be able to serve in the department and which shall amount to the snatching of bread and butter of the poor employees

It is, therefore, humbly prayed that on the acceptance of the instant Service Appeal; the Impugned Notification bearing No. SO (POLICY) E&D/1-3 1-2020 DATED 06/08/2020, communicated to Respondent No.2 by Respondent NO.1, vide letter dated 06/06/2023, may please be declared and ordered to be struck down being Void, Ultra vires to the Constitution of Pakistan and against the fundamental principles of natural justice.

It is further prayed that no penal action as proposed and envisaged in letter dated 06/06/2023 may be declared as unlawful, illegal and without having any legal effect.

Any other relief, which this honorable Tribunal deems fit and proper in the circumstances of the case, may also be granted to the appellant.

AFFIDAVIT:

I Israr Ali Son of Zarif Khan Resident of Tehsil & District Mardan 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 Muazzzam Butt Advocate Supreme Court

Appellant

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

Israr Ali

VERSUS

Secretary to Government of Khyber Pakhtunkhwa, & others

APPLICATION FOR SUSPENSION OF IMPUGNED NOTIFICATION BEARING NO. SO (POLICY) E&D/1-3/2020 DATED 06/08/2020, COMMUNICATED TO RESPONDENT NO.2 BY RESPONDENT NO.1, VIDE LETTER DATED 06/06/2023 TILL THE FINAL DISPOSAL OF CASE IN HAND.

Respectfully Submitted:-

- 1. That the instant application may be treated as part and parcel of service appeal of the appellant.
- 2. That the appellant has brought a good prima facte 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

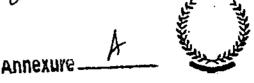
Through

Muhammad Muazzam Butt Advocate Supreme Court

Appellant

Muhammad Adeel Butt Advocate High Court

Dist. Govt. KP-Provincial District Accounts Office Mardan Monthly Salary Statement (January-2024)



Personal Information of Mr ISRAR ALI d/w/s of ZARIF KHAN

Personnel Number: 00123518 Date of Birth: 20,04,1974

CNIC: 1610112202801

Entry into Covt. Service: 24.06.1997

NTN: 0

Length of Service: 26 Years 07 Months 009 Days

Employment Category: Vocational Permanent Designation: PRIMARY SCHOOL HEAD TEACH

DDO Code: MR6435-District MARDAN Payroll Section: 003

GPF A/C No: EDUMR011528 GPF Interest applied

GPF Section: 001

Cash Center: 18

GPF Balance:

80663756-DISTRICT GOVERNMENT KHYBE

614,566.00 (provisional)

Vendor Number: -

Pay and Affowances:

Pay scale: BPS For - 2022

Pay Scale Type: Civil BPS: 15

Pay Stage; 22

Wage type	Amount	Wage type	Antount
0001 Basic Pay	67,480,00	1001 House Rent Allowance 45%	3.524.00
1210 Convey Allowance 2005	2.856.00	1300 Medical Allowance	1.500,00
1505 Charge Allowance	40,00	2148 15% Adhoc Relief All-2013	
2199 Adhoc Relief Allow (a) 10%	555,00	2316 Teaching Allowance 2021	827,00
341 Dispr. Red All 15% 2022KP	6,408,00	2347 Adhoc Rel Al 15% 22(PS17)	3.224.00
2378 Adhoc Relief All 2023 35%	22,925,00	-5- Name (C) At 13 in 22(1317)	6,408,00 0.00

Deductions - General

Wage type	Amount	Wage type	Amount
3015 GPF Subscription	-4,290.60	3501 Benevolent Fund	-1.200.00
3609 Іпсине Тах	-2,414,00	3990 Emp.Edu. Fund KPK	-135.00
4004 R. Henellis & Death Comp:	<u>-600.00</u>		0.00

Deductions - Loans and Advances

Loan	t-s	I			
	Description	Principal amount	Deduction	Bulance	
6505	GPF Loan Principal Instal	570,000,00	-23,000,00	225,000.00	ĺ

Deductions - Income Tax

Payable:

37,382.88

Recovered till JAN-2024:

15,970,00

Exempted: 9345,23

Recoverable:

12,067,65

Gross Pay (Rs.):

115,747.00

Deductions: (Rs.):

-31,639.00

Net Pay: (Rs.):

84,108,00

Payee Name: ISRAR ALI Account Number: 1737-3

Bank Details: NATIONAL BANK OF PAKISTAN, 230884 KATLONG, MARDAN KATLONG, MARDAN, MARDAN

Lenves:

Opening Balance:

Availed:

Earned:

Balance:

Permanent Address: VILL KATIGANI PO KATI GARHI TEH MARDNA

City: MARDAN

Domicile: NW - Khyber Pakhtunkhwa

Housing Status: No Official

Temp. Address: City:

Email: israr1947.ali@gmail.com

System generated document in accordance with APPM 4.6.12.9(288598/24.01.2024/v3.0)

* All amounts are in Pak Rupees * Errors & omissions excepted (SERVICES/02/02/2024/19/11/01)





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GOVERNMENT OF KHYBER PAKHTUNKHYA establishment departme (REQUESTION WING)

NOTHICATION

Dated Peshiwar the, 06 / 8-72020

Pakhlinhihwa Civil Saryants Act, 1973 (Kliyber Pakhlankhwa Act Ho: XVIII of Pakhlinhihwa Minister of Khyber Pakhlankhwa Act Mo: XVIII of In exercise of the powers conferred by seculon 25 of the Philip Philipper Minister of Khylier Pakhichkliwn is pleased to direct that in the Khylier Pakhichkliwn and Training the Civil Servants (Appointment, Promotion and Training to the Civil Servants (Appointment, Promotion and Promotion a Things with the smooth and shall be made, namely: The made amondment shall be made, namely:

AMENDMENT

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

GOVERNMENT OF THE ICEYBER PAKETUNKHIVA CHIEF SECRET ARY

<u>ustenda even date</u>

Impunted to:-

Additional Chief Secretary, Oavl. of Khyber Pakhtunkhwa. Planning &

The Senior Member Board of Revenue, Khyber Pakhrunkhwa. Development Department.

All Administrative Segretaries to Govt. of Khyber: Pekbtunkhwa. The Principal Secretary to Governor, Khyber Pakhhunkhwa,

The Principal Secretary to Chief Minister, Khyber Pakhankhwa.
All Divisional Commissioners in Khyber Pakhankhwa. All Heads of Attached Departments in Khyber Pakhiunkhwa. All Autonomous/Sami Autonomous Bodies in Khyber Pakhtunkhwa

8. 9.

All Deputy Commissioners in Khyber Pakhtunkhwa. The Registrar Peshawar High Court Peshawar

The Registrar, Khyber Rakhlunkhyla Service Tribunal, Peshawar.

The Deputy Director (T), Esta Department. All Section Officers in Establishments Administration Department The Section Officer (Admin), Administration Department with the request to

Carcinker Administration Department. arrange 20 gazzue copies.

ATTESTEL

DERUTY SECRETARY (POLICY

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:

<u>AMENDMENT</u>

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
- 16. The Caretaker, Administration Department.

(WARDAH LATIF) DEPUTY SECRETARY (POLICY)





. QOVERNMENT OF KOPYBER PAROTUNKTEYA Calving opening destablishing No. SO(Palley) (RADII - 3/2020 Daled Pesinwar the June 06, 2013

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The Clovernment of Khylier Published Illementary & Secondary White In Propailment

Subjects .

CHUIDANCE REGARDING DELETION DE RUILE TES IN THE RECYDER PARITUMICIVA GIVIL SERVANTA (APPOINTAIENT, PROMPTION AND TRANSPERTUREES, 1982,

I and directed to refer to your letter No. SO(Primary-Myrizesili)12-2/Appolitimen/2023 dated 18.04.7033 un the subject noted above and to state that Sub-Rule (5) of Rule-7 of Khyber Pakhtunkimu Civil Servanis (Appointment, Promotion and Transfer) Rules, 1989 stands deleted vide this department northeotics dated 06.08.2020; thus, no provision exists to decide or forgo promotion.

- The basic rationals behind the deletion of the libit rate is almost at preventing a civil servent from temptation for itileli fain by sticking to a single incretive post/position or to prevent those who tend to large 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.
- Furthermore, those afficers/offishels who do not comply with promotion order of the compatent authority or tip to evade promotion through different means shall be proceeded against under Khyber Pokhtunktiwn Civil Servents (Efficiency & Discipline) Rules, 2011, please

Radst. Of even No & Hole

Copy forwarded to thor-

1. PS to Special Scenary (fire); Etublitunent Department.

2. PA to Additional Secretary (Rep. 11), Establishment Department.
3. IS to Dappiny Secretary (Policy), Establishment Department.

Annie Collpinili. Many Khan) Micci (Polloy)

Meer (Pallay)

WP4442-2023 AZIZULLAH VS GOVT CF PG43

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Povernment of Hhyber Pakhtunkhwa ELEMENTARY AND SECONDARY EDUCATION DEPARTMENT CIVIL SECRETARIAT PESHAWAR

(Phone No.091-9223587)

No.SO (Primary-M)/E&SEO/2-8/2023 Oaled Peshaviar the, June 26th, 2023

Tο

The Director

Elementary & Secondary Education Department

Khyber Pakhlunkhwa, Peshawar.

Aziz Ullah Khan President

All Primary Teacher's Association, KP

Subject:

GUIDANCE REGARDING DELETION OF RULE 7(5) IN THE KHYBER

PAKHTUNKHWA CIVIL SERVANTS (APPOINTMENT, PROMOTION

AND TRANSFER) RULES, 1989.

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

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

Engl: AA

(MUHAMMAD ISHAO) SECTION OFFICER (PRIMARY MALE)

Copy forwarded to the:

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

SECTION OFFICER (PF

WP4442-2023 AZIZULLAH VS GOVT CF PG43

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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 Ali 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.

f 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)

WP4442-2023 AZIZULLAH VS GOVT CF PG43

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Annexure.

MINUTES OF THE MEETING REGARDING APPLICATION SUBMITTED BY MR. AXIX ULLAH PROVINCIAL PRESIDENT ALL PRIMARY TEACHERS ASSOCIATION XHYBER PAKHTUNKHWA REGARDING OF DELETION OF RULE 7(5) IN THE CIVIL SERVANT (APPOINTMENT, PROMOTION LINANSFER RULES 1969).

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

5#	NAM#	DESIGNATION
1 	Mr. Pozal Wahld	Deputy Director Establishment of Directorate Elementary & Secondary Education Department
2	i Mr. Aziz Ullah	Pjovincial President All Primary Teachars - Association - Khyber Pakhlunkhwa
3	Mr. Rafagal Vilah	General Secretary APTA Peshawar
4	Muhammad Ishaq	Section Officer (Primary) ELSE Department Civil Secretarial Khyber Pakhtunkhwa Peshawar

- 2. The meeting started with racifolion from the Holy Ouran. The chair welcomed the participants. The Deputy Director (Establishment) of Directorals of Elementary & Secondary Education briefed the forum regarding agenda from in detail.
- 3. After threadbore discussion it was decided that Directorate of Elementary 2 Secondary Education Department may examine the case properly and submit a self-contained/consolidated case for anward submission to Establishment Department for further necessary action.

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

(Mr. Fazal Wahla) Deputy Director-I ESSE Department

3.5

(Mr Aziz Uilah)
Provincial President
Nu Primary Teachers Association
Khyber Pakhlunkhyra

(Mr. Relogol Ullah) General Sacrelary APTA Peshowar

7.2.

(Muhahimad Ishda) Sacilan Officer (Primary-Male) E&SE Department

(Abdyllah) Addillanal Secretary (Establishment) E&SE Deportment

WP4442-2023 AZIZULLAH VS GOVT GP PG43

ATTESTED

- 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

5#	NAME I	DESIGNATION
<u></u>	Mr. Fazal Wahld	Deputy Director Establishment of Directorate Elementary & Secondary Education Department
	Mr. Aziz Ullah	Provincial President All Primary Teachers Association: Khyber Pakhtunkhwa
э.	Mr. Rafaqat Ullah	General Secretary APTA Peshawar
4.	Muhammad Ishaq	Section Officer (Primary) E&SE Department Civil Secretarial Khyber Pakhtunkhwa Pashawar

- 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.

General Secretary APTA Peshawar	·
(Muhammad Ishaq) Section Officer (Primary-Male) E&SE Department	· · · · · · · · · · · · · · · · · · ·
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 UbbA	(Abdullah)





No. 8145 KI Phone: 091-9223344

Klıyber Paklıttınklıwa, Pesliawar F.Na. 34/55T/}UGeneral Cases Daled 2-

al Cases Dated 2/Empli: establishmentmale/@gmail.com

To

The Socilar Officer (Primary-Mulé), Elementary & Secondary Ethication Department, Klyber Politiunkhwa Peshawar..

Subject: - MINUTES OF THE MEETING Dear Str.

I am directed to refer to the latter No.SO(Primary-M)&&&&D/3-1/ Q.Mixe/Minutes of the Maxiing/PST/2023 dated 10-07-2023 on the subject eltail above and to present brief history about the background of the case as under:

- That Government of Klyber Pakitunkinya Establishment Department (Royalation Wing)
 deleted Rule 7(3) in the Civil Servents (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 wide letter No.6987 dated 06-02-2023.
 - (1) Now it is abligatory upon the civil servant to accept Promotion in every condition.
 - (ii) It is the prerogetive of the civil servant to either escept or turn down the offer of premotion.
- That your gorf office forwarded the same to the quarter concerned vide letter No.SO (Primary-M) E&SED/2-2/Appointment/2021 for necessary guidance.
- They the Government of Klyber Pakhtunkhwa Establishment Department (Regulation Wing) vide letter No.SO (Policy) E&AD/I-3/2020 dated 6-06-2023 categorically stated that there exists no provision in decline or forgo promation. 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 Han, Additional Secretary Establishment at his office this office has been asked for submission of consolidated ease.

In view of the above, this office is of considered opinion that the deletion of Rules 7(5) have affected againsty a huge numbers of Female Teachers. Thus it is proposed that Teachers below BPS-16 may be exempted of implications of the amendment in the rules ibid provided they submit their written refusal prior to conduction of the meeting of Departmental Provision Committee.

The case is submitted for perusol and necessary actions please.

Assistant Director (Estab NI-1)
Elamantary & Secondary Education

Khyber Pakhumkhwa

Endst: No.

6

Copy of the above is to:-

- 1. PA to Director Local Pirestorale.
- 2. Master Copy.

Assistant Director (EstabM-l) Elementary & Societary Education Klyber Pakhtunkhwa

WP4442-2923 AZIZULLAH VS GOVT CF PG43



ENDY 4D TVOD RV HAJJUSISA ÇSØS-ÇNJARW

2. Master Copy A. PA to Director Local Directorate Cirpy of the cibous to:

Khyles Rechmiching Demarkory & Secondary Educates Acidona Director

(1301-F-15)

The case is eubmilled for period and necessary actions - splease members of Ferrale Jeachars.

adding beneficated to it softe with applying the considered opinions by the delation of the colorest of the delation of the colorest of the co

The residence of his office has been asked for substitution hald under the Chairmanship of then Additional Secretary Establish. Cras-Fo-2 betab gritering att to retiren out to tright in teath o

Serving to ciccept paration under energy condition. Inis graves may by the state of the mointaining agreet will be at mointained an Etanol 1-3 2000 dated 6-06-2073 eaterphically stated that there exists . That the government of KP-ED (Regulation Wing) vide letter No. So (Policy)

vide letter /w. 50 (Primayer) E& SED/2-2/Appaintment (2023 for recessory . Their your good office forwarded the come to quarte concerned

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ant construct to some of truscos into to svitogerary littlij restamong tossist at the scenario to decept from the confici

words vice letter no. 6983 dated ob-ovrasz extracted with my suffer boy rook mak successed the suffer suffer that wild rufification No. No. 50R-VI(E&AD)1-3/2020 dated ob-08-2020. delated rule 7(5) in Civil Servents (Apprintment, promotion of 12) Paller 1919)

(Brilly restrained by Establishment department (Regulation Willy present boles history about background of cous as under: Minutes of meeting [27] Ral dated to-F-of bated cras/Til gritesom of relations Dear Eir] & am directed to refer to heller No. (50. Annoy -M)E & SED /5-1/6, Nilly

Subject i Minutes of Meeting

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14PK) Perhauser.

Elementicay & Secondary Education Department Section Office (Primary Male)

DECHBLURIE DIRECTURATE OF ELEMENTARY & SECONDARY EDUCATION, KPK

-5|8-



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

149. SO(Primary-M)E&SED/2-2/Appointment-Rule /2023 Peshawar Dated 23rd August, 2023

The Becretary to Govil of Khyber Pakhlunkhwa. Establishment & Administration Department, Feethaviar

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

Gest Sir,

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

In this connection it is submitted that in some cases lady teacher of primary level wind 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 heed care. In such cases, there are negative effects on service delivery.

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

> MUHAMPIAU ISHA SECTION OFFICER (PRIMARY MALE)

SECTION OFFICER

Copy (cryrarded to the:

1. Director ERSE Khyber Pakhbinkhwa.

2 PS to Secretary, EBSE Department Khyber Pakhtunkhwa.

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WP4447-7977 AZIZULLAH VS GOVT CF PG43

Pedramar Dated 23rd August 13. 18-8 (M- Horang) 2.01/ 6.501 | 2017 - Lumbridger

Establishment and Administration Department, The Secretary to Government of Khybos Pakhambhusa. Peshausur.

(6867 Old Servent (Agistiment, hometion & Transfer Rules Quidance responding deletion of Rule 7(2) in the SUBJECT:

those officers officials who do not comply with promotion orders tout betomitri need red 1882 really eliment pro rectioned deletton of Rule 7(5) Whyber Bithunkhwa Civil Senant (Apparetment with init state of long scarsmilling potob aros 18-1/ 9 am directed to refer to your letter No. Solthinung Dear Sir,

Civil Servant (Efficiency and Discipline) Rule 2011. different means shall be proceed under Khyber Rikhtunkhun about notioning shows at but to ethoritus brestogmes wit fo

In this connection it is submitted that in some cases lady

effects on service delivery. Mather-in-law who need asse, in such cases there are negative Most of them age married with kills and elder father of , with the required / Sintrabitise on offine crothold tratomer and ni foce serious incovenience while though hove to peoplem duties teacher of primary level who avoil such promother . hove to

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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 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,

Endst. Of even No & date

Copy forwarded to the:-

- PS to Special Secretary (Reg), Establishment Department.
- PA to Additional Secretary (Reg-II), Establishment Department.
- PS to Deputy Secretary (Policy), Establishment Department.



- B|c-

GOVERNMENT OF KHYBER PAKHTUNKHWA **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 Str.

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)

Bridst. Of aven 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)

WP4442-2023 AZIZULLAH VS GOVT CF PG43

Τo,

Dated: 22-01-2024

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

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

3) Director Elementary and Secondary Education Department

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

Sir/ Madam:-

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

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

Best Regards

Israr Ali Son of Zarif Khan Resident of Tehsil & District Mardan



To. Dated: 22-01-2024

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 Q6/08/2020. COMMUNICATED TO SECRETARY TO GOVERNMENT OF KHYBER PAKHTUNKHWA. ELEMENTARY & SECONDARY EDUCATION DEPARTMENT VIDE LETTER DQ6/06/2023. WHEREIN IT WAS STATED THAT SUB RULE 5 OF RULE 7 OF KHYBER PAKHTUNKHWA CIVIL SERVANTS (APPOINTMENT. PROMOTION AND TRANSFER) RULES. 1989 STANDS DELETED

Sir/ Madam:-

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

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

Best Regards

Israr Ali Son of Zarif Khan Resident of Tehsil & District Mardan

ATTESTE

WP4442-2021 AZIZULLAH VB GOVT CF PG42

الأنخر بهذ الأبوا لايموا نابخ لأكأب لمآ مهر وأباره والدينايان

ك ريزان عبو عددا رفا الله المنادلة المنافر لليك له المنافرة لحديد بد كا طفاله الله لي المنافرة المنافرة المنافرة בי ולית ויל אד וצדו למ קום עוז לומו עלוק עם ביונאי שיבון וצל

모나!!

ים ל הבו לולן לל לבן לא מו מום לב בני לנוף או לי בי לווים מולום מום מום מון לבל לבל לא או או לבל לבל לא לי או מו בינו לביל לשב היל לשב היל לב של היל לב מו בינו לב ביל ל מו בינו ל ביני ל או מו ביני ל או מו מים ביל היל היל הי

לשו מו בנינו (חוו מביוומה) לי גרועלים בללים עי נונו בגף שו עלו לישל ל לע בלעלו שום בשו הוע

ساكسته ماري دارد در در المارية ישור של של של של או של א ב ב על צל בר בא של של על על של של של מפצור השל של או בי ב שו בי בי בי של הי של הי של ה

בי לב של היו לב היו ליו בי ליו בי לו בי ווו בי או מ בי ווו בי או היו בי או היו בי או היו בי אי היו בי אי היו בי אי היו בי אי היו היו אי אי היו היו אי אי היו היו א というというかんとうないないないないないないというとうないないないないないないないないで العركما سيواداله عد عربه وحل المناف سيد المنكاف من المناف لل إعد لا من الما كدم لا حسال به يكون عد و لكمائح

> · 并以此外的年日的日本 الم يخر ها ما يو ها المايين عدلها المايي : به

ا يخُوَيْنُكُوْ بِهِيْ (لِوُلِ) لِيُعْلَا الرحيمةِ إي رَجِيْزُ لا رمُوارِ لِ ال

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Khyber Pakhrunkhwa

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07.05.2024



- 1. Learned counsel for the appellant present.
- 2. Let a pre-admission notice he 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 meanwhite, no adverse action shall be taken against the appellant till next date of hearing.

dertified to be true copy(Muhammad Akbar Khan)
Member (E)

Date of Pennyasian of Application 10 15 1-9

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Date of Community of Congress of Congress

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VAKALAT NAMA

BEFORE THE SERVICE TRIBUNAL PESHAWAR

ISRAR A.L.I

Appellant

Versus

Government of KP & others

Respondents

I (the Hoppellant)

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 SIDDIQUI
Advocate High Court