FORM OF ORDER SHEET

Court of			
Anneal No	2528	/2024	

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	App	peal No. 2528 /2024
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		The appeal presented today by Mr. Muhammad Muazzam Butt Advocate. It is fixed for preliminary hearing
		before Single Bench at Peshawar on 21.11.2024. Parcha Peshi
		given to counsel for the appellant.
		By order of the Chairman
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CHECKLIST PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

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BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHUWA

Abdullah Shad

V/S

Government of KP & others

INDEX

S#	DESCRIPTION OF THE DOCUMENTS	ABIRITY	7 54.575
	PERMITTER OF THE BOCOMENTS	ANNEX	PAGES
1.	Appeal and Verification	*	1-4
2.	Application for suspension	*	5
3.	Copy of Monthly Salary account	A.	6- 6A
4.	Copy of notification No. SD (Policy) EV AD/1-	B.	
	3/2020 dated 06/08/2020		8- F
5.	Copy of Impugned Letter dated June 06th, 2023	C.	9 - 11
6.	Copy of Minutes of Meeting dated 06-07-2023	D.	12-15
<i>F</i> .	Copy of Letter dated 23-08-2023	E.	16-17
8.	Copy of Impugned letter dated 07-09-202	F.	18 -19
9.	Copy of Representation against the said	G & H	-
	notification and representation made by APTA		20-21
	President		
1.0.	Wakalat Nama		22

ADVOCATE

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHUWA

In Ref to

Service Appeal No_2528 __/2024

Khyher Pakhtnkhwa Service Tellegraf

Diary No. 18074

Abdullah Shad Son of Sawoo Khan Resident of Tehsil & Dsitrict Torghar

Designation: Primary School Teacher at GPS Zangia KD

.....Appellant

VERSUS

- 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 ACT 1974, **AGAINST** THE IMPUGNED <u>NOT</u>IFICATION 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 <u>PAKHTUNKHWA</u> CIVIL SERVANTS (APPOINTMENT, PROMOTION AND TRANSFER) RULES, 1989 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 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 <u>Annexure G & H</u>
- 11. That feeling aggrieved from the letters dated 06-06-2023 and 07-09-2023 and the deletion of Rule 7(5) in the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989; the petitioners filed this Hence, the instant service appeal is filed on the following grounds:-

GROUNDS:-

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

- 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 Abdullah Shad Son of Sawoo Khan Resident of Tehsil & Dsitrict Torghar do hereby solemnly affirm and declare that the contents of foregoing application are true and correct to the best of my knowledge and belief and nothing has been concealed therein from this Honourable Court

Through

Deponent

Muhammad Muazzzam Butt Advocate Supreme Court

Muhammad Adeel Butt Advocate High Court

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

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Secretary to Government of Khyber Pakhtunkhya. & others

CASE IN HAND. VIDE LETTER DATED 06/06/2023 THE THE FINAL DISPOSAL OF COMMUNICATED TO RESPONDENT NO.2 BY RESPONDENT NO.1, BEVEING NO. 80 (POLICY ERDN 3/2020 DATED 06/08/2020, APPLICATION FOR SUSPENSION OF IMPLICATION

Respectfully Submitted:-

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des in favor of the appellant. Ozla sonsinavnoo to sonsled bus asso spisi spiriq boog s tilguord esd tasllaqqa adt tsilf

No. So (Policy) B&D/1-3/2020 Dated 06/08/2020, comministed to Respondent No.2 That there is likelihood success of the appellant in the list And If the notification bearing

would suffer irreparable loss. by Respondent, No.L. Vide Letter Dated 06/06/2023 is not enspended the appellant

That valuable rights of the appellant is involved in the case.

Respondent No.1, Vide Letter Dated 06/06/2023 may idnelly be suspended till the (Policy) R&D/1-3/2020 dated 06/08/2020, communicated to Respondent No.2 by In view of the reasons, it is humbly requested that the notification bearing No. So

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Through **TIVAGITA**

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Appellant

Advocate High Court Hug leabh hemmeduld

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Consequent upon the approval of the District slection Committee, the Competent Authority is please to appoint the following eligible PST (Male) Open Merit, Candidates (KALA DAKA) purely on Merit / Plicy in BPS -5 @-Rs2415/- fixed plus usual allowances as admissible under the rules Posted in the Schools as noted against each with effect from the date of their taking over charge.

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	15	55	Shamzad Khan	Dimension and		
		 -	Harry Daymond	Bimbal A/Zai	GPS Judbah	-do

TERMS & CONDITIONS

Their appointment's are made on purely temporary basis and liable to termination at any stage without assigning any reason/notice.

They will be governed by such rules and regulations enforce and as may be prescribed by the Government time to they will be governed by such rules and regulations enforce and as may be presented by the Government time to time for the eategory of the Government which they belong. In case, any of the above candidate failed to assume the charge of his post within 15 days of his appointment, candidature ship will be sland automatically cancelled.

The Candidate will enter into an agreement with the Governed will be governed by the terms and conditions herein after mention in such agreement. They will sign the agreement on the prescribed form on stamp paper

They will be governed by such rules and regulations enforce and as may be prescribed by the Gove from time to ime for the entegory of the Governer which they belong " case any of the above candidate failed to assume the charge of his post within 15 days appointment, candiadature ship will be stand entomatically cancelled. The Candidate will-enter-into-en-agreement with the Governed will be governed by the terms and conditions herein after mention in such agreement. They will sign the agreement on the prescribed form on stamp paper. The Principal/Headmasters /DDO concerned are responsible to get verified their certificates etc from the concerned Universities/Board & RDE cic before the drawl of their pay and report genuineness of their They will get initial of the scale including usual allowances as admissible under the rules, they are entitle to incual increment according to the rules exect? Pension and commutation. Their services are liable to termination on one month prior notice from either side in case of resignation without

prior notice, their one month pay fallowance; if any shall be forfeited to Govt. They will not contribute any amount towards GPFund however they will contribute CPFund @Rs,5% of the minimum of the pay and the 5% contribution will be made by the Govt.

They shall be required to furnish the copies of all their certificates/Degrees along with original with the original receipt and photo copies of thereof pertaining to the verification fee of the concerned examination Agencies lie Board/University to the District officer S & L. The District officer S & L shall arrange verification of all the certificates/Degrees of the appointee and will issue a clearance certificates to each appointee for the release of his pay. Their pay bills should not be submitted to the Distr. Account officer Manschra before verification of all

They should produce age and health certificate from the Medical Supditi DHQ, Hospital Manchra. The Head of Institution /DDO must check their original certificates/Degrees.

li 13

The overage candidates should not be hunded over charge, The age limit is 18 to 35 years. 13

10

1.1

Charge report should be submitted(in duplicate)to all concerned.

Syed Shah Jee enecutive district officer SCHOOLS & LITERACY MANSEHRA.

27AT Male appui 2006, Dated Manchin the L by forwarded for information and necessary action to the

Director Schools & Literacy NWFP Peshawar.

District Nazim Manschra,

District Coordination officer Manschra.

District Account officer Manschra,

Principal/Headmaster concerned.

Budget & Account officer local office.

P/S to EDO S&L tocal office.

Candidates concerned,

Office order file

SCHOOLS & LITERACY MANSEH

OFISTLY DEFUTY SECRETARY POLICY The Carculett, Actininiairation Departmentarrange 20, gazette, copies. of Brupal oth Aliw Instituted Organism similar (ambk) 237110, notices off And Handson And Handshigh Sharing And Hadani White A sharing the residence of the same of The Service Conunstion, Pushing Rublic Service Conunstion, Pushiwal The Registrat, Khyber-pekhunkhwa Service Tribunal, Peshawas. The Russian Peshawar High Court, Peshawar All Deputy Commissioners in Khyber, Pathlundhwa. 6 All Autonous/Semi Autonomous Bodies in Khyber Pakhtunkhwa All Heers of America Departments in Klyber pakhunkliwa. All Divisional Commissioners in Khyber Pathunkhwa. The principal Severary to Chief Minister, Khyber Pakhtunkhwa. The Principal Acereury to Covernor Klyber. Pakhunlawa. Lydinitating Secretaries to Gove, of Knybert Palariciniby. Il The Senior Member Bond of Revuna, Khyber Pakhunkhya. Additional Chief Secretary, Dove, of Khyber Pakhtunkhwa. Planning · tot hobrareml is quil TLY O NEAR TO ON THE GOVERNMENT OF THE IDENDER TA KHI'UN KUINA ibriolob ad Unite (\$) shirt be deleud: White the contract shall be made, namely: VINTENDWENT in the time of Survenia (Appointment, Prainolion and Transfell Rules, 1989, the Multiplier and Transfell Rules, 1989, the in the child white the Khyber Pakhinikhwa is pressed to direct that in the Khyber in t Milliams Clviff Solyungs Achiunkliwa is abancad to definiated by sceildards of the scripturkly of the powers conferred by sceildards of the scripturkly of the scripture of khyber Pakhunkhwa Aci do. XVIII of the scripture of khyber Pakhunkhwa Aci do. XVIII of the scripture of khyber Pakhunkhwa Aci do. XVIII of the scripture of t The powers confirmed to either of the powers conferred by section 24, of the MOLLINGATION (ивепрукцовъино). PHAMERAGIC THEMPSLIES CHARLE BYTCHTTRIKERAY COMPRIMENTOR

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 1989.

AMENDMENT

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

CHIER SECRETARY
GOVERNMENT OF THE KHYBER PAKHTUNKHWA

(ANDS): & EVEN DATE

Copy is forwarded to :-

- 1. Additional Chief Secretary, Govt of Khyber Pakhtunkhwa. Planning & Development Department)
- 2. The Senior Member Board of Revenue, Khyber Pakhtunkhwa.
- 3. All Administrative Secretaries to Govt of Khyber Pakhtunkhwa.
- 4. The Principal Secretary to Governor, Khyber Pakhtunkhwa.
- 5. The Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
- 6. All Divisional Commissioners in Khyber Pakhtunkhwa.
- 7. All Heads of Attached Departments in Khyber Pakhtunkhwa.
- 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)

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PA to Additional Secretary (Reg. 11), Euchilplaneni Department. . PB to Special Secretary (Reg), Establituncal Department. P. 19

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प्रेयाददर (Polloy)

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chall serving to necept promotion in every condition.

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Rules, 1989 at and deleted vide this department neitheathen dated 06,08,2020; thus, an (3) of Rule. 3 of Rhyber Publications Clear Servines (Appolaturent, Promotion and Transfer) olust due tont plate of ban avoda boton residut oils un ecor, 20,81 beloit ecostareminiogyans on alrected to teles in sout teller No. SOthhmory-Mynastaniva-

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эоувифмент Ор Крувей, Ракитинкий а ELEMENTARY AND SECONDARY EDUCATION DEPARTMENT CIVIL SECRETARIAT PESHAWAR

(Phone No.091-9223587)

Nii.80 (Primary-M)/E&SED/2-6/2023 Ualed Peshaviar lhc. June 26*,2023

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

Áziz Ullah Khan President-All Primary Teacher's Association, KP

GUIDANCE REGARDING DELETION OF RULE 7(5) IN THE KHYBER PAKHTUNKHWA CIVIL SERVANTS (APPOINTMENT, PROMOTION Şubject: 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)E8AD/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 ábove, please.

<u>Encl: AA</u>

(MUHANMAD ISHAO) SECTION OFFICER (PRIMARY MALE)

Copy forwarded to the:

PS to Secretary, E&SE Department Khyber Pakhtunkhwa.

1842-2703 AZIZULLAH VS GOVT CÉ PG43

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

 T_{C}

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(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.

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Encl: AA

(MUHAMMAD ISHAQ) SECTION OFFICER (PRIMARY MALE)

Copy forwarded to the:

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

SECTION OFFICER (PRIMARY MALE)

WP4442-2023 AZIZULLAH VS GOVT CF PG43

MINUTES OF THE MEETING I REGARDING APPLICATION SUBMITTED BY MR. AZIZ ULLAH PROVINCIAL PRESIDENT IALL 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 Chairmonship of Additional Secretary Establishment in his office. The following attended the meeting.

5#	NAME ,	DESIGNATION
1	Mr. Pazal Wahld	Deputy Director Extablishment of Directorals Elementary & Secondary Education Department
2	Mr. Aziz Ullah	Provincial President All Primary Teachers - Association Khyber Pakhtunkhwa
3	Mr. Ralagal Ullah	General Secretary AFTA Pethawar
4	Muhammad Ishaq	Section Officer (Primary) ELSE Department Civil Secretarial Khyber Pakhtunkhwa Peshawar

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

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

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

(Mi. Fazal Wahld) Deputy Director-I E&SE Department

(Mr. Ralagat Ullah) Géneral Sacretary APTA Peshowar

WE

(Mr Ariz Ullah)
Provincial President

All Primary Teachers Association Khyber Pathlunkhyva

(Muhahmad Lihoq) Section Officer (Primary-Male) E&SE Deportment

(Abdullah)
Addillonal Secretary (Establishment)
EASE Department

WP4442-2023 AZIZULLAH VS GOVT CF PG43

1

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
1	Mr. Fazai Wahid	Deputy Director Establishment of Directorate Elementary & Secondary Education Department
2	Mr. Aziz Ullah	Provincial President All Primary Teachers Association: Khyber Pakhtunkhwa
3.	Mr. Rafaqat Ullah	General Secretary APTA Peshawar
4.	Muhammad Ishaq	Section Officer (Primary) E&SE Department Civil Secretarial Khyber Pakhtunkhwa Peshawar

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

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

(Mr. Fazal Wahld) Deputy Director-1 E&SE Department	
Provincial President Ali Primary Teachers Association Khyber Pakhtunkhwa	:
(Mr. Rafaqat Ullah) General Secretary APTA	
Peshawar	
Muhammad Ishaq)	
Section Officer (Primary-Male) E&SE Department	
. 1	•
-	(Abdullah)
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RIG



Kliyber Pakhtunkliwa, Peshawar

P.No. 34/351/) (Galieral Caies Dalett 22 | P.No. 34/351/) (Galieral Caies Dalette 24 | P.No. 34/351/) (Galiera

The Socitor Officer (Primary-Mule). Elementary & Secondary Education Department, Kliyber Paklitunkhwa Pesitawar...

<u>ΜΙΝΌΤΗς ΟΡ ΤΙΙΕ ΜΕΕΤΙΝΌ</u> Subject: 4. Dear Sir.

I am Ardeled to refer to the latter, No.SO(Primary-M)&&&ED/3-1/ G.Mise/Mingles of the Heating/PST/3023 dated 10-07-2023 on the subject clied above and to present brief history about the background of the case as under:

That Government of Kluber Pakhtimkhwa Establishment Department (Regulation Wing) dalaied Rula 7(1) in the Civil Servants (Appaintment, pramation & Transfer Rules 1989) vide notification No. SOR-1/1 (E&AD)/1-1/2020 dated 06-08-2020.

That this office sought guidance from your good office in the following words vide letter No. 6987 dated \$6-02-2023.

Now it had igniory upon the civil servant to accept Promotion in every condition.

It is the precognitive of the civil servant to either accept or turn down the affer of

promotion.

That your golf affice foreground the same to the quarter concerned vide letter No.50 (Primary-M) E&SED/2-2/Appointment/2021 for necessary guidance.

That the Government of Klyber Pakhtunkhwo Establishment Department (Regulation Wing) vide letter No.SO (Policy) E&AD/1-1/2020 dated 6-06-2023 categorically stated that there exists no provision to decline or forgo premation. 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 Na.SO (Primary-M) E&SED/2-1/Appainiment/2021 dated 12-06-2021.

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 far submission of consolidated ease.

In view of the above, this office is of considered opinion that the deletion of Rilles 7(5) have affected regulively a luge numbers of Female Teachers. Thus it is proposed that Teachers helding DIS-16 may be exempted of Implications of the amondment in the rules little \$ provided they guind their written refusal prior to conduction of the meeting of Departmental framation Committee.

ose is submitted for perusal and necessary actions piense.

Asstrumi Director (Estab M-1) Elementary & Secondary Education Khyber Pakhminkhwa .

Endst: No.

Copy of the libele is to:-

1. PA to Director Lated Directorate.

Master Copy.

Assistant Director (Establi-1) Elementary & Socondary Education . Kligher Pakhtunkhwa

WP4442-2023 AZIZULLAH VS GOVT CF PG43

-B/c-

DIRECTORATE OF ELEMENTARY & SECONDARY EDUCATION, KPK

:٥٦

, ICPK PESHAWAR (21-7-1083)

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

Subject: Minutes of Meeting

Dear Sir, of am directed to refer to letter No. (So Rimony -M) E & SED /5-1/GN/Ke/Minister of meeting /PST/2023 dated 10-7-2023 on subject cited above and to
present balef history, about background of care as under.

* That Government of KP Establishmond depositment (Regulation Wing)

addited rule 7(5) In Civil Servants (Appointment, promotions, Transfer, Rule 1939)

vide notification No. No. 50R-VI(ESAD) 1-3/2020 dated 06.08-2020.

· That this office sought guidance from your good office in the following words vide letter No. 6987 defed ob-orzers

(i) Now it is obligatory upon airil seasont to accept promotion.

(ii) It is prerogative of civil seasont to either accept/turndown the

offer of promotion.

That your good office forwarded the come to apuntes concerned wide letter No. So (Primary M) E& SED/2-2/Appointment (2023 for recessor)

That the government of KP-ED (Regulation Wing) vide letter No. So (Policy) EGAD 1-3/2070 dated 6-06-2073 categorically stated that those exists no provision to decline forgo providion. It is obligatory upon every civil several to accept pomotion under every condition.

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

In view of the above, this office is of considered opinions that the deletion of Rules 7(5) have affected negatively a huge members of Female teachiers.

The case is "submitted for person and necessary actions

Copy of the above to:

1. PA to Dirictor Local Directorate

2. Master Copy

Assistand Director

Elementary & Secondary Education

Khyler Ruchlankhun.

WP4442-2023 AZIZULLAH VA GOVT CF PG43

1



ELEMENTARY AND SECONDARY EDUCATION DEPARTMENT CIVIL SECRETARIAT PESHAWAR (Phona No.091-8223587)

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

Dunexure

The Georgiany to Govi, of Khyber Pakhlunkhwa, Establishment & Administration Department, Perhaviai

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

CARLE SIL

I am directed to refer to your letter No. SO(Policy)/ E&AD/ 1-3/2020 dated 067 June 2023 and to state that after deletion of rule 7(5) Khyber Pakhtunkhwa Ovil Servant (Applionizment, Promotion & Transfer Rules 1989) it has been intimated that those officers/ officials who do not comply with promotion order of the competent authority or or to evade promotion through different means shall be proceed under Khyber Pakrounkirura Civil Servant (Efficiency & Discipline) Rules, 2011.

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

in view of the above, the said amendment may be reconsidered to the intern of lady leacher in julmary schools.

> MUHAMBAU ISI SECTION OFFICER (PRIMARY MALE)

Copy forwarded to the:

1. Director EBSE Khyber Pakhbinkhwa.

2. PS to Secretary, EBSE Department Khyber Pakhtunkhwa.

SECTION OFFICER

Scanned with ComScanner

WP4442-2023 AZIZULLAH VS GOVT CF PG43

Pedramor Dated 22rd Augustus

Establishment and Adminishation Department, The Secretary to Government of Khyba Bakhtunbhua.

(686t) Civil Servant (Asportment, Romation & Transfer Rules - Gildonce regarding, deletion of Rule 7(5) in the

and Sewant (Efficiency and Dixipline) Rule 2012. different means shall be proceed under Khyber lakhhunkhun of the confermed shows at but to ethnority a breatsquess with for those officers officials who do not comply with promotion order took between the less 1989, and the hear instituted that deletton of Rule 9(5) Khyber Bithunkhwa Civil Servant (Appaintment wifter tarit states at lars exercinal to patale aros 18-11 9 Am directed to refer to your letter No. Softmeny) (ELAD Decar Sir,

-21 calls bround all valout book of tracker with ct beiseld annibianing bios of Judo pour her formation of Judo Builto somes no charte Matheer-in-them who need asse. In sect of the indirections negative Most of them are married with bibli and elder father of intigizat teaperart / Withospiese on other Enothing testomer ant ril foce serious incoverience while though hove to pressure duties of such richering days such such bound Evering & reducet In this connection it is submitted that in some couss backy.

Section Officer (Antice) (Note lammartuM)

ergesthretational Anathralish essessment Director E & SE Khydos Rehature

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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/Appointmegt-Rule/2023 dated 23.08.2023 on the subject noted above and to state that necessary guidance has already been rendered 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 their

- 1. PS to Special Secretary (Reg). Establishment Department.
- PA to Additional Secretary (Reg-1), Establishment Department.
- 3. 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

Te

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

Subject: -

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

Dear Str.

I am directed to refer to your letter No. SO(Primary-M)/E&SED/2- 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 alcer (Policy)

WP4442-2023 AZIZULLAH VS GOVT OF PG43

To,

Dated: 28-01-2024

- 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

Abdullah Shad Son of Sawoo Khan Resident of Tehsil & Dsitrict Torghar

Khyber Palchtrinkehwa

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Honerue -ATÁA Housar Govt, Primary Bairool Ho.4, Gulbahar Peshawar Cliy,

JAKALAT NAMA

BEFORE THE SERVICE TRIBUNAL PESHAWAR

Abdallah, Shad

Appellant

Versus

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