02.08.2018 learned counsel for the appellant and Mr. Kabir Ullah Khattak learned Additional Advocate General present. Learned counsel for the appellant submitted application for adjournment. Adjourned. To come up for arguments on 26.09.2018 before D.B.

(Ahmad Hassan)
Member

(Muhammad Hamid Mughal)
Member

Order

26.09.2018 Appellant with counsel present. Mr. Ziaullah, Deputy District Attorney for respondents present. Arguments heard and record perused.

This appeal is also dismissed as per detailed judgment of today placed on file in connected service appeal No. 1366/2017titled "Mohammad Salahuddin-vs- Govt: of Khyber Pakhtunkhwa through Secretary Elementary and Secondary Education Civil Secretariat Peshawar and two others". Parties are left to bear their own cost. File be consigned to the record room.

Announced:
26.09.2018

(Ahmad Hassan)
Member

(Muhammad Amin Khan Kundi)
Member

[illegible] Counsel for the appellant and A.A.G for respondents present. Counsel for appellant submitted [illegible] adjournment. Adjourned. To come up for [illegible] before D.B.

(Ahmad Hassan)
Member

26.02.2018 Counsel for the appellant and Addl: AG for respondents present. Written reply not submitted. Requested for adjournment. Adjourned. To come up for written reply on 13.03.2018 before S.B.

(Ahmad Hassan)
Member(E)

13.03.2018 None present on behalf of appellant. Mr. Riaz Paindakhel, Assistant AG alongwith Wahid Gul, ADO (Lit) for the respondents present. Written reply submitted. To come up for rejoinder/arguments 22.05.2018 before D.B.

(M. Hamid Mughal)
Member

22.05.2018 Counsel for the appellant and Mr. Zia Ullah, DDA for the respondents present. Arguments could not be heard due to incomplete bench. Adjourned. To come up for rejoinder and arguments on **02.08.2018** before D.B.

(Muhammad Amin Khan Kundi)
Member

12.01.2018

Counsel for the appellant present. Preliminary arguments heard. It was contended by learned counsel for the appellant that the appellant was appointed as untrained teacher vide order dated 09.11.1990. It was further contended that later on the appellant passed PTC exam and the department has also issued certificate to the appellant. It was further contended that after passing the PTC examination the appellant was regularized by the department. It was further contended that the respondent-department was required to regularize his untrained period of service and issue seniority list from the date of his appointment in the light of judgments of the Supreme Court of Pakistan but the respondent-department reluctant to issue seniority of the appellant from the date of his appointment therefore, the appellant filed department appeal but the same was also not responded hence, the present service appeal. It was further contended that since there is a judgment of apex court that the untrained service will be counted towards seniority therefore, the respondent-department is duly bound to count the untrained service period of the appellant toward seniority.

The contentions raised by learned counsel for the appellant need consideration. The appeal is admitted for regular hearing subject to deposit of security and process fee within 10 days, thereafter notice be issued to the respondents for written reply/comments for 26.02.2018 before S.B.

Appellant Deposited
Security & Process Fee

(Muhammad Amin Khan Kundi)
Member

Form-A

FORMOF ORDERSHEET

Court of_____

Case No. 11/2018

S.No.	Date of order proceedings	Order or other proceedings with **signature** of judge
1	2	3
1	3/1/2018	The appeal of Mr. Muhammad Shakir resubmitted today by Mr. Ahmad Shah Afridi Advocate, may be entered in the Institution Register and put up to Worthy Chairman for proper order please. REGISTRAR 3/1/18
2-	04/01/18.	This case is entrusted to S. Bench for preliminary hearing to be put up there on 12/01/18. CHAIRMAN

The appeal of Mr. Muhammad Shakir son of Muhammad Ashraf PTC GPS Saro Khel-II Kohat received today i.e. on 11.12.2017 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

Copy of PTC Certificate mentioned in the memo of appeal is not attached with the appeal which may be placed on it.

No. 2652 /S.T,

Dt. 12/12 /2017

REGISTRAR
SERVICE TRIBUNAL 12/12/17
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Ahmad Shah Afridi Adv. Pesh.

Respected Sir,

Subject to resubmit, objection raised has been dealt with/document has been added.

Afridi
Advocate Ahmed Shah Afridi
3-1-2018

BEFORE THE KHYBER PAKHTUNKHWA

SERVICE TRIBUNAL PESHAWAR

Appeal No. 11 /2018

Mohammed Shakir V/s Govt. of Khyber Pakhtunkhwa and Others

INDEX

07/12/2017

Shakir

Appellant

Through:

Afridi

Ahmed Shah Afridi
Advocate, Peshawar

1

BEFORE THE KHYBER PAKHTUNKHWA

SERVICE TRIBUNAL PESHAWAR

Appeal No. 11 /2018

Khyber Pakhtukhwa Service Tribunal
Diary No. 1401
Dated 11-12-2017

Mohammad Shakir S/o Mohammad Ashraf
PTC Teacher, GPS Saro Khel-II
R/o Mohalla Mian Khel, Kohat

.....(Appellant)

Versus

1. **Government of Khyber Pakhtunkhwa**
   Through Secretary, Elementary and Secondary Education
   Civil Secretariat, Peshawar

2. **Director of Elementary and Secondary Education**
   Directorate of Elementary and Secondary Education

3. **District Education Officer (Male), Kohat**
   Office of DEO (Male), Kohat

.....(Respondents)

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974, FOR SENIORITY AND PAYMENT OF ANNUAL INCREMENTS/PAY FROM DATE OF FIRST APPOINTMENT AND ANY OTHER BENEFITS WITHOUT DISTINCTION BETWEEN TRAINED AND UNTRAINED TEACHERS IN VIEW OF THE JUDGEMENT OF THE SUPREME COURT OF PAKISTAN

Filedto-day
Registrar
11/12/17

Prayer in Appeal:

On acceptance of this appeal, the appellant be allowed seniority and receive graded pay effective from the date of first appointment, rather than date of qualification, without making distinction between trained and untrained PST

Re-submitted to -day
and filed.
Registrar
2/1/18

Teachers in accordance with the judgement of the Honourable Supreme and any other back benefits that is due under the relevant laws and rules.

Respectfully Sheweth;

1. **That** the appellant belong to a respectable family of his locality and have carried out exemplary service for decades at the post of PTC Teacher, since the date first of appointment, carrying out his duties with diligence, due care, efficiency, devotion and to the great satisfaction of his superiors, with no adverse remarks towards ACR's and imparting quality education upon his students.

2. **That** Appellant was hired vide Appointment Letter No.2340-67/Apptt:/I.AG, dated 09.11.1990 for the Post of PTC Teacher (BPS-7), furthermore, he appeared for and passed the mandatory examinations to attain a Primary Teaching Certificate on 7.11.1996.

   *(**True** copy of Appointment Letter, Certificate and other documents are attached as **Annexure-A**)*

3. **That** the appellant along with other PST Teaches filed an application with Respondent No.3 on 17.07.2017, requesting that in light of the Judgement of the Honourable Supreme Court of Pakistan, dated 19.03.2016, the appellants be offered seniority and all due financial benefits for period of service from the date of appointment till the date of regularization/qualification attained.

   (**True** copy of application dt.17.07.2017 is attached as **Annexure-B**)

4. **That** the appellant along with other PST Teachers furthermore submitted an application with Respondent No.2 on 17.07.2017, requesting to be granted seniority and all due financial back benefits from the date of first appointment in light of the Judgement of the Honourable Supreme Court of Pakistan, dated 19.03.2016.

   (**True** copy of application dt.17.07.2017 is attached as **Annexure-C**)

5. **That** the Office of the District Education Officer (Male), Kohat, sent Letter No.10290, dated 07.09.2017, to Respondent No.2 on the subject matter of the application submitted by the appellant requesting seniority and back benefits from the date of first appointment.

   (**True** copy of the Letter dt. 07.09.2017 is attached as **Annexure-D**)

6. **That** feeling aggrieved by the inaction and lethargic behaviour of the concerned authorities, the appellant seeks to invoke the jurisdiction of this Honourable Tribunal, *inter-alia,* on the following grounds:

GROUNDS

A. **Because** the actions or the lack of as well as the lacklustre, sluggish and slothful behaviour of the respondents is illegal, patently wrong, unlawful, arbitrary, capricious, unwarranted, malafide and against the relevant provisions of the law and rules and thus the appellant is liable to be granted relief.

B. **Because** the behaviour and inaction of the Respondents is against settled precedence set down by the Honourable Supreme Court of Pakistan in numerous judgement including judgement dated 19.03.2016.

C. **Because** the appellant rights are enshrined and protected under the Constitution of the Islamic Republic of Pakistan, such as under **Article 25**, which is being blatantly violated by the respondents. Therefore, the appellant deserves to be treated at par with their peers, in accordance to the Constitution and thus, should be given due seniority.

D. **Because** the appellant has carried out his service in exemplary manner for decades without any complaints from his superiors and that the inability of the respondents to provide relief as well as the failure to accord seniority to the appellant is harsh and demonstrates a lack of concern from the respondents towards the honest hard work and years of service of the appellant.

E. **Because** the appellant belongs to a poor but respectable family of his locality, who deserves to have his service recognized by the relevant authorities (Respondents),

have his service acknowledged and be granted due seniority from the date of his first appointment (untrained period).

F. **Because** the appellant seeks permission of this honourable Tribunal, to rely upon additional grounds and seek any other relief at the time of hearing of the appeal.

It is, therefore, humbly prayed that upon acceptance of this appeal, appellant be accorded seniority and be granted all due financial benefits from the date of first appointment.

Any other relief this honourable Tribunal deems fit in the circumstances of the case may also be granted

Dated: 07.12.2017

Shakir

Appellant

Through:

Afridi

Ahmed Shah Afridi
Advocate, Peshawar

(5)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Appeal No._____/2017

Mohammed Shakir V/s Govt. of Khyber Pakhtunkhwa and Others

AFFIDAVIT

I, **Mohammad Shakir** S/o Mohammad Ashraf, R/o Kohat, affirm and declare that the contents of the accompanied Departmental Appeal are true and correct and nothing material has been concealed therein from this honourable Tribunal.

KHALID MAHMOOD ADVOCATE PESHAWAR HIGH COURT ATTESTED NOTARY PUBLIC

Shakir

Deponent

(6)

BEFORE THE KHYBER PAKHTUNKHWA

SERVICE TRIBUNAL PESHAWAR

Appeal No._____/2017

Mohammed Shakir V/s Govt. of Khyber Pakhtunkhwa and Others

MEMO OF ADDRESSES

Mohammad Shakir S/o Mohammad Ashraf
PTC Teacher, GPS, Saro Khel-II
R/o Mohalla Mian Khel, Kohat

.....(Appellant)

Versus

1. **Government of Khyber Pakhtunkhwa**
   Through Secretary, Elementary and Secondary Education
   Civil Secretariat, Peshawar

2. **Director of Elementary and Secondary Education**
   Directorate of Elementary and Secondary Education

3. **District Education Officer (Male), Kohat**
   Office of DEO (Male), Kohat

.....(Respondents)

ANNEX A

7

OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE), KOHAT.

APPOINTMENT:-

The following candidates already selected on merit in the interview held on 26.3.1990 at GPS, Tehsil Kohat is hereby appointed against the vacant posts of PTC untrained on temperary basis in BPS-7 (750-31-1350) plus usual allowance in rhw interest of public service with effect from the dates of their taking over charge:-

SNo.	Name of candidates & address.	Posted at.	Remarks.
1.	Abdul Waheed s/o Mohammad Khan R/O Toga Sarai.	GPS, Tangi Miangan-I	Aganst V.P.
2.	Tahir Shah s/o Anwar Shah r/o H.No.65 Sector-4 I.A Kohat.	GPS Kundwali Samana.	-do-
3.	Khalid Hamid s/o Pio Noor r/o Mohammad Khawaja.	GPS Palosi Banda.	-do-
4.	Ghulam Murtaza s/o Said Mehmood r/o Dhoda.	MPS, Dakasi Killa.	-do-
5.	Irfan Ali s/o Shahjehan Ali r/o Bahadur Gaini (Hangu)	MPS, Darband-II	-do-
6.	Ajmali Shah s/o Misal Ali Shah r/o Chorlaki.	MPS, Dakasi Killa.	-do-
7.	Azizur Rehman s/o Resham Khan r/o Chapri Waziran.	MPS, Chapri W.	Viedesurang Zeb transferred.
8.	Naeem Ahmad s/o Gul Ahmad r/o Military Dairy Farm Kohat.	GPS, Karbogha-I.	against VP.
9.	Mushtaq Ahmad s/o Haji Gul r/o Lachi Kohat.	GPS, Sarki Payala No.2	-do-
10.	Zia Saghiruddin s/o Inaghauddin r/o Jangal Khel Kohat.	GPS, Darari Banda.	-do-
11.	Sanjaf Ali s/o Naseeb Ali r/o Usterzai Payan.	GPS, Karbogha-I	-do-
12.	Mohammad Shakir s/o Mohammad Ashraf r/o Moh: Mian Khel Kohat.	GPS, Saro Khel-II	-do-
13.	Gul Ahamds/o Noor Alam r/o Jangal Khel Kohat.	GPS, Sharki Karbogha.	-do-
14.	Nasrullah Khan s/o Walif Khan r/o Ganderi Hangu.	GPS, Khan Kot.	-do-
15.	Allah Nawaz s/o Mohammad Nawaz r/o Shakardara.	GMS, Chamba Gul.	-do-
16.	Zafar Iqbal s/o Hamid Gul r/o Gumbat Kohat.	GPS, Tall M.Zai.	-do-
17.	Noor Mohammad s/o Khan Mohammad r/o Char Bagh. Kohat.	GPS, Kotomanz.	-do-
18.	Gul Faraz s/o Shah Beg r/o Shah Abad Colony Kohat.	GPS, Sawan Banda,	-do-
19.	Said Salim Shah s/o Langar Shah r/o Mansoor Khel Kohat.	GPS, Kawal Karosam.	-do-
20.	Mohammad Irfan s/o Mohammad Ashraf Khan r/o Lachi Kohat.	GMS, Anar Chinna.	-do-
21.	Ashaq Ali s/o Sher Ali r/o Sher Kot Kohat.	MPS, Dallan-2	-do-
22.	Mansoor Tariq s/o Abdullah Noor r/o Jangal Khel Kohat.	MPS, Tang.	-do-
23.	Sajjad Hussain s/o Faqir Hussain r/o Moh: pir Abdullah Shah Kohat.	GPS, Tangi Miangan-2	-do-
24.	Alhamd Jan S/O Resham Khan R/O [illegible]	MPS, Sharif Abad	-do-

Attested True Copy Advocate

(8)

24. Gulawat Khan s/o Lalbat Khen r/o Mohammadzai Kohat. GPS, Tangi Miangan-2. against V/Post.

25. Shaheen Ali s/o Shah Jehan Ali r/o Ali Zai Kohat. GPS, Saro Khel-2. -do-

26. Khalid Ahmad s/o Mehmood Hamid r/o Moh: Haji Bahadur. Kohat. MPS, Gurgina. -do-

Terms & Conditions:-

1. No TA/DA etc. is allowed on fresh appointment.
2. Charge reports should be submitted to all concerned in duplicate.
3. The appointment of candidates are purely temporary and liable to termination at any time without assigning any reasons.
4. The candidates should produce their health and age certificate from the Medical Supdt: concerned.
5. They should not allow to take over charge of their posts if their age acceeds 25 years or below 18 years of age.
6. ~~Thexxxxxx~~ In case of resignation they will have to submit one month prior notice or they shall forefeit one months pay to the Govt:
7. His appointment is subject for further conditions that they are domiciled of Distt: Kohat.
8. If they fail to takeover charge of the post within a week of the receipt of this order the offer of appointment shall stand cancelled.

(MOHAMMAD RAZA),
Distt: Education Officer,
(Male), Kohat.

Endst.No. 2340-67 /Apptt:/I.AG, dated Kohat, the 9/11/1990.

Copy of the above is forwarded for information and necessary action to the:-

1. Sub Divisional Education Officer (Male), Kohat.
2. Sub Divisional Education Officer (Male), Hangu.
3-28. All candidates concerned.

DDEO.
for Distt: Education Officer,
(Male), Kohat.

original checked
ASDEO(M)
Hangu

Attested

Asstt. Sub Divisional Officer
Ele. Sec. Kohat Dept.

ATTESTED
TO BE TRUE COPY

Revised

9

G. P. D. NWFP. 662 D. of E. 50000 P.—12-3-98—(18)

DETAIL MARKS CERTIFICATE

TRAINING CLASSES EXAMINATION P-T.C. 1998.

Roll No 4811 ... Name Muhammad Shakir Son/Daughter of Muhammad Ashraf

Serial No.	SUBJECT	Max Marks	Marks Obtained Interl:	Marks Obtained Exterll	TOTAL
1.	Principles of Edu, and Method of Teaching ..	100	33		
2.	Child Devept: and Counselling ...	100	36		
3.	School Org: and Class Room Management ...	100	62		
4.	Lang: and Method of Teaching ...	100	52		
5.	Mathematics and Method of Teaching ...	100	45		
6.	Science and Method of Teaching ...	100	40		
7.	Social Studies and Method of Teaching ...	100	61		
8.	Islamiat and Method of Teaching ...	100	67		
9.	Art and Craft, Art and Method of Teaching ...	100	66		
10.	Health and Principle of Education ...	100	48		
11.	Teaching Practice ...	200	90		
	Grand Total ...	1200	600		

Passed/~~Failed~~ — Passed

Division — II

To Re-appear in

1 —

2 —

3 —

Prepared by ...

Checked ...

Date of declaration 11-5-1999

Dy: Registrar
Departmental Examination,
Education Department,
N.W.F.P., Peshawar.

ATTESTED

DIRECTORATE OF CURRICULUM & TEACHERS EDUCATION, KHYBER PAKHTUNKHWA, PESHAWAR

9-A

PRIMARY TEACHING CERTIFICATE (PTC)

(ORIGINAL CERTIFICATE)

Serial No. 426

Roll No. 4811 Old No. 4167/97 & 351/98

Session 1998

Marks Obtained 600 / 1200

Division 2nd

Certified that Mr. Muhammad Shakir

S/o Muhammad Ashraf

Private

having passed the prescribed examination held in 1998

is qualified to teach in Primary Schools of Elementary and Secondary Education Department.

Prepared by

Checked by

Result declaration date 11-05-1999

Date of Issue 20-12-2017

Assistant Director (Examinations),
Khyber Pakhtunkhwa, Peshawar.

ATTESTED

(10)

143-90-070890

00163361

1.	Name (نام).....	Mohammad Shakir
2.	Nationality and Religion ..... (قومیت اور مذہب)	Pakistani - Islam.
3.	Residence (مستقل رہائش).....	Mohalla Mian Khel Kohat.
4.	Father's name and residence..... (والد کا نام اور پتہ)	Mohammad Ashraf As ab
5.	Date of birth by Christian era as nearly as can be ascertained..... (تاریخ پیدائش مطابق سن عیسوی)	(18-2-1972) Eighteenth February N.H. 9 Sen
6.	Exact height by measurement..... (قد و قامت)	1.75 M
7.	Personal mark for identification..... (نشان شناخت)	wound scar on nose.

8. Left hand/right hand thumb and finger-impressions of (Non-gazetted) officer

(مرد کی صورت میں بائیں اور عورت کی صورت میں دائیں ہاتھ کی انگلیوں کے نشانات)

Little Finger (چھنگلیا) Ring Finger (چھنگلیا کے ساتھ کی انگلی) Middle Finger (انگشت میانہ)

Fore Finger (انگشت شہادت) Thumb (انگوٹھا)

9.	Signature of Government servant..... (سرکاری ملازم کے دستخط)	M. Shakir.
10.	Signature and designation of the Head of the Office, or other Attesting Officer..... (تصدیق کنندہ افسر کے دستخط اور مہر)	S.D.E.O. (M) Hangu

Attested
Asstt. Sub District Officer
Ele: Secy: Edu: Deptt
Kohat

Note.—The entries in this page should be renewed or re-attested at least every five years and the entries in lines 9 and 10 should be dated. Finger prints need not be taken after every 5 years unless

نوٹ:- اس صفحہ کے مندرجات کم از کم پانچ سال بعد تصدیق ہونا ضروری ہیں اور نمبر ۹ - ۱۰ میں دستخطوں کے نیچے تاریخ درج کی جائے - انگلیوں کے نشانات کے لئے ہر پانچ سال کے بعد تصدیق کی ضرورت نہیں -

(11)

1	2	3	4		5		6	7	8	9
Name of post دوجہ ملازمت	Whether substantive or officiating, and whether permanent or temporary عارضی ' مستقل یا قائم مقام	If officiating, state— (i) substantive appointment or (ii) whether service counts for pension under rule 3-20 of C.S.R. (Pb.) Volume II اگر عارضی ہے تو کیا وہ رول 3-20 مطابق پنشن 5 شمار ہوگا	Pay in substantive position تنخواہ بطور عارضی ملازمت		Additional pay for officiating زائد تنخواہ بطور قائم مقام		Other emoluments falling under the term "pay" ماسوائے تنخواہ دیگر الاؤنس	Date of appointment تاریخ تقرری	Signature of Government servant دستخط سرکاری ملازم	ature and gnation o Head f the e or othe testing ficer in estation columns to 8 دستخط مجاز
			Rs.	Pa.	Rs.	Pa.				
BPS-7	750-31-1350/-									
Pc										
Sana Kbel			750/-					12 11/90	(EN) MS	
PO II										D.E.O
			750/-					1 12/90		H
		Rs.	750/-					16 5/91	Shaki	
		Revised BPS.7 (1995-60-1995)								KOHA
Do-	Do-	Rs.	1095/					1 6/91	Shaki	
Do	Do	Rs.	1095/					1 12/91	Shaki	
Do	Do	Rs	1095/-					1 12/92	Shaki	
Do	Do	Rs	1095/-					1 12/93	Shaki	

Attested

Asstt. Sub District Officer
Ele. Secy. Edu. Deptt
Kohat

Shaki

To PS

(12)

1	2	3	4	5	6	7	8	9
Name of post درجہ ملازمت	Whether substantive or officiating and whether permanent or temporary عارضی، مستقل یا قائم مقام	If officiating, state (i) substansive appointment or (ii) whether service count for pension under rules 3.20 of C.S.R. (Pb.) volum II اگر عارضی ہے تو کیا وہ رولز کے مطابق پنشن کا مستحق ہے	Pay in substantive post تنخواہ بطور عارضی ملازمت	Additional pay for officiating زائد تنخواہ بطور قائم مقام	Other emoluments falling under this term "pay" ماسوائے تنخواہ دیگر الاؤنس	Date of appointment تاریخ تقرری	Signature of Government servant دستخط سرکاری ملازم	Signature and designation of the Head of the office or other attesting officer in testation of columns 1 to 8 دستخط افسر مجاز
			Rs. P.	Rs. P.				
	R.							
	R.							
SPS	R.	Rs	148/-			11/ 65	Shakir	
Acc	2 Acc. Imm	R	16/-					
			164/-					
do	do	R	1723/-			12/ 65	Shakir	
do	do	Rs	1806/-			12/ 2002	Shakir	
		Rs	1885/-	Mn		12/ 2001	Shakir	
		Rs	2820/-	Mn		12/ 2000	Shakir	

Attested
Asstt. Sub Divisional Officer
Elec. Sub Div. Elec. Depo
Kohat

ATTESTED

Annex "B"

(13)

بحضور جناب ڈسٹرکٹ ایجوکیشن آفیسر (مردانہ) کوہاٹ

بوساطت جناب SDEO ہنگو

عنوان: محکمانہ درخواست Regularization برخلاف حکم ڈسٹرکٹ ایجوکیشن آفیسر کوہاٹ جس کی رو سے سائلان کو تاریخ تقرری کے مطابق فیصلہ سپریم کورٹ آف پاکستان مورخہ 19-03-16 کے تحت سنیارٹی شمار کی جائے اور متعلقہ مراعات فراہم کی جائیں

جناب عالی!

سائلان ذیل عرض رساں ہیں

1- یہ کہ سائلان محکمہ تعلیم میں بطور PST اساتذہ تعینات ہیں۔ جو ریکارڈ سے صاف ظاہر اور ثابت شدہ ہے۔

2- یہ کہ سائلان تقریباً 27 یا 30 سال سے اپنے فرائض منصبی بطور PST ٹیچر مختلف سکولوں میں سرانجام دیتے چلے آرہے ہیں۔

3- یہ کہ بمطابق فیصلہ عدالت عظمیٰ اسلام آباد مورخہ 19-03-16 سے سائلان کو سنیارٹی تاریخ تقرری سے فراہم کی جائے نہ کہ تاریخ Passing PTC سے۔ چونکہ سائلان گزشتہ تقریباً 30 سالوں سے اپنی خدمات سرانجام دے رہے ہیں۔ تاکہ سائلان کی حق تلفی نہ ہو۔ بدیں وجہ بمطابق سپریم کورٹ آف پاکستان کے فیصلہ کی رو سے مراعات کے حقدار ہیں۔ جو اس سے قبل صوبہ پنجاب میں فیصلہ سپریم کورٹ کے مطابق عملدرآمد ممکن بنایا جا چکا ہے۔

لہٰذا استدعا ہے کہ بمنظوری درخواست ہذا مناسب احکامات صادر فرمائیں۔ اس میں یہ امر بھی قابل ذکر ہے کہ سائلان کی سنیارٹی کو PTC Untrained کے پیریڈ سے دی جائے۔ نیز Ex-Postfacto Sanction کی منظوری بھی حاصل کی جائے اگر ضرورت پڑے۔ یا دیگر دادرسی کو بھی یقینی بنایا جائے

مورخہ 13 جولائی 2017ء

عرض ہے

1. محمد صلاح الدین SPST جی بی ایس MC 1 کوہاٹ

2. محمد ساکر PST جی بی ایس تھیل گیٹ کوہاٹ

3. [illegible] PST جی بی ایس تھیل گیٹ کوہاٹ

4. [illegible] PST " " " " "

Attested
Asstt Sub District Officer
Ele Secy Educ Deptt
Kohat

ATTESTED

17/7/2017

(14)

ANNEX C

بحضور جناب ڈائریکٹر صاحب ایلیمنٹری اینڈ سیکنڈری ایجوکیشن KPK پشاور

۱) محمد صلاح الدین SPST جی پی ایس MC1 کوہاٹ۔
۲) محمد شاکر PST جی پی ایس تحصیل گیٹ کوہاٹ۔ (سائلان)
۳) سجاد PST جی پی ایس تحصیل گیٹ کوہاٹ۔

عنوان :- درخواست بمراد SST کیلئے بنائی گئی DPC میں شمولیت

جناب عالی! سائلان ذیل عرض رساں ہیں:

۱۔ یہ کہ سائلان محکمہ تعلیم میں بطور PST اساتذہ تعینات ہیں۔ جو کہ ریکارڈ سے صاف ظاہر او[illegible] ثابت شدہ ہے۔

۲۔ یہ کہ [illegible] تقریباً ۲۷ یا ۳۰ سالوں سے اپنے فرائض منصبی بطور PST ٹیچرز مختلف [illegible] میں سرانجام دیتے چلے آ رہے ہیں۔

۳۔ یہ کہ بمطابق فیصلہ سپریم کورٹ آف پاکستان مورخہ 19-03-2016 سے سائلان کو سنیارٹی تاریخ تقرری Date of First appointment بشمول Untrained پیریڈ سے فراہم کی جائے نہ کہ تاریخ Passing PTC سے نیز سائلان کو 10-07-2017 میں SST کے لیے ہونے والی DPC میں بھی شامل کیا جائے۔ کیونکہ سائلان کی SST پوسٹ کے لیے تعلیمی و پیشہ ورانہ قابلیت بھی پوری ہے۔

لہٰذا استدعا ہے کہ بمطابق فیصلہ سپریم کورٹ آف پاکستان سائلان کی دادرسی فرماتے ہوئے ان کا حق دینے کے احکامات صادر فرمائے جائیں

(متعلقہ فیصلہ سپریم کورٹ آف پاکستان لف ہذا ہے)

مورخہ 17-07-2017

عرضی

۱) محمد صلاح الدین SPST — Sibtahuddin

۲) محمد شاکر PST — Shakir

۳) سجاد PST — Sajjad

Attested
Asst. Sub District Officer
Ele. Secy. Edu. Deptt

ATTESTED

(15) ANNEX D

OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) KOHAT

No. 10290 dated 7 / 9 /2017

To

The Director
Elementary & Secondary Education
Khyber Pakhtunkhwa Peshawar

Subject: - **APPLICATION FOR REGULARIZATION IN THE LIGHT OF ORDE PASSED BY THE SUPREME COURT OF PAKISTAN**

Memo:-

I am directed to enclosed herewith the application along with above cited judgment is submitted for your kind perusal and with the request that the PST teachers demanding the Seniority from the date of 1st appointment (Untrained period) whether they are entitled for the seniority from the date of 1st appointment or otherwise.

Hence in this regard this office may kindly be guided please.

06/9/17
DY DISTRICT EDUCATION OFFICER
(MALE) KOHAT

Endst.No.

Copy to the:-

1. SDEO (M) Kohat
2. Teachers concerned

06/9/17
DY DISTRICT EDUCATION OFFICER
(MALE) KOHAT

Attested

Asstt. Sub District Officer
Ele. Secy. Edu. Deptt
Kohat

ATTESTED

IN THE COURT OF JUDGE PROVINCIAL SERVICES TRIBUNAL, PESHAWAR

Appeal No. 11/2018 **Wakalatnama**

Mohammed Shakir **V/s Gov. of Khyber Pakhtunkhwa & Others**

I, Mohammed Shakir S/o Ashraf R/o Kohat, do hereby appoint **Advocate Ahmed Shah Afridi**, Advocate in the above mentioned case, to do all or any of the following acts, deeds and things:-

1- **To** appear, act and plead for me/us in the above mentioned case in this Court/Tribunal in which the same may be tried or heard, and any other proceedings arising out of or connected therewith.
2- **To** sign and verify and file, petitions, appeals, affidavits and applications as may be deemed necessary or advisable by them for the conduct, prosecution or defense of the said case at all its stages.
3- **To** receive payment of, and issue receipts for, all moneys that may be or become due and payable to us during the course of the proceedings.
4- **To** do any act necessary or ancillary to the above acts, deeds and things.
5- **To** employ any other legal practitioner authorizing him to exercise the power and authorities hereby conferred on the advocate whenever he may think fit to do so.

AND I/We hereby agree to ratify whatever the advocates or their substitute shall do in the premises.

AND I/We hereby agree that in the event of the whole or any part of the fee agreed by us to be paid to the advocates remaining unpaid they shall be entitled to withdraw from the prosecution of the said until the same is paid.

In witness whereof I have signed this Wakalatnama hereunder, the contents of which have been read/explained to me and fully understood by me on 1st day of December 2017.

Shakir

Signature of Executant

Attested & Accepted by:

Ahmed Shah Afridi
Advocate, District Peshawar

OFFICE: 60-C, 2nd Street, Defence Officers Colony, Khyber Road, Peshawar

BEFORE THE HONOURABLE SERVICE TRIBUNAL PESHAWAR

SERVICE APPEAL NO. 11/2018

MUHAMMAD SHAKIR... APPELLANT

V/S

DISTT EDUCATION OFFICER (MALE) KOHAT & OTHER........ RESPONDENTS

◇◇◇

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Dated 13.03.2018

Respondent No: 1, 2 &3

District Education Officer
(Male) Tehsil Kohat

BEFORE THE HONOURABLE SERVICE TRIBUNAL PESHAWAR
SERVICE APPEAL NO. 11/2018

MUHAMMAD SHAKIR..... APPELLANT

V/S

DISTT EDUCATION OFFICER (MALE) KOHAT & OTHER..... RESPONDENTS

Parawise comments on behalf of Respondent No: 1 to 3

Respectfully Sheweth

Preliminary objections:

1. That the appellant has got no cause of action/locus standi.
2. That the instant Service appeal is badly time barred.
3. That the appellant has concealed material facts from the Hon'able Tribunal in the instant service appeal.
4. That the instant service appeal is against the relevant provisions of law.
5. That the appellant has not come to this Hon"able Tribunal with clean hands.
6. That the instant appeal is liable to be dismissed for mis-joinder & non-joinder of the necessary parties to the present appeal.
7. That the appellant is estopped by his own conduct to file the instant appeal.
8. That the instant service appeal is not maintainable in the present form & circumstances of the case.

FACTS

1. No comments pertain to record.
2. Correct to the extent that appellant was appointed as PST post in the respondent department as untrained PST post vide appointment order dated 09.11.1990 on his own application/request for the appointment against the said post.
3. Incorrect, Appx Supreme Court of Pakistan vide order dated 19.03.2016 granted Annual Increment to the untrained teachers and ancillary privileges of pay which cannot be linked with seniority, while Govt of Khyber Pakhtunkhwa Finance Department letter No FD/PRC issued on 05.02.2002 & dated 30.10.2009, wherein annual increments on running pay to the untrained teachers has been allowed but without arrear & with immediate effect. So far as Seniority of Untrained teachers is concerned it is submitted that under the provision of Section 8 (4) chapter II of

the NWFP now Khyber Pakhtunkhwa Civil Servant act 1973 (NWFP) (now KPK) act No: XVIII of 1973 the seniority can not be considered from the date of appointment as untrained rather it would be reckoned from the regular appointment to the post, from the date of passing the prescribed qualification in case of untrained appointment to a post (Copy of the relevant rules is attached as Annex A)

4. Incorrect, the judgment of Appx Supreme Court of Pakistan has already been implemented and extended benefit of Annual increments to all untrained teachers and seniority is always commenced from the date of regular appointment or from the date of passing the professional qualification.
5. Incorrect/ misleading , on the persistent request of appellant his application was submitted to respondent No: 2 merely for seeking guidance which can not be turned as Departmental appeal further since his appointment so many seniority list have been issued by the Department but non has been challenged by the appellant.
6. Incorrect on going through above stated para, the appeal in hand is libel to be strict down on the following grounds inter alia.

GROUNDS

A. Incorrect and denied. The appellant has been treated strictly in accordance with law & rules/ regulations and the act of the respondent departments is within the legal sphere, having no question of illegality, exceed of jurisdiction and un lawful authority. Hence, libel to be maintained.

B. Incorrect and denied. The appellant is not entitled for the grant of Seniority for his untrained period, without possessing/ acquiring the prescribed professional qualification at the time of his induction in the respondent department as PST.

C. Incorrect. There is a no rules and regulation for the grant of seniority for untrained period in respondent of any teaching cadre post therefore the act of the respondents department regarding non grant of the seniority for the untrained period to the appellant is within legal sphere. The appellant has been treated on the principle " sauce for the goose is the sauce for the gender" and the rule in question is unanimously implement on each and every one, and

question of article 25 of the constitution of Pakistan does not attracted in the instant case.

D. Incorrect. The respondent department can not have any malafide against any one as there is a crystal clear rules without the shadow of any doubt as enumerated above under which the respondent department has been treated the appellant.

E. No comments. It pertain to personal open of the appellant however the appellant is not entitled for the seniority for untrained period according to rules.

In view of the above made submission, it is most humbly prayed that this Hon'able, Tribunal may very graciously be pleased to dismiss~~ed~~ the instant service appeal with cost in favour of respondent department.

District Education Officer
(Male) Kohat

Director
Elementary & Secy Education
Khyber Pakhtunkhwa Peshawar

28/2/18

Secretary
Government of Khyber Pakhtunkhwa
Elementary & Secy Education Department

(4)

BEFORE THE HONOURABLE SERVICE TRIBUNAL PESHAWAR
SERVICE APPEAL NO. 11/2018

MUHAMMAD SHAKIR..... APPELLANT

V/S

DISTT EDUCATION OFFICER (MALE) KOHAT & OTHER..... RESPONDENTS

Parawise comments on behalf of Respondent No: 1 to 3

Affidavit

I, Haziq ur Rehman District Education Officer (Male) Kohat do hereby solemnly affirm and declare on oath that the contends of the accompanying Parawise comments are true and correct to the best of my knowledge and belief and nothing has been concealed withheld from this Honourable court.

Deponent

HAZIQ UR REHMAN
DISTRICT EDUCATION OFFICER
(MALE) KOHAT

law, in the whole or part of the North-West Frontier province now Khyber Pakhtunkhwa, shall be amended in the manner as appeared hereinafter, namely:

(a) In the Acts and Ordinances:-

(i) for the words and hyphen "North West Frontier Province " and for the letters, dots and hyphen "N.-W.F.P" appearing before the words "AN ACT" or "AN ORDINANCE", as the case may be, the words "Khyber Pakhtunkhwa" shall be substituted.

(ii) in the long title and preamble, for the words and hyphen "North-West Frontier Province", "Sarhad", "Frontier" and for letters, dots and Hyphen, "N.-W.F.P", as the case may be, wherever occurring, the words, "Khyber Pakhtunkhwa", shall be Substituted.

(iii) in section 1, in sub-section (1) and in sub-section (2), for the words and hyphen, "North-West Frontier Province", "Sarhad", "Frontier" and for letters, dots and hyphen, "N.-W.F.P", wherever occurring , the words "Khyber Pakhtunkhwa" or the words "Province of the Khyber Pakhtunkhwa", as the case may be, shall be substituted; and

(iv) in any other section, for the words and hyphen, "North-West Frontier Province", "Sarhad", "Frontier" and for letters, dots and hyphen, "N.-W.F.P", as the case may be , wherever occurring, the words, "Khyber Pakhtunkhwa", shall be substituted; and

(b) In the rules, regulations, notifications, orders, bye-laws, issued or framed under the provinces of any Act or Ordinance or any other legal instrument of the works and hyphen, "North-West Frontier Province", "Sarhad", "Frontier" and for letters, dots and hyphen, "N.-W.F.P", as the case may be, where ever occurring, the words "Khyber Pakhtunkhwa" , shall be substituted.

Khyber Pakhtunkhwa
Civil Servants Acts, 1973

(Khyber Pakhtunkhwa Act No. XVIII of 1973)

An Act to regulate the appointment of persons to, and the terms and conditions of service of persons in, the service of the Khyber Pakhtunkhwa

[Gazette of Khyber Pakhtunkhwa, Extraordinary, Page No. 287N-287V, 12th November, 1973]

Preamble.---WHEREAS it is expedient to regulate by law, the appointment of persons to, and the terms and conditions of service of persons in, the service of the Khyber Pakhtunkhwa, and to provide for matters connected therewith or ancillary thereto;

It is hereby enacted as follows:--

1. Short title, application and commencement.---(1) This Act may be called the Khyber Pakhtunkhwa Civil Servants Act,1973.

(2) This section and section 25, shall apply to persons employed on contract, or on work charged basis, or who are paid from contingencies, and the remaining provisions of this Act including this section, shall apply to all civil servants wherever they may be.

(3) It shall come into force at once.

CHAPTER-I
PRELIMINARY

2. Definitions.---(1) In this Act, unless the context otherwise requires the following expressions shall have the meanings hereby respectively assigned to them, that is to say--

(a) "adhoc appointment" means appointment of a duly qualified person made otherwise than in accordance with the prescribed method of recruitment, pending recruitment in accordance with such method,

(b) "civil servant" means a person who is a member of a civil service of the Province, or who holds a civil post in connection with the affairs of the Province, but does not include--

(i) a person who is on deputation to the Province from the Federation or any other Province or other authority;

(ii) a person who is employed on contract, or on work charged basis, or who is paid from contingencies; or

(iii) a person who is a "worker" or "workman" as defined in the Factories Act,1934 (Act XXV of 1934), or the Workman's Compensation Act,1923 (Act VIII of 1923);

(c) "Government" means the Government of the Khyber Pakhtunkhwa.

(d) "initial appointment" means appointment made otherwise than by promotion or transfer;

(e) "pay" means the amount drawn monthly by a civil servant as pay, and includes special pay, personal pay and any other emoluments declared by the prescribed authority to be paid ;

(f) "permanent post" means a post sanctioned without limit of times;

(g) "prescribed " means prescribed by rules;

(h) "Province "means the Khyber Pakhtunkhwa;

(i) "rules" means rules made or deemed to have been made under this Act ;

(j) "selection authority" means the Khyber Pakhtunkhwa Public Service Commission, a departmental selection board, departmental selection committee or other authority or body on the recommendations of, or in consultation with which any appointment or promotion, as may be prescribed, is made;

(k) "temporary post" means a post other than a permanent post.

(2) For the purpose of this Act, an appointment, whether by promotion or otherwise, shall be deemed to have been made on regular basis if it is made in the prescribed manner.

CHAPTER-II

TERMS AND CONDITIONS OF SERVICE OF CIVIL SERVANTS

3. Terms and Conditions.---The terms and conditions of service of a civil servant shall be as provided in this Act and the rules.

4. Tenure of office of civil servants.---Every civil servant shall hold office during the pleasure of the Governor.

5. Appointment.---Appointment to a civil service of the Province or to a civil post in connection with the affairs of the Province shall be made in the prescribed manner by the Governor or by a person authorised by the Governor in that behalf.

6. Probation.---(1) An initial appointment to a service or post referred to in section 5, not being an adhoc appointment, shall be on probation as may be prescribed.

(2) Any appointment of a civil servant by promotion or transfer to a service or post may also be made on probation as may be prescribed.

(3) Where, in respect of any service or post, the satisfactory completion of probation includes the passing of a prescribed examination, test or course or successful completion of any training, a person appointed on probation to such service or post who, before the expiry of the original or extended period of his probation, has failed to pass such examination or test or to successfully complete course or the training shall, except as may be prescribed otherwise--

(a) if he was appointed to such service or post by initial recruitment, be discharged; or

(b) if he was appointed to such service or post by promotion or transfer, be reverted to the service or post from which he was promoted or transferred and against which he holds a lien or, if there be no such service or post, be discharged:

Provided that in the case of initial appointment to a service or post, a civil servant shall not be deemed to have completed his period of probation satisfactorily until his character and antecedents have been verified as satisfactory in the opinion of the appointing authority.

7. Confirmation.---(1) A person appointed on probation shall, on satisfactory completion of his probation, be eligible for confirmation in a service or, as the case may be, a post as may be prescribed.

(2) A civil servant promoted to a post [1][....] on regular basis shall be eligible for confirmation after rendering satisfactory service for the period prescribed for confirmation therein.

(3) There shall be no confirmation against any temporary post.

(4) A civil servant who, during the period of his service, was eligible to be confirmed in any service or against any post retires from service before being confirmed shall not, merely by reason of such retirement, be refused confirmation in such service or post or any benefits accruing therefrom.

(5) Confirmation of a civil servant in a service or post shall take effect from the date of occurrence of permanent vacancy in that service or post or from the date of continuous officiation, in such service or post, whichever is later.

8. Seniority.---(1) For proper administration of a service, cadre or [2][post], the appointing authority shall cause a seniority list of the members for the time being of such service, cadre or [3][post] to be prepared, but nothing herein contained shall be construed to confer any vested right to a particular seniority in such service, cadre or [4][post] as the case may be.

(2) Subject to the provisions of sub-section (1), the seniority of a civil servant shall be reckoned in relation to other civil servants belonging to the same service or [5][cadre], whether serving in the same department or office or not, as may be prescribed.

(3) Seniority on initial appointment to a service, [6][cadre] or post shall be determined as may be prescribed.

[1][(4) Seniority in a post, service or cadre to which a civil servant is promoted shall take effect from the date of regular appointment to that post:

1. The words "or grade" omitted by Khyber Pakhtunkhwa Ordinance No. IV of 1985.
2. Subs: for the word "grade" by Khyber Pakhtunkhwa Ordinance No. IV of 1985.
3. Subs. for the word "grade" by Khyber Pakhtunkhwa Ordinance No. IV of 1985.
4. Subs. for the word "grade" by Khyber Pakhtunkhwa Ordinance No. IV of 1985.
5. Substituted for the word "grade" by Khyber Pakhtunkhwa Ordinance No. IV of 1985.
6. Substituted for the word "grade" by Khyber Pakhtunkhwa Ordinance No. IV of 1985.

Provided that civil servants who are selected for promotion to a higher post in one batch shall, on their promotion to the higher post, retain their inter-se-seniority as in the lower post.]

[2][(5) The seniority lists prepared under sub-section (1), shall be revised and notified in the official Gazette at least once in a calendar year, preferably in the month of January].

9. Promotion.---(1) A civil servant possessing such minimum qualifications as may be prescribed shall be eligible for promotion to a [3][higher] post for the time being reserved under the rule for departmental promotion in [4][....] the service or cadre to which he belongs.

(2) A post referred to in sub-section (1) may either be a selection post or a non selection post to which promotion shall be made as may be prescribed--

(a) in the case of a selection post, on the basis of selection on merit; and

(b) in the case of non-selection post, on the basis of seniority-cum-fitness.

10. Posting and Transfer.---Every civil servant shall be liable to serve anywhere within or outside the province, in any post under the Federal Government, or any Provincial Government or Local authority, or a corporation or body set up or established by any such Government:

Provided that nothing contained in this section shall apply to a civil servant recruited specifically to serve in a particular area or region;

Provided further that, where a civil servant is required to serve in a post outside his service or cadre, his terms and conditions of service as to his pay shall not be less favourable than those to which he would have been entitled if he had not been so required to serve.

11. Termination of service.---(1) The service of a civil servant may be terminated without notice--

(i) during the initial or extended period of his probation:

Provided that, where such civil servant is appointed by promotion on probation or, as the case may be, is transferred from one [5][service], cadre or post to another [6][service], cadre or post, his

1. Sub-section (4) substituted by Khyber Pakhtunkhwa Ordinance No. IV of 1985.
2. Sub-section (5) added by Khyber Pakhtunkhwa Act No. I of 1989.
3. The word "higher" inserted by Khyber Pakhtunkhwa Ordinance No. IV of 1985.
4. The words "the higher grade of" omitted by Khyber Pakhtunkhwa Ordinance No .IV of 1985.
5. The word "grade" substituted by Khyber Pakhtunkhwa Ordinance No. IV of 1985.
6. The word "grade" substituted by Khyber Pakhtunkhwa Ordinance No. IV of 1985.

service shall not be so terminated so long as he holds a lien against his former post in such [1][service] or cadre, but he shall be reverted to his former [2][service], cadre or post, as the case may be;

(ii) on the expiry of the initial or extended period of his employment; or

(iii) if the appointment is made adhoc terminable on the appointment of a person on the recommendation of the selection authority, on the appointment of such person.

(2) Where, on the abolition of a post or reduction in the number of post in a cadre or grade, the services of a civil servant are required to be terminated, the person whose services are terminated shall ordinarily be the one who is the most junior in such cadre or grade.

(3) Notwithstanding the provisions of sub-section (1), but subject to the provisions of sub section (2), the service of a civil servant in temporary employment or appointed adhoc shall be liable to termination on fourteen days notice or pay in lieu thereof.

[3][**11A. Absorption of civil servants rendered surplus.**--- Notwithstanding anything contained in this Act, the rules made thereunder, any agreement, contract or the terms and conditions of service, a civil servant who is rendered surplus as a result of re-organisation or abolition of a department, office or abolition of a post in pursuance of any Government decision may be appointed to a post, carrying basic pay scale equal to the post held by him before such appointment, if he possesses the qualifications and fulfils other conditions applicable to that post:

Provided that where no equivalent post is available, he may offered a lower post in such manner and subject to such conditions as may be prescribed, and where such civil servant is appointed to a lower post, the pay being drawn by him in the higher post immediately preceding his appointment to a lower post shall remain protected.]

12. Reversion to a lower [4][post].--- A civil servant appointed to a higher post or [5][before the commencement of the Khyber Pakhtunkhwa Civil Servants (amendment) Ordinance,1985 to a higher] grade adhoc or on temporary or officiating basis shall be liable to reversion to his lower post [6][.....] without notice.

1. The word "grade" substituted by Khyber Pakhtunkhwa Ordinance No. IV of 1985.
2. The word "grade" substituted by Khyber Pakhtunkhwa Ordinance No. IV of 1985.
3. Inserted by Khyber Pakhtunkhwa Ordinance No. VI of 2001 dated 04-06-2001.
4. The words "grade or service" substituted by Khyber Pakhtunkhwa Ordinance No. IV of 1985.
5. Inserted by Khyber Pakhtunkhwa Ordinance No. IV of 1985.
6. The words "or grade" omitted by Khyber Pakhtunkhwa Ordinance No. IV of 1985.

(8)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

SERVICE APPEAL NO. 115/2016

Date of institution ... 30.11.2015
Date of judgment ... 17.01.2017

Abid Ali Shaukat S/o Shaukat Ali
SPST, GPS Nundrale, Nowshera.

... (Appellant)

VERSUS

1. Secretary Education, Khyber Pakhtunkhwa, Civil Secretariat Peshawar.
2. Director of Education, Khyber Pakhtunkhwa, Dabgari Garden Peshawar.
3. District Education Officer, Nowshera.
4. M. Asad Khan, PSHT GPS No.2, ZKKS presently at G.P.S Tarkhel Bala District Nowshera and 36 other private respondents.

... (Respondents)

APPEAL UNDER SECTION-4 OF THE SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED SENIORITY LIST DATED 07.02.2015 OF RESPONDENT NO. 3 AND IMPUGNED NOTIFICATION NO. 3641/46 DATED 27.07.2015 OF RESPONDENT NO. 3 AND AGAINST THE IN ACTION OF RESPONDENT NO. 3 IN RESPONSE TO DEPARTMENTAL APPEAL WHEREBY PROMOTION/UP-GRADATION OF THE PETITIONER TO BPS-15 AS PSHT/SPST HAS BEEN REFUSED.

17.01.17

Mr. Abdul Ghaffar Khan, Advocate. .. For appellant.
Mr. Ziaullah, Government Pleader .. For official respondents No. 1 to 3.

MR. ASHFAQUE TAJ .. MEMBER (JUDICIAL)
MR. AHMAD HASSAN .. MEMBER (EXECUTIVE)

JUDGMENT

ASHFAQUE TAJ, MEMBER:- Abid Ali Shaukat hereinafter called appellant has moved instant service appeal under section-4 of Service Tribunal Act, 1974 against impugned seniority list dated 07.02.2015 and impugned notification dated 27.07.2015 issued by respondent No. 3. And against inaction of respondent No. 3

ATTESTED

EXAMINER
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against departmental appeal whereby promotion/up-gradation of appellant to BPS-15 was refused.

2. Facts in brief are that appellant joined Education Department as SPST on 04.09.1989. That initially the appellant was appointed in BPS-7 as untrained teacher but subsequently regularized against his post on completing the required training on his turn. That the appellant was ready for training from day first of his appointment but due to lack of institutions he could not do his training in time, so non-performance of training at earlier was not his fault. That in year 2015 seniority lists were prepared but the appellant was shown junior to many of his junior colleagues. Appellant objected to tentative seniority list for promotion to BPS-14/15 but the same was not considered. That on the basis of second seniority list notification No. 3641/46 was issued on 27.07.2015. The teachers junior to appellant were promoted. That appointment and retirement of the appellant are considered from the date of appointment as untrained teachers. That earlier appellant was granted promotion/up-gradation on the basis of same qualification length of service earlier to the respondents. The prayer of the appellant is that impugned notification and seniority list might be set-aside and that appellant be promoted from the date of his original appointment.

17.01.2017

3. Learned counsel for appellant contended that in reply to letter dated 02.12.2008 Accountant General Office Peshawar gave opinion on up-gradation of various posts of teachers by submitting that temporary/officiating services followed by confirmation rendered on the relevant posts which are reckonable towards pension can also be counted for the purpose of length of service required for up-gradation. He added that question was asked in above mentioned letter that whether 10 years services will be counted from date of initial recruitment as untrained teacher from the date of passing PTC exam. He was of the view that on this analogy when his service was counted from the date of initial appointment as untrained teacher then his seniority also had to be determined from the date of initial appointment.

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4. The learned Government Pleader for respondents controverted that it is a settled rule duly communicated to the Executive District Officer vide letter No. 2296/A-88/KC/SET(M&F)SL/Inform dated 31.08.2012, regard to guidance for preparation of seniority list/promotion/up-gradation of various cadres of teaching staff. The seniority cannot be considered from the date of appointment as untrained teacher. The seniority is considered from the date of regular appointment or from the date of passing the prescribed qualification in case of untrained appointment. Further at serial No. 3 of letter it is recorded that the name of the untrained teachers could not be enlisted in the seniority list unless he passes the prescribed rules. So, the rule is clear on the matter and on the basis of said rule the seniority list was prepared in year 2013 first time and many deserving were promoted which was never challenged. He also pointed that the above mentioned rules were also challenged before this Tribunal in Service Appeal No.1343/2012 dated 31.05.2016 titled "Javed Iqbal PST-vs-Government of Khyber Pakhtunkhwa, through Elementary & Secondary Education, Peshawar" was dismissed, meaning thereby appellant was praying for the matter which had already been decided by this Tribunal.

17.01.2017

5. The Tribunal observed that appellant came up with prayer that since his service was counted from the date of initial appointment as untrained teacher for purpose of up-gradation, so on this analogy he is entitled to get seniority and further promotion. We are afraid that this matter has already been decided by this Tribunal vide judgment dated 31.05.2016 in Service Appeal No. 1343/2012. Over and above this, the Tribunal agrees with the arguments/stance of Additional Advocate General that rules on the subject were circulated vide letter dated 31.08.2012 inter-alia untrained teacher cannot be enlisted in the seniority list unless he passes the prescribed professional qualification are palpable and conspicuous reality. The appellant had not asserted that he had been not given due seniority after getting requisite professional training. At an end appellant

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had likewise failed to point out that he had applied for training but was refused or kept waiting and that fault was not on his part.

6. In view of above the appeal in hand stands dismissed. Parties are left to bear their own costs. File be consigned to the record room.

7. Vide our this detailed judgment we would also like to dispose of identical Service Appeals No. 111/2016 titled "Zahid Ali-vs- Secretary Education, KPK, Civil Secretariat Peshawar" etc, 112/2016 titled "Murad Khan-vs- Secretary Education, KPK, Civil Secretariat Peshawar" etc, 113/2016 titled "Faraz Muhammad-vs-Secretary Education, KPK, Civil Secretariat Peshawar" etc, 114/2016 titled "Amin-ur-Rehman-vs- Secretary Education, KPK, Civil Secretariat Peshawar" etc, and 116/2016 titled "Zia Ullah Shah-vs- Secretary Education, KPK, Civil Secretariat Peshawar" etc as similar question of law and facts are involved, all service appeals stands disposed of accordingly.

ANNOUNCED
17.01.2017

(AHMAD HASSAN)
MEMBER

(ASHFAQUE TAJ)
MEMBER

Certified to be true copy
Khyber Pakhtunkhwa Service Tribunal, Peshawar

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2017 PLC (CS) 697

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT: Mr. Justice Mian Saqib Nisar
Mr. Justice Iqbal Hameedur Rahman

Civil Appeals No. 398-L to 405-L/2010, 179-L to 183-L, 231-L, 424-L & 425-L/2011, 17 to 23/2012 and C. M. As. No. 20-L, 41-L/2011 & 99-L/2012.
(On appeal against the judgement dated 17.05.2010 passed by the Punjab Service Tribunal, Lahore, in Appeals No. 1644, 1645/2006, 823, 830, 831/2008, 2691/2009, 2785/2005, 2959/2007, 2561, 2563 to 2566/2006, 987/2010, 2926, 2927/2010, 988/2010, 1756/2008, 3714 to 3717/2010 & 1271/2011)

Abdul Hameed, (in C.A. 398-L/2010)

Muhammad Maqsood Shah (in C.A. 399-L/2010)

Jaffar Ali Jaffar, (in C.A. 400-L/2010)

Muhammad Javed, (in C.A. 401-L/2010)

Nusra Ali, (in C.A. 402-L/2010)

Muhammad Arif, (in C.A. 403-L/2010)

Executive District Officer (E) Khushab, etc. (in C.A. 404-L/2010)

District Education Officer (SE), Sialkot, etc. (in C.A. 405-L/2010)

Special Secretary Education (S) Govt. of Punjab Lahore, etc. (in C.As. 179-L to 183-L/11)

Executive District Officer (E) Rawalpindi, etc. (in C.As. 231-L/11, 17 to 23/12)

Executive District Officer (E) Attock, etc. (in C.As. 424-L & 425-L/11)

District Education Officer, (EE-M), Multan, etc. (in C.A. 18/2012)

Province of Punjab through Secretary (Education), etc. (in C.As. 19 to 22/2012)

.....Appellant(s)

Versus

Special Secretary Education, Govt. of Punjab, Lahore, etc. (in C.A. 398-L/2010)

ATTESTED

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Supreme Court of Pakistan

For the Respondent(s):	
(in C.As. 398-L to 403-L/10):	Mr. Khalid Waheed, Addl. AG.
(in C.A. 404-L/2010):	Mian Jaffar Hussain, ASC.
(in C.As. 179-L, 180-L, 182-L/11):	Syed Fayyaz Ahmed Shah, AOR.
(in C.As. 231-L/11, 17 & 18/12):	In-person.
For the Applicant(s):	
(in C.M.As. 20-L & 31-L/2011):	Mian Ghulam Rasool, ASC.
(in C.As. 99-L/2012):	Aghaz A. Imran, ASC.
(in C.M.As. 131-L/2012):	Nemo.
Date of Hearing:	09.03.2016.

JUDGMENT

Iqbal Hameed-ur-Rahman, J.— Through this judgment we intend to decide all the above listed appeals which have arisen with the leave of the Court against the judgment dated 17.05.2010 of the Punjab Service Tribunal, Lahore (hereinafter to be referred as the Tribunal). Civil Appeals No. 398-L to 403-L/2010 have been filed by the PTC/Un-Trained Teachers (hereinafter to be referred as the Teachers) while Civil Appeals No. 404-L, 405-L/2010, 179-L to 183-L, 231-L, 424-L, 425-L/2011 and 17 to 23/2012 have been filed by the different departments (hereinafter to be referred as the Department). The Tribunal has partially allowed the appeals of the Teachers by holding that they are allowed benefit of full increments for the period of first two years from the date of their original appointment till the regularization and in case the period exceeds two years, then for the period exceeding two years they would be entitled to only ½ of the annual increment till their regularization. Both the parties being aggrieved of the same judgment approached this Court by filing the listed appeals.

2. The controversy giving rise to the listed appeals is that the Teachers were appointed in the year 1982-84 under the Special Development

Programme initially for a period of six months on temporary basis likely to be made permanent at the fixed monthly salary plus usual allowances. They were subsequently confirmed in the year 1991 on different dates. Some of them after their regularization/confirmation demanded increment from the Department prior to the period of their regularization/confirmation. The Department declined the same with the remarks that they were not entitled to annual increment for the period they served as Un-Trained Teachers. The Teachers being aggrieved after exhausting their departmental remedy filed Service Appeals No.1917 to 1919/2003 before the Tribunal which were allowed vide judgment dated 22.01.2004 and the Education Department was directed to pay the increments of the said period. The Department challenged the said judgment before this Court by filing Civil Petitions No.1285-L, 1286-L and 1287-L/2004 which were dismissed vide order dated 2.10.2006 in the following terms:-

> 2. These petitions for leave to appeal have been filed against the judgment dated 22nd January 2004 passed by Punjab Service Tribunal, Lahore.
>
> 2. Learned counsel for petitioners when called upon to clarify as to how beyond the scope of Section 16 of the Punjab Civil Servants Act, 1974 (hereinafter referred to as the Act, 1974) fixed pay was allowed to PTC Teachers, he could not answer satisfactorily.
>
> 3. The Tribunal has granted relief to the respondents, in having taken into consideration that salary is to be fixed according to Section 16 of the Act, 1974. Therefore, impugned judgment being in consonance with the provisions of law, warrants no interference of this Court.

(i) Light of the above judgments of the Tribunal as well as this Court several other Teachers approached the Tribunal for seeking the same relief while some of them invoked the jurisdiction of High Court for grant of the same relief by placing reliance on the case of *Hamid Ashraf Niazi* (1996

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Supreme Court of Pakistan

SCMR 1185) whereupon the Hon'ble Single Judge of the High Court directed the Education Department for grant of the said relief. However, the said judgment also was assailed by the Department before this Court by filing Civil Appeals No.89-L to 105-L/2009 etc. which were disposed of by means of order dated 7.7.2009 relevant part whereof reads as under:-

> .....Consequently, writ petitions filed by the respondents shall be treated as appeals and transmitted to the learned Punjab Service Tribunal forthwith who shall decide the same as appeals within a period of thirty days of respondents' appearance before it. Both the parties are directed to appear before Punjab Service Tribunal alongwith copies of their writ petitions on 15.7.2009. Needless to observe, the Tribunal shall decide the appeals on merits. Learned Law Officer has very fairly stated that the appellants shall not raise question of limitation."

Keeping in view the above background the Tribunal proceeded to decide the controversy involved in these appeals and passed the impugned judgment in terms mentioned above.

3. On 5.11.2010 leave to appeal was granted in these matters in the following terms:-

> After having heard learned ASC and learned Additional Advocate General, Punjab, we are inclined, *inter alia*, to grant leave in these petitions on the point as to whether the judgment impugned is in consonance with the dictum laid down by this Court in *Province of Sindh thr. The Secretary, Education Department, Karachi and 2 others versus Ghulam Rasul and 35 others* (1976 SCMR 297) & in Civil Petitions Nos.1249-L, 1286-L to 1287-L of 2004 titled *(District Education Officer etc. versus Nazir Ahmad etc.)* decided on 23.1.2006. It is further to be examined as to whether being temporary employees they are entitled to get increments in accordance with the relevant provisions of Punjab Servants Act and Rules made thereunder. The appeals be fixed at some early date."

4. Learned counsel representing the Teachers contended that they were appointed as Un-Trained Primary Teachers being matriculate in BPS-07 at a fixed salary of Rs.560/- per month plus usual allowances in

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the year 1982-84; that after joining service they performed duties and qualified PTC examination and were awarded regular pay scale in BPS-07 and their services were regularized during the year 1989 to 1991 but after their regularization/confirmation they were deprived of the annual increment and other benefits drawn by them prior to their regularization. Learned counsel while referring to Section 16 of the Punjab Civil Servants Act, 1974 stated that earlier a controversy of the same nature was agitated before the Federal Service Tribunal in which vide judgment dated 23.04.2002 the Tribunal while relying upon the said section had granted the same relief. Learned counsel laid stress that Section 16 *ibid* is applicable to the case of the present Teachers and when the salaries received by them prior to their regularization were in accordance with law then they are entitled also to all the benefits including annual increment provided to their class of service. Learned counsel while relying on the case of *Province of Sindh through the Secretary, Education Department, Karachi and 2 others Vs. Ghulam Rasul and 35 others* (1976 SCMR 297) states that there is no distinction between Trained and Un-Trained Teachers. At the end learned counsel contends that the Tribunal while partially allowing their appeals restricted their annual increment to ½ if the period exceeds two years from the original appointment till their regularization/confirmation which is not justifiable as such they are entitled to full annual increment.

5. Learned counsel representing the Department states that the Teachers were not entitled to the grant of annual increment from the date of their initial appointment; that they had been inducted under a scheme for a period of six months and subsequently were regularized; that they had accepted the terms and conditions knowingly as such are not entitled to any increment prior to their regularization and cannot claim the same.

Learned counsel asserts that during their temporary appointment and training period they cannot be considered to be civil servants as such the Tribunal while passing the impugned judgment has not taken into consideration the above aspects of the matter and has erroneously held them entitled to full annual increment for a period of two years and subsequent to that for ½ of the increment till their regularization/confirmation as such seeks setting aside of the impugned judgment.

6. We have heard the learned counsel for the parties and have perused the impugned judgment as well as the earlier judgments passed by this Court and the Tribunal and have also examined the material placed on the record. For proper adjudication of the lis first of all we have to examine the appointment letter of the Teachers and their terms and conditions so propounded therein. From perusal of the said letter clause 3 would be of importance wherein it has been specifically mentioned that *The Service of the candidate will be governed under the Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974.* Keeping in view the quoted clause of the appointment letter it can safely be said that the services of the Teachers are to be governed under the Punjab Civil Servants Act, 1974. Once it is determined that the services of the Teachers are to be governed under the Act *ibid* then definitely Section 16 of the said Act being relevant would be applicable to the case in hand. Section 16 of the Act *ibid* for ease of reference is reproduced as under:-

> "16. Pay.—A civil servant appointed to a post shall be entitled, in accordance with the rules, to the pay sanctioned for such post.

From the above provision it is definite that when a civil servant appointed to a post is entitled to the pay sanctioned for such post then obviously he would also be entitled to the ancillary privileges of such pay. As such it

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Supreme Court of Pakistan

[illegible]

Sd/ Mian Saqib Nisar, J
Sd/ Iqbal Hameed ur Rahman, J

[illegible]

Date of Registration [illegible]
No. of Words [illegible]
No. of Folios [illegible]
Requisition fee [illegible]
[illegible]

Brief Facts

Mohammad Shakir S/o Mohammad Ashraf

Joined Service as PTC/Untrained teacher vide **Appointment Letter No.2340-67/Apptt:/I.AG, dated 09.11.1990**, at **S. No. 12** (Annex-A, Page 7)

That the appellant obtained PTC qualification by passing his PTC Examination held in 1998, **Roll No. 4811**. **Date of Declaration of Result, 11.5.1999**(Page 9)/(Error in the plaint concerning date of passing of examination). **PTC Certificate** issued on **20.12.2017** (Page 9A)

The appellant, Shakir along with othershad submitted an application with Respondent No.3 on **17.07.2017** requesting to be treated according to the Supreme Court Judgement, dated: 19.03.2016, and be granted seniority from the *Date of First Appointment*. (Annex-B, Page 13)

The appellant, Shakir along with others had submitted anotherapplication with Respondent No.2 on **17.07.2017**, requesting to be treated according to the Supreme Court Judgement, dated: 19.03.2016 and be given seniority accordingly. (Annex-C, Page 14)

That Respondent No. 3 vide**Letter No.10290, dated 07.09.2017** informed Respondent No.2 of the application submitted by the appellant. (Annex-D, Page 15)

Grounds/Prayer

A. **Condonation of Delay/Limitation**

i. That if there is any delay, it is due to bona fide reasons and thus it should be condoned.

ii. That the appeal involves a question of seniority and pay, thus it is a recurring matter and question of limitation cannot be attracted.

iii. That the inability of the Respondents to implement the Judgment, dated 09.03.2016, it is in breach of the rights of the appellant and in violation of the rules of good governance.

Case Law

2004 PLC (C.S.) SC 1014

Decision of cases on merits is to be always encouraged instead of non-suiting litigants on technical reasons including ground of limitation---SC condoned delay, set aside impugned judgment in the interest of justice.

2007 PLC (CS) 152 / PLD 2003 SC 724 / 1996 SCMR 920

Decision of cases should be on merits instead of non-suiting the litigants for technical reasons including limitation.

1996 SCMR 1185

S.4---Constitution of Pakistan (1973) Art.212---Appeal to Service Tribunal or Supreme Court---Effect---If the Service Tribunal or Supreme Court decides a point of law relating to the terms of service of a civil servant which covers not only the case of civil servant who litigated, but also of other civil servants, who may have not taken any legal proceedings, in such a case, the dictates and rule of good governance demand that the benefit of such judgement by Service Tribunal/Supreme Court be extended to other civil servants, who may not be parties to the litigation instead of compelling them to approach the Service Tribunal or any other forum.

Similar view reiterated in **2007 PLC (CS) 632 (Supreme Court).**

B. **Seniority and back benefits from the date of First Appointment**

i. That under **Section 17**of the **KP Civil Servants Act, 1973**, when a civil servant is appointed to a post and is entitled to the pay that is sanctioned for such a post, then he would also be entitled to ancillary privileges of such pay.

ii. That the Respondents, by refusing to implement the Judgement of the Honourable Supreme Court, are in breach of the rights of the appellant enshrined in the Constitution of Pakistan.

iii. That the Appellant has carried out years of service and imparted quality education and in line with the Judgement of the Supreme Court, which held that, there is no distinction between a trained and untrained teacher, the appellant should be affordedservice benefits, such as seniority from the date of first appointment.

Case Law

2017 PLC (C.S) 697 (SC)/ 2016 SCMR 1611 (SC)

S. 16---Untrained teachers employed under a Scheme as temporary employees --- Regularization in service--- Entitlement to annual increments for the period before regularization--- Appointment letter of the teachers in the present case and the terms and conditions propounded therein specifically mentioned that the service of the candidate would be governed under the Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974---Services of the teachers, in such circumstances, were to be governed under the Punjab Civil Servants Act, 1974---Section 16 of the said Act which dealt with pay would be relevant for the present case---When the salaries of the teachers, which they had received prior to their regularization/ confirmation, were in accordance with law then they were entitled also to the annual increment on the basis of the same---No distinction could be drawn between the untrained and trained teachers---Teachers were entitled to receive full annual increments for the whole period prior to their regularization---Appeals were disposed off accordingly.

S.16---Ancillary privileges of pay---When a civil servant appointed to a post was entitled to the pay sanctioned for such post, then he would also be entitled to the ancillary privileges of such pay.

2008 PLC (CS) 768

S. 16---Punjab Service Tribunals Act (IX of 1974), S.4---Constitution of Pakistan (1973), Arts.189, 190, 199 & 212---Annual increments claimed by untrained P.T.C. teachers ---Non-acceptance of such claim by department---Service Tribunal in appeals filed by some teachers found them entitled to claim increments, which view was upheld by Supreme Court with observations that Government, while fixing pay of P.T.C. Teacher, could not go behind scope of S.16 of Punjab Civil Servants Act, 1974---Refusal of Department to accept petitioner's claim for increments and fix his pay in the light of such judgment of Service Tribunal and Supreme Court---Constitutional petition filed by petitioner seeking enforcement 'of such judgments in his case also---Validity---Withholding of emoluments and that too in violation of S.16 of the Punjab Civil Servants Act, 1974 would suffer from inherent vice---Supreme Court had laid down that a civil servant having made to work against a post would become entitled to running pay scale thereof---No Court or authority could deviate from decision of Supreme Court---Supreme Court in the present case having decided question of law, High Court directed department to pay claimed increments to petitioner and fix his pay accordingly.

1976 SCMR 287 / (Similar view in Appeal No.690/1996)

---Art. 178(3)-Civil service-Appointment to---Respondents untrained teachers having their salaries fixed in time scale as notified in Provincial Gazette---Notification not drawing any distinction between trained and untrained teachers- subsequent notification entitling untrained teachers only to a fixed pay and denying the, advantage of progressive grade pay, held, violative of provisions of Art.178(3) and on no discoverable principle could they be refused grade pay to their disadvantage by an executive fiat.

1993 SCMR 609 / 1985(1) Services Law Reporter 358 [Punjab and Haryana High Court

---Seniority---Period of ad hoc service followed by regular service in the same scale would be counted towards length of service prescribed for promotion or move over in the next higher scale.

---Ad hoc appointments belong to the family of "officiating", "temporary" and "until further orders" appointments.

1998 SCMR 969

Civil Servants Act 1973---Ss. 9(4) & 23---Seniority---Ad hoc employee---Seniority dates back from the date of regular appointment---Period during which an employee held a post as an ad hoc appointee can be taken into consideration for pay and pensionary benefits---Period of ad hoc service followed by regular service as regards promotion and move-over to the next grade subject to the condition that there is no break of service---Principles. (Principle laid down that period to be counted if there is no break during service.)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

In:
Appeal Nos. 1366/2017, 1367/2017 & 11/2018

WRITTEN SUBMISSION ON BEHALF OF APPELLANTS, M. SALAHUDDIN, SAJJAD ALI & M. SHAKIR

Brief Facts

Mohammad SalahuddinS/o Malik Sher Mohammad

Joined Service as PTC/Untrained teacher vide **Appointment Letter No.12500-547/A-1/PTC/Supdt, dated 15.09.1988**, at **S. No. 17** (Annex-A, Page 8)

That the appellant obtained PTC qualification by passing his PTC Examination held in 1996, **Roll No. 6198. Date of Declaration of Result, 13.05.1997** (Page 7)

The appellant, Salahuddin along with others had submitted an application with Respondent No.3 on **17.07.2017** requesting to be treated according to the Supreme Court Judgement, **dated: 19.03.2016**, and be granted seniority from the *Date of First Appointment*. (Annex-B, Page 30)

The appellant, Salahuddin along with others had submitted another application with Respondent No.2 on **17.07.2017,** requesting to be treated according to the Supreme Court Judgement, **dated: 19.03.2016** and be given seniority accordingly. (Annex-C, Page 31)

That Respondent No. 3 vide**Letter No.10290, dated 07.09.2017** informed Respondent No.2 of the application submitted by the appellant. (Annex-D, Page 32)

Sajjad Ali S/o Abdullah Khan

Joined Service as PTC/Untrained teacher vide **Appointment Letter No.1780-88/Apptt/PTC/I.AG, dated 31.01.1991**, at **S. No. 4** (Annex-A, Page 7)

That the appellant obtained PTC qualification by passing his PTC Examination held in 2002, **Roll No. 01-NKT-0485. Date of Declaration of Result, 06.06.2003, Certificate issued on 05.11.2008.**(Page 8-9)

The appellant, Sajjad Ali along with others had submitted an application with Respondent No.3 on **17.07.2017** requesting to be treated according to the Supreme Court Judgement, dated: 19.03.2016, and be granted seniority from the *Date of First Appointment*. (Annex-B, Page 13)

The appellant, Sajjad Ali along with others had submitted another application with Respondent No.2 on **17.07.2017,** requesting to be treated according to the Supreme Court Judgement, dated: 19.03.2016 and be given seniority accordingly. (Annex-C, Page 14)

That Respondent No. 3 vide**Letter No.10290, dated 07.09.2017** informed Respondent No.2 of the application submitted by the appellant. (Annex-D, Page 15)

Mohammad Shakir S/o Mohammad Ashraf

Joined Service as PTC/Untrained teacher vide **Appointment Letter No.2340-67/Apptt:/I.AG, dated 09.11.1990**, at **S. No. 12** (Annex-A, Page 7)

That the appellant obtained PTC qualification by passing his PTC Examination held in 1998, **Roll No. 4811. Date of Declaration of Result, 11.5.1999** (Page 9) / [redacted] **PTC Certificate** issued on **20.12.2017** (Page 9A)

The appellant, Shakir along with others had submitted an application with Respondent No.3 on **17.07.2017** requesting to be treated according to the Supreme Court Judgement, dated: 19.03.2016, and be granted seniority from the *Date of First Appointment*. (Annex-B, Page 13)

The appellant, Shakir along with others had submitted another application with Respondent No.2 on **17.07.2017,** requesting to be treated according to the Supreme Court Judgement, dated: 19.03.2016 and be given seniority accordingly. (Annex-C, Page 14)

That Respondent No. 3 vide**Letter No.10290, dated 07.09.2017** informed Respondent No.2 of the application submitted by the appellant. (Annex-D, Page 15)

Grounds/Prayer

A. Condonation of Delay/Limitation

i. That if there is any delay, it is due to bona fide reasons and thus it should be condoned.

ii. That the appeal involves a question of seniority and pay, thus it is a recurring matter and question of limitation cannot be attracted.

iii. That the inability of the Respondents to implement the Honourable Supreme Court Judgment, dated 09.03.2016, it is in breach of the rights of the appellant and in violation of the rules of good governance.

iv. That representations had been made to the Competent Authority (Respondent No.2&3), that Respondent No.3 acted upon the representation made and forwarded the appellants representation/application, yet no response was provided nor was any action taken. That the appellants subsequently after ninety days, applications were filed before this Honourable Tribunal.

Case Law

2015 S C M R 456

Present: Nasir-ul-Mulk, C.J., Amir Hani Muslim and Ijaz Ahmed Chaudhry, JJ
CIVIL REVIEW PETITION NO.193 OF 2013 ETC.
C.R.P. NO.193 OF 2013 IN CONSTITUTIONAL PETITION NO.71 OF 2011
ALI AZHAR KHAN BALOCH and others---Petitioners/Appellants
Versus
PROVINCE OF SINDH and others---Respondents

(u) Civil Servants Act (LXXI of 1973)---

----S. 22--- Service Tribunals Act (LXX of 1973), S. 4(1)(a)---Constitution of Pakistan, Arts. 4, 9, 10A, 25, 184(3) & 188---Review petition---Civil service---Expeditious remedy from the Service Tribunal, hindrance to---Civil servant could not approach the Service Tribunal unless he exhausted the remedy of departmental appeal/representation under S. 22 of the Civil Servants Act, 1973---Section 4(1)(a) of the Service Tribunals Act, 1973, provided that a civil servant could approach the

Service Tribunal, subject to his exhausting remedy under S. 22 of the Civil Servants Act, 1973, after lapse of 90 days from the date on which such appeal/application was so preferred---Civil Servant aggrieved by an order of the department had to file a representation or appeal within 30 days of passing of such order and if the said authority did not decide his appeal/representation within 90 days, he could prefer an appeal before the Tribunal, after lapse of time as contained under S.4(1)(a) of the Service Tribunals Act, 1973---Supreme Court observed that provisions of S. 22 of the Civil Servants Act, 1973 and S. 4 of the Service Tribunals Act, 1973, were required to be re-examined after insertion of Art. 10A in the Constitution, as it restricted a civil servant from seeking expeditious remedy from the Service Tribunal which was constituted under the command of the Constitution; that after the promulgation of Art. 10-A of the Constitution, it was imperative to re-examine the existing law which apparently barred the filing of appeal in the Service Tribunal before the passage of mandatory 90 days, but practically for 120 days; that in certain situations a civil servant may face wrath and vendetta of his superiors, if he refused to carry out their illegal orders, and in such a situation, his representation etc. to the concerned authority to seek redressal of the wrong committed against him may be ignored or outright rejected by the authorities under political influence or for ulterior motives, leaving him with no option but to wait for mandatory period of 120 days to enable him to file an appeal etc. before the Service Tribunal; that in view of such problems faced by the civil servants due to lengthy process of filing appeal in the Tribunal and availing of relief, it was imperative to provide an efficacious and expeditious alternate remedy to civil servants by way of allowing them to approach the Service Tribunal, Federal or Provincial, without waiting for a period of 90 days, as contained under S.4(1)(a) of the Service Tribunals Act, 1973 by preferring an appeal against the orders; that at touchstone of Art. 10-A of the Constitution, the issues that were required to be answered were whether S. 4(1)(a) of the Service Tribunals Act, 1973, restricting a civil servant from filing appeal to the Tribunal after lapse of 90 days was violative of the spirit and command of Art. 10-A of the Constitution, and whether time frame provided by S. 4 of the Service Tribunals Act, 1973 debarring an aggrieved civil servant to approach the Service Tribunal amounted to denial of the relief to him in terms of Arts. 4, 9 & 25 of the Constitution---Supreme Court further observed that it was necessary to take up said issues in its suomotu jurisdiction under Art. 184(3) of the Constitution in a separate proceedings---Review petition was dismissed accordingly.

2007 P L C (C.S.) 152 Lahore High Court

Before Syed Zahid Hussain, J
NEK ALAM CHEEMA
Versus
ISLAMIC REPUBLIC OF PAKISTAN through Secretary Establishment Division, Government of Pakistan and another

(a) Service Tribunals Act (LXX of 1973)---

----S. 4---Constitution of Pakistan (1973), Arts.189 & 199---Constitutional petition---Maintainability---Laches---Petitioner being civil servant, sought similar treatment as was meted out to other civil servants in view of the judgment passed by High Court in year, 1982---Contention of authorities was that petition filed by petitioner in year, 2000, suffered from laches---Validity---Petitioner had been making repeated application time and again but without any positive response---*Undoubtedly procrastination on the part of authorities was there and delay on their part could not be made a ground for non-suiting the petitioner*---Such conduct of authorities could furnish a cause of action for agitating the matter before the Court---Objection raised by authorities to laches was not well founded---Petitioner was justified in seeking similar treatment and implementation of judgment of Service Tribunal---Petition was allowed in circumstances.

2004 P L C (C. S.) 1014 SC

Present: Mian Muhammad Ajmal and Syed Deedar Hussain Shah, JJ
MUHAMMAD H.ANIF BUKHARI and another Versus PRESIDENT, NATIONAL BANK OF PAISTAN HEAD OFFICE, KARACHI and others
Civil Appeals Nos.1298 and 1309 of 2000, decided on 22nd March, 2004.
(a) Service Tribunals Act (LXX of 1973)
---S.4 ..Constitution of Pakistan (1973), Arts.25, 187 & 212(3) ¬Appeals against same departmental order by appellant and respondent ¬Condonation of delay Service Tribunal dismissed appellant's appeal on ground of limitation, but accepted respondent's appeal after condoning delay *Validity Decision of cases on merits is to be always encouraged instead of non suiting litigants on technical reasons including ground of limitation* Supreme Court condoned delay, set aside impugned judgment in the interest of justice, equity, fair play and in view of the provisions of the Constitution, and remanded case to Tribunal for its fresh decision on merits.
(b) Administration of justice
---Decision of cases on merits always to be encouraged instead of non¬-suiting litigants on technical reason including ground of limitation.

PLD 2003 SC 724

(k) Limitation---
---- Administration of justice---Decision of the cases on merits always to be encouraged instead of non-suiting the litigants for technical reasons including on limitation.

1996 SCMR 920

Decision of cases should be on merits instead of non-suiting the litigants for technical reasons including limitation.

1996 SCMR 1185

S.4---Constitution of Pakistan (1973) Art.212---Appeal to Service Tribunal or Supreme Court---Effect---If the Service Tribunal or Supreme Court decides a point of law relating to the terms of service of a civil servant which covers not only the case of civil servant who litigated, but also of other civil servants, who may have not taken any legal proceedings, in such a case, the dictates and rule of good governance demand that the benefit of such judgement by Service Tribunal/Supreme Court be extended to other civil servants, who may not be parties to the litigation instead of compelling them to approach the Service Tribunal or any other forum.

Similar view reiterated in **2007 PLC (CS) 632 (Supreme Court).**

B. Seniority and back benefits from the date of First Appointment

i. That under **Section 17** of the **KP Civil Servants Act, 1973**, when a civil servant is appointed to a post and is entitled to the pay that is sanctioned for such a post, then he would also be entitled to ancillary privileges of such pay.
ii. That the Respondents, by refusing to implement the Judgement of the Honourable Supreme Court, are in breach of the rights of the appellant enshrined in the Constitution of Pakistan.
iii. That the Appellant has carried out years of service and imparted quality education and in line with the Judgement of the Supreme Court, which held that, there is no distinction between a trained and untrained teacher, the appellant should be afforded service benefits, such as seniority from the date of first appointment.
iv. That if there is no difference between trained and untrained teacher in terms of financial benefits, lawfully employed and carrying out the same duties with numerous

years of experience, therefore, the period from date of initial appointment till the date of regularisation should be considered in relation to seniority and promotion.

v. That if ad-hoc employees can have their service counted for promotion, it would be discriminatory towards contractual employees who were subsequently regularised. Such employees have the right to have such period counted and have such period of time to be considered for promotion.

Case Law

2017 PLC (C.S) 697 (SC) / 2016 SCMR 1611 (SC)

S. 16---Untrained teachers employed under a Scheme as temporary employees --- Regularization in service--- Entitlement to annual increments for the period before regularization--- Appointment letter of the teachers in the present case and the terms and conditions propounded therein specifically mentioned that the service of the candidate would be governed under the Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974---Services of the teachers, in such circumstances, were to be governed under the Punjab Civil Servants Act, 1974---Section 16 of the said Act which dealt with pay would be relevant for the present case---*When the salaries of the teachers, which they had received prior to their regularization/ confirmation, were in accordance with law.then they were entitled also to the annual increment on the basis of the same---No distinction could be drawn between the untrained and trained teachers*---Teachers were entitled to receive full annual increments for the whole period prior to their regularization---Appeals were disposed off accordingly.

S.16---Ancillary privileges of pay---When a civil servant appointed to a post was entitled to the pay sanctioned for such post, then he would also be entitled to the ancillary privileges of such pay.

2008 PLC (CS) 768

S. 16---Punjab Service Tribunals Act (IX of 1974), S.4---Constitution of Pakistan (1973), Arts.189, 190, 199 & 212---Annual increments claimed by untrained P.T.C. teachers ---Non-acceptance of such claim by department---Service Tribunal in appeals filed by some teachers found them entitled to claim increments, which view was upheld by Supreme Court with observations that Government, while fixing pay of P.T.C. Teacher, could not go behind scope of S.16 of Punjab Civil Servants Act, 1974---Refusal of Department to accept petitioner's claim for increments and fix his pay in the light of such judgment of Service Tribunal and Supreme Court---Constitutional petition filed by petitioner seeking enforcement 'of such judgments in his case also---Validity---Withholding of emoluments and that too in violation of S.16 of the Punjab Civil Servants Act, 1974 would suffer from inherent vice---Supreme Court had laid down that a civil servant having made to work against a post would become entitled to running pay scale thereof---No Court or authority could deviate from decision of Supreme Court---Supreme Court in the present case having decided question of law, High Court directed department to pay claimed increments to petitioner and fix his pay accordingly.

1976 SCMR 287 / (Similar view in Appeal No.690/1996)

---Art. 178(3)-Civil service-Appointment to—Respondents untrained teachers having their salaries fixed in time scale as notified in Provincial Gazette---Notification not drawing any distinction between trained and untrained teachers- subsequent notification entitling untrained teachers only to a fixed pay and denying the, advantage of progressive grade pay, held, violative of provisions of Art.178(3) and on no discoverable principle could they be refused grade pay to their disadvantage by an executive fiat.

1993 S C M R 609 Supreme Court of Pakistan

Present: Muhammad Afzal Zullah, CJ., Abdul Qadeer Chaudhry and Nasir Aslam Zahid; JJ

FEDERATION OF PAKISTAN and others---Appellants

versus

RAIZ KHAN---Respondent

(a) Civil Servants Act (LXXI of 1973)---

----S.8(4)---Seniority---Mode for determining---Seniority in a post, service or cadre to which a civil servant is promoted would take effect from the date of regular appointment to that post---For purpose of seniority in a particular grade, regular appointment is the determining factor.

(b) Civil service---

----Seniority---Period of ad hoc service followed by regular service in the same scale would be counted towards length of service prescribed for promotion or move over in the next higher scale.

(c) Civil Servants (Appointment, Promotion and Transfer) Rules, 1973---

----R.8(i)(b)---Appointment on current charge basis---Validity---When civil servant was appointed on current charge basis in BPS-18, he had completed the requisite number of years in BPS-17 and thus his appointment in the presence of a vacancy, on current charge basis was not proper---Where a person who had completed the requisite number of years and was otherwise fit for promotion was promoted to a higher post, his promotion would be regular and not on current charge basis---*No law or rule existed against counting ad hoc service followed by regular service in the same scale towards length of service prescribed for promotion to a post in a higher scale.*

Muhammad Afzal v. Government of the Punjab 1982 SCMR 408 and Dharam Singh v. State of Punjab (1985) 1 SLR 358 ref.

(d) Constitution of Pakistan (1973)---

----Art.212---Civil Servants Act (LXXI of 1973), S.5---Service Tribunal--Extent of powers---Service Tribunal has wide powers under S.5, Civil Servants Act, 1973---Service Tribunal on appeal may confirm, set aside, vary or modify the order appealed against.

Yamin Qureshi v. Islamic Republic of Pakistan PLD 1980 SC 22 rel.

(e) Civil service---

---- Ad hoc appointments belong to the family of "officiating", "temporary" and "until further orders" appointments.

Jafar Ali Akhtar Yousafzai v. Islamic Republic of Pakistan PLD 1970 Quetta 115 rel ;

1998 S C M R 969

Present: Nasir Aslam Zahid, Munawar Ahmad Mirza and AbdurRehman Khan, JJ

Dr. SHER WALI KHAN, ASSISTANT DIRECTOR, HEALTH SERVICE, NORTHERN AREAS, GILGIT ---Appellant

versus

Dr. M. HASSAN KHAN AMACHA and 4 others---Respondents

(a) Civil; Servants Act (LXXI of 1973)---

----S 8---Constitution of Pakistan (1973), Art. 212---Seniority---Not a vested right---Exception---Appeal to Service Tribunal ---Scope--Notwithstanding the fact that seniority in service of a civil servant has been specifically declared under S. 8, Civil Servants Act, 1973 as not a vested right of the civil servant, *a civil servant who has been wrongfully denied his rightful seniority in service is entitled to seek redress before the Service Tribunal in a properly instituted proceedings*---Contention that appeal filed before the Service Tribunal was not maintainable was repelled in circumstances.

Jamal Khan Jaffar's case 1994 SCMR 759 fol.

Muhammad Iqbal Khokhar v. Government of Punjab PLD 1991 SC 35; Capt. (Retd.) Abdul Qayym v. Muhammad Iqbal Khokhar PLD 1992 SC 184; EhsanullahMemon v. Government of Sindh 1993 SCMR 982; Federation of Pakistan v. Rias Khan 1993 SCMR 609 and Major (Retd.) Muhammad Matlub Khan v. Government of Pakistan 1993 SCMR 798 ref.

(b) Civil Servants Act (LXXI of 1973)---

----Ss. 8(4) & 23---Seniority---Ad hoc employee---Seniority dates back from the date of regular appointment---Period during which an employee held a post as an ad hoc appointee can be taken into consideration for pay and pensionary benefits---*Period of ad hoc service followed by regular service as regards promotion and move-over to the next grade subject to the condition that there is no break of service---Principles.*

Seniority dates back from the date of regular appointment seniority in the grade to which a civil servant is promoted shall take effect from the date of regular appointment to the post in that grade. *The period during which an employee held a post as an ad hoc appointee can be taken into consideration for pay and pensionary benefits and as regards promotion and move-over to the next higher grade period for ad hoc service followed by regular service in the scale shall also be counted towards length of service provided for promotion or move-over in the higher scale subject to the condition that there is no break of service.* While exercising plenary powers under section 23 of the Civil Servants Act (or corresponding provisions in the Provincial Civil Servants Laws) or exercising powers for relaxation of rules, the President, or the Governor or the Government, as the case may be, benefits can be conferred upon the concerned employee so as to alleviate any hardship or injustice to which the employee might have been subjected to on account of adverse situations created or strict application of the rules which could not be undone under the ordinary rules but could only be done by relaxation for some rule or rules or by exercising plenary powers under section 23 of the Civil Servants Act, but without affecting the rights of another employee. .In section 23 of the Civil Servants Act, (and in corresponding provisions in the Provincial Civil Servants Acts) power has been conferred upon the President (or the Governor or Government as the case may be) to deal with the case of any civil servant as may appear to him as just and equitable and such power is not limited or abridged by any provisions of the Act or any Rules made thereunder. While dealing with the provisions in relation to relaxation for any rules where a strict application would cause hardship to the concerned individual, the general principle appears to be that such power should not be exercised to the prejudice of another employee.

Muhammad Iqbal Khokhar v. Government of Punjab PLD 1991 SC 35; Capt. (Retd.)Abdul Qayym v. Muhammad Iqbal Khokhar PLD 1992 SC 184; EhsanullahMemon v. Government of Sindh 1993' SCMR 982; Federation of Pakistan v. Rais Khan 1993 SCMR 609 and Major (Retd.)Muhammad Matlub Khan v. Government of Pakistan 1993 SCMR 798 and Jamal Khan Jaffar's case 1994 SCMR 759 ref.

(c) Federal Public Service Commission (Functions) Rules, 1978---

----8. 4---Civil Servants Act (LXXI of 1973), S. 23---Ad hoc employee--Regularisation of service of ad hoc employee---Once the Federal Public Service Commission found the person fit to hold the post in Grade-17, the Competent Authority could validly pass orders regularising his service in Grade-17 and also pass consequential orders formally regularising his promotion to Grade-18, on the date when he had already been promoted. to that grade---Principles.