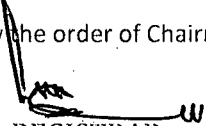


Form- A
FORM OF ORDER SHEET

Court of _____

Execution Petition No. 518/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	02.09.2022	<p>The joint execution petition of Mr. Abdullah Javed & 6 others submitted today by Mr. Inayat Ullah Khan Tareen Advocate. It is fixed for implementation report before touring Single Bench at A.Abad on _____. Original file be requisitioned. AAG has noted the next date. The respondents be issued notices to submit compliance/implementation report on the date fixed.</p> <p style="text-align: right;">By the order of Chairman  REGISTRAR</p>

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR**

E.P. NO. 518 /2022

DATED _____ /2022

Abdullah Javed & others V/S Secretary Elementary &
Secondary Education and
others.

EXECUTION PETITION

INDEX

S.No.	Description of Document.	Annexure	Page No.
(1)	Execution Petition alongwith Affidavit.	-	01 - 05
(2)	Copy of Judgment dated 02-02-2022 of 07 petitioners separately passed by Hon'able Service Tribunal in Service Appeal No. 2756/2021.	"A,A/1 to A/6"	06 - 60
(3)	Copy of Memorandum of Appeals of 07 petitioners.	"B, B/1 to B/6"	61 - 95
(4)	Vakalat Nama.	-	96

Dated ___/08/2022


PETITIONERS

THROUGH:


INAYAT ULLAH KHAN TAREEN,
ADVOCATE HIGH COURT,
PESHAWAR.

0333 - 9934837

E. mail: InayatKhanTareen55@gmail.com

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 1140

E.P. NO. 518 /2022

Dated 22/9/22

DATED 2/9 /2022

1. Abdullah Javed, SST (BPS-16), presently working as A.S.D.E.O, Circle Sarai Saleh, Haripur.
2. Qazi Javed Iqbal, SDM (BPS-16), Govt. High School Laban Bandi, Haripur.
3. Nasir Ali, SST (BPS-16) Govt. High School No. 2, Haripur (Now Retired from service).
4. Qazi Behram, SCT (BPS-16), Govt: High School Laban Bandi, Haripur.
5. Qazi Shaheen Iqbal, SS (Pak studies) (BPS-17), R.I.T.E. (Male Haripur).
6. Azhra Bibi, SCT (BPS-16), Govt: Girls High School, Sarai Saleh, Haripur.
7. Qazi Sikander, PSHT (BPS-15), Govt: Primary School No. 2, Laban Bandi, Haripur.

PETITIONERS

VERSUS

1. Secretary Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.
2. Director, Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.
3. District Education Officer, Haripur.

RESPONDENTS

EXECUTION PETITION FOR IMPLEMENTATION OF THE BELOW
DESCRIBED JUDGMENT THROUGH PROCEEDINGS UNDER THE
ENABLING PROVISION OF CPC READ WITH SECTION RELEVANT
PROVISIONS OF THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL ACT, 1974 AND RULES MADE THEREUNDER.

Respectfully Sheweth,

The petitioners seek execution of the single judgment at their credit, the particulars whereof are stated in the columns hereunder.

u

1.	No of Appeals decided by single judgment.	2756/2021 titled Abdullah Javed, 2757/2021 titled QaziJaved Iqbal, 2758/2021 titled Nasir Ali, 2759/2021 titled Qazi Behram, 2760/2021 titled QaziShaheen Iqbal, 2761/2021 titled Azhra Bibi, 2762/2021 titled Qazi Sikandar
2.	Name of Parties.	As described above in the heading
3.	Date of judgment of which execution is sought.	02.02.2022
9.	Against whom execution is sought.	Respondents enumerated above in the heading
10.	In what manner Tribunal's assistance is sought.	By directions for implementation, attachment of salary/property, detention in civil prison.

2. That the appeals enumerated in the above table were decided by this Hon'ble Tribunal through a single judgment dated 02-02-2022 passed in Service Appeal No. 2756/2021, with the operative part as copied below:-

“In view of the foregoing discussion, the instant appeal as well as connected service appeals are accepted as prayed for.”

(Copy of the judgment dated 02-02-2022 passed by Hon'able Service Tribunal in Service Appeal No. 2756/2021 is annexed as **Annexure “A, A/1 to A/6”**)

3. That the prayer in all the appeals enumerated above is mutatis mutandis similar for the purpose of execution. The prayer from the main appeal No. 2756/2021, for its ready reading with the above noted operative, is copied below:-

"That on acceptance of this appeal the respondents may kindly be directed to consider the appellant for promotion to the post of Subject Specialist (BPS-17) w.e.f. 2009 i.e. the date when adhoc/contract S.S. (BPS-17) have been regularized with all back benefits including seniority. Any other remedy which this august Tribunal deems fit that may also be awarded in favour of the appellant.

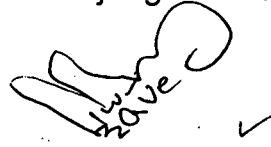
(Copies of Memorandum of Appeals are annexed as Annexure "B, B/1 to B/6").

4. That the service appeals enumerated in this petition were decided by the Hon'ble Tribunal through a single judgment at the credit of all the petitioners and forum for its execution in their favour is also one and the same. Therefore, this single execution petition has been filed jointly by all the petitioners which obviously is beneficial for process of the Tribunal in one place instead of its repetition in different files in case of separate execution petitions.
5. That this Hon'ble Tribunal by virtue of sub section (2) of Section 7 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 has got the jurisdiction of a Civil Court for the purpose of execution of judgments and with enabling provisions of CPC, the judgment at credit of petitioners is executable in any of the solicited manner.
6. That the judgment at credit of the petitioners is appealable before august Supreme Court of Pakistan under Article 212(3) of the Constitution of Islamic Republic of Pakistan. However, under order XX rule 1 of the Supreme Court Rules, 1980, mere filing of petition for leave to appeal or appeal shall not prevent execution proceedings unless stayed by a specific order as provided under the said rule. So, if there is any petition for leave to appeal or appeal having been filed

by the respondents against the judgment at credit of petitioners, they cannot prevent the execution proceedings unless they succeed to get the stay order from august Supreme Court of Pakistan. Therefore, this execution petition is maintainable under the law for execution proceedings against the respondents.

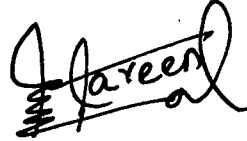
It is respectfully prayed that appropriate process may be issued against the respondents for execution of judgment at credit of the petitioners.

Dated ____/08/2022



PETITIONERS

THROUGH:



INAYAT ULLAH KHAN TAREEN,
ADVOCATE HIGH COURT,
PESHAWAR.

Verification:

I, Abdullah Javed, the above named petitioner do hereby verify that the contents of this petition are true to my knowledge and belief and nothing has been kept concealed.



PETITIONER

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR**

E.P. NO. _____/2022

DATED _____/2022

Abdullah Javed & others V/S Secretary Elementary &
Secondary Education and
others.

EXECUTION PETITION

AFFIDAVIT

I, Abdullah Javed, SST (BPS-16), presently working as A.S.D.E.O, Circle Sarai Saleh, Haripur, do hereby solemnly affirm and declare that the contents of foregoing Execution Petition are true and correct to the best of my knowledge and belief and nothing has been suppressed from this Hon'able Tribunal.

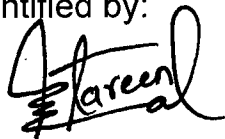
Dated: _____



Deponent

6334-8386287

Identified by:



INAYAT ULLAH KHAN TAREEN,
ADVOCATE HIGH COURT,
PESHAWAR.



Job Annex "A"

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR



6

APPEAL NO. 2756/2021

Mr. Abdullah Javed, SST (BPS-16),
A.S.D.E.O (Male), District Haripur.

APPELLANT

VERSUS

- 1- The Secretary Elementary and Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.
- 2- The Director Elementary and Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.
- 3- The District Education Officer, District Haripur.

RESPONDENTS

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE INACTION OF THE RESPONDENTS BY NOT PROMOTING THE APPELLANT TO THE POST OF S.S (BPS-17) W-E-F 2009 I.E. FROM THE DATE WHEN THE ADHOC/ CONTRACT SUBJECT SPECIALIST (BPS-17) HAVE BEEN REGULARIZED AND AGAINST NO ACTION TAKEN ON THE DEPARTMENTAL APPEAL OF APPELLANT WITHIN THE STATUTORY PERIOD

PRAYER:

That on acceptance of this appeal the respondent may kindly be directed to consider the appellant for promotion to the post of Subject specialist (BPS-17) w-e-f. 2009 i.e. the date when the adhoc/ contract S.S (BPS-17) have been regularized with all back benefits including seniority. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

ATTESTED

[Signature]
Khyber Pakhtunkhwa Service Tribunal
Peshawar

R/SWETH:
ON FACTS:

Filed to-day
Registrar
27/11/2021

e-submitted to-day
id filed.

[Signature]
Registrar 2.

That the appellant is the employee of the respondent department and performing his duty as SST (BPS-16).

That in the year 2004 the respondents asked applications for the post of Subject Specialist (SS) on contract basis. That after appearing in the test conducted through EATA, the appellant was appointed on the post of S.S (BPS-17) on contract basis for a period of six months. Copies of the

ATTESTED

to be true copy
Advocate

P/07



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 2756/2021

Date of Institution ... 27.01.2021

Date of Decision ... 02.02.2022

Mr. Abdullah Javed, SST (BPS-16) ASDEO (Male), District Haripur.
... (Appellant)

VERSUS

The Secretary Elementary & Secondary Education Department Government of
Khyber Pakhtunkhwa through Chief Secretary, Peshawar and three others.
... (Respondents)

Noor Muhammad Khattak,
Advocate ... For Appellant

Muhammad Adeel Butt,
Additional Advocate General ... For respondents

AHMAD SULTAN TAREEN ... **CHAIRMAN**
ATIQU-UR-REHMAN WAZIR ... **MEMBER (EXECUTIVE)**

JUDGMENT

ATIQU-UR-REHMAN WAZIR MEMBER (E):- This single

judgment shall dispose of instant service appeal as well as the following
connected service appeals, as common question of law and facts are involved
therein.

1. 2757/2021 titled Qazi Javed Iqbal
2. 2758/2021 titled Nasir Ali
3. 2759/2021 titled Qazi Behram
4. 2760/2021 titled Qazi Shaheen Iqbal
5. 2761/2021 titled Azra Bibi
6. 2762/2021 titled Qazi Sikandar

ATTESTED

(Signature)
Khyber Pakhtunkhwa Service Tribunal
Peshawar

ATTESTED

to be true copy
Advocate

02. Brief facts of the case are that the appellant is employee of the respondent department and performing duty as SST (BPS-16). In the year 2004, the respondents invited applications for the post of subject specialist on contract basis and after due process of selection, the appellant was appointed as Subject Specialist (BPS-17) on contract basis for a period of six months vide order dated 10-09-2005. The contract period was renewed/extended for another period vide notification dated 24.03.2006. It is worth to mention here that a notification was issued by the respondent department that in-service teachers, who are also appointed on contract basis as SS(BPS-17) should get leave without pay from their original post of SS(BPS-16), if they want to continue their contractual appointments. The appellant applied for extra ordinary leave, which was granted to the appellant by the department vide order dated 28.02.2006. It is pertinent to mention here that the entry with regard to the leave without pay was made on the service book of the appellant. After expiry of the contract period the same was once again renewed/extended vide notification dated 20.10.2007, but the department refused to sanction leave without pay to the appellant and thus the appellant was deprived to continue service as Subject Specialist on contract basis, hence the appellant returned to his original post of SS (BPS-16). Vide advertisement dated August, 2007 the posts of Subject Specialist were once again advertised but through this advertisement the in-service teachers were debarred to appear in the test, hence the appellant was also not allowed to be appointed/selected on the post of SS on contract basis. In the meanwhile the contract appointees were regularized vide notifications dated 24.10.2009 and 11.12.2009 and thereby permanently depriving the appellant from appointment on contract basis on the post of SS as well as through this regularization the right of promotion of the appellant to the post of SS was also curtailed. The appellant feeling aggrieved from the action of the respondents and from the impugned regularization dated 24.10.2009 and notification dated 11.12.2009, preferred departmental appeal

EXAMINER

ATTESTED

ATTESTED
to be true copy
Advocate's

followed by a Writ Petition No. 741-A/2010 before the Honorable Peshawar High Court Abbottabad Bench which was decided vide judgment dated 24.11.2020 with the observation that the matter pertaining to terms and conditions, therefore, the petition was dismissed being not maintainable. However, the petitioners were given liberty to knock at the door of the competent forum for redressal of their grievance, if so desired, hence the appellant filed the instant service appeal with prayers that the appellant may be considered for promotion to the post of subject specialist (BPS-17) with effect from 2009 i.e. the date when adhoc/contract SS (BPS-17) had been regularized with all back benefits including seniority.

03. Learned counsel for the appellant argued that by not promoting the appellant to the post of SS (BPS-17) w.e.f. 2009 i.e. the date when the adhoc/contract S.S (BPS-17) have been regularized with all back benefits including seniority is against the law, facts, norms of natural justice and material on the record hence not tenable and liable to be modified/rectified to the extent of the appellant be promoted w.e.f. 2009 with all back benefits including seniority; the appellant has not been treated by the respondent department in accordance with law and rules on the subject noted above and as such the respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973; that the treatment meted out to the appellant is clearly based on discrimination and malafide as such the respondents violated the principle of natural justice; that the appellant is fully entitled to be promoted to the post of SS (BPS-17) w.e.f. 2009 i.e. the date when the adhoc/contract SS have been regularized with all back benefits including seniority in light of Section 9 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 read with Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989; that the respondents violated Article 38(e) of the Constitution of Islamic Republic of Pakistan, 1973, according to which state is bound to eliminate disparity in the income and earning of individuals including

ATTESTED

ADVOCATE
KHYBER PAKHTUNKHWA

ATTESTED
to be true copy
Advocate

persons in the services of the Federation, thus in light of the above quoted Article of the Constitution the respondents are duty bound to promote the appellant to the post of SS (BPS-17) w.e.f. 2009 i.e. the date when the ad-hoc/contract Subject Specialist have been regularized with all back benefits.

04. Learned Additional Advocate General appearing on behalf of respondents has contended that the respondent department advertised some posts of Subject Specialist BS-17 purely on contract basis for a period of six months in the year, 2004; that the contract was extended for further six months in the light of notification dated 24.03.2006; that as per terms and conditions in-service teachers were not allowed to apply against the post of six month contract being regular employee of the department. He added that matter was also decided by the Hon'ble Peshawar High Court Peshawar in Writ Petition No. 2905-P/2009 titled "Atta Ullah and others Versus The Chief Secretary Khyber Pakhtunkhwa etc." which was disposed of in the following terms:-

- JW
- (i) that the Act, XVI of 2009, commonly known as (Regularization of Services) Act, 2009 is held as beneficial and remedial legislation, to which no interference is advisable hence, upheld.
 - (ii) Official respondents are directed to work out the backlog of the promotion quota as per above mentioned example, within 30 days and consider the in-service employees, till the backlog is washed out, till then there would be complete ban on fresh recruitment.

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

05. We have heard learned counsel for the parties and have perused the record.

06. Record reveals that the appellant was serving as subject specialist (BPS-16) against a regular post. In 2004 some posts of subject specialists in BPS-17 were advertised and the appellant also applied for the

ATTESTED
to be true copy
Advocate

same through proper channel and with permission of the respondents and was selected and appointed as such vide order dated 10-09-2005 for a period of six months, which was further extended for another period of six months vide order dated 24-03-2006. In the meanwhile, the respondents issued a notification dated 15-09-2005 that in-service candidates, who wish to join the contractual post of SS (BPS-17), can join the post with the condition that either they shall resign from their existing post or get leave without pay from their regular posts. In compliance the appellant requested for leave without pay, which was granted vide order dated 28-02-2006. The contractual period of the post of SS(BPS-17) was again extended for another period of six months vide order dated 20-10-2007, but the appellant was not granted leave without pay after expiry of his previous leave without pay, thus the appellant was compelled to return to his original post of SS(BPS-16). In August 2007, the posts of SS (BPS-17) were again advertised, but in-service teachers were debarred to appear in the test, but before such appointments were made, the contract appointees were regularized vide order dated 24-10-2009 and 11-12-2009.

07. In a situation, the appellant was deprived of his contractual post of SS (BPS-17) in the first place due to refusal of leave without pay, which was admissible to him as per notification dated 15-09-2005 and secondly he was deprived of regularization against that post. Stance of the appellant hold force to the effect that if he was granted leave without pay, he would have served against the contractual post of SS (BPS-17) till its regularization and he would have been regularized alongwith his batch-mates, but the respondents violated its own order dated 15-09-2005 by not granting him leave without pay. It is also worthy to note that the respondents initially allowed in-service teachers to work against the contractual post of SS(BPS-17) either to obtain leave without pay or resign from their original post and later on refused the same facility without

ATTESTED

DR. S. S. KUMAR
 Khayal
 Khayal
 Khayal

ATTESTED
 he true copy
 Khayal

supersession of order dated 15-09-2005, which however was not warranted.

08. We are of the considered opinion that the appellant has not been treated in accordance with law, as the appellant served against the contractual post of SS (BPS-17) alongwith his batch-mates for quite longer but just before its regularization, the appellant was refused leave without pay, which compelled him to return to his original position of SS(BPS-16), thus deprived him of the benefits, which were admissible to him after his regularization against SS (BPS-17) on the one hand and on the other hand the appellants promotion/seniority was also blocked by inducting huge number of BPS-17 through their regularization. The irregularity committed by the respondents was refusal of leave without pay, which however was admissible to him under notification dated 15-09-2005 and which created the whole mess, due to which the appellant suffered for the unlawful act of the respondents. Equity and fair play demands that the appellant must avail the benefits accrued to him against the contractual post of SS (BPS-17), which was later on regularized and against which the appellant served for quite longer time, but was illegally detached from such post, which however was not warranted.

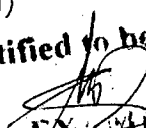
09. In view of the foregoing discussion, the instant appeal as well as connected service appeals are accepted as prayed for. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
02.02.2022


(AHMAD SULTAN TAREEN)
CHAIRMAN


(ATIQ-UR-REHMAN WAZIR)
MEMBER (E)

Certified to be true copy


EXAMINER
Khyber Pakhtunkhwa
Tribunal

ATTESTED
to be true copy
Advocate

A/1

Javed Iqbal

P/13

Ammed (A/1)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

PESHAWAR

2757/2

APPEAL NO. ~~2008~~ 120

TRIBUNAL

Khyber Pakhtunkhwa Service Tribunal

Diary No. 1697

Dated 27/1/2021

Mr. Qazi Javed Iqbal, SDM (BPS-16),
Govt. High School Laban Bandi, Haripur.

APPELLANT

VERSUS

- 1- The Secretary Elementary and Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.
- 2- The Director Elementary and Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.
- 3- The District Education Officer, District Haripur.

RESPONDENTS

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE INACTION OF THE RESPONDENTS BY NOT PROMOTING THE APPELLANT TO THE POST OF S.S (BPS-17) W-E-F 2009 I.E. FROM THE DATE WHEN THE ADHOC/ CONTRACT SUBJECT SPECIALIST (BPS-17) HAVE BEEN REGULARIZED AND AGAINST NO ACTION TAKEN ON THE DEPARTMENTAL APPEAL OF APPELLANT WITHIN THE STATUTORY PERIOD

PRAYER:

That on acceptance of this appeal the respondent may kindly be directed to consider the appellant for promotion to the post of Subject specialist (BPS-17) w-e-f. 2009 i.e. the date when the adhoc/ contract S.S (BPS-17) have been regularized with all back benefits including seniority. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

R/SHWETH:

ON FACTS:

1. That the appellant is the employee of the respondent department and performing his duty as SDM (BPS-16).
2. That in the year 2004 the respondents asked applications for the post of Subject Specialist (SS) on contract basis. That after appearing in the test conducted through EATA, the appellant was appointed on the post of S.S (BPS-17) on contract basis for a period of six months. Copies of the

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

ATTESTED
to be true copy
Advocate

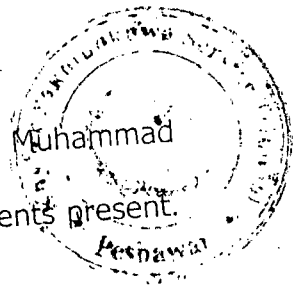
led to-day
Registrar
11/1/2021

Re-submitted to-day
and filed.

2/14

ORDER
02.02.2022


Learned counsel for the appellant present. Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present.

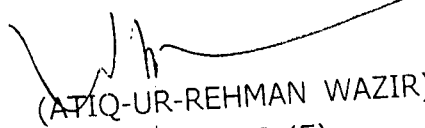


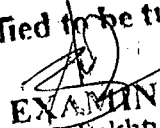
Arguments heard and record perused.

Vide our detailed judgment of today, passed in service appeal bearing No. 2756/2021 titled Abdullah Javed Versus Secretary Elementary & Secondary Education Department Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and three others", the instant appeal is accepted as prayed for. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
02.02.2022


(AHMAD SULTAN TAREEN)
CHAIRMAN


(ATIQU-UR-REHMAN WAZIR)
MEMBER (E)

Certified to be true copy

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application 07-03-22
Number of Words 850
Copying Fee 10/-
Urgent _____
Total 10/-
Name of Copyist _____
Date of Completion of Copy 09-03-22
Date of Delivery of Copy 09-03-22

ATTACHED
to be true copy
Advocate

P/15

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 2756/2021

Date of Institution ... 27.01.2021

Date of Decision ... 02.02.2022



Mr. Abdullah Javed, SST (BPS-16) ASDEO (Male), District Haripur. ... (Appellant)

VERSUS

The Secretary Elementary & Secondary Education Department Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and three others. ... (Respondents)

Noor Muhammad Khattak, Advocate ... For Appellant

Muhammad Adeel Butt, Additional Advocate General ... For respondents

AHMAD SULTAN TAREEN ... **CHAIRMAN**
ATIQ-UR-REHMAN WAZIR ... **MEMBER (EXECUTIVE)**

JUDGMENT

ATIQ-UR-REHMAN WAZIR MEMBER (E):- This single

judgment shall dispose of instant service appeal as well as the following connected service appeals, as common question of law and facts are involved therein.

1. 2757/2021 titled Qazi Javed Iqbal
2. 2758/2021 titled Nasir Ali
3. 2759/2021 titled Qazi Behram
4. 2760/2021 titled Qazi Shaheen Iqbal
5. 2761/2021 titled Azra Bibi
6. 2762/2021 titled Qazi Sikandar

ATTESTED
[Signature]
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

ATTESTED
13/02/2022
Advocate

02. Brief facts of the case are that the appellant is employee of the respondent department and performing duty as SST (BPS-16). In the year 2004, the respondents invited applications for the post of subject specialist on contract basis and after due process of selection, the appellant was appointed as Subject Specialist (BPS-17) on contract basis for a period of six months vide order dated 10-09-2005. The contract period was renewed/extended for another period vide notification dated 24.03.2006. It is worth to mention here that a notification was issued by the respondent department that in-service teachers, who are also appointed on contract basis as SS(BPS-17) should get leave without pay from their original post of SS(BPS-16), if they want to continue their contractual appointments. The appellant applied for extra ordinary leave, which was granted to the appellant by the department vide order dated 28.02.2006. It is pertinent to mention here that the entry with regard to the leave without pay was made on the service book of the appellant. After expiry of the contract period the same was once again renewed/extended vide notification dated 20.10.2007, but the department refused to sanction leave without pay to the appellant and thus the appellant was deprived to continue service as Subject Specialist on contract basis, hence the appellant returned to his original post of SS (BPS-16). Vide advertisement dated August, 2007 the posts of Subject Specialist were once again advertised but through this advertisement the in-service teachers were debarred to appear in the test, hence the appellant was also not allowed to be appointed/selected on the post of SS on contract basis. In the meanwhile the contract appointees were regularized vide notifications dated 24.10.2009 and 11.12.2009 and thereby permanently depriving the appellant from appointment on contract basis on the post of SS as well as through this regularization the right of promotion of the appellant to the post of SS was also curtailed. The appellant feeling aggrieved from the action of the respondents and from the impugned regularization dated 24.10.2009 and notification dated 11.12.2009, preferred departmental appeal

EXAMINER
 Khuzdar Pakhtunkhwa
 Service Tribunal
 Peshawar

RECEIVED
 Khuzdar Pakhtunkhwa
 Service Tribunal
 Peshawar

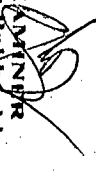
P/17

followed by a Writ Petition No. 741-A/2010 before the Honorable Peshawar High Court Abbottabad Bench which was decided vide judgment dated 24.11.2020 with the observation that the matter pertaining to terms and conditions, therefore, the petition was dismissed being not maintainable. However, the petitioners were given liberty to knock at the door of the competent forum for redressal of their grievance, if so desired, hence the appellant filed the instant service appeal with prayers that the appellant may be considered for promotion to the post of subject specialist (BPS-17) with effect from 2009 i.e. the date when adhoc/contract SS (BPS-17) had been regularized with all back benefits including seniority.

03. Learned counsel for the appellant argued that by not promoting the appellant to the post of SS (BPS-17) w.e.f. 2009 i.e. the date when the adhoc/contract S.S (BPS-17) have been regularized with all back benefits including seniority is against the law, facts, norms of natural justice and material on the record hence not tenable and liable to be modified/rectified to the extent of the appellant be promoted w.e.f. 2009 with all back benefits including seniority; the appellant has not been treated by the respondent department in accordance with law and rules on the subject noted above and as such the respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973; that the treatment meted out to the appellant is clearly based on discrimination and malafide as such the respondents violated the principle of natural justice; that the appellant is fully entitled to be promoted to the post of SS (BPS-17) w.e.f. 2009 i.e. the date when the adhoc/contract SS have been regularized with all back benefits including seniority in light of Section 9 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 read with Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989; that the respondents violated Article 38(e) of the Constitution of Islamic Republic of Pakistan, 1973, according to which state is bound to eliminate disparity in the income and earning of individuals including

ATTESTED

EX AMINER
Khyber Pakhtunkhwa



to be taken copy
Khyber Pakhtunkhwa

persons in the services of the Federation, thus in light of the above quoted Article of the Constitution the respondents are duty bound to promote the appellant to the post of SS (BPS-17) w.e.f. 2009 i.e. the date when the ad-hoc/contract Subject Specialist have been regularized with all back benefits.

04. Learned Additional Advocate General appearing on behalf of respondents has contended that the respondent department advertised some posts of Subject Specialist BS-17 purely on contract basis for a period of six months in the year, 2004; that the contract was extended for further six months in the light of notification dated 24.03.2006; that as per terms and conditions in-service teachers were not allowed to apply against the post of six month contract being regular employee of the department. He added that matter was also decided by the Hon'ble Peshawar High Court Peshawar in Writ Petition No. 2905-P/2009 titled "Atta Ullah and others Versus The Chief Secretary Khyber Pakhtunkhwa etc." which was disposed of in the following terms:-

- (i) that the Act, XVI of 2009, commonly known as (Regularization of Services) Act, 2009 is held as beneficial and remedial legislation, to which no interference is advisable hence, upheld.
- (ii) Official respondents are directed to work out the backlog of the promotion quota as per above mentioned example, within 30 days and consider the in-service employees, till the backlog is washed out, till then there would be complete ban on fresh recruitment.

TESTED

EXAMINER
Peshawar
vice Tribunal
Peshawar

05. We have heard learned counsel for the parties and have perused the record.

06. Record reveals that the appellant was serving as subject specialist (BPS-16) against a regular post. In 2004 some posts of subject specialists in BPS-17 were advertised and the appellant also applied for the

to be true copy
ADVOCATE

4/19

same through proper channel and with permission of the respondents and was selected and appointed as such vide order dated 10-09-2005 for a period of six months, which was further extended for another period of six months vide order dated 24-03-2006. In the meanwhile, the respondents issued a notification dated 15-09-2005 that in-service candidates, who wish to join the contractual post of SS (BPS-17), can join the post with the condition that either they shall resign from their existing post or get leave without pay from their regular posts. In compliance the appellant requested for leave without pay, which was granted vide order dated 28-02-2006. The contractual period of the post of SS(BPS-17) was again extended for another period of six months vide order dated 20-10-2007, but the appellant was not granted leave without pay after expiry of his previous leave without pay, thus the appellant was compelled to return to his original post of SS(BPS-16). In august 2007, the posts of SS (BPS-17) were again advertised, but in-service teachers were debarred to appear in the test, but before such appointments were made, the contract appointees were regularized vide order dated 24-10-2009 and 11-12-2009.

07. In a situation, the appellant was deprived of his contractual post of SS (BPS-17) in the first place due to refusal of leave without pay, which was admissible to him as per notification dated 15-09-2005 and secondly he was deprived of regularization against that post. Stance of the appellant hold force to the effect that if he was granted leave without pay, he would have served against the contractual post of SS (BPS-17) till its regularization and he would have been regularized alongwith his batch-mates, but the respondents violated its own order dated 15-09-2005 by not granting him leave without pay. It is also worthy to note that the respondents initially allowed in-service teachers to work against the contractual post of SS(BPS-17) either to obtain leave without pay or resign from their original post and later on refused the same facility without

MEMBER
Khyber Pakhtunkhwa
Contractual

ATTESTED

Handwritten signature and text, possibly a date or reference number.

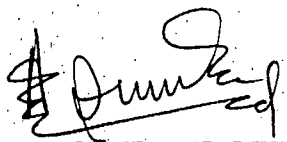
supersession of order dated 15-09-2005, which however was not warranted.

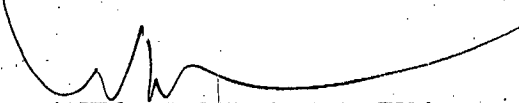
08. We are of the considered opinion that the appellant has not been treated in accordance with law, as the appellant served against the contractual post of SS (BPS-17) alongwith his batch-mates for quite longer but just before its regularization, the appellant was refused leave without pay, which compelled him to return to his original position of SS(BPS-16), thus deprived him of the benefits, which were admissible to him after his regularization against SS (BPS-17) on the one hand and on the other hand the appellants promotion/seniority was also blocked by inducting huge number of BPS-17 through their regularization. The irregularity committed by the respondents was refusal of leave without pay, which however was admissible to him under notification dated 15-09-2005 and which created the whole mess, due to which the appellant suffered for the unlawful act of the respondents. Equity and fair play demands that the appellant must avail the benefits accrued to him against the contractual post of SS (BPS-17), which was later on regularized and against which the appellant served for quite longer time, but was illegally detached from such post, which however was not warranted.

09. In view of the foregoing discussion, the instant appeal as well as connected service appeals are accepted as prayed for. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
02.02.2022

to be truly
Advocate's


(AHMAD SULTAN TAREEN)
CHAIRMAN


IQBAL-UR-REHMAN WAZIR)
MEMBER (E)

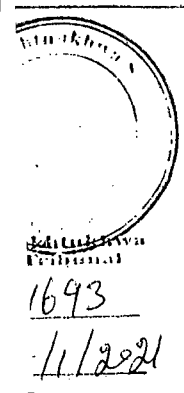
Certified to be true copy
EXAMINER
Khayber Pakhtunkhwa
Service Tribunal.
Peshawar

A/2

P/21

Ammeed 1/2

Judgment



**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR**

APPEAL NO. 2758 /2021

Mr. Nasir Ali, SST (BPS-16),
Govt. High School No.2, Haripur.

..... APPELLANT

VERSUS

- 1- The Secretary Elementary and Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.
- 2- The Director Elementary and Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.
- 3- The District Education Officer, District Haripur.

..... RESPONDENTS

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE INACTION OF THE RESPONDENTS BY NOT PROMOTING THE APPELLANT TO THE POST OF S.S (BPS-17) W-E-F 2009 I.E. FROM THE DATE WHEN THE ADHOC/ CONTRACT SUBJECT SPECIALIST (BPS-17) HAVE BEEN REGULARIZED AND AGAINST NO ACTION TAKEN ON THE DEPARTMENTAL APPEAL OF APPELLANT WITHIN THE STATUTORY PERIOD

PRAYER:

That on acceptance of this appeal the respondent may kindly be directed to consider the appellant for promotion to the post of Subject specialist (BPS-17) w-e-f. 2009 i.e. the date when the adhoc/ contract S.S (BPS-17) have been regularized with all back benefits including seniority. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

Filed to-day
Registrar
7/11/2021

**R/SHWETH:
ON FACTS:**

1. That the appellant is the employee of the respondent department and performing his duty as W.I (BPS-16).
2. That in the year 2004 the respondents asked applications for the post of Subject Specialist (SS) on contract basis. That after appearing in the test conducted through EATA, the appellant was appointed on the post of S.S (BPS-17) on contract basis for a period of six months. Copies of the

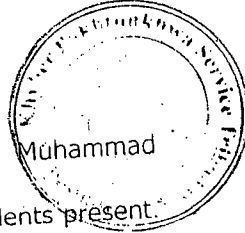
ATTESTED
Khyber Pakhtunkhwa Service Tribunal Peshawar
ATTESTED
Registrar
Khyber Pakhtunkhwa Service Tribunal Peshawar

Re-submitted to-day and filed.

ATTESTED
to be true copy
Advocate

P/22

ORDER
02.02.2022

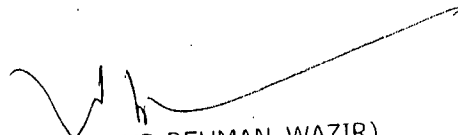



Learned counsel for the appellant present. Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present.
Arguments heard and record perused.

Vide our detailed judgment of today, passed in service appeal bearing No. 2756/2021 titled Abdullah Javed Versus Secretary "Elementary & Secondary Education Department Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and three others", the instant appeal is accepted as prayed for. Parties are left to bear their own costs. File be consigned to record room.

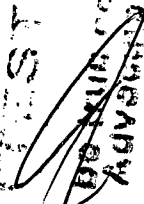
ANNOUNCED
02.02.2022


(AHMAD SULTAN TAREEN)
CHAIRMAN


(ATIQU-UR-REHMAN WAZIR)
MEMBER (E)

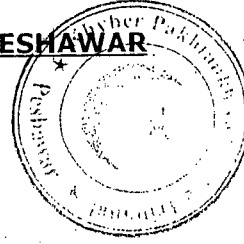
Certified to be true copy

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application 07-03-22
Number of Witnesses 800
Copying Fee 10/-
Urgent 10/-
Total 10/-
Name of Copyist _____
Date of Completion of Copy 09-03-22
Date of Delivery of Copy 09-03-22

ATTENDED

to be kept copy
Advocate

P/23

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR



Service Appeal No. 2756/2021

Date of Institution ... 27.01.2021

Date of Decision ... 02.02.2022

Mr. Abdullah Javed, SST (BPS-16) ASDEO (Male), District Haripur.
... (Appellant)

VERSUS

The Secretary Elementary & Secondary Education Department Government of
Khyber Pakhtunkhwa through Chief Secretary, Peshawar and three others.
... (Respondents)

Noor Muhammad Khattak,
Advocate ... For Appellant

Muhammad Adeel Butt,
Additional Advocate.General ... For respondents

AHMAD SULTAN TAREEN ... **CHAIRMAN**
ATIQ-UR-REHMAN WAZIR ... **MEMBER (EXECUTIVE)**

JUDGMENT

ATIQ-UR-REHMAN WAZIR MEMBER (E):- This single

judgment shall dispose of instant service appeal as well as the following
connected service appeals, as common question of law and facts are involved
therein.

1. 2757/2021 titled Qazi Javed Iqbal
2. 2758/2021 titled Nasir Ali
3. 2759/2021 titled Qazi Behram
4. 2760/2021 titled Qazi Shaheen Iqbal
5. 2761/2021 titled Azra Bibi
6. 2762/2021 titled Qazi Sikandar

ATTESTED
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

ATTESTED
to be true copy
Advocate

P/24

02. Brief facts of the case are that the appellant is employee of the respondent department and performing duty as SST (BPS-16). In the year 2004, the respondents invited applications for the post of subject specialist on contract basis and after due process of selection, the appellant was appointed as Subject Specialist (BPS-17) on contract basis for a period of six months vide order dated 10-09-2005. The contract period was renewed/extended for another period vide notification dated 24.03.2006. It is worth to mention here that a notification was issued by the respondent department that in-service teachers, who are also appointed on contract basis as SS(BPS-17) should get leave without pay from their original post of SS(BPS-16), if they want to continue their contractual appointments. The appellant applied for extra ordinary leave, which was granted to the appellant by the department vide order dated 28.02.2006. It is pertinent to mention here that the entry with regard to the leave without pay was made on the service book of the appellant. After expiry of the contract period the same was once again renewed/extended vide notification dated 20.10.2007, but the department refused to sanction leave without pay to the appellant and thus the appellant was deprived to continue service as Subject Specialist on contract basis, hence the appellant returned to his original post of SS (BPS-16). Vide advertisement dated August, 2007 the posts of Subject Specialist were once again advertised but through this advertisement the in-service teachers were debarred to appear in the test, hence the appellant was also not allowed to be appointed/selected on the post of SS on contract basis. In the meanwhile the contract appointees were regularized vide notifications dated 24.10.2009 and 11.12.2009 and thereby permanently depriving the appellant from appointment on contract basis on the post of SS as well as through this regularization the right of promotion of the appellant to the post of SS was also curtailed. The appellant feeling aggrieved from the action of the respondents and from the impugned regularization dated 24.10.2009 and notification dated 11.12.2009, preferred departmental appeal

EXAMINER
 Khairul Pakhtunkhwa
 Senior Technical
 Services Division
 Peshawar

ATTESTED

ATTESTED
 to be true copy
 Advocate

followed by a Writ Petition No. 741-A/2010 before the Honorable Peshawar High Court Abbottabad Bench which was decided vide judgment dated 24.11.2020 with the observation that the matter pertaining to terms and conditions; therefore, the petition was dismissed being not maintainable. However, the petitioners were given liberty to knock at the door of the competent forum for redressal of their grievance, if so desired, hence the appellant filed the instant service appeal with prayers that the appellant may be considered for promotion to the post of subject specialist (BPS-17) with effect from 2009 i.e. the date when adhoc/contract SS (BPS-17) had been regularized with all back benefits including seniority.

03. Learned counsel for the appellant argued that by not promoting the appellant to the post of SS (BPS-17) w.e.f. 2009 i.e. the date when the adhoc/contract S.S (BPS-17) have been regularized with all back benefits including seniority is against the law, facts, norms of natural justice and material on the record hence not tenable and liable to be modified/rectified to the extent of the appellant be promoted w.e.f. 2009 with all back benefits including seniority; the appellant has not been treated by the respondent department in accordance with law and rules on the subject noted above and as such the respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973; that the treatment meted out to the appellant is clearly based on discrimination and malafide as such the respondents violated the principle of natural justice; that the appellant is fully entitled to be promoted to the post of SS (BPS-17) w.e.f. 2009 i.e. the date when the adhoc/contract SS have been regularized with all back benefits including seniority in light of Section 9 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 read with Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989; that the respondents violated Article 38(e) of the Constitution of Islamic Republic of Pakistan, 1973, according to which state is bound to eliminate disparity in the income and earning of individuals including

ATTESTED
 MEMBER
 KHYBER PAKHTUNKHWA
 SERVICE TRIBUNAL

ATTESTED
 to be true copy
 Advocate

persons in the services of the Federation, thus in light of the above quoted Article of the Constitution the respondents are duty bound to promote the appellant to the post of SS (BPS-17) w.e.f. 2009 i.e. the date when the ad-hoc/contract Subject Specialist have been regularized with all back benefits.

04. Learned Additional Advocate General appearing on behalf of respondents has contended that the respondent department advertised some posts of Subject Specialist BS-17 purely on contract basis for a period of six months in the year, 2004; that the contract was extended for further six months in the light of notification dated 24.03.2006; that as per terms and conditions in-service teachers were not allowed to apply against the post of six month contract being regular employee of the department. He added that matter was also decided by the Hon'ble Peshawar High Court Peshawar in Writ Petition No. 2905-P/2009 titled "Atta Ullah and others Versus The Chief Secretary Khyber Pakhtunkhwa etc." which was disposed of in the following terms:-

- (i) that the Act, XVI of 2009, commonly known as (Regularization of Services) Act, 2009 is held as beneficial and remedial legislation, to which no interference is advisable hence, upheld.
- (ii) Official respondents are directed to work out the backlog of the promotion quota as per above mentioned example, within 30 days and consider the in-service employees, till the backlog is washed out, till then there would be complete ban on fresh recruitment.

W

ATTESTED
 EXAMINER
 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar

05. We have heard learned counsel for the parties and have perused the record.

06. Record reveals that the appellant was serving as subject specialist (BPS-16) against a regular post. In 2004 some posts of subject specialists in BPS-17 were advertised and the appellant also applied for the

ATTESTED
 to be true copy
 Advocate

P/27

same through proper channel and with permission of the respondents and was selected and appointed as such vide order dated 10-09-2005 for a period of six months, which was further extended for another period of six months vide order dated 24-03-2006. In the meanwhile, the respondents issued a notification dated 15-09-2005 that in-service candidates, who wish to join the contractual post of SS (BPS-17), can join the post with the condition that either they shall resign from their existing post or get leave without pay from their regular posts. In compliance the appellant requested for leave without pay, which was granted vide order dated 28-02-2006. The contractual period of the post of SS(BPS-17) was again extended for another period of six months vide order dated 20-10-2007, but the appellant was not granted leave without pay after expiry of his previous leave without pay, thus the appellant was compelled to return to his original post of SS(BPS-16). In August 2007, the posts of SS (BPS-17) were again advertised, but in-service teachers were debarred to appear in the test, but before such appointments were made, the contract appointees were regularized vide order dated 24-10-2009 and 11-12-2009.

Handwritten mark

07. In a situation, the appellant was deprived of his contractual post of SS (BPS-17) in the first place due to refusal of leave without pay, which was admissible to him as per notification dated 15-09-2005 and secondly he was deprived of regularization against that post. Stance of the appellant hold force to the effect that if he was granted leave without pay, he would have served against the contractual post of SS (BPS-17) till its regularization and he would have been regularized alongwith his batch-mates, but the respondents violated its own order dated 15-09-2005 by not granting him leave without pay. It is also worthy to note that the respondents initially allowed in-service teachers to work against the contractual post of SS(BPS-17) either to obtain leave without pay or resign from their original post and later on refused the same facility without

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

ATTESTED

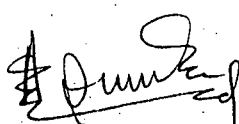
to be true copy
Advocate

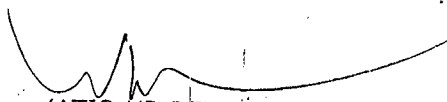
supersession of order dated 15-09-2005, which however was not warranted.

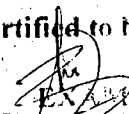
08. We are of the considered opinion that the appellant has not been treated in accordance with law, as the appellant served against the contractual post of SS (BPS-17) alongwith his batch-mates for quite longer but just before its regularization, the appellant was refused leave without pay, which compelled him to return to his original position of SS(BPS-16), thus deprived him of the benefits, which were admissible to him after his regularization against SS (BPS-17) on the one hand and on the other hand the appellants promotion/seniority was also blocked by inducting huge number of BPS-17 through their regularization. The irregularity committed by the respondents was refusal of leave without pay, which however was admissible to him under notification dated 15-09-2005 and which created the whole mess, due to which the appellant suffered for the unlawful act of the respondents. Equity and fair play demands that the appellant must avail the benefits accrued to him against the contractual post of SS (BPS-17), which was later on regularized and against which the appellant served for quite longer time, but was illegally detached from such post, which however was not warranted.

09. In view of the foregoing discussion, the instant appeal as well as connected service appeals are accepted as prayed for. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
02.02.2022


(AHMAD SULTAN TAREEN)
CHAIRMAN


(ATIQ-UR-REHMAN WAZIR)
MEMBER (E)

Certified to be true copy

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal.

ACCEPTED
to be true copy
Advocate

A/3

Judged

P/29 Annex A/3

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

TRIBUNAL

Khyber Pakhtunkhwa Service Tribunal

Diary No. 1692

Dated 27/1/2021

APPEAL NO. 2759 /20

Mr. Qazi Behram, SCT (BPS-16),
Govt. High School Laban Bandi, Haripur.

APPELLANT

VERSUS

- 1- The Secretary Elementary and Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.
- 2- The Director Elementary and Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.
- 3- The District Education Officer, District Haripur.

RESPONDENTS

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE INACTION OF THE RESPONDENTS BY NOT PROMOTING THE APPELLANT TO THE POST OF S.S (BPS-17) W-E-F 2009 I.E. FROM THE DATE WHEN THE ADHOC/ CONTRACT SUBJECT SPECIALIST (BPS-17) HAVE BEEN REGULARIZED AND AGAINST NO ACTION TAKEN ON THE DEPARTMENTAL APPEAL OF APPELLANT WITHIN THE STATUTORY PERIOD

PRAYER:

That on acceptance of this appeal the respondent may kindly be directed to consider the appellant for promotion to the post of Subject specialist (BPS-17) w-e-f. 2009 i.e. the date when the adhoc/ contract S.S (BPS-17) have been regularized with all back benefits including seniority. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

led to-day
Registrar
21/1/2021

**REASONS/SHWETH:
ON FACTS:**

- 1. That the appellant is the employee of the respondent department and performing his duty as SCT (BPS-16).
- 2. That in the year 2004 the respondents asked applications for the post of Subject Specialist (SS) on contract basis. That after appearing in the test conducted through EATA, the appellant was appointed on the post of S.S (BPS-17) on contract basis for a period of six months. Copies of the

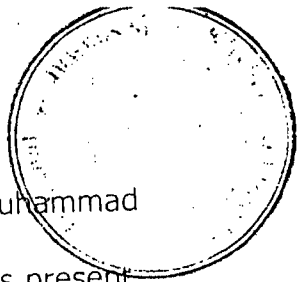
ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Re-submitted to-day and filed.

To be true copy

2/30

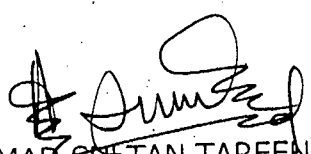



ORDER
02.02.2022

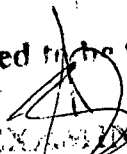
Learned counsel for the appellant present. Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today, passed in service appeal bearing No. 2756/2021 titled Abdullah Javed Versus Secretary Elementary & Secondary Education Department Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and three others", the instant appeal is accepted as prayed for. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
02.02.2022


(AHMAD SULTANA TAREEN)
CHAIRMAN


(ATIQ-UR-REHMAN WAZIR)
MEMBER (E)

Certified to be true copy

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 07-03-22
Number of Copies 800
Copy for 10/r
Urgent 10/r
Total 10/r
Name of Applicant _____
Date of Collection of Copy 07-03-22
Date of Delivery of Copy 07-03-22

is the true copy
Khyber Pakhtunkhwa Service Tribunal

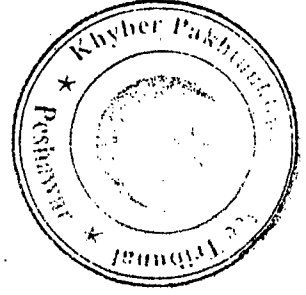
8/31

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 2756/2021

Date of Institution ... 27.01.2021

Date of Decision ... 02.02.2022



Mr. Abdullah Javed, SST (BPS-16) ASDEO (Male), District Haripur.

... (Appellant)

VERSUS

The Secretary Elementary & Secondary Education Department Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and three others.

... (Respondents)

Noor Muhammad Khattak,
Advocate

... For Appellant

Muhammad Adeel Butt,
Additional Advocate General

... For respondents

AHMAD SULTAN TAREEN
ATIQU-UR-REHMAN WAZIR

... **CHAIRMAN**
... **MEMBER (EXECUTIVE)**


JUDGMENT

ATIQU-UR-REHMAN WAZIR MEMBER (E):-

This single

judgment shall dispose of instant service appeal as well as the following connected service appeals, as common question of law and facts are involved therein.

1. 2757/2021 titled Qazi Javed Iqbal
2. 2758/2021 titled Nasir Ali
3. 2759/2021 titled Qazi Behram
4. 2760/2021 titled Qazi Shaheen Iqbal
5. 2761/2021 titled Azra Bibi
6. 2762/2021 titled Qazi Sikandar

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

ATTESTED
to be true copy
Advocate

02. Brief facts of the case are that the appellant is employee of the respondent department and performing duty as SST (BPS-16). In the year 2004, the respondents invited applications for the post of subject specialist on contract basis and after due process of selection, the appellant was appointed as Subject Specialist (BPS-17) on contract basis for a period of six months vide order dated 10-09-2005. The contract period was renewed/extended for another period vide notification dated 24.03.2006. It is worth to mention here that a notification was issued by the respondent department that in-service teachers, who are also appointed on contract basis as SS(BPS-17) should get leave without pay from their original post of SS(BPS-16), if they want to continue their contractual appointments. The appellant applied for extraordinary leave, which was granted to the appellant by the department vide order dated 28.02.2006. It is pertinent to mention here that the entry with regard to the leave without pay was made on the service book of the appellant. After expiry of the contract period the same was once again renewed/extended vide notification dated 20.10.2007, but the department refused to sanction leave without pay to the appellant and thus the appellant was deprived to continue service as Subject Specialist on contract basis, hence the appellant returned to his original post of SS (BPS-16). Vide advertisement dated August, 2007 the posts of Subject Specialist were once again advertised but through this advertisement the in-service teachers were debarred to appear in the test, hence the appellant was also not allowed to be appointed/selected on the post of SS on contract basis. In the meanwhile the contract appointees were regularized vide notifications dated 24.10.2009 and 11.12.2009 and thereby permanently depriving the appellant from appointment on contract basis on the post of SS as well as through this regularization the right of promotion of the appellant to the post of SS was also curtailed. The appellant feeling aggrieved from the action of the respondents and from the impugned regularization dated 24.10.2009 and notification dated 11.12.2009, preferred departmental appeal

Khaylan P. K. J. Swar

ATTESTED

ADDITIONAL COPY

followed by a Writ Petition No. 741-A/2010 before the Honorable Peshawar High Court Abbottabad Bench which was decided vide judgment dated 24.11.2020 with the observation that the matter pertaining to terms and conditions, therefore, the petition was dismissed being not maintainable. However, the petitioners were given liberty to knock at the door of the competent forum for redressal of their grievance, if so desired, hence the appellant filed the instant service appeal with prayers that the appellant may be considered for promotion to the post of subject specialist (BPS-17) with effect from 2009 i.e. the date when adhoc/contract SS (BPS-17) had been regularized with all back benefits including seniority.

03. Learned counsel for the appellant argued that by not promoting the appellant to the post of SS (BPS-17) w.e.f. 2009 i.e. the date when the adhoc/contract S.S (BPS-17) have been regularized with all back benefits including seniority is against the law, facts, norms of natural justice and material on the record hence not tenable and liable to be modified/rectified to the extent of the appellant be promoted w.e.f. 2009 with all back benefits including seniority; the appellant has not been treated by the respondent department in accordance with law and rules on the subject noted above and as such the respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973; that the treatment meted out to the appellant is clearly based on discrimination and malafide as such the respondents violated the principle of natural justice; that the appellant is fully entitled to be promoted to the post of SS (BPS-17) w.e.f. 2009 i.e. the date when the adhoc/contract SS have been regularized with all back benefits including seniority in light of Section 9 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 read with Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989; that the respondents violated Article 38(e) of the Constitution of Islamic Republic of Pakistan, 1973, according to which state is bound to eliminate disparity in the income and earning of individuals including

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal

ATTESTED
SECRETARY

P/34

same through proper channel and with permission of the respondents and was selected and appointed as such vide order dated 10-09-2005 for a period of six months, which was further extended for another period of six months vide order dated 24-03-2006. In the meanwhile, the respondents issued a notification dated 15-09-2005 that in-service candidates, who wish to join the contractual post of SS (BPS-17), can join the post with the condition that either they shall resign from their existing post or get leave without pay from their regular posts. In compliance the appellant requested for leave without pay, which was granted vide order dated 28-02-2006. The contractual period of the post of SS(BPS-17) was again extended for another period of six months vide order dated 20-10-2007, but the appellant was not granted leave without pay after expiry of his previous leave without pay, thus the appellant was compelled to return to his original post of SS(BPS-16). In August 2007, the posts of SS (BPS-17) were again advertised, but in-service teachers were debarred to appear in the test, but before such appointments were made, the contract appointees were regularized vide order dated 24-10-2009 and 11-12-2009.

07. In a situation, the appellant was deprived of his contractual post of SS (BPS-17) in the first place due to refusal of leave without pay, which was admissible to him as per notification dated 15-09-2005 and secondly he was deprived of regularization against that post. Stance of the appellant hold force to the effect that if he was granted leave without pay, he would have served against the contractual post of SS (BPS-17) till its regularization and he would have been regularized alongwith his batch-mates, but the respondents violated its own order dated 15-09-2005 by not granting him leave without pay. It is also worthy to note that the respondents initially allowed in-service teachers to work against the contractual post of SS(BPS-17) either to obtain leave without pay or resign from their original post and later on refused the same facility without

ATTESTED
 EXAMINER
 ...

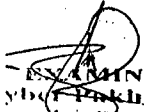
to be true
 ...

persons in the services of the Federation, thus in light of the above quoted Article of the Constitution the respondents are duty bound to promote the appellant to the post of SS (BPS-17) w.e.f. 2009 i.e. the date when the ad-hoc/contract Subject Specialist have been regularized with all back benefits.

04. Learned Additional Advocate General appearing on behalf of respondents has contended that the respondent department advertised some posts of Subject Specialist BS-17 purely on contract basis for a period of six months in the year, 2004; that the contract was extended for further six months in the light of notification dated 24.03.2006; that as per terms and conditions in-service teachers were not allowed to apply against the post of six month contract being regular employee of the department. He added that matter was also decided by the Hon'ble Peshawar High Court Peshawar in Writ Petition No. 2905-P/2009 titled "Atta Ullah and others Versus The Chief Secretary Khyber Pakhtunkhwa etc." which was disposed of in the following terms:-

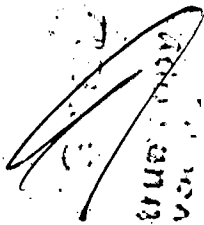
- J.W.
- (i) that, the Act, XVI of 2009, commonly known as (Regularization of Services) Act, 2009 is held as beneficial and remedial legislation, to which no interference is advisable hence, upheld.
 - (ii) Official respondents are directed to work out the backlog of the promotion quota as per above mentioned example, within 30 days and consider the in-service employees, till the backlog is washed out, till then there would be complete ban on fresh recruitment.

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

05. We have heard learned counsel for the parties and have perused the record.

06. Record reveals that the appellant was serving as subject specialist (BPS-16) against a regular post. In 2004 some posts of subject specialists in BPS-17 were advertised and the appellant also applied for the

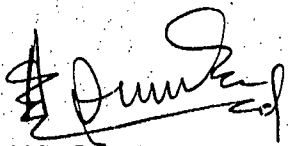

Additional Advocate General


supersession of order dated 15-09-2005, which however was not warranted.

08. We are of the considered opinion that the appellant has not been treated in accordance with law, as the appellant served against the contractual post of SS (BPS-17) alongwith his batch-mates for quite longer but just before its regularization, the appellant was refused leave without pay, which compelled him to return to his original position of SS(BPS-16), thus deprived him of the benefits, which were admissible to him after his regularization against SS (BPS-17) on the one hand and on the other hand the appellants promotion/seniority was also blocked by inducting huge number of BPS-17 through their regularization. The irregularity committed by the respondents was refusal of leave without pay, which however was admissible to him under notification dated 15-09-2005 and which created the whole mess, due to which the appellant suffered for the unlawful act of the respondents. Equity and fair play demands that the appellant must avail the benefits accrued to him against the contractual post of SS (BPS-17), which was later on regularized and against which the appellant served for quite longer time, but was illegally detached from such post, which however was not warranted.

09. In view of the foregoing discussion, the instant appeal as well as connected service appeals are accepted as prayed for. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
02.02.2022


(AHMAD SULTAN TAREEN)
CHAIRMAN


(ATIQ-UR-REHMAN WAZIR)
MEMBER (E)

Certified to be true copy


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal

Copy of
Advocate
to be returned
to
Advocate

A/4
Judgment 2/3/21

Amma A/4

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRI
PESHAWAR**



APPEAL NO. 2760 / 2021

Mr. Qazi Shaheen Iqbal, SS (Pak Studies) (BPS-17),
R.I.T.E (Male) Haripur.

Kb
Di
D

15
1221

APPELLANT

VERSUS

- 1- The Secretary Elementary and Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.
- 2- The Director Elementary and Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.
- 3- The District Education Officer, District Haripur.

RESPONDENTS

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE INACTION OF THE RESPONDENTS BY NOT PROMOTING THE APPELLANT TO THE POST OF S.S (BPS-17) W-E-F 2009 I.E. FROM THE DATE WHEN THE ADHOC/ CONTRACT SUBJECT SPECIALIST (BPS-17) HAVE BEEN REGULARIZED AND AGAINST NO ACTION TAKEN ON THE DEPARTMENTAL APPEAL OF APPELLANT WITHIN THE STATUTORY PERIOD

PRAYER:

That on acceptance of this appeal the respondent may kindly be directed to consider the appellant for promotion to the post of Subject specialist (BPS-17) w-e-f. 2009 i.e. the date when the adhoc/ contract S.S (BPS-17) have been regularized with all back benefits including seniority. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

led to-day
Registrar
27/11/2021

**R/SWETH:
ON FACTS:**

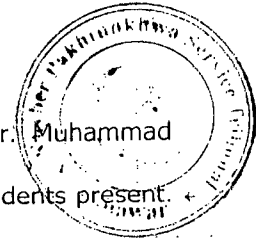
- 1. That the appellant is the employee of the respondent department and performing his duty as SET (BPS-17).
- 2. That in the year 2004 the respondents asked applications for the post of Subject Specialist (SS) on contract basis. That after appearing in the test conducted through EATA, the appellant was appointed on the post of S.S (BPS-17) on contract basis for a period of six months. Copies of the

ATTESTED
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

ATTESTED
to be the copy
AUGUST 2021

Resubmitted to-day
and filed.
27/11/2021

ORDER
02.02.2022

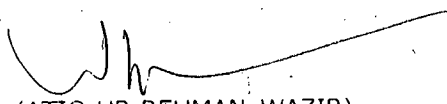


Learned counsel for the appellant present. Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present. Arguments heard and record perused.

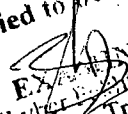
Vide our detailed judgment of today, passed in service appeal bearing No. 2756/2021 titled Abdullah Javed Versus Secretary Elementary & Secondary Education Department Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and three others", the instant appeal is accepted as prayed for. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
02.02.2022

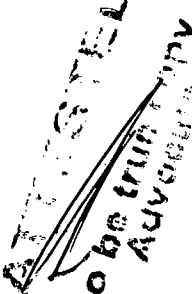

(AHMAD SULTAN TAREEN)
CHAIRMAN


(ATIQ-UR-REHMAN WAZIR)
MEMBER (E)

Certified to be true copy


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 07-03-22
Number of Words 800
Copying Fee 10/-
Urgent _____
Total 10/-
Name of Copyist _____
Date of Completion of Copy 09-03-22
Date of Delivery of Copy 09-03-22


ADVOCATE
to be true copy
Advocate

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 2756/2021

Date of Institution ... 27.01.2021

Date of Decision ... 02.02.2022



Mr. Abdullah Javed, SST (BPS-16) ASDEO (Male), District Haripur. ... (Appellant)

VERSUS

The Secretary Elementary & Secondary Education Department Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and three others. ... (Respondents)

Noor Muhammad Khattak, Advocate ... For Appellant

Muhammad Adeel Butt, Additional Advocate General ... For respondents

AHMAD SULTAN TAREEN ... **CHAIRMAN**
ATIQ-UR-REHMAN WAZIR ... **MEMBER (EXECUTIVE)**

JUDGMENT

ATIQ-UR-REHMAN WAZIR MEMBER (E):- This single

judgment shall dispose of instant service appeal as well as the following connected service appeals, as common question of law and facts are involved therein.

1. 2757/2021 titled Qazi Javed Iqbal
2. 2758/2021 titled Nasir Ali
3. 2759/2021 titled Qazi Behram
4. 2760/2021 titled Qazi Shaheen Iqbal
5. 2761/2021 titled Azra Bibi
6. 2762/2021 titled Qazi Sikandar

ATTESTED
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

ATIQ-UR-REHMAN WAZIR
MEMBER (E)
Advocate

P/40

02. Brief facts of the case are that the appellant is employee of the respondent department and performing duty as SST (BPS-15). In the year 2004, the respondents invited applications for the post of subject specialist on contract basis and after due process of selection, the appellant was appointed as Subject Specialist (BPS-17) on contract basis for a period of six months vide order dated 10-09-2005. The contract period was renewed/extended for another period vide notification dated 24.03.2006. It is worth to mention here that a notification was issued by the respondent department that in-service teachers, who are also appointed on contract basis as SS(BPS-17) should get leave without pay from their original post of SS(BPS-16), if they want to continue their contractual appointments. The appellant applied for extraordinary leave, which was granted to the appellant by the department vide order dated 28.02.2006. It is pertinent to mention here that the entry with regard to the leave without pay was made on the service book of the appellant. After expiry of the contract period the same was once again renewed/extended vide notification dated 20.10.2007, but the department refused to sanction leave without pay to the appellant and thus the appellant was deprived to continue service as Subject Specialist on contract basis, hence the appellant returned to his original post of SS (BPS-16). Vide advertisement dated August, 2007 the posts of Subject Specialist were once again advertised but through this advertisement the in-service teachers were debarred to appear in the test, hence the appellant was also not allowed to be appointed/selected on the post of SS on contract basis. In the meanwhile the contract appointees were regularized vide notifications dated 24.10.2009 and 11.12.2009 and thereby permanently depriving the appellant from appointment on contract basis on the post of SS as well as through this regularization the right of promotion of the appellant to the post of SS was also curtailed. The appellant feeling aggrieved from the action of the respondents and from the impugned regularization dated 24.10.2009 and notification dated 11.12.2009, preferred departmental appeal

EXAMINER
 Khwairakhim
 Service Tribunal
 Peshawar

ATTESTED

ATTESTED
 TO BE TRUE
 10/11/2010

followed by a Writ Petition No. 741-A/2010 before the Honorable Peshawar High Court Abbottabad Bench which was decided vide judgment dated 24.11.2020 with the observation that the matter pertaining to terms and conditions, therefore, the petition was dismissed being not maintainable. However, the petitioners were given liberty to knock at the door of the competent forum for redressal of their grievance, if so desired, hence the appellant filed the instant service appeal with prayers that the appellant may be considered for promotion to the post of subject specialist (BPS-17) with effect from 2009 i.e. the date when adhoc/contract SS (BPS-17) had been regularized with all back benefits including seniority.

03. Learned counsel for the appellant argued that by not promoting the appellant to the post of SS (BPS-17) w.e.f. 2009 i.e. the date when the ad-hoc/contract S.S (BPS-17) have been regularized with all back benefits including seniority is against the law, facts, norms of natural justice and material on the record hence not tenable and liable to be modified/rectified to the extent of the appellant be promoted w.e.f. 2009 with all back benefits including seniority; the appellant has not been treated by the respondent department in accordance with law and rules on the subject noted above and as such the respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973; that the treatment meted out to the appellant is clearly based on discrimination and malafide as such the respondents violated the principle of natural justice; that the appellant is fully entitled to be promoted to the post of SS (BPS-17) w.e.f. 2009 i.e. the date when the ad-hoc/contract SS have been regularized with all back benefits including seniority in light of Section 9 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 read with Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989; that the respondents violated Article 38(e) of the Constitution of Islamic Republic of Pakistan, 1973, according to which state is bound to eliminate disparity in the income and earning of individuals including

EX OFFICIO
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

ATTESTED

ATTESTED
TO THE CLERK
BY

persons in the services of the Federation, thus in light of the above quoted Article of the Constitution the respondents are duty bound to promote the appellant to the post of SS (BPS-17) w.e.f. 2009 i.e. the date when the ad-hoc/contract Subject Specialist have been regularized with all back benefits.

04. Learned Additional Advocate General appearing on behalf of respondents has contended that the respondent department advertised some posts of Subject Specialist BS-17 purely on contract basis for a period of six months in the year, 2004; that the contract was extended for further six months in the light of notification dated 24.03.2006; that as per terms and conditions in-service teachers were not allowed to apply against the post of six month contract being regular employee of the department. He added that matter was also decided by the Hon'ble Peshawar High Court Peshawar in Writ Petition No. 2905-P/2009 titled "Atta Ullah and others Versus The Chief Secretary Khyber Pakhtunkhwa etc." which was disposed of in the following terms:-

- (i) that the Act, XVI of 2009, commonly known as (Regularization of Services) Act, 2009 is held as beneficial and remedial legislation, to which no interference is advisable hence, upheld.
- (ii) Official respondents are directed to work out the backlog of the promotion quota as per above mentioned example, within 30 days and consider the in-service employees, till the backlog is washed out, till then there would be complete ban on fresh recruitment.

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Services Tribunal
Peshawar

05. We have heard learned counsel for the parties and have perused the record.

06. Record reveals that the appellant was serving as subject specialist (BPS-16) against a regular post. In 2004 some posts of subject specialists in BPS-17 were advertised and the appellant also applied for the

ATTESTED
to be true copy
Advocate

same through proper channel and with permission of the respondents and was selected and appointed as such vide order dated 10-09-2005 for a period of six months, which was further extended for another period of six months vide order dated 24-03-2006. In the meanwhile, the respondents issued a notification dated 15-09-2005 that in-service candidates, who wish to join the contractual post of SS (BPS-17), can join the post with the condition that either they shall resign from their existing post or get leave without pay from their regular posts. In compliance the appellant requested for leave without pay, which was granted vide order dated 28-02-2006. The contractual period of the post of SS(BPS-17) was again extended for another period of six months vide order dated 20-10-2007, but the appellant was not granted leave without pay after expiry of his previous leave without pay, thus the appellant was compelled to return to his original post of SS(BPS-16). In august 2007, the posts of SS (BPS-17) were again advertised, but in-service teachers were debarred to appear in the test, but before such appointments were made, the contract appointees were regularized vide order dated 24-10-2009 and 11-12-2009.

07. In a situation, the appellant was deprived of his contractual post of SS (BPS-17) in the first place due to refusal of leave without pay, which was admissible to him as per notification dated 15-09-2005 and secondly he was deprived of regularization against that post. Stance of the appellant hold force to the effect that if he was granted leave without pay, he would have served against the contractual post of SS (BPS-17) till its regularization and he would have been regularized alongwith his batch-mates, but the respondents violated its own order dated 15-09-2005 by not granting him leave without pay. It is also worthy to note that the respondents initially allowed in-service teachers to work against the contractual post of SS(BPS-17) either to obtain leave without pay or resign from their original post and later on refused the same facility without

EX AMPLER
Khyber Pakhtunkhwa
Services Tribunal
Peshawar

ATTESTED

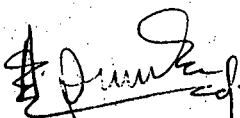
~~ATTESTED~~
to be true copy
ADVOCATE

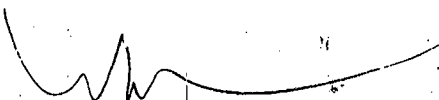
supersession of order dated 15-09-2005, which however was not warranted.

08. We are of the considered opinion that the appellant has not been treated in accordance with law, as the appellant served against the contractual post of SS (BPS-17) alongwith his batch-mates for quite longer but just before its regularization, the appellant was refused leave without pay, which compelled him to return to his original position of SS(BPS-16), thus deprived him of the benefits, which were admissible to him after his regularization against SS (BPS-17) on the one hand and on the other hand the appellants promotion/seniority was also blocked by inducting huge number of BPS-17 through their regularization. The irregularity committed by the respondents was refusal of leave without pay, which however was admissible to him under notification dated 15-09-2005 and which created the whole mess, due to which the appellant suffered for the unlawful act of the respondents. Equity and fair play demands that the appellant must avail the benefits accrued to him against the contractual post of SS (BPS-17), which was later on regularized and against which the appellant served for quite longer time; but was illegally detached from such post, which however was not warranted.

09. In view of the foregoing discussion, the instant appeal as well as connected service appeals are accepted as prayed for. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
02.02.2022


(AHMAD SULTAN TAREEN)
CHAIRMAN


(ATIQ-UR-REHMAN WAZIR)
MEMBER (E)

Certified to be true copy


DIRECTOR
Khyber Pakhtunkhwa
Service Tribunal

ATTACHED
BE THE COPY
Advocate

A/5

P/45

Ammer A/5

judgment

BEFORE THE KHYBER PAKHTUNKHWA SERVICE PESHAWAR

2761

APPEAL NO. ~~2759~~ /2021



1700

7/11/2021

Mr. Azra BiBi, SCT (BPS-16),
Govt. Girls High School, Sarai Saleh, Haripur.

..... APPELLANT

VERSUS

- 1- The Secretary Elementary and Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.
- 2- The Director Elementary and Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.
- 3- The District Education Officer, District Haripur.

..... RESPONDENTS

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE INACTION OF THE RESPONDENTS BY NOT PROMOTING THE APPELLANT TO THE POST OF S.S (BPS-17) W-E-F 2009 I.E. FROM THE DATE WHEN THE ADHOC/ CONTRACT SUBJECT SPECIALIST (BPS-17) HAVE BEEN REGULARIZED AND AGAINST NO ACTION TAKEN ON THE DEPARTMENTAL APPEAL OF APPELLANT WITHIN THE STATUTORY PERIOD

PRAYER:

That on acceptance of this appeal the respondent may kindly be directed to consider the appellant for promotion to the post of Subject specialist (BPS-17) w-e-f. 2009 i.e. the date when the adhoc/ contract S.S (BPS-17) have been regularized with all back benefits including seniority. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

filed to-day

7/11/2021

R/SHWETH:
ON FACTS:

- 1. That the appellant is the employee of the respondent department and performing his duty as SCT (BPS-16).
- 2. That in the year 2004 the respondents asked applications for the post of Subject Specialist (SS) on contract basis. That after appearing in the test conducted through EATA, the appellant was appointed on the post of S.S. (BPS-17) on contract basis for a period of six months. Copies of the

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

REQUESTED
to be true copy
Advocate

Re-submitted to-day and filed.

A/5
judgment

P/45
Answer A/5

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE
PESHAWAR**

2761

APPEAL NO. ~~2759~~ / 2021



1700
2/11/2021

Mr. Azra BiBi, SCT (BPS-16),
Govt. Girls High School, Sarai Saleh, Haripur.

APPELLANT

VERSUS

- 1- The Secretary Elementary and Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.
- 2- The Director Elementary and Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.
- 3- The District Education Officer, District Haripur.

RESPONDENTS

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE INACTION OF THE RESPONDENTS BY NOT PROMOTING THE APPELLANT TO THE POST OF S.S (BPS-17) W-E-F 2009 I.E. FROM THE DATE WHEN THE ADHOC/ CONTRACT SUBJECT SPECIALIST (BPS-17) HAVE BEEN REGULARIZED AND AGAINST NO ACTION TAKEN ON THE DEPARTMENTAL APPEAL OF APPELLANT WITHIN THE STATUTORY PERIOD

PRAYER:

Filed to-day
2/11/2021

That on acceptance of this appeal the respondent may kindly be directed to consider the appellant for promotion to the post of Subject specialist (BPS-17) w-e-f. 2009 i.e. the date when the adhoc/ contract S.S (BPS-17) have been regularized with all back benefits including seniority. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

**R/SHWETH:
ON FACTS:**

- 1. That the appellant is the employee of the respondent department and performing his duty as SCT (BPS-16).
- 2. That in the year 2004 the respondents asked applications for the post of Subject Specialist (SS) on contract basis. That after appearing in the test conducted through EATA, the appellant was appointed on the post of S.S. (BPS-17) on contract basis for a period of six months. Copies of the

ATTESTED

[Signature]
Chairman
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

**ATTESTED
to be true copy
Advocate**

Re-submitted to-day
and filed.
2/11/2021




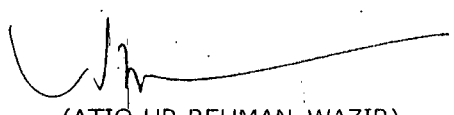
ORDER
02.02.2022

Learned counsel for the appellant present. Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today, passed in service appeal bearing No. 2756/2021 titled Abdullah Javed Versus Secretary Elementary & Secondary Education Department Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and three others", the instant appeal is accepted as prayed for. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
02.02.2022


(AHMAD SULTAN TAREEN)
CHAIRMAN


(ATIQ-UR-REHMAN WAZIR)
MEMBER (E)

Date of presentation of application 07-03-22
800
10/-
10/-
Date of delivery of copy 07-03-22
07-03-22

Certified to be true copy

Khyber Pakhtunkhwa
Service Tribunal
Peshawar

NOTIFIED
to be true copy
Advocate

P/147

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 2756/2021

Date of Institution ... 27.01.2021

Date of Decision ... 02.02.2022



Mr. Abdullah Javed, SST (BPS-16) ASDEO (Male), District Haripur.
... (Appellant)

VERSUS

The Secretary Elementary & Secondary Education Department Government of
Khyber Pakhtunkhwa through Chief Secretary, Peshawar and three others.
... (Respondents)

Noor Muhammad Khattak,
Advocate ... For Appellant

Muhammad Adeel Butt,
Additional Advocate General ... For respondents

AHMAD SULTAN TAREEN ... **CHAIRMAN**
ATIQU-UR-REHMAN WAZIR ... **MEMBER (EXECUTIVE)**

JUDGMENT

ATIQU-UR-REHMAN WAZIR MEMBER (E):- This single

judgment shall dispose of instant service appeal as well as the following
connected service appeals, as common question of law and facts are involved
therein.

1. 2757/2021 titled Qazi Javed Iqbal
2. 2758/2021 titled Nasir Ali
3. 2759/2021 titled Qazi Behram
4. 2760/2021 titled Qazi Shaheen Iqbal
5. 2761/2021 titled Azra Bibi
6. 2762/2021 titled Qazi Sikandar

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

ATTESTED

to be true copy
Advocate

02. Brief facts of the case are that the appellant is employee of the respondent department and performing duty as SST (BPS-16). In the year 2004, the respondents invited applications for the post of subject specialist on contract basis and after due process of selection, the appellant was appointed as Subject Specialist (BPS-17) on contract basis for a period of six months vide order dated 10-09-2005. The contract period was renewed/extended for another period vide notification dated 24.03.2006. It is worth to mention here that a notification was issued by the respondent department that in-service teachers, who are also appointed on contract basis as SS(BPS-17) should get leave without pay from their original post of SS(BPS-16), if they want to continue their contractual appointments. The appellant applied for extraordinary leave, which was granted to the appellant by the department vide order dated 28.02.2006. It is pertinent to mention here that the entry with regard to the leave without pay was made on the service book of the appellant. After expiry of the contract period the same was once again renewed/extended vide notification dated 20.10.2007, but the department refused to sanction leave without pay to the appellant and thus the appellant was deprived to continue service as Subject Specialist on contract basis, hence the appellant returned to his original post of SS (BPS-16). Vide advertisement dated August, 2007 the posts of Subject Specialist were once again advertised but through this advertisement the in-service teachers were debarred to appear in the test, hence the appellant was also not allowed to be appointed/selected on the post of SS on contract basis. In the meanwhile the contract appointees were regularized vide notifications dated 24.10.2009 and 11.12.2009 and thereby permanently depriving the appellant from appointment on contract basis on the post of SS as well as through this regularization the right of promotion of the appellant to the post of SS was also curtailed. The appellant feeling aggrieved from the action of the respondents and from the impugned regularization dated 24.10.2009 and notification dated 11.12.2009, preferred departmental appeal

ATTESTED

[Signature]
 EXAMINER
 State Tribunal
 Jammu

[Signature]
 ATTESTED
 to be true copy
 Advocate

followed by a Writ Petition No. 741-A/2010 before the Honorable Peshawar High Court Abbottabad Bench which was decided vide judgment dated 24.11.2020 with the observation that the matter pertaining to terms and conditions, therefore, the petition was dismissed being not maintainable. However, the petitioners were given liberty to knock at the door of the competent forum for redressal of their grievance, if so desired, hence the appellant filed the instant service appeal with prayers that the appellant may be considered for promotion to the post of subject specialist (BPS-17) with effect from 2009 i.e. the date when adhoc/contract SS (BPS-17) had been regularized with all back benefits including seniority.

03. Learned counsel for the appellant argued that by not promoting the appellant to the post of SS (BPS-17) w.e.f. 2009 i.e. the date when the adhoc/contract S.S (BPS-17) have been regularized with all back benefits including seniority is against the law, facts, norms of natural justice and material on the record hence not tenable and liable to be modified/rectified to the extent of the appellant be promoted w.e.f. 2009 with all back benefits including seniority; the appellant has not been treated by the respondent department in accordance with law and rules on the subject noted above and as such the respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973; that the treatment meted out to the appellant is clearly based on discrimination and malafide as such the respondents violated the principle of natural justice; that the appellant is fully entitled to be promoted to the post of SS (BPS-17) w.e.f. 2009 i.e. the date when the adhoc/contract SS have been regularized with all back benefits including seniority in light of Section 9 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 read with Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989; that the respondents violated Article 38(e) of the Constitution of Islamic Republic of Pakistan, 1973, according to which state is bound to eliminate disparity in the income and earning of individuals including

Handwritten mark resembling a stylized 'W' or 'N' with a line extending from it.

REGISTERED

Handwritten signature and official stamp of the Khyber Pakhtunkhwa High Court.

REGISTERED
to be true copy
Advocate

persons in the services of the Federation, thus in light of the above quoted Article of the Constitution the respondents are duty bound to promote the appellant to the post of SS (BPS-17) w.e.f. 2009 i.e. the date when the ad-hoc/contract Subject Specialist have been regularized with all back benefits.

04. Learned Additional Advocate General appearing on behalf of respondents has contended that the respondent department advertised some posts of Subject Specialist BS-17 purely on contract basis for a period of six months in the year, 2004; that the contract was extended for further six months in the light of notification dated 24.03.2006; that as per terms and conditions in-service teachers were not allowed to apply against the post of six month contract being regular employee of the department. He added that matter was also decided by the Hon'ble Peshawar High Court Peshawar in Writ Petition No. 2905-P/2009 titled "Atta Ullah and others Versus The Chief Secretary Khyber Pakhtunkhwa etc." which was disposed of in the following terms:-

- (i) that the Act, XVI of 2009, commonly known as (Regularization of Services) Act, 2009 is held as beneficial and remedial legislation, to which no interference is advisable hence, upheld.
- (ii) Official respondents are directed to work out the backlog of the promotion quota as per above mentioned example, within 30 days and consider the in-service employees, till the backlog is washed out, till then there would be complete ban on fresh recruitment.

05. We have heard learned counsel for the parties and have perused the record.

06. Record reveals that the appellant was serving as subject specialist (BPS-16) against a regular post. In 2004 some posts of subject specialists in BPS-17 were advertised and the appellant also applied for the

W

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

ATTESTED
to be true copy
Advocate

P/51

same through proper channel and with permission of the respondents and was selected and appointed as such vide order dated 10-09-2005 for a period of six months, which was further extended for another period of six months vide order dated 24-03-2006. In the meanwhile, the respondents issued a notification dated 15-09-2005 that in-service candidates, who wish to join the contractual post of SS (BPS-17), can join the post with the condition that either they shall resign from their existing post or get leave without pay from their regular posts. In compliance the appellant requested for leave without pay, which was granted vide order dated 28-02-2006. The contractual period of the post of SS(BPS-17) was again extended for another period of six months vide order dated 20-10-2007, but the appellant was not granted leave without pay after expiry of his previous leave without pay, thus the appellant was compelled to return to his original post of SS(BPS-16). In August 2007, the posts of SS (BPS-17) were again advertised, but in-service teachers were debarred to appear in the test, but before such appointments were made, the contract appointees were regularized vide order dated 24-10-2009 and 11-12-2009.

W.N.

07. In a situation, the appellant was deprived of his contractual post of SS (BPS-17) in the first place due to refusal of leave without pay, which was admissible to him as per notification dated 15-09-2005 and secondly he was deprived of regularization against that post. Stance of the appellant hold force to the effect that if he was granted leave without pay, he would have served against the contractual post of SS (BPS-17) till its regularization and he would have been regularized alongwith his batch-mates, but the respondents violated its own order dated 15-09-2005 by not granting him leave without pay. It is also worthy to note that the respondents initially allowed in-service teachers to work against the contractual post of SS(BPS-17) either to obtain leave without pay or resign from their original post and later on refused the same facility without

ATTESTED

[Signature]
 MEMBER
 THE TRIBUNAL

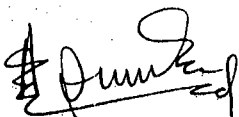
ATTESTED
 TO BE TRUE COPY
[Signature]

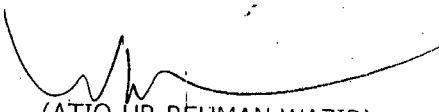
supersession of order dated 15-09-2005, which however was not warranted.

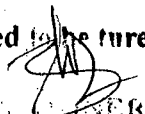
08. We are of the considered opinion that the appellant has not been treated in accordance with law, as the appellant served against the contractual post of SS (BPS-17) alongwith his batch-mates for quite longer but just before its regularization, the appellant was refused leave without pay, which compelled him to return to his original position of SS(BPS-16), thus deprived him of the benefits, which were admissible to him after his regularization against SS (BPS-17) on the one hand and on the other hand the appellants promotion/seniority was also blocked by inducting huge number of BPS-17 through their regularization. The irregularity committed by the respondents was refusal of leave without pay, which however was admissible to him under notification dated 15-09-2005 and which created the whole mess, due to which the appellant suffered for the unlawful act of the respondents. Equity and fair play demands that the appellant must avail the benefits accrued to him against the contractual post of SS (BPS-17), which was later on regularized and against which the appellant served for quite longer time, but was illegally detached from such post, which however was not warranted.

09. In view of the foregoing discussion, the instant appeal as well as connected service appeals are accepted as prayed for. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
02.02.2022


(AHMAD SULTAN TAREEN)
CHAIRMAN


(ATIQ-UR-REHMAN WAZIR)
MEMBER (E)

Certified to be true copy

Khyber Pakhtunkhwa
Service Tribunal
Peshawar

ACCEPTED
to be true copy
Advocate

A/6
Jadgnat

P/53
Amma 7/6

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR**



APPEAL NO. 2767 /2021

Mr. Qazi Sikandar, PSHT (BPS-15),
Govt. Primary School No.2 Laban Bandi, Haripur.

APPELLANT

VERSUS

- 1- The Secretary Elementary and Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.
- 2- The Director Elementary and Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.
- 3- The District Education Officer, District Haripur.

RESPONDENTS

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE INACTION OF THE RESPONDENTS BY NOT PROMOTING THE APPELLANT TO THE POST OF S.S (BPS-17) W-E-F 2009 I.E. FROM THE DATE WHEN THE ADHOC/ CONTRACT SUBJECT SPECIALIST (BPS-17) HAVE BEEN REGULARIZED AND AGAINST NO ACTION TAKEN ON THE DEPARTMENTAL APPEAL OF APPELLANT WITHIN THE STATUTORY PERIOD

PRAYER:

That on acceptance of this appeal the respondent may kindly be directed to consider the appellant for promotion to the post of Subject specialist (BPS-17) w-e-f. 2009 i.e. the date when the adhoc/ contract S.S (BPS-17) have been regularized with all back benefits including seniority. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

Filed to-day
Registrar
27/11/2021

ON FACTS:

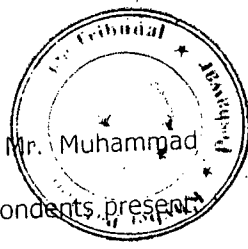
- 1. That the appellant is the employee of the respondent department and performing his duty as SPST (BPS-14).
- 2. That in the year 2004 the respondents asked applications for the post of Subject Specialist (SS) on contract basis. That after appearing in the test conducted through EATA, the appellant was appointed on the post of S.S (BPS-17) on contract basis for a period of six months. Copies of the

Submitted to-day
Registrar

Handwritten signature and stamp.

ALL REQUESTED
to be true copy
Advocate

P/53




ORDER
02.02.2022


Learned counsel for the appellant present. Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today, passed in service appeal bearing No. 2756/2021 titled Abdullah Javed Versus Secretary Elementary & Secondary Education Department Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and three others", the instant appeal is accepted as prayed for. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
02.02.2022


(AHMAD SULTAN TAREEN)
CHAIRMAN


(ATIQ-UR-REHMAN WAZIR)
MEMBER (E)

Certified to be true copy

MEMBER (E)
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 07-03-22
Number of Copies 800
Cost 10/-
Date of Delivery of Copy 09-03-22
09-03-22

REGISTERED
to be true copy
Advocate

P/55

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 2756/2021

Date of Institution ... 27.01.2021

Date of Decision ... 02.02.2022



Mr. Abdullah Javed, SST (BPS-16) ASDEO (Male), District Haripur. (Appellant)

VERSUS

The Secretary Elementary & Secondary Education Department Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and three others. (Respondents)

Noor Muhammad Khattak, Advocate ... For Appellant

Muhammad Adeel Butt, Additional Advocate General ... For respondents

AHMAD SULTAN TAREEN ... **CHAIRMAN**
ATIQU-UR-REHMAN WAZIR ... **MEMBER (EXECUTIVE)**

JUDGMENT

ATIQU-UR-REHMAN WAZIR MEMBER (E):- This single

judgment shall dispose of instant service appeal as well as the following connected service appeals, as common question of law and facts are involved therein.

1. 2757/2021 titled Qazi Javed Iqbal
2. 2758/2021 titled Nasir Ali
3. 2759/2021 titled Qazi Behram
4. 2760/2021 titled Qazi Shaheen Iqbal
5. 2761/2021 titled Azra Bibi
6. 2762/2021 titled Qazi Sikandar

ATTESTED
ENANI
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

ATTESTED
TO THE
ADVISING
PESHAWAR

02. Brief facts of the case are that the appellant is employee of the respondent department and performing duty as SST (BPS-16). In the year 2004, the respondents invited applications for the post of subject specialist on contract basis and after due process of selection, the appellant was appointed as Subject Specialist (BPS-17) on contract basis for a period of six months vide order dated 10-09-2005. The contract period was renewed/extended for another period vide notification dated 24.03.2006. It is worth to mention here that a notification was issued by the respondent department that in-service teachers, who are also appointed on contract basis as SS(BPS-17) should get leave without pay from their original post of SS(BPS-16), if they want to continue their contractual appointments. The appellant applied for extraordinary leave, which was granted to the appellant by the department vide order dated 28.02.2006. It is pertinent to mention here that the entry with regard to the leave without pay was made on the service book of the appellant. After expiry of the contract period the same was once again renewed/extended vide notification dated 20.10.2007, but the department refused to sanction leave without pay to the appellant and thus the appellant was deprived to continue service as Subject Specialist on contract basis, hence the appellant returned to his original post of SS (BPS-16). Vide advertisement dated August, 2007 the posts of Subject Specialist were once again advertised but through this advertisement the in-service teachers were debarred to appear in the test, hence the appellant was also not allowed to be appointed/selected on the post of SS on contract basis. In the meanwhile the contract appointees were regularized vide notifications dated 24.10.2009 and 11.12.2009 and thereby permanently depriving the appellant from appointment on contract basis on the post of SS as well as through this regularization the right of promotion of the appellant to the post of SS was also curtailed. The appellant feeling aggrieved from the action of the respondents and from the impugned regularization dated 24.10.2009 and notification dated 11.12.2009, preferred departmental appeal

Handwritten scribble

APPELLANT'S
[Signature]
 Officer in Charge
 Service Request


NOTIFIED - D
10-10-2010
Advocate

1157

followed by a Writ Petition No. 741-A/2010 before the Honorable Peshawar High Court Abbottabad Bench which was decided vide judgment dated 24.11.2020 with the observation that the matter pertaining to terms and conditions, therefore, the petition was dismissed being not maintainable. However, the petitioners were given liberty to knock at the door of the competent forum for redressal of their grievance, if so desired, hence the appellant filed the instant service appeal with prayers that the appellant may be considered for promotion to the post of subject specialist (BPS-17) with effect from 2009 i.e. the date when adhoc/contract SS (BPS-17) had been regularized with all back benefits including seniority.

03. Learned counsel for the appellant argued that by not promoting the appellant to the post of SS (BPS-17) w.e.f. 2009 i.e. the date when the adhoc/contract S.S (BPS-17) have been regularized with all back benefits including seniority is against the law, facts, norms of natural justice and material on the record hence not tenable and liable to be modified/rectified to the extent of the appellant be promoted w.e.f. 2009 with all back benefits including seniority; the appellant has not been treated by the respondent department in accordance with law and rules on the subject noted above and as such the respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973; that the treatment meted out to the appellant is clearly based on discrimination and malafide as such the respondents violated the principle of natural justice; that the appellant is fully entitled to be promoted to the post of SS (BPS-17) w.e.f. 2009 i.e. the date when the adhoc/contract SS have been regularized with all back benefits including seniority in light of Section 9 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 read with Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989; that the respondents violated Article 38(e) of the Constitution of Islamic Republic of Pakistan, 1973, according to which state is bound to eliminate disparity in the income and earning of individuals including

W

ATTESTED

 EXAMINER
 Honourable Peshawar
 Service Tribunal
 Peshawar

ATTESTED

 AS A TRUE COPY
 ADVOCATE

persons in the services of the Federation, thus in light of the above quoted Article of the Constitution the respondents are duty bound to promote the appellant to the post of SS (BPS-17) w.e.f. 2009 i.e. the date when the ad-hoc/contract Subject Specialist have been regularized with all back benefits.

04. Learned Additional Advocate General appearing on behalf of respondents has contended that the respondent department advertised some posts of Subject Specialist BS-17 purely on contract basis for a period of six months in the year, 2004; that the contract was extended for further six months in the light of notification dated 24.03.2006; that as per terms and conditions in-service teachers were not allowed to apply against the post of six month contract being regular employee of the department. He added that matter was also decided by the Hon'ble Peshawar High Court Peshawar in Writ Petition No. 2905-P/2009 titled "Atta Ullah and others Versus The Chief Secretary Khyber Pakhtunkhwa etc." which was disposed of in the following terms:-

- (i) that the Act, XVI of 2009, commonly known as (Regularization of Services) Act, 2009 is held as beneficial and remedial legislation, to which no interference is advisable hence, upheld.
- (ii) Official respondents are directed to work out the backlog of the promotion quota as per above mentioned example, within 30 days and consider the in-service employees, till the backlog is washed out, till then there would be complete ban on fresh recruitment.

05. We have heard learned counsel for the parties and have perused the record.

06. Record reveals that the appellant was serving as subject specialist (BPS-16) against a regular post. In 2004 some posts of subject specialists in BPS-17 were advertised and the appellant also applied for the

Handwritten initials

Handwritten signature

APPEARED
IN THE COPY
ADVOCATE

same through proper channel and with permission of the respondents and was selected and appointed as such vide order dated 10-09-2005 for a period of six months, which was further extended for another period of six months vide order dated 24-03-2006. In the meanwhile, the respondents issued a notification dated 15-09-2005 that in-service candidates, who wish to join the contractual post of SS (BPS-17), can join the post with the condition that either they shall resign from their existing post or get leave without pay from their regular posts. In compliance the appellant requested for leave without pay, which was granted vide order dated 28-02-2006. The contractual period of the post of SS(BPS-17) was again extended for another period of six months vide order dated 20-10-2007, but the appellant was not granted leave without pay after expiry of his previous leave without pay, thus the appellant was compelled to return to his original post of SS(BPS-16). In August 2007, the posts of SS (BPS-17) were again advertised, but in-service teachers were debarred to appear in the test, but before such appointments were made, the contract appointees were regularized vide order dated 24-10-2009 and 11-12-2009.

W

07. In a situation, the appellant was deprived of his contractual post of SS (BPS-17) in the first place due to refusal of leave without pay, which was admissible to him as per notification dated 15-09-2005 and secondly he was deprived of regularization against that post. Stance of the appellant hold force to the effect that if he was granted leave without pay, he would have served against the contractual post of SS (BPS-17) till its regularization and he would have been regularized alongwith his batch-mates, but the respondents violated its own order dated 15-09-2005 by not granting him leave without pay. It is also worthy to note that the respondents initially allowed in-service teachers to work against the contractual post of SS(BPS-17) either to obtain leave without pay or resign from their original post and later on refused the same facility without

ATTESTED
 EXAMINER
 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar

ATTESTED
 to be true copy
 Advocate


P/60


supersession of order dated 15-09-2005, which however was not warranted.


08. We are of the considered opinion that the appellant has not been treated in accordance with law, as the appellant served against the contractual post of SS (BPS-17) alongwith his batch-mates for quite longer but just before its regularization, the appellant was refused leave without pay, which compelled him to return to his original position of SS(BPS-16), thus deprived him of the benefits, which were admissible to him after his regularization against SS (BPS-17) on the one hand and on the other hand the appellants promotion/seniority was also blocked by inducting huge number of BPS-17 through their regularization. The irregularity committed by the respondents was refusal of leave without pay, which however was admissible to him under notification dated 15-09-2005 and which created the whole mess, due to which the appellant suffered for the unlawful act of the respondents. Equity and fair play demands that the appellant must avail the benefits accrued to him against the contractual post of SS (BPS-17), which was later on regularized and against which the appellant served for quite longer time, but was illegally detached from such post, which however was not warranted.

09. In view of the foregoing discussion, the instant appeal as well as connected service appeals are accepted as prayed for. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
02.02.2022


(AHMAD SULTAN TAREEN)
CHAIRMAN


(ATIQ-UR-REHMAN WAZIR)
MEMBER (E)


to be true copy
Advocate

Annex

B

P/61

Memo
of

Annex "B"

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

APPEAL NO. 2756 /2021

ABDULLAH JAVED

VS

EDUCATION DEPTT:
& OTHERS

INDEX

S.NO.	DOCUMENTS	ANNEXURE	PAGE
1	Memo of Appeal	.....	1-4.
2	Advertisement & appointment order	A & B	5-13
3	Notification dt: 24.3.2006	C	14-23
4	Order dt: 15.9.2005	D	24-
5	Service book	E	25-37
6	Advertisement	F	38
7	Regularization act dt: 24.10.2009 & notification dt: 11.12.2009	G & H	39-55
8	Departmental appeal, memo of writ petition & judgment dt: 24.11.2020	I, J & K	56-70
9	Vakalatnama	.....	71.

— Sd —

APPLICANT

THROUGH:

— Sd —

NOOR MOHAMMAD KHATTAK
ADVOCATE

S. P. F
submitted on
dated 03/9/21

RECEIVED
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

P/62

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. _____/2021

Mr. Abdullah Javed, SST (BPS-16),
A.S.D.E.O (Male), District Haripur.

..... **APPELLANT**

VERSUS

- 1- The Secretary Elementary and Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.
- 2- The Director Elementary and Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.
- 3- The District Education Officer, District Haripur.

..... **RESPONDENTS**

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE INACTION OF THE RESPONDENTS BY NOT PROMOTING THE APPELLANT TO THE POST OF S.S (BPS-17) W-E-F 2009 I.E. FROM THE DATE WHEN THE ADHOC/ CONTRACT SUBJECT SPECIALIST (BPS-17) HAVE BEEN REGULARIZED AND AGAINST NO ACTION TAKEN ON THE DEPARTMENTAL APPEAL OF APPELLANT WITHIN THE STATUTORY PERIOD

PRAYER:

That on acceptance of this appeal the respondent may kindly be directed to consider the appellant for promotion to the post of Subject specialist (BPS-17) w-e-f. 2009 i.e. the date when the adhoc/ contract S.S (BPS-17) have been regularized with all back benefits including seniority. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

R/SHWETH:

ON FACTS:

- 1. That the appellant is the employee of the respondent department and performing his duty as SST (BPS-16).
- 2. That in the year 2004 the respondents asked applications for the post of Subject Specialist (SS) on contract basis. That after appearing in the test conducted through EATA, the appellant was appointed on the post of S.S (BPS-17) on contract basis for a period of six months. Copies of the

RECEIVED
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

advertisement and appointment order are attached as annexure.....**A&B.**

3. That it is pertinent to mention here that the contract period was renewed/ extended for another period vide notification dated 24-03-2006. Copy of the notification dated 24-03-2006 is attached as annexure.....**C.**

4. That it is worth to mention here that a notification was issued by the respondent department that in-service teachers appointed on contract basis as SS should get leave without pay and the same was granted to the appellant by the department vide order dated 15-09-2005. Copy of the order dated 15-09-2005 is attached as annexure**D.**

5. That it is pertinent to mention her that the entry with regard to the leave without pay was made on the service book of the appellant. Copy of the service book is attached as annexure**E.**

6. That after the expiry of the contract period the same was once again renewed/ extended vide notification dated 20-10-2007, but the department refused to sanction leave without pay to the appellant and thus the appellant was deprived to continue service as SS.

7. That vide advertisement dated August, 2007 the posts of SS were once again advertised but through this advertisement the in-service teachers were debarred to appear in the test, hence the appellant was also not allowed to be appointed/ selected on the post of SS on contract basis. Copy of the advertisement is attached as annexure**F.**

8. That it is important to mention here that before regular appointment of the contract appointees were regularized vide Notification dated 24-10-2009 and 11-12-2009 and thereby permanently depriving the appellant from appointment on contract basis on the post of SS as well as through this regularization the right of promotion of the appellant to the post of SS was also curtailed. Copies of the regularization Act dated 24-10-2009 and notification dated 11-12-2009 are attached as annexure.....**G&H.**

9. That appellant feeling aggrieved from the action of the respondents and from the impugned regularization dated 24-10-2009 and notification dated 11-12-2009, preferred departmental appeal followed by a writ petition No. 741-A/2010 before the August Peshawar High Court, Abbottabad Bench which was decided on, 24-11-2020 with the observation that the matter pertaining to terms and conditions therefore, **"For what has been discussed**

10
to be
AUGUST
2010

hereinabove, this petition is dismissed being not maintainable. However, the petitioners shall be at liberty to knock at the door of the competent forum for redressal of their grievance, if so desired." Copies of the departmental appeal, memo of writ petition and judgment dated 24-11-2020 are attached as annexureI, J &K.

10. That having no other remedy the appellant preferred the instant appeal on the following grounds amongst others.

GROUND:

- A- That by not promoting the appellant to the post of S.S (BPS-17) w-e-f 2009 i.e. the date when the adhoc/ contract S.S (BPS-17) have been regularized with all back benefits including seniority is against the law, facts, norms of natural justice and materials on the record hence not tenable and liable to be modified/rectified to the extent of the appellant be promoted w-e-f 2009 with all back benefits including seniority.
- B- That appellant has not been treated by the respondent Department in accordance with law and rules on the subject noted above and as such the respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973.
- C- That, the treatment meted out to the appellant is clearly based on discrimination and malafide and as such the respondents violated the principle of natural justice.
- D- That appellant is fully entitled to be promoted to the post of S.S (BPS-17) w-e-f 2009 i.e. the date when the adhoc/ contract S.S (BPS-17) have been regularized with all back benefits including seniority in light of the section 9 of the Khyber Pakhtunkhwa Civil Servant Act, 1973 read with the Khyber Pakhtunkhwa Civil Servant (Appointment, Promotion and Transfer) Rules, 1989.
- E- That appellant is also entitled for his promotion w-e-f 2009 with all back benefits.
- F- That respondents violated Article 38(e) of the Constitution of Islamic Republic of Pakistan 1973, according to which state is bound to eliminate disparity in the income and earning of individuals including persons in the services of the Federation, thus in light of the above quoted Article of the Constitution the respondents are duty bound to promote the appellant to the post of S.S (BPS-17) w-e-f 2009 i.e. the

P/65

date when the, adhoc/ contract S.S (BPS-17) have been regularized with all back benefits including seniority.

G- That appellant seeks permission to advance other grounds and proofs at the time of hearing.

It is therefore, most humbly prayed that the appeal of the appellant may very graciously be accepted as prayed for, please.

Dated: 08-01-2021

APPELLANT

Sd

ABDULLAH JAVED

THROUGH: *Sd*

NOOR MOHAMMAD KHATTAK

Sd

KAMRAN KHAN

Sd

UMER FAROOQ

Sd

SHAHZULLAH YOUSAFZAI

Sd

**&
MIR ZAMAN SAFI
ADVOCATES**

**REGISTERED
to be true copy
Advocates**

**BEFORE THE KHYBER PAKHTUNKHWA
TRIBUNAL PESHAWAR**

APPEAL NO. 2757 /2021

QAZI JAVED IQBAL

VS

EDUCATION DEPTT

INDEX

S. NO.	DOCUMENTS	ANNEXURE	PAGE
1.	Memo of appeal	.....	1- 4.
2.	Advertisement & Appointment order	A & B	5- 13
3.	Notification dt: 24.03.2006	C	14- 23.
4.	Order dt: 15.9.2005	D	24
4.	Service book	E	25- 37.
5.	Advertisement	F	38.
6.	Regularization Act dt:24.10.2009	G & H	39- 55.
7.	Departmental appeal, memo & judgment dt: 24.11.2020	I, J & K	56- 70.
8.	Vakalatnama	.....	71.

-sd-

APPELLANT

-sd-

THROUGH:

NOOR MOHAMMAD KHATTAK
ADVOCATE

FLATE: NO.4-2nd JUMA KHAN PLAZA,
NEAR FATA SECRETARAIT,
WARSAK ROAD PESHAWAR

**NOT LISTED
TO THE PUBLIC COPY**

B/1
2/66
Memo of
of
appeal
CE
Annex B/1

P/67

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. _____/2021

Mr. Qazi Javed Iqbal, SDM (BPS-16),
Govt. High School Laban Bandi, Haripur.

APPELLANT

VERSUS

- 1- The Secretary Elementary and Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.
- 2- The Director Elementary and Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.
- 3- The District Education Officer, District Haripur.

RESPONDENTS

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE INACTION OF THE RESPONDENTS BY NOT PROMOTING THE APPELLANT TO THE POST OF S.S (BPS-17) W-E-F 2009 I.E. FROM THE DATE WHEN THE ADHOC/ CONTRACT SUBJECT SPECIALIST (BPS-17) HAVE BEEN REGULARIZED AND AGAINST NO ACTION TAKEN ON THE DEPARTMENTAL APPEAL OF APPELLANT WITHIN THE STATUTORY PERIOD

PRAYER:

That on acceptance of this appeal the respondent may kindly be directed to consider the appellant for promotion to the post of Subject specialist (BPS-17) w-e-f. 2009 i.e. the date when the adhoc/ contract S.S (BPS-17) have been regularized with all back benefits including seniority. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

R/SHWETH:

ON FACTS:

- 1. That the appellant is the employee of the respondent department and performing his duty as SDM (BPS-16).
- 2. That in the year 2004 the respondents asked applications for the post of Subject Specialist (SS) on contract basis. That after appearing in the test conducted through EATA, the appellant was appointed on the post of S.S (BPS-17) on contract basis for a period of six months. Copies of the

to be true copy

advertisement and appointment order are attached as annexure.....A&B.

- 3. That it is pertinent to mention here that the contract period was renewed/ extended for another period vide notification dated 24-03-2006. Copy of the notification dated 24-03-2006 is attached as annexure.....C.
- 4. That it is worth to mention here that a notification was issued by the respondent department that in-service teachers appointed on contract basis as SS should get leave without pay and the same was granted to the appellant by the department vide order dated 15-09-2005. Copy of the order dated 15-09-2005 is attached as annexureD.
- 5. That it is pertinent to mention her that the entry with regard to the leave without pay was made on the service book of the appellant. Copy of the service book is attached as annexureE.
- 6. That after the expiry of the contract period the same was once again renewed/ extended vide notification dated 20-10-2007, but the department refused to sanction leave without pay to the appellant and thus the appellant was deprived to continue service as SS.
- 7. That vide advertisement dated August, 2007 the posts of SS were once again advertised but through this advertisement the in-service teachers were debarred to appear in the test, hence the appellant was also not allowed to be appointed/ selected on the post of SS on contract basis. Copy of the advertisement is attached as annexureF.
- 8. That it is important to mention here that before regular appointment of the contract appointees were regularized vide Notification dated 24-10-2009 and 11-12-2009 and thereby permanently depriving the appellant from appointment on contract basis on the post of SS as well as through this regularization the right of promotion of the appellant to the post of SS was also curtailed. Copies of the regularization Act dated 24-10-2009 and notification dated 11-12-2009 are attached as annexure.....G&H.
- 9. That appellant feeling aggrieved from the action of the respondents and from the impugned regularization dated 24-10-2009 and notification dated 11-12-2009, preferred departmental appeal followed by a writ petition No. 741-A/2010 before the August Peshawar High Court, Abbottabad Bench which was decided on 24-11-2020 with the observation that the matter pertaining to terms and conditions therefore, **"For what has been discussed**

ADMITTED
10/01/2010
BY
10/01/2010

hereinabove, this petition is dismissed being not maintainable. However, the petitioners shall be at liberty to knock at the door of the competent forum for redressal of their grievance, if so desired." Copies of the departmental appeal, memo of writ petition and judgment dated 24-11-2020 are attached as annexureI, J&K.

10. That having no other remedy the appellant preferred the instant appeal on the following grounds amongst others.

GROUND:

- A- That by not promoting the appellant to the post of S.S (BPS-17) w-e-f 2009 i.e. the date when the adhoc/ contract S.S (BPS-17) have been regularized with all back benefits including seniority is against the law, facts, norms of natural justice and materials on the record hence not tenable and liable to be modified/rectified to the extent of the appellant be promoted w-e-f 2009 with all back benefits including seniority.
- B- That appellant has not been treated by the respondent Department in accordance with law and rules on the subject noted above and as such the respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973.
- C- That, the treatment meted out to the appellant is clearly based on discrimination and malafide and as such the respondents violated the principle of natural justice.
- D- That appellant is fully entitled to be promoted to the post of S.S (BPS-17) w-e-f 2009 i.e. the date when the adhoc/ contract S.S (BPS-17) have been regularized with all back benefits including seniority in light of the section 9 of the Khyber Pakhtunkhwa Civil Servant Act, 1973 read with the Khyber Pakhtunkhwa Civil Servant (Appointment, Promotion and Transfer) Rules, 1989.
- E- That appellant is also entitled for his promotion w-e-f 2009 with all back benefits.
- F- That respondents violated Article 38(e) of the Constitution of Islamic Republic of Pakistan 1973, according to which state is bound to eliminate disparity in the income and earning of individuals including persons in the services of the Federation, thus in light of the above quoted Article of the Constitution the respondents are duty bound to promote the appellant to the post of S.S (BPS-17) w-e-f 2009 i.e. the

TO THE HONORABLE
ADVOCATE GENERAL

P/70

date when the adhoc/ contract S.S (BPS-17) have been regularized with all back benefits including seniority.

G- That appellant seeks permission to advance other grounds and proofs at the time of hearing.

It is therefore, most humbly prayed that the appeal of the appellant may very graciously be accepted as prayed for, please.

Dated: 08-01-2021

APPELLANT

-sd-

QAZI JAVED IQBAL

THROUGH:

-sd-

NOOR MOHAMMAD KHATTAK

-sd-

KAMRAN KHAN

-sd-

UMER FAROOQ

-sd-

SHAHZULLAH YOUSAFZAI

-sd- &

MIR ZAMAN SAFI
ADVOCATES

RECEIVED
10 DEC 2021
ADVOCATES

B/2

2/71
Annex B/2

**BEFORE THE KHYBER PAKHTUNKH
TRIBUNAL PESHAWAR**

Memo
of
appeal
SERVICE

APPEAL NO. 2758 /20

NASIR ALI

VS

ED

IN DEPTT

INDEX

S. NO.	DOCUMENTS	ANNEXURE	PAGE
1.	Memo of appeal	.....	1- 4.
2.	Advertisement & Appointment order	A & B	5- 13
3.	Notification dt: 24.03.2006	C	14- 23.
4.	Order dt: 15.9.2005	D	24
4.	Service book	E	25- 38.
5.	Advertisement	F	39.
6.	Regularization Act dt:24.10.2009	G & H	40-56
7.	Departmental. appeal, memo & judgment dt: 24.11.2020	I, J & K	57- 71
8.	Vakalatnama	.....	72

-sd-

APPELLANT

-sd-

THROUGH:

NOOR MOHAMMAD KHATTAK
ADVOCATE.

FLATE: NO.4-2nd JUMA KHAN PLAZA.
NEAR FATA SECRETARAIT.
WARSAK ROAD PESHAWAR

RECEIVED
ADVOCATE

0172

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. _____/2021

Mr. Nasir Ali, SST (BPS-16),
Govt. High School No.2, Haripur.

..... **APPELLANT**

VERSUS

- 1- The Secretary Elementary and Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.
- 2- The Director Elementary and Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.
- 3- The District Education Officer, District Haripur.

..... **RESPONDENTS**

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE INACTION OF THE RESPONDENTS BY NOT PROMOTING THE APPELLANT TO THE POST OF S.S (BPS-17) W-E-F 2009 I.E. FROM THE DATE WHEN THE ADHOC/ CONTRACT SUBJECT SPECIALIST (BPS-17) HAVE BEEN REGULARIZED AND AGAINST NO ACTION TAKEN ON THE DEPARTMENTAL APPEAL OF APPELLANT WITHIN THE STATUTORY PERIOD

PRAYER:

That on acceptance of this appeal the respondent may kindly be directed to consider the appellant for promotion to the post of Subject specialist (BPS-17) w-e-f. 2009 i.e. the date when the adhoc/ contract S.S (BPS-17) have been regularized with all back benefits including seniority. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

R/SHWETH:

ON FACTS:

- 1. That the appellant is the employee of the respondent department and performing his duty as W.I (BPS-16).
- 2. That in the year 2004 the respondents asked applications for the post of Subject Specialist (SS) on contract basis. That after appearing in the test conducted through EATA, the appellant was appointed on the post of S.S (BPS-17) on contract basis for a period of six months. Copies of the

to be true copy
SUBMITTED

advertisement and appointment order are attached as annexure.....**A&B.**

3. That it is pertinent to mention here that the contract period was renewed/ extended for another period vide notification dated 24-03-2006. Copy of the notification dated 24-03-2006 is attached as annexure.....**C.**

4. That it is worth to mention here that a notification was issued by the respondent department that in-service teachers appointed on contract basis as SS should get leave without pay and the same was granted to the appellant by the department vide order dated 15-09-2005. Copy of the order dated 15-09-2005 is attached as annexure**D.**

5. That it is pertinent to mention her that the entry with regard to the leave without pay was made on the service book of the appellant. Copy of the service book is attached as annexure**E.**

6. That after the expiry of the contract period the same was once again renewed/ extended vide notification dated 20-10-2007, but the department refused to sanction leave without pay to the appellant and thus the appellant was deprived to continue service as SS.

7. That vide advertisement dated August, 2007 the posts of SS were once again advertised but through this advertisement the in-service teachers were debarred to appear in the test, hence the appellant was also not allowed to be appointed/ selected on the post of SS on contract basis. Copy of the advertisement is attached as annexure**F.**

8. That it is important to mention here that before regular appointment of the contract appointees were regularized vide Notification dated 24-10-2009 and 11-12-2009 and thereby permanently depriving the appellant from appointment on contract basis on the post of SS as well as through this regularization the right of promotion of the appellant to the post of SS was also curtailed. Copies of the regularization Act dated 24-10-2009 and notification dated 11-12-2009 are attached as annexure.....**G&H.**

9. That appellant feeling aggrieved from the action of the respondents and from the impugned regularization dated 24-10-2009 and notification dated 11-12-2009, preferred departmental appeal followed by a writ petition No. 741-A/2010 before the August Peshawar High Court, Abbottabad Bench which was decided on 24-11-2020 with the observation that the matter pertaining to terms and conditions therefore, **"For what has been discussed**

D
to be taken into
consideration

P/74

hereinabove, this petition is dismissed being not maintainable. However, the petitioners shall be at liberty to knock at the door of the competent forum for redressal of their grievance, if so desired." Copies of the departmental appeal, memo of writ petition and judgment dated 24-11-2020 are attached as annexureI, J&K.

- 10. That having no other remedy the appellant preferred the instant appeal on the following grounds amongst others.

GROUND:

- A- That by not promoting the appellant to the post of S.S (BPS-17) w-e-f 2009 i.e. the date when the adhoc/ contract S.S (BPS-17) have been regularized with all back benefits including seniority is against the law, facts, norms of natural justice and materials on the record hence not tenable and liable to be modified/rectified to the extent of the appellant be promoted w-e-f 2009 with all back benefits including seniority.
- B- That appellant has not been treated by the respondent Department in accordance with law and rules on the subject noted above and as such the respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973.
- C- That, the treatment meted out to the appellant is clearly based on discrimination and malafide and as such the respondents violated the principle of natural justice.
- D- That appellant is fully entitled to be promoted to the post of S.S (BPS-17) w-e-f 2009 i.e. the date when the adhoc/ contract S.S (BPS-17) have been regularized with all back benefits including seniority in light of the section 9 of the Khyber Pakhtunkhwa Civil Servant Act, 1973 read with the Khyber Pakhtunkhwa Civil Servant (Appointment, Promotion and Transfer) Rules, 1989.
- E- That appellant is also entitled for his promotion w-e-f 2009 with all back benefits.
- F- That respondents violated Article 38(e) of the Constitution of Islamic Republic of Pakistan 1973, according to which state is bound to eliminate disparity in the income and earning of individuals including persons in the services of the Federation, thus in light of the above quoted Article of the Constitution the respondents are duty bound to promote the appellant to the post of S.S (BPS-17) w-e-f 2009 i.e. the

FILED
 to the High Court
 Islamabad

2/75

date when the adhoc/ contract S.S (BPS-17) have been regularized with all back benefits including seniority.

G- That appellant seeks permission to advance other grounds and proofs at the time of hearing.

It is therefore, most humbly prayed that the appeal of the appellant may very graciously be accepted as prayed for, please.

Dated: 08-01-2021

APPELLANT

- sd -

NASIR ALI

THROUGH:

- sd -

NOOR MOHAMMAD KHATTAK

- sd -

KAMRAN KHAN

- sd -

UMER FAROOQ

- sd -

SHAHZULLAH YOUSAFZAI

- sd -

MIR ZAMAN SAFI

ADVOCATES

ATTESTED
to be true copy
Advocate

B/3

Memo
of
appeal

2/76

Annex B/3

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE
PESHAWAR**

JNAL,

APPEAL NO. 2759 /2021

QAZI BEHRAM

VS

EDUCATION DEPTT:
& OTHERS

INDEX

S.NO.	DOCUMENTS	ANNEXURE	PAGE
1	Memo of Appeal	.....	1- 4.
2	Advertisement & appointment order	A & B	5- 13
3	Notification dt: 24.3.2006	C	14 - 23
4	Order dt: 15.9.2005	D	24
5	Service book	E	25 - 33
6	Advertisement	F	34
7	Regularization act dt: 24.10.2009 & notification dt: 11.12.2009	G & H	35- 51
8	Departmental appeal, memo of writ petition & judgment dt: 24.11.2020	I, J & K	52 - 66
9	Vakalatnama	.....	67

-sd-

APPLICANT

THROUGH: -sd-

NOOR MOHAMMAD KHATTAK
ADVOCATE

[Signature]
To be true copy
Advocate

2/77

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. _____/2021

Mr. Qazi Behram, SCT (BPS-16),
Govt. High School Laban Bandi, Haripur.

..... **APPELLANT**

VERSUS

- 1- The Secretary Elementary and Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.
- 2- The Director Elementary and Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.
- 3- The District Education Officer, District Haripur.

..... **RESPONDENTS**

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE INACTION OF THE RESPONDENTS BY NOT PROMOTING THE APPELLANT TO THE POST OF S.S (BPS-17) W-E-F 2009 I.E. FROM THE DATE WHEN THE ADHOC/ CONTRACT SUBJECT SPECIALIST (BPS-17) HAVE BEEN REGULARIZED AND AGAINST NO ACTION TAKEN ON THE DEPARTMENTAL APPEAL OF APPELLANT WITHIN THE STATUTORY PERIOD

PRAYER:

That on acceptance of this appeal the respondent may kindly be directed to consider the appellant for promotion to the post of Subject specialist (BPS-17) w-e-f. 2009 i.e. the date when the adhoc/ contract S.S (BPS-17) have been regularized with all back benefits including seniority. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

R/SHWETH:
ON FACTS:

- 1. That the appellant is the employee of the respondent department and performing his duty as SCT (BPS-16).
- 2. That in the year 2004 the respondents asked applications for the post of Subject Specialist (SS) on contract basis. That after appearing in the test conducted through EATA, the appellant was appointed on the post of S.S (BPS-17) on contract basis for a period of six months. Copies of the

to be true copy
Advocate

- advertisement and appointment order are attached as annexure.....**A&B.**
3. That it is pertinent to mention here that the contract period was renewed/ extended for another period vide notification dated 24-03-2006. Copy of the notification dated 24-03-2006 is attached as annexure.....**C.**
 4. That it is worth to mention here that a notification was issued by the respondent department that in-service teachers appointed on contract basis as SS should get leave without pay and the same was granted to the appellant by the department vide order dated 15-09-2005. Copy of the order dated 15-09-2005 is attached as annexure **D.**
 5. That it is pertinent to mention her that the entry with regard to the leave without pay was made on the service book of the appellant. Copy of the service book is attached as annexure**E.**
 6. That after the expiry of the contract period the same was once again renewed/ extended vide notification dated 20-10-2007, but the department refused to sanction leave without pay to the appellant and thus the appellant was deprived to continue service as SS.
 7. That vide advertisement dated August, 2007 the posts of SS were once again advertised but through this advertisement the in-service teachers were debarred to appear in the test, hence the appellant was also not allowed to be appointed/ selected on the post of SS on contract basis. Copy of the advertisement is attached as annexure**F.**
 8. That it is important to mention here that before regular appointment of the contract appointees were regularized vide Notification dated 24-10-2009 and 11-12-2009 and thereby permanently depriving the appellant from appointment on contract basis on the post of SS as well as through this regularization the right of promotion of the appellant to the post of SS was also curtailed. Copies of the regularization Act dated 24-10-2009 and notification dated 11-12-2009 are attached as annexure.....**G&H.**
 9. That appellant feeling aggrieved from the action of the respondents and from the impugned regularization dated 24-10-2009 and notification dated 11-12-2009, preferred departmental appeal followed by a writ petition No. 741-A/2010 before the August Peshawar High Court, Abbottabad Bench which was decided on 24-11-2020 with the observation that the matter pertaining to terms and conditions therefore, **"For what has been discussed**

to be true copy
 July 2021

hereinabove, this petition is dismissed being not maintainable. However, the petitioners shall be at liberty to knock at the door of the competent forum for redressal of their grievance, if so desired." Copies of the departmental appeal, memo of writ petition and judgment dated 24-11-2020 are attached as annexureI, J&K.

10. That having no other remedy the appellant preferred the instant appeal on the following grounds amongst others.

GROUNDS:

- A- That by not promoting the appellant to the post of S.S (BPS-17) w-e-f 2009 i.e. the date when the adhoc/ contract S.S (BPS-17) have been regularized with all back benefits including seniority is against the law, facts, norms of natural justice and materials on the record hence not tenable and liable to be modified/rectified to the extent of the appellant be promoted w-e-f 2009 with all back benefits including seniority.
- B- That appellant has not been treated by the respondent Department in accordance with law and rules on the subject noted above and as such the respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973.
- C- That, the treatment meted out to the appellant is clearly based on discrimination and malafide and as such the respondents violated the principle of natural justice.
- D- That appellant is fully entitled to be promoted to the post of S.S (BPS-17) w-e-f 2009 i.e. the date when the adhoc/ contract S.S (BPS-17) have been regularized with all back benefits including seniority in light of the section 9 of the Khyber Pakhtunkhwa Civil Servant Act, 1973 read with the Khyber Pakhtunkhwa Civil Servant (Appointment, Promotion and Transfer) Rules, 1989.
- E- That appellant is also entitled for his promotion w-e-f 2009 with all back benefits.
- F- That respondents violated Article 38(e) of the Constitution of Islamic Republic of Pakistan 1973, according to which state is bound to eliminate disparity in the income and earning of individuals including persons in the services of the Federation, thus in light of the above quoted Article of the Constitution the respondents are duty bound to promote the appellant to the post of S.S (BPS-17) w-e-f 2009 i.e. the

RECEIVED
TO THE HON. JUDGE
ADVOCATE

2/80
date when the adhoc/ contract S.S (BPS-17) have been regularized with all back benefits including seniority.

- G- That appellant seeks permission to advance other grounds and proofs at the time of hearing.

It is therefore, most humbly prayed that the appeal of the appellant may very graciously be accepted as prayed for, please.

Dated: 08-01-2021

-sd-
APPELLANT

-sd-
QAZI BEHRAM

THROUGH: -sd-
NOOR MOHAMMAD KHATTAK

-sd-
KAMRAN KHAN

-sd-
UMER FAROOQ

-sd-
SHAHZULLAH YOUSAFZAI

-sd-
&
MIR ZAMAN SAFI
ADVOCATES

Adv. Zaman Safi
Adv. Kamran Khan
Adv. Umer Farooq
Adv. Shahzullah Yousafzai

B/4

Memo
of
appeal

2/81

Annex B/4

**BEFORE THE KHYBER PAKHTUNKHWA SE
TRIBUNAL PESHAWAR**

APPEAL NO. 2760 /2021

QAZI SHAHEEN IQBAL VS EDUCATION DEPTT

INDEX

S. NO.	DOCUMENTS	ANNEXURE	PAGE
1.	Memo of appeal	.....	1- 4.
2.	Advertisement & Appointment order	A & B	5- 13
3.	Notification dt: 24.03.2006	C	14- 23.
4.	Order dt: 15.9.2005	D	24
4.	Service book	E	25- 37.
5.	Advertisement	F	38.
6.	Regularization Act dt:24.10.2009	G & H	39- 55
7.	Departmental appeal, memo & judgment dt: 24.11.2020	I, J & K	56- 69
8.	Vakalatnama	.....	70

-sd-
APPELLANT

THROUGH: -sd-
NOOR MOHAMMAD KHATTAK
ADVOCATE
FLATE:NO.4-2nd JUMA KHAN PLAZA.
NEAR FATA SECRETARAT.
WARSAK ROAD PESHAWAR

~~to be filed
Advocate~~

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR**

APPEAL NO. _____/2021

Mr. Qazi Shaheen Iqbal, SS (Pak Studies) (BPS-17),
R.I.T.E (Male) Haripur:

APPELLANT

VERSUS

- 1- The Secretary Elementary and Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.
- 2- The Director Elementary and Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.
- 3- The District Education Officer, District Haripur.

RESPONDENTS

**APPEAL UNDER SECTION 4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974
AGAINST THE INACTION OF THE RESPONDENTS BY
NOT PROMOTING THE APPELLANT TO THE POST OF S.S
(BPS-17) W-E-F 2009 I.E. FROM THE DATE WHEN THE
ADHOC/ CONTRACT SUBJECT SPECIALIST (BPS-17)
HAVE BEEN REGULARIZED AND AGAINST NO ACTION
TAKEN ON THE DEPARTMENTAL APPEAL OF APPELLANT
WITHIN THE STATUTORY PERIOD**

PRAYER:

That on acceptance of this appeal the respondent may kindly be directed to consider the appellant for promotion to the post of Subject specialist (BPS-17) w-e-f. 2009 i.e. the date when the adhoc/ contract S.S (BPS-17) have been regularized with all back benefits including seniority. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

R/SHWETH:

ON FACTS:

- 1. That the appellant is the employee of the respondent department and performing his duty as SET (BPS-17).
- 2. That in the year 2004 the respondents asked applications for the post of Subject Specialist (SS) on contract basis. That after appearing in the test conducted through EATA, the appellant was appointed on the post of S.S (BPS-17) on contract basis for a period of six months. Copies of the

*to be true copy
Advocate*

advertisement and appointment order are attached as annexure.....**A&B.**

3. That it is pertinent to mention here that the contract period was renewed/ extended for another period vide notification dated 24-03-2006. Copy of the notification dated 24-03-2006 is attached as annexure.....**C.**

4. That it is worth to mention here that a notification was issued by the respondent department that in-service teachers appointed on contract basis as SS should get leave without pay and the same was granted to the appellant by the department vide order dated 15-09-2005. Copy of the order dated 15-09-2005 is attached as annexure**D.**

5. That it is pertinent to mention her that the entry with regard to the leave without pay was made on the service book of the appellant. Copy of the service book is attached as annexure**E.**

6. That after the expiry of the contract period the same was once again renewed/ extended vide notification dated 20-10-2007, but the department refused to sanction leave without pay to the appellant and thus the appellant was deprived to continue service as SS.

7. That vide advertisement dated August, 2007 the posts of SS were once again advertised but through this advertisement the in-service teachers were debarred to appear in the test, hence the appellant was also not allowed to be appointed/ selected on the post of SS on contract basis. Copy of the advertisement is attached as annexure**F.**

8. That it is important to mention here that before regular appointment of the contract appointees were regularized vide Notification dated 24-10-2009 and 11-12-2009 and thereby permanently depriving the appellant from appointment on contract basis on the post of SS as well as through this regularization the right of promotion of the appellant to the post of SS was also curtailed. Copies of the regularization Act dated 24-10-2009 and notification dated 11-12-2009 are attached as annexure.....**G&H.**

9. That appellant feeling aggrieved from the action of the respondents and from the impugned regularization dated 24-10-2009 and notification dated 11-12-2009, preferred departmental appeal followed by a writ petition No. 741-A/2010 before the August Peshawar High Court, Abbottabad Bench which was decided on 24-11-2020 with the observation that the matter pertaining to terms and conditions therefore, **"For what has been discussed**

10
to be
ADVOCATE

hereinabove, this petition is dismissed being not maintainable. However, the petitioners shall be at liberty to knock at the door of the competent forum for redressal of their grievance, if so desired." Copies of the departmental appeal, memo of writ petition and judgment dated 24-11-2020 are attached as annexureI, J&K.

10. That having no other remedy the appellant preferred the instant appeal on the following grounds amongst others.

GROUND:

- A- That by not promoting the appellant to the post of S.S (BPS-17) w-e-f 2009 i.e. the date when the adhoc/ contract S.S (BPS-17) have been regularized with all back benefits including seniority is against the law, facts, norms of natural justice and materials on the record hence not tenable and liable to be modified/rectified to the extent of the appellant be promoted w-e-f 2009 with all back benefits including seniority.
- B- That appellant has not been treated by the respondent Department in accordance with law and rules on the subject noted above and as such the respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973.
- C- That, the treatment meted out to the appellant is clearly based on discrimination and malafide and as such the respondents violated the principle of natural justice.
- D- That appellant is fully entitled to be promoted to the post of S.S (BPS-17) w-e-f 2009 i.e. the date when the adhoc/ contract S.S (BPS-17) have been regularized with all back benefits including seniority in light of the section 9 of the Khyber Pakhtunkhwa Civil Servant Act, 1973 read with the Khyber Pakhtunkhwa Civil Servant (Appointment, Promotion and Transfer) Rules, 1989.
- E- That appellant is also entitled for his promotion w-e-f 2009 with all back benefits.
- F- That respondents violated Article 38(e) of the Constitution of Islamic Republic of Pakistan 1973, according to which state is bound to eliminate disparity in the income and earning of individuals including persons in the services of the Federation, thus in light of the above quoted Article of the Constitution the respondents are duty bound to promote the appellant to the post of S.S (BPS-17) w-e-f 2009 i.e. the

RECEIVED
Advocate
to be true copy
Advocate

date when the adhoc/ contract S.S (BPS-17) have been regularized with all back benefits including seniority.

G- That appellant seeks permission to advance other grounds and proofs at the time of hearing.

It is therefore, most humbly prayed that the appeal of the appellant may very graciously be accepted as prayed for, please.

Dated: 08-01-2021

-sd-
APPELLANT

-sd-
QAZI SHAHEEN IQBAL

THROUGH: -sd-
NOOR MOHAMMAD KHATTAK

-sd-
KAMRAN KHAN

-sd-
UMER FAROOQ

-sd-
SHAHZULLAH YOUSAFZAI

-sd- &
MIR ZAMAN SAFI
ADVOCATES

CO-OPERATIVE BANK
KARACHI

2/187

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. _____/2021

Mr. Azra BiBi, SCT (BPS-16),
Govt. Girls High School, Sarai Saleh, Haripur.

..... **APPELLANT**

VERSUS

- 1- The Secretary Elementary and Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.
- 2- The Director Elementary and Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.
- 3- The District Education Officer, District Haripur.

..... **RESPONDENTS**

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE INACTION OF THE RESPONDENTS BY NOT PROMOTING THE APPELLANT TO THE POST OF S.S (BPS-17) W-E-F 2009 I.E. FROM THE DATE WHEN THE ADHOC/ CONTRACT SUBJECT SPECIALIST (BPS-17) HAVE BEEN REGULARIZED AND AGAINST NO ACTION TAKEN ON THE DEPARTMENTAL APPEAL OF APPELLANT WITHIN THE STATUTORY PERIOD

PRAYER:

That on acceptance of this appeal the respondent may kindly be directed to consider the appellant for promotion to the post of Subject specialist (BPS-17) w-e-f. 2009 i.e. the date when the adhoc/ contract S.S (BPS-17) have been regularized with all back benefits including seniority. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

R/SHWETH:

ON FACTS:

- 1. That the appellant is the employee of the respondent department and performing his duty as SCT (BPS-16).
- 2. That in the year 2004 the respondents asked applications for the post of Subject Specialist (SS) on contract basis. That after appearing in the test conducted through EATA, the appellant was appointed on the post of S.S (BPS-17) on contract basis for a period of six months. Copies of the

[Handwritten signature]
to be true copy advised.

advertisement and appointment order are attached as annexure.....A&B.

- 3. That it is pertinent to mention here that the contract period was renewed/ extended for another period vide notification dated 24-03-2006. Copy of the notification dated 24-03-2006 is attached as annexure.....C.
- 4. That it is worth to mention here that a notification was issued by the respondent department that in-service teachers appointed on contract basis as SS should get leave without pay and the same was granted to the appellant by the department vide order dated 15-09-2005. Copy of the order dated 15-09-2005 is attached as annexureD.
- 5. That it is pertinent to mention her that the entry with regard to the leave without pay was made on the service book of the appellant. Copy of the service book is attached as annexureE.
- 6. That after the expiry of the contract period the same was once again renewed/ extended vide notification dated 20-10-2007, but the department refused to sanction leave without pay to the appellant and thus the appellant was deprived to continue service as SS.
- 7. That vide advertisement dated August, 2007 the posts of SS were once again advertised but through this advertisement the in-service teachers were debarred to appear in the test, hence the appellant was also not allowed to be appointed/ selected on the post of SS on contract basis. Copy of the advertisement is attached as annexureF.
- 8. That it is important to mention here that before regular appointment of the contract appointees were regularized vide Notification dated 24-10-2009 and 11-12-2009 and thereby permanently depriving the appellant from appointment on contract basis on the post of SS as well as through this regularization the right of promotion of the appellant to the post of SS was also curtailed. Copies of the regularization Act dated 24-10-2009 and notification dated 11-12-2009 are attached as annexure.....G&H.
- 9. That appellant feeling aggrieved from the action of the respondents and from the impugned regularization dated 24-10-2009 and notification dated 11-12-2009, preferred departmental appeal followed by a writ petition No. 741-A/2010 before the August Peshawar High Court, Abbottabad Bench which was decided on 24-11-2020 with the observation that the matter pertaining to terms and conditions therefore, **"For what has been discussed**

[Handwritten signature]
to the file
[unclear]

hereinabove, this petition is dismissed being not maintainable. However, the petitioners shall be at liberty to knock at the door of the competent forum for redressal of their grievance, if so desired."

Copies of the departmental appeal, memo of writ petition and judgment dated 24-11-2020 are attached as annexureI, J&K.

10. That having no other remedy the appellant preferred the instant appeal on the following grounds amongst others.

GROUND:

- A- That by not promoting the appellant to the post of S.S (BPS-17) w-e-f 2009 i.e. the date when the adhoc/ contract S.S (BPS-17) have been regularized with all back benefits including seniority is against the law, facts, norms of natural justice and materials on the record hence not tenable and liable to be modified/rectified to the extent of the appellant be promoted w-e-f 2009 with all back benefits including seniority.
- B- That appellant has not been treated by the respondent Department in accordance with law and rules on the subject noted above and as such the respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973.
- C- That, the treatment meted out to the appellant is clearly based on discrimination and malafide and as such the respondents violated the principle of natural justice.
- D- That appellant is fully entitled to be promoted to the post of S.S (BPS-17) w-e-f 2009 i.e. the date when the adhoc/ contract S.S (BPS-17) have been regularized with all back benefits including seniority in light of the section 9 of the Khyber Pakhtunkhwa Civil Servant Act, 1973 read with the Khyber Pakhtunkhwa Civil Servant (Appointment, Promotion and Transfer) Rules, 1989.
- E- That appellant is also entitled for his promotion w-e-f 2009 with all back benefits.
- F- That respondents violated Article 38(e) of the Constitution of Islamic Republic of Pakistan 1973, according to which state is bound to eliminate disparity in the income and earning of individuals including persons in the services of the Federation, thus in light of the above quoted Article of the Constitution the respondents are duty bound to promote the appellant to the post of S.S (BPS-17) w-e-f 2009 i.e. the

to be true
Advocate

date when the adhoc/ contract S.S (BPS-17) have been regularized with all back benefits including seniority.

G- That appellant seeks permission to advance other grounds and proofs at the time of hearing.

It is therefore, most humbly prayed that the appeal of the appellant may very graciously be accepted as prayed for, please.

Dated: 08-01-2021

-sd-

APPELLANT

-sd-

AZRA BIBI

THROUGH: *-sd-*

NOOR MOHAMMAD KHATTAK

-sd-

KAMRAN KHAN

-sd-

UMER FAROOQ

-sd-

SHAHZULLAH YOUSAFZAI

-sd- &

MIR ZAMAN SAFI

ADVOCATES

*Mir Zaman Safi
Advocate*

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR**

APPEAL NO. _____ / 2021

Mr. Qazi Sikandar, PSHT (BPS-15),
Govt. Primary School No:2 Laban Bandi, Haripur.

..... APPELLANT

VERSUS

- 1- The Secretary Elementary and Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.
- 2- The Director Elementary and Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.
- 3- The District Education Officer, District Haripur.

..... RESPONDENTS

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE INACTION OF THE RESPONDENTS BY NOT PROMOTING THE APPELLANT TO THE POST OF S.S (BPS-17) W-E-F 2009 I.E. FROM THE DATE WHEN THE ADHOC/ CONTRACT SUBJECT SPECIALIST (BPS-17) HAVE BEEN REGULARIZED AND AGAINST NO ACTION TAKEN ON THE DEPARTMENTAL APPEAL OF APPELLANT WITHIN THE STATUTORY PERIOD

PRAYER:

That on acceptance of this appeal the respondent may kindly be directed to consider the appellant for promotion to the post of Subject specialist (BPS-17) w-e-f. 2009 i.e. the date when the adhoc/ contract S.S (BPS-17) have been regularized with all back benefits including seniority. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

R/SHWETH:

ON FACTS:

- 1. That the appellant is the employee of the respondent department and performing his duty as SPST (BPS-14).
- 2. That in the year 2004 the respondents asked applications for the post of Subject Specialist (SS) on contract basis. That after appearing in the test conducted through EATA, the appellant was appointed on the post of S.S (BPS-17) on contract basis for a period of six months. Copies of the

RECEIVED
to be filed at
[Signature]

advertisement and appointment order are attached as annexure.....**A&B.**

3. That it is pertinent to mention here that the contract period was renewed/ extended for another period vide notification dated 24-03-2006. Copy of the notification dated 24-03-2006 is attached as annexure.....**C.**

4. That it is worth to mention here that a notification was issued by the respondent department that in-service teachers appointed on contract basis as SS should get leave without pay and the same was granted to the appellant by the department vide order dated 15-09-2005. Copy of the order dated 15-09-2005 is attached as annexure**D.**

5. That it is pertinent to mention her that the entry with regard to the leave without pay was made on the service book of the appellant. Copy of the service book is attached as annexure**E.**

6. That after the expiry of the contract period the same was once again renewed/ extended vide notification dated 20-10-2007, but the department refused to sanction leave without pay to the appellant and thus the appellant was deprived to continue service as SS.

7. That vide advertisement dated August, 2007 the posts of SS were once again advertised but through this advertisement the in-service teachers were debarred to appear in the test, hence the appellant was also not allowed to be appointed/ selected on the post of SS on contract basis. Copy of the advertisement is attached as annexure**F.**

8. That it is important to mention here that before regular appointment of the contract appointees were regularized vide Notification dated 24-10-2009 and 11-12-2009 and thereby permanently depriving the appellant from appointment on contract basis on the post of SS as well as through this regularization the right of promotion of the appellant to the post of SS was also curtailed. Copies of the regularization Act dated 24-10-2009 and notification dated 11-12-2009 are attached as annexure.....**G&H.**

9. That appellant feeling aggrieved from the action of the respondents and from the impugned regularization dated 24-10-2009 and notification dated 11-12-2009, preferred departmental appeal followed by a writ petition No. 741-A/2010 before the August Peshawar High Court, Abbottabad Bench which was decided on 24-11-2020 with the observation that the matter pertaining to terms and conditions therefore, **"For what has been discussed**

to be filed by
adv.

hereinabove, this petition is dismissed being not maintainable. However, the petitioners shall be at liberty to knock at the door of the competent forum for redressal of their grievance, if so desired." Copies of the departmental appeal, memo of writ petition and judgment dated 24-11-2020 are attached as annexureI, J&K.

10. That having no other remedy the appellant preferred the instant appeal on the following grounds amongst others.

GROUND:

- A- That by not promoting the appellant to the post of S.S (BPS-17) w-e-f 2009 i.e. the date when the adhoc/ contract S.S (BPS-17) have been regularized with all back benefits including seniority is against the law, facts, norms of natural justice and materials on the record hence not tenable and liable to be modified/rectified to the extent of the appellant be promoted w-e-f 2009 with all back benefits including seniority.
- B- That appellant has not been treated by the respondent Department in accordance with law and rules on the subject noted above and as such the respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973.
- C- That, the treatment meted out to the appellant is clearly based on discrimination and malafide and as such the respondents violated the principle of natural justice.
- D- That appellant is fully entitled to be promoted to the post of S.S (BPS-17) w-e-f 2009 i.e. the date when the adhoc/ contract S.S (BPS-17) have been regularized with all back benefits including seniority in light of the section 9 of the Khyber Pakhtunkhwa Civil Servant Act, 1973 read with the Khyber Pakhtunkhwa Civil Servant (Appointment, Promotion and Transfer) Rules, 1989.
- E- That appellant is also entitled for his promotion w-e-f 2009 with all back benefits.
- F- That respondents violated Article 38(e) of the Constitution of Islamic Republic of Pakistan 1973, according to which state is bound to eliminate disparity in the income and earning of individuals including persons in the services of the Federation, thus in light of the above quoted Article of the Constitution the respondents are duty bound to promote the appellant to the post of S.S (BPS-17) w-e-f 2009 i.e. the

to be true copy
Admission

date when the adhoc/ contract S.S (BPS-17) have been regularized with all back benefits including seniority.

G- That appellant seeks permission to advance other grounds and proofs at the time of hearing.

It is therefore, most humbly prayed that the appeal of the appellant may very graciously be accepted as prayed for, please.

Dated: 08-01-2021

-sd-

APPELLANT

-sd-

QAZI SIKANDAR

THROUGH: -sd-

NOOR MOHAMMAD KHATTAK

-sd-

KAMRAN KHAN

-sd-

UMER FAROOQ

-sd-

SHAHZULLAH YOUSAFZAI

-sd &

MIR ZAMAN SAFI

ADVOCATES

RECEIVED
10 JAN 2021
MIRZAMANSAFI

وکالت نامہ

بعدالت جناب خیر بختونزادہ سروس ٹریبیونل، لہشار

منجانب Petitioners

عبداللہ جاوید وغیرہ

دعویٰ یا جرم

ایک کسٹم
توجہ

باعث تحریر آنکہ سیکرٹری ایبلمنٹ سی اینڈ ڈسٹریکٹ سٹیٹسٹس ٹریبونل لہشار۔ احمد سلطان ترین۔ عنایت اللہ خان ترین۔
مندرجہ بالا عنوان میں اپنی طرف سے بیرونی و جوابدہی مقام لہشار۔ احمد سلطان ترین۔ عنایت اللہ خان ترین۔
رضان ترین ریڈ وکٹس آئیڈووکیٹ بدیں شرط وکیل مقرر کیا۔ کہ میں ہر پیشی پر خود یا بذریعہ مختار خاص
رو برو عدالت حاضر ہوتا رہوں گا۔ اور بوقت پکارے جانے وکیل صاحب موصوف کو اطلاع دے کر حاضر کروں گا۔ اگر کسی
پیشی پر منظر حاضر نہ ہوں۔ اور حاضری کی وجہ سے کسی وجہ پر مقدمہ میرے خلاف ہو گیا تو صاحب موصوف اس کے کسی طرح ذمہ دار نہ
ہوئے۔ نیز وکیل صاحب موصوف صدر مقام پکھری کے علاوہ کسی اور جگہ یا پکھری کے مقرر اوقات سے پہلے یا بروز
تعطیل بیروی کرنے کے مجاز نہ ہونگے۔ اگر مقدمہ مقام پکھری کے کسی اور جگہ سماعت ہونے یا بروز پکھری کے اوقات
کے آگیا یا پیچھے ہونے پر منظر کو کوئی نقصان پہنچے تو ذمہ دار یا اس کے رابطے کسی معاوضہ ادا کرنے مختار نامہ واپس کرنے کے
بھی صاحب موصوف ذمہ دار نہ ہونگے۔ مجھے کل ساختہ پرواختہ صاحب مثل کردہ ذات خود منظور و قبول ہوگا اور صاحب
موصوف کو عرضی دعویٰ اور درخواست اجراءے ڈگری و نظر ثانی اپیل نگرانی دائر کرنے نیز ہر قسم کی درخواست پر دستخط تصدیق
کرنے کا بھی اختیار ہوگا۔ اور کسی حکم یا ڈگری کے اجراء کرنے اور ہر قسم کاروبار وصول کرنے اور رسید دینے اور داخل کرنے
کا ہر قسم کا بیان دینے اور سپروٹاشی و راضی نامہ و فیصلہ برخلاف کرنے اقبال دعوے کا اختیار ہوگا۔ اور بصورت اپیل و
برآمدگی مقدمہ یا منسوخی ڈگری یکطرفہ درخواست حکم اتنا ہی یا ڈگری قبل از فیصلہ اجراءے ڈگری بھی صاحب موصوف کو
بشرط ادائیگی علیحدہ بیروی مختار نامہ کرنا مجاز ہوگا۔ اور بصورت ضرورت اپیل یا اپیل کے واسطے کسی دوسرے وکیل یا ایئر سٹر
کو بجائے اپنے ہمراہ مقرر کریں اور ایسے مشیر قانونی کو بھی اس امر میں وہی اختیارات حاصل ہونگے جیسے صاحب
موصوف کو۔ پوری فیس تاریخ پیشی سے پہلے ادا نہ کروں گا۔ تو صاحب موصوف کو پورا اختیار ہوگا کہ مقدمہ کی بیروی نہ
کریں اور ایسی حالت میں میرا مطالبہ صاحب موصوف کے برخلاف نہیں ہوگا۔ لہذا مختار نامہ لکھ دیا ہے کہ سند ہے مضمون
مختار نامہ سن لیا ہے اور اچھی طرح سمجھ لیا اور منظور ہے۔

مورخہ: 20

عبداللہ جاوید

قاضی جاوید اقبال

ناصر علی

قاضی بیبرا

قاضی شاہین اقبال

عذره بی بی

قاضی سکندر اعظم

ناصر علی