30.06.2022 Counsel for the petitioner present. Mr. Shahab Khattak, Legal Advisor for TEVETA present and stated that implementation report in process and seeks time for submission of implementation report. To come for implementation report on 26.07.2022 before S.B.

(Fareeha Paul)
Member (E)

26th July, 2022 Petitioner in person present. Mr. Muhammad Adeel Butt, Addl: AG alongwith Mr. Shahab Khattak, Legal Advisor for respondents present.

Learned AAG has assured that he will coordinate with the respondents to get the judgment implemented and submit implementation report on the next date. To come up for implementation report on 27.09.2022 before S.B.

(Kalim Arshad Khan)
Chairman

Form- A

FORM OF ORDER SHEET

Court of _____

Execution Petition No. 221/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	14.04.2022	The execution petition of Mr. Abdul Aziz submitted today by Mr. Javed Ali Ghani Advocate may be entered in the relevant register and put up to the Court for proper order please. REGISTRAR
2-		This execution petition be put up before to Single Bench at Peshawar on 26-05-2022. Original file be requisitioned. Notices to the appellant and his counsel be also issued for the date fixed. Notices also be issued to the Respondents for I/R. CHAIRMAN
	22/4 Noted	
26.05.2022		Nobody present for the petitioner. Mr. Kabirullah Khattak, Addl AG alongwith Mr. Shahab Khattak for respondents present. Learned AAG seeks time for compliance of judgment of this Tribunal. Granted. To come up for implementation report on 30.06.2022 before S.B. Original appeal also requisitioned. Kalim Arshad Khan Chairman

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

CHECK LIST

Case Title: Abdul Aziz Govt

S#	CONTENTS	YES	NO
1	This Appeal has been presented by:	✓	
2	Whether Counsel/Appellant/Respondent/Deponent have signed the requisite documents?	✓	
3	Whether appeal is within time?	✓	
4	Whether the enactment under which the appeal is filed mentioned?	✓	
5	Whether the enactment under which the appeal is filed is correct?	✓	
6	Whether affidavit is appended?	✓	
7	Whether affidavit is duly attested by competent Oath Commissioner?	✓	
8	Whether appeal/annexures are properly paged?	✓	
9	Whether certificate regarding filing any earlier appeal on the subject, furnished?	✓	
10	Whether annexures are legible?	✓	
11	Whether annexures are attested?	✓	
12	Whether copies of annexures are readable/clear?	✓	
13	Whether copy of appeal is delivered to AG/DAG?	✓	
14	Whether Power of Attorney of the Counsel engaged is attested and signed by petitioner/appellant/respondents?	✓	
15	Whether numbers of referred cases given are correct?	✓	
16	Whether appeal contains cutting/overwriting?	✓	
17	Whether list of books has been provided at the end of the appeal?	✓	
18	Whether case relate to this court?	✓	
19	Whether requisite number of spare copies attached?	✓	
20	Whether complete spare copy is filed in separate file cover?	✓	
21	Whether addresses of parties given are complete?	✓	
22	Whether index filed?	✓	
23	Whether index is correct?	✓	
24	Whether Security and Process Fee deposited? On	✓	
25	Whether in view of Khyber Pakhtunkhwa Service Tribunal Rules 1974 Rule 11, notice along with copy of appeal and annexures has been sent to respondents? On	✓	
26	Whether copies of comments/reply/rejoinder submitted? On	✓	
27	Whether copies of comments/reply/rejoinder provided to opposite party? On	✓	

It is certified that formalities/documentation as required in the above table have been fulfilled.

Name: Amanullah

Signature:

Dated: 13/4/22

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,

PESHAWAR.

Execution Petition No. 221/2022

Appeal No.426/2019

Abdul Aziz ..... Appellant

Versus

Secretary Industry Commerce and Technical Education Department and another..... ..... Respondents

INDEX

Petitioner/ Appellant

Through

Javed Ali Ghani

&

Aman Ullah Khan
Advocates High Court
Peshawar

Dated: 06.04.2022

(17)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,

PESHAWAR.

Execution petition no. 221/2022

Appeal No.426/2019

Abdul Aziz s/o Abdul Rauf
Director Physical Education
Govt. College of Technology Nowshera..... Appellant

Versus

1) Secretary Industry Commerce and Technical Education Department, Civil Secretariat, Peshawar.
2) Govt. of KP through Secretary Finance, KP, Civil Secretariat, Peshawar.
3) Govt. of KP through Secretary Establishment Department, Civil Secretariat, Peshawar.
4) Managing Director Khyber Pakhtunkhwa TEVETA Headquarters, Peshawar.

..... Respondents

APPLICATION FOR IMPLEMENTATION OF JUDGMENT/ ORDER OF SERVICE TRIBUNAL DATED 31.01.2022

Respectfully Sheweth;

1) That this Hon'ble Tribunal vide order dated 31.01.2022 accepted appeal of applicant/ petitioner. (Attested copy of judgment/ order dated 31.01.2022 is attached).

2) That petitioner approached the concerned authorities/ respondent No.1 for the implementation of judgment/ order dated 31.01.2022 but he paid no heed. (Copy of application is attached

3) That respondent are not implementing the order/ judgment dated 31.01.2022 of this hon'ble Tribunal and have committed clear contempt.

4) That justice demands that judgment of this Hon'ble Tribunal may please be implemented in true letter and spirit.

It is, therefore, humbly prayed that respondents may please be directed to implement the order/ judgment dated 31.01.2022 in true letter and spirit and all the benefits be awarded after the decision of the Hon'ble Tribunal.

Petitioner/ Appellant

Through

Javed Ali Ghani

&

Aman Ullah Khan
Advocates High Court
Peshawar.

AFFIDAVIT

I, do hereby affirm and declare on oath that the contents of the **Application** are true and correct to the best of my knowledge and belief to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.

Deponent
16102-8149388-9

(3)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Appeal No. 426 /2019

Abdul Aziz, Director of Physical Education Govt Polytechnic Institute Mardan.

(Appellant)

VERSUS

1. Govt of Khyber Pakhtunkhwa through Secretary Industry Commerce and Technical Education Department Peshawar.
2. Govt of Khyber Pakhtunkhwa through Secretary Finance Khyber Pakhtunkhwa, Peshawar
3. Govt of Khyber Pakhtunkhwa through Secretary Establishment Department Peshawar.
4. Managing Director Khyber Pakhtunkhwa TEVETA Head quarters Peshawar.

(Respondents)

Appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 for allowing / antedating Seniority / Promotion to BPS-18, against which his Departmental Appeal dated 05.12.2018 was not responded despite the lapse of 90 days.

Filed to-day
Registrar
1/4/19

Prayed in Appeal:

On acceptance of this Appeal the respondents may kindly be directed to allow the appellant seniority / promotion to BPS-18 on the basis of 25 % promotion Quota of sanctioned posts from BPS 17 to BPS 18 in the light of Notification date 27.02.2006 as similar relief has been granted to the colleagues of the appellant with all arrears and benefits.

Re-submitted to -day and filed.
Registrar
4/4/19.

ATTESTED
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

(4)

ORDER
31.01.2022

Learned counsel for the appellant present. Mr. Muhammad Adeel Butt, learned Additional Advocate General for official respondents No. 1 to 3 present. Mr. Ali Gohar Durrani, legal Advisor for respondent No. 4 present. Arguments heard and record perused.

Vide our detailed judgment of today, passed in service appeal bearing No. 412/2019 titled Syed Jamal Shah Versus Government of Khyber Pakhtunkhwa through Secretary Industry, Commerce and Technical Education Department Peshawar and three others, the instant service appeal is accepted as prayed for. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
31.01.2022

(AHMAD SULTAN TAREEN)
CHAIRMAN

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

Date of Presentation of Application 06/04/22
Number of Words 800
Copying Fee 10/-
Urgent —
Total 10/-
Name of Copyist —
Date of Completion of Copy 07/4/22
Date of Delivery of Copy 07/4/22

5

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 412/2019

Date of Institution ... 01.04.2019

Date of Decision ... 31.01.2022

Syed Jamal Shah, Librarian Government College of Technology, Tangi, District Charsadda. ... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Secretary Industry Commerce and Technical Education Department, Peshawar & Others. ... (Respondents)

Mr. Zartaj Anwar, Advocate ... For Appellant

Mr. Muhammad Adeel Butt, Additional Advocate General ... For respondents No. 1 to 3.

Mr. Ali Gohar Durrani, Legal Advisor, ... For respondent No. 4.

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 questions of law and facts are involved therein:-

1. Service Appeal No. 410/2019 titled Javed Iqbal,
2. Service Appeal No. 411/2019 titled Alamgir Shah,
3. Service Appeal No. 424/2019 titled Sultan Muhammad
4. Service Appeal No. 425/2019 titled Muhammad Akram
5. Service Appeal No. 426/2019 titled Abdul Aziz
6. Service Appeal No. 427/2019 titled Khalid Saleem

ATTESTED

EXAMINER
Khyber Pakhtukhwa
Service Tribunal
Peshawar

02. The appellants in the instant service appeal and the connected service appeals are Librarians-BPS-17 and Director Physical Education (DPE) BPS-17. Both are employees of respondent No. 1 and both the cadres are sailing in the same boat with respect to the issue in hand. Briefly stated facts of the case are that the appellants were initially appointed as Librarian/DPEs BPS-16 on regular basis. The posts in respect of both the cadres were up-graded to BPS-17 vide order dated 15-08-2008 only for those holding the requisite qualification, but later on such posts were up-graded on regular basis to BPS-17 vide notification dated 23.02.2011 but with immediate effect, which however was required to be affected from the date of acquiring the prescribed degree. Feeling aggrieved, the appellants filed departmental appeals followed by Service Appeal No. 1342/2011 by Librarians and Writ Petition No. 4137-P/2016 by DPEs. The Service Tribunal as well as the High Court accepted their appeals vide judgment dated 08-06-2015 by the service tribunal and vide judgment dated 05-09-2017 by the High Court. The respondents challenged the judgment of Service Tribunal before the august Supreme court in Civil Petition Nos. 415 to 424, 426 to 438, 511 to 514-P of 2015, which were dismissed vide judgment dated 06.05.2016, hence the respondents did not prefer to contest the judgment of High, hence the respondents allowed up-gradation from the date of acquiring the requisite qualification vide order dated 28.09.2016. The episode went well to the extent of up-gradation from the date of acquiring the prescribed qualification, but on the other hand, the Government Of Khyber Pakhtunkhwa vide notification dated 27.02.2006 had approved placement of 25 % of the sanctioned posts of Librarians/DPEs BPS-16 in BPS 17 and 25% from BPS-17 to Senior Scale BPS 18. Other colleagues of the appellants were allowed senior scale BPS-18 and the appellants on the same analogy, submitted appeals before the respondents, which was worked out by the respondent department and out of sanctioned posts, five posts falling to the share of BPS-18 @ of 25% of sanctioned posts, but as a result of afterthought, the same was refused to the appellants. Feeling

aggrieved, the appellants filed departmental appeal dated 05.12.2018, which was not responded within statutory period, hence the present appeals with prayers to allow the appellants seniority/promotion to BPS-18 from the date of entitlement alongwith all consequential benefits on the basis of 25% promotion quota of sanctioned posts from BPS-17 to 18 on the strength of notification dated 27-02-2006 as similar relief has already been granted to the colleagues of the appellants.

03. Learned counsel for the appellants has contended that the respondent department extended the benefit of BPS-18 on regular basis against the existing vacancies to other Librarians namely Sarwar Ullah and Ali Akbar while the appellants has been discriminated; that the appellants were holding the requisite qualification, hence after serving for more than five years as such, they were entitled to Senior Scale BPS-18 as per notification dated 27-02-2006; that even in a judgment reported as PLD 2013(SC)-195 the august Supreme Court has held that the statutory provisions, rules regulation which govern the matter of appointment of Civil Servants must be followed honestly and scrupulously; that respondent have discriminated the appellants by allowing promotion to their other colleagues and refusing the same to the appellants.

04. Learned Additional Advocate General appearing on behalf of the respondents has contended that previously the posts of Librarians/DPEs were in BPS-16. There was no further structure available for their promotion and keeping in view this hardship, the Government of Khyber Pakhtunkhwa Industries, Commerce & Technical Education Department vide its notification dated 27.02.2006 devised a structure for them whereby 25% of the total sanctioned posts of Librarians/DPEs BPS-16 were placed in BPS-17 while 25% of BPS-17 of the same cadres were placed in BPS-18. However, later on, all the posts of Librarians/DPEs BPS-16 were upgraded to BPS-17 vide Notification dated 15.08.2008 and 23-02-2011 and now none of these posts exists in BPS-16. Now

due to changed positions of the posts, a question arises that in the absence of BPS-16, how 25% of the posts in BPS-17 is to be allocated for further 25% allocation in BPS-18; that in pursuance of the judgment of this Tribunal the appellants were allowed BPS-17 from the date of appointment with all benefits for having acquired Master Degree in Library Science; that so far as promotion to the post of Senior Scale BPS-18 is concerned, the department has no justification for creation of posts in BPS-18; that the appeal being devoid of merit may be dismissed. Learned counsel for respondent No.4 relied upon the arguments of learned Additional Advocate General.

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

06. Crux of the issue is that the appellants being Librarians/DPEs in BPS 17 against regular sanctioned posts, has invoked jurisdiction of notification dated 27.02.2006, which allows placement of 25% of the sanctioned posts of Librarians/DPEs BPS-16 in BPS-17 and 25% of BPS-17 posts of the same cadres in BPS-18. The respondents had already exercised the formula by granting promotions against posts falling in the share of 25% and vide notification dated 28-04-2014 had promoted other colleagues of the appellants. Record would suggest that the respondents had also processed case of promotion of appellants at some length, which would show that 5 posts are falling to the share of the appellants and the appellants are otherwise fit for promotion in respect of seniority and qualification, but the respondents at a belated stage realized that since the notification dated 27-02-2006 was a hardship incentive at the time, when the post of librarian was in BPS-16 and now the post is upgraded to BPS-17, in a situation, the incentive falling in the share @ 25% of BPS-16 vanished away, but the respondents deliberately avoiding the share @ 25% of BPS-17 to BPS-18, which is still intact, as the said notification is neither rescind nor superseded and is still in field and it would be interesting to note that

respondents had already made promotions in pursuance of the notification dated 27-02-2006, even after up-gradation of post to BPS-17, hence contention of the respondents does not hold ground. In a situation, denial of right of promotion would be discriminatory to the effect, that similar relief had already been granted to similarly placed employees against their existing vacancies, which does not require creation of posts, hence concern of the respondents regarding creation of posts is not tenable. Equity and fair play demands that the appellants also deserve the same treatment being the senior most and otherwise eligible.

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

ANNOUNCED
31.01.2022

(AHMAD SULTAN TAREEN)
CHAIRMAN

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

Date of Presentation of Application 06/04/22
Number of Words 2220
Copying Fee 22/-
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Date of Delivery of Copy 07/4/22

Certified to be ture copy
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

To

(10)

Secretary Industry Commerce and
Technical Education Department,
Civil Secretariat, Peshawar

APPLICATION FOR IMPLEMENTATION OF JUDGMENT OF THE HON'BLE SERVICE TRIBUNAL, PESHAWAR DATED 31.01.2022 PASSED IN S.A.No.426/2019

Sir,

Please comply the order/ judgment dated 31.01.2022 passed by Hon'ble Service Tribunal, Peshawar passed in S.A.No.426/2019 in letter, spirit and obliged. (Certified copy attached).

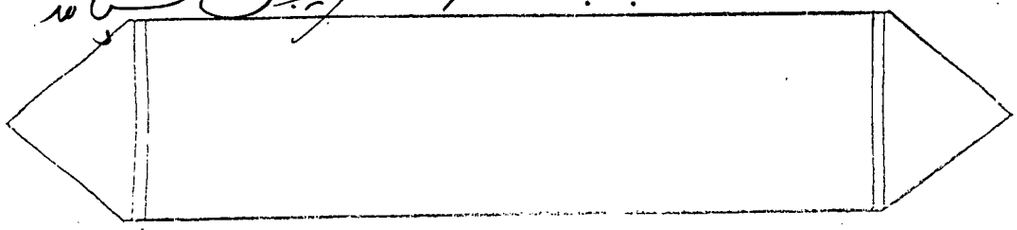
Applicant

Abdul Aziz
Director Physical Education
Govt. College of Technology
Nowshera.
CNIC No. 16102-8149388-9
Cell: 0317-1650246

Dated: 15.02.2022

(10)

بعدالت جناب سروس ٹریبونل کشمیر



سے 2 منجانب

موزخہ ــــــــــ

مقدمہ ــــــــــ

دعویٰ ــــــــــ

جرم ــــــــــ

عبدالعزیز بنام گورنمنٹ

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ آن مقام کشمیر کیلئے حاجی عبدالغنی اویسی و ارمان اللہ خان ایڈووکیٹس

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ برحلف دینے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارعرضی دعویٰ اور درخواست ہر قسم کی تصدیق زرایں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برامدگی اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ بالا اختیارات حاصل ہوں گے اور اس کا ساختہ پرداختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ ہرجانہ التوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھدیا کہ سند رہے۔

المرقوم ــــــــــ ماہ ــــــــــ سنہ 20ء

المعبد ــــــــــ گواہ العبد ــــــــــ

بمقام ــــــــــ لئے منظور ہے۔

عبدالعزیز