

7th September, 2022

1. None for the petitioner present. Mr. Muhammad Adeel Butt, Addl: AG for respondents present.

2. Learned Addl: AG submitted copy of order dated 21.07.2022 passed in CPLA No. 611-P/2021 and 612-P/2021, wherein judgement of this Tribunal has been suspended, therefore, it would be appropriate to adjourned this appeal sine-die till the decision of the CPLA by the august Supreme Court of Pakistan. On the request of the learned AAG this appeal is adjourned sine-die. The parties or any of them may get it restored and decided by making an application, after decision of the august Supreme Court of Pakistan referred to above. Cosign.

3. *Pronounced in open court in Peshawar and given under my hand and seal of the Tribunal on this 7th day of September, 2022.*


(Kalim Arshad Khan)
Chairman

11.05.2022

Petitioner in person present.

Muhammad Adeel Butt, learned Additional Advocate General present. Nemo for respondent Department.

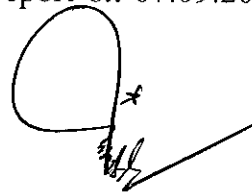
Implementation report is still awaited. Notice be issued to all the respondents for submission of implementation report on or before 15.07.2022 before S.B.


(Rozina Rehman)
Member (J)

15.07.2022

Petitioner in person present. Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present.

Implementation report not submitted. Learned Additional Advocate General committed at the bar that opportunity may be granted to contact and consult the respondent department for submission of proper implementation report on the next date. Adjourned. To come up for implementation report on 07.09.2022 before S.B.


(MIAN MUHAMMAD)
MEMBER(E)

SCANNED
KPST
Peshawar

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE SAJJAD ALI SHAH
MR. JUSTICE MUHAMMAD ALI MAZHAR

CIVIL PETITION NOS. 571-P to 612-P OF 2021
Against the judgment dated 14.07.2021 passed by Khyber
Pakhtunkhwa Service Tribunal, Peshawar in Service Appeal
Nos.1266-1284/2018, 327/2019, 650-671/2018

Govt. of Khyber Pakhtunkhwa through Secretary
Elementary & Secondary Education, Peshawar and
others

...Petitioner(s)

VERSUS

Afzal Shah	(CP 571-P/21)
Abi Hayat	(CP 572-P/21)
Shams ur Rahman	(CP 573-P/21)
Karim Khan	(CP 574-P/21)
Abdul Hakim	(CP 575-P/21)
Stana Gul	(CP 576-P/21)
Muhammad Idrees	(CP 577-P/21)
Marisoor Ahmad Khan	(CP 578-P/21)
Khial Zada	(CP 579-P/21)
Nizam ud Din	(CP 580-P/21)
Sher Muhammad	(CP 581-P/21)
Rehmat Said	(CP 582-P/21)
Javed Akhtar	(CP 583-P/21)
Munawar Khan	(CP 584-P/21)
Said Alam Shah	(CP 585-P/21)
Lateef Ullah	(CP 586-P/21)
Mst. Khalida Safi	(CP 587-P/21)
Zar Gu	(CP 588-P/21)
Imtiaz Gul	(CP 589-P/21)
Abdul Hamid	(CP 590-P/21)
Khaista Shcr	(CP 591-P/21)
Sabeel Hassan	(CP 592-P/21)
Anwar Ali	(CP 593-P/21)
Javed Hussain	(CP 594-P/21)
Luqman Hakeem	(CP 595-P/21)
Aziz ur Rehman	(CP 596-P/21)
Muhammad Muneer Khan	(CP 597-P/21)
Mst. Shah Begum	(CP 598-P/21)
Munir Khan	(CP 599-P/21)
Mst. Fehmeeda Begum	(CP 600-P/21)
Muhammad Baz	(CP 601-P/21)
Hanif Jan	(CP 602-P/21)
Sher Afzal	(CP 603-P/21)
Mst. Dil Taj Begum	(CP 604-P/21)
Races Khan	(CP 605-P/21)
Syed Hijab Hussain	(CP 606-P/21)
Eid Muhammad	(CP 607-P/21)
Fazal Hakeem	(CP 608-P/21)
Syed Zamir Hussain	(CP 609-P/21)
Janat Khan	(CP 610-P/21)

ATTESTED

[Signature]
Assistant Registrar
Supreme Court of Pakistan
Peshawar.

Ayan Ali
Sohail Khan

(CP 611-P/21)
(CP 612-P/21)
...Respondent(s)

For the Petitioner(s): Mr. Atif Ali Khan, Addl. AG KPK

For the Respondent(s): N.R.

Date of Hearing: 21.07.2022

ORDER

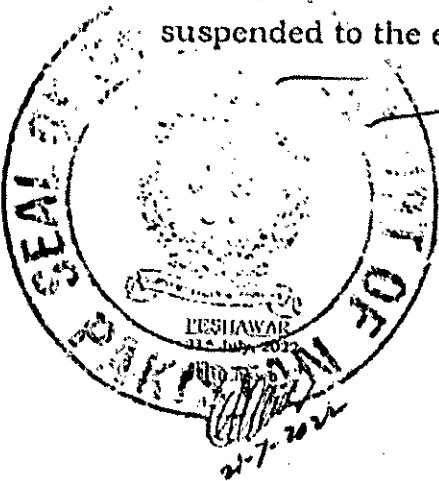
SAJJAD ALI SHAH, J. — The petitioners have impugned the judgment of the learned Khyber Pakhtunkhwa Service Tribunal, whereby the petitioners were directed to promote the respondents from the date when their colleagues at the Provincial level were promoted. The learned Additional Advocate General argues that the judgment is bad mainly on two accounts; firstly, that the Tribunal could not have directed the petitioners to promote the respondents and at the best it could have directed that the respondents may be considered for promotion as the issue solely is the domain of Departmental Promotion Committee. However, it submitted that to that extent the petition is not pressed as the DPC has promoted the respondents with immediate effect; secondly, the promotion as per rules of the Provincial Government is always with immediate effect and consequently, directions for promoting the respondents retrospectively could not be sustained.

2. Contentions of the learned Advocate General require consideration. Accordingly, leave to the extent of directing ante-dated promotion is granted. Since it is a service matter and short question is involved, therefore, appeal stage paper books be prepared and office is directed to fix the appeals arising out of the instant petitions in the next session. Till then, operation of the impugned judgment is suspended to the extent of directing ante-dated promotion.

Sd/- Sajjad Ali Shah, J.
Sd/- Muhammad Ali Mazhar, J.

Certified to be true copy
21/07/2022
Assistant Registrar
Supreme Court of Pakistan
Peshawar.

Not approved for reporting



BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Execution Petition No. 119/2022

In

S.A # 87/2016

Mr. Sher Alam.....Petitioners

Versus

Govt. of Khyber Pakhtunkhwa

Through Secretary, Higher Education

And Others.....Respondents

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Respondent

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Execution Petition No. 119/2022

In

S.A # 87/2016

Mr. Sher Alam Khan.....Petitioner

Versus

Govt. of Khyber Pakhtunkhwa

Through Chief Secretary Khyber Pakhtunkhwa

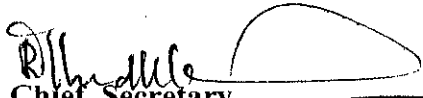
And others.....Respondents.

Subject: REPLY TO EXECUTION PETITION ON BEHALF OF RESPONDENTS
NO. 1 to 3

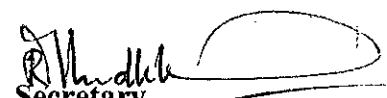
1. Correct to the extent that Service Appeal No. 87/2016 was filed by the appellant.
2. Correct to the extent that Service Appeal was decided vide judgment dated: 12-11-2021 (**Annex-A**). The respondents feeling aggrieved from the judgment placed it before scrutiny committee of Law Department to determine its suitability for filing CPLA or otherwise and the same was declared fit for filing CPLA on 12-01-2022 (**Annex-B**) and Govt; accordingly filed CPLA in Supreme Court of Pakistan (**Annex-C**).
3. Incorrect, hence denied as this department (Higher Education Department) has already moved/forwarded Summary to Chief Minister, Khyber Pakhtunkhwa for conditional reinstatement and withdrawal of resignation from service in respect of the petitioner which is in pipeline and will be notified as and when approved by the competent authority (Copy of the Summary enclosed) (**Annex-D**).
4. Incorrect. As already explained in Para-02. The respondents used its legal option by filing CPLA in Supreme Court of Pakistan.
5. As already explained in Preceding Paras.
6. As already explained in Preceding Paras.

Prayer:

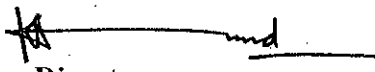
It is, therefore, humbly prayed that the instant Execution Petition is not maintainable being devoid of merit, hence may graciously be dismissed.


Chief Secretary,

Govt; of Khyber Pakhtunkhwa
Respondent No. 01


Secretary,

Higher Education, Archives
& Library Department
Respondent No. 02


Director,

Directorate of Higher Education
Respondent No. 03

A

5/14/21

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 87/2016

Date of Institution ... 29.12.2015

Date of Decision ... 12.11.2021



Sher Alam Khan Ex-Assistant Professor (English), Higher Education Department,
presently Registrar Abdul Wali Khan University Mardan,

... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa
Civil Secretariat Peshawar and three others. ... (Respondents)

Khush Dil Khan & Syed Noman Ali Bukhari,
Advocates

... For Appellant

Noor Zaman Khattak,
District Attorney

... For Respondents

SALAH-UD-DIN ...
ATIQ-UR-REHMAN WAZIR ...

MEMBER (JUDICIAL)
MEMBER (EXECUTIVE)

JUDGMENT

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

Brief facts of the

case are that upon the recommendations of Public Service Commission, the appellant was initially appointed as Lecturer (BPS-17) vide order dated 15-10-1992, who later on was promoted as Assistant Professor (BPS-18) vide order dated 01-01-2010. During the course of his career, the appellant applied through proper channel to the post of Registrar (BPS-20) in Abdul Wali Khan University Mardan (AWKUM) and the appellant was selected and appointed as registrar for a period of three years vide order dated 19-08-2014. The appellant submitted request to the respondents to relieve him of his post to join his new assignment,

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which however was regretted, instead the appellant was asked to submit resignation from the post of assistant professor. The appellant again requested for retention of his lien or counting his service under section-418 of the Civil Service Regulations (CSR), which too was not acceded to, hence the appellant tendered his resignation on 10-10-2014, but when the appellant came to know that the post of registrar is a tenure based post, hence he requested again on 27-05-2015 for conversion of his resignation into a request to relieve him from service in order to join new assignment, but in the meanwhile his resignation was accepted vide order dated 08-06-2015, against which the appellant filed departmental appeal dated 30-06-2015 for withdrawal of his resignation or confirmation of his pension for the services he rendered in the respondents department, but his appeal was rejected vide order dated 01-12-2015, hence the instant service appeal with prayers that the impugned orders dated 08-06-2015 and 01-12-2015 may be set aside and resignation so tendered may be allowed to be withdrawn or in alternative, the appellant having rendered more than 20 years of service be allowed pension for the service rendered.

02. Learned counsel for the appellant has contended that the appellant has not been treated in accordance with law and his rights secured under the law has been violated; that before acceptance of resignation, the appellant has virtually withdrawn his resignation, but was not considered by the respondents, which is against law and norms of natural justice; that the appellant has at his credit more than 20 years of service, however the respondents rejected departmental appeal of the appellant, hence his long and spotless service has been washed out, inspite of the fact that under the law he is entitled either to have count his service for the purpose of pay and pension or at least he should have been allowed pension for the service he rendered in the Higher Education Department; that the respondents illegally insisted for resignation, despite the fact that the appellant

was entitled to retain his lien over his post or to have been allowed deputation; that case of the appellant is covered under section-418 of CSR.

03. Learned District Attorney for the respondents has contended that upon his selection as Registrar, the appellant was required either to submit resignation from the post of Assistant Professor or to quit the job of registrar and continue with his job; that the appellant opted to submit his resignation and quit the job of Assistant Professor, now he cannot opt to withdraw his resignation; that university is an autonomous body and any civil servant who wants to join the autonomous body, will have to resign from his previous job, hence request of the appellant for relieving was regretted and his resignation was accepted by the competent authority; that it is prerogative of the government to accept or reject the resignation.

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

05. Record reveals that the appellant was properly granted NOC for applying to the post of Registrar and upon his selection as Registrar in Abdul Wali Khan University Mardan (AWKUM) vide order dated 19-08-2014, the appellant placed a request dated 25-10-2014 to the respondents to relieve him either on deputation or retaining his lien in his parent department in order to join his new assignment, but the appellant was compelled to tender resignation from the post of Assistant Professor. The appellant though was hesitant but finally tendered his resignation on 10-10-2014. The appellant assumed the charge as registrar on 17-11-2014 and after taking over charge, it transpired that the post of registrar is a tenure based post only for the period of three years, hence he submitted an application to consider his resignation as withdrawn, but his request was declined vide order dated 17-06-2015, but in the meanwhile his resignation was accepted vide order

dated 08-06-2015, against which the appellant filed departmental appeal dated 30-06-2015, which was rejected vide order dated 01-12-2015.

06. Placed on record is a letter of Administration Department dated 03-10-1989 containing instructions that resignation tendered by a Government Servant shall either be accepted or rejected by the competent authority within the stipulated period of not more than 30 days of its submission and acceptance/rejection thereof be communicated to the Government Servant concerned accordingly, but in case of the appellant, his resignation was accepted after lapse of almost eight months, which is contrary to the instructions circulated by the provincial government. Placed on record is another letter dated 24-12-1959 of Administration Department containing instructions regarding resignation that where a government servant who has tendered resignation, withdraws it before it is accepted by the competent authority, or where after the acceptance but before the acceptance is communicated to him, he is allowed to withdraw the resignation. It was noted that the appellant requested for withdrawal of his resignation on 27-05-2015 well before acceptance of his resignation dated 08-06-2015 and as per instructions circulated by administration department vide order dated 24-12-1959, the appellant was entitled to withdraw his resignation before its acceptance, but the respondents illegally accepted his resignation in haste without taking into consideration his pending request for withdrawal of his resignation. In the judgment reported as 2003 PLC (CS) 1535 it has been held that ESTA CODE, Edition (1989) clearly mentioned that in case Civil Servant makes withdrawal of his resignation before the same was accepted by the competent authority, resignation would be deemed to have been withdrawn. In other judgments reported as 2015 PLC (CS) 337 and 1984 PLC (CS) 435, it has been held that resignation could be withdrawn or recalled before its acceptance by the competent authority, whereas the appellant had also requested for withdrawal of his resignation, but such request of the appellant was not

considered positively by respondents, which however was not warranted and on this score alone, the impugned orders are liable to be set at naught.

07. We have also noted that the appellant in his departmental appeal alleged his resignation not to be voluntary, but he was forced to do so and to this effect, august Supreme Court of Pakistan in its judgment reported as 2005 SCMR 1194 has declared such action of the respondents as legal. Last but not the least, section-418(b) states that resignation of an appointment to take up another appointment, service that counts, is not a resignation of the public service, so in view of section-418(b) of CSR, the resignation so tendered cannot be termed a resignation in real terms and depriving the appellant from benefits of his long service would not be in accordance with the canons of law.

08. We are of the considered opinion that the appellant having more than 20 years service at his credit cannot be ousted for technical reasons, as the appellant submitted his application for withdrawal of his resignation well before its acceptance, but his request was illegally rejected. Most importantly, the appellant was properly granted NOC by the respondents for joining his new assignment and in view of granting such NOC, the respondents were required to grant him either deputation or retaining his lien against his original post, which however was not done by the respondents. The appellant was denied fundamental right of due process as guaranteed under Article-10-A of the constitution.

09. In view of the foregoing discussion, the instant appeal is accepted. Impugned orders dated 08-06-2015 and 01-12-2015 are set aside and resignation of the appellant stands withdrawn and service of the appellant as Assistant Professor (BPS-18) is restored without back benefit with observations that period during which he remained as Registrar would be treated on duty against leave accrued, if any, or leave without pay for the purpose of his length of service and



future benefits. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
12.11.2021

(SALAH-UD-DIN)
MEMBER (J)

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

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B

GOVERNMENT OF KHYBER PAKHTUNKHWA
LAW, PARLIAMENTARY AFFAIRS &
HUMAN RIGHTS DEPARTMENT

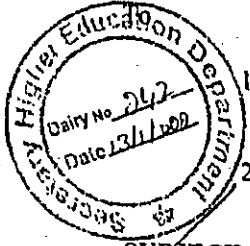
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(Agenda Item No.03)

No.SOL/DG/Law/9-12(1)/HE/2021
Dated Peshawar the 12-01-2022

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1. The Advocate General, Khyber Pakhtunkhwa, Peshawar.
2. The Secretary to Govt. of Khyber Pakhtunkhwa, Higher Education, Archives & Libraries Department, Peshawar.

SUBJECT SERVICE APPEAL NO.87/16.SHER ALAM KHAN VERSUS GOVERNMENT OF KHYBER PAKHTUNKHWA THROUGH CHIEF SECRETARY AND OTHERS

I am directed to refer to your letter No.SO(Lit)/HED/4-99/SA No.87/16 Sher Alam Khan, dated 06.01.2022 on the subject noted above and to state that a meeting of the Scrutiny Committee has been held on 12-01-2022 under the Chairmanship of Secretary Law Department in order to determine the fitness of the subject case for filing of Appeal/CPLA in the upper forum.

After threadbare discussion on the subject case particularly hearing the stance of Administrative Department, it was decided with consensus by the Scrutiny Committee that the subject case is a fit case for filing of Appeal/CPLA before the Supreme Court of Pakistan.

Therefore, the Administrative Department is advised to approach the office of Advocate General Khyber Pakhtunkhwa through well conversant representative alongwith complete record of the case for doing the needful forthwith, please. (Power of Attorney for signature of petitioners attached).

Yours faithfully,

12/01/22
96 (Lit)

(TAHIR IQBAL KHATTAK)
SOLICITOR
LAW DEPARTMENT

Endst: No & Date Even.

Copy forwarded to the.

1. PS to Secretary Law Department.
2. PA to Law Officer, Law Department.

SOLICITOR

C

(4) 12 (23)

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

CPLA NO. _____/2022

1. Government of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa, Peshawar
2. Secretary, Higher Education Archives & Libraries Department, Khyber Pakhtunkhwa, Peshawar
3. Director Higher Education Khyber Pakhtunkhwa, Peshawar
4. Vice Chancellor Abdul Wali Khan University, Mardan.

PETITIONERS

VERSUS

Sher Alam Khan Ex-Assistant Professor (English), Higher Education Department, (presently Registrar Abdul Wali Khan University Mardan)

RESPONDENT

CIVIL PETITION FOR LEAVE TO APPEAL UNDER ARTICLE 212(3) OF THE CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN, 1973 AGAINST THE IMPUGNED JUDGMENT/ ORDER OF THE HON'BLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR DATED 12/11/2021 PASSED IN SERVICE APPEAL No.87/2016

RESPECTFULLY SHEWETH

Substantial questions of law of general public importance and grounds, inter alia, which falls for determination of this august Court are as under:-

1. Whether the impugned judgment / order of the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar does not suffer from material illegality, factually and legally incorrect and requires interference by this august Court?
2. Whether the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar has properly and legally exercised its jurisdiction in the matter in hand?

- 2 13
- (20)
3. Whether the resignation of the respondent has not attained finality as it is accepted by the Petitioners hence cannot be withdrawn after being accepted?
 4. Whether Respondent No.1 while applying for the post of Registrar Abdul Wali Khan University was not aware / cognizant of the fact that it is a tenure post but despite having knowledge of the fact that the post is a tenure post?
 5. Whether the Hon'ble Service Tribunal has taken into the consideration the Establishment Department's Notification dated 29.7.2006 while passing the impugned judgment/order?
 6. Whether the service of the University is not service of an autonomous body? Which was in the knowledge of the respondent but despite the same respondent preferred the service of the university and resigned of the post of Assistant Professor?
 7. Whether the respondent No.1 had not resigned from the government service on his own sweet will and preferred to the services of an autonomous body?
 8. Whether on joining of the post of Registrar Abdul Wali Khan University by the respondent, the respondent has not actually effected his resignation?
 9. Whether application of respondent for withdrawal of his resignation is not after thought?
 10. Whether it is not the prerogative of the government to accept or reject the resignation?
 11. Whether after acceptance of resignation of respondent, the claim of respondent is not a past and closed transaction?
 12. Whether the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar has taken into the consideration the law and facts involved in the case?
 13. Whether the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar has properly construed the record and material in its true perspective?

- 3 14 (7)
14. Whether the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar has properly applied and interpreted the law in the subject case?

FACTS

II- Facts relevant to the above points of law, inter alia, are as under:-

1. That the respondent No.1 was initially appointed on 15/10/1992 as Lecturer BPS-17 in Higher Education Department on the recommendation of Public Service Commission and was subsequently promoted as Assistant Professor BPS-18 on 01.01.2010.
2. That Respondent No.1 applied to the post of Registrar BPS-20 advertised by Abdul Wali Khan University vide advertisement No.40/2013 after obtaining departmental NOC.
3. That Respondent No.1 was appointed as Registrar BPS-20 by Abdul Wali Khan University vide office order dated 19.8.2014. Thereafter the appellant submitted his arrival report to Abdul Wali Khan University on 20.08.2014 and took charge of the post on 17.11.2014.
4. That the respondent No.1 submit his resignation from the post of Assistant Professor in the Higher Education Department which was accepted by the Competent Authority on 08/06/2015. The respondent No.1 had the option to either resign from the service of Government of Khyber Pakhtunkhwa, Higher Education Department and then join the University service or not join at all the university service and thus continue his service as Assistant Professor in the Higher Education Department. But the respondent No.1 opted for the university service.
5. That the respondent No.1 requested vide letter dated 27.05.2015 that his resignation be excepted and relieve him from the service and order to join his new assignment, however his request was regretted /declined and his resignation was accepted on 08.06.2015.
6. That respondent No.1 filed departmental appeal for the withdrawal of his resignation and for confirmation of his pension for the service he has rendered in the Higher Education Department but the appeal being devoid of merit was regretted vide the appellate order dated 1.12.2015.

- 4 15 (30)
7. That the respondent No.1 being aggrieved of the impugned order of the Competent Authority filed Service Appeal No.87/2016 before the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar in which comments of Petitioner were asked which were accordingly filed by denying stance of the respondent No.1
 8. That the Hon'ble Khyber Pakhtunkhwa Service Tribunal Peshawar was pleased to accept the Service Appeal No 87/2016 of respondent No.1 vide judgment dated 12.11.2021.
 9. That the Petitioners being aggrieved from the impugned judgment /order dated 12.11.2021 passed by the Hon'ble Services Tribunal Peshawar in Service Appeal No.87/2016 prefer this CPLA before the august Court.
 10. That the Petitioners seek leave of this august Court against the impugned judgment /order dated 12.11.2021 passed by the Service Tribunal Peshawar in Service Appeal No.87/2016.

It is, therefore, prayed that on acceptance of this petition, leave to appeal against the impugned judgment and order of the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar dated 12/11/2021 in Service Appeal No.87/2016 may graciously be granted.

(Moin-ud-Din Humayun)
Advocate-on-Record
Supreme Court of Pakistan
For Government

NOTE:

Learned Advocate General, KPK/ Addl. AG /State Counsel shall appear at the time of hearing of this petition.

ADDRESS

Office of the Advocate General, KPK, High Court Building, Peshawar. (Telephone No.091-9210119, Fax No.091-9210270)

CERTIFICATE Certified that no such petition has earlier been filed by Petitioners/ Government against the impugned judgment mentioned above.

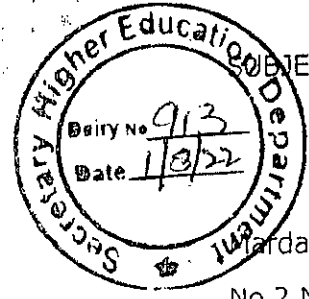
Advocate-On-Record



GOVT. OF KHYBER PAKHTUNKHWA HIGHER EDUCATION, ARCHIVES & LIBRARIES DEPARTMENT

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SUMMARY FOR CHIEF MINISTER, KHYBER PAKHTUNKHWA



SUBJECT: CONDITIONAL REINSTATMENT AND WITHDRAWAL OF RESIGNATION FROM SERVICE IN RESPECT OF MR. SHER ALAM, EX-ASSISTANT PROFESSOR (BS-18).

Upon his selection as Registrar (BS-20) at Abdul Wali Khan University Mardan (F/A), Mr. Sher Alam, Ex-Assistant Professor of English, Govt. Degree College No,2 Mardan had submitted resignation from Govt. service w.e.f 10.10.2014 (F/B).

2. Higher Education Department had processed the resignation case of the above officer (F/C) for the approval of the Hon'ble Chief Minister Khyber Pakhtunkhwa being competent authority under Rule-4(1)(a) of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 which was accepted by the competent authority and accordingly notified on 08.06.2015 (F/D).

3. Later on, the officer concerned submitted an appeal/application to Higher Education Department wherein he argued that he had completed 22 years and 07 months service and requested that either his case may be considered for deputation or he may be allowed lien in the case" (F/E). The appeal was processed and regretted by this department on 01.12.2015 (F/F).

4. Being aggrieved, Mr. Sher Alam, Ex-Assistant Professor approached Khyber Pakhtunkhwa Service Tribunal Peshawar and the Hon'ble Court decided the case in his favor on 12.11.2021 with the directions that "*the instant appeal is accepted. Impugned order dated 08.06.2015 and 01.12.2015 are set aside and resignation of the appellant stands withdrawn and service of the appellant as Assistant Professor (BS-18) is restored without back benefits with observation that period during which he remained as Registrar would be treated on duty against leave accrued, if any, or leave without pay for the purpose of his length of service and future benefits*" (F/G).


5. The Department filed CPLA in the Supreme Court of Pakistan on the advice of the Law Department for setting aside the impugned judgment of Khyber Pakhtunkhwa Service Tribunal Peshawar dated 12.11.2021 and for its suspension as interim relief (F/H). Meanwhile, the appellant filed an Execution Petition before the Khyber Pakhtunkhwa Service Tribunal Peshawar and the honorable court vide order

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dated 15.07.2022 has directed the respondents to submit implementation report before or on 07.09.2022 before the court (F/I). Furthermore, the department has also sent Execution Petition to Law Department to instruct the Advocate General Khyber Pakhtunkhwa for filing early hearing application in the Supreme Court of Pakistan (F/J).

6. In view of the foregoing, this Department is of the view that as the CPLA is still under adjudication in the Apex Court, therefore, in order to avoid any adverse action of the Service Tribunal, the Hon'ble Chief Minister Khyber Pakhtunkhwa, being competent authority under Rule-4(1)(a) of (Appointment, Promotion and Transfer) Rules, 1989 (F/K) may accord approval to conditional withdrawal of resignation of **Mr. Sher Alam**, Ex-Assistant Professor (BS-18) and reinstate him subject to the final decision of the Supreme Court of Pakistan in the CPLA. The period during which he remained as Registrar may be treated as leave without pay.

7. Approval of the Hon'ble Chief Minister, Khyber Pakhtunkhwa is solicited to the proposal contained at Para-6 above, please.


(DAWOOD KHAN)

SECRETARY HIGHER EDUCATION DEPARTMENT

SECRETARY,
ESTABLISHMENT DEPARTMENT:

CHIEF SECRETARY,
KHYBER PAKHTUNKHWA:

CHIEF MINISTER,
KHYBER PAKHTUNKHWA:

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Execution Petition No. 119/2022

In

S.A #.87/2016

Mr. Sher Alam.....Petitioners

Versus

Govt. of Khyber Pakhtunkhwa

Through Secretary, Higher Education

And Others.....Respondents

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Respondent

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Execution Petition No. 119/2022

In

S.A # 87/2016

Mr. Sher Alam Khan.....Petitioner

Versus

Govt. of Khyber Pakhtunkhwa

Through Chief Secretary Khyber Pakhtunkhwa

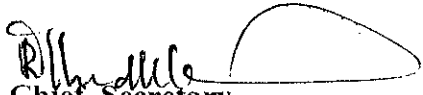
And others.....Respondents.

**Subject: REPLY TO EXECUTION PETITION ON BEHALF OF RESPONDENTS
NO. 1 to 3**

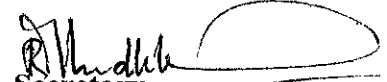
1. Correct to the extent that Service Appeal No. 87/2016 was filed by the appellant.
2. Correct to the extent that Service Appeal was decided vide judgment dated: 12-11-2021 (**Annex-A**). The respondents feeling aggrieved from the judgment placed it before scrutiny committee of Law Department to determine its suitability for filing CPLA or otherwise and the same was declared fit for filing CPLA on 12-01-2022 (**Annex-B**) and Govt; accordingly filed CPLA in Supreme Court of Pakistan (**Annex-C**).
3. Incorrect, hence denied as this department (Higher Education Department) has already moved/forwarded Summary to Chief Minister, Khyber Pakhtunkhwa for conditional reinstatement and withdrawal of resignation from service in respect of the petitioner which is in pipeline and will be notified as and when approved by the competent authority (Copy of the Summary enclosed) (**Annex-D**).
4. Incorrect. As already explained in Para-02. The respondents used its legal option by filing CPLA in Supreme Court of Pakistan.
5. As already explained in Preceding Paras.
6. As already explained in Preceding Paras.

Prayer:

It is, therefore, humbly prayed that the instant Execution Petition is not maintainable being devoid of merit, hence may graciously be dismissed.


Chief Secretary,

Govt; of Khyber Pakhtunkhwa
Respondent No. 01


Secretary,

Higher Education, Archives
& Library Department
Respondent No. 02



Director,
Directorate of Higher Education
Respondent No. 03

A

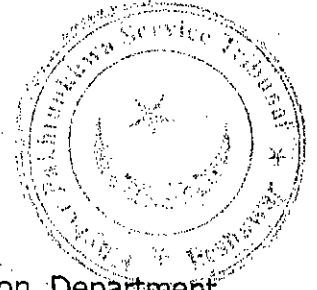
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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 87/2016

Date of Institution ... 23.12.2015

Date of Decision ... 12.11.2021



Sher Alam Khan Ex-Assistant Professor (English), Higher Education Department,
presently Registrar Abdul Wali Khan University Mardan

... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa
Civil Secretariat Peshawar and three others. ... (Respondents)

Khush Dil Khan & Syed Noman Ali Bukhari,
Advocates

... For Appellant

Noor Zaman Khattak,
District Attorney

... For Respondents

SALAH-UD-DIN
ATIQ-UR-REHMAN WAZIR

...
...

MEMBER (JUDICIAL)
MEMBER (EXECUTIVE)

JUDGMENT

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

Brief facts of the

case are that upon the recommendations of Public Service Commission, the appellant was initially appointed as Lecturer (BPS-17) vide order dated 15-10-1992, who later on was promoted as Assistant Professor (BPS-18) vide order dated 01-01-2010. During the course of his career, the appellant applied through proper channel to the post of Registrar (BPS-20) in Abdul Wali Khan University Mardan (AWKUM) and the appellant was selected and appointed as registrar for a period of three years vide order dated 19-08-2014. The appellant submitted request to the respondents to relieve him of his post to join his new assignment,

which however was regretted, instead the appellant was asked to submit resignation from the post of assistant professor. The appellant again requested for retention of his lien or counting his service under section-418 of the Civil Service Regulations (CSR), which too was not acceded to, hence the appellant tendered his resignation on 10-10-2014, but when the appellant came to know that the post of registrar is a tenure based post, hence he requested again on 27-05-2015 for conversion of his resignation into a request to relieve him from service in order to join new assignment, but in the meanwhile his resignation was accepted vide order dated 08-06-2015, against which the appellant filed departmental appeal dated 30-06-2015 for withdrawal of his resignation or confirmation of his pension for the services he rendered in the respondents department, but his appeal was rejected vide order dated 01-12-2015, hence the instant service appeal with prayers that the impugned orders dated 08-06-2015 and 01-12-2015 may be set aside and resignation so tendered may be allowed to be withdrawn or in alternative, the appellant having rendered more than 20 years of service be allowed pension for the service rendered.

02. Learned counsel for the appellant has contended that the appellant has not been treated in accordance with law and his rights secured under the law has been violated; that before acceptance of resignation, the appellant has virtually withdrawn his resignation, but was not considered by the respondents, which is against law and norms of natural justice; that the appellant has at his credit more than 20 years of service, however the respondents rejected departmental appeal of the appellant, hence his long and spotless service has been washed out, inspite of the fact that under the law he is entitled either to have count his service for the purpose of pay and pension or at least he should have been allowed pension for the service he rendered in the Higher Education Department; that the respondents illegally insisted for resignation, despite the fact that the appellant

was entitled to retain his lien over his post or to have been allowed deputation; that case of the appellant is covered under section-418 of CSR.

03. Learned District Attorney for the respondents has contended that upon his selection as Registrar, the appellant was required either to submit resignation from the post of Assistant Professor or to quit the job of registrar and continue with his job; that the appellant opted to submit his resignation and quit the job of Assistant Professor, now he cannot opt to withdraw his resignation; that university is an autonomous body and any civil servant who wants to join the autonomous body, will have to resign from his previous job, hence request of the appellant for relieving was regretted and his resignation was accepted by the competent authority; that it is prerogative of the government to accept or reject the resignation.

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

05. Record reveals that the appellant was properly granted NOC for applying to the post of Registrar and upon his selection as Registrar in Abdul Wali Khan University Mardan (AWKUM) vide order dated 19-08-2014, the appellant placed a request dated 25-10-2014 to the respondents to relieve him either on deputation or retaining his lien in his parent department in order to join his new assignment, but the appellant was compelled to tender resignation from the post of Assistant Professor. The appellant though was hesitant but finally tendered his resignation on 10-10-2014. The appellant assumed the charge as registrar on 17-11-2014 and after taking over charge, it transpired that the post of registrar is a tenure based post only for the period of three years, hence he submitted an application to consider his resignation as withdrawn, but his request was declined vide order dated 17-06-2015, but in the meanwhile his resignation was accepted vide order

dated 08-06-2015, against which the appellant filed departmental appeal dated 30-06-2015, which was rejected vide order dated 01-12-2015.

06. Placed on record is a letter of Administration Department dated 03-10-1989 containing instructions that resignation tendered by a Government Servant shall either be accepted or rejected by the competent authority within the stipulated period of not more than 30 days of its submission and acceptance/rejection thereof be communicated to the Government Servant concerned accordingly, but in case of the appellant, his resignation was accepted after lapse of almost eight months, which is contrary to the instructions circulated by the provincial government. Placed on record is another letter dated 24-12-1959 of Administration Department containing instructions regarding resignation that where a government servant who has tendered resignation, withdraws it before it is accepted by the competent authority, or where after the acceptance but before the acceptance is communicated to him, he is allowed to withdraw the resignation. It was noted that the appellant requested for withdrawal of his resignation on 27-05-2015 well before acceptance of his resignation dated 08-06-2015 and as per instructions circulated by administration department vide order dated 24-12-1959, the appellant was entitled to withdraw his resignation before its acceptance, but the respondents illegally accepted his resignation in haste without taking into consideration his pending request for withdrawal of his resignation. In the judgment reported as 2003 PLC (CS) 1535 it has been held that ESTA CODE, Edition (1989) clearly mentioned that in case Civil Servant makes withdrawal of his resignation before the same was accepted by the competent authority, resignation would be deemed to have been withdrawn. In other judgments reported as 2015 PLC (CS) 337 and 1984 PLC (CS) 435, it has been held that resignation could be withdrawn or recalled before its acceptance by the competent authority, whereas the appellant had also requested for withdrawal of his resignation, but such request of the appellant was not

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considered positively by respondents, which however was not warranted and on this score alone, the impugned orders are liable to be set at naught.

07. We have also noted that the appellant in his departmental appeal alleged his resignation not to be voluntary, but he was forced to do so and to this effect, august Supreme Court of Pakistan in its judgment reported as 2005 SCMR 1194 has declared such action of the respondents as illegal. Last but not the least, section-418(b) states that resignation of an appointment to take up another appointment, service that counts, is not a resignation of the public service, so in view of section-418(b) of CSR, the resignation so tendered cannot be termed a resignation in real terms and depriving the appellant from benefits of his long service would not be in accordance with the canons of law.

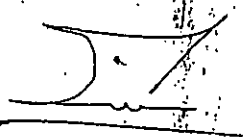
08. We are of the considered opinion that the appellant having more than 20 years service at his credit cannot be ousted for technical reasons, as the appellant submitted his application for withdrawal of his resignation well before its acceptance, but his request was illegally rejected. Most importantly, the appellant was properly granted NOC by the respondents for joining his new assignment and in view of granting such NOC, the respondents were required to grant him either deputation or retaining his lien against his original post, which however was not done by the respondents. The appellant was denied fundamental right of due process as guaranteed under Article-10-A of the constitution.

09. In view of the foregoing discussion, the instant appeal is accepted. Impugned orders dated 08-06-2015 and 01-12-2015 are set aside and resignation of the appellant stands withdrawn and service of the appellant as Assistant Professor (BPS-18) is restored without back benefit with observations that period during which he remained as Registrar would be treated on duty against leave accrued, if any, or leave without pay for the purpose of his length of service and

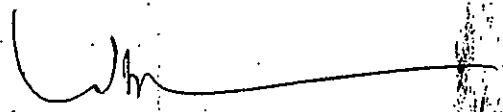
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future benefits. Parties are left to bear their own costs. File be consigned to record room.

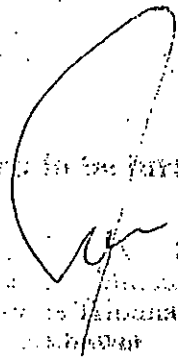
ANNOUNCED
12.11.2021



(SALAH-UD-DIN)
MEMBER (J)



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


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Annual

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B

GOVERNMENT OF KHYBER PAKHTUNKHWA
LAW, PARLIAMENTARY AFFAIRS &
HUMAN RIGHTS DEPARTMENT

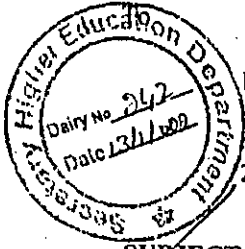
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(Agenda Item No.03)

No.SOL/DG/Law/9-12(1)/HE/2021
Dated Peshawar the 12-01-2022

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1. The Advocate General,
Khyber Pakhtunkhwa, Peshawar.
2. The Secretary to Govt. of Khyber Pakhtunkhwa,
Higher Education, Archives & Libraries Department, Peshawar.

SUBJECT SERVICE APPEAL NO.87/16 SHER ALAM KHAN VERSUS GOVERNMENT OF KHYBER PAKHTUNKHWA THROUGH CHIEF SECRETARY AND OTHERS

I am directed to refer to your letter No.SO(Lit)/HED/4-99/SA No.87/16 Sher Alam Khan, dated 06.01.2022, on the subject noted above and to state that a meeting of the Scrutiny Committee has been held on 12-01-2022 under the Chairmanship of Secretary Law Department in order to determine the fitness of the subject case for filing of Appeal/CPLA in the upper forum.

After threadbare discussion on the subject case particularly hearing the stance of Administrative Department, it was decided with consensus by the Scrutiny Committee that the subject case is a fit case for filing of Appeal/CPLA before the Supreme Court of Pakistan.

Therefore, the Administrative Department is advised to approach the office of Advocate General Khyber Pakhtunkhwa through well conversant representative alongwith complete record of the case for doing the needful forthwith, please. (Power of Attorney for signature of petitioners attached).

Yours faithfully,

12/01/22
910 (Lit)

(TAHIR IQBAL KHATTAK)
SOLICITOR
LAW DEPARTMENT

Endst: No & Date Even.

Copy forwarded to the.

1. PS to Secretary Law Department.
2. PA to Law Officer, Law Department.

SOLICITOR

C

① 23

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

CPLA NO. _____/2022

1. Government of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa, Peshawar
2. Secretary, Higher Education Archives & Libraries Department, Khyber Pakhtunkhwa, Peshawar
3. Director Higher Education Khyber Pakhtunkhwa, Peshawar
4. Vice Chancellor Abdul Wali Khan University, Mardan.

PETITIONERS

VERSUS

Sher Alam Khan Ex-Assistant Professor (English), Higher Education Department, (presently Registrar Abdul Wali Khan University Mardan)

RESPONDENT

CIVIL PETITION FOR LEAVE TO APPEAL UNDER ARTICLE 212(3) OF THE CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN, 1973 AGAINST THE IMPUGNED JUDGMENT/ ORDER OF THE HON'BLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR DATED 12/11/2021 PASSED IN SERVICE APPEAL No.87/2016

RESPECTFULLY SHEWETH

Substantial questions of law of general public importance and grounds, inter alia, which falls for determination of this august Court are as under:-

1. Whether the impugned judgment / order of the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar does not suffer from material illegality, factually and legally incorrect and requires interference by this august Court?
2. Whether the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar has properly and legally exercised its jurisdiction in the matter in hand?

- 2
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3. Whether the resignation of the respondent has not attained finality as it is accepted by the Petitioners hence cannot be withdrawn after being accepted?
 4. Whether Respondent No.1 while applying for the post of Registrar Abdul Wali Khan University was not aware / cognizant of the fact that it is a tenure post but despite having knowledge of the fact that the post is a tenure post?
 5. Whether the Hon'ble Service Tribunal has taken into the consideration the Establishment Department's Notification dated 29.7.2006 while passing the impugned judgment/order?
 6. Whether the service of the University is not service of an autonomous body? Which was in the knowledge of the respondent but despite the same respondent preferred the service of the university and resigned of the post of Assistant Professor?
 7. Whether the respondent No.1 had not resigned from the government service on his own sweet will and preferred to the services of an autonomous body?
 8. Whether on joining of the post of Registrar Abdul Wali Khan University by the respondent, the respondent has not actually effected his resignation?
 9. Whether application of respondent for withdrawal of his resignation is not after thought?
 10. Whether it is not the prerogative of the government to accept or reject the resignation?
 11. Whether after acceptance of resignation of respondent, the claim of respondent is not a past and closed transaction?
 12. Whether the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar has taken into the consideration the law and facts involved in the case?
 13. Whether the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar has properly construed the record and material in its true perspective?

14. Whether the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar has properly applied and interpreted the law in the subject case?

FACTS

II- Facts relevant to the above points of law, inter alia, are as under:-

1. That the respondent No.1 was initially appointed on 15/10/1992 as Lecturer BPS-17 in Higher Education Department on the recommendation of Public Service Commission and was subsequently promoted as Assistant Professor BPS-18 on 01.01.2010.
2. That Respondent No.1 applied to the post of Registrar BPS-20 advertised by Abdul Wali Khan University vide advertisement No.40/2013 after obtaining departmental NOC.
3. That Respondent No.1 was appointed as Registrar BPS-20 by Abdul Wali Khan University vide office order dated 19.8.2014. Thereafter the appellant submitted his arrival report to Abdul Wali Khan University on 20.08.2014 and took charge of the post on 17.11.2014.
4. That the respondent No.1 submit his resignation from the post of Assistant Professor in the Higher Education Department which was accepted by the Competent Authority on 08/06/2015. The respondent No.1 had the option to either resign from the service of Government of Khyber Pakhtunkhwa, Higher Education Department and then join the University service or not join at all the university service and thus continue his service as Assistant Professor in the Higher Education Department. But the respondent No.1 opted for the university service.
5. That the respondent No.1 requested vide letter dated 27.05.2015 that his resignation be excepted and relieve him from the service and order to join his new assignment, however his request was regretted /declined and his resignation was accepted on 08.06.2015.
6. That respondent No.1 filed departmental appeal for the withdrawal of his resignation and for confirmation of his pension for the service he has rendered in the Higher Education Department but the appeal being devoid of merit was regretted vide the appellate order dated 1.12.2015.

- 7. That the respondent No.1 being aggrieved of the impugned order of the Competent Authority filed Service Appeal No.87/2016 before the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar in which comments of Petitioner were asked which were accordingly filed by denying stance of the respondent No.1
- 8. That the Hon'ble Khyber Pakhtunkhwa Service Tribunal Peshawar was pleased to accept the Service Appeal No 87/2016 of respondent No.1 vide judgment dated 12.11.2021.
- 9. That the Petitioners being aggrieved from the impugned judgment /order dated 12.11.2021 passed by the Hon'ble Services Tribunal Peshawar in Service Appeal No.87/2016 prefer this CPLA before the august Court.
- 10. That the Petitioners seek leave of this august Court against the impugned judgment /order dated 12.11.2021 passed by the Service Tribunal Peshawar in Service Appeal No.87/2016.

It is, therefore, prayed that on acceptance of this petition, leave to appeal against the impugned judgment and order of the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar dated 12/11/2021 in Service Appeal No.87/2016 may graciously be granted.

(Moin-ud-Din Humayun)
 Advocate-on-Record
 Supreme Court of Pakistan
 For Government

NOTE:
 Learned Advocate General, KPK/ Addl. AG /State Counsel shall appear at the time of hearing of this petition.

ADDRESS
 Office of the Advocate General, KPK, High Court Building, Peshawar. (Telephone No.091-9210119, Fax No.091-9210270)

CERTIFICATE Certified that no such petition has earlier been filed by Petitioners/ Government against the impugned judgment mentioned above.

Advocate-On-Record

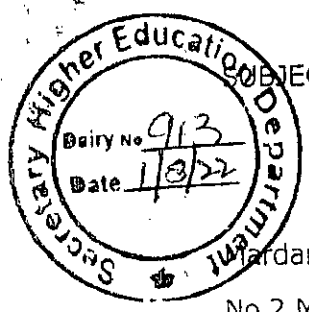
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GOVT. OF KHYBER PAKHTUNKHWA HIGHER EDUCATION, ARCHIVES & LIBRARIES DEPARTMENT

SUMMARY FOR CHIEF MINISTER, KHYBER PAKHTUNKHWA



OBJECT: CONDITIONAL REINSTATEMENT AND WITHDRAWAL OF RESIGNATION FROM SERVICE IN RESPECT OF MR. SHER ALAM, EX-ASSISTANT PROFESSOR (BS-18).

Upon his selection as Registrar (BS-20) at Abdul Wali Khan University Mardan (F/A), Mr. Sher Alam, Ex-Assistant Professor of English, Govt. Degree College No,2 Mardan had submitted resignation from Govt. service w.e.f 10.10.2014 (F/B).

2. Higher Education Department had processed the resignation case of the above officer (F/C) for the approval of the Hon'ble Chief Minister Khyber Pakhtunkhwa being competent authority under Rule-4(1)(a) of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 which was accepted by the competent authority and accordingly notified on 08.06.2015 (F/D).

3. Later on, the officer concerned submitted an appeal/application to Higher Education Department wherein he argued that he had completed 22 years and 07 months service and requested that either his case may be considered for deputation or he may be allowed lien in the case" (F/E). The appeal was processed and regretted by this department on 01.12.2015 (F/F).

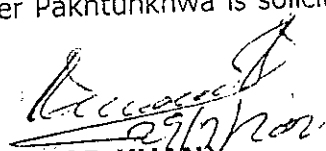
4. Being aggrieved, Mr. Sher Alam, Ex-Assistant Professor approached Khyber Pakhtunkhwa Service Tribunal Peshawar and the Hon'ble Court decided the case in his favor on 12.11.2021 with the directions that "the instant appeal is accepted. Impugned order dated 08.06.2015 and 01.12.2015 are set aside and resignation of the appellant stands withdrawn and service of the appellant as Assistant Professor (BS-18) is restored without back benefits with observation that period during which he remained as Registrar would be treated on duty against leave accrued, if any, or leave without pay for the purpose of his length of service and future benefits" (F/G).

5. The Department filed CPLA in the Supreme Court of Pakistan on the advice of the Law Department for setting aside the impugned judgment of Khyber Pakhtunkhwa Service Tribunal Peshawar dated 12.11.2021 and for its suspension as interim relief (F/H). Meanwhile, the appellant filed an Execution Petition before the Khyber Pakhtunkhwa Service Tribunal Peshawar and the honorable court vide order

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dated 15.07.2022 has directed the respondents to submit implementation report before or on 07.09.2022 before the court (F/I). Furthermore, the department has also sent Execution Petition to Law Department to instruct the Advocate General Khyber Pakhtunkhwa for filing early hearing application in the Supreme Court of Pakistan (F/J).

6. In view of the foregoing, this Department is of the view that as the CPLA is still under adjudication in the Apex Court, therefore, in order to avoid any adverse action of the Service Tribunal, the Hon'ble Chief Minister Khyber Pakhtunkhwa, being competent authority under Rule-4(1)(a) of (Appointment, Promotion and Transfer) Rules, 1989 (F/K) may accord approval to conditional withdrawal of resignation of **Mr. Sher Alam**, Ex-Assistant Professor (BS-18) and reinstate him subject to the final decision of the Supreme Court of Pakistan in the CPLA. The period during which he remained as Registrar may be treated as leave without pay.

7. Approval of the Hon'ble Chief Minister, Khyber Pakhtunkhwa is solicited to the proposal contained at Para-6 above, please.


(DAWOOD KHAN)

SECRETARY HIGHER EDUCATION DEPARTMENT

SECRETARY,
ESTABLISHMENT DEPARTMENT:

CHIEF SECRETARY,
KHYBER PAKHTUNKHWA:

CHIEF MINISTER,
KHYBER PAKHTUNKHWA:

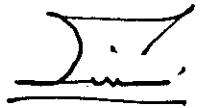
5 copies

11.01.2022

Learned counsel for the petitioner present. Mr. Hussain Ahmed, Focal Person alongwith Mr. Kabirullah Khattak, Additional Advocate General for the respondents.

Representative of respondents stated at the bar that the judgment under execution has been challenged through filing of CPLA before the august Supreme Court of Pakistan.

In this view of the matter, in case no order of suspension of the judgment under execution has been passed by august Supreme Court of Pakistan, the respondents are required to pass a conditional order of implementation of the judgment dated 14.07.2021 passed by this Tribunal, which of course will be subject to outcome of the CPLA. To come up for submission of implementation report on 24.02.2022 before S.B.



(Salah-Ud-Din)
Member (J)

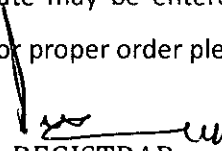

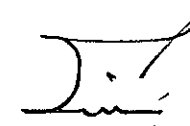
24.02.2022

Due to retirement of the Worthy Chairman, the Tribunal is defunct, therefore, case is adjourned to 11.05.2022 for the same as before.

Form- A
FORM OF ORDER SHEET

Court of _____

Execution Petition No. 236 /2021

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	20.10.2021	<p>The execution petition of Mr. Abdul Hamid submitted today by Mr. Abdur Rehman Mohmand Advocate may be entered in the relevant register and put-up to the Court for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-		<p>This execution petition be put up before S. Bench on <u>19/11/21</u></p> <p style="text-align: right;"> CHAIRMAN</p>
19.11.2021		<p>Learned counsel for the petitioner present. Notices be issued to the respondents for submission of implementation report on 11.01.2022 before the S.B.</p> <p style="text-align: right;"> (Salah-Ud-Din) Member (J)</p>

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

CHECK LIST

Case Title: *Abdul Hamid V's Chief Secretary KP and others*

S#	CONTENTS	Yes	No
1.	This Appeal has been presented by <i>Abdur Rahman Mohmand</i>		
2.	Whether counsel / appellant / respondent / deponent have signed the requisite document?	✓	
3.	Whether appeal is within time?	✓	
4.	Whether appeal enactment under which the appeal is filed is mentioned?	✓	
5.	Whether 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 / annexure are properly paged?	✓	
9.	Whether certificate regarding filing any earlier appeal in the subject, furnished?	✓	
10.	Whether annexures are legible?	✓	
11.	Whether annexures are attested?	✓	
12.	Whether copies of annexures are readable/ clear?	✓	
13.	Whether copies 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 number 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 are attached?	✓	
20.	Whether complete spare copy is filed in separate file cover?	✓	
21.	Whether addresses of parties given are completed?	✓	
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 Rule 1974 rule 11, Notice along with copy of appeal and annexure has been sent to respondents? On _____		
26.	Whether copies of comments / replay/ rejoinder submitted? On _____		
27.	Whether copies of comments / replay/ rejoinder provided to opposite party? On _____		

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

Name:- *Abdur Rahman Mohmand*

Signature: - *[Signature]*

Dated: - *20/10/2021*

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

PESHAWAR

Execution petition No 236 2021

In

Service appeal No. 327/2019

**SCANNED
KPST
Peshawar**

ABDUL HAMID

VERSUS

**THE CHIEF SECRETARY KHYBER PAKHTUNKHWA, CIVIL
SECRETARIAT PESHAWAR AND OTHERS.**

I N D E X.

S.NO	DESCRIPTION OF DOCUMENTS	ANN:	PAGES
1.	Execution Petition		1-3
2.	Affidavit		4
3.	Copy of the judgment dated 14/07/2021	A	5-16
4.	Copy of the letter No-4258-4300 dated 30/09/2021	B	17
	Wakalat Nama		18

PETITIONER

Through



Abdur Rahman Mohmand

Advocate High Court, Peshawar

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

PESHAWAR

Execution petition No 236 2021
In
Service appeal No. 327/2019



**ABDUL HAMID S/O SARWAR KHAN R/O KOTA SADAR
DIN, SARGHAR MUHAMMAD KHAN P/O TAJORI,
TEHSIL & DISTRICT LAKKI MARWAT WORKING AS
SST IN EDUCATION DEPARTMENT GOVERNMENT OF
KHYBER PAKHTUNKHWA**

.....PETITIONER.

VERSES

- 1) The Chief Secretary Khyber Pakhtunkhwa, Civil Secretariat Peshawar.
- 2) The Secretary Education, Khyber Pakhtunkhwa Peshawar.
- 3) The Director Education Newly Merged Districts Warsak Road, Peshawar.
- 4) District Education officer sub division, battani (EX-F.R Lakki).

.....RESPONDENTS.

**EXECUTION PETITION FOR IMPLEMENTATION OF
JUDGMENT OF THIS HON'ABLE TRIBUNAL IN
APPEAL NO. 327/2019 DECIDED ON 14/07/2021.**

Respectfully Sheweth!

- 1) That the above mentioned appeal was decided by this Hon'able Tribunal vide judgment dated 14/07/2021. (Copy of the judgment dated 14/07/2021 is annexed as annexure-"A").

- 2) That the petitioner after getting of the attested copy of the same judgment approached the respondents several time for the implementation of the above mention judgment. However they are using delaying tactics and reluctant to implement the judgment of this Hon'able Tribunal.
- 3) That the respondents are legally and morally bound to obey the order of this Hon'able Tribunal and to implement judgment of this Hon'able Tribunal. But they are reluctant to implement the same.
- 4) That the respondent No-03 has issued a letter NO-4258-4300 dated 30/09/2021 to respondent No-04 for promotion of SST to the post of SS/HM where applications/ documents along with ACR for SS/HM promotion have been requested to be submitted of entire SST period along with separate documents file of those male SSTs who are due for promotion to BPS-17 and having appointing up to 31/11/2015 according to updated/revised seniority list of SST who are working under jurisdiction of respondents office within one month **(Copy of the letter No-4258-4300 is annexed as annexure-B).**
- 5) That the petitioner has no other option but to file the instant petition for implementation of judgment of this Hon'able Tribunal because if the judgment of this Hon'able Tribunal is not implemented on time the petitioner may not be included in the seniority list asked for promotion to the post of SS/HM, hence will suffer irrecoverable loss.

3

- 6) That there is nothing which may prevent this Hon'able Tribunal from implementation of its own judgment.

It is therefore requested that on acceptance of this petition the respondents may kindly be directed to implement the judgment of this Hon'able Tribunal dated 14/07/2021.

INTERIM RELIEF:

The petitioner further pray that in the meanwhile the respondents be restrained from promotion of SST through letter NO-4258-4300 dated 30/09/2021 to the post of SS/HM till the implementation of Judgment dated 14.07.2021 and respondents may also be restrained from any adverse action against petitioner till the decision of this petition.



PETITIONER

Through



Abdur Rahman Mohmand

Advocate High Court, Peshawar

DATED:15.10.2021

4

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

PESHAWAR

Execution petition No _____ 2021

In

Service appeal No. 327/2019

ABDUL HAMID

VERSUS

**THE CHIEF SECRETARY KHYBER PAKHTUNKHWA, CIVIL
SECRETARIAT PESHAWAR AND OTHERS.**

AFFIDAVITE

I, *Abdul Hamid S/O Sarwar Khan R/O Kota Sadar Din, Sarghar Muhammad Khan P/O Tajori, Tehsil & District Lakki Marwat working as SST in Education Department Government Of Khyber Pakhtunkhwa*, do hereby affirm and declare on oath that all contents of this petition are true and correct to the best of my knowledge and believe and nothing has been concealed from this Hon'able Tribunal.



DEPONENT.

CNIC:11201-0605264-1

CELL NO.03416258040



18-10-21

1 (5)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR



Service Appeal No. 327/2019

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 308

Dated 05/3/2019

Abdul Hamid Son of Sarwar Khan,
R/o Kotia Sadar Din, Sarghar Muhammad Khan, P.O
Tajori, Tehsil & District Lakki Marwat..... **Appellant**

V E R S U S

- 1) The Chief Secretary, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar
- 2) The Secretary Education, Khyber Pakhtunkhwa, Peshawar
- 3) The Director Education newly merged District, Warsak Road, Peshawar
- 4) District Education, Officer Sub Division, Battani (Exe-F R Lakki)

..... **Respondents**

Filed to-day
DM
Registrar
05/3/19

APPEAL U/S 4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT,
1974 AGAINST THE ORDER/NOTIFICATION
DATED 11.10.2017 WHEREBY THE
PROMOTION ORDER OF THE APPELLANT
TO SST WERE ANNOUNCED BUT WHICH
WAS DUE FROM 31.10.2014 AS PER
PROMOTION ORDER NO.3493-3562/SST
PROMOTION/ ESTABLISHED DATED
31.10.2014 NOTIFIED BY KHYBER

ATTESTED

[Signature]
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Appel No-327/2019
Abdul Hameed vs Govt

6



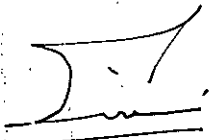
ORDER

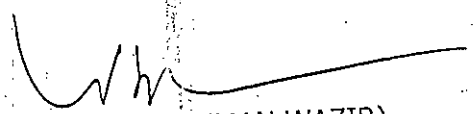
14.07.2021

Mr. Hidayat Ullah Khattak, Advocate for the appellant present.
Muhammad Riaz Ahmed Paindakheil, Assistant Advocate General for the respondents present. Arguments heard and record perused.


Vide our detailed judgment of today, separately placed on file, in Service Appeal No. 1266/2018 titled "Afzal Shah Versus Government of Khyber Pakhtunkhwa through Secretary Elementary and Secondary Education Secretariat building Peshawar and eight others", the instant appeal is accepted and the appellant is held entitled for promotion from the date, the first batch of their other colleagues at provincial level were promoted in the year 2014 with all consequential benefits. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
14.07.2021


(SALAH-UD-DIN)
MEMBER (JUDICIAL)


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

Date of Presentation of Application 30-9-21
Number of Words 800
Copying Fee 10.00
Urgent 4.00
Total 14.00
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Date of Completion of Copy 30-9-21
Date of Delivery of Copy 30-9-21

Certified to be true copy

Khyber Pakhtunkhwa
Service Tribunal
Peshawar

(X)

(7)



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

S.A.No. 1266/2018

Khyber Pakhtunkhwa Service Tribunal

Diary No. 1501

Dated 09/10/2018

AFZAL SHAH SST (BIO/CHEM) BPS-16) GOVERNMENT
HIGH SCHOOL SANDU KHEL MOHMAND AGENCY
GOVERNMENT OF KHYBER PAKHTUNKHWA EDUCATION
DEPARTMENT.----- APPELLANT.

VERSUS

1. GOVERNMENT OF KHYBER PAKHTUNKHWA THROUGH SECRETARY ELEMENTARY AND SECONDARY EDUCATION SECRETARIATE BUILDING PESHAWAR.
2. DIRECTOR ELEMENTARY AND SECONDARY EDUCATION DIRECTORATE OF ELEMENTARY AND SECONDARY EDUCATION KHYBER PAKHTUNKHWA, PESHAWAR.
3. DEPUTY DIRECTOR (ESTABLISHMENT) ELEMENTARY AND SECONDARY EDUCATION DIRECTORATE OF ELEMENTARY AND SECONDARY EDUCATION KHYBER PAKHTUNKHWA PESHAWAR.
4. DIRECTOR EDUCATION FATA, FATA SECRETARIAT KHYBER PAKHTUNKHWA, WARSAK ROAD PESHAWAR.
5. DEPUTY DIRECTOR (ESTABLISHMENT) DIRECTORATE OF EDUCATION, FATA SECRETARIAT KHYBER PAKHTUNKHWA, WARSAK ROAD PESHAWAR.
6. ADDITIONAL DIRECTOR (ESTABLISHMENT) DIRECTORATE OF EDUCATION, FATA SECRETARIAT KHYBER PAKHTUNKHWA, WARSAK ROAD PESHAWAR.
7. AGENCY EDUCATION OFFICER MOHMAND GALLANAL. *District Tehsil*
8. ACCOUNTANT GENERAL (PR) SUB OFFICE, PESHAWAR.
9. SECRETARY FINANCE DEPARTMENT FATA SECRETARIAT KHYBER PAKHTUNKHWA, WARSAK ROAD PESHAWAR,

-----RESPONDENTS

File-to-day
Registrar
9/10/18

APPEAL U/S 4 OF THE SERVICE TRIBUNAL ACT, 1974
AGAINST ORDER DATED 11.10.2017 OF RESPONDENT
NO.4 & RESPONDENT NO.6 FOR NON OBSERVANCE OF
PROMOTION/SENIORITY ORDER OF THE APPELLANT

ATTESTED

[Signature]
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

(8)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1266/2018

Date of Institution ... 09.10.2018

Date of Decision ... 14.07.2021



Afzal Shah SST (BIO/CHEM BPS-16) Government High School Sandu Khel
Mohmand Agency Government of Khyber Pakhtunkhwa Education Department.
... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Secretary Elementary and
Secondary Education Secretariat building Peshawar and eight others.
... (Respondents)

MR. HIDAYAT ULLAH KHATTAK &
MR. ABDUR REHMAN MOHMAND
Advocates

... For Appellants

MR. MUHAMMAD RIAZ AHMED PAINDAKHEIL
Assistant Advocate General

... For Respondents

MR. SALAH-UD-DIN
MR. ATIQ-UR-REHMAN WAZIR

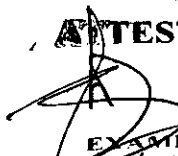
MEMBER (JUDICIAL)
MEMBER (EXECUTIVE)

JUDGMENT


ATIQ-UR-REHMAN WAZIR MEMBER (E):- This judgment shall dispose of
the instant Service Appeal as well as the following connected Service Appeals as
common question of law and facts are involved therein.

- 1) Service Appeal bearing No.1267/2018 titled "Abi Hayat Versus Government of
Khyber Pakhtunkhwa through Secretary Elementary and Secondary Education
Secretariat building Peshawar and others",

ATTESTED



EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

- 2) Service Appeal bearing No. 1268/2018 titled "Shams Ur -Rahman Versus Government of Khyber Pakhtunkhwa through Secretary Elementary and Secondary Education Secretariat building Peshawar and others".
- 3) Service Appeal bearing No. 1269/2018 titled "Karim Khan Versus Government of Khyber Pakhtunkhwa through Secretary Elementary and Secondary Education Secretariat building Peshawar and others".
- 4) Service Appeal bearing No. 1270/2018 titled "Abdul Hakim Versus Government of Khyber Pakhtunkhwa through Secretary Elementary and Secondary Education Secretariat building Peshawar and others".
- 5) Service Appeal bearing No. 1271/2018 titled "Stana Gul Versus Government of Khyber Pakhtunkhwa through Secretary Elementary and Secondary Education Secretariat building Peshawar and others".
- 6) Service Appeal bearing No. 1272/2018 titled "Mohammad Idress Versus Government of Khyber Pakhtunkhwa through Secretary Elementary and Secondary Education Secretariat building Peshawar and others".
- 7) Service Appeal bearing No. 1273/2018 titled " Mansoor Ahmad Khan Versus Government of Khyber Pakhtunkhwa through Secretary Elementary and Secondary Education Secretariat building Peshawar and others".
- 8) Service Appeal bearing No. 1274/2018 titled " Khial Zada Versus Government of Khyber Pakhtunkhwa through Secretary Elementary and Secondary Education Secretariat building Peshawar and others".
- 9) Service Appeal bearing No. 1275/2018 titled "Nizam-ud-Din Versus Government of Khyber Pakhtunkhwa through Secretary Elementary and Secondary Education Secretariat building Peshawar and others".
- 10) Service Appeal bearing No. 1276/2018 titled "Sher Mohammad Government of Khyber Pakhtunkhwa through Secretary Elementary and Secondary Education Secretariat building Peshawar and others".

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

- 11) Service Appeal bearing No. 1277/2018 titled "Rahmat Said Versus Government of Khyber Pakhtunkhwa through Secretary Elementary and Secondary Education Secretariat building Peshawar and others".
- 12) Service Appeal bearing No. 1278/2018 titled "Javid Akhter Versus Government of Khyber Pakhtunkhwa through Secretary Elementary and Secondary Education Secretariat building Peshawar and others".
- 13) Service Appeal bearing No. 1279/2018 titled "Munawar Khan Versus Government of Khyber Pakhtunkhwa through Secretary Elementary and Secondary Education Secretariat building Peshawar and others".
- 14) Service Appeal bearing No. 1280/2018 titled "Said Alam Shah Versus Government of Khyber Pakhtunkhwa through Secretary Elementary and Secondary Education Secretariat building Peshawar and others".
- 15) Service Appeal bearing No. 1281/2018 titled "Lateef Ullah Versus Government of Khyber Pakhtunkhwa through Secretary Elementary and Secondary Education Secretariat building Peshawar and others".
- 16) Service Appeal bearing No. 1282/2018 titled "Mst. Khalida Safi Versus Government of Khyber Pakhtunkhwa through Secretary Elementary and Secondary Education Secretariat building Peshawar and others".
- 17) Service Appeal bearing No. 1283/2018 titled "Zar Gul Government of Khyber Pakhtunkhwa through Secretary Elementary and Secondary Education Secretariat building Peshawar and others".
- 18) Service Appeal bearing No. 1284/2018 titled "Imtiaz Gul Versus Government of Khyber Pakhtunkhwa through Secretary Elementary and Secondary Education Secretariat building Peshawar and others".
- 19) Khaista Sher Versus Chief Secretary, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others".

ATTESTED
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

- 20) Service Appeal bearing No. 327/2019 titled "Abdul Hamid Versus Chief Secretary, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others".
- 21) Service Appeal bearing No. 651/2018 titled "Sabeel Hassan Versus Chief Secretary, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others".
- 22) Service Appeal bearing No. 652/2018 titled "Anwar Ali Versus Chief Secretary, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others".
- 23) Service Appeal bearing No. 653/2018 titled "Javed Hassan Versus Chief Secretary, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others".
- 24) Service appeal bearing No. 654/2018 titled "Luqman Hakeem Versus Chief Secretary, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others".
- 25) Service Appeal bearing No. 655/2018 titled "Aziz-ur-Rehman Versus Chief Secretary, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others".
- 26) Service Appeal bearing No. 656/2018 titled "Muhammad Muneer Khan Versus Chief Secretary, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others".
- 27) Service Appeal bearing No. 657/2018 titled "Mst. Shah Eegum Versus Chief Secretary, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others".
- 28) Service Appeal bearing No. 658/2018 titled "Munir Khan Versus Chief Secretary, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others".
- 29) Service Appeal bearing No. 659/2018 titled "Mst. Fahmeeda Begum Versus Chief Secretary, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others".
- 30) Service Appeal bearing No. 660/2018 titled "Muhammad Baz Versus Chief Secretary, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others".
- 31) Service Appeal bearing No. 661/2018 titled "Hanif Jan Versus Chief Secretary, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others".
- 32) Service Appeal bearing No. 662/2018 titled "Sher Afzal Versus Chief Secretary, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others".


ATTESTED


 EXAMINER
 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar

- 33) Service Appeal bearing No. 663/2018 titled "Mst. Dil Taj Begum Versus Chief Secretary, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others".
- 34) Service Appeal bearing No. 664/2018 titled "Raees Khan Versus Chief Secretary, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others".
- 35) Service Appeal bearing No. 665/2018 titled "Syed Hijab Hussain Versus Chief Secretary, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others".
- 36) Service Appeal bearing No. 666/2018 titled "Eid Muhammad Versus Chief Secretary, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others".
- 37) Service Appeal bearing No. 667/2018 titled "Fazal Hakeem Versus Chief Secretary, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others".
- 38) Service Appeal bearing No. 668/2018 titled "Syed Zamir Hussain Versus Chief Secretary, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others".
- 39) Service Appeal bearing No. 669/2018 titled "Janat Khan Versus Chief Secretary, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others".
- 40) Service Appeal bearing No. 670/2018 titled "Ayan Ali Versus Chief Secretary, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others".
- 41) Service Appeal bearing No. 671/2018 titled "Sohail Khan Versus Chief Secretary, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others".

02. Brief facts of the case are that the appellants are primarily aggrieved by inaction of the respondents to the effect that promotions of the appellants were delayed for no good reason, which adversely affected their seniority positions as well as sustained financial loss. The appellant, Mr. Afzal Shah and 18 others were serving under Agency Education Officer, Mohmand Agency (Now District Mohmand) and the appellant Mr. Khaista Sher and 22 others were serving under Agency Education Officer, Orakzai Agency (Now District Orakzai). All the appellants were promoted to the post of Secondary School Teachers (SST) (BPS-16) vide order dated 11-10-2017, which, as per stance of the appellants were required to be promoted in 2014.

ATTESTED



EXAMINER
 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar

Feeling aggrieved, the appellants preferred respective departmental appeals against the impugned order dated 11-10-2017, which were not responded to, and hence the appellants filed service appeals in this Tribunal with prayers that promotions of the appellants may be considered from 24-07-2014 or the date when other employees serving in settled districts were promoted along with all back benefits.

03. Written reply/comments were submitted by the respondents.

04. Learned counsel for the appellant Mr. Afzal Shah and 18 others has contended that the appellants have not been treated in accordance with law and their rights secured under law and constitution have been violated; that the respondents delayed promotions of the appellants for no good reason, which adversely affected their seniority positions and made them junior to those, who were promoted at settled district level in 2014; that the delay occurred due to lethargic attitude of respondents, otherwise the appellants were equally fit for promotion like their counterparts working in settled districts; that the appellants were discriminated which is highly deplorable, being unlawful and contrary to the norms of natural justice; that inaction on part of the respondents have adversely affected financial rights of the appellants as protected by the Constitution. He further added that the appellant be treated at par like other employees of districts who were promoted in 2014 in pursuance of notification dated 24-07-2014 and shall equally be dealt with in accordance with law and rules.

05. Learned counsel for the appellant Mr. Khaista Sher and 22 others mainly relied on the arguments of the learned counsel for the appellant Mr. Afzal Shah and 18 others with further arguments that departmental appeals of the appellants were not considered and the appellants were condemned unheard; that as per constitution every citizen is to be treated equally, while the appellants have not been treated in accordance with law, which need interference.

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

06. Learned Assistant Advocate General appeared on behalf of respondents has contended that as per Para-VI of promotion policy, promotions are always made with immediate effect and not with retrospective effect; that promotion is neither a vested right nor it can be claimed with a retrospective effect. Reliance was placed on 2005 SCMR 1742. Learned Assistant Advocate General argued that promotions of the appellants were made in accordance with law and rule and no discrimination was made. He further argued that some of the appellants submitted successive appeals, which is violation of Rule 3(2) of Appeal Rules, 1986. Learned Assistant Advocate General prayed that appeals of the appellants being devoid of merit may be dismissed.

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

08. A perusal of record would reveal that all the appellants were employees of the provincial government, who were deputed to serve in Ex-FATA under the control of Director of Education Ex-FATA, whereas their other colleagues working in settled districts were working under the control of Director of Education at provincial level. The provincial Government vide Notification dated 24-07-2014 had issued criteria for promotion of teachers to next grades, which was equally applicable to provincial as well as employees working in Ex-FATA. To this effect, the provincial directorate of Elementary & Secondary Education KP vide letter dated 07-08-2014 had asked the Directorate of Education Ex-FATA to fill in the vacant posts of SST in Ex-FATA by promotion of in-service teachers under the existing service rules. The said letter lingered in the Directorate of Ex-FATA for almost seven months, which finally was conveyed to all Agency Education Officers vide letter dated 09-03-2015 with directions to submit category wise lists of candidates for promotion against the post of SST. Agency Education Officers took another two years and seven months, while submitting such information to the directorate of Ex-FATA and finally the appellants


ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

were promoted vide order dated 11-10-2017. On the other hand, the office of the District Education Officer in the settled district took timely steps and the promotions were made possible in the same year i.e. 2014. Placed on record is a Notification dated 01-11-2014 issued by District Education Officer Charsada, whereby promotions had been made in pursuance of the Notification dated 24-07-2014 in the same year, whereas promotions in Ex-FATA were made in 2017 with delay of more than three years. Placed on record is another Notification dated 14-03-2017 issued by Directorate of Education Ex-FATA promoting Certified Teachers (CT) (BPS-15) to the post of Senior CT (BPS-16) w.e.f 20-02-2013, negating their own stance that promotions are always made with immediate effect. Similarly placed teachers was extended the benefit of their promotion with retrospective effect, however the respondents are denying the same to the appellants for the reasons best known to them. The material available on the record, would suggest that the appellants were treated with discrimination.

09. The appellants are primarily aggrieved by the inaction of the respondents to the effect that all the appellants were otherwise fit for promotion to the post of SST, but their promotions were delayed due to slackness of the directorate of education, which adversely affected their seniority position as well as suffered financially due to intentional delay in their promotions. The respondents also did not object to the point of their fitness for further promotion at that particular time.

10. We have observed that seniority of the appellants as well as their other counterparts working at Districts level had been maintained at Agency/District level before their promotion to the post of SST, whereas upon promotion to the post of SST, the seniority is maintained at provincial level and the appellants who were promoted in 2017 in comparison to those, who were promoted in 2014, would definitely find place in the bottom of the seniority list maintained at provincial level with dim future prospects of their further promotions, as well as they were kept

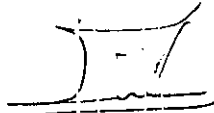
ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar


deprived of the financial benefits accrued to them after promotion for no fault of them, hence they were discriminated. It was noted with concern that the only reason for their delayed promotion was slackness on part of directorate of education Ex-FATA and its subordinate offices at Agency level, which had delayed their promotions for more than three years for no fault of the appellants.

11. In view of the foregoing discussion, the instant appeals are accepted and all the appellants are held entitled for promotion from the date, the first batch of their other colleagues at provincial level were promoted in the year 2014 with all consequential benefits. Parties are left to bear their own costs. File be consigned to record room.

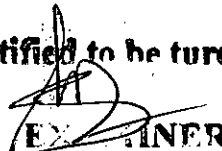
ANNOUNCED:

14.07.2021


(SALAH-UD-DIN)
MEMBER (JUDICIAL)


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

Certified to be true copy


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 30-9-21
Number of Words 4000
Copying Fee 42.00
Urgent 4.00
Total 46.00
Name of Copyist ✓
Date of Completion of Copy 30-9-21
Date of Delivery of Copy 30-9-21



(17) Annx - 8

**DIRECTORATE OF ELEMENTARY AND SECONDARY EDUCATION
KHYBER PAKHTUNKHWA PESHAWAR**

No. 4258-4300

dated 30/09/2021

To,

All District Education Officer
Deputy Directors DCTE/PITE/NMD (Male),
Elementary and Secondary Education Department,
Khyber Pakhtunkhwa.

Subject: **SUBMISSION OF APPLICATION/DOCUMENTS ALONGWITH ACR FOR
SS/HM PROMOTION**

Memo:-

I am directed to refer to the subject cited above and to request you to submit complete ACRs/PERs files of entire SST period alongwith separate documents file (detail of each given below) of those male SSTs who are due for promotion to B-17 and having appointed upto 31/11/2015 according to updated/revised seniority of SST, who are working under your jurisdiction to this office within one month positively.

The relevant documents file will be consisting of:

Bio Data, CNIC attested copy, 1st appointment order, Regular Appointment SST, Service Certificate, Noninvolvement certificate (duly countersigned by DEO), Last five year results, Pay slip, Synopsis (11 copies) (SST Period), All certificate /Degree with DMCs (Duly Attested by authorized guzzated officer), Domicile.

ACRs/PERs file will be consisting of:

ACRs/PERs of entire SST period duly countersign by Reporting Officer/Countersigning Officer of his in chair period, Noninvolvement certificates, Service Certificate, Service History, Synopsis (one copy), Promotion/regularization Order of SST period, and All Transfer orders during the period of SST.

General Instructions:

Combination for Promotion to Subject Specialist.

- a. SS (Bio & Zoology) in B.Sc + Botony in M.Sc OR Botony in B.Sc + Zoology, in M.Sc
- b. SS History-cum-Civics is history in BA+ Political science in MA OR Political science in BA + History in MA OR Master degree in History + political science

Those that not have the above combination are not eligible for SS. (Biology) & SS (H/Civics) post.

1. Candidate having master in more than one subject are directed to apply for each subject separately in the same manner mentioned above for submission of documents only.
2. SST's having third division in master are not eligible.

Furthermore you are directed that the information about those SSTs who have been retired, died, selected against another post, on deputation, went abroad and left the department may also clearly be indicated with exact dates/ justification and annexures. It is also stated that those who are not willing for promotion written on stamp paper may also be annexed.

Note: By hand/Individual ACRs/PERs file will not be collected/received by this office. All DEOs are directed to submit ACR/PERs file of the concerned SSTs through focal person alongwith coving letter in consolidate format accordingly.

ACR/document must be complete in all aspect.

Assistant Director (ACR)
Directorate of Elementary and Secondary
Education Khyber Pakhtunkhwa Peshawar




Endst: No. _____/

Copy of the above is forwarded to the:-

3. Assistant Director (Establishment) Local Directorate.
4. P.A to Director of Elementary and Secondary Education Khyber Pakhtunkhwa Peshawar.


Assistant Director (ACR)
Directorate of Elementary and Secondary
Education Khyber Pakhtunkhwa Peshawar

ATTACHED

50 روپے	101584	  
ایڈوکیٹ: عبدالرشید خان مہمند بار کونسل ایسوسی ایشن نمبر: BC-10-0611 رابطہ نمبر: 0300-5991598		

پشاور بار ایسوسی ایشن، خیبر پختونخوا

بعدالت جناب: حیدر خٹون خواہ سروس ٹرائیبل پشاور

منجانب: سائل  عبدالرشید خان مہمند حیدر خٹون خواہ	دعویٰ: علت نمبر: مورخہ: جرم: تھانہ:
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باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کاروائی متعلقہ آن مقام پشاور کے ایڈوکیٹ عبدالرشید خان مہمند ایڈووکیٹ صاحب کو وکیل مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا مکمل اختیار ہوگا، نیز وکیل صاحب کو راضی نامہ کرہے و تقررات و فیصلہ برحلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی، نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ بلائے جائے تقرر کا اختیار ہوگا اور صاحب مقرر شدہ کو وہی جملہ مذکورہ بااختیارات حاصل ہوں گے اور ان کا ساختہ پرداختہ منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ اتوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ سند رہے

المقام: 18/10/2021
 PESHAWAR BAR ASSOCIATION
 KHAYBER PAKHTUNKHA

مقام کے لیے منظور ہے۔

Attested & Accepted
 ATTESTED

نوٹ: اس وکالت نامہ کی فوٹوکاپی ناقابل قبول ہوگی۔

عبداللطیف خان SSI 19 سروس ٹرائیبل پشاور
 CNICNO, 11201-0605260-1 GHS. Sakunijani
 Sub-Division Bettani