

21.07.2022

Counsel for appellant present.

Muhammad Adeel Butt, learned Additional Advocate General for respondents present.

File to come up alongwith connected Service Appeal No.5800/2021 titled "Syed Anwar Shah Vs. Government of Khyber Pakhtunkhwa" on 28.09.2022 before D.B.



(Fareeha Paul)
Member(E)



(Rozina Rehman)
Member (J)

28.09.2022

Junior to counsel for the appellant present.

Nascer Ud Din Shah, learned Assistant Advocate General alongwith Muhammad Shah, for respondents present.

File to come up alongwith connected Service Appeal No. 5800/2021 titled "Syed Anwar Shah Vs. Government of Khyber Pakhtunkhwa" on 14.12.2022 before D.B



(Fareeha Paul)
Member (E)



(Rozina Rehman)
Member (J)

Stipulated period passed reply not submitted.

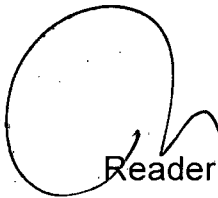
15.09.2021

Learned Addl, A.G be reminded about the omission and for submission of reply/comments within extended time of 10 days.


Chairman

03.02.2022

Due to retirement of the Worthy Chairman, the Tribunal is defunct, therefore, case is adjourned to 16.05.2022 for the same as before.

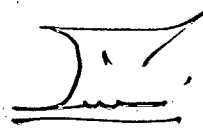

Reader

16.05.2022

Junior of learned counsel for the appellant present. Mr. Naseer ud Din Shah, Assistant Advocate General for the respondents present.

File to come up alongwith connected Service Appeal No.5800/202 titled "Syed Anwar Shah Vs. Education Department" on 21.07.2022 before the D.B.


(Rozina Rehman)
Member (J)


(Salah-Ud-Din)
Member (J)

02.08.2021

Counsel for the appellant present. Preliminary arguments heard.

After hearing the preliminary submissions of learned counsel for the appellant, a question because due for examination whether the condition of at least second class Bachelor Degree provided in the notification dated 24.07.2014 setting down the method of recruitment for the positions in the said notification with particular reference to the phrase "at least" used with the said academic qualification apparently giving expression of minimum; and in extension its effect when the education is improved by acquiring degree in 2nd Division or above in the higher examination. Obviously, the question formulated above relates to interpretation of the policy and the notification related therewith having prospect even to prevent the litigation in future, if the question is finally settled by this Tribunal. Therefore, this appeal is admitted for regular hearing. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for submission of written reply/comments in office within 10 days after receipt of notices, positively. If the written reply/comments are not submitted within the stipulated time, or extension of time is not sought through written application with sufficient cause, the office shall submit the file with a report of non-compliance. File to come up for arguments on 28.09.2021 before the D.B.

Appellant Deposited
Security & Process Fee

28-9-21

Chairman

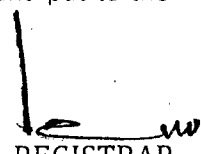
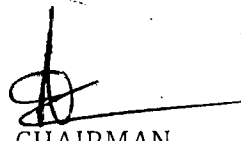
DB is on Tour case to come up
for the same on Dated. 3-2-22

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Reader

Form- A
FORM OF ORDER SHEET

Court of _____

Case No.- 5802 /2021

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	07/06/2021	<p>The appeal resubmitted today by Mr. Noor Muhammad Khattak Advocate may be entered in the Institution Register and put to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-		<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>02/08/21</u></p> <p style="text-align: right;"> CHAIRMAN</p>

The appeal of Mr. Dildar Khan SCT GHS Uchat District Kurram Parachinar received today i.e. on 28.05.2021 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Copy of impugned order is not attached with the appeal which may be placed on it.
- 2- Index of the appeal may be prepared according to the Khyber Pakhtunkhwa Service Tribunal rules 1974.
- 3- Annexures-B,D & F of the appeal are illegible which may be replaced by legible/better one.
- 4- Annexures of the appeal may be attested.
- 5- Appeal has not been flagged/marked with annexures marks.
- 6- Seven more copies/sets of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.

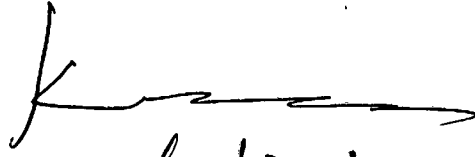
No. 909 /S.T,

Dt. 28/05 /2021


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr.Noor Muhammad Khattak Adv.Pesh.

Resubmitted after the
compliance.


7/6/21

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. 5802 /2021

DILDAR KHAN

VS

EDUCATION DEPTT:

INDEX

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1.	Memo of appeal	1-3
2.	Academics documents	A	4-6
3.	Impugned notification dt: 24.07.2014	B	7-12
4.	Judgment dt: 28.01.2016 & 05.04.2016	C & D	13-19
5.	Notification	E	20
6.	Departmental appeal	F	21
11.	Vakalat nama	22

APPELLANT

THROUGH:
NOOR MOHAMMAD KHATTAK
ADVOCATE

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Khyber Pakhtunkhwa
Service Tribunal

APPEAL NO. _____/2021

Diary No. 58/8

Dated 28/5/2021

Mr. Dildar Khan, SCT (BPS-16),
GHS Uchat, District Kurram

APPELLANT

VERSUS

- 1- The Secretary Elementary & Secondary Education Department, Khyber Pakhtunkhwa Peshawar.
- 2- The Secretary Establishment Department, Khyber Pakhtunkhwa, Peshawar.
- 3- The Secretary Finance Department, Khyber Pakhtunkhwa, Peshawar.
- 4- The Director Elementary & Secondary Education Department, Khyber Pakhtunkhwa Peshawar.
- 5- The District Education Officer, (male) District Kurram.

.....**RESPONDENTS**

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE INACTION OF THE RESPONDENTS BY NOT CONSIDERING THE APPELLANT FOR PROMOTION TO THE POST OF S.S.T (BPS-16) ON THE BASIS HAVING BACHELOR DEGREE IN 3RD DIVISION AND AGAINST THE SERVICE RULES NOTIFIED ON 24.7.2014 WHEREBY THE CONDITION OF BACHELOR 2ND DIVISION HAS BEEN INSERTED IN SERIAL NO.1B, COLUMN NO.3(i) OF THE TABLE AND AGAINST NOT TAKING ACTION ON DEPARTMENTAL APPEAL OF APPELLANT WITHIN STATUTORY PERIOD OF NINETY DAYS

Filed to-day
Registrar

28/5/2021

PRAYER:

That on acceptance of this appeal the impugned service Rules dated 24.7.2014 may kindly be modified to the extent that the condition of Second Division/Class be expunged/deleted from Column No.3 (i), serial No.1B of the table and the respondents may kindly be directed to consider the appellant for promotion to the post of Secondary School Teacher (BPS-16) from the date when his Colleagues and junior colleagues were promoted with all consequential back benefits including seniority. Any other remedy which this august Tribunal deems fit that may also be awarded in favour of the appellant.

R/SHEWETH:

ON FACTS:

Brief facts giving rise on the present appeal are as under:

- 1- That appellant was initially appointed as certified teacher and later on promoted to SCT and right from appointment till date the appellant is serving the respondents department quite efficiently and of to the entire satisfaction of his superiors.
- 2- That appellant is higher qualified having Master in Arts with first division. Copy of academics documents are attached as annexure.....**A.**
- 3- That it is pertinent to mention here that the respondents issued the impugned notification dated 24/07/2014 whereby the post of secondary school teacher was restructured and 20 % promotion quota to the aforementioned post was reserved for certified Teacher. That according to the said notification required qualification for initial recruitment as well as promotion was mentioned as second class bachelor degree. Copy of impugned notification dated 24/07/2014 is attached as annexure.....**B.**
- 4- That it is pertinent to mention here that the respondents denied promotion to some colleagues of the appellant to the post of SST due to having third class bachelor degree. That feeling aggrieved some colleagues filed writ petitions which were allowed in favor of petitioners vide judgment dated 05/04/2016 and 28/01/2016 and consequently they were promoted to the post of SST. Copies of the judgments dated 28/1/2016 and 05/04/2016 are attached as annexure..... **C & D.**
- 5- That it is worth mentioning that appellant was also denied promotion due to having third class bachelor degree despite the fact that appellant is having first division in higher qualification i.e. master in Arts.
- 6- That appellant being a similar placed employee approached the respondents to extend him the benefits of above mentioned judgments, but still in vain.
- 7- That it is also pertinent to mention that establishment department issued a notification dated 15/12/2011 whereby amendment has been made in PMS rules 2007 by providing that a candidate who has obtain 3rd division in bachelor degree will be eligible for the examination in cases where he/she has obtained a higher division in Master's degree. Copy of notification is attached as annexure**E.**
- 8- That appellant feeling aggrieved filed Departmental appeal before the appellate authority but of no avail. Copy of the departmental appeal is attached as annexure **F.**

- 9- That feeling aggrieved and having no other remedy the appellant filed the instant appeal on the following grounds amongst the others.

GROUND:

- A- That the impugned notification dated 24/07/2014 to the extent of second class bachelor degree for promotion is against the law facts and judgment of Peshawar high court, hence not tenable and liable to be modified and the words second class be expunged only for promotion purpose.
- B- That the petitioner has not been treated in accordance with law and rules by the respondent Department on the subject noted above and as such the respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973:
- C- That appellant is entitled to be promoted to the post of SST from due date in light of judgments of Peshawar high court by attracting principle of consistency as mentioned in 2009 SCMR 1.
- D- That appellant has second division in higher qualification i.e master and entitle to be promoted from due date in light of notification dated 15/12/2011.
- E- That as per section-9 of the Civil servant Act, 1973 read with rule 7 of the appointment, promotion and transfer rules, 1989 the appellant is fully entitle for promotion to the post of SST (BPS-16).
- F- That appellant seeks permission to advance other grounds and proofs at the time of hearing.

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

Dated: . . .2021

APPELLANT

Dildar
DILDAR KHAN

THROUGH:

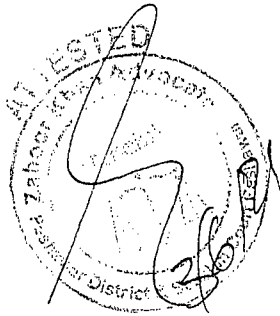
Noor
**NOOR MOHAMMAD KHATTAK
ADVOCATES**

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

DILDAR KHAN VS EDUCATION DEPTT: & OTHERS

AFFIDAVIT

Stated on oath that the contents of the accompanying service appeal are correct to best of my knowledge and belief and nothing has been concealed from this Honorable Service Tribunal.



Dildar
DEPONENT

CERTIFICATE:

Certify that no earlier service appeal has been filed by the appellant in the instant matter before this Honorable Service Tribunal.

Dildar
CERTIFICATION

Serial No. 004551

Roll No. 10598

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

Registration No.
2009-FCUM-232

Kohat University

of Science & Technology, Kohat
(Pakistan)

Session ANNUAL 2010

DILDAR KHAN

SON

of

NOOR MUHAMMAD KHAN

and a student

of KURRAM AGENCY

having passed the prescribed

examination held in SEPTEMBER 20 10, is this day admitted by

The Kohat University of Science & Technology, Kohat

to the Degree of

Master of Arts

in the FIRST Division

The Subject of examination being ISLAMIYAT

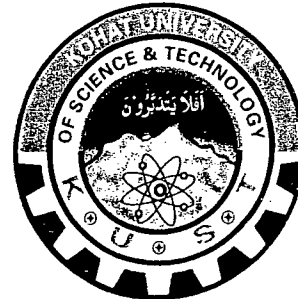
The Examination was taken as a whole / in parts

Controller of Examinations

Countersigned

C. Rehman

Vice Chancellor



Attested
Qud

SHAHZAD KHAN SST
G.H.S UCHAT
DISTRICT KURRAM

Result declared on FEBRUARY 07, 2011

Annexure 'A' 4

پشاور یونیورسٹی

University of Peshawar

(Pakistan)

Session ANNUAL 1977

DILDAR KHAN SON of MOON SHAHJAD KHAN and a student

of KURRAM AGENCY having passed the prescribed

examination held in August 1977 is this day admitted by the University of Peshawar to the Degree of

Bachelor of Arts

in the Third Division

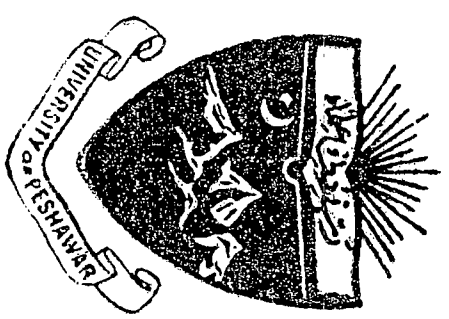
The examination was taken as a whole / in parts.

Serial No: 063925

Registration No. 94-PO-31621

Roll No. 83978

Exempt declared on 31st December, 1977



M. Javed Khan
Registrar

Countersigned

Z. E. Siddiqi
Vice-Chancellor

Attested
SHAHZAD KHAN SST
G.H.S UCHAT
DISTRICT KURRAM

6

OFFICE OF THE HEAD MASTER GHS UCHAT DISTRICT KURRAM

SERVICE CERTIFICATE

Certified that Mr. Dildar Khan S/O Noor Muhammad Khan has been serving in education department since 25-11-1989 .Presently he is working as SCT Teacher at Govt High School Uchat district Kurram

H/c Gudi

Head Master
Head Master G.H.S Uchat (L.K)
GHS Uchat district Kurram

GOVERNMENT OF KHYBER PAKHTUNKHWA ELEMENTARY &
SECONDARY EDUCATION DEPARTMENT

Peshawar ,dated the 24th july ,2014 .

NOTIFICATION:-

NO.SO(PE)4-5/SSRC/Meeting/2013/Teaching cadre:- in pursuance of the provision contained in sub rule (2) of rule 3 of the Khyber Pakhtunkhwa civil servants' (appointment ,promotion and transfer)rules, 1989,the elementary & secondary education department in consultation with the establishment department and the finance department hereby direct that in this department 's notification NO.SO(G)S&LD/1-28/2003/VOL-II dated ,09.04.2004,notification NO.SO(G)S&L/1-69/06/VOL-1/DPE/LIB dated 13.11.2003and notification NO.SO(PE)4-5/SSRC/meeting/2012/teaching cadre,dated,13.11.2012,the following further amendments shall be made, snamely:

AMENDMENTS

IN THE APPENDEX,-

- (i) Serial no.1shall be renumbered as 1b and before serial no.1b , as so renumbered ,the following new entries shall be inserted in respective columns, namely:

1	2	3	4	5
"1	Subject specialist (BPS-17)	i. at last second class master's degree or four years BS degree in the relevant subject; and ii. Bachelor of education or master of education (industrial art or business education) or M.A education or equivalent from a recognized university	23 to 35 years	(a)fifty percent by promotion .on the basis of seniority-cum-fitness, for the relevant subject from the amongst the secondary schoolteacher (BP-16).with at least five years service as such and having qualification mentioned in column No.3 Note:- if no suitable candidate is available in the relevant subject the post falling in their promotion quota shall be filled by initial recruitment ; and (b) fifty percent by initial recruitment

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1A	Director physical education (BPS-17)	At least second class master's degree in physical education from a recognized university	22-35 years	<p>(a) Fifty percent by promotion, on the basis of seniority-cum-fitness, from amongst senior physical education teachers (BPS-16), with at least five years service as senior physical education teacher and having qualification mentioned in column No. 3:</p> <p>Provided that if no suitable person is available from amongst senior physical education teachers for promotion then the post shall be filled by promotion, on the basis of seniority-cum-fitness from amongst the physical education teachers, with at least five years service as such and having qualification mentioned in column No.3</p> <p>Note:- If no suitable candidate is available is available in the relevant cadres of the above teachers the post falling in their promotion quota shall be filled by initial recruitment and</p> <p>(b) Fifty percent by initial recruitment and</p>
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(ii) Against serial No 1B as so renumbered for the existing entries, the following shall be substituted in respective columns,

1	2	3	4	5
1B	Secondary school teacher (BPS-16)	<p>1. At least second class bachelor degree's form a recognized university on need basis from the following groups with two subject</p> <p>(a) (Chemistry, Botany, zoology).</p> <p>Or</p> <p>(b) (physics, maths 'A' OR "B" or statistics</p> <p>Or</p> <p>(c) (humanities and the equivalent groups at degree level with English as compulsory subject:</p> <p>And</p> <p>ii. bachelor of education or master of education industrial Art Or Business Education) OR M.A education or equivalent qualification from a recognized university.</p>	21 to 35 years.	<p>1. Seventy five percent by promotion on the basis of the seniority-cum-fitness from the district concern in the following manner.</p> <p>(a) Forty percent from amongst the senior certified teachers BPS-16 with at least five years service as senior certified teacher and certified teachers and having qualification mentioned in column No.3</p> <p>Provide that if no suitable candidate is available from amongst senior certified teachers from promotion then the post shall be filled by promotion, on the basis of seniority-cum-fitness, from amongst teacher with at least five years service as such and having qualification mentioned in column No.3</p>

				<p>(b) Four percent form amongst the senior driving masters (BPS-16) with at least five years service as senior driving masters and driving masters and having qualification mention in column No.3</p> <p>Provided that no suitable candidate is available from amongst senior Drawing Masters for promotion then the post shall be filled by promotion on the basis of seniority-cum-fitness from amongst drawing masters with at least five years service as such and having qualification in column No.3</p> <p>(c) Four percent amongst the senior Arabic teachers (BPS-16) with at least five years as senior arabic teachers and Arabic teacher, and qualification mentioned in column No.3</p> <p>(d) Four percernt from amongst the senior theology teachers (BPS-16) with at least five years</p>
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				<p>service as senior theology teachers and theology teachers and having qualification mentioned in column No. 3</p> <p>Provided that if no suitable candidate is available from amongst senior theology teachers for promotion then the post shall be filled by promotion, on the basis of seniority-cum-fitness from amongst theology teachers with at least five years service as such and having qualification mentioned in column No.3</p> <p>(e) Three percent from amongst the senior qaris (BPS-16), with at least five years service as senior qari and qari and having qualification mentioned in column No3</p> <p>Provided that if no suitable candidate as available from amongst the senior qaris then the post shall be filled by promotion, on the</p>
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				<p>basis of seniority-cum-fitness, from qaaris at least five years service as such and having qualification mentioned in column No .3</p> <p>(f) Twenty percent from amongst the primary school if teachers (BPS-16) With at least seven years service as primary school head teachers and senior primary school teacher and primary school and having qualification mentioned in column No.3</p> <p>Provided that if no available candidate is available from amongst.</p>
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SECRETARY TO GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION DEPARTMENT

**GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION DEPARTMENT**

Peshawar, dated the 24th July, 2014.



NOTIFICATION

No.SO(PE)4-5/SSRC/Meeting/2013/Teaching-Cadre - In pursuance of the provisions contained in sub rule (2) of rule 3 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, the Elementary and Secondary Education Department in consultation with the Establishment Department and the Finance Department hereby directs that in this Department's Notifications No.SO(G)S&LD/1-28/2003/Vol-II dated, 09-04-2004, Notification No.SO(G)S&L/1-69/06/Vol-1/DPE/LIB dated, 13-11-2007, and Notification No.SO(PE)4-5/SSRC/Meeting/2012/Teaching Cadre, dated, 13.11.2012, the following further amendments shall be made, namely:

AMENDMENTS

In the Appendix,-

(i) Serial No. 1 shall be renumbered as 1B and before Serial No. 1B, as so renumbered, the following new entries shall be inserted in respective columns, namely:

1	2	3	4	5
1	Subject Specialist (BPS-17).	i. At least second class Master's Degree or four years BS Degree in the relevant subject; and ii. Bachelor of Education or Master of Education (Industrial Art or Business Education) or M.A. Education or equivalent qualification from a recognized University.	23 to 35 years	(a) Fifty per cent by promotion, on the basis of seniority-cum-fitness, for the relevant subject from amongst the Secondary School Teachers (BPS-16), with at least five years service as such and having qualification mentioned in column No. 3. Note: If no suitable candidate is available in the relevant subject the post falling in their promotion quota shall be filled by initial

(1)

ATTENDED

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Annexure 'B'

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1A	Director Physical Education (BPS-17)	At least second class Master's Degree in Physical Education from a recognized University.	22-35 years	<p>recruitment; and (b) fifty percent by initial recruitment.</p> <p>(a) Fifty percent by promotion, on the basis of seniority-cum-fitness, from amongst Senior Physical Education Teachers (BPS-16), with at least five years service as Senior Physical Education Teacher and Physical Education Teacher and having qualification mentioned in column No. 3:</p> <p>Provided that if no suitable person is available from amongst Senior Physical Education Teachers for promotion then the post shall be filled by promotion, on the basis of seniority-cum-fitness, from amongst the Physical Education Teachers, with at least five years service as such and having qualification mentioned in column No. 3:</p> <p>Note:- If no suitable candidate is available in the relevant cadres of the above teachers the post falling in their promotion quota shall be filled by initial recruitment; and</p> <p>(b) fifty percent by initial recruitment; and</p>
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~~ATTACHED~~

ATTACHED

against Serial No. 1B, as so renumbered, for the existing entries, the following shall be substituted, in respective columns, namely:

1	2	3	4	5
1B.	Secondary School Teacher (BPS-16)	<p>I. At least second class Bachelor Degree's from a recognized University on need basis from the following groups with two subject</p> <p>(a) (Chemistry, Botany or Zoology), Or (b) (Physics, Maths "A" or "B" or Statistics) Or (c) (Humanities and other equivalent groups at degree level with English as compulsory subject;</p> <p>and</p> <p>II. Bachelor of Education or Master of Education (Industrial Art or Business Education) or M.A Education or equivalent qualifications from a recognized University.</p>	21 to 35 years.	<p>1. Seventy Five per cent by promotion, on the basis of seniority-cum-fitness, from the district concerned in the following manner:</p> <p>(a) forty per cent from amongst the Senior Certified Teachers (BPS-16), with at least five years service as Senior Certified Teacher and Certified Teacher and having qualification mentioned in column No.3:</p> <p>Provided that if no suitable candidate is available from amongst Senior Certified Teachers for promotion then the post shall be filled by promotion, on the basis of seniority-cum-fitness, from amongst Certified Teachers, with at least five years service as such and having qualification mentioned in column No. 3;</p> <p>(b) four per cent from amongst the Senior Drawing Masters(BPS-16), with at least five years service as Senior Drawing Masters and Drawing Masters and having qualification mentioned in column No.3:</p>

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ATTESTED

ATTESTED

			<p>Provided that if no suitable candidate is available from amongst Senior Drawing Masters for promotion, then the post shall be filled by promotion, on the basis of seniority-cum-fitness, from amongst Drawing Masters with at least five years service as such and having qualification mentioned in column No. 3;</p> <p>(c) four per cent from amongst the Senior Arabic Teachers (BPS-16), with at least five years service as Senior Arabic Teachers and Arabic Teachers, and having qualification mentioned in column No. 3;</p> <p>Provided that if no suitable candidate is available from amongst Senior Arabic Teachers for promotion then the post shall be filled by promotion, on the basis of seniority-cum-fitness, from Arabic Teachers with at least five years service as such and having qualification mentioned in column No. 3;</p> <p>(d) four per cent from amongst the Senior Theology Teachers (BPS-10), with at least five years service as Senior Theology Teachers and Theology Teachers and having qualification mentioned in column No. 3;</p>

(4)

ATTESTED **ATTESTED**

[Signature]

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Provided that if no suitable candidate is available from amongst Senior Theology Teachers for promotion then the post shall be filled by promotion, on the basis of seniority-cum-fitness, from amongst Theology Teachers with at least five years service as such and having qualification mentioned in column No. 3;

(c) three per cent from amongst the Senior Qaris (BPS-16), with at least five years service as Senior Qari and Qari and having qualification mentioned in column No.3:

Provided that if no suitable candidate is available from amongst the Senior Qaris then the post shall be filled by promotion, on the basis of seniority-cum-fitness, from Qaris with at least five years service as such and having qualification mentioned in column No. 3;

(f) twenty per cent from amongst the Primary School Head Teachers (BPS-16), with at least seven years service as Primary School Head Teachers and Senior Primary School Teachers and Primary School Teachers and having qualification mentioned in column No. 3:

Provided that if no suitable candidate is available from amongst

~~ATTESTED~~

ATTESTED

SECRETARY TO GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION DEPARTMENT

Endst : of even No & date:

1. The Secretary to Government of Khyber Pakhtunkhwa, Establishment and Administration Department Peshawar.
2. The Secretary to Government of Khyber Pakhtunkhwa, Finance Department Peshawar.
3. The Secretary to Government of Khyber Pakhtunkhwa, Law Department Peshawar.
4. The Secretary Khyber Pakhtunkhwa, Public Service Commission Peshawar.
5. The Accountant General Khyber Pakhtunkhwa Peshawar.
6. The Director, Elementary and Secondary Education Department Khyber Pakhtunkhwa Peshawar.
7. The Director of Education (FATA) Peshawar.
8. The Director, Curriculum and Teacher Education Khyber Pakhtunkhwa Abbottabad.
9. The Director, (PITE) Khyber Pakhtunkhwa Peshawar.
10. The Director, ESRU Elementary and Secondary Education Department Khyber-Pakhtunkhwa-Peshawar.
11. Manager Government Printing Press Khyber Pakhtunkhwa Peshawar.
12. The Deputy Director, EMIS (S&SE) Department Khyber Pakhtunkhwa Peshawar.
13. All District Education Officer (M&F) in Khyber Pakhtunkhwa.
14. All District Account Officer in Khyber Pakhtunkhwa.
15. All Agency Education Officer in FATA.
16. All Agency Account Officer in FATA.
17. PS to Governor Khyber Pakhtunkhwa. Peshawar.
18. PS to Chief Minister Khyber Pakhtunkhwa. Peshawar.
19. PS to Chief Secretary Khyber-Pakhtunkhwa. Peshawar.
20. PS to Minister E&SE Khyber Pakhtunkhwa. Peshawar.
21. PS to Secretary E&SE Khyber Pakhtunkhwa. Peshawar.
22. Master file

(ZAMIN KHAN MOMAND)
SECTION OFFICER (PRIMARY)

ATTESTED

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PESHAWAR HIGH COURT BANNU BENCHFOR OF ORDER SHEET

Date of order or other proceedings	Order or other proceedings with signature of judge(s)
(1)	(2)
28/01/2016	<p>W.P No. 73-B-2014, Present: Mr. Ali Jan Khan advocate for petitioner</p> <p><u>MUHAMMAD GHAZANFAR KHAN</u> (J):- The petitioner namely Mumtaz Khan S/O Guli Jan, through the instant Constitutional petition under Article 199 of the Constitution of Islamic Republic of Pakistan 1973, seeks issuance of directions to the respondents/department to consider him for promotion in the post of SST in BPS-16 in view of the Departmental Promotion Committee meeting held on 18.01.2014.</p> <p>2. We have heard learned counsel for the petitioner and gone through the available record of the case.</p> <p>3. Perusal of record transpires that the petitioner has passed BA in third division while as per Notification bearing No. SO(III)S/SSR(Y)III, dated 18.1.2011, the minimum qualifications for the post of SST (BPS-16) are Second Class Bachelor's degree or MA in Education or Bachelor's Degree in Education. The record further shows that the petitioner has also passed M.Ed during the year 2000 in second division and M.A History and Pak Study during the session 2003 in second division and M.A. History and Pak Study during the session 2003 in second division.</p> <p>4. In wake of the above, we direct the respondents to consider the petitioner for promotion to the post of SST (BPS-16) in the next Departmental Promotion Committee meeting on the basis of his degree in MA. History and Pak Study coupled with M.ED qualifications. The writ petition is disposed of in the above terms.</p> <p>ANNOUNCED 28.01.2016</p>

ATTACHED

SESHAWAR HIGH COURT BANNU BENCH

FORM OF ORDER SHEET

Date of order or other proceedings	Order or other proceedings with signature of Judge(s)
(1)	(2)

23/01/2014

WP No. 73-B-2014.
 Present: Mr. Ali Jan Khan advocate for petitioner.

MUHAMMAD SHAZANUVA KHAN Petitioner, namely, Munir Zia son of Gull Jan, through the instant Constitutional petition under Article 199 of the Constitution of Islamic Republic of Pakistan 1973, seeks issuance of directions to the respondents/department to consider him for promotion to the post of SST in BPS-16 in view of the Departmental Promotion Committee meeting held on 18-04-2014.

2. We have heard learned counsel for the petitioner and gone through the available record of the case.

3. Perusal of record transpires that the petitioner has passed BA in third division while as per notification bearing No. SO (P) 5058/2011 dated 19/1/2011, the minimum qualifications for the post of SST (BPS-16) are second class Bachelor's degree or MA in Education or Bachelor's degree in Education. The

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 Seshawar High Court
 Bannu Bench

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record further shows that the petitioner has also passed M.Ed during the year 2000 in second division and M.A. History and Pak Study during the session 2003 in second division.

In wake of the above, we direct the respondents to consider the petitioner for promotion to the post of SST (BPS-16) in the next Departmental Promotion Committee meeting on the basis of his degree in M.A. History and Pak Study coupled with M.Ed qualifications. The writ petition is disposed of in the above terms.

Sd/- Iftakhar Khan

ANNOUNCED
28/01/2016.

Sd/- Muhammad Ghazafar Khan

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Deputy Registrar
High Court Sindh Bench
Authorized Under Article 97 of
The Constitution of Sindh Order 1974

ATTESTED

~~ATTESTED~~

Judgment Sheet

IN THE PESHAWAR HIGH COURT , ABBOTTABAD BENCH

JUDICIAL DEPARTMENT

Write Petition No. 1014-A/2015

JUDGMENT

Date of hearing: 05.04.2016

Petitioner: Mohammad bari by for Abdul sohail Advocate

IKRAMULLAH KHAN, J.- Through the instant Writ petition under Article 199 of the Islamic Republic of Pakistan, 1973 the petitioner seeks declaration to the effect that the act of respondent No.03 whereby the promotion notification dated 28-10-2014 was withdrawn vide impugned notification dated 24-04-2014 on the ground of having qualification of B.Sc (3rd division) is illegal and without lawful authority and against the judgment of this court passed in W.P.No.58-B of 2014.

2. In essence, the petitioner was initially appointed as Certified Teacher and as per entitlement, later on promoted to the post of Senior Certified Teacher (BPS-16) vide notification dated 28.10.2014 where after the petitioner assumed the charge of the said post on 30-10-2014 and after performing his duties to the satisfaction of his competent authority, on 24-04-2015 respondent No.03 has passed the impugned notification and, as such, the promotion order of the petitioner was withdrawn on the ground of having B.Sc in third division.

3. Comments were called from respondent No.03 who filed the same, averring therein that through petitioner was promoted to the post of SST vide notification dated 28-10-2014 by respondent No.2 but on scrutinizing his qualification documents, it was found that petitioner was not eligible for promotion to the post of SST being B.Sc third divisioner, hence, his promotion order was de-notified by the Director Elementary and Secondary Education Khyber Pakhtunkhwa Peshawar and on the direction of Director the promotion order of the petitioner was withdrawn vide impugned notification dated 24.04.2015.

4. It has further been averred in the comments that promotion order of the petitioner was withdrawn on the ground of B.Sc third division and it was done in light of policy circulated vide Notification No.SO(PE)4-5/SSRC/meeting/ 2013 / teaching cadre dated 24.7.2014 according to which the method of recruitment for SST was specified with a

first condition of at least second class BA/B.Sc from a recognized university on need basis wht tow relevant subject along with second condition of MA education or B.Ed from the recognized university further averred that it is the prerogative of the government enhance, modify or after the promotion criteria/ policy for the civil servant is not supposed to be treated with a set of rules of his own choice.

6. the main contention of learned counsel for the petitioner is that this court has already declared the condition of having third division as null and void in its judgment dated 4.6.2015 and the case of the petitioner is on better footing for the reason that in the referred judgment the petitioner had not been appointed but so far as the case of the petitioner is concerned, he was duly promoted rather received its benefits from 28.10.2014 to 24.4.2015 and thus, the impugned order is illegal, without lawful authority and jurisdiction.

7. Admittedly, the petitioner was duly promoted to the post in question of 28.10.2014 after the departmental promotion committee evaluated his case/PERS.

8. now the question for the termination before this court would be that when the petitioner actually performed his duties on the promoted post and that two for six long moths then who the respondent No.3 could withdrawn earlier promotion order on the pretext of having B.Sc third division.

8. it appears form the record that a division bench of this had already declared the condition of having third division as null and void in its judgment dated 4.6.2015 which fact has also been affirmed by the respondent No.3 in his comments by stating that they were not aware of that judgment at the time of withdrawal of the impugned promotion of the petitioner and when the case of the present of the petitioner is at per with date of the petitioner there rather on better footing because the petitioner was not only promoted to post in question but he performed his duties for six long months and received its benefits, the impugned past by respondent NO.3 is required set at naught.

9. it is also avail settle principal of law that once benefit is granted to a civil servant, cannot be take in back from him and, if so very stringent from reasons are required for the same, which are not available in the case in hand more so, when the promotion order of the similarly placed teacher having B.Sc third division have not been so far withdrawn which is clearly violation of article 25 of the constitution of Pakistan.

10. for the reasons mentioned above, this petitioner is accepted and the impugned notification dated 24.4.2015 issued by respondent No.3 whereby the promotion order the petitioner was withdrawal is declared to be

FILED

VAKALATNAMA

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

_____ OF 2021

Dildar Khan

(APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

Education Deptt.-

(RESPONDENT)
(DEFENDANT)

I/We Dildar Khan

Do hereby appoint and constitute **NOOR MOHAMMAD KHATTAK, Advocate, Peshawar** to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate Counsel on my/our cost. I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter.

Dated. ____/____/2021

Dildar Khan Dildar
CLIENT

ACCEPTED
NOOR MOHAMMAD KHATTAK

Kamran Khan
KAMRAN KHAN

Afrasiab Khan Wazir
AFRASIAB KHAN WAZIR

Haider Ali
HAIDER ALI
ADVOCATES

OFFICE:

Flat No.4, 2nd Floor, Juma Khan
Plaza, near FATA Secretariat,
Warsak Road, Peshawar.
Mobile No.0345-9383141

BEFORE THE HONORABLE SERVICE TRIBUNAL PESHAWAR .

Service Appeal No. 5802/2021.

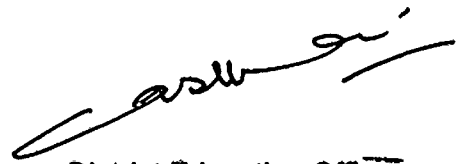
Dildar khan.....Appellant.

Versus

Secretary E & SE Khyber Pakhtunkhwa & others.....Respondents

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S.NO	Description of Documents	Annexure	Pages
1	Comments / Affidavit	-----	1-3
2	Promotion policy 2014	A	4-10



District Education Officer
(Male) Distt: Kurram

(1)

BEFORE THE HONORABLE SERVICE TRIBUNAL PESHAWAR.

Service Appeal No. 5802/2021.

Dildar KhanAppellant.

Versus

Secretary E & SE Khyber Pakhtunkhwa & others.....Respondents

Comments on behalf of Respondent No./4 & 5.

Preliminary objections.

- That the appellant has got no cause of action, locus standi to file the instant appeal.
- That the appellant has not come to this Tribunal with clean hands.
- That the appeal is not maintainable in the present form.
- That the appellant is estopped by his own conduct to bring the instant appeal.
- That the appeal is badly time barred as there is no record of the appeal of the appellant in the Respondent Department.
- That the appellant has concealed material facts from the Honorable Service Tribunal.
- That the appellant is lacking the prescribed qualification i.e "At least second class Bachelor's Degrees from a recognized University on need basis from the Humanities and other equilant groups at degree level with English as Compulsory Subject" and Bachelor of Education or Master of Education (Industrial Art or Business Education) or M.A Education or equilant qualification from a recognized University, however, the appellant has third division and not eligible for promotion under the in-vogue Rules / policy.

ON FACTS.

1. That para-1 pertains to record, hence no further comments.
2. That para-2 pertains to record, hence no further comments.
3. That para-3 is correct to the extent (40%) forty percent promotion quota was reserved out of (75 %) seventy five percent for promotion to the post of SST from the eligible SCT /CT Teacher, policy attached as **(Annex-A)**.
4. That the appellant is misleading this Honorable Tribunal and exerting illegal pressure through instant appeal. The Respondent Department is bound to abide by the Rules / Policy In-vogue, the policy dated 24-7-2014 for promotion to the post of SST General is reproduced herein.

- i. "At least second class Bachelor's Degrees from a recognized University on need basis from the Humanities and other equivalent qualification at degree level with English as Compulsory Subject" and
- ii. Bachelor of Education or Master of Education (Industrial Art or Business Education) or M.A Education or equivalent qualification from a recognized University, attached as **(Annex-A)**.
In view of the said policy, the appellant is with third division, so he is not eligible for promotion.

5. That the appellant is not eligible as he has not fulfilling required criteria, i.e having third division in Bachelor degree.
6. That the appellant is not eligible as he does not fulfill the required criteria as mentioned above. Furthermore, there is no appeal of the appellant in the Respondent Department.
7. That detail reply has already been submitted under para-4 above while the Respondent Department has its own Rules/ policy for promotion and induction, which is attached as **(Annex-A)**.
8. That the appellant is not eligible as he has not fulfilling required criteria, i.e for having third division in bachelor degree, so he is not entitle / eligible under the invogue policy / rules. Furthermore, there is no appeal of the appellant in the Respondent Department.
9. Legal, the respondent also submits on following grounds inter alia.

GROUNDS

- A. **Incorrect and denied**, the appellant is exerting illegal pressure on the respondent department through instant appeal and the responded department has acted according to the Rules / Policy.
- B. **Incorrect and denied**, the respondent department did not violate Article 4 & 25 of the constitution of Islamic Republic of Pakistan 1973 and has been acted according to the Rules and policy.
- C. **Incorrect and dined**, the Respondent Department is bound to abide by the law / rules and policy, as elucidated above that the appellant was not eligible for promotion under the Rules / policy.

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- D. **Incorrect and denied**, detail reply has already been submitted above under para 4 above on facts.
- E. **Incorrect and denied**, detail reply has already been submitted above under para 4 on facts above.
- F. Legal, Respondent Department also seek permission of this Honorable Tribunal to produce additional grounds at time of hearing.

Prayer:

Therefore, it is humbly requested that this Honorable Service Tribunal may graciously be pleased to dismiss the instant appeal in favor of the Respondent Department.



Director E & SE
Khyber Pakhtunkhwa
(Respondent No,4)



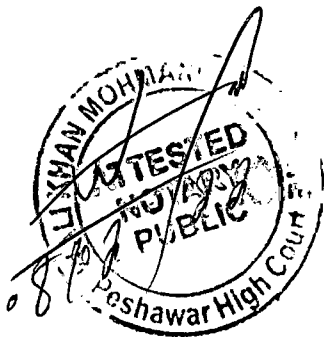
District Education Officer
District Kurram
(Respondent No. 5)

AFFIDAVIT

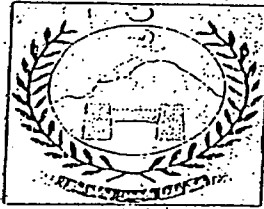
I Mr. Abbas Khan District Education Officer District Kurram do hereby solemnly affirm and declare that the contents of the instant Parawise Comments are true & correct to the best of my knowledge & belief.



District Education Officer
District Kurram



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GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION DEPARTMENT

Peshawar, dated the 24th July, 2014.

(S)
D
Peshawar

NOTIFICATION

No.SO(PE)4-5/SSRC/Meeting/2013/Teaching-Cadre:- In pursuance of the provisions contained in sub-rule (2) of rule 3 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, the Elementary and Secondary Education Department in consultation with the Establishment Department and the Finance Department hereby directs that in this Department's Notifications No.SO(G)S&L/D/1-28/2003/Vol-II dated, 09-04-2004, Notification No.SO(G)S&L/1-69/06/Vol-1/DPE/LIB dated, 13-11-2007, and Notification No.SO(PE)4-5/SSRC/Meeting/2012/Teaching-Cadre, dated, 13-11-2012, the following further amendments shall be made, namely:

AMENDMENTS

In the Appendix:-

(i) Serial No. 1 shall be renumbered as 1B and before Serial No. 1B, as so renumbered, the following new entries shall be inserted in respective columns, namely:

1	2	3	4	5
1	Subject Specialist (BPS-17)	i. At least second class Master's Degree or four years BS Degree in the relevant subject; and ii. Bachelor of Education or Master of Education (Industrial Art or Business Education) or M.A Education or equivalent qualification from a recognized University.	23 to 35 years	(a) Fifty per cent by promotion, on the basis of seniority-cum-fitness, for the relevant subject from amongst the Secondary School Teachers (BPS-16), with at least five years service as such and having qualification mentioned in column No. 3. Note: If no suitable candidate is available in the relevant subject the post falling in their promotion quota shall be filled by initial

(1)

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1A	Director Physical Education (BPS-17)	At least second class Master's Degree in Physical Education from a recognized University.	22-35 years	<p>recruitment, and (b) fifty percent by initial recruitment.</p> <p>(a) Fifty percent by promotion, on the basis of seniority-cum-fitness, from amongst Senior Physical Education Teachers (BPS-16), with at least five years service as Senior Physical Education Teacher and Physical Education Teacher and having qualification mentioned in column No. 3:</p> <p>Provided that if no suitable person is available from amongst Senior Physical Education Teachers for promotion then the post shall be filled by promotion, on the basis of seniority-cum-fitness, from amongst the Physical Education Teachers, with at least five years service as such and having qualification mentioned in column No. 3:</p> <p>Note:- If no suitable candidate is available in the relevant cadres of the above teachers, the post falling in their promotion quota shall be filled by initial recruitment, and</p> <p>(b) fifty percent by initial recruitment, and</p>
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(11)

against Serial No. 1B, as so renumbered, for the existing entries, the following shall be substituted, in respective columns, namely:

(10)

1	2	3	4	5
1B.	Secondary School Teacher (BPS-16)	<p>I. At least second class Bachelor Degree's from a recognized University on need basis from the following groups with two subject</p> <p>(a) (Chemistry, Botany or Zoology), Or (b) (Physics, Maths "A" or "B" or Statistics) Or (c) (Humanities and other equivalent groups at degree level with English as compulsory subject;</p> <p>and</p> <p>II. Bachelor of Education or Master of Education (Industrial Art or Business Education) or M.A Education or equivalent qualifications from a recognized University.</p>	21 to 35 years.	<p>1. Seventy Five per cent by promotion, on the basis of seniority-cum-fitness, from the district concerned in the following manner:</p> <p>(a) forty per cent from amongst the Senior Certified Teachers (BPS-16), with at least five years service as Senior Certified Teacher and Certified Teacher and having qualification mentioned in column No. 3;</p> <p>Provided that if no suitable candidate is available from amongst Senior Certified Teachers for promotion then the post shall be filled by promotion, on the basis of seniority-cum-fitness, from amongst Certified Teachers, with at least five years service as such and having qualification mentioned in column No. 3;</p> <p>(b) four per cent from amongst the Senior Drawing Masters (BPS-16), with at least five years service as Senior Drawing Masters and Drawing Masters and having qualification mentioned in column No. 3;</p>

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			<p>Provided that if no suitable candidate is available from amongst Senior Drawing Masters for promotion then the post shall be filled by promotion, on the basis of seniority-cum-fitness, from amongst Drawing Masters with at least five years service as such and having qualification mentioned in column No. 3;</p> <p>(c) four per cent from amongst the Senior Arabic Teachers(BPS-16), with at least five years service as Senior Arabic Teachers and Arabic Teachers, and having qualification mentioned in column No.3:</p> <p>Provided that if no suitable candidate is available from amongst Senior Arabic Teachers for promotion then the post shall be filled by promotion, on the basis of seniority-cum-fitness, from Arabic Teachers with at least five years service as such and having qualification mentioned in column No. 3:</p> <p>(d) four per cent from amongst the Senior Theology Teachers(BPS-16), with at least five years service as Senior Theology Teachers and Theology Teachers and having qualification mentioned in column No.3:</p>
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				<p>Provided that if no suitable candidate is available from amongst Senior Theology Teachers for promotion then the post shall be filled by promotion, on the basis of seniority-cum-fitness, from amongst Theology Teachers with at least five years service as such and having qualification mentioned in column No. 3;</p> <p>(e) three per cent from amongst the Senior Qaris (BPS-16), with at least five years service as Senior Qari and Qari and having qualification mentioned in column No. 3;</p> <p>Provided that if no suitable candidate is available from amongst the Senior Qaris then the post shall be filled by promotion, on the basis of seniority-cum-fitness, from Qaris with at least five years service as such and having qualification mentioned in column No. 3;</p> <p>(f) twenty per cent from amongst the Primary School Head Teachers (BPS-16), with at least seven years service as Primary School Head Teachers and Senior Primary School Teachers and Primary School Teachers and having qualification mentioned in column No. 3;</p> <p>Provided that if no suitable candidate is available from amongst</p>
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Primary School Head Teachers for promotion then the post shall be filled by promotion, on the basis of seniority-cum-fitness, from amongst Senior Primary School Teachers with at least seven years service as Senior Primary School Teachers and Primary School Teachers and having qualification mentioned in column No.3:

Provided further that if no suitable candidate is available from amongst Senior Primary School Teachers for promotion then the post shall be filled from amongst Primary School Teachers with at least seven years service as such and having qualification mentioned in column No. 3; and

(ii) twenty Five percent by initial recruitment.

Note:

- I. If no suitable candidate is available in the relevant cadre of the above teachers, the post falling in their promotion quota shall be filled by initial recruitment.
- II. Posts of General SST and SSTs-1 Science and SST-2 Science shall be filled by promotion or initial recruitment, each on need basis separately."

10

**SECRETARY TO GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION DEPARTMENT**

Endst : of even No & date:

1. The Secretary to Government of Khyber Pakhtunkhwa, Establishment and Administration Department Peshawar.
2. The Secretary to Government of Khyber Pakhtunkhwa, Finance Department Peshawar.
3. The Secretary to Government of Khyber Pakhtunkhwa, Law Department Peshawar
4. The Secretary Khyber Pakhtunkhwa, Public Service Commission Peshawar.
5. The Accountant General Khyber Pakhtunkhwa Peshawar.
6. The Director, Elementary and Secondary Education Department Khyber Pakhtunkhwa Peshawar.
7. The Director of Education (FATA) Peshawar.
8. The Director, Curriculum and Teacher Education Khyber Pakhtunkhwa Abbottabad.
9. The Director, (PITE) Khyber Pakhtunkhwa Peshawar.
10. The Director, ESRU Elementary and Secondary Education Department Khyber Pakhtunkhwa Peshawar.
11. Manager Government Printing Press Khyber Pakhtunkhwa Peshawar.
12. The Deputy Director, EMIS (S&SE) Department Khyber Pakhtunkhwa Peshawar.
13. All District Education Officer (M&F) in Khyber Pakhtunkhwa.
14. All District Account Officer in Khyber Pakhtunkhwa.
15. All Agency Education Officer in FATA
16. All Agency Account Officer in FATA.
17. PS to Governor Khyber Pakhtunkhwa. Peshawar.
18. PS to Chief Minister Khyber Pakhtunkhwa. Peshawar.
19. PS to Chief Secretary Khyber Pakhtunkhwa. Peshawar.
20. PS to Minister E&SE Khyber Pakhtunkhwa. Peshawar.
21. PS to Secretary E&SE Khyber Pakhtunkhwa. Peshawar.
22. Master file

(ZAMIN KHAN MOMAND)
SECTION OFFICER (PRIMARY)

(7)

Judgment Sheet

IN THE PESHAWAR HIGH COURT, ABBOTTABAD BENCH
JUDICIAL DEPARTMENT

Writ Petition No. 1041-A/2015

JUDGMENT

Date of hearing 5-4-16

Petitioner Mohammad Bawa by Mr. Akmal Sabir

Respondents Govt of NW F Abdul

IKRAMULLAH KHAN, J. - Through the instant writ petition under Article 199 of the Islamic Republic of Pakistan, 1973 the petitioner seeks declaration to the effect that the act of respondent No.3 whereby the promotion notification dated 28.10.2014 was withdrawn vide impugned notification dated 24.04.2014 on the ground of having qualification of B.Sc (3rd division) is illegal and without lawful authority and against the judgment of this court passed in W.P.No. 58-B of 2014.

2. In essence, the petitioner was initially appointed as Certified Teacher and as per entitlement later on promoted to the post of Senior Certified Teacher (BPS-16) vide notification dated 28.10.2014 whereafter the petitioner assumed the charge of the said post on 30.10.2014 and after performing his duties to the satisfaction of his competent authority, on 24.04.2015 respondent No.3 has passed the impugned notification and, as

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such, the promotion order of the petitioner was withdrawn on the ground of having B.Sc in third division.

3. Comments were called from respondent No.3, who filed the same, averring therein that though petitioner was promoted to the post of SST vide notification dated 28.10.2014 by respondent No.2 but on scrutinizing his qualification documents, it was found that petitioner was not eligible for promotion to the post of SST being B.Sc third divisioner, hence, his promotion order was de-notified by the Director Elementary and Secondary Education Khyber Pakhtunkhwa Peshawar and on the direction of Director the promotion order of the petitioner was withdrawn vide impugned notification dated 24.04.2015.

4. It has further been averred in the comments that promotion order of the petitioner was withdrawn on the ground of B.Sc third division and it was done in light of policy circulated vide Notification No.SO(PE)4-5 /SSRC / meeting / 2013 / teaching cadre dated 24.07.2014 according to which the method of recruitment of SST was specified with a first condition of at least second class BA / B.Sc from a recognized University on need basis with two relevant subjects along with second condition of MA Education or B.Ed from the recognized University. Further averred that it is the prerogative of the government to enhance, modify or alter the promotion

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ATTESTED

criteria / policy for the civil servants and a civil servant is not supposed to be treated with a set of rules of his own choice.

5. In response to Para-6 of the petition, respondent No.3 averred in the comments that the judgment of this court was announced on 04.06.2015 whereas the withdrawal order of the petitioner was passed on 24.04.2015, prior to the announcement of the judgment.

6. The main contention of learned counsel for the petitioner is that this court has already declared the condition of having third division as null and void in its judgment dated 04.06.2015 and the case of the petitioner is on better footing for the reason that in the referred judgment the petitioner had not been appointed but so far as the case of the petitioner is concerned, he was duly promoted rather received its benefits from 28.10.2014 to 24.04.2015 and thus, the impugned order is illegal, without lawful authority and jurisdiction.

7. Admittedly, the petitioner was duly promoted to the post in question on 28.10.2014 after the departmental promotion committee evaluated his case / PERs.

8. Now the question for determination before this court would be that when the petitioner actually performed his duties on the promoted post and that too for six long months, then how the respondent No.3 could withdraw the earlier promotion order only on the pretext of having B.Sc third division.

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of the original
in Court
on 28/11/15

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unlawful

8. It appears from the record that a Division Bench of this had already declared the condition of having third division as null and void in its judgment dated 04.06.2015 which fact has also been affirmed by the respondent No.3 in his comments by stating that they were not aware of that judgment at the time of withdrawal of the impugned promotion of the petitioner and when the case of the present petitioner is at par with that of the petitioner therein, rather on better footing because the petitioner was not only promoted to the post in question but he performed his duties for six long months and received its benefits, the impugned notification passed by respondent No.3 is required to be set at naught.

9. It is also a well settled principle of law that once a benefit is granted to a civil servant, cannot be taken back from him and, if so, very stringent strong reasons are required for the same, which are not available in the case in hand, moreover, when the promotion order of the similarly placed teachers having B.Sc third division have not been so far withdrawn which is clearly violation of Article 25 of the Constitution of Pakistan.

10. For the reasons mentioned above, this petition is accepted and the impugned notification dated 24.04.2015 issued by respondent No.3 whereby the promotion order of the petitioner was withdrawn is declared to be without lawful

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authority and, as such, the promotion notification dated 28.10.2014 is hereby restored.

Announced:
05.04.2016

Sd/ Judge,
Sd/ Judge,

1. Saif M

ATTESTED

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gk

[Signature]

Annexure E

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GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT

Dated Peshawar the December, 15 of 2011

NOTIFICATION

No. SOE-II (ED) 2(14)2011:-in exercise of the powers conferred by Section 26 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 (Khyber Pakhtunkhwa Act No.XVIII of 1973), the Chief MINISTER OF THE Khyber Pakhtunkhwa is pleased to direct that in the Khyber Pakhtunkhwa Provincial Management Service Rules 2007, the following further amendment, shall be made, namely:

AMENDMENT

In Schedule-I, against Sr. No.1, in Column No.3, the full stop appearing at the end shall be replaced by colon and thereafter that following proviso shall be added, namely:

“Provided that a candidate who has obtained a 3rd Division or D-Grade in Bachelor's Degree will be eligible for the examination in cases where he/she has obtained a higher Division in Master's Degree”.

CHIEF SECRETARY
KHYBER PAKHTUNKHWA

ATTN: [Signature]

Annex E

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GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT

Dated Peshawar the December, 15, 2011

NOTIFICATION

No. SOE.II (E.D) 2(14)/2011. In exercise of the powers conferred by Section 26 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 (Khyber Pakhtunkhwa Act No. XVIII of 1973), the Chief Minister of the Khyber Pakhtunkhwa is pleased to direct that in the Khyber Pakhtunkhwa Provincial Management Service Rules, 2007, the following further amendment, shall be made, namely:

AMENDMENT

In Schedule-I, against Sr. No. 1, in Column No. 3, the full stop appearing at the end shall be replaced by colon and thereafter the following proviso shall be added, namely:

"Provided that a candidate who has obtained a 3rd Division or D-Grade in Bachelor's Degree will be eligible for the examination in cases where he/she has obtained a higher Division in Master's Degree."

CHIEF SECRETARY
KHYBER PAKHTUNKHWA

Encl. No. & date even

Copy of the above is forwarded to:

1. Additional Chief Secretary, Khyber Pakhtunkhwa.
2. Secretary to Governor, Khyber Pakhtunkhwa.
3. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
4. Senior Member Board of Revenue, Khyber Pakhtunkhwa.
5. All Administrative Secretaries, Khyber Pakhtunkhwa.
6. Secretary (Administration & Coordination)/Civil Secretariat PATA.
7. Chairman, Khyber Pakhtunkhwa Public Service Commission.
8. Accountant General, Khyber Pakhtunkhwa, Peshawar.
9. Director, STI, E&A Department.
10. Secretary Khyber Pakhtunkhwa Public Service Commission.
11. PS to Chief Secretary, Khyber Pakhtunkhwa.
12. PS to Secretary Establishment.
13. PS to Additional Secretary (Estt)/Deputy Secretary (Estt) Establishment Department.
14. Office order file.

(PARTAL KAZINI)
SECTION OFFICER (E.II)

ATTESTED

ATTESTED

ATTESTED

Annxure "F"

(21)

PAFSE Department
Khyber Pakhtunkhwa Education

Subject: DEPARTMENTAL APPEAL AGAINST THE INACTION OF THE RESPONDENTS BY NOT CONSIDERING THE APPELLANT FOR PROMOTION TO THE POST OF SST (BPS-16) ON THE BASIS OF HAVING BACHELOR DEGREE IN 3RD DIVISION AND AGAINST THE SERVICE RULES NOTIFIED ON 24.07.2014 WHEREBY THE CONDITION OF BACHELOR 2ND DIVISION HAS BEEN INSERTED IN SERIAL NO.1B, COLUMN NO.3(i) OF THE TABLE.

Respected Sir,

With due respect it is stated that I was initially appointed as Certified School Teacher in the respondent Department and right from the date of my 1st appointment I am performing my duties quite efficiently and up to the entire satisfaction of his superiors. During service, later on I was promoted to the post of SCT. That I have the higher qualification of Master in Arts in 1st Division but the authorities issued the impugned Notification dated 24.07.2014 whereby the post of SST was restricted and 20% promotion quota to the aforementioned post was reserved for Certified School Teachers. That according to the said Notification required qualification for initial recruitment as well as promotion was mentioned as second class bachelor degree. That the concerned authority denied promotion of my some colleagues to the post of SST due to having third class bachelor degree. They were feeling aggrieved filed writ petitions which were allowed in favor of petitioners vide judgment dated 05.04.2016 and 28.01.2016 and consequently they were promoted to the post of SST. That I was also denied from promotion due to having third class bachelor degree despite the fact that I am having 1st division in higher qualification of Master in education. That being a similar placed employe approached the concerned authority to extend the same benefit of the above mentioned judgments but in vain. That the establishment Department issued a Notification dated 15.12.2011 whereby amendment has been made in PMS rules, 2007 by providing that a candidate who has obtain 3rd division in bachelor degree will be eligible for the examination in cases where he/she has obtained a higher division in Master's degree. That feeling aggrieved from the inaction of the concerned authority by not considering me for promotion to the post of SST (BPS-16) filed the instant Departmental appeal before your good self.

It is therefore, most humbly prayed that on acceptance of this Department appeal I may very kindly be considered for promotion to the post of SST (BPS-16) from the date when my colleagues and junior colleagues were promoted with all consequential benefits including seniority. Any other remedy which your good self deems fit that may also be awarded in my favor.

Dated: 30.01.2021

APPLICANT

D. J. Lohar
D. J. Lohar, SST (BPS-16)
SST (BPS-16) Education

ATTACHED

without lawful authority and, as such the promotion notification dated 28.10.2014 is hereby restored.

Announced.

05.04.2016

ATTACHED