ORDER

13th July, 2022

1. Mr. Akhtar Ilyas, Advocate, learned counsel for the appellant present. Mr. Muhammad Adeel Butt, Addl: AG alongwith Mr. Muhammad Tufail, Assistant office of the Directorate, Elementary & Secondary Education (E&SE), Peshawar and Mr. Iftikhar Ul Ghani, DEO(M) Buner in person present.

2. Vide our detailed order of today placed in Service Appeal No. 82/2018 'titled "Abdur Rashid-vs- the Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education (E&SE), Department Peshawar and others" (copy placed in this file), this appeal is also disposed of on the same terms. Costs shall follow the events. Consign.

3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 13th day of July, 2022.*

(KALIM ARSHAD KHAN)
CHAIRMAN

(FAREEHA PAUL)
MEMBER(E)

25.11.2021 Proper DB is not available, therefore, the case is adjourned to 28/2/22 for the same before DB.

Reader

28-2-22 due to Retirement of the Hon'ble Chairman the case is adjourned on

15-6-22

Reader

15.06.2022 Learned counsel for the appellant present. Mr. Yakmin Khan, ADEO alongwith Mr. Kabirullah Khattak, Additional Advocate General for the respondents present.

Learned counsel for the appellant requested for adjournment on the ground that he has not made preparation for arguments. Adjourned. To come up for arguments on 13.07.2022 before the D.B.

(MIAN MUHAMMAD)
MEMBER (EXECUTIVE)

(SALAH-UD-DIN)
MEMBER (JUDICIAL)

05.08.2021 Learned counsel for the appellant present.

Mr. Kabirullah Khattak, Additional Advocate General alongwith Ubaid-Ur-Rehman ADO (Litigation) for respondents present.

Former made a request for adjournment being not in possession of the file today. This being an old case be fixed in last week of September, 2021 for arguments. Adjourned. To come up for arguments on 23.09.2021 before D.B.

(Atiq Ur Rehman Wazir)
Member (E)

Chairman

23.09.2021 Counsel for the appellant and Mr. Muhammad Rahedd, DDA for the respondents present.

Learned counsel for the appellant requested for adjournment for preparation and assistance. Case to come up for arguments on 25.11.2021 before the D.B.

(Rozina Rehman)
Member(Judicial)

Chairman

14.01.2021 Junior to counsel for appellant and Kabir Ullah Khattak learned Additional Advocate General alongwith Ubaid ur Rehman ADEO for respondents present.

Due to COVID-19, the case is adjourned to 01.04.2021 for the same as before.

READER

01.04.2021 Due to non availability of the concerned D.B, the case is adjourned to 20.05.2021 for the same.

Reader

05.03.2021 Due to pandemic of covid-19, the case is adjourned to 05.08.2021 for the same before D.B.

Reader

9.4.2020 Due to COVID19, the case is adjourned to 6/7/2020 for the same as before.

Reader

06.07.2020 Due to COVID19, the case is adjourned to 31.08.2020 for the same as before.

Reader

31.08.2020 Due to summer vacation, the case is adjourned to 05.11.2020 for the same as before.

Reader

05.11.2020 Junior to counsel for the appellant and Addl: AG alongwith Mr. Obaid Ur Rehman, ADEO for respondents present.

The Bar is observing general strike, therefore, the matter is adjourned to 14.01.2021 for hearing before the D.B.

(Mian Muhammad)
Member (E)

Chairman

09.01.2020 Due to general strike of the Khyber Pakhtunkhwa Bar Council, the case is adjourned. To come up for arguments on 03.03.2020 before D.B.

Member Member

03.03.2020 Counsel for the appellant and Mr. Kabirullah Khattak, Additional AG alongwith Mr. Muhammad Irfan, Assistant for the respondents present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 08.04.2020 before D.B.

(Mian Mohammad)
Member

(M. Amin Khan Kundi)
Member

09.10.2019 Due to official tour of Hon'ble Members to Camp Court Swat, instant appeal is adjourned to 20.12.2019 for the same.

Reader

18.12.2019 Learned counsel for the appellant present. Mr. Kabirullah Khattak, learned Additional Advocate General alongwith Mr. Obaid Ur Rehman, ADO present. Learned counsel for the appellant seeks adjournment. Adjourn. To come up for arguments on 26.12.2019 before D.B.

Member Member

26.12.2019 Clerk to counsel for the appellant present. Mr. Muhammad Jan, DDA alongwith Mr. Obaid Ur Rehman, ADEO for respondents present. Clerk to counsel for the appellant submitted an application for adjournment as learned counsel for the appellant has gone to Islamabad due to his personal engagements. Adjourn. To come up for arguments on tomorrow i.e 27.12.2019 before D.B.

Member Member

27.12.2019 Counsel for the appellant present Mr. Muhammad Jan, DDA for respondents present. Learned counsel for the appellant seeks adjournment. Adjourn. To come up for arguments on 09.01.2020 before D.B.

Member Member

30.04.2019 Learned counsel for the appellant and Mr. Muhammad Jan learned Deputy District Attorney present. Learned counsel for the appellant seeks adjournment. Adjourn. To come up for arguments on 15.05.2019 before D.B.

Member Member

15.05.2019 Counsel for the appellant and Addl. AG for the respondents present.

Due to demise of his father, learned Member of the Bench (Mr. Hussain Shah) is on leave. Adjourned to 24.07.2019 for arguments before the D.B.

Chairman

24.07.2019 Learned counsel for the appellant present. Mr. Usman Ghani learned District Attorney for the respondents present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 09.10.2019 before D.B.

(Hussain Shah)
Member

(M. Amin Khan Kundi)
Member

24.01.2019 Clerk to counsel for the appellant present. Shakeel Superintendent representative of the respondent department present. Written reply not submitted. Representative of the respondent department seeks time to furnish written reply/comments. Granted. To come up for written reply/comments on 13.02.2019 before S.B

Member

13.02.2019 Learned counsel for the appellant and Mr. Kabir Ullah Khattak learned Additional Advocate General alongwith Ubaid ur Rehman ADO present. Representative of the respondent department submitted written reply/comments. Adjourn. To come up for rejoinder/arguments on 28.02.2019 before D.B.

Member

28.02.2019 Clerk to counsel for the appellant and Addl. AG alongwith Hayat Khan, AD for the respondents present.

Due to general strike on the call of Bar Association instant matter is adjourned to 30.04.2019 before the D.B.

Member

Chairman

10.08.2018 Neither appellant nor his counsel present. Mr. Kabirullah Khattak, Addl: AG for respondents present. Case to come up for written reply/comments on 09 .10.2018 before S.B.

Chairman

09.10.2018 Counsel for the appellant Mr. Akhtar Ilyas Advocate present. Mr. Kabirullah Khattak, Addl. AG for the respondents present and made a request for adjournment. Granted. To come up for written reply/comments on 27.11.2018 before S.B.

Chairman

27.11.2018 Learned counsel for the appellant and Mr. Kabir Ullah Khattak learned Additional Advocate General alongwith Mr. Hayat Khan Assistant Director present. Written reply not submitted. Representative of the respondents seeks time to file written reply/comments. Granted. To come up for written reply/comments on 18.12.2018 before S.B.

Member

18.12.2018 Learned counsel for the appellant and Mr. Kabirullah khattak learned Additional Advocate General alongwith Muhammad Azam KPO present. Written reply not received. Representative of the respondent department seeks time to furnish written reply/comments. Granted by way of last chance. To come up for written reply/comments on 24.01.2019 before S.B.

Member

07.02.2018 Counsel for the appellant present. He submitted preliminary arguments that similar appeal no. 363/2016 titled Shireen Zada-vs-Education Department and appeal no. 489/2017 titled Sher Yazdan-vs-Education Department have already been admitted to regular hearing. This has also been brought on the same grounds.

In view of the orders in the above mentioned service appeals this appeal is also admitted to regular hearing on the basis of the submission of the above mentioned plea. The appellant is directed to deposit security and process fee within 10 days. Thereafter notices be issued to the respondents for written reply/comments on 16.04.2018 before S.B.

(AHMAD HASSAN)
MEMBER

16.04.2018 Clerk of the counsel for appellant and Addl: AG. for the respondents present. Security and process fee not deposited. Appellant is directed to deposit security and process fee within seven(7) days, thereafter notices be issued to the respondents for written reply/comments on 05.06.2018 before S.B.

Member

05.06.2018 Learned counsel for the appellant present. Learned Additional Advocate General present. Security and process fee not deposited. Learned counsel for the appellant requested for further time to deposit security and process fee. Requested accepted by way of last chance. Five days given to deposit security and process fee. Thereafter notices be issued to the respondents for written reply/comments. To come up for written reply/comments on 10.08.2018 before S.B

Member

Appellant Deposited
Security & Process Fee

Form-A

FORMOF ORDERSHEET

Court of_____

Case No. **85/2018**

S.No.	Date of order proceedings	Order or other proceedings with **signature** of judge
1	2	3
1	23/1/2018	The appeal of Mr. Mujeeb Ullah presented today by Mr. Akhtar Ilyas Advocate, may be entered in the Institution Register and put up to Worthy Chairman for proper order please. REGISTRAR
2-	6/2/18	This case is entrusted to S. Bench for preliminary hearing to be put up there on 7/2/18 CHAIRMAN

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

S.A. No. 88 /2018

Khan Wali Khan .....Appellant

Versus

Govt. of KPK through Secretary, (E&SE), Department, Peshawar and others.....Respondents

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3.	Copy of promotion order 30.10.2014	B	27-29
4.	Copy of W.P.No.1951 and order	C	30-38
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Dated: 23/11/18

Appellant

Through

Akhtar Ilyas
Advocate High Court
6-B Haroon Mansion
Khyber Bazar, Peshawar
Cell: 0345-9147612

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

S.A. No. 88 /2018

Khan Wali Khan, SST (SC)
GHS Janak Banda, District Buner..... .....Appellant

VERSUS

1. Govt. of KPK through Secretary, Elementary & Secondary Education (E&SE), Department, Peshawar.
2. Director, Elementary & Secondary Education, (E&SE), Khyber Pakhtunkhwa, G.T Road, Peshawar.
3. District Education Officer (M), District Buner at Daggar.

.....Respondents

APPEAL U/S 4 OF KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 FOR TREATING THE PROMOTION OF THE APPELLANT FROM THE DATE HE HAS QUALIFIED ON, AND THE VACANCIES HAD BECOME AVAILABLE:

Sheweth;

1) That numerous vacancies of SST in BPS-16 were available in the respondent-department since long and no steps were taken for appointments against those posts. However, in the year 2009 an advertisement was published in the print media, inviting applications for appointments against those vacancies, but a rider was given therein that in-service employees would not be eligible and they were restrained from making applications.

2) That the appellant do belong to the category of in-service employees, who were not permitted to apply against the stated SST vacancies.

3) That those who were appointed on adhoc/ contract basis against the abovesaid vacancies were later on regularized on the strength of KPK Employees (Regularization of Services) Act, 2009 (Act No.XVI of 2009)

4) That the regularization of the adhoc/ contract employees, referred to in the preceding para, prompted the left out contendents, may be the in-service employees who desired to take part in the competition or those who did fall in the promotion zone, to file writ petitions, which were ultimately decided vide a **consolidated judgment dated 26.01.2015** (Annex "A")

5) That while handing down the judgment, ibid, the Hon'ble Peshawar High Court was pleased to consider the promotion quota under paragraph 18 of the judgment, as also a direction was made in that respect in the concluding para to the following effect:-

> ***"Official respondents are directed to workout the backlog of the promotion quota as per above mentioned example, within 30 days and consider the in-service employees, till the backlog is washed out, till then there would be complete ban on fresh recruitments"***

6) That the appellant was considered for promotion, pursuant to the findings given by the august High Court in the abovereferred judgment, and he was appointed on promotion on **30.10.2014** (Annex "B"), but **with immediate effect**, as against the law laid down by the august Supreme Court, that the promotees of one batch/ year shall rank Senior to the initial recruits of the same batch/ year.

7) That till date seniority list of the SSTs in BPS-16 has not been issued, as against the legal obligation of the respondents to issue seniority list every year.

8) That though the appellant was having the required qualification much earlier and the vacancies were also available, but he was deprived of the benefit of promotion at that juncture, as against the principle of law laid down by the apex Court in the case of **Azam Ali reported 1985 SCMR 386 and followed in Muhammad Yousaf (1996 SCMR 1287)**. As such he was deprived from the enjoyment of the high post not only in terms of status but also in terms of financial benefits for years. It may not be out of place to mention here that the appellant was at promotion zone at the time of Regularization of Adhoc recruits of 2009.

9) That appellant alongwith others filed W.P.No.1951-P/2016 for issuance of seniority list and considering the appellant from the

date when the Adhoc Employees were regularized instead of immediate effect.

10) That the stated writ petition has been decided by worthy Peshawar High Court vide order dated 01.12.2016. (Copy of W.P.No.1951 and order is attached as Annex "C")

11) That the respondents assailed the judgment of Peshawar High Court referred to in Para-4 above before the august Supreme Court of Pakistan. On 20.09.2017 (Annex "D") the respondents withdraw the petition and as such the judgment of hon'ble Peshawar High Court attained finality.

12) That after the withdrawal of appeals, the appellant preferred departmental appeal/ representation (Annex "E") to respondent No.2, through proper channel, which was not decided/ responded within the statutory period, hence the instant service appeal, inter-alia on the following:-

GROUNDS:

A. That the appellant was equipped with all the requisite qualification for promotion to the posts of SST (BPS-16) long ago and also the vacancies were available but for no valid reason the promotion was withheld and the post was retained vacant in the promotion quota, creating a backlog, which was not attributable to the appellant , hence, as per following examination by the august Supreme Court, the appellant are entitled to the back benefits from the date the vacancies had occurred;

> ***"promotions of such promotee (appellant in the instant case) would be regular from date that the vacancy reserved under the Rules for departmental promotion occurred"***

B. That the appellant has a right and entitlement to the back benefits attached to the post from the day of the qualification of the appellant and availability of the vacancies coincided.

C. That the appellant being the promotee of one and the same batch, are required to be placed senior to the fresh appointees, but the respondents have sat on the seniority list and uptill now no seniority list whatsoever has been issued/ circulated.

D. That the appellant has been discriminated, which goes against the provision of Articles 25 and 27 of the Constitution, 1973.

E. That the appellant has not been treated in accordance with law as against the provisions of Article 4 of the Constitution.

F. That appellant reserve his right to urge additional grounds with leave of the Tribunal, after the stance of the respondents becomes known to him.

Prayer:

In view of the foregoing, it is, therefore, prayed that on acceptance of this appeal, this Hon'ble Tribunal may be pleased to issue an appropriate direction to the respondents for treating the promotion of the appellant from the date he was qualified on, and the vacancies had become available, and the impugned order may kindly be modified by giving effect from the date when the fresh recruits are regularized w.e.f. 2009 alongwith back benefits in accordance to the judgment dated 26.01.2015 and also to circulate the seniority list of SSTs (BPS-16), giving senior positions to the appellant being promotee against the fresh recruits.

Any other remedy to which the appellant is found fit in law, justice and equity may also be granted.

Appellant

Through

Akhtar Ilyas
Advocate High Court

AFFIDAVIT

I, do hereby affirm and declare on Oath that the contents of the accompanying **Appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed from this hon'ble Court.

Deponent

KHALID MAHMOOD ADVOCATE
ATTESTED
NOTARY PUBLIC
PESHAWAR HIGH COURT

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"A" S

(4)

JUDGMENT SHEET

PESHAWAR HIGH COURT,PESHAWAR
(JUDICIAL DEPARTMENT)

Writ Petition No.2905 of 2009.

ATTA ULLAH AND OTHERS.....PETITIONERS.

VERSUS.

THE CHIEF SECRETARY KPK ETC....RESPONDENTS..

JUDGMENT.

Date of hearing 26.01.2015

Appellant/Petitioner by Ghulam Nabi Khan Advocate.

Respondent by Sardar Ali Raza Advocate & Waqar Ahmad Khan AAG.

WAQAR AHMAD SETH,J:- *Through this single judgment we propose to dispose of the instant Writ Petition No.2905 OF 2009 as well as the connected Writ Petition Nos.2941, 2967,2968,3016. 3025.3053,3189,3251,3292 of 2009,496,556,664,1256,1662,1685,1696,2176,2230,2501,2696, 2728 of 2010 & 206, 355,435 & 877 of 2011 as common question of law and fact is involved in all these petitions.*

ATTESTED

Attested

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EXAMINER
Peshawar High Court
10 FEB 2015

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2- The petitioners in all the writ petitions have approached this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 with the following relief:-

> "It is, therefore, prayed that on acceptance of the Amended Writ Petition the above noted Act No.XVI 2009 namely 'The North West Province Employees (Regularization of Services) Act, 2009 dated 24th October, 2009' being illegal unlawful, without authority and jurisdiction, based on malafide intentions and being unconstitutional as well as ultra vires to the basic rights as mentioned in the constitution be set-aside and the respondents be directed to fill up the above noted posts after going through the legal and lawful and the normal procedure as prescribed under the prevailing laws instead of using the short cuts for obliging their own person.
>
> It is further prayed that the notification No.A-14/SET(M) dated 11.12.2009 and Notification No.A-17/SET(5) Contract-Apptt:2009 dated 11.12.2009, as well as Notification No.SO(G)ES/1/85/2009/SS(Contract) dated

ATTESTED

31.05.2010 issued as a result of above noted impugned Act whereby all the private respondents have been regularized may also be set-aside in the light of the above submissions, being illegal, unlawful, in-constitutional and against the fundamental rights of the petitioners.

Any other relief deemed fit and proper in the circumstances and has not been particular asked for in the noted Writ Petition may also be very graciously granted to the petitioners".

3- *It is averred in the petition that the petitioners are serving in the Education Department of KPK working posted as PST,CT,DM,PET,AT,IT, Qari and SET in different Schools; that respondents No.9 to 1359 were appointed on adhoc/contract basis on different times and lateron their service were regularised through the North West Frontier Province Employees (Regularization of Services) Act, 2009; that almost all the petitioners have got the required qualifications and also got at their credit the length of service; that as per notification No.SO(S)6-2/97 dated 03/06/1998*

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ATTESTED
EXAMINER
Peshawar High Court
16 FEB 2015

the qualification for appointment/promotion of the SET Teachers BPS-16 was prescribed that 75% SETs shall be selected through Departmental Selection Committee on the basis of batchwise/yearwise open merit from amongst the candidates having the prescribed qualification and remaining 25% by initial recruitment through Public Service Commission whereas through the same notification the qualification for the appointment/promotion of the Subject Specialist Teachers BPS-17 was prescribed that 50% shall be selected by promotion on the basis of seniority cum fitness amongst the SETs possessing the qualification prescribed for initial recruitment having five years service and remaining 50 by initial recruitment through the Public Service Commission and the above procedure was adopted by the Education Department till 22/09/2002 and the appointments on the above noted posts were made in the light of the above notification. It was further averred that the Ordinance No.XXVII of 2002 notified on 09/08/2002 was promulgated under the shadow of which some 1681 posts of different cadres were advertised by the Public Service Commission

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Peshawar High Court
16 FEB 2015

That before the promulgation of Act No.XVI of 2009, it was practice of the Education Department that instead of promoting the eligibie and competent persons amongst the teachers community, they have been advertising the above noted posts of SET (BPS-16) and Subject Specialist (BPS-17) on the basis of open merit/adhoc/contract wherein it was clearly mentioned that the said posts will be temporary and will continue only for a tenure of six months or till the appointment by the Public Serviced Commission or Departmental Selection Committee That after passing the KPK Act No.XVI of 2009 by the Provincial Assembly the fresh appointees of six months and one year on the adhoc and contract basis including respondents no.9 to 1351 with a clear affidavit for not adopting any legal course to make their services regularized, haye been made permanent and regular employees whereas the employees and teaching staff of the Education Department having at their credit a service of minimum 15 to maximum 30 years have been ignored. That as per contract Policy issued on 26/10/2002 the Education Department was not authorised/entitled to

ATTESTED

ATTESTED

make appointments in BPS-16 and above on the contract basis as the only appointing authority under the rules was Public Service Commission. That after the publication made by the Public Service Commission thousands of teachers eligible for the above said posts have already applied but they are still waiting for their calls and that through the above Act thousands of the adhoc teachers have been regularized which has been adversely effected the rights of the petitioners, thus having no efficacious and adequate remedy available to the petitioners, the have knocked the door of this Court through the aforesaid constitutional petitions.

4- The concerned official respondents have furnished parawise comments wherein they raised certain legal and factual objections including the question of maintainability of the writ petitions. It was further stated that Rule 3(2) of the N.W.F.P. Civil Servants (Appointment, Promotion & Transfer)Rules 1989, authorised a department to lay down method of appointment, qualification and other conditions applicable to post in consultation with Establishment & Administration Department and the Finance Department.

ATTESTED

That to improve/uplist the standard of education, the Government replaced/amended the old procedure i.e. 100% including SETs through Public Service Commission KPK for recruitment of SETs B-16 vide Notification No.SO(PE)4-5/SS-RC/Vol-III dated 18/01/2011 wherein 50% SSTs (SET) shall be selected by promotion on the basis of seniority cum fitness in the following manner:-

"(i) Forty percent from CT (Gen), CT(Agr), CT(Indust: Art) with at least 5 years service as such and having the qualification mentioned in column 3.

(ii) Four percent from amongst the DM with at least 5 years service as such and having qualification in column 3.

(iii) Four percent from amongst the PET with at least 5 years service as such and having qualification mentioned in column 3.

(iv) One percent amongst Instructional Material Specialists with at least 5 years

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(4)

service and having qualification mentioned in column 3."

It is further stated in the comments that due to the degradation/fall of quality education the Government abandoned the previous recruitment policy of promotion, appointment/recruitment and in order to improve the standard of teaching cadre in Elementary & Secondary Education Department of KPK, vide Notification dated 09/04/2004 wherein at serial No. 1.5 in column 5 the appointment of SS prescribed as by the initial recruitment and that the (North West Frontier Provincial) Khyber Pakhtunkhwa Employees(Regularization of Services)Act, 2009 (ACT No.XVI of 2009 dated 24th October, 2009 is legal, lawful and in accordance with the Constitution of Pakistan which was issued by the competent authority and jurisdiction, therefore, all the writ petitions are liable to be dismissed.

ATTESTED

5- We have heard the learned counsel for the parties and have gone through the record as well as the law on the subject.

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(42)

6- The grievance of the petitioners is two fold in respect of Khyber Pakhtunkhwa, Employees (Regularization of Services) Act, 2009 firstly, they are alleging that regular post in different cadres were advertised through Public Service Commission in which petitioners were competing with high profile carrier but due to promulgation of Act ibid, they could not made through it as no further proceedings were conducted against the advertised post and secondly, they are agitating the legitimate expectancy regarding their promotion, which has been blocked due to the in block induction / regularization in a huge number, courtesy Act, No. XVI of 2009.

7- As for as, the first contention of advertisement and in block regularization of employees is concerned in this respect it is an admitted fact that the Government has the right and prerogative to withdraw some posts, already advertised, at any stage from Public Service Commission and secondly no one knows that who could be selected in open merit case, however, the right of competition is reserved. In the instant case KPK, employees

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(Regularization of Services) Act, 2009, was promulgated, which in-fact was not the first in the line rather N.W.F.P (now Khyber Pakhtunkhwa) Civil Servants (Regularization of Services) Act, 1988, NWFP (now Khyber Pakhtunkhwa) (Regulation of Services) Act, 1989 & NWFP (now Khyber Pakhtunkhwa) Adhoc Civil Servants (Regularization of Services) Act, 1987 were also promulgated and were never challenged by anyone.

8- In order to comment upon the Act, ibid, it is important to go through the relevant provision which reads as under:-

S.2 Definitions. (1)---

a)----

aa) "contract appointment" means appointment of a duly qualified person made otherwise than in accordance with the prescribed method of recruitment.

b) "employee" means an adhoc or a contract employee appointed by Government on adhoc or contract basis or second shirt/night shift but does not include the employees for project post or appointed on work charge

ATTESTED

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Peshawar High Court
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basis or who are paid out of contingencies;

-------- whereas,

S. 3 reads:-

Regularization of services of certain employees.---- All employees including recommendee of the High Court appointed on contract or adhoc basis and holding that post on 31st December, 2008 or till the commencement of this Act shall be deemed to have been validly appointed on regular basis having the same qualification and experience for a regular post;

9- The plain reading of above sections of the Act, ibid, would show that the Provincial Government, has regularized the "duly qualified persons", who were appointed on contract basis under the Contract Policy, and the said Contract Policy was never ever challenged by any one and the same remained in practice till the commencement of the said Act. Petitioners in their writ petitions have not quoted any single incident / precedent showing that the regularized employees under the said Act, were not qualified for the post against

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which they are regularized, nor had placed on record any documents showing that at the time of their appointment on contract they had made any objection. Even otherwise, the superior courts have time and again reinstated employees whose appointments were declared irregular by the Government Authorites, because authorities being responsible for making irregular appointments on purely temporary and contract basis, could not subsequently turned round and terminate services because of no lack of qualification but on manner of selection and the benefit of the lapses committed on part of authorities could not be given to the employees. In the instant case, as well, at the time of appointment no one objected to, rather the authorities committed lapses, while appointing the private respondent's and others, hence at this belated stage in view of number of judgments, Act, No. XVI of 2009 was promulgated. Interestingly this Act, is not applicable to the education department only, rather all the employees of the Provincial Government, recruited on contract basis till 31st Decembe; 2008 or till the commencement of this Act have been

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regularized and those employees of to other departments who have been regularized are not party to this writ petition.

10- All the employees have been regularized under the Act, ibid are duly qualified, eligible and competent for the post against which they were appointed on contract basis and this practice remained in operation for years. Majority of those employees getting the benefit of Act, ibid may have become overage, by now for the purpose of recruitment against the fresh post.

11- The law has defined such type of legislation as **"beneficial and remedial"**. A beneficial legislation is a statue which purports to confer a benefit on individuals or a class of persons. The nature of such benefit is to be extended relief to said persons of onerous obligations under contracts. A law enacted for the purpose of correcting a defect in a prior law, or in order to provide a remedy where non previously existed. According to the definition of Corpus Juris Secundum, a remedial statute is designed to correct an existence law, redress an existence grievance, or introduced regularization conductive to the public goods. The challenged

ATTESTED

Act, 2009, seems to be a curative statue as for years the then Provincial Governments, appointed employees on contract basis but admittedly all those contract appointments were made after proper advertisement and on the recommendations of Departmental Selection Committees.

12- In order to appreciate the arguments regarding beneficial legislation it is important to understand the scope and meaning of beneficial, remedial and curative legislation. Previously these words have been explained by N.S Bindra in interpretation of statute, tenth edition in the following manners:-

> *"A statue which purports to confer a benefit on individuals or a class of persons, by reliving them of onerous obligations under contracts entered into by them or which tend to protect persons against oppressive act from individuals with whom they stand in certain relations, is called a beneficial legislations....In interpreting such a statue, the principle established is that there is no room for taking a narrow view but that the court is entitled to be generous towards the persons on whom the benefit has*

ATTESTED

been conferred. It is the duty of the court to interpret a provision, especially a beneficial provision, Liberally so as to give it a wider meaning rather than a restrictive meaning which would negate the very object of the rule. It is a well settled canon of construction that in constructing the provision of beneficent enactments, the court should adopt that construction which advances, fulfils, and furthers the object of the Act, rather than the one which would defeat the same and render the protection illusory..... Beneficial provisions call for liberal and broad interpretation so that the real purpose, underlying such enactments, is achieved and full effect is given to the principles underlying such legislation."

Remedial or curative statues on the other hand have been explained as:-

"A remedial statute is one which remedies defect in the pre existing law, statutory or otherwise. Their purpose is to keep pace with the views of society. They serve to keep our system of jurisprudence up to date and in

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harmony with new ideas or conceptions of what constitute just and proper human conduct. Their legitimate purpose is to advance human rights and relationships. Unless they do this, they are not entitled to be known as remedial legislation nor to be liberally construed. Manifestly a construction that promotes improvements in the administration of justice and the eradication of defect in the system of jurisprudence should be favoured over one that perpetuates a wrong".

Justice Antonin Scalia of the U.S. Supreme Court in his book on Interpretation of Statute states that:

> *"Remedial statutes are those which are made to supply such defects, and abridge such superfluities, in the common law, as arise from either the general imperfection of all human law, from change of time and circumstances, from the mistakes and unadvised determinations of unlearned (or even learned) judges, or from any other cause whatsoever."*

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13- The legal proposition that emerges is that generally beneficial legislation is to be given liberal interpretation, the beneficial legislation must carry curative or remedial content

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EXAMINER
Peshawar High Court
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Such legislation must therefore, either clarify an ambiguity or an omission in the existence and must therefore, the explanatory or clarificatory in nature. Since the petitioners does not have the vested rights to be appointed to any particular post, even advertised one and private respondents who have being regularized are having the requisite qualification for the post against which the were appointed, vide challenged Act, 2009, which is not effecting the vested right of anyone, hence, the same is deemed to be a beneficial, remedial and curative legislation of the Parliament.

14- This court in its earlier judgment dated 26th November 2009 in WP No. 2905 of 2009, wherein the same Khyber Pakhtunkhwa (Regularization of Servers) Act, 2009, vires were challenged has held that this court has got no jurisdiction to entertain the writ petition in view of Article 212 of the Constitution of Islamic Republic of Pakistan, 1973, as an Act, Rule or Notification effecting the terms and conditions of service, would not be an exception to that, if seen in the light of the spirit of the ratio rendered in the case of

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I.A.Sherwani & others Versus Government of Pakistan, reported in 1991 SCMR 1041. Even otherwise, under Rule 3 (2) of the Khyber Pakhtunkhwa (Civil Servants) (appointment), promotion and transfer) Rules 1989, authorize a department to lay down method of appointment, qualification and other conditions applicable to the post in consultation with Establishment & Administrative Department and the Finance Department. In the instant case the duly elected Provincial Assembly has passed the Bill/Act, which was presented through proper channel i.e Law and Establishment Department, which cannot be quashed or declared illegal at this stage.

15- Now coming to the second aspect of the case, that petitioners legitimate expectancy in the shape of promotion has suffered due to the promulgation of Act, ibid, in this respect, it is a long standing principle that promotion is not a vested right but it is also an established principle that when ever any law, rules or instructions regarding promotion are violated then it become vested right. No doubt petitioners in the first instance cannot claim promotion as a vested right

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but those who fall within the promotion zone do have the right to be considered for promotion.

16- Since the Act, XVI of 2009 has been declared a beneficial and remedial Act, for the purpose of all those employees who were appointed on contract and may have become overage and the promulgation of the Act, was necessary to given them the protection therefore, the other side of the picture could not be brushed a side simply. It is the vested right of in service employees to be considered for promotion at their own turn. Where a valid and proper rules for promotion have been framed which are not given effect, such omission on the part of Government agency amounts to failure to perform a duty by law and in such cases, High Court always has the jurisdiction to interfere. In service employees / civil servants could not claim promotion to a higher position as a matter of legal right, at the same time, it had to be kept in mind that all public powers were in the nature of a sacred trust and its functionary are required to exercise same in a fair, reasonable and transparent manner strictly in accordance with law. Any transgression from such

principles was liable to be restrained by the superior courts in their jurisdiction under Article 199 of the Constitution. One could not overlook that even in the absence of strict legal right there was always legitimate expectancy on the part of a senior, competent and honest carrier civil servant to be promoted to a higher position or to be considered for promotion and which could only be denied for good, proper and valid reasons.

17- Indeed the petitioners can not claim their initial appointments on a higher post but they have every right to be considered for promotion in accordance with the promotion rules, in field. It is the object of the establishment of the courts and the continue existence of courts of law is to dispense and foster justice and to right the wrong ones. Purpose can never be completely achieved unless the injustice done was undone and unless the courts stepped in and refused to perpetuate what was patently unjust, unfair and unlawful. Moreover, it is the duly of public authorities as appointment is a trust in the hands of public authorities and it is their legal and moral duty to discharge their functions as

ATTESTED

trustee with complete transparency as per requirement of law, so that no person who is eligible and entitle to hold such post is excluded from the purpose of selection and is not deprived of his any right.

18- Considering the above settled principles we are of the opinion that Act, XVI of 2009 is although beneficial and remedial legislation but its enactment has effected the in service employees who were in the promotion zone, therefore, we are convinced that to the extent of in service employees / petitioners, who fall within the promotion zone have suffered, and in order to rectify the inadvertent mistake of the respondents/Department, it is recommended that the promotion rules in field be implemented and those employees in a particular cadre to which certain quota for promotion is reserved for in service employees, the same be filled in on promotion basis. In order to remove the ambiguity and confusion in this respect an example is quoted, " If in any cadre as per existence rules, appointment is to be made on 50/50 % basis i.e 50 % initial recruitment and 50 % promotion quota then all the employees have been

ATTESTED

regularized under the Act in question be calculated in that cadre and equal number i.e remaining 50 % are to promoted from amongst the eligible in service employees other wise eligible for promotion on the basis of sonority cum fitness."

10- In view of the above, this writ petition is disposed of in the following terms:-

(i) "The Act, XVI of 2009, commonly known as (Regularization Of Services) Act, 2009 is held as beneficial and remedial legislation, to which no interference is advisable hence, upheld.

(ii) Official respondents are directed to workout the backlog of the promotion quota as per above mentioned example within 30 days and consider the in service employees, till the backlog is washed out, till then there would be complete ban on fresh recruitments."

Order accordingly.

Announced.
26th January 2015

JUDGE

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JUDGE

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Attested

CERTIFIED TO BE TRUE COPY

Peshawar High Court, Peshawar
Authorized Under Article 87 of the Qanun-e-Shahadat Order 1984

16 FEB 2015

"B" 27

OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) DISTRICT BUNER.

NOTIFICATION:

Consequent upon the recommendation of the Departmental Promotion Committee and in pursuance of the Government of Khyber Pakhtunkhwa Elementary & Secondary Education Notification No. SO(PE)/4-5/SSRC/Meeting/2013/Teaching Cadre dated 24th July 2014, the following SCTs/CTs, SDMs/DMs, SATs/ATs, STTs/TTs, Senior Qaris/Qaris, PSHTs/SPSTs/PSTs are hereby promoted to the post of SST(Bio-Chem), SST (Phy-Maths), SST (General) noted against each in BPS-16 (Rs10000-800-34000) plus usual allowances as admissible under the rules on the regular basis under the existing policy of the provincial Govt: on the terms and conditions given below with immediate effect and posted on " School Based " as given below.

A. SST (BIO-CHEM)

1. PROMOTED FROM SCT/CT TO THE POST OF SST (BIO-CHEM) BPS-16

S.No	Name of Official	Present Place of Posting	School Where Posted	Remarks
1/1-A	Wakeel Zada	GHSS Gagra	GHSS Gagra	A.V.P
2/2-A	Bakht Akbar	GHS Ghurgushto	GHSS Ghurgushto	A.V.P
3/3-A	Shamsur Rahman	GHS Ganshal	GHS Ganshal	A.V.P
4/4-A	Shah Bhroz Khan	GHS Shalbandi	GHS Shalbandi	A.V.P
5/5-A	Abdul Ghafoor	GHS Torwarsak	GHS Kala Khela	A.V.P
6/6-A	Bakht Rasool Khan	GHS Dewana Baba	GHS Dewana Baba	A.V.P
7/7-A	Rahim Zada	GHS Jowar	GHS Jowar	A.V.P

2. PROMOTED FROM PSHT/SPST/PST TO THE POST OF SST (BIO-CHEM) BPS-16

S.No	Name of Official	Present Place of Posting	School Where Posted	Remarks
8/1-A	Rahmanullah	GPS Kalpani	GCMHS Daggar	A.V.P
9/2-A	Fazali Wadood	GPS Girarai	GHS Katkala	A.V.P
10/3-A	Khan Said	GPS Bampokha	GHS Nanser	A.V.P
11/4-A	Saifur Rahman	GPS Rahim Abad	GHS Elai	A.V.P

B. SST (PHY-MATHS)

3. PROMOTED FROM SCT/CT TO THE POST OF SST (PHY-MATHS) BPS-16

S.No	Name of Official	Present Place of Posting	School Where Posted	Remarks
12/1-B	Liaqat Hussain	GCMHS Daggar	GCMHS Daggar	A.V.P
13/2-B	Ahmad Ali	GHSS Totalai	GHS Janak Banda	A.V.P
14/3-B	Muhammad Salim	GHSS Nawagai	GHSS Jangai	A.V.P

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15/4-B	Khan Wali Khan	GHSS Totalai	GHS Dagai	A.V.P
16/5-B	Israrullah	GHS Kawga	GHS Chanar	A.V.P
17/6-B	Mihrab Gul	GHS Khanano Dherai	GHS Khararai	A.V.P
18/7-B	Zaroj Khan	GHSS Charorai	GHS Daggar No.2	A.V.P
19/8-B	Sher Nawaz Khan	GHS Jowar	GHS Katkala	A.V.P
20/9-B	Inam Ullah	GHS Diwana Baba	GHS Diwana Baba	A.V.P
21/10-B	Muhammad Iqbal	GMS [illegible]	GHS Nogram	A.V.P
22/11-B	Said Kamal Shah	GMS Sambar [illegible]	GHS Dakara	A.V.P

4. PROMOTED FROM PSHT/SPST/PST TO THE [illegible] ST (PHY-MATHS) BPS-16

S.No	Name of Official	Present Place of Posting	School Where Posted	Remarks
23/1-B	Sabir Rahman	GPS Bando Tangai	GHS Torwa	A.V.P
24/2-B	Hamdullah	GPS Manezai Kawga	GHS Asharay	A.V.P
25/3-B	Sher Ahmad	GPS Balo Khan	GHS Ghazi Khanay	
26/4-B	Hamid ur Rahman	GPS Daggar No.1	GHS Nawakaly	
27/5-B	Rasool Shah	GPS Kinger Gali	GHS Dokada	
28/6-B	Akmal Khan	GPS Rega No.3	GHS Bajkata	A.V.P
29/7-B	Aziz Ahmad	GPS Bampokha	GHS Kala Khela	A.V.P
30/8-B	Rahim Dad Khan	GPS Jowar No.3	GHS Bazargay	A.V.P

C. SST (GENERAL)

5. PROMOTED FROM SCT/CT TO THE POST OF SST (GENERAL) BPS-16

S.No	Name of Official	Present Place of Posting	School Where Posted	Remarks
31/1-C	Hakim Khan	GHSS Nawagai	GHS Asharay	A.V.P
32/2-C	Abdul Halim	GHS Jowar	GMS Shanai Torwarsak	A.V.P
33/3-C	Ali Jan	GHSS Agarai	GHSS Agarai	A.V.P
34/4-C	Hazrat Rahman	GHS Batai	GMS Malakpur	A.V.P
35/5-C	Abdur Rashid	GHSS Totalai	GHSS Totalai	A.V.P
36/6-C	Nawar Khan	GHS Dherai	GHS Chanar	A.V.P
37/7-C	Ghulam Rahman	GHS Batai	GHS Dokada	A.V.P
38/8-C	Sher Wali Khan	GHS Jowar	GHS Girarai	A.V.P
39/9-C	Shamsul Islam	GHSS Jangai	GHSS Jangai	A.V.P
40/10-C	Bashir Ahmad	GHSS Totalai	GHSS Totalai	A.V.P
41/11-C	Saifur Rahman	GHSS Gagra	GHS Tangora	A.V.P

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Terms and Conditions:-

1. They would be on probation for a period of one year extendable for another one year.
2. They will be governed by such rules and regulations as may be issued from time to time by the Govt.
3. Their services can be terminated at any time, in case their performance is found unsatisfactory during probationary period. In case of misconduct, they shall be proceeded under the rules framed from time to time.
4. Charge report should be submitted to all concerned.
5. Their inter-Se-seniority on lower post will remain intact.
6. No TA/ DA will be allowed to the appointee for joining their duty.
7. They will give an undertaking to be recorded in their service books to the effect that if any over payment i made to them, in light of this order, will be recovered and if he is wrongly promoted he will be reversed.
8. Their posting will be made on school based, they will have to serve at the place of posting and their service i not transferable to any other station.
9. Before handing over charge, once again their documents may be checked if they have not the require relevant qualification as per rules, they may not be handed over charge of the post.

CONSEQUENTIAL TRANSFER / ADJUSTMENTS

The following SST BPS-16 are hereby consequentially transferred / adjusted at the schools noted against their names in their own pay and scale with immediate effect in the interest of the public.

S.No	Name of Official	Present Place of Posting	School Where Posted	Remarks
1	Habibullah SST(PHY-MATHS)	GHS Dewana Baba	GHS Matwanai	A.V.P (Newly Upgraded)
2	Siyar Khan SST (GENERAL)	GHS Cheena	GHS Matwanai	A.V.P (Newly Upgraded)
3	Jan Bahadar Khan SST(PHY-MATHS)	GHSS Jangai	GHS Dherai	Vice S.No.14/3-I
4	Muhammad Abrar SST (GENERAL)	GHS Bagra	GMS Kalil	Vice S.No.83/2-
5	Hidayatur rahman SST (GENERAL)	GMS Gumbat	GHS Gulbandi	Vice S.No.77/15

(HANIF-UR- RAHMAN)
DISTRICT EDUCATION OFFICER(M)
BUNER.

Endst; No.3029-36 Dated. 30/10/2014.

Copy forwarded for information and necessary action to ;-

1. Director Elementary &Secondary Education Khyber Pakhtunkhwa Peshawar with r/t Endstt: No.3436-40/File No.2/Promotion SST B-16 dated Peshawar the 28/10/2014.
2. Deputy Commissioner Buner.
3. District Accounts Officer Buner
4. District Monitoring Officer Buner
5. Principals/Head Masters concerned.
6. Sub Divisional Education Officer (M) Buner
7. Officials concerned.
8. Master file.

ATTESTED

30/10/14

DISTRICT EDUCATION OFFICER(M)
BUNER.

"C" 30

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BEFORE THE PESHAWAR HIGH COURT, PESHAWAR

W.P. No. 1951-P/2016

1. Rehmatullah, SST, GHSS, Gagra, District Buner
2. Shahbaroz Khan SST (SC), GHS Shal Bandi
3. Inamullah SST (SC) GHS Diwana Baba
4. Bakht Rasool Khan (SC) GHS Diwana Baba
5. Abdur Raqib SST (G) GHS Bajkata
6. Sher Akbar SST (G) GMS Banda
7. Shairbar SST (G) GMS Kuz Shamnal.
8. Aub Zar SST (G) GHS Cheena
9. Habib-ur-Rehman SST (G) GHS Bagra
10. Shaukat SST (SC) GHSS Amnawar
11. Subhani Gul SST (G) GMS Alami Banda.
12. Gul Said SST (G) GHS Karapa
13. Siad Amin SST (G) GCMHS Daggar
14. Sardar Shah (G) GCMHS Daggar
15. Israr Ullah SST (SC) GHS Chanar
16. Mahir Zada (SST) GHS Shal Bandai.
17. Shir Yazdan SST (G) District Buner
18. Bahari ALam ST (SC) GHS Shal Bandai
19. Miskeen SSG (G) GMS Shargahy, District Buner.

.....Petitioners

Versus

1. Government of Khyber Pakhtunkhwa through Secretary, E&SE Department, Peshawar.
2. Director E&SE, KPK, Peshawar.
3. District Education Officer (M), Buner at Daggar

.....Respondents

SEAL OF HIGH COURT PESHAWAR
عدالت عالیہ
پشاور

ATTESTED

ATTESTED
EXAMINER
Peshawar High Court
16 DEC 2016

FILED TODAY
13 MAY 2016

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(30)

WRIT PETITION UNDER ARTICLE 199 OF THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF PAKISTAN, 1973.

Sheweth;

1) That numerous vacancies of SST in BPS-16 were available in the respondent department since long and no steps were taken for appointments against those posts. However, in the year 2009 an advertisement was published in the print media, inviting applications for appointment against those vacancies, but a rider was given therein that in-service employees would not be eligible and they were restrained from making applications.

2) That the petitioners do belong to the category of in-service employees, who were not permitted to apply against the stated SST vacancies.

ATTESTED

3) That those who were appointed on adhoc/ contract basis against the abovesaid vacancies were later on regularized on the strength of KPK Employees (Regularization of Services) Act, 2009 (Act No.XVI of 2009)

4) That the regularization of the adhoc/ contract employees, referred to in the preceding para, prompted the left out contendents, may be the in-service employees who desired to take part in the competition or those who did fall in the promotion zone, to file writ

13 MAY 2013

ATTESTED

EXAMINER
Peshawar High Court

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(31)

petitions, which were ultimately decided vide a consolidated judgment dated 26.01.2015 (Annex "A")

5) That while handing down the judgment, ibid, this Hon'ble Court was pleased to consider the promotion quota under paragraph 18 of the judgment, as also a direction was made in that respect in the concluding para to the following effect:-

> ***"Official respondents are directed to workout the backlog of the promotion quota as per above mentioned example, within 30 days and consider the in-service employees, till the backlog is washed out, till then there would be complete ban on fresh recruitments"***

6) That the petitioners were considered for promotion, pursuant to the findings given by this august Court in the abovereferred judgment, and they were appointed on promotion on various dates ranging from 01.03.2012 to 31.07.2015 (Annex "B"), but with immediate effect, as against the law laid down by the august Supreme Court, that the promotees of one batch/ year shall rank Senior to the initial recruits of the same batch/ year.

ATTESTED

7) That till date seniority list of the SSTs in BPS-16 has not been issued, as against the legal obligation of the respondents to issue seniority list every year.

8) That though the petitioners were having the required qualifications much earlier and the vacancies were also available, but they were deprived of the benefit of promotion at that juncture, as against the principle of law

13 MAY 2015

ATTESTED

EXAMINER

laid down by the apex Court in the case of Azam Ali reported 1985 SCMR 386 and followed in Muhammad Yousaf (1996 SCMR 1287). As such they were deprived from the enjoyment of the high post not only in terms of status but also in terms of financial benefits for years.

9) That feeling mortally aggrieved and having no other adequate and efficacious remedy, the petitioners approach this august Court for a redress, inter alia, on the following grounds:-

GROUNDS:

A. That the petitioners were equipped with all the requite qualification for promotion to the posts of SST (BPS-16) long ago and also the vacancies were available but for no valid reason the promotions were withheld and the posts were retained vacant in the promotion quota, creating a backlog, which was not attributable to the petitioners, hence, as per following examination by the august Supreme Court, the petitioners are entitled to the back benefits from the date the vacancies had occurred;

> ***"promotions of such promotee (petitioners in the instant case) would be regular from date that the vacancy reserved under the Rules for departmental promotion occurred"***

ATTESTED

B. That the petitioners have a right and entitlement to the back benefits attached to the post from the day the

ATTESTED

EXAMINER
Peshawar High Court
16 DEC 2016

qualifications of the petitioners and availability of the vacancies coincided.

C. That the petitioners being the promotees of one and the same batch, are required to be placed senior to the fresh appointees, but the respondents have sat on the seniority list and uptill now no seniority list whatsoever has been issued/ circulated.

D. That in view of the fact that no seniority list has been issued, the petitioners neither can file a departmental appeal nor can have recourse to the Services Tribunal for agitating their grievances, therefore, this august Court can issue appropriate directions to the respondents to act in accordance with law, in view of the principle of law laid down by the apex Court in the pronouncements reported in PLD 1981 SC 612, 2003 SCMR 325, etc.

E. That the petitioners have not been treated in accordance with law as against the provisions of Article 4 of the Constitution.

F. That petitioners reserve their right to urge additional grounds with leave of the Court, after the stance of the respondents becomes known to them.

ATTESTED
EXAMINER
Peshawar High Court
16 DEC 2016

ATTESTED

TODAY

13 MAY 2016

Prayer

In view of the foregoing, its is, therefore, prayed that on acceptance of this petition, this Hon'ble Court may be pleased to issue an appropriate direction to the respondents for treating the promotion of the petitioners from the date

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they were qualified on, and the vacancies had become available, and also to circulate the seniority list of SSTs (BPS-16), giving senior positions to the petitioners being promotees against the fresh recruits.

Any other remedy to which the petitioners are found fit in law, justice and equity may also be granted.

Petitioners

Through

Muhammad Isa Khan Khalil
Advocate Supreme Court

&

Akhtar Ilyas
Advocate High Court

CERTIFICATE:
It is certified that no such petition on the subject matter has earlier been filed by the petitioner in this august Court.

Advocate

LIST OF BOOKS:
1) Constitution of Pakistan, 1973.
2) Case law according to need.

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ATTESTED
EXAMINER
Peshawar High Court
16 DEC 2016

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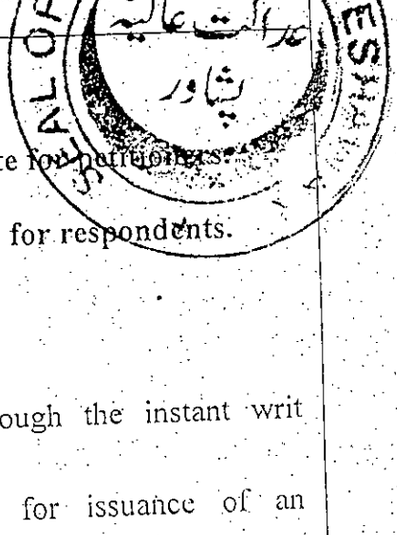
PESHAWAR HIGH COURT, PESHAWAR.

ORDER SHEET



Date of Order/ Proceedings	Order or other Proceedings with Signature of Judge
01/12/2016.	*WP No. 1951-P/2016 M.* *Present:* Mr. Isa khan Khalil, advocate for petitioners. Mr. Rab Nawaz Khan, AAG for respondents. =-=-= **WAQAR AHMAD SETH, J.-** Through the instant writ petition, the petitioners have prayed for issuance of an appropriate writ directing the respondents to treat their promotion from the date, they were qualified on and also to circulate the seniority list of SSTs BS-16 by giving them senior position being promotees against the fresh recruits. 2. Arguments heard and available record gone through. 3. The prayer so made, in the writ petition and argued at bar clearly bifurcate, the case of petitioners in two parts; firstly, petitioners are claiming an appropriate direction to the respondents to circulate the senior list of SSTs (BS-16). Yes, according to section-8 of Khyber Pakhtunkhwa, Civil Servants Act, 1973, for proper administration of service, cadre, or post, the

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Peshawar High Court
16 DEC 2016

appointing authority shall cause a seniority list of the members of the time being of such service, cadre, or post to be prepared and the said seniority list so prepared under subsection-1, shall be revised and notified in the official gazette at least once in a calendar year, preferably in the month of January. In view of the clear provision of law, the first prayer of the petitioners is allowed with the consent of learned AAG and the competent authority is directed to issue the seniority list of SST's BS-16, in accordance with the law, relating to seniority etc, but in the month of January, 2017, positively.

4. As regarding the second portion of the petiton, wherein they have asked for appropriate direction to the respondents for treating the promotion of the petitioners from the date they were qualified and vacancies had become available besides considering them senior being promotees against the direct recruits is concerned, we are of the view that the same pertains to terms and condition of service and as such under article-212 of the constitution this Court is barred to entertain that portion of the writ petition.

5. In view of the above, this writ petition is disposed of

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EXAMINER
Peshawar High Court
16 DEC 2016

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with the direction to the respondents, as indicated in para-3, whereas the seniority and promotion being terms and conditions of service is neither entertain-able nor maintainable in writ jurisdiction.

Sd/ Waqar Ahmed Seth J
Sd/ Ishtiaq Ibrahim J

JUDGE

JUDGE

SEAL OF HIGH COURT PESHAWAR
عدالت عالیہ پشاور

CERTIFIED TO BE TRUE COPY

Examiner
Peshawar High Court Peshawar
Authorized Under Article 87 of
The Qanun-e-Shahadat Order, 1984

16 DEC 2016

No. 11800

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6/12/16

ATTESTED

Nawab Shah

39

"D"

Civil Petitions No. [illegible]

[illegible]

[illegible] Secretary [illegible]

[illegible] and others
[illegible]

Petitioner(s) (?) [illegible]

For the respondent(s) [illegible]
[illegible]

Date of hearing: [illegible]

ORDER

Ejaz Afzal Khan, J. The learned Additional Advocate General appearing on behalf of the Govt. of [illegible] states at the bar that as per instructions of the Government he does not press these petitions. Dismissed as such.

Sd/- Ejaz Afzal Khan, J
Sd/- Sh. Azmat Saeed, J
Sd/- Ijaz ul Ahsan, J

Certified to be True Copy

SUPREME COURT OF PAKISTAN

ISLAMABAD
20.09.2017

Court Associate
Supreme Court of Pakistan
Islamabad

25/9/17

CR No: [illegible] Civil/Criminal
Date of Presentation: [illegible]
No of W[illegible]
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Co[illegible]
Date [illegible]

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IN THE SUPREME COURT OF PAKISTAN.

(APPEAL JURISDICTION)

PRESENT:
MR. JUSTICE EJAZ AFZAL KHAN
MR. JUSTICE SH.AZMAT SAEED
MR. JUSTICE EJAZ UL AHSAN.

CIVIL PETITIONS NO. 127-P TO 129-P OF 2016

(Against the judgment dated 26.01.2015 Peshawar High Court, Peshawar passed in with Petition No.2905 of 2009, 3025 of 2009, and others.

The Chief Secretary, Govt: of KPK, Peshawar and Others....Petitioner(s)
(in all cases).

VERSUS.

Attaullah and Others
Nasruminullah and Others.
Mukhtar Ahmad and Others. Respondents.

For the petitioner(s): Mr.Mujahid Ali Khan, Addl.A.G.KPK

For the respondent(s): Mr.Ghulam Nabi Khan, ASC
Mr.Abdul Qayyum Sarwar, AOR.

Date of Hearing 20.09.2017.

O R D E R.

Ejaz Afzal Khan J. The learned Additional General appearing on behalf of the Govt. of KPK stated at the bar that as per instructions of the Government he does not press these petitions. Dismissed as such.

Sd/-Ejaz Afzal Khan,J
Sd/- Sh.Azmat Saeed,J.
Sd/- Ijaz ul Ahsan, J.

ISLAMABAD.
20.09.2017

ATTESTED

"Through proper channel"

The Director,
E&SE, Department, KPK, Peshawar.

Sub: Appeal/Representation for treating the promotion of the applicant from the date he has qualified on, and the vacancies had become available, and also to circulate the seniority of SSTs (Bps-16), giving Senior position to the applicant being promotee against the fresh recruits.

R/Sir,

(1) That applicant alongwith others filed writ petitions before Peshawar High Court on the grounds mentioned therein, which was decided vide a consiladated Judgment dated 26.1.2015 passed in WP No 2905/2009. (Copy of the same is attached).

(2) That para-18 of the Stated Judgment is relevent for the controversy in hand.

(3) That yourgood self has issued promotion order in compliance of the Stated Judgment but with immediate effect, which is against the Law and rules on the Subject.

(4) That the applicant along with others filed another WP No 1951-P/2016 for the same purpose, which was disposed off vide order dated 1/12/2016. (copy of the same is attached).

(5) That applicant also relies on the grounds mentioned in WP No 1951/16 the same may kindly be considered as part and parcel of this appeal.

(6) That at the time of regularization of the Adhoc/Contract Employees referred to in para-1 of the appeal, the applicant was at promotion Zone and he has every right to be promoted atleast w.e.f regularization of the adhoc employees of the same batch i.e 2009

(7) That the Judgment rendered in WP No 2905/2009 has attained finality as the Govt of KPK has withdrew the same (Copy attached). It is, therefore, requested that the appeal/representation of the applicant may kindly be allowed in the terms mentioned in the Subject of the instant appeal/representation.

Thanking in anticipation and obliged.

Dated: 25/9/2017.

Applicant
Khan wali Khan SS
GHS Jamak Bandy Buss

ATTE

ATTESTED

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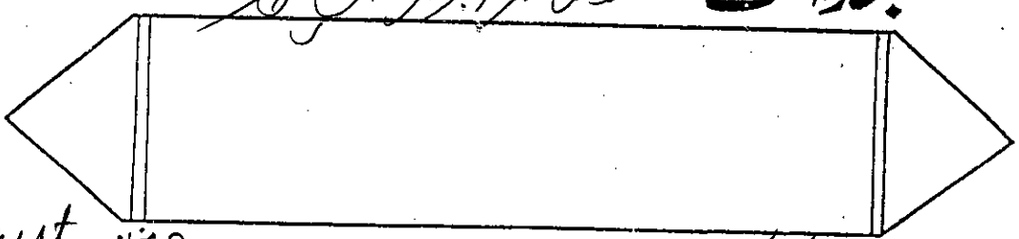
بعدالت سروس ٹریبونل پشاور



Appellant منجانب 2ء
خانزادہ بنام حکومت

موزخہ 16/11/2018
مقدمہ
دعویٰ
جرم

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی وجواب دہی وکل کاروائی متعلقہ
آن مقام ____ کیلئے احتشام الحق ایڈووکیٹ
مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز وکیل صاحب کو راضی نامہ کرنے وتقرر ثالث وفیصلہ برحلف دیئے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء اور وصولی چیک وروپیہ ارعرضی دعویٰ اور درخواست ہر قسم کی تصدیق زرایں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برامدگی اور منسوخی نیز دائر کرنے اپیل نگرانی ونظر ثانی وپیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ بااختیارات حاصل ہوں گے اور اس کا ساختہ پرداختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ ہرجانہ التوائے مقدمہ کے سبب سے وہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھدیا کہ سند رہے۔

المرقوم 16 ماہ جنوری 2019ء

العبد ____ گواہ العبد ____

بمقام ____ کے لئے منظور ہے۔

16/11/2018

BEFORE THE HONORABLE KHYBER PAKHATUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No: 88 /2018

Khan Wali Khan SST(Sc:) GHS Jank Banda District Bunir .....Appellant.

VERSUS

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

JOINT PARAWISE COMMENTS ON & FOR BEHALF OF RESPONDENTS No: 1-3.

Respectfully Sheweth :-

The Respondents submit as under:-

PRELIMINARY OBJECTIONS.

1 That the Appellant has got no cause of action/locus standi.

2 That the instant Service Appeal is badly time barred.

3 That the Appellant has concealed material facts from this Honorable Tribunal.

4 That the instant Service Appeal is based on mala fide intentions.

5 That the Appellant has not come to this Honorable Tribunal with clean hands.

6 That the Appellant is not entitled for the relief he has sought from this Honorable Tribunal.

7 That the instant Service Appeal is against the prevailing law & rules.

8 That the instant appeal is based on mala-fide intentions just to put extra ordinary pressure on the Respondents for gaining illegal service benefits against the post of SST(Sc:)

9 That the Appeal is not maintainable in its present form.

10 That the Appeal is bad for mis-joinder & non joinder of the necessary parties.

11 That this Honorable Tribunal has got no jurisdiction to entertain the instant case.

12 That the instant service appeal is barred by law.

13 That the appellant has been treated as per law, rules & policy.

14 That the appellant is not competent to file the instant appeal against the Respondents.

15 That the notification dated 28/10/2014 is legally competent & is liable to be maintained.

ON FACTS.

1 That Para-1 is correct to the extent that the Respondent Department has sought application from the eligible candidates for the appointment on adhoc basis against the SST(G) Post in the year 2009 with the conditions that the in service teachers of all cadres are not eligible to apply for the said adhoc & contractual posts.

2 That Para-2, is correct that the appellant is a regular & bona-fide Civil servant in the Respondent Department & was not allowed like others in service teachers on the grounds that the advertised posts for SST(G) in BPS-16 are on contractual & adhoc based upon which the regular & in service teacher's adjustments would be fatal for their respective service career. Hence, they were barred not to apply for the said adhoc posts in the Respondent Department.

3 That Para-3 is correct that through an act of Services Regularization Act 2009 passed by the Khyber Pakhtunkhwa Provincial Assembly the services of those teachers who were appointed on adhoc basis regularized by Respondent Department. **(Copy of the said Act 2009 is already attached with the judicial file for ready references).**

4 That Para-4 is incorrect & denied on the grounds that the Respondent Department has promotion policy for in-service teachers under which these teachers are also promoted in upper Scale & post on the basis of their respective seniority cum fitness basis in view of the reserved quota for each cadre, whereas rest of the para regarding filing of a Writ Petition 2905/2009 before the Peshawar High Court decided on 26/01/2015 with the directions to consider to the Petitioner for promotion against the SST(G) B-16 Post & consequent upon the said judgment dated 26/01/2015, the Respondent Department has promoted the Petitioner against the SST(Sc:) post in BPS-16 in view of his seniority cum fitness basis in the Respondent Department.

5 That Para-5 pertains to the Court record & judgment dated 26/01/2015 which has already been implemented by the Respondent Department, hence no further comments.

6 That Para-6 is correct to the extent that the appellant has been promoted against the SST(G) B-16 post on the basis of his seniority cum fitness basis on dated 30/10/2014 with immediate effect instead of the year 2009.

7 That Para-7 is incorrect & denied. The stand of the appellant is baseless & without any cogent proof & legal justification& even against the factual position that the Respondent Department is regularly issuing the final seniority list of all cadres including the SST (G) B-16 post under the provision of Sectioon-8 of Civil Servants Act 1973.

8 That Paa-8 is incorrect & denied on the grounds that the appellant has been promoted against the SST(G) BPS-16 post in accordance with rules & on the basis of his seniority cum fitness alongwith his other batch mates in the Respondent Department. Hence, the plea of the appellant is baseless & liable to be rejected on the grounds that the cited judgments reported as SCMR P-386 & SCMR 1996 P-1287 of the August Supreme Court of Pakistan are not applicable upon the case of the appellant.

9 That Para-9 needs no comments being pertains to the Court record.

10 That Para-10 is also needs no comments being pertains to the Court record.

11 That Para-11 is correct that the Respondent department has filed a CPLA against the judgment dated 01/12/2016 passed by the Peshawar High Court before the August Supreme Court of Pakistan but on later the said civil Petition was withdrawn on the grounds that as per judgment date 26/01/2015 of the Peshawar High Court, a back-legs has been worked out for the promotion of in service teachers on the basis of their respective seniority cum fitness basis within the prescribed period of time, promotions to the in service teachers are allowed on the basis of seniority cum fitness basis sin view of the prescribed quota for each cadre in the respondent department.

12 That Para-12 is incorrect & denied. No departmental appeal has been filed by the appellant to the Respondents. Hence, the appeal in hand is liable to be dismissed on the following grounds inter alia :-

ON GRONDS.

A Incorrect & not admitted. The impugned Notification dated 28/10/2014is in accordance with law, rules & policy, as well as with immediate effect in terms of the appointment Promotion & Transfer rules 1989. Hence, liable to be maintained in favour of the Respondents.

B Incorrect & not admitted. The statement of the appellant is baseless & liable to be dismissed on the grounds that the appellant has been treated as per law, rules & policy vide Notification dated 28/10/2014, which is not only within legal sphere but is also liable to be maintained in favour of the Respondents.

C Incorrect & denied. The appellant is not entitled for the grant of back benefits against the SST(G) post since 2009 under the relevant provisions of law, recruitment & promotion policy.

D Incorrect & denied. The appellant has been treated as per law, rules & criteria in the instant case having no violation of Articles 25 & 27 of the constitution of Islamic Republic of Pakistan 1973 by the Respondents.

E Incorrect & misleading. The stand of the appellant is illegal & without any cogent proof & justification.

F Legal. However, the Respondent Department seeks leave of this Honorable Tribunal to submit additional grounds, record & case law at the time of arguments on the date fixed.

In view of the above made submissions, it is most humbly Prayed that this Honorable Tribunal may very graciously be pleased to dismiss the instant service appeal with cost in favor of the Respondent Department in the interest of justice.

Dated ____/ /2018

Director
E&SE Department Khyber
Pakhtunkhwa, Peshawar.
(Respondents No: 2&3)

Secretary
E&SE Department Khyber
Pakhtunkhwa, Peshawar.
(Respondent No: 1)

BEFORE THE HONORABLE KHYBER PAKHATUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No: /2018

District .....Appellant.

VERSUS

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

AFFIDAVIT

I, Asstt: Director (Litigation-II) E&SE Department do hereby solemnly affirm and declare that the contents of the instant Parawise Comments are true & correct to the best of my knowledge & belief.

Deponent

Asstt: Director (Lit: II)
E&SE Department, Khyber Pakhtunkhwa, Peshawar.