EP 382/2019

14.09.2021 Petitioner alongwith counsel and Mr. Muhammad Adeel Butt, Addl. AG alongwith Jehanzaib, Superintendent for the respondents present.

The petitioner having at his credit the judgment of this Tribunal passed on 25.02.2019 in Service Appeal No. 15/2015, filed the Execution Petition at hands seeking implementation of the judgment. According to operative part of the judgment, appellant's appeal was accepted and the respondents were directed to consider the case of appellant (present petitioner) for notional promotion with effect from the date his juniors were promoted. After registration of the Execution Petition in office, the same was put up before the Single Bench on 15.10.2019. It was during the course of proceedings in the Execution Petition that on 27.01.2020, the promotion order of the petitioner dated 06.08.2020 was produced with the submission that the judgment of this Tribunal has been implemented. The matter was adjourned on joint request for reply/arguments. On 07.07.2020 arguments were heard and the order was reserved for the next date. It was reflected in order sheet dated 27.08.2020 that the grievance of the petitioner to the extent of his promotion from BPS-18 to BPS-19 had been redressed. So far as the grievance to the extent of his promotion to BS-20 is concerned, that needs further discussion. Due to different reasons on different dates, the case was adjourned and could not be heard. Today the

point left for discussion vide order dated 27.08.2020 has been taken up and parties have been heard.

The crux of the arguments on behalf of the petitioner was that he undoubtedly was given notional promotion from BPS- 18 to BPS-19 in compliance with the judgment of this Tribunal but he was also entitled for next promotion to BS-20 as Professor as some of his colleagues have got promotion in BS-20. I am afraid to concur with the said argument.

The petitioner through Execution Petition at hands has requested for implementation of the judgment dated 25.02.2019 in its letter & spirit. According to the arguments noted in the judgment, the petitioner then appellant was promoted as Assistant Professor BPS-18 through notification dated 14.03.2007. As he was going to retire from government service on 15.02.2014, he moved an application for promotion against the post of Associate Professor BPS-19 and again another application on 09.01.2014 for the similar purpose. He, on reaching the age of superannuation, stood retired from service on 14.02.2014. The respondents notified promotion of Assistant Professor BPS-18 to the post of Associate Professor BPS-19 vide notification dated 05.08.2014 but the name of the appellant/petitioner was not included due to his retirement from government service. He preferred departmental appeal followed by the Service Appeal which

culminated into the judgment dated 25.02.2019 under execution through this Petition.

It is evident from the arguments noted in the judgment and from the findings at Paragraph 06 of the same judgment that his case was held viable for promotion from the post of Assistant Professor to the post of Associate Professor BPS-19 on notional basis. The appellant/petitioner misconceived the reference of the case of Mr. Afsar Ali in the conclusion part. The said reference was meant only as precedent for grant of notional promotion after retirement as he i.e. Mr. Afsar Ali after his retirement on 14.12.2012 was granted promotion to the post of BPS-20 as Professor. The said precedent is not workable in light of arguments on behalf of the appellant/petitioner for grant of two promotions to him on notional basis. According to the spirit of the judgment, the appellant/petitioner has been granted notional promotion from BPS-18 to BPS-19 which is not disputed. No case is made out for second promotion of the petitioner to BPS-20 on the strength of the judgment of this Tribunal. Therefore, this Execution Petition having already met the target is no more required for further proceedings. File be consigned to the record room.

Chairman

24.05.2021 Due to demise of the Worthy Chairman the Tribunal is defunct, therefore, case is adjourned to 03.08.2021 for the same as before.

Reader

03.08.2021 Petitioner in person and Mr. Kabirullah Khattak, Addl. AG alongwith Jehanzaib, Superintendent for the respondents present.

Petitioner seeks adjournment due to non-availability of his learned counsel. Case to come up on 14.09.2021 for further proceedings before S.B.

Chairman

01.12.2020 Petitioner is present in person. Mr. Kabirullah Khattak, Additional Advocate General for the respondents is also present.

Petitioner seeks adjournment that his respective counsel is not available today. Adjourned to 18.01.2021 on which date file to come up for further proceedings before S.B.

(MUHAMMAD JAMAL KHAN)
MEMBER (JUDICIAL)

18.01.2021 Petitioner in person present.

Noor Zaman Khattak learned District Attorney for respondents present.

Former made a request for adjournment as his counsel is not in available. Adjourned by way of last chance. To come up on 16.03.2021 before S.B.

(Rozina Rehman)
Member (J)

16.03.2021 Due to tour of Camp Court Abbottabad and shortage of Members at Principal Bench Peshawar, the case is adjourned to 24.05.2021 before S.B.

Reader

27.08.2020 Petitioner present in person.

Record shows that the grievance of the petitioner to the extent of his promotion from BPS-18 to BPS-19 has been redressed. So far as his grievance to extent of his promotion to BS-20 is concerned, that needs further discussion. Today, counsel for petitioner is not available. Therefore, case is adjourned to 04.09.2020 before S.B.

Member (J)

04.09.2020 Petitioner is present in person. Mr. Kabirullah Khattak, Additional Advocate General for the respondents is also present. Petitioner seeking adjournment that his counsel is not available today. Adjourned to 06.10.2020. File to come up for further proceedings before S.B.

(Muhammad Jamal Khan)
Member (Judicial)

06.10.2020 Nemo for the petitioner. Addl. AG for the respondents present.

The petitioner has submitted an application for adjournment on 05.07.2020 in the office of the Tribunal. The proceedings are, therefore, adjourned to 01.12.2020 before S.B.

Chairman

13.04.2020 Due to public holiday on account of COVID-19, the case is adjourned to 07.07.2020 for the same. To come up for the same as before S.B.

Reader

07.07.2020 Petitioner with counsel present.

Mr. Muhammad Jan learned Deputy District Attorney alongwith Israr Ahmad Litigation Assistant for the respondents present.

Arguments on the point heard. To come up for order on 11.08.2020 before S.B.

Member (J)

11.08.2020 Due to summer vacation, the case is adjourned to 27.08.2020 for the same, before S.B.

Reader

16.12.2019 Petitioner in person and Addl. AG alongwith Muhammad Israr, Assistant (Litigation) for the respondents present.

Petitioner requests for adjournment due to non-availability of his learned counsel today. Adjourned to 27.01.2020 before S.B.

Chairman

27.01.2020 Petitioner in person present. Mr. Muhammad Jan learned Deputy District Attorney alongwith Kazi Ayaz Litigation Officer present and submitted promotion order dated 06.08.2019 in support of his stance that the judgment of this Tribunal has been implemented. Joint request made for adjournment. Adjourn. To come up for reply/arguments 09.03.2020 before S.B.

Member

09.03.2020 Petitioner in person and Mr. Kabirullah Khattak, Additional AG alongwith Mr. Akbar Gul, Superintendent for the respondents present. Representative of the department submitted reply. The same is placed on record. To come up for arguments on 13.04.2020 before S.B.

(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

Form- A

FORM OF ORDER SHEET

Court of _____

Execution Petition No. 382/2019

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	14.10.2019	The execution petition of Proff. Akbar Shah submitted today by Mr. Amjid Ali Khan Advocate may be entered in the relevant register and put up to the Court for proper order please. REGISTRAR 14/10/19
2-	15/10/19.	This execution petition be put up before S. Bench on 12/11/19. CHAIRMAN
	12.11.2019	Petitioner in person present. Notice be issued to the respondents for 16.12.2019 before S.B. Chairman

BEFORE THE KPK SERVICE TRIBUNAL, PESHAWAR

Execution Petition No. 382/2019

IN Re:

S.Appeal No.15/2015

Prof. Akbar Shah.....Appellant

Versus

Govt. of Khyber Pakhtunkhwa through
Secretary Higher Education & others.....Respondents

INDEX

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1.	Application for implementation with affidavit		1-3
2.	Copy of attested copy of judgment dated 25.02.2019	A	4-19
3.	Copy of letter dated 06.08.2019 alongwith other correspondence	B	20-22

Applicant

Through

Amjad Ali (Mardan)
Advocate
Supreme Court of Pakistan
Cell: 0321-9882434

BEFORE THE KPK SERVICE TRIBUNAL, PESHAWAR

Execution Petition No.382/R

IN Re:

S.Appeal No.15/2015

Prof. Akbar Shah.....Appellant

Versus

Govt. of Khyber Pakhtunkhwa through
Secretary Higher Education & others.....Respondents

APPLICATION FOR IMPLEMENTATION OF JUDGMENT DATED 25.02.2019 OF THIS HON'BLE TRIBUNAL

Sir,

Applicant humbly submits as under:-

1. That applicant filed titled Service Appeal No.15/2015 before this hon'ble Tribunal with the prayer that ***"promotion order dated 05.08.2014 may please be modified by including name of appellant by considering him for promotion from Assistant Professor (BPS-18) to Associate Professor (BPS-19) and Professor (BPS-20) with all back benefits and promotion order dated 31.05.2013 and final seniority list as stood on 31.03.2011 may please be set-aside and appellant may please be declared senior to respondents No.4 to 69. "***

2. That appeal of the applicant came up for hearing on 25.02.2019, and this Hon'ble Tribunal was pleased to allow the appeal of the applicant with the following order:-

> ***"the instant appeal is accepted and respondents are directed to consider the case of the applicant for notional promotion w.e.f the date his juniors were promoted"***

(Copy of order/ judgment dated 25.02.2019 is Annex "A")

3. That after announcement of judgment dated 25.02.2019, the applicant provided the same to the respondents and approached the respondents concerned time and again for the implementation of the judgment dated 25.02.2019.

4. That on 06.08.2019, the respondents in pursuance of judgment dated 25.02.2019, promoted petitioner to the post of Associate Professor (BPS-19) from the date of his batch mates were promoted i.e. w.ef. 05.08.2014. (Copy of order dated 06.08.2019 alongwith other corresponding letters are attached)

5. That after perusal of order dated 06.08.2019, it was found that, the respondents with their malafide intention only allowed one promotion i.e. Associate Professor (BPS-19) to petitioner, while his prayer for promotion to Professor

(BPS-20) for which the appellant was also entitled was ignored.

6. That appellant approached the respondents for implementation of the judgment dated 25.02.2019 in its letter and spirit, but in vain.

7. That omission of respondents to act upon the order of this Hon'ble Tribunal speaks of the fact that respondents has undermined the authority of this Hon'ble Tribunal and have not moved even an inch for implementation of the same.

8. That this omission/ act of respondents squarely falls within the ambit of contempt of court as respondents have conveniently ignored the time frame provided by this Tribunal Court.

It is therefore, humbly requested to please direct respondents to implement the judgment dated 25.02.2019 in its letter and spirit

Applicant

Through

Amjald Ali (Mardan)
Advocate
Supreme Court of Pakistan

AFFIDAVIT

I, do hereby affirm and declare as per instructions of my clients that the contents of this **Application** are true and correct and nothing has been concealed from this honorable court.

KHALID MAHMOOD ADVOCATE PESHAWAR HIGH COURT ATTESTED NOTARY PUBLIC

14-10-19

DEPONENT

Anx-(4) (1)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 15 /2015

1436
12-12-2

Prof. Akbar Shah S/o Hussain Shah
R/o Hussain Shah Koroona,
Takht Bhai, District Mardan. . . . . Appellant

Versus

1. Govt. of Khyber Pakhtunkhwa through Secretary Higher Education, Civil Secretariat, Peshawar.
2. Chief Secretary, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
3. Director, Higher Education, Civil Secretariat, Peshawar.
4. Mr. Arif Ullah, Professor (BPS-20), Govt. Degree College, Madyan Swat.
5. Mr. Tehsil Badshah, Professor (BPS-20), Govt. Post Graduate College, Karak.
6. Mr. Muhammad Sultan, Professor (BPS-20), Govt. Degree College, (Disposal of Dte of Education) FATA as substitute of S.No.3 above (Seniority List) Est. Deptt.
7. Mr. Akhtar Pervez, Professor (BPS-20), Govt. Post Graduate College, Abbottabad.
8. Mr. Said Nawaz Khan, Professor (BPS-20), Principal, Govt. Degree College, Prova, D.I.Khan.

Respondents No 4 to 69 are placed Ex-partee on 13-10-2015

12/12/14

Re-submitted to-day

24/15

ATTESTED

Khyber Pakhtunkhwa Service Tribunal, Peshawar

(5)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,PESHAWAR.

Service Appeal No. 15/2015

Date of Institution ... 12.12.2014

Date of Decision ... 25.02.2019

Prof. Akbar Shah S/o Hussain Shah R/o Hussain Shah Koroona, Takht Bhai, District Mardan. ... (Appellant)

VERSUS

Govt: of Khyber Pakhtunkhwa through Secretary Higher Education, Civil Secretariat, Peshawar and 68 others. ... (Respondents)

MR. AMJAD ALI, Advocate --- For appellant.

MR. MUHAMMAD JAN, Deputy District Attorney --- For respondents

MR. AHMAD HASSAN, --- MEMBER(Executive)
MR. HAMID FAROOQ DURRANI --- CHAIRMAN

JUDGMENT

AHMAD HASSAN, MEMBER:- Arguments of the learned counsel for the parties heard and record perused.

ATTESTED

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Service Tribunal,
Peshawar

ARGUMENTS

2. Learned counsel for the appellant argued that he joined the Higher Education Department as Lecturer on contract basis vide notification dated 26.11.1988. That his services were regularized vide notification dated 22.12.1988. On the recommendations of the Provincial Selection Board, the appellant was promoted as Assistant Professor (BPS-18) through notification dated 14.03.2007. As the appellant was going to retire from government service on 15.02.2014, he moved an application for promotion against the post of Assistant Professor (BPS-19) on 08.012014. As per seniority list dated 31.09.2012 name of the appellant was reflected at serial no. 49. Thereafter another application dated 09.01.2014 for grant of promotion as Associate Professor was filed. Finally, on reaching

(6)

the age of superannuation, he stood retired from service on 14.02.2014. The respondents notified promotions of Assistant Professor (BPS-18) to the post of Associate Professor (BPS-19) vide notification dated 05.08.2014 but name of the appellant was not included having retired from government service. He preferred departmental appeal dated 14.08.2014 which failed to evoke any response from the respondents, hence, the present service appeal.

3. In support of his assertions, learned counsel for the appellant presented notification dated 13.05.2013 through which promotions were granted to the officers of the Higher Education Department after retirement. He also relied on a judgment of the Peshawar High Court in which Mr. Qasim Khan was promoted as S.P prior to retirement. In addition to above, he also produced promotion order of Mr. Afsar Ali who was granted promotion after retirement and the case of the appellant being identical in nature deserved to be treated in the same manner.

4. Learned Deputy District Attorney argued that promotion is not a vested right of a civil servant. Changes are brought in the seniority list after retirement of a government servant. As meeting of the Provincial Selection Board was held after retirement of the appellant so his case was not considered by the forum. The promotion policy of the provincial government does not permit promotion of a civil servant after retirement.

ATTESTED

CONCLUSION.

5. In the present service appeal eligibility of the appellant for promotion to the post of Associate Professor (BPS-19) is not disputed. However, the PSB in its meeting held on 24.02.2014 did not consider him for promotion on the sole ground that he had retired from service on reaching the age of superannuation on 14.02.2014. On the other hand vide notification dated 13.05.2013 promotions were granted to some officers of Higher Education Department after retirement. Prima-facie treatment meted out to the appellant appears to be discriminatory. Moreover, the respondents granted promotion to Mr. Afsar

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Service Tribunal
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Ali, Ex-Associate Professor of Zoology, Govt: Degree College, Babuzai, Mardan as Professor (BPS-20) w.e.f 07.12.2012 vide notificiaton dated 15.05.2013 the officer stood retired from service on 14.12.2012.

6. Attention is also invited to a letter of respondent no.3 dated 10.12.2018, whereby case of the appellant for grant of notional promotion was recommended. It was further clarified that the PSB in its meeting on 25.02.2014 cleared him for promotion to the post of Associate Professor (BPS-19) on notional basis and proposal of promotes was forwarded vide letter dated 01.04.2014 in which name of the appellant was reflected at serial no. 35. Promotions of all except the appellant were notified. As the appellant has already retired from service and is only interested in notional promotion for the purpose of monetary/ pensioner benefits his case is quite genuine and worth consideration.

7. As a sequel to above, the appeal is accepted and the respondents are directed to consider the ~~promotion~~ case of the appellant for notional promotion with effect from the date his juniors were promoted. Parties are left to bear their own costs. File be consigned to the record room.

(AHMAD HASSAN)
Member

(HAMID FAROOQ DURRANI)
Chairman

ANNOUNCED
25.02.2019

Certified to be ture copy
Khyber Pakhtunkhwa Service Tribunal, Peshawar

Date of Presentation of Application 08-03-19
Number of Words 1600
Copying Fee 10-00
Urgent 2-00
Total 12-00
Name of Copyist
Date of Completion of Copy 08-03-19
Date of Delivery of Copy 08-03-19

(8)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 15 /2015

1436
12-12-2014

Prof. Akbar Shah S/o Hussain Shah
R/o Hussain Shah Koroona,
Takht Bhai, District Mardan. . . . . Appellant

Versus

1. Govt. of Khyber Pakhtunkhwa through Secretary Higher Education, Civil Secretariat, Peshawar.
2. Chief Secretary, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
3. Director, Higher Education, Civil Secretariat, Peshawar.
4. Mr. Arif Ullah, Professor (BPS-20), Govt. Degree College, Madyan Swat.
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6. Mr. Muhammad Sultan, Professor (BPS-20), Govt. Degree College, (Disposal of Dte of Education) FATA as substitute of S.No.3 above (Seniority List) Est. Deptt.
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espondents
4 to 69
re placed
x-partee on
3-10-2015

12/12/14

Resubmitted to-day and filed.
2/1/15

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Peshawar

9. Mr. Muhammad Bashir, Professor (BPS-20), Principal, Govt. Degree College, Lassan Nawab. Kotha Dist

10. Mr. Riaz-ud-Din, Professor (BPS-20), Govt. Degree College, Pabbi, Nowshera.

11. Mr. Shoukat Baig, Professor (BPS-20), Govt. Post Graduate College, Swat.

12. Mr. Safeed Ullah Jan, Professor (BPS-20), Govt. Post Graduate College, Charsadda.

13. Dr. Syed Azkia Hashmi, Professor (BPS-20), Govt. Post Graduate College, Abbottabad.

14. Mr. Saeed-ul-Haq, Professor (BPS-20), Govt. Post Graduate College, Mandian, Abbottabad.

15. Mr. Fazal Sher, Professor (BPS-20), Principal, Govt. Degree College, Bakhshali Mardan.

16. Mr. Haji Nawab, Associate Professor (BPS-19), Govt. College, Matta. Swat

17. Mr. Muhammad Sajjad Khan, Associate Professor (BPS-19), Govt. Post Graduate College, Abbottabad.

18. Mr. Muhammad Abdullah, Associate Professor (BPS-19), Govt. College, Kotha.

19. Mr. Altaf Hussain Khattak, Associate Professor (BPS-19), Govt. Post Graduate College No.1, Abbottabad.

20. Mr. Rafiullah, Associate Professor (BPS-19), Govt. Post Graduate College, Kohat.

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21. Mr. Abdul Qadir Sajid, Associate Professor (BPS-19), Govt. Post Graduate College, Abbottabad.

22. Mr. Ghulam Subhani, Associate Professor (BPS-19), Govt. Post Graduate College, Swat.

23. Mr. Muhammad Ishaq, Associate Professor (BPS-19), Govt. Superior Science College, Peshawar.

24. Mr. Anwarzeb Shah, Associate Professor (BPS-19), Govt. College, Lahore. Disst Swabi

25. Mr. Muhammad Anwar, Associate Professor (BPS-19), Govt. College, Swabi.

26. Mr. Muhammad Hanif, Associate Professor (BPS-19), Govt. Post Graduate College, Bannu.

27. Mr. Sharif Gul, Associate Professor (BPS-19), Govt. College, Peshawar.

28. Mr. Manzoor Ali, Associate Professor (BPS-19), Govt. Post Graduate College, Mardan.

29. Mr. Mir Ghulam Khan, Associate Professor (BPS-19), Govt. Post Graduate College, Kohat.

30. Mr. Roshmali Khan, Associate Professor (BPS-19), Govt. Post Graduate College, Karak.

31. Mr. Rehmat Karim, Associate Professor (BPS-19), Govt. College, Timergara.

32. Mr. Nowsherawan, Associate Professor (BPS-19), Principal, Govt. Degree College, Kabal Swat.

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33. Mr. Muhammad Anwar-ul-Haq, Associate Professor (BPS-19), Govt. Post Graduate College, Mardan.

34. Mr. Sher Bahadar Khan, Associate Professor (BPS-19), Principal, Govt. Degree College, Khanpur.

35. Mr. Abdul Hadi, Associate Professor (BPS-19), Govt. Post Graduate College, Timergara. Dist Nowshera

36. Mr. Inayat-ur-Rehman, Associate Professor (BPS-19), Govt. Post Graduate College, Mardan.

37. Mr. Izhar-ul-Haq, Associate Professor (BPS-19), Govt. College, Lahore. Dist Swabi

38. Mr. Sakhi Muhammad Khan, Associate Professor (BPS-19), Govt. Post Graduate College, Bannu.

39. Mr. Hidayat Ullah, Associate Professor (BPS-19), Govt. Degree College, Sabir Abad. Dist Mardan

40. Mr. Wajid Shah, Associate Professor (BPS-19), Govt. Post Graduate College, Mansehra.

41. Mr. Sajjad Samad, Associate Professor (BPS-19), Govt. College, Nowshera.

42. Mr. S. Zulfiqar Haider, Associate Professor (BPS-19), Govt. College, Phar Pur, D.I.Khan.

43. Mr. Sajjad Ali Khan, Associate Professor (BPS-19), Govt. Post Graduate College, Kohat.

44. Mr. Rehmat Ullah, Associate Professor (BPS-19), Govt. College, Dargai, Malakand Agency.

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45. Mr. Muhammad Saddiq, Associate Professor (BPS-19), Govt. Superior Science College, Peshawar.

46. Mr. Abdul Jabbar, Associate Professor (BPS-19), Chairman Board of Intermediate & Secondary Education, Mardan.

47. Dr. Fazl-ur-Rehman, Associate Professor (BPS-19), Govt. Superior Science College, Peshawar.

48. Mr. Falak Naz Khan, Associate Professor (BPS-19), Principal Govt. College, Isak Khel, Lakki Marwat.

49. Mr. S. Altaf Haider, Associate Professor (BPS-19), Govt. Post Graduate College, Mardan.

50. Mr. Rehmat Ali, Associate Professor (BPS-19), Principal Govt. Post Graduate College, Nowshera.

51. Mr. Irshad Ahmad, Associate Professor (BPS-19), Govt. Post Graduate College, Nowshera.

52. Mr. Muhammad Tariq Saddique, Associate Professor (BPS-19), Govt. College, Pabbi.

53. Mr. Nasrullah Khan, Associate Professor (BPS-19), Govt. College, Hayatabad, Peshawar.

54. Mr. Ghulam Rasool, Associate Professor (BPS-19), Govt. Post Graduate College, Havelian. Dist Abbot Abad

55. Mr. Muhammad Zubair, Associate Professor (BPS-19), Govt. College, Lahore Text Book Board. Dist Lahore (Punjab)

56. Mr. Muhammad Ayub, Associate Professor (BPS-19), Govt. College, Peshawar. near Ashbab wala Stadium

ATTESTED

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Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

69. Mr. Anwar Ali, Associate Professor (BPS-19), Govt. College, Akora Khattak. Disst Nowshera .Respondents

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APPEAL U/S 4 OF THE SERVICE TRIBUNAL ACT, 1974 AGAINST PROMOTION ORDER DATED 05.08.2014 AND FINAL SENIORITY LIST DATED 31.03.2011 (NEVER COMMUNICATED) APPELLANT CAME TO KNOW ON 16.08.2014 THAT DEPARTMENTAL APPEAL DATED 16.08.2014 REMAINED UN-RESPONDED EVEN AFTER LAPSE OF 90 DAYS.

PRAYER: On acceptance of this appeal, promotion order dated 05.08.2014 may please be modified by including name of appellant by considering him for promotion from Assistant Professor (BPS-18) to Associate Professor (BPS-19) and Professor (BPS-20) with all back benefits and promotion order dated 31.05.2013 and final seniority list as stood on 31.03.2011 may please be set aside and appellant may please be declared senior to respondents No.4 to 69.

Respectfully Sheweth:

Appellant humbly submits as under:

ATTESTED

EXAMINER
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Service Tribunal,
Peshawar

(15)

1. That appellant was appointed as Lecturer on contract basis vide order dated 26.11.1988, whereafter appellant was regularized vide order dated 22.12.1988. (Copy of orders dated 26.11.1988 & 14.06.1990 is attached as annexure "A").

2. That vide order dated 27.04.2001, appellant was allowed move over BPS-17 to BPS-18. (Copy of order dated 27.04.2001 is attached as annexure "B").

3. That appellant is regularly promoted vide order dated 14.03.2007, after recommendation of Provincial Selection Board. (Copy of promotion order dated 14.03.2007 is attached as annexure "C").

4. That appellant filed application dated 08.01.2014 for promotion to the post of Associate Professor as he is going to retire. (Copy of application dated 8.01.2014 is attached as annexure "D").

5. That as per seniority list dated 31.09.2012 of College Cadre (Grade-18) Assistant Professor appellant's name is at S.No.49 which was then brought to S.No.45. (Copy of seniority list is attached as annexure "E").

6. That appellant filed application dated 09.01.2014 for promotion from post of Assistant Professor (BPS-18) to

ATTESTED

Khyber Pakhtunkhwa Service Tribunal, Peshawar

(16)

Associate Professor of Biology (BPS-19) prior to his retirement on individual basis through T.C.S. (Copy of application/ receipt is attached as annexure "F").

7. That respondents have promoted certain professors, in the post on individual basis via circulation to the concerned officers. (Copy of promotion orders is attached as annexure "G").

8. That appellant stood on retired on 14.02.2014 on attaining age of superannuation. (Copy of retirement order is attached as annexure "H").

9. That respondents passed promotion order dated 05.08.2014 of Assistant Professor (BPS-18) to Associate Professor (BPS-19) and did not include name of appellant only due to his retirement. (Copy of promotion order dated 05.08.2014 is attached as annexure "I").

10. That appellant filed departmental appeal dated 16.08.2014 through T.C.S, but in vain. (Copy of appeal and receipt is attached as annexure "J").

11. That appellant has been recommended in the PSB meeting, but copy of the same is not provided to appellant.

ATTESTED

Khyber Pakhtunkhwa Service Tribunal, Peshawar

17 18

12. That appellant approaches this Honourable Tribunal on following grounds;

GROUNDS:

A. Because appellant was eligible to be promoted, but the same was delayed due to meeting of PSB and late promotion order inspite of availability of vacancies.

B. Because junior to appellant has been promoted and appellant is ignored inspite of being senior, highly qualified, experienced, equipped with NCC certificate and eligible.

C. Because the Honourable Peshawar High Court, Peshawar too accepted Writ Petition of appellant for appointment as Associate Professor BPS-19 of Botany. (Copy of judgment is attached as annexure "K").

D. Because appellant is promoted to BPS-18, after 18 long years which too is injustice as according to Government Rules, promotion from BPS-17 to BPS-18 is due after 5 years. (Copy of rules is attached as annexure "L").

E. Because appellant has not been treated in accordance with law, thereby violated Article-4 of the constitution of Pakistan, 1973.

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Khyber Pakhtunkhwa Service Tribunal, Peshawar

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F. Because respondents violated the very service law as, due to retirement appellant, otherwise, eligible could not be deprived of promotion.

G. Because juniors have been promoted from BPS-17 to BPS-18/ BPS-19/ BPS-20 and appellant, being senior is ignored. (Copy of seniority list is attached as annexure "M").

H. Because all the seniority lists are incorrectly, illegally prepared while favouring the blue-eyed.

I. Because inspite of application of appellant, appellant is deprived of promotion due to nepotism as they were waiting for retirement of appellant to accommodate their blue-eyed.

J. Because vide promotion order dated 15.01.2013 identically placed others have been promoted prior to their retirement. (Copy of promotion order dated 15.01.2013 is attached as annexure "N").

K. Because as per order of the Honourable High Court, Peshawar in case of Mir Qasim Khan, was promoted as S.P prior to retirement. (Copy of judgment is attached as annexure "O").

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

(19)

L. Because respondents No.4 to 69 are junior to appellant in promoted to BPS-20 in violation of judgment of this Honourable Tribunal dated 03.03.2009 in amended service appeal No.1057/2007 circulated to all departments. (Copy of judgment dated 03.03.2009 is attached as annexure "P").

It is, therefore, prayed that on acceptance of this appeal, promotion order dated 05.08.2014 may please be modified by including name of appellant by considering him for promotion from Assistant Professor (BPS-18) to Associate Professor (BPS-19) and Professor (BPS-20) with all back benefits and promotion order dated 31.05.2013 and final seniority list as stood on 31.03.2011 may please be set aside and appellant may please be declared senior to respondents No.4 to 69.

Appellant

Through

AMJAD ALI
Advocate Supreme Court

Dated: 10.12.2014

AFFIDAVIT

I, Prof. Akbar Shah, do hereby solemnly affirm and declare on oath that the contents of the instant **Appeal** are true and correct.

DEPONENT

Certified to be true copy
Khyber Pakhtunkhwa Service Tribunal, Peshawar

KHALID MAHMOOD ADVO
ATTESTED
NOTARY PUBLIC
PESHAWAR HIGH COURT

GOVERNMENT OF KHYBER PAKHTUNKHWA
HIGHER EDUCATION, ARCHIVES & LIBRARIES DEPARTMENT
CIVIL SECRETARIAT

(20)

Dated Peshawar the 06/08/2019

NOTIFICATION

No.SO(C-I)/HE/1-13/Service Appeal # 15/2015/Akbar Shah: In pursuance of Khyber Pakhtunkhwa Service Tribunal Judgment dated 25.02.2019 in Service Appeal No.15/2015 titled, "Professor Akbar Shah S/O Hussain Shah, R/O Hussain Shah Koroona, Takht Bhai VS Govt. of Khyber Pakhtunkhwa & Others", the Competent Authority is pleased to promote Mr. Akbar Shah, Ex-Assistant Professor (BPS-18) of Botany, Government Degree College, Katlang (Mardan) to the post of Associate Professor (BPS-19) from the date his batch mates were promoted i.e. w.e.f 05.08.2014.

SECRETARY TO
GOVT. OF KHYBER PAKHTUNKHWA
HIGHER EDUCATION DEPARTMENT

ENDST: NO. & DATE EVEN.

Copy forwarded to the:

1. Director Higher Education, Khyber Pakhtunkhwa Peshawar.
2. Principal, Government Degree College, Katlang (Mardan)
3. District Accounts Officer, Mardan.
4. Manager, Govt. Printing Press Khyber Pakhtunkhwa, Peshawar.
5. Deputy Director HEMIS Cell Higher Education Department.
6. Officer Concerned.

(RIAZ)
SECTION OFFICER (*COLLEGES-I*)

(21)

Office of the
DISTRICT COMPTROLLER OF ACCOUNTS
MARDAN
Ph/Fax # 0937-9230066.

No.DCA/Payroll-II/2019-20/255 Dated: 25 /09/2019

To

The Accounts Officer
HAD Section,
Office of the Accountant General,
Khyber Pakhtunkhwa Peshawar.

Subject:: **FIXATION OF PAY IN RESPECT OF AKBAR SHAH EX-ASSISTANT PROFESSOR FROM B-18 TO B-19**

Memo:

This office has received a case of Promotion of the above named Officer who has been retired as Assistant Professor w.e.f 14-2-2014. Now through Khyber Pakhtunkhwa Service Tribunal Judgment in Service Appeal No.15/2015 dated: 25.02.2019 titled "Professor Akbar Shah (B-18) of Botany Takht Bhai Vs Govt. of Khyber Pakhtunkhwa and others" (copy enclosed) and after Judgment Parent Department Notification No.SO(C-1)/HE/1-13/Serice Appeal #15/2015/Akbar Shah dated: 06-8-2019 has promoted the officer from B-18 to B-19 w.e.f 05-8-2014.

This office is of the view that fixation of Pay of the above named officer may be made on notional basis on 13.2.2014.View of this office may be confirmed or otherwise please.

25/9/19

District Accounts Officer
Mardan

25/9/19

(22)

GOVERNMENT OF KHYBER PAKHTUNKHWA
HIGHER EDUCATION, ARCHIVES & LIBRARIES DEPARTMENT
CIVIL SECRETARIAT

No. SO(C-I)/HE/1-13/Service Appeal # 15/2015/Akbar Shah
Dated Peshawar the 24/09/2019

To

The District Accounts Officer,
Mardan.

Subject: - **GUIDANCE REGARDING PROMOTION FROM BPS-18 TO BPS-19.**

I am directed to refer to the subject noted above and to enclose herewith a copy of Government of Khyber Pakhtunkhwa, Establishment Department letter No.SOR-I(E&AD)1-2/2018 (B) dated 05.09.2019 for further necessary action at your end, please.

Encl. As above.

(RIAZ)
SECTION OFFICER (*COLLEGES-I*)

ENDST: NO. & DATE EVEN.

Copy forwarded to the:

1. Accountant General Khyber Pakhtunkhwa, Peshawar.
2. Director Higher Education, Khyber Pakhtunkhwa, Peshawar.
3. Mr. Akbar Shah, Ex-Assistant Professor, Government Degree College, Katlang, Mardan
4. PS to Secretary to Govt. of Khyber Pakhtunkhwa, Higher Education Department.
5. Master File.

SECTION OFFICER (*COLLEGES-I*)

بحمد اللہ

اسمہ منجانب

مورخہ:

مقدمہ: بنام:

دعویٰ:

جرم:

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا اپنی طرف سے واسطے پیروی وجواب دہی وکل کاروائی متعلقہ

آں مقام _____ کیلئے **امجد علی ایڈوکیٹ ،سپریم کورٹ آف پاکستان**

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 وصولی چیک وروپیہ عرضی دعویٰ اور درخواست ہر قسم کی تصدیق زاریں 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 مختیار 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 وقبول ہوگا دوران مقدمہ میں جو خرچہ وجانہ

التوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی مذکور کریں۔

لہٰذا **وکالت نامہ** لکھ دیا کہ سند رہے۔

المرقوم: ماہ

اسمہ

العبد **گواہ** **العبد**

بمقام کے لیے منظور ہے۔

امجد علی ایڈوکیٹ سپریم کورٹ آف پاکستان، ڈسٹرکٹ کورٹس ،مردان

0321-9882434 0321-9870175

138

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GOVERNMENT OF KHYBER PAKHTUNKHWA
HIGHER EDUCATION, ARCHIVES & LIBRARIES DEPARTMENT
CIVIL SECRETARIAT

Dated Peshawar the 06/08/2019

NOTIFICATION

No.SO(C-I)/HE/1-13/Service Appeal # 15/2015/Akbar Shah: In pursuance of Khyber Pakhtunkhwa Service Tribunal Judgment dated 25.02.2019 in Service Appeal No.15/2015 titled, "Professor Akbar Shah S/O Hussain Shah, R/O Hussain Shah Koroona, Takht Bhai VS Govt. of Khyber Pakhtunkhwa & Others", the Competent Authority is pleased to promote Mr. Akbar Shah, Ex-Assistant Professor (BPS-18) of Botany, Government Degree College, Katlang (Mardan) to the post of Associate Professor (BPS-19) from the date his batch mates were promoted i.e. w.e.f 05.08.2014.

SECRETARY TO
GOVT. OF KHYBER PAKHTUNKHWA
HIGHER EDUCATION DEPARTMENT

ENDST: NO. & DATE EVEN.

Copy forwarded to the:

1. Director Higher Education, Khyber Pakhtunkhwa Peshawar.
2. Principal, Government Degree College, Katlang (Mardan)
3. District Accounts Officer, Mardan.
4. Manager, Govt. Printing Press Khyber Pakhtunkhwa, Peshawar.
5. Deputy Director HEMIS Cell Higher Education Department.
6. Officer Concerned.

(RIAZ)
SECTION OFFICER (*COLLEGES-I*)

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

EP NO. 382/2019
In
SA# 15-P/2015
Mr. Akbar Shah..... Appellant

Versus

Govt. of Khyber Pakhtunkhwa
Through Secretary, Higher Education
& others.....Respondents

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Identified by:

Deponent
17301-8792433-6

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

EP NO. 382/2019
In
S.A # 15/2015
Prof. Akbar Shah .....Appellant

Versus

Govt. of Khyber Pakhtunkhwa
Through Secretary, Higher Education Peshawar
& Others.....Respondents

SUBJECT: REPLY TO EXECUTION PETITION ON BEHALF OF RESPONDENTS NO. 1, 2 & 3

Respectfully Sheweth: -

1) Correct.
2) Correct.
3) After receipt of the certified copy of judgment the respondent department processed the case of the petitioner.
4) Correct. That the respondent in pursuance of judgment dated 25/02/2019, promoted the petitioner to the post of Associate Professor (BPS-19) on notional basis from the date his batch mates were promoted i.e. 05/08/2014.
5) Incorrect. That there is no malafide intention on part of respondents. The petitioner is promoted to the post of Associate Professor w.e.f 05/08/2014 through notification dated 06/08/2019 (Annex-A). It is worth to mention that the petitioner got retired on 14/02/2014 on attaining superannuation. The promotion is always made on the basis of seniority and his batch mates were promoted to BPS-20 on their own turn. The claim of the retired officer is not justified.
6) Incorrect. That the respondents have implemented the judgment.
7) Incorrect. As already explained in para-5.
8) Incorrect. That the respondents have fully implemented the judgment.

Prayers: -

It is, therefore, most humbly prayed that the instant execution petition is based on misconception/misstatement, hence may graciously be dismissed with appropriate costs.

Chief Secretary,
Govt. of Khyber Pakhtunkhwa
Respondent No. 2

Secretary,
Higher Education Department
Respondent No. 1

Director,
Directorate of Higher Education
Respondent No. 3

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

EP NO. 382/2019
In
SA# 15-P/2015
Mr. Akbar Shah..... Appellant

Versus

Govt. of Khyber Pakhtunkhwa
Through Secretary, Higher Education
& others.....Respondents

AFFIDAVIT

I, Lubna Farman, Assistant Director (Litigation), Higher Education Department do hereby declare and affirm on oath that the contents of reply to execution petition are correct to the best of my knowledge and belief and that nothing has been concealed from this Honourable Court.

Identified by:

Deponent
17301-8792433-6

Annex-A (3) 163 136-26

GOVERNMENT OF KHYBER PAKHTUNKHWA
HIGHER EDUCATION, ARCHIVES & LIBRARIES DEPARTMENT
CIVIL SECRETARIAT

Dated Peshawar the 06/08/2019

NOTIFICATION /1406 – 08.

No.SO(C-I)/HE/1-13/Service Appeal # 15/2015/Akbar Shah: In pursuance of Khyber Pakhtunkhwa Service Tribunal Judgment dated 25.02.2019 in Service Appeal No.15/2015 titled, "Professor Akbar Shah S/O Hussain Shah, R/O Hussain Shah Koroona, Takht Bhai VS Govt. of Khyber Pakhtunkhwa & Others", the Competent Authority is pleased to promote Mr. Akbar Shah, Ex-Assistant Professor (BPS-18) of Botany, Government Degree College, Katlang (Mardan) to the post of Associate Professor (BPS-19) from the date his batch mates were promoted i.e. w.e.f 05.08.2014.

SECRETARY TO
GOVT. OF KHYBER PAKHTUNKHWA
HIGHER EDUCATION DEPARTMENT

ENDST: NO. & DATE EVEN.

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5. Deputy Director HEMIS Cell Higher Education Department.
6. Officer Concerned.

(RIAZ)
SECTION OFFICER (COLLEGES-I)

بحضور جناب چیئرمین سروس ٹریبونل صوبہ خیبر پختونخوا پشاور

اکبر شاہ بنام پالیسی ایجوکیشن وغیرہ

تاریخ پیشی 05/10/020

درخواست برائے تبدیلی تاریخ پیشی از حضور بالا بوجوہات ذیل

جناب عالی:-

1) کہ حضور بالا عدالت حضور میں زیر تجویز ہے جس میں آج تاریخ پیشی مقرر ہے

2) کہ وکیل کا کیس سپریم کورٹ آف پاکستان اسلام آباد میں پیشی ہے (05/10/020)

3) کہ یہ وجہ مانع عدالت حضور میں پیشی سے قاصر ہے

استدعا ہے کہ حضور بالا میں تاریخ تبدیل فرمایا جاوے

05-10-020

سائل اکبر شاہ

Akbar Shah
5-10-2020