

**BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.**

Service Appeal No. 7311/2021

Date of Institution ... 12.08.2021

Date of Decision ... 07.12.2022

Habib Ahmad, SCT (BPS-16), GHSS Munda, District Dir Lower.

... (Appellant)

**VERSUS**

The Secretary Elementary & Secondary Education Department, Khyber Pakhtunkhwa Peshawar and 04 others.

... (Respondents)

MR. MUNFAT ALI,  
Advocate

-----  
--- For appellant.

MR. ASIF MASOOD ALI SHAH,  
Deputy District Attorney

--- For respondents.

SALAH-UD-DIN  
MIAN MUHAMMAD

--- MEMBER (JUDICIAL)  
--- MEMBER (EXECUTIVE)

**JUDGMENT:**

**SALAH-UD-DIN, MEMBER:-** Through the instant service appeal, the appellant has invoked jurisdiction of this Tribunal with the prayer copied as below:-



*“On acceptance of this appeal, the impugned service rules dated 24.07.2014 may kindly be modified to the extent that the condition of Second Division/Class be expunged from column No. 3 (i), serial No. 1B of the table and the respondents may kindly be directed to consider the appellant for promotion to the post of*

*Secondary School Teachers (BPS-16) from the date when his colleagues and junior colleagues were promoted with all consequential benefits including seniority. Any other remedy which this august Tribunal deems fit may also be awarded in favour of the appellant."*

2. Brief facts of the case are that the appellant has challenged the Notification No. SO(PE)4-5/SSRC/meeting/2013/Teaching Cadre dated 24<sup>th</sup> July, 2014 to the extent, whereby Second Class Bachelor Degree from a recognized University has been mentioned as first requirement for initial recruitment as well as promotion to the post of Secondary School Teacher (BPS-16). The appellant has alleged that as he has obtained Master Degree, therefore, he was eligible to have been considered and promoted to the post of SST (BPS-16) particularly, when other colleagues of the appellant have been granted the same relief by honourable Peshawar High Court, Peshawar. The appellant filed departmental appeal, however the same was not responded within the statutory period, hence the appellant filed the instant appeal for redressal of his grievance.

3. Notices were issued to the respondents, who submitted their para-wise comments, wherein they denied the contentions raised by the appellant in his appeal.

4. Learned counsel for the appellant has addressed his arguments supporting the grounds agitated by the appellant in his service appeal. On the other hand, learned Deputy District Attorney has

controverted the arguments of learned counsel for the appellant and has supported the comments submitted by the respondents.

5. Arguments of learned counsel for the parties heard and record perused.

6. Keeping in view the respective arguments of both the sides, a perusal of the record would show that it is main contention of the appellant that as some of his colleagues having 3<sup>rd</sup> Division Bachelor Degrees have been granted promotion in light of various judgments of honourable Peshawar High Court, Peshawar, therefore, the appellant being similarly placed employee is also entitled to the said relief. In this respect, reliance has been placed on judgment dated 05.04.2016 rendered in Writ Petition No. 1041-A/2015 titled "Muhammad Baqi Versus Government of Khyber Pakhtunkhwa through Secretary (Elementary & Secondary Education), Peshawar and two others". We have gone through the afore-mentioned judgment and have observed that while accepting the Writ Petition, reference has been made to judgment dated 04.06.2015 rendered by honourable Peshawar High Court in Writ Petition No. 58-B/2014 titled "Waris Khan Versus Government of Khyber Pakhtunkhwa and 05 others". August apex court in its order dated 06.04.2022, passed in Civil Appeal No. 2039 of 2019 and Civil Petitions No. 91-P and 92-P of 2016, has observed as below:-

*"4. We note that Civil Petition No.92-P/2016 has been filed against a judgment of the Peshawar High Court dated 08.12.2015 in Writ Petition No. 87-B/2014 titled "Mst. Yasmin Vs. Government of Khyber Pakhtunkhwa etc" and*

Civil Petition No. 91-P/2016 against a judgment of the Peshawar High Court dated 04.06.2015 in Writ Petition No. 58-B/2014 titled "Waris Khan Vs. Govt. of Khyber Pakhtunkhwa and 05 others". We have also been informed that the judgment in the case titled "Muhammad Baqi Vs. Government of Khyber Pakhtunkhwa through Secretary (Elementary & Secondary Education), Peshawar and 02 others" which has been relied upon by the Peshawar High Court in the impugned judgment was challenged before this Court but was dismissed on account of limitation and was not decided on merits.

5. Civil Petitions No. 91-P and 92-P/2016 have been filed beyond the period of limitation. The applications for condonation of delay (C.M.As.No.149-P and 151-P/2016) do not disclose any sufficient cause that may constitute basis within the contemplation of the Limitation Act, 1908 for condonation of delay. Consequently, the applications for condonation of delay are dismissed. The petitions are dismissed as barred by time. It is, however, clarified that the judgment dated 08.12.2015 rendered in Writ Petition No. 87-B/2014 titled "Mst. Yasmin Vs. Government of Khyber Pakhtunkhwa etc.", judgment dated 04.06.2015 rendered in Writ Petition No. 58-B/2014 titled "Waris Khan Vs. Govt. of Khyber Pakhtunkhwa and 05 others" and the judgment dated 05.04.2016 rendered in Writ Petition No. 1041-A/2015 titled "Muhammad Baqi Vs. Government of Khyber Pakhtunkhwa through Secretary (Elementary & Secondary Education), Peshawar and 02 others" shall not be used as precedent in any other case. (Emphasis provided)



7. In view of the above observations, rendered by august Supreme Court of Pakistan in its order dated 06.04.2022, the judgments of the honourable Peshawar High Court, Peshawar, relied upon by learned counsel for the appellant are of no avail to the appellant. Similarly, through the same order dated 06.04.2022 passed by the august Apex court, judgment dated 13.02.2017 passed by honourable Peshawar High Court in Writ Petition

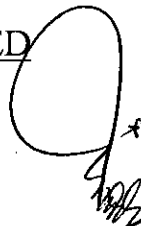
No. 559-A/2016, whereby similarly placed 3<sup>rd</sup> Division Bachelor Degree holders were held entitled to promotion to the post of SST, has been set-aside.

8. The requirement of 2<sup>nd</sup> Division/Class Bachelor Degree for promotion to the post of Secondary School Teacher (BPS-16) is not person specific and would be applicable for promotion as well as initial recruitment to the post of SST (BPS-16) across the board. No allegation of any mala-fide has been raised by the appellant in his appeal and it is a settled proposition that the Government is entitled to make service rules in the interest of expediency of service and to remove any anomaly in service rules, which in the absence of demonstrable mala-fide could not be assailed. August Supreme Court of Pakistan in its judgment reported as 2004 SCMR 1427 has graciously held as below:-

*“The government is always empowered to change the promotion policy and the domain of the government to prescribe the qualification for a particular post through amendment in the relevant rules, is not challengeable. This is also a settled law that notwithstanding fulfillment of the required qualification and other conditions containing the rules, the promotion cannot be claimed as a vested right.”*

9. Consequently, the appeal in hand being devoid of merit stands dismissed. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED  
07.12.2022



(MIAN MUHAMMAD)  
MEMBER (EXECUTIVE)



(SALAH-UD-DIN)  
MEMBER (JUDICIAL)