

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Service Appeal No. 1411/2011

BEFORE: SALAH UD DIN --- MEMBER(J)
MIAN MUHAMMAD --- MEMBER(E)

**Shams-ul-Islam son of Khalil Khan, Head Master,
Government High School, Kandi Kalukhel, Peshawar.**
..... (*Appellant*)

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary, Elementary & Secondary, Education Department, Civil Secretariat, Peshawar.
2. Government of Khyber Pakhtunkhwa through Secretary Finance Department, Civil Secretariat, Peshawar.
3. Director/Directress, Elementary and Secondary Education, Directorate of Elementary and Secondary Education, Khyber Pakhtunkhwa, Peshawar City.
4. Syed Shabbir Hussain S.S Physic GHSS Baffa, Mansehra.
5. Mr. Irshad, S.S Urdu GHSS Baffa, Mansehra.
6. Mr. Shahzad, SS Maths GHSS Lassa Tabral, Mansehra
7. Shah Muhammad, S.S Islamiyat GHSS Dhodial Mansehra.
8. Sajid Saleem, S.S History-cum-Civics GHSS Sherpur, Mansehra..... (*Respondents*)

Present:

NOOR MUHAMMAD KHATTAK,
Advocate --- For Appellant

Mr. Asif Khan Yousafzai &
Mr. Younas Jan,
Advocates --- For private respondents

MUHAMMAD JAN,
District Attorney --- For official respondents No. 1 to 3

Date of Institution.....18.07.2011
Date of Hearing.....19.12.2022
Date of Decision.....19.12.2022

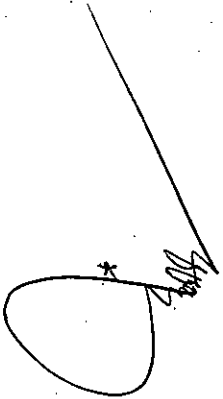
CONSOLIDATED JUDGEMENT

MIAN MUHAMMAD, MEMBER(E):- Our this judgement, will dispose of the instant service appeal as well as connected service appeals bearing No. 1412/2011 titled "Khalid Rehman versus Government of Khyber Pakhtunkhwa through Secretary Elementary and Secondary Education Department, Civil Secretariat, Peshawar and eleven others", service appeal bearing No. 1413/2011 titled "Mir Qadam Khan versus Government of Khyber Pakhtunkhwa through Secretary Elementary and Secondary Education Department, Civil Secretariat, Peshawar and seven others", service appeal bearing No. 1533/2019 titled "Rizwanullah versus The Chief Secretary, Khyber Pakhtunkhwa, Peshawar and six others" service appeal bearing No. 1534/2019 titled "Wajid Ali versus The Chief Secretary, Khyber Pakhtunkhwa, Peshawar and three others" and service appeal bearing No. 1535/2019 titled "Shabir Ahmad versus The Chief Secretary, Khyber Pakhtunkhwa, Peshawar and three others" as common question of law and facts are involved therein.

02. The appellants have filed the service appeals under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the final seniority of Head Masters/Subject Specialists Male (BPS-17) Officers as it stood on 15.10.2010 and notified by Secretary Elementary & Secondary Education Department on 10.11.2010. Feeling aggrieved, the appellant filed departmental appeal on 29.10.2010 which was rejected on 21.06.2011.

03. Brief facts of the case are that in the first round of litigation, the instant service appeal was instituted in the Service Tribunal on

18.07.2011 and was admitted for regular hearing on 16.09.2011. Thereafter notices were issued to the respondents for filing their replies and opportunity was given to the learned counsel for the appellants as well as respondents to argue their respective appeals before the Tribunal. A decision in the service appeals of three appellants namely; Mr. Shams ul Islam, Mr. Khalid Rehman & Mr. Mir Qadam Khan thereupon made by the Tribunal vide judgement dated 01.09.2015 whereby the appeals of these three appellants were dismissed. Feeling aggrieved with the judgement of this Tribunal dated 01.09.2015, the appellants filed Civil Appeal Nos. 1509, 1510 & 1511 of 2015 respectively, before the august Supreme Court of Pakistan. The civil appeals of the appellants were allowed by the Apex court on 07.11.2018 and the judgement of this Tribunal dated 01.09.2015 was set aside. The august Supreme Court of Pakistan observed as follows;



"The rationality of the criteria that sustain the joint classification of the two limbs of the teaching staff is a question which the learned Tribunal ought to have examined and rendered a speaking judgment on the challenge brought before it under Article 25 of the constitution".

04. Similarly, Mr. Rizwan Ullah, Wajid Ali and Shabir Ahmed through Service Appeal No. 1533/2019, Service Appeal No. 1534/2019 and Service Appeal No. 1535/2019 approached the Service Tribunal with the same prayer and their service appeals have been clubbed with those (03) service appeals remitted to the Service Tribunal by the august Supreme Court of Pakistan.

05. We have heard learned counsel for the appellants as well as learned District Attorney for official respondents and learned counsel for the private respondents, and have gone through the record with their valuable assistance.

06. Learned counsel for the appellant mainly focused on the point that Headmasters and Subject Specialists are two distinct cadres, totally different from each other for all intents and purposes because the Headmasters are performing administrative functions and they are responsible for overall management and smooth functioning of the educational institutions while the Subject Specialists are primarily concerned with teaching functions and have no concern with the management of the educational institutions. The government is therefore, bound to frame separate set of Service Rules for the Subject Specialists and maintain their separate seniority list as per requirement of Section 8 (2) of the Government of Khyber Pakhtunkhwa Civil Servants Act, 1973 read with Rule 3 (2) of the Khyber Pakhtunkhwa, Civil Servants (Appointment, Promotion & Transfer) Rules, 1989. He next argued that by mixing the appellants (Headmasters) with other cadre (Subject Specialists) without proper Notification, appellants have been deprived of their valuable rights of seniority and career progression in terms of promotion. Furthermore, the method of recruitment of appellants to the post of Headmaster was 20% by direct recruitment and 80% by promotion under the Service Rules 1994 followed by Service Rules, 2004 whereas the Subject Specialist is a new cadre introduced in 1986 for the first time through 100% direct recruitment. Learned counsel for the appellant further contended that

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seniority list of Subject Specialists is prepared at the time of their direct recruitment, therefore, no question of fresh joint seniority list could arise as has been issued by the respondents vide Notification dated 10.11.2010. Learned counsel for the appellant next contended that the appellants and private respondents belong to two different cadres, therefore separate seniority list should have been maintained and proper service structure with separate Service Rules to have been framed for the Subject Specialists being a separate entity. The disputed combined seniority list, being illegal, issued in violation of Article 38 (e) of the constitution and based on malafide, is liable to be set aside. To strengthen his arguments, he relied on 2002 PLC (C.S)1388 and 1991 SCMR 1041, 2001 PLC (C.S) 175, 1988 SCMR 1453, 2014 SCMR 1539, 2000 PLC (C.S) 1222, 2015 PLC (C.S) 767 and 2011 PLC (C.S) 870.

07. Learned counsel for the private respondents controverted content and assertions of the appellant raised in his appeal as well as arguments of learned counsel for the appellant mainly on the ground of maintainability of the instant service appeals under Rule 23 of the Khyber Pakhtunkhwa Service Tribunal Rules, 1974 because the issue has already been decided by this Tribunal vide judgement dated 02.08.2005 in Service Appeal No. 88/1998 of Muhammad Jameel, Headmaster. It was further contended that both the tiers of Headmasters and Subject Specialists are belonging to the teaching cadre and have no separate cadre but their services in terms of qualification and promotion are governed under one and the same set of Service Rules i.e. the Service Rules notified on 09.05.1994 and then amended on 09.04.2004.

These Rules have further been amended vide Notification dated 24.07.2014 and 50% of the posts of Subject Specialists (BS-17) reserved for promotion, are filed from SST (BS-16) with at least five years service. In this way, both the limbs belong to the same teaching service or cadre. They next argued that the common seniority list of Headmasters and Subject Specialists have been issued on the basis of their Service Rules which have never been challenged at any legal forum at appropriate time. The service appeals are therefore, hit by limitation as the same are badly time barred. It was further argued that the departmental appeal to which learned counsel for appellant has referred to, is actually an application of the Action committee of Headmasters, and not individual departmental appeals of the appellants as required under the provision of Khyber Pakhtunkhwa Civil Servants (Appeal) Rules, 1986. It was vehemently contended that the appellants have also got benefited from the same Service Rules when they were promoted to BS-18 in the year 2016 and still have a share of 50% from SST (BS-16) for promotion to the post of Subject Specialist (BS-17) under the Service Rules, their service appeals at this stage are based on malafide intention to block the career progression of the private respondents. They next contended that Rule 3 (2) of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1989 have empowered the department to determine qualification, frame Service Rules and set other conditions of service applicable to a post in consultation with Establishment & Finance departments. The government while exercising the legal powers and authority has formulated the service Rules for both the limbs of the cadre and the

combined seniority list of Headmasters and Subject Specialists has been issued by implication not specifically mentioned in the Service Rules of the cadre. To strengthen their arguments, learned counsel for the private respondents relied on 2006 SCMR 535, 2015 SCMR 269, 2016 SCMR 1021 and 2019 PLC (C.S) 282.

08. Learned District Attorney while relying on the arguments of learned counsel for private respondents, contended that the appellants apparently seem to have been aggrieved of the Service Rules 1994 and 2004 but the same were not appealed against at appropriate time under Section 3 of the Khyber Pakhtunkhwa Civil Servants (Appeal) Rules, 1986. The impugned order dated 21.06.2011 passed by the competent authority is a speaking order under Section 24(A) of the General Clause Act. The instant service appeals being devoid of any merit, may be dismissed with cost, he concluded.

09. The question for judicial scrutiny before us, is "the rationality of the criteria that sustain the joint classification of the two limbs of teaching staff". In the present scheme of administrative machinery, Article 240 (b) of the constitution empowers the Provincial Assembly to determine conditions of service for appointments against the posts in connection with the affairs of the province. The Khyber Pakhtunkhwa Civil Servants Act, 1973, therefore, derives its origin from the constitution. The Act, under Section 26, further empowers the provincial government to make such rules appeared to be necessary or expedient for carrying out the purposes of the Act. The Government of Khyber Pakhtunkhwa has, therefore, framed the Civil Servants (Appointment, Promotion & Transfer) Rules, 1989 to streamline the

conduct and procedure of Civil Services in the province. To further elaborate and lay foundation for any specific rules related to a certain Service Group or cadre of a particular department as a separate unit of the provincial administrative machinery, Rule 3 (2) of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1989 authorize the concerned administrative department to lay down the method of appointment, qualification and other conditions applicable to a post in consultation with Establishment and Finance departments. The Service Rules of the respondent department have therefore, been framed through a properly constituted SSRC (Standing Service Rules Committee) and notified on 09.05.1994, 09.04.2004 and 24.07.2014. The scheme, mode and ratio in recruitment of the two limbs of the current teaching staff, is required to be seen juxta posed for better understanding, in the following table.

Service Rules	S. No.	Nomenclature of post	Method of Recruitment
1994	4	Headmasters Govt. High School	(a) Eighty percent by promotion on the basis of seniority-cum-fitness from amongst the senior English Teacher/Assistant District Education Officers/Assistant Sub-Divisional Education Officers with five years service as such; and (b) Twenty percent by initial recruitment
-do-	5.	Subject Specialists Government Higher Secondary School/Government comprehensive High School	(a) Twenty percent by promotion on the basis of seniority-cum-fitness from amongst the Senior English Teacher/Assistant District Education Officers/Assistant Sub Divisional Education Officers possessing qualification prescribed for initial recruitment and having five years service as such; and (b) Eighty percent by initial recruitment.
2004	1.4	Headmaster Government High School and other equivalent posts in the Teaching Cadre.	(a) Eight percent by promotion on the basis of seniority-cum-fitness from amongst the Senior English Teachers with five years service and (b) Twenty percent by initial recruitment.
	1.5	Subject Specialists Government Higher Secondary Schools/Government	By initial recruitment!

		Comprehensive High Schools and other equivalent posts in the Teaching Cadre.	
2014	1.	Subject Specialists (BS-17)	(a) Fifty percent by promotion, on the basis of seniority-cum-fitness, for the relevant subject from amongst the Secondary School Teachers (BPS-16), with at least five years service as such and having qualification mentioned in column No. 3. Note: if no suitable candidate is available in the relevant subject the post falling in their promotion quota shall be filled by initial recruitment; and (b) fifty percent by initial recruitment


10. From the comparative statement of the Service Rules tabulated above, it is crystal ^{clear} that both the limbs i.e. Headmasters and Subject Specialists are incumbent of the same service group or cadre which is obviously the teaching cadre. The only difference is that Headmasters teach at High School level and the Subject Specialists teach their subject at Higher Secondary School/comprehensive High School level. The mode of recruitment is expressively and explicitly determined and specified with certain ratio for each limbs of the service. Moreover, they are considered for promotion to BS-18 on the basis of combined seniority list maintained at the lower tier in BS-17. It is also a matter of the record that 176 Headmasters including the present appellants (Khalid Rehman Khan, Mir Qadam Khan & Shams-ul-Islam) have benefited from the same Service Rules and seniority list when they were promoted to (BPS-18) vide Notification bearing NO.SO(S/M)E&SED/1-3/2016/Promotion to BS-17 to BS-18 dated 01.12.2016. The Service appeals are therefore, hit by the principle of estoppels on this score alone. Moreover, the appellants never challenged the above mentioned Service Rules which were amended from time to time and the same have gained finality; rendering the present service appeals as time barred.

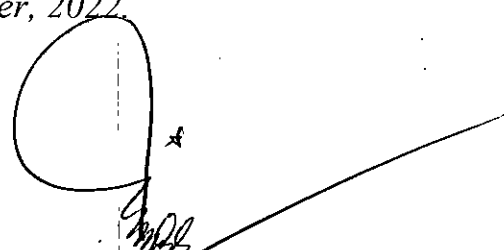
11. It is the domain and prerogative of the government to make Service Rules and to lay down other terms and conditions for the recruitment of Civil Servants against the vacant positions in a service or cadre, so far the administrative compulsion and expediency in public interest is involved. The august 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.”

12. As a sequel to the above, the appellants could not make their case and we do not find any logic or merit in their claim to interfere with the combined seniority list of Headmasters and Subject Specialists, circulated by the respondent department on 10.11.2010. The instant service appeal as well as connected service appeals reflected above, are dismissed. Parties are left to bear their own costs. File be consigned to the record room.

13. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal this 19th day of December, 2022.*


(SALAH UD DIN)
MEMBER (J)


(MIAN MUHAMMAD)
MEMBER (E)

ORDER

19.12.2022

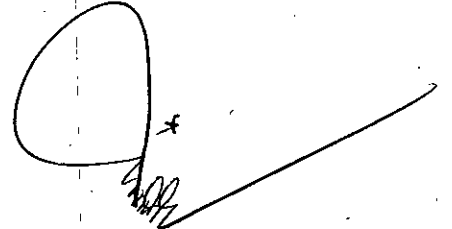
Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney for official respondents No. 1 to 3 present. Learned counsel for private respondents present. Arguments heard and record perused.

02. Vide our detailed judgement of today, separately placed on file consisting of (10) pages, the appellant could not make his case and we do not find any logic or merit in his claim to interfere with the combined seniority list of Headmasters and Subject Specialists, circulated by the respondent department on 10.11.2010. The instant service is dismissed. Parties are left to bear their own costs. File be consigned to the record room.

03. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal this 19th day of December, 2022.*



(SALAH UD DIN)
MEMBER (J)



(MIAN MUHAMMAD)
MEMBER (E)