05.04.2017 Counsel for the appellant and Mr. Adeel Butt, Addl: AG for the respondents present. Argument could not be heard due to incomplete bench. To come up for final hearing on 27.07.2017 before D.B.

Chairman

27.07.2017 Clerk to counsel for the appellant and Addl: AG for respondents present. Clerk to counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 12.10.2017 before D.B.

(Ahmad Hassan)
Member

(M. Hamid Mughal)
Member

**12.10.2017** Counsel for the appellant and Mr. Kabeerullah Khattak, Addl. Advocate General for the respondents present. Arguments heard and record perused.

This appeal is dismissed as per our detailed judgment of today in connected service appeal No. 503/2015 entitled "Fazal Sheer Versus Government of Khyber Pakhtunkhwa through Secretary E&SE, Peshawar and others". Parties are left to bear their own costs. File be consigned to the record room.

Member

Chairman

ANNOUNCED
12.10.2017

28.03.2016 Counsel for the appellant, M/S Khurshid Khan, SO and Hameed-ur-Rehman, AD (lit.) alongwith Assistant AG for respondents present. Para-wise comments on behalf of respondents No. 1 and 2 submitted. The learned Assistant AG relies on the same on behalf of respondent No. 3. The appeal is assigned to D.B for rejoinder and final hearing for 14.7.2016.

Chairman

14.07.2016 Appellant in person and Additional AG for the respondents present. Rejoinder not submitted and requested for further time to file rejoinder. To come up for rejoinder and arguments on 25-11-16

MEMBER MEMBER

25.11.2016 Appellant in person and Addl. AG for the respondents present. Rejoinder submitted which is placed on file. To come up for arguments on 05.04.2017 before D.B.

(MUHAMMAD AAMIR NAZIR)
MEMBER

(ABDUL LATIF)
MEMBER

26.06.2015

Counsel for the appellant present. Learned counsel for the appellant argued that the appellant is serving in the High School as Qari. That previously the scale of the appellant was equal with that of TT, AT and DM etc but vide impugned notification dated 11.7.2012 other teachers are given up-gradation to BPS-15 while the appellant was ignored and discriminated against despite the facts the he was entitled to alike treatment. That against the impugned notification and decision appellant preferred departmental appeal on 10.2.2015 which was not responded and hence the instant service appeal on 27.5.2015.

That since financial benefits are involved as such limitation would not come in the way of the appellant.

Points urged need consideration. Admit, subject to all legal objections. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply for 1.10.2015 before S.B.

Appellant Deposited
Security & Process Fee

Chairman

01.10.2015

Appellant in person, M/S Khurshid Khan, SO and Hameed-ur-Rehman, AD (lit.) alongwith Addl: A.G for respondents present. Requested for adjournment. To come up for written reply/comments on 2.12.2015 before S.B.

Chairman

02.12.2015

None present for appellant. M/S Khurshid Khan, SO, Hameed-ur-Rehman, AD (lit.) and Javed Shah, Litigation Officer alongwith Addl: A.G for respondents present. Written reply not submitted. Requested for further adjournment. Last opportunity granted. To come up for written reply/comments on 28.3.2016 before S.B.

Chairman

# Form- A

## FORM OF ORDER SHEET

Court of _____

Case No. 522/2015

| S.No. | Date of order Proceedings | Order or other proceedings with signature of judge or Magistrate |
|---|---|---|
| 1 | 2 | 3 |
| 1 | 27.05.2015 | The appeal of Mr. Fazal Hadi presented today by Mr. Amjid Ali Advocate, may be entered in the Institution register and put up to the Worthy Chairman for proper order.<br>REGISTRAR |
| 2 | 5-6-15 | This case is entrusted to S. Bench for preliminary hearing to be put up thereon 9-6-15.<br>CHAIRMAN |
| 3 | 09.06.2015 | None present for appellant. Notice be issued to counsel for the appellant for preliminary hearing for 26.6.2015 before S.B.<br>Chairman |

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**

**PESHAWAR.**

Service Appeal No. 522 /2015

Fazal Hadi .....Appellant

VERSUS

Govt of KPK through Secretary E&S and etc .....Respondents

INDEX

| S.No | Description of Document | Annex: | Pages |
|---|---|---|---|
| 1 | Memo Appeal with Affidavit. | | 1-8 |
| 2 | Copy of the notification 11-07-2012 | A | 9-10 |
| 3 | Copy of Departmental Appeal. | B | 11-17 |
| 4 | Wakalatnama | | 18 |

Appellant

Through

Amjad Ali Advocate

Supreme Court of Pakistan .

Cell:0321-9882434

**BEFORE THE KHYBER PAKHTUNKHWA, SERVICE T**

**PESHAWAR**

Service Appeal No. 522 /2015

Fazal Hadi S/O Syed Aftab Posted As (Qari BPS-12) At Govt High Scho
Katlang, District Mardan. .....

VERSUS

1. Govt of Khyber Pakhtunkhwa through Secretary elementary & Secondary Education (E&S) Education Department, Civil Secretariat, Peshawar.

2. Director Elementary & Secondary education (E&S), Department, Khyber Pakhtunkhwa, Dargari Garden Peshawar.

3. Distict Education Officer (E&S) District Mardan.

.....Respondents

SERVICES APPEAL U/S 4 OF SERVICE TRIBUNAL ACT,1974 AGAINST NOTIFICATION DATED 11/7/2012 AND DEPARTMENTAL APPEAL DATED 10/2/2015 UN-RESPONDED AFTER LAPSE OF 90X DAYS.

Respectfully Sheweth:-

Filed to-day
Registrar
23/5/15

That facts pertaining to this appeal are as under:-

1) That appellant is equipped with qualification such as Qirat Sanad, Shahdatul Aalammia, BA, MA, B.Ed, M.Ed.

2) That the appellant was appointed against the post of Qaries in Government High Schools, Mardan & Swabi District of Khyber Pakhtunkhwa.

(1)

# BEFORE THE KHYBER PAKHTUNKHWA, SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 522 /2015



Fazal Hadi S/O Syed Aftab Posted As (Qari BPS-12) At Govt High School Babo Zai Katlang, District Mardan. .....Appellant

VERSUS

1. Govt of Khyber Pakhtunkhwa through Secretary elementary & Secondary Education (E&S) Education Department, Civil Secretariat, Peshawar.

2. Director Elementary & Secondary education (E&S), Department, Khyber Pakhtunkhwa, Dargari Garden Peshawar.

3. Distict Education Officer (E&S) District Mardan.

.....Respondents

SERVICES APPEAL U/S 4 OF SERVICE TRIBUNAL ACT,1974 AGAINST NOTIFICATION DATED 11/7/2012 AND DEPARTMENTAL APPEAL DATED 10/2/2015 UN-RESPONDED AFTER LAPSE OF 90X DAYS.

Respectfully Sheweth:-



That facts pertaining to this appeal are as under:-

1) That appellant is equipped with qualification such as Qirat Sanad, Shahdatul Aalammia, BA, MA, B.Ed, M.Ed.

2) That the appellant was appointed against the post of Qaries in Government High Schools, Mardan & Swabi District of Khyber Pakhtunkhwa.

3) That respondents are taking duty from the appella other computer, SET Teachers.

4) That appellant was appointed initially in BPS-7 in diff years by the competent authority and presently se in different High Schools of the province.

5) That after the appointment of the appellant his b pay scale up graded to BPS-09, 10, 12, 14, 15 accordin to their qualifications and experience by different orders of the competent authority in different time. (In this respect notification dated 26.01.2008

6) That for BPS of Teachers the 1st Rules were framed in the year 1981, then 1991 wherein there are three basic categories of teachers.

a. Primary school Teachers

b. Middle School Teachers

c. High School Teachers

7) That according to the decision of the Govt. of Khyber Pakhtunkhwa a meeting of respondents was held on 01.06.2012, under the Chairmanship of respondent No.05 for up gradation of the basic pay scales of all teachers of province.

3) That respondents are taking duty from the appellant like other computer, SET Teachers.

4) That appellant was appointed initially in BPS-7 in different years by the competent authority and presently serving in different High Schools of the province.

5) That after the appointment of the appellant his basic pay scale up graded to BPS-09, 10, 12, 14, 15 according to their qualifications and experience by different orders of the competent authority in different time. (In this respect notification dated 26.01.2008

6) That for BPS of Teachers the 1st Rules were framed in the year 1981, then 1991 wherein there are three basic categories of teachers.

a. Primary school Teachers

b. Middle School Teachers

c. High School Teachers

7) That according to the decision of the Govt. of Khyber Pakhtunkhwa a meeting of respondents was held on 01.06.2012, under the Chairmanship of respondent No.05 for up gradation of the basic pay scales of all teachers of province.

8) That in the light of above stated meeting of respondents the BPS of all the teachers in Province working in different categories/cadres were up graded by the order of respondent No.1 vide notification No.SO(BQA)1-18 E QSE 2012 dated 11.07.2012. is Annexure-A

9) That the above stated notification was then circulated to all the Executive District Officer in Khyber Pakhtunkhwa by the order of respondent No.3. (Copies of the notification of respondent No.3 and sanction order of EDO, Mardan/Swabi dated 27.08.2012

10) That according to the above stated notification, the post of Qari has been up graded to BPS-12, whereas the post of the theology teacher (T.T) was up graded to BPS-15, who possess equal or less the same qualification.

11) That appellant filed appeal dated 10-2-2015 to respondent that appellant treated as par with Theology Teacher/Arabic Teacher and other High School Teachers in matter of grade as since 1981, they were in the same grade being High School Teachers, but remained un-responded. (Copy of departmental appeal is Annexure-B

12) That impugned notification dated 11.07.2012 regarding the up gradation to the extent of the post of Qaries is illegal, void, and discriminatory as T.T. are placed in BPS-15 and appellant in BPS-12, thus clear-cut violation of articles 4 and 25/27 of the Constitution of Islamic Republic of Pakistan, 1973.

13) That appellant filed writ petition wherein respondents filed comments but writ petition was dismissed for being service matter.

14) That there is no other officious remedy available to the appellant against the illegal act/order of respondents, therefore invoking jurisdiction of this Hon'ble Tribunal on the following amongst others grounds.

GROUNDS:

A. Because the act of respondent is discriminatory, illegal, and void, hence untenable under the law.

B. Because according to the impugned notification all the posts of different categories and cadres have been up graded to BPS-15 and 16 in all the Govt: High Schools in Province except the post of the appellant, which has been up graded to BPS-12 instead of BPS-15 and BPS-16.

C. Because before the up gradation of basic pay scales of the impugned notification of the respondent No.1, the teachers of theology and the appellant was serving in the same different grades, which is also clear from the impugned notification, therefore, depriving of appellant from his legal/due rights in not only illegal, but also discriminatory.

D. Because in impugned notification, respondent have not given any legal justification for not upgrading the post of the appellant equivalent to Theology Teacher (T.T) nor any criteria has been mentioned in this regard.

E. That appellant is not only Hafiz-ul-Quran, but also possess equal or more qualification then the teachers of

theology in the relevant subject i.e. Islamiyat and beside possess professional Teaching Degrees like B.Ed, M.Ed as well.

F. Because all the citizens of Pakistan are equal before the law and they are entitled to equal protection of law, hence impugned notification in respect of up gradation to the post of Qaries is also against Article 4 of Constitution of Islamic Republic of Pakistan, 1973.

G. Because according to their lordship Superior Court of the country "All persons placed in similar circumstances must be treated alike" in famous case of I.A Sherwani 1991 SCMR 1041.

H. Because impugned notification of respondents No.1, to the extent of appellant's right is clear cut violation of the law/ principles settled by the Superior Courts, thus liable to be declared null and void, without lawful authority ultra vires to the extent of not granting BPS-15 and 16 and granted to other High Schools Teachers.

I. Because appellant has been discriminated thereby violated Articles 25/27 of Constitution of Islamic Republic of Pakistan, 1973.

J. Because appellant is performing same duties upto come duration to the same classic of students in the same High School, possessing same qualification like T.T., A.T, SET, then placing T.T., A.T. SET in grade 15, 16, who were earlier in the same grade as appellant and depriving appellant of the same is clear discrimination.

K. Because it is not reasonable classification and is clear disparity.

L. Because no grounds for declaring these classes can be forwarded by respondents.

M. Because Article 35 and Superior Courts including this Hon'ble Court presses equal social standards/financials.

N. Because appellant and T.T/AT are purchasing same commodities like flour, pulses, ghee, electricity, gas, phone from the same market at the same rate.

O. That instant relief is of upgradation for treating appellant at par with other teachers teaching in High Schools like theology teachers, Arabic teachers, drawing masters, physical education teacher, there are three categories of schools.

| S.No. | Category | Teachers |
|---|---|---|
| I. | Primary Schools | PST |
| II. | Middle School | C.T |
| III. | High School | SET, AT, TT, DM, PET, Qari |

So, even CT teachers who are teaching in Middle Schools are granted BPS-15 with 1/3rd BPS-16. Petitioners are placed in category of primary school teachers which is totally illegal, against all norms of justice.

P. Because post of Qari is only available in High School and when Middle School is upgraded to High, then Qari post is sanctioned.

Q. Because D.M is teaching Drawing, which is an optional subject.

R. Because P.E.T. is teaching Drill/ Scout, which is too optional.

S. Because A.T. is teaching Arabic, which is optional subject.

T. Because Qari teachers are teaching other subjects, beside Qirat from 8th upto 10th class.

U. Because Qirat is only taught to 9th and 10th classes.

V. Because any other grounds, which has not been taken specifically in the instant appeal may be argued with the permission of this Hon'ble Tribunal at the time of arguments.

It is, therefore, most humbly prayed that on acceptance of this appeal, notification dated 11.07.2012 issued by respondents may please be modified by treating appellant at par with Theology Teacher/Arabic Teacher i.e. BPS-15 as basic and BPS-16 as 1/3rd in Selection grade/promotion as both are teaching to the same High School classes and were treated alike in past notifications of pay scales. It is further prayed that appellant may please be treated at par with other teachers of High Schools like Arabic Teachers physical education Teacher, Drawing Masters and Certificate Teachers etc. in matter of upgradation/promotion.

Any other relief deemed appropriate in the circumstances of the case, may also be graciously granted in favour of petitioners.

(8)

Appellant

Through

**Amjad Ali**
Advocate
Supreme Court of Pakistan
At Mardan

AFFIDAVIT

I, do hereby affirm and declare on oath that the contents of the appeal are true and correct to the best of my knowledge and belief and nothing material has been concealed from this hon'ble Tribunal.

Saeed Usman Advocate
Oath Commissioner
No.
Date
Distt: Courts Mardan

Deponent

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

(9)

Dated Peshawar, 11.07.2012

**NOTIFICATION:**

No. SO ( B & A )/1-18/E&SE/2012: Sanction of the Government of Khyber Pakhtunkhwa is hereby accorded to the up gradation of the posts for Grant of Incentive of Higher Pay Scale to different Categories/Cadres of teachers in Elementary & Secondary Education Department w.e.f. 01-07-2012 as per details given below:-

| Sr, No. | Nomenclature of Teaching Cadre Post | Location | Existing Basic Pay Scale | New Approved Basic Pay Scale | Remarks |
|---|---|---|---|---|---|
| 1. | Primary School Teacher (PST) | Govt. Primary School | BPS-5<br>BPS-6<br>BPS-7<br>BPS-9<br>BPS-10<br>BPS-12 | (BPS-12) | The post of PST is upgraded to BPS-12. Accordingly, 33,497 posts of PSTs, already sanctioned in various pay scales are upgraded to BPS-12 for the present incumbents as well as future appointees. |
| 2. | Senior Primary School Teach (Sr. PST) | "do" | Newly Upgraded/ Redesignated Post | (BPS-14) | 22,331 posts of the existing PSTs in various existing pay Scales are upgraded to BPS-14 and redesignated as Senior PST. The posts will be filled in the manner as may be prescribed by the Elementary & Secondary Education Department by making necessary service rules or amending the existing service rules, if any, for the post. |
| 3. | Primary School Head Teacher (PSHT) | "do" | Newly Upgraded/ Redesignated Post | (BPS-15) | 20,804 posts of the existing PST's (one post in each Primary School) are upgraded to BPS-15 and redesignated as Primary School Head Teacher, and will be filled in the manner as may be prescribed by the Elementary & Secondary Education Department by making necessary service rules or amending the existing service rules, if any, for the post |
| 4. | Certified Teachers (CT) | Govt. Middle/High/Higher Secondary School | BS-09<br>BS-10<br>BS-12<br>BS-14<br>BS-15 | (BPS-15) | All the existing posts of CTs are upgraded to BPS-15 for the present incumbents to the post as well as future appointees. |
| 5. | Senior Certified Teachers (Sr.CT) | "do" | Newly Upgraded/ Redesignated Post | (BPS-16) | One thirds (1/3rd) of the total CT posts are upgraded to BPS-16 and redesignated as Senior CTs which will be filled in the manner as may be prescribed by the Elementary & Secondary Education Department by making necessary service rules or amending the existing service rules, if any, for the post. |
| 6. | Arabic Teachers (A.T) | "do" | BS-09<br>BS-10<br>BS-12<br>BS-14<br>BS-15 | (BPS-15) | All the existing posts of ATs are upgraded to BPS-15 for the present incumbents to the post as well as future appointees. |
| 7. | Senior Arabic Teachers (Sr. AT) | "do" | Newly Upgraded/ Redesignated Post | (BPS-16) | One thirds (1/3rd) of the total AT posts are upgraded to BPS-16 and redesignated as Senior AT, which will be filled in the manner as may be prescribed by the Elementary & Secondary Education Department by making necessary service rules or amending the existing service rules, if any, for the post. |
| 8. | Teacher of Theology (TT) | "do" | BS-07<br>BS-09<br>BS-10<br>BS-12<br>BS-14<br>BS-15 | (BPS-15) | All the existing posts of TTs are upgraded to BPS-15 for the present incumbents to the post as well as future appointees. |
| 9. | Senior Teacher of Theology (Sr.TT) | "do" | Newly Upgraded/ Redesignated Post | (BPS-16) | One thirds (1/3rd) of the total TT posts are upgraded to BPS-16 and redesignated as Senior TT, which will be filled in the manner as may be prescribed by the Elementary & Secondary Education Department by making necessary service rules or amending the existing service rules, if any, for the post. |
| 10. | Drawing Masters (DM) | "do" | BS-09<br>BS-10<br>BS-12<br>BS-14<br>BS-15 | (BPS-15) | All the existing posts of DMs are upgraded to BPS-15 for the present incumbents to the post as well as future appointees. |
| 11. | Senior Drawing Masters (Sr. DM) | "do" | Newly Upgraded/ Redesignated Post | (BPS-16) | one thirds (1/3rd) of the total DM's posts are upgraded to BPS-16 and redesignated as Senior DM, which will be filled in the manner as may be prescribed by the Elementary & Secondary Education Department by making necessary service rules or |

(10)

| | | | | | |
|---|---|---|---|---|---|
| 12. | Physical Education Teachers (PET's) | "do" | BS-09<br>BS-10<br>BS-12<br>BS-14<br>BS-15 | (BPS-15) | All the existing posts of PETs are upgraded to BPS-15 for the present incumbents to the post as well as future appointees. |
| 13. | Senior Physical Education Teachers (Sr. PET's) | "do" | Newly Upgraded/ Redesignated Post | (BPS-16) | One thirds (1/3rd) of the total PETs posts are upgraded to BPS-16 and redesignated as Senior PET, which will be filled in the manner as may be prescribed by the Elementary & Secondary Education Department by making necessary service rules or amending the existing service rules, if any, for the post. |
| 14. | Qari/Qaria | "do" | BPS-7<br>BPS-9<br>BPS-10<br>BPS-12<br>BPS-14<br>BPS-15 | (BPS-12) | All the existing posts of Qari/Qaria are upgraded to BPS-12 for the present incumbents to the post as well as future appointees. |
| 15. | Sr.Qari/Sr.Qaria | "do" | Newly Upgraded/ Redesignated Post | (BPS-15) | One thirds (1/3rd) of the total Qari/Qaria posts are upgraded to BPS-15 and redesignated as Senior Qari/Qaria, which will be filled in the manner as may be prescribed by the Elementary & Secondary Education Department by making necessary service rules or amending the existing service rules, if any, for the post. |

2. A policy shall also be devised in the framework of input/output criteria in terms of qualification, length of service, regularity, punctuality, results, curricular and co-curricular achievements and other performance indicators, so that the teachers do not take the scheme for granted but work for it.

3. District wise/ school wise breakup of the posts is enclosed herewith as **Annexure-A.**

SECRETARY

Endst: No. SO(FR)/FD/10-22(E)/2010 Dated Pesh: the 16/07/ 2012

Copy is forwarded to Accountant General Khyber Pakhtunkhwa, Peshawar.
All District Account Officers

SECTION OFFICER (FR)
FINANCE DEPARTMENT

Endst. Of even Number & Date.

Copy of the above is forwarded to:-

1. The Secretary to Government of Khyber Paktunkhwa, Finance Department, with reference to his letter No SO(FR)/FD/10-22(E)/2010 dated 26.06.2012.
2. P.S. to Secretary, E&SE Department, Khyber Pakhtunkhwa, Peshawar.
3. P.S. to Special Secretary, E&SE Department, Khyber Pakhtunkhwa, Peshawar.
4. P.S. to Deputy Secretary-II, E&SE Department, Khyber Pakhtunkhwa, Peshawar
5. P.S. to Minister of E&SE, Khyber Pakhtunkhwa.
6. The Director, E&SE Khyber Pakhtunkhwa, Peshawar.
7. All the Executive District Officers, E&SE Khyber Pakhtunkhwa.
8. The Managing Director, Printing Press, Khyber Pakhtunkhwa, Peshawar.
9. Master file.

11/07/2012

(NOOR ALAM KHAN WAZIR)
SECTION OFFICER (B&A)
ELEMENTARY & SECONDARY EDUCATION
DEPARTMENT

To,

Director (E&S) Department
Govt. of Khyber Pakhtunkhawa,
Dabgari Garden Peshawar

(11) Anx. B

## DEPARTMENTAL APPEAL

Sir,

The appellants humbly submits as under;-

1. That appellants are equipped with qualifications such as Qirat Sanad, Hifzul Quran BA, MA, B.Ed, M.Ed

2. That the appellants were appointed against the post of Qaries in Government High Schools, Mardan & Swabi District of Khyber Pakhtunkhawa.

3. That Department is taking duty from the petitioners like other computer, SET Teachers.

4. That the appellants were appointed initially in BPS-7 in different years by the competent authority and presently serving in different High Schools of the province.

5. That after the appointment of the appellants their basic pay scale up graded to BPS-9, 10, 12, 14, 15 according to their qualifications and experience by different orders of the competent authority in different time.

6. That for BPS of Teachers the 1st Rules were framed in the year 1981, then 1991 wherein there are three basic categories of teachers.

    a. Primary School Teachers
    b. Middle School Teachers
    c. High School Teachers

(12)

7. That according to the decision of the Govt: of Khyber Pakhtunkhawa a meeting of concerned officials was held on 01/06/2012, under the Chairmanship of respondent No. 05 for up gradation of the basic pay scales of all teachers of province.

8. That in the light of above stated meeting of concerned officials, the BPS of all the teachers in Province working in different categories/cadres were up graded by the order of Secretary Elementary & Secondary Education (E&S) Education, Department vide notification No SO (BQA)1-18 E QSE 2012 dated 11/07/2012.

9. That the above stated notification was then circulated to all the Executive District Officer in Khyber Pakhtunkhawa by the order of Deputy Director (Establishment) Elementary & Secondary Education.

10. That according to the above stated notification, the post of Qari has been up graded to BPS-12, whereas the post of the theology teacher (T.T) was up graded to BPS-15, who possess equal or less the same qualification.

11. That appellants filed appeals to Department that appellants be treated as par with Theology Teacher/ Arabic Teacher and other High School Teachers in matter of grade as since 1981, they were in the same grade being High School Teachers, but remained un-responded.

12. That impugned notification dated 11/07/2012 regarding the up gradation to the extent of the post of Qaries is illegal, void, and discriminatory as T.T are placed in BPS-15 and appellants in BPS-12, thus clear-cut violation of articles 4 and 25/27 of the Constitution of Islamic Republic of Pakistan, 1973, hence, this departmental appeal, inter alia, on the following grounds.

(13)

GROUNDS:-

A. Because the act of department with appellants is discriminatory, illegal, and void, hence untenable under the law.

B. Because according to the impugned notification all the posts of different categories and cadres have been up graded to BPS-15 and 16 in all the Govt: High Schools in Province except the post of the appellants, which has been up graded to BPS-12 instead of BPS-15 and BPS-16.

C. Because before the up gradation of basic pay scales of the impugned notification, the teachers of theology and the appellants were serving in the same different grades, which is also clear from the impugned notification, therefore, depriving of appellants from their legal/due rights in not only illegal, but also discriminatory.

D. Because in impugned notification, the department has not given any legal justification for not upgrading the post of the appellants equivalent to Theology Teacher (T.T) nor any criteria has been mentioned in this regard.

E. That appellants are not only Hafiz-ul-Quran, but also possess equal or more qualification then the teachers of theology in the relevant subject i.e. Islamyat and beside possess professional Teaching Degrees like B.Ed, M.Ed as well.

F. Because all the citizens of Pakistan are equal before the law and they are entitled to equal protection of law, hence impugned notification in respect of up gradation to the post of Qaries is also against Article 4 of Constitution of Islamic Republic of Pakistan, 1973.

G. Because according to their lordship Superior Court of the country "All persons placed in similar circumstances must be treated alike" in famous case of I.A Sherwari 199 SCMR.

H. Because impugned notification to the extent of appellants' rights is clear cut violation of the law/principles settled by the Superior Courts, thus liable to be declared null and void, without lawful authority ultravires to the extent of not granted BPS-15 and 16 as granted to other High Schools Teachers.

I. Because appellants has been discriminated thereby violated Articles 25/27 of Constitution of Islamic Republic of Pakistan, 1973.

J. Because appellants are performing same duties upto same duration to the same classis of students in the same High School, possessing same qualification like T.T, A.T, SET, then placing T.T, A.T, SET in grade 15, 16, who were earlier in the same grade as appellants and depriving appellants of the same is clear discrimination.

K. Because it is not reasonable classification and is clear disparity.

L. Because no grounds for declaring these classes can be forwarded by concerned officials much less plausible.

M. Because Article 35 and Superior Courts including this Hon'ble Court presses equal social standards/ financials.

N. Because appellants and T.T/ AT are purchasing commodities from the same market at the same rate.

O. That any other grounds, which have not been taken specifically in the instant appeal, may be argued with the

permission of this Honourable Court at the time of arguments. (15)

It is, therefore, most humbly prayed that on acceptance of this Departmental Appeal, notification dated 11/07/2012 issued by Secretary Elementary & Secondary Education (E&S) Education, Department, may please be modified by treating appellants at par with Theology Teacher/ Arabic Teacher i.e. BPS-15 as basic and BPS-16 as 1/3rd in Selection grade/ promotion as both are teaching to the same High School classes and were treated alike in past notifications of pay scales.

Any other relief deemed appropriate in the circumstances of the case, may also be graciously granted in favour of appellants.

APPELLANTS

1 Fazal Sher

2 Afsar Ali

3 Sayyed Muhammad Zakaria

4 Muhammad Darvesh

5 Hazrat Hussain

6 Muhammad Iqbal

7 Muhammad Ayaz

8 Muhammad Hayat

9 Mustaqim Shah

10 Shrif Gul

11 Fazal Hadi

12 Gul Muhammad

13 Muhammad Ilyas

14 Iftikhar Hussain

16

15 Muhammad Ayub

16 Asad Ur Rahman

17 Mudassir Shah

18 Muhammad Rasool

19 Asad Ullah

20 Muhammad Farooq

21 Hazrat Hussain

22 Badar Munir

23 Yahya Habib

24 Shah Faisal

25 Farhan

26 Muhammad Bilal

27 Ahmad Ali

28 Kifayat-ur-Rahman

29 Dildaruddin

30 Sher Ali

31 Khair-ul-Wara

32 Ishaq Ali

33 Asad Ali

34 Ali Nasir Khan

35 Sahib Zada Aamir

36 Ihsan Ullah

37 Hussain Ali

38 Sulaiman Said

(17)

39 Muhammad Zubair

40 Muhammad Abdullah

41 Ubaid Ullah

42 Niaz Muhammad

43 Shams-ul-Arifeen

44 Maab Ahmad

45 Mazhar-ul-Hassan

46 Abdul Zahoor

47 Saleem-ur-Rahman

48 Muhammad Ikram

49 Muhammad Ali Khan

50 Habib Ullah

51 Zubair Ali

Muhammad Ibrahim

53 Abid Mehmood

Dated 10/2/2015

بعدالت سروس ٹریبونل پشاور

(18)

اپیلانٹ بخلاف 2015 16/5/2015

مورخہ:

مقدمہ:

بنام:

دعویٰ: فضل ہادی

حکومت

جرم:

سروس اپیل باعث تحریر آنکہ

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

آن مقام پشاور کیلئے امجد علی ایڈوکیٹ سپریم کورٹ آف پاکستان ایٹ مردان / فہد نواز ایڈوکیٹ پشاور

مقرر کرکے 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 ہرقسم 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 مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا۔ اور صاحب مقررشدہ کو بھی وہی جملہ مذکورہ بااختیارات حاصل ہوں گے اور اس کا ساختہ پرداختہ منظور وقبول ہوگا دوران مقدمہ میں جو خرچہ وہرجانہ 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۔ لہذا وکالت نامہ لکھ دیا کہ سند رہے۔

المرقوم: 16 ماہ مئی 2015ء

فضل ہادی

العبد

گواہ

العبد

بمقام پشاور کے لیے منظور ہے۔

Attested and Accepted
Amjad Ali
Advocate
Mardan

AMJAD ALI
Advocate
SUPREME COURT

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

0321-9882434 0321-9870175

**BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.**

Service Appeal No: 522/2015.

FAZAL HADI GARI GHS BABOOZAI MARDAN. .....Appellant

**VERSUS**

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

**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 standai.

2 That the instant Service Appeal is badly time barred. Hence is liable to be dismissed.

3 That the Appellant has concealed material facts from this Honorable Tribunal in the instant service appeal. Hence liable to be dismissed.

4 That the instant Service Appeal is against the relevant provisions of law.

5 That the Appellant is not an aggrieved person under article 212 of the constitution of the Islamic Republic of Law of Pakistan 1973.

6 That the Appellant has filed the instant appeal on malafide intentions just to put extra ordinary pressure on the Respondents for the grant of illegal & even unauthorized service benefits.

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

8 That the instant appeal is liable to be dismissed for mis-joinder & non-joinder of the necessary parties to the present appeal.

9 That the Appellant is estopped by his own conduct to file the instant appeal.

10 That the instant Service Appeal is not maintainable in the present circumstances of the case.

11 That the Notification No: SO(B&A) 1-18/ E&SED/ 2012 dated 11-07-2012 & Notification dated 13-11-2012 are legally competent & liable to be maintained in favour of the Respondents in the interest of justice.

12 That this Honorable Tribunal has got no jurisdictions to entertain the instant Service Appeal being pertains to the policy.

13 That the Appellant has been treated as per laws, rules & relevant policy in the instant case.

14 That the Appellant is not entitled for the grant of relief he has sought from this Honorable Tribunal in the instant appeal.

15 That the instant Appeal is barred by law.

16 That no departmental appeal has been filed by the appellant.

**ON FACTS .**

1 That Para-I needs no comments being pertains to the Academic record of the appellant.

2 That Para-2 is also needs no comments being pertains to the transfer & postings against the Qari post.

3 That Para-3 is incorrect & denied. The statement of the appellant with regard to the performance of duty is without any legal justification on the ground that U/S-2(b) of Civil Servant Acts 1973, every civil servant is legally & morally is bound to performed his delegated official duty against the post he holds & paid for the services against them by the Respondent Department.

4 That Para-4 needs no comments being pertains to the transfer & postings of the appellant against the Qari post in the Respondent Department which is not disputed in the given circumstances of the case.

5 That Para-5 is correct to the extent that the appellant alongwith other officials of teaching cadre have been upgraded by the Provincial Govt: from time to time in which the scale of appellant from BPS-07 to 12 has been upgraded by the Respondent Department in the light of the onetime upgradation of scale of the Provincial Govt:.

6 That Para-6 is incorrect & denied . The Respondents are bound to follow & implement the current impugned policy of the Provincial Govt: in its true letter & spirit

7 That Para-7 is correct to the extent that the Basic Pay Scales for the initial recruitments of PST, CT & Qari have been upgraded to BPS-12 respectively vide Notification dated 01-6-2012, by the Respondent No: 1.

8 That Para-8 is incorrect & misleading on the grounds that the referred Notification dated 11-07-2012 has not been issued in the light of the above mentioned Notification dated 01-06-2012 with the submission that the later Notification is for the initial recruitment of various teaching & non-teaching cadre posts whereas the Notification dated 11-07-2012 the post of the appellant has been re designated as Senior Qari post in BPS-15 under the formula of 1/3 of the total Qaries post have been upgraded which will be filled in the manner as may be prescribed by the E&SE Department by making necessary service rules or amending the existing service rules if any for the post.

9 That Para-9 needs no comments.

10 That Para-10 is incorrect & denied on the grounds that the prescribed qualification for the appointment against the Qari post in BPS-12, is FA / F.Sc & Asnad in Hafiz-E-Quran & Qirat from the dully recognized Board/Deeni Madrassa, whereas the prescribed qualifica--tion for the initial appointment against the TT in BPS-15 post is SSC alongwith the relevant qualification of Shahadat-ul-Almiya or MA in Islamiyat from dully recognized Institutions of the country in the light of the Notification dated 13-11-2012 issued by the Respondent Department(copies of the relevant Notifications are attached as Annexures-A, B & C).

11 That Para-11 is incorrect & denied, no Departmental appeal has been filed by the appellant against the impugned Notification dated 11-07-2012, with the additional submission that the post of the appellant does not fall within the ambit of teaching cadre in the Respondent Department as per Notification dated 13-11-2012.

12 That Para-12 is incorrect & denied. The appellant has been treated as per law, rules & in accordance with the prescribed policy as mentioned above having no question of violation of the mentioned article of the Constitution of 1973.

13 That Para-13 is correct that the W/P No: 2733-P/2014 under titled Fazal Sher & others Versus Government has been dismissed vide order dated 20-01-2015 in favour of the Respondent Department by the Honorable Peshawar High Court Peshawar in the interest of justice.

14 That Para-14 is legal, however the Respondents further submit on the following grounds inter alia:-

**ON GROUNDS .**

A That ground-A is incorrect & denied. The act of the Respondents with regard to the impugned Notification dated 11-07-2012 is legally competent & liable to be maintained in favour of the Responding Department.

B That ground –B is incorrect & denied. The appellant has been treated as per law, rules & policy in the instant matter in the light of the Notifications dated 11-7-2012 & 13-11-2012 by the Respondents.

C That ground-C is incorrect & denied. The statement of the appellant is baseless on the grounds that both the cadres are different in job & nature. Hence both cannot be treated at par under the above mentioned Notification.

D That ground-D is incorrect & denied. The impugned Notification is within legal sphere & justification, hence is liable to be maintained in favour of the Respondents .

E That ground-E needs no comments being pertains to the academic of the appellant.

F That ground-F is incorrect & misleading. The appellant has been treated as per law, rules & policy in the instant case.

G That ground-G is incorrect & denied. The cited judgment is not applicable on the case of the appellant.

H That ground-H is incorrect & denied. Detailed reply has been given above.

I That ground-I is incorrect. The appellant has not been discriminated in the instant case by the Respondents.

J That ground-J is also incorrect on the grounds that every civil servant is supposed to perform his duty against the post he holds in the Respondent Department.

K That ground-K is incorrect & denied, hence no further comments.

L That ground-L is incorrect. Detailed reply has been given in above paras. Hence no further comments.

M That ground-M is incorrect & denied. The appellant has been treated in accordance with law, rules & policy in the instant case by the Respondents.

N That ground-N needs no comments, being pertains to the domestic problems of the appellant.

O That ground-O is incorrect & denied. The appellant has been treated as per law, rules & Policy in accordance with his cadre in the Respondent Department.

P That ground-P is incorrect & denied. Detailed reply has been given in the foregoing paras. Hence needs no further comments.

Q That ground-Q is incorrect & denied. The post of the DM is not a teaching cadre post in the Respondent Department.

R That ground-R is incorrect. Detailed reply has been given in ground Q.

S That ground-S is incorrect & denied. Hence no further comments.

T That ground-T is incorrect & misleading, hence no further comments.

U That ground-U is incorrect & denied, hence no further comments.

V That ground-V is legal, however the Respondents seek leave of this Honorable Tribunal to submit additional grounds and case law at the time of arguments.

**In view of the above made submissions, it is requested that this Honorable Tribunal may very graciously be pleased to dismiss the instant service appeal with cost in favour of the Respondent Department.**

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

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

## AFFIDAVIT

I, Khaista Rehman Asstt: Director (Litigation-II) do hereby solemnly affirm and declare that the contents of the instant Parawise Comments are true & correct to the best of my knowledge & belief & that nothing has been concealed from the ambit of this Honorable Tribunal in the titled Service Appeal.

Deponent