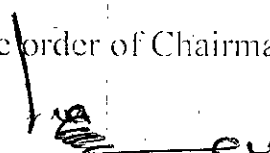


FORM OF ORDER SHEET

Court of _____

Case No.- _____

579/2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	17/03/2023	<p>The appeal of Mr. Fazal e Manan presented today by Mr. Noor Muhammad Khattak Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on _____. Parcha Peshi is given to appellant/counsel for the date fixed.</p> <p>By the order of Chairman</p> <p> REGISTRAR</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

SERVICE APPEAL No. 579 /2023

FAZAL-E- MANAN VS **GOVT. OF KPK & OTHERS**

I N D E X

S.NO.	DOCUMENTS	ANNEXURE	PAGE
1.	Memo of appeal with Affidavit	1-4
2.	Advertisement And Appointment Order	A & B	5-8
3.	Copy of Act	C	9-11
4.	Judgment dated 24.11.2020	D	12-16
5.	Appeal and judgment	E	17-26
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APPELLANT

Through:


NOOR MOHAMMAD KHATTAK
ADVOCATE SUPREME COURT

-1-

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 579 /2023

Mr. Fazal e Manan SST (G) (BPS-16),
GHS Drad Puran, District Shangla.

..... **APPELLANT**

VERSUS

- 1- The Secretary Elementary and Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.
- 2- The Director Elementary and Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.
- 3- The District Education Officer, District Shangla.

..... **RESPONDENTS**

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE INACTION OF THE RESPONDENTS BY NOT PROMOTING THE APPELLANT TO THE POST OF S.S (BPS-17) W-E-F 2009 I.E. FROM THE DATE WHEN THE ADHOC/ CONTRACT SUBJECT SPECIALIST (BPS-17) HAVE BEEN REGULARIZED AND AGAINST NO ACTION TAKEN ON THE DEPARTMENTAL APPEAL OF APPELLANT WITHIN THE STATUTORY PERIOD.

PRAYER:

That on acceptance of this appeal the respondent may kindly be directed to consider the appellant for promotion to the post of Subject specialist (BPS-17) w-e-f. 2009 i.e. the date when the adhoc/ contract S.S (BPS-17) have been regularized with all back benefits including seniority. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

R/SHWETH:

ON FACTS:

1. That the appellant is the employee of the respondent department and performing his duty as SST (G) (BPS-16).
2. That in the year 2004 the respondents invited applications for the post of Subject Specialist (SS) on contract basis whereafter the appellant applied for the said post. That after appearing in the test conducted through EATA and after successfully passing the exam and other codal formalities, the appellant was appointed on the post of S.S (BPS-17) on contract basis for a period of six months and was subsequently appointed as SS Islamiyat (BPS-17) at GHSS Butyal, Shangla post vide order dated 10.09.2005. Copies of the advertisement and appointment order are attached as annexure **A & B.**
3. That astonishingly vide para No.10 of the terms and condition of the appointment order issued by the respondent department stated that

candidates already in service cannot join the post of SS (BPS-17) and the concerned District Education Officer also refused to take charge of the appellant.

4. That it is worth mentioning that the advertisement issued by the respondent department for the post of SS (BPS-17) did not mention that in-service candidates shall not be allowed to join the said post.
5. That it is pertinent to mention here that the colleagues of appellant already in service after successfully passing the same exam were appointed against the post of SS (BPS-17) and their contract period was renewed/ extended few times by the respondent department and later on they were regularized vide regularization Act, 2009. Copy of Act is attached as annexure C.
6. That by introducing the Act ibid some of the colleagues of the appellant who were not allowed any more to perform their duty under the pretext of term and condition No. 10, knocked the door of the Honorable Peshawar High Court Abbottabad Bench in writ petition No.741-A/2010 which was decided vide judgment dated 24.11.2020 with the observation that the matter pertaining to terms and condition, therefore the petition was dismissed being not maintainable, however the petitioners were given liberty to knock at the door of the competent forum for redressal of their grievance. Copy of the judgment dated 24.11.2020 is attached as AnnexureD.
7. That colleagues of the appellant then filled appeals before this Honorable tribunal and that were decided vide judgment dated 02.02.2022 in appeal No. 2756/2021. Copy of the memo of appeal and judgment dated 02.02.2022 are attached as annexureE.
8. That the appellant is serving as SST (BPS-16) and due to term and condition by not allowing the in service teachers for the contract SS and thereafter regularization of the service of the contract employee through Act ibid by curtailing the prospects of promotion, therefore the appellant in light of the judgment ibid preferred departmental appeal. Copy of the departmental appeal is attached as annexureF.
9. That having no other remedy the appellant preferred the instant appeal on the following grounds amongst others.

GROUND:

- A- That by not promoting the appellant to the post of S.S (BPS-17) w-e-f 2009 i.e. the date when the adhoc/contract S.S (BPS-17) have been regularized with all back benefits including seniority is against the law, facts, norms of natural justice and materials on the record hence not tenable and liable to be modified/rectified to the extent of the appellant be promoted w-e-f 2009 with all back benefits including seniority.
- B- That appellant has not been treated by the respondent Department in accordance with law and rules on the subject noted above and as such the respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973.

- C- That, the treatment meted out to the appellant is clearly based on discrimination and mala fide and as such the respondents violated the principle of natural justice.
- D- That appellant is fully entitled to be promoted to the post of S.S (BPS-17) w-e-f 2009 i.e. the date when the adhoc/ contract S.S (BPS-17) have been regularized with all back benefits including seniority in light of the section 9 of the Khyber Pakhtunkhwa Civil Servant Act, 1973 read with the Khyber Pakhtunkhwa Civil Servant (Appointment, Promotion and Transfer) Rules, 1989.
- E- That appellant is also entitled for his promotion w-e-f 2009 with all back benefits.
- F- That respondents violated Article 38(e) of the Constitution of Islamic Republic of Pakistan 1973, according to which state is bound to eliminate disparity in the income and earning of individuals including persons in the services of the Federation, thus in light of the above quoted Article of the Constitution the respondents are duty bound to promote the appellant to the post of S.S (BPS-17) w-e-f 2009 i.e. the date when the adhoc/ contract S.S (BPS-17) have been regularized with all back benefits including seniority.
- G- That appellant seeks permission to advance other grounds and proofs at the time of hearing.

It is therefore, most humbly prayed that the appeal of the appellant may very graciously be accepted as prayed for, please.

Dated: 16-03-2023

APPELLANT

FAZAL MANAN
THROUGH:
NOOR MOHAMMAD KHATTAK
ADVOCATE SUPREME COURT

KAMRAN KHAN

UMER FAROOQ
MUHAMMAD AYUB
ADVOCATES

5

-4-

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

SERVICE APPEAL No. _____ /2023

FAZAL-E- MANAN

VS

GOVT. OF KPK & OTHERS

AFFIDAVIT

I, Fazal-e-Manan SST (G) (BPS-16), GHS Drad Puran, District Shangla, do hereby solemnly affirm that the contents of this Appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Court/Tribunal.

DEPONENT

S.NO. 035

-6- V B

Government of NWFP
Schools and Literacy Department
No.SOG/SL/SS Apptt/2005
Dated Peshawar the 10/09/2005.

ORDER

Consequent upon the recommendation of the Departmental Selection Committee (DSC), the Competent Authority is pleased to appoint the following Merit Subject Specialists (BPS-17) on contract basis for a period of Six months or till arrival of the nominees of the NWFP Public Service Commission whichever is earlier with immediate effect and post-ponement of the vacant posts in the schools as noted against their names.

S.No	Name of Candidate	Father's Name	Address	Zone	Posted At
1	Din Muhammad	Mehmood Khan	Moh. Binmal, Dera, Poto District Laka Marwat	Merit	GHSS Gul Inam, Tank
2	Sudhan Ullah	Fazal Ullah	Moh. Malik Awan, PO Umarzai Charsadda	Merit	GHSS Dosehra, Charsadda
3	Najib Ullah	Hakim Khan	CG. Market, Dera, Dera Meena Khat Bazar Laka Marwat	Merit	GHSS Kot Kashmir, Lakki
4	Inam Ullah	Abdur Rauf	Nor. Road, Masjid, Aqsa, Peshawar	Merit	GHSS No. 1 Peshawar City
5	Shah Jehan	Nawab Khan	Phase-4 Awin, Dany Kohat Road, Peshawar	Merit	GHSS No. 4, Kakshal Peshawar
6	Ahmad Ali	Gul Said	Wazirabad, P/O Akbar Pura Huzarna	Merit	GHSS Akbar Pura, Huzarna
7	Safdar Ali	Muqarab Khan	Wazirabad, Swabi	Merit	GHSS Zarabi, Swabi
8	Muhammad Ayaz	Ashraf Zeb	Moh. Alai, Ghalegay, District Swat	Merit	GHSS Nawagai, Buner
9	Abdur Rehman	Abdullah	Village Gahra, Guli Bagh, Chahayh, Swat	Merit	GHSS Lal Qela, Dir(Lower)
10	Muhammd Ikram Ullah	M.Habib Ullah	Village Sogha, Dir Lower, Tangay	Merit	GHSS Haya Serai, Dir(Lower)
11	Muhammad Tahir	Shadi Khan	Wazirabad, Lakki Marwat	Merit	GHSS Sinaurang, Lakki
12	Aziz Ullah	Miser Khan	Village Saidu, Moh. Aisar Abad C/O Bhatt Rawan Swat	Merit	GHSS Batara, Buner
13	Arshad Nawaz Khan	Rahim Zaid Khan	PO Bharat, Bannu	Merit - I	GHSS Lachi, Kohat
14	Amir Jan	Muhammad Ghulam	Moh. Michon, PO & District Lakki	Merit - I	GHSS No. 4 D.J.Khan
15	Sher Ghaffar Khan	Muhammad Nazif Khan	Village Ghora, Bannu	Merit - I	GHSS Lalozai, Bannu
16	Mukhtar Ahmed	Abdul Jalil Khan	Village Naugra, (Gala Jamal ud Din) Peshawar	Merit - I	GHSS Daag, Peshawar
17	Homid Ullah	Saleh ur Rehman	Village Yousaf, (Talan) Kalyas, Charsadda	Merit - I	GHSS Sherpao, Charsadda
18	Abdul Karim	H.Abdul Latif Khan	GT Road, Ground Floor Ranim Medical Center Peshawar	Merit - I	GHSS Chaghar Matti, Peshawar
19	Shabir Ahmad	Sher Bahadar	Village & PO T. No. Moh. Malwala, Charsadda	Merit - V	GHSS Tameb, Charsadda
20	Muhammad Tahir Khan	M.Said Mohammad	Village Sher, Moh. Shah Sheikhan Bannu	Merit - V	GHSS Landi Kachai, Kchat
21	Inayat Ullah	Khawaja Amir Jan	Village & PO, N.W.A.		GHSS Dalian, Hangu

Page 1 of 3

(Signature)
Subject Specialist.
GHSS, Dalian, Hangu.

ORDER

Consequent upon the recommendation of the Departmental Selection Committee (DSC), the Competent Authority is pleased to appoint the following Subject Specialists (BPS-17) on contract basis for a period of Six months or till arrival of the nominees of NWFP Public Service Commission whichever is earlier with immediate effect and posted them against the vacant posts in the Schools as noted against their names.

Subject: Islamiyat

S#	Name of Candidate	Father's Name	Address	Zone	Posted at
1	Din Muhammad	Mehmood Khan	Lakki Marwat	Merit	GHSS Gul Imam, Tank
2	Subhan Ullah	Fazal Ullah	Charsadda	Merit	GHSS Dosehra, Charsadda
3	Naja Ullah	Hakim Khan	Lakki Marwat	Merit	GHS Kot Kashmir Lakki
4	Inam Ul Haq	Abdul Rauf	Peshawar	Merit	GHSS No.1, Peshawar City
5	Shah Jehan	Nawab Khan	Peshawar	Merit	GHSS No.4 Kakshal Peshawar
6	Ahmad Ali	Gul Said	Nowshera	Merit	GHSS Akbar Pura Nowshera
7	Sataar Ali	Muqarab Khan	Swabi	Merit	GHSS Zarobi Swabi
8	Muhammad Ayaz	Jahan Zeb	Swat	Merit	GHSS Nawagai Buner
9	Abdur Rehman	Abdullah	Charbagh Swat	Merit	GHSS Lal Qela, Dir (Lower)
10	Muhammad Irfan Ullah	M. Habib Ullah	Dir Lower Timergarah	Merit	GHSS S/Naurang Lakki
11	Muhammad Tafil	Shahi Khan	Lakki Marwat	Merit	GHSS Batara, Buner
12	Aziz Ullah	Miser Khan	Rawalpindi	Merit-I	GHSS Lachi Kohat
13	Arshad Nawaz Khan	Raham Zad Khan	Bannu	Merit-I	GHSS No.4, D.I.Khan
14	Amir Jan	Muhammad Ghulam	District Lakki	Merit-I	GHSS Lallozai Bannu
15	Sher Ghaffar Khan	Muhammad Nazif Khan	Bannu	Merit-I	GHSS Daag Peshawar
16	Mukhtar Ahmad	Abdul Jalil Khan	Peshawar	Merit-I	GHSS Sherpao Charsadda
17	Hamid Ullah	Saleh Ur Rehman	Charsadda	Merit-I	GHSS Chaghar Matti, Peshawar
18	Abdul Karim	H. Abul Latif Khan	Rehim Medical Centre Peshawar	Merit-I	GHSS Tamab, Charsadda
19	Sabir Ahmad	Sher Bahadar	Charsadda	Merit-V	GHSS Lanki Kachai, Kohat
20	Muhammad Tahir Khan	M. Said Mohammad	Bannu	Merit-V	GHSS Dallan Hangu
21	Hidayat Ullah	Khawaja Amir Jan	N.W.A	Merit-V	

S.#	Name of Candidate	Father's Name	Address	Zone	Posted At
22	Muhammad Gul	Nazar Gul	Sakna Khalki Sharif GMS Rawal Kor Mohammad Agency	I	GHSS Mardan
23	Javed Khan	Hamesh Khan	C/O Asif Khan Jeneral Store V/PO Hatan Bazar Mardan	II	GHSS Garhi Kapura, Mardan
24	Musta Mir Khan	M.Yousaf	O/O Model Public School Maini Swabi	II	GHSS Thand Kol, Swabi
25	Arab Khan	Said Alam Khan	Vill: & PO Gul Bula, Peshawar	II	GHSS Sheikhan, Peshawar
26	M.Zubair	Fazli Khaliq	H.No:1,Moh:GHSS No.1, Peshawar	II	GHSS Urmer Payan, Peshawar
27	Hamayun	Saif ur Rehman	Moh:Sherpao V/PO Charsadda Town, Charsadda	II	GHSS Palo Dheri, Mardan
28	Izaz Ullah	Alta Ullah	5/A, Wakhlatul, Naka Khel Street P.Code:25110, Peshawar	II	GHSS Kalbani, Swabi
29	Siraj Khan	Akber Shah	Achini Payan, Momin Garhi, Peshawar	II	GHSS Shabqadar Fort, Charsadda
30	Muhammad Javed Kh	Sher Ghani Khan	Dheri Talash Dir Payeen Zone III	III	GHSS Bagh Maidan, Dir(Lower)
31	Fazal Jamil	Fazal Sani	V&PO Allahdani Dheri MKD Moh: Azi Khel	III	GHSS Palai, Malakand Agency
32	Latif ur Rehman	Ghulam Rabani	GHSS Kass Lelawal Shangla	III	GHSS Olandar, Shangla
33	Nazir Ahmad	Fazl e Raziq	Vill:Naway Kalay Kamagara PO Khasana Talash Dir Lower	III	GHSS Zaimdara, Dir(Lower)
34	Muhammad Inayat ur	Fazal ur Rehman	Panakot PO DirUpper	III	GHSS Kalkot, Dir(Upper)
35	Fazal e Manan	Ghaibana	Vill:Bangali PO Aloooh Puran Shangla	III	GHSS Butyal, Shangla
36	Bakht Zeb Khan	Niaz Bar Khan	Lugman Banda PO Khali Tehsil Wan, Upper Dir	III	GHSS Wan, Dir(Upper)
37	Gul Raheem Khan	Ali Baz Khan	GHSS Kando Khel V/PO Kando Khel Karak	IV	GHSS Manki Sharif, Nowshera
38	Hafiz Musa Khan	Gul. Bazar	V/PO Ghazni Khel Lakki Marwat	IV	GHSS Kalbgarh, D.I.Khan
39	Sajjad ur Rehman	Maqbool Shah	GMS Waam Para Hangu	IV	GHSS Choraki, Kohat
40	Saif Ullah Khan	Wazir Khan	Vill:Dingerwala P/O Ahmad Abad, Karak	IV	GHSS Shah Salim, Karak
41	Itaf Hussain	Nazir Hussain	Mir Ahmed Khel PO Kohat, District Kohat	IV	GHSS Bilalung, Kohat
42	Taj Muhammad	Faqir Mohammad	C/O Taj & Co Khad Dealer Lakki Road, Bannu	IV	GHSS Dhakki, D.I.Khan
43	Qazi Sajid Rashid	Qazi Abdur Rasheed	Vill:Layan Banli PO Haripur	V	GHSS Kat Najeebullah, Haripur
44	Abdus Salam	H.Muhammad Ilyas	V/PO Rajmala, Malagram	V	GHSS Eehul, Mansehra
45	Nasir Ali	Ghulam Sanwar	Moh:Asif Abad Malkiar Road, Haripur	V	GHSS Barar, Haripur
46	Hamid Shah	Sajawal Shah	PO Galleai (Sinkot) Ghazi Haripur	V	GHSS Saikote, Haripur

Terms and Conditions of their Appointments

- The candidates will enter into an agreement with the Government and their services will be governed by the terms and conditions mentioned in such agreement.
- Their salary is subject to execution of agreement deed containing the terms and conditions of the contract.

[Signature]
Subject Specialist,
GHSS, Barikot, Swat.

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S#	Name of Candidate	Father's Name	Address.	Zone	Posted at
22	Muhammad Gul	Nazar Gul	Sakna Khatki Sharif GMS Rawal Kor Mohmand Agency	I	GHSS Mardan
23	Javed Khan	Hamesh Khan	C/O Asif Khan Jeneral Store V/PO Hatian Bazar Mardan	II	GHSS Garhi Kapura Mardan
24	Musta Mir Khan	M. Yousaf	C/O Model Public School Maini Swabi	II	GHSS Thand Koi Swabi
25	Arab Khan	Said Alam Khan	Vill: & PO Gul Bela, Peshawar	II	GHSS Sheikhan Peshawar
26	M. Zubair	Fazli Khaliq	H. No.1 Moh: GHSS No.1, Peshawar	II	GHSS Urmar Payan, Peshawar
27	Hamayun	Saif Ur Rehman	Moh: Sherpao V/PO Charsadda town, Charsadda	II	GHSS Palo Dheri, Mardan
28	Izaz Ullah	Atta Ullah	5/A Wahidabad, Kaka Khel Street P.O Code 25110, Peshawar	II	GHSS Kabgani Swabi
29	Siraj Khan	Akber Shah	Achini Payan, Momin Garhi, Peshawar	II	GHSS Shabqadar Fort, Charsadda
30	Muhammad Javed Khan	Sher Ghani Khan	Dheri Talash Dir Payeen Zone III	III	GHSS Bagh Maidan, Dir (lower)
31	Fazal Jamil	Fazal Sani	V&PO Allahdand Dheri MKD Moh: Azi Khel	III	GHSS Palai, Malakand Agency
32	Latif Ur Rehman	Ghulam Rabani	GHS Kass Lelonai Shangla	III	GHSS Olandar, Shangla
33	Nazir Ahmad	Fazl e Raziq	Vill: Naway Kalay Kamagara PO Khasana Talash Dir Lower	III	GHSS Zaiimbara, Dir (Lower)
34	Muhammad Inayat Ur Rehman	Fazal Ur Rehman	Panakot PO Dir Upper	III	GHSS Kalkot Dir (Upper)
35	Fazal e Manan	Ghaibana	Vill: Banagali PO Aloooh Puran Shangla	III	GHSS Butyal, Shangla
36	Bakht Zeb Khan	Niaz Bar Khan	Luqman Banda PO Khail Tehsil Wari, Upper Dir	III	GHSS Wari, Dir (Upper)
37	Gul Raheem Khan	Ali Baz Khan	GHS Kando Khel V/PO Kando Khel Karak	IV	GHSS Manki Sharif Nowshera
38	Hafiz Musa Khan	Gul Bazar	V/PO Ghazni Khel Lakki Marwat	IV	GHSS Kathgarh D.I.Khan
39	Sajjad ur Rehman	Maqbool Shah	GMS Waam Para Hangu	IV	GHSS Chorlarki Kohat
40	Saif Ullah Khan	Wazir Khan	Vill Dingrwala P/O Ahmad Abad, Karak	IV	GHSS Shal Salim Karak
41	Iltaf Hussain	Nazir Hussain	Mir Ahmad Khel P.O Kohat District Kohat	IV	GHSS Bilitang, Kohat
42	Taj Muhammad	Faqir Muhammad	C/O Taj & Co Khad Dealer Lakki Road, Bannu	IV	GHSS Dhakki D.I.Khan
43	Qazi Sajjid Rashid	Qazi Abdur Rasheed	Vill: Layan Bandi PO Haripur	V	GHSS Kot Najeebullah Haripur
44	Abdus Salam	H. Muhammad Ilyas	V/PO Rajmah Battagram	V	GHSS Beholi Manshera
45	Nasir Ali	Ghulam Sarwar	Moh: Asif Abad Malkiar Road Haripur	V	GHSS Beer Haripur
46	Hamid Shah	Sajawal Shah	PO Galleai (Sinkot) Gazai Haripur	V	GHSS Sarikote, Haripur

Terms and Conditions of their Appointment

1. The candidates will enter into an agreement with the Government and their services will be governed by the terms and conditions mentioned in such agreement.
2. Their salary is subject to execution of agreement deed containing the terms and conditions of the contract.

-8-

- They will get pay in BPS-17 plus usual allowances as admissible under the rules.
- 4. The initial period of their appointment shall be six months or till the arrival of the selectees of the NWFP Public Service Commission which ever is earlier. This order will automatically stand terminated after 180 days from the date of issue.
- 5. Their services will be liable to termination without assigning any reason during the currency of this agreement. In case of resignation without prior notice, their one month pay plus allowances shall be forfeited in favour of Government.
- 6. The appointees shall join their posts within 15 days of the issuance of this order. The EDOs (S and L) shall furnish a certificate to the effect that the appointees have joined the posts or otherwise, after 15 days of the issuance of this order.
- 7. Their services can be terminated at any time in case their performance is found un-satisfactory. In case of misconduct they will be proceeded against under the Removal from Service (Special Power) Ordinance 2000 and E and D Rules, 1973.
- 8. They shall be required to furnish attested copies of all their certificates/degrees to EDO (S and L) concerned. The EDO concerned should check their original certificates/degrees.
- 9. The appointment is School specific and non-transferable during the currency of contract period.
- 10. The In-Service candidates shall not be allowed to join and shall not be handed over charge by the EDO concerned.
- 11. No TADA etc. will be allowed to the appointees for joining duty.
- 12. Charge report shall be submitted to all concerned.

Secretary

Endst: No. Even No. and date.

Copy forwarded for information and necessary action to the:

- 1. Accountant General NWFP Peshawar
- 2. District Account Officer concerned.
- 3. Director Schools and Literacy NWFP Peshawar
- 4. The Executive District Officers (S and L) concerned.
- 5. Principal of the Schools concerned.
- 6. Officers concerned
- 7. PS to Minister for Education, Government of NWF
- 8. PS to Secretary Schools and Literacy, Government of NWFP

[Signature]
 Subject Specialist,
 GHSS, Barikot, Swat.

[Signature]
 10/9/2005
 (Muhammadi Tariq Khan)
 Deputy Secretary (Admin.)

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3. They will get pay in OPS-17 plus usual allowances as admissible under the rules
4. The initial period of their appointment shall be six months or till the arrival of the selectees of the NWFP Public Service Commission which ever is earlier. This order will automatically stand terminated after 100 days from the date of issue.
5. Their services will be liable to termination without assigning any reason during the currency of this agreement in case of resignation without prior notice, their one month pay plus allowances shareable forfeited in favour of Government.
6. The appointees shall join their posts within 15 days of the issuance of this order. The EDOS (S and L) shall issue certificate to the effect that the appointees have joined the posts or otherwise, after 15 days of the issuance of this order
7. Their services can be terminated at any time in case their performance is found unsatisfactory. In case of misconduct they will be proceeded against under the Removal from Service (Special Power) Ordinance 2000 and E and D Rules, 1973
8. They shall be required to furnish attested copies of all their certificates/degrees to EDO (S and L) concerned. The EDO concerned should check their original certificates/degrees.
9. The appointment is School specific and non-transferable during the currency of contract period.
10. The In-Service candidates shall not be allowed to join and shall not be handed over charge by the EDO concerned.
11. No TA/DA etc. will be allowed to the appointees for joining duty.
12. Charge report shall be submitted to all concerned.

Secretary

Endst: No. Even No. and date.

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3. Director Schools and Literacy NWFP, Peshawar
4. The Executive District Officers (S and L) concerned.
5. Principal of the Schools concerned.
6. Officers concerned
7. PS to Minister for Education, Government of NWFP
7. PS to Secretary Schools and Literacy, Government of NWFP

(Muhammad Tariq Khan)
Deputy Secretary (Admn.)

-9-

C- (17)

THE ³[KHYBER PAKHTUNKHWA]
EMPLOYEES (REGULARIZATION OF SERVICES) ACT, 2009.
(⁴[KHYBER PAKHTUNKHWA] ACT NO. XVI OF 2009)

[First published after having received the assent of the Governor of the ⁵[Khyber Pakhtunkhwa] in the Gazette of ⁶[Khyber Pakhtunkhwa] (Extraordinary), dated the 24th October, 2009]

AN
ACT

to provide for the regularization of the services of certain employees appointed on adhoc or contract basis.

WHEREAS it is expedient to provide for the regularization of the services of certain employees appointed on adhoc or contract basis, in the public interest, for the purposes hereinafter appearing;

It is hereby enacted as follows:-

1. **Short title and commencement.**—(1) This Act may be called the ⁷[Khyber Pakhtunkhwa] Employees (Regularization of Services) Act, 2009.

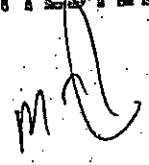
(2) It shall come into force at once.

2. **Definitions.**—(1) In this Act, unless the context otherwise requires,-

- (a) "Commission" means the ⁸[Khyber Pakhtunkhwa] Public Service Commission;
- (aa) "contract appointment" means appointment of a duly qualified person made otherwise than in accordance with the prescribed method of recruitment;
- (b) "employee" means an adhoc or a contract employee appointed by Government on adhoc or contract basis or second shift/night shift but does not include the employees for project post or appointed on work charge basis or who are paid out of contingencies;

³Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011
⁴Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011
⁵Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011
⁶Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011
⁷Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011
⁸Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011

ATTESTED



- (c) "Government" means the Government of the ⁹[Khyber Pakhtunkhwa];
- (d) "Government Department" means any department constituted under rule 3 of the ¹⁰[Khyber Pakhtunkhwa] Government Rules of Business, 1985, and does not include any section of a Department or an organization which is federally funded;
- (e) "law or rule" means the law or rule for the time being in force governing the selection and appointment of civil servants; and
- (f) "post" means a post under Government or in connection with the affairs of Government to be filled in on the recommendation of the Commission.

(2) The expressions "ad hoc or contract appointment" and "civil servant" shall have the same meanings as respectively assigned to them in the ¹¹[Khyber Pakhtunkhwa] Civil Servants Act, 1973 (¹²[Khyber Pakhtunkhwa] Act No. XVIII of 1973).

3. **Regularization of services of certain employees.**—All employees including recommendees of the High Court appointed on contract or ad hoc basis and holding that post on 31st December, 2008 or till the commencement of this Act shall be deemed to have been validly appointed on regular basis having the same qualification and experience for a regular post:

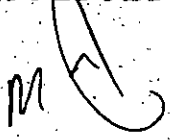
Provided that the service promotion quota of all service cadres shall not be affected.

4. **Determination of seniority.**—(1) The employees whose services are regularized under this Act or in the process of attaining service at the commencement of this Act shall rank junior to all civil servants belonging to the same service or cadre, as the case may be, who are in service on regular basis on the commencement of this Act, and shall also rank junior to such other persons, if any, who, in pursuance of the recommendation of the Commission made before the commencement of this Act, are to be appointed to the respective service or cadre, irrespective of their actual date of appointment.

(2) The seniority interse of the employees, whose services are regularized under this Act within the same service or cadre, shall be determined on the basis of their continuous officiation in such service or cadre:

⁹Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011
¹⁰Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011
¹¹Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011
¹²Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011

ATTESTED



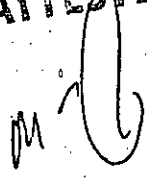
(17)

Provided that if the date of continuous officiation in the case of two or more employees is the same, the employee older in age shall rank senior to the younger one.

4A. **Overriding effect.**—Notwithstanding any thing to the contrary contained in any other law or rule for the time being in force, the provisions of this Act shall have an overriding effect and the provisions of any such law or rule to the extent of inconsistency to this Act shall cease to have effect.

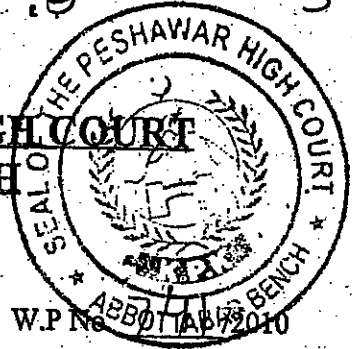
5. **Repeal.**—The North-West Frontier Province Employees (Regularization of Services) Ordinance, 2009 (N.-W.F.P. Ordinance No. VII of 2009) is hereby repealed.

ATTESTED

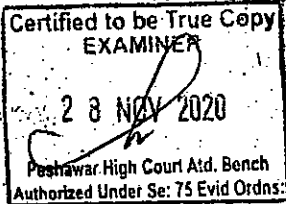


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**BEFORE THE PESHAWAR HIGH COURT
ABBOTTABAD BENCH**



1. Abdullah Javed, C.T, GMS Kaneer, Haripur.
2. Qazi Javed Iqbal, D.M, GMS Ghari Sarian, Haripur.
3. Qazi Behram, C.T, GHS, Dartian, Haripur.
4. Nasir Ali, A.W.I, GHSS, Baghra, Haripur.
5. Qazi Sikandar, PST, GPS, Changi Bandi, Haripur.
6. Qazi Shaheen Iqbal, SET, GMS, Shah Maqsood, Haripur.
7. Azra Bibi, CT, GGHS, Kholian Bala, Haripur.



...PETITIONERS

VERSUS

1. Government of Khyber Pakhtonkhawa, through Secretary Elementary and Secondary Education Peshawar.
2. Chief Secretary, Govt. of Khyber Pakhtonkhawa, Peshawar.
3. Director Elementary & Secondary Education, KPK, Peshawar.
4. Executive District Officer, Elementary & Secondary Education, District Haripur.
5. Secretary Law, Parliamentary Affairs and Human Rights Department, Khyber Pakhtonkhawa, Peshawar.
6. Secretary Establishment and Administration Department, Khyber Pakhtonkhawa, Peshawar.

...RESPONDENTS

No 3366
27/11/20
F.T.P. 18/11/20

**WRIT PETITION UNDER ARTICLE 199 OF
CONSTITUTION OF ISLAMIC REPUBLIC OF
PAKISTAN 1973 AS AMENDED UPTO DATE.**

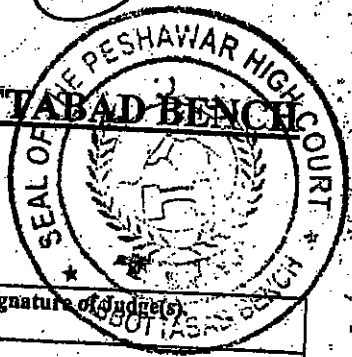
Additional Registrar
Peshawar High Court
Abbottabad Bench

Respectfully Sheweth: -

67 K

PESHAWAR HIGH COURT, ABBOTTABAD BENCH

ORDER SHEET



Date of Order of Proceedings	Order or other Proceedings with Signature of Judge(s)
1	2

24.11.2020

W.P No.741-A-2010

Present: Mr. Tahir Hussain Lughmani, Advocate, for the petitioners.

Sardar Muhammad Asif, Assistant Advocate General for the respondents.

SHAKEEL AHMAD, J: By means of filing this constitutional petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, petitioners Abdullah Javed and others have sought the following relief:

"It is, therefore, prayed that on acceptance of instant petition this Honourable Court may be pleased to declare the above stated act of respondents as illegal, void, violative of fundamental rights and ineffective upon the rights of the petitioners and respondents be directed to promote the petitioners w.e.f. 01/01/2009 in accordance with their own seniority list without being influenced by the seniority of adhoc/ temporary employees.

Any other relief to which the petitioners are deemed entitled in the circumstances of matter may also be granted in the interest of justice."

2. Briefly stated the facts of the case out of which the present constitutional petition arises are that the petitioners are employees of Government of KPK Education Department, working against different posts of teachers; that in the year, 2004, the petitioners applied

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28 NOV 2020
Peshawar High Court Attd. Bench
Authorized Under Sec. 75 Evid Ordns.

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for appointment as subject specialist in response to advertisement published by the Education Department; that the petitioners qualified the requisite EATA test and consequently they were appointed as Subject Specialist on contract basis for a period of six months; that the contract of the petitioners was extended on 24.03.2006; that during the said period, a Notification was issued by the department that in service teachers appointed as SS can obtain leave without pay, as such, the petitioners obtained leave without pay; that on 20.10.2007 the contract was further extended, however, the department refused to grant leave without pay, which constrained the petitioners to quit their contractual service; that since 2006 the petitioners were deprived from annual increment due to leave without pay and when the posts of SS were advertised for appointment on regular bases, the petitioners being in service teachers were debarred to apply for the posts. Hence, this petition.

3. It was mainly contended by the learned counsel for the petitioners that after a fair competition, petitioners were appointed as Subject Specialist (BPS-16) on contract basis as a stopgap arrangement. Ultimately, they left the service on 20.10.2007 due to refusal of the department to sanction the leave without pay; that during service on contract basis the petitioners were not granted increments; that in the year, 2008, posts of subject specialist were advertised but the petitioners were debarred to apply for that posts; that the petitioners were appointed as subject specialist that in the meanwhile due to Notification dated 24.09.2009, the services of the contract/temporary employees appointed as SS or SST were regularized; that after assuming the charge in their parent department the petitioners became junior to their colleagues and their seniority was also liable to be rectified.

4. As against that learned AAG appearing on behalf of respondents argued that the grievance of the

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28 NOV 2020
Peshawar High Court Aid. Bench
Authorized Under Sec: 75 Evid Ordns.

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(69)

petitioners regarding seniority and grant of increment relates to terms and conditions of a civil servant and petitioners being civil servants can urge their plea before the Service Tribunal and this writ petition is not maintainable, in view of embargo placed under Article 212 of the Constitution of Islamic Republic of Pakistan, 1973.

5. Arguments heard. Record perused.

6. Perusal of record reflects that the petitioners were the permanent employees of the Education Department. They were serving in different categories. They were initially appointed on contract basis for a period of six months vide Notification dated 10.09.2005, on the terms and conditions mentioned therein. However, the contractual employment of the petitioners was extended on 24.03.2006. It is pertinent to mention here that the petitioners have joined the contractual employment after obtaining leave from their department, however, on 20.10.2007 the department refused to grant leave to the petitioners without pay and ultimately they left their contractual employment and joined their parent department. In the meanwhile, on the promulgation of the North-West Frontier Province Employees (Regularization of Services) Act, 2009, the service of the contractual employees were regularized in terms of section 3 of the ibid Act.

7. The only grievance of the petitioners urged before us is that after joining their previous service, they have become junior to their colleagues and they were not only deprived of their promotion but also from the annual increments during the period of their contractual employment. Admittedly, the plea urged before us pertains to the terms and conditions of civil servant, which can be urged before the Service Tribunal constituted under Article 212 of the Constitution of Islamic Republic of Pakistan, 1973, which has exclusive jurisdiction to adjudicate upon the matter relating to

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28 NOV 2009
Peshawar High Court Attd. Bench
Authorized Under Sec 75 Evid Ordns

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terms and conditions of a civil servant.

8. For what has been discussed hereinabove, this petition is dismissed being not maintainable. However, the petitioners shall be at liberty to knock at the door of the competent forum for redressal of their grievance, if so desired.

Announced.
Dt. 24.11.2020.

sd/ JUDGE

sd/ JUDGE

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EXAMINER
26 NOV 2020
Peshawar High Court Bench
Authorized Under Sr. 73 Evid Ordns.

"E" -17-

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR**

APPEAL NO. 2756 /2021

Mr. Abdullah Javed, SST (BPS-16),
A.S.D.E.O (Male), District Haripur.

..... **APPELLANT**

VERSUS

- 1- The Secretary Elementary and Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.
- 2- The Director Elementary and Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.
- 3- The District Education Officer, District Haripur.

..... **RESPONDENTS**

**APPEAL UNDER SECTION 4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974
AGAINST THE INACTION OF THE RESPONDENTS BY
NOT PROMOTING THE APPELLANT TO THE POST OF S.S
(BPS-17) W-E-F 2009 I.E. FROM THE DATE WHEN THE
ADHOC/ CONTRACT SUBJECT SPECIALIST (BPS-17)
HAVE BEEN REGULARIZED AND AGAINST NO ACTION
TAKEN ON THE DEPARTMENTAL APPEAL OF APPELLANT
WITHIN THE STATUTORY PERIOD**

PRAYER:

That on acceptance of this appeal the respondent may kindly be directed to consider the appellant for promotion to the post of Subject specialist (BPS-17) w-e-f. 2009 i.e. the date when the adhoc/ contract S.S (BPS-17) have been regularized with all back benefits including seniority. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

R/SHWETH:

ON FACTS:

- 1. That the appellant is the employee of the respondent department and performing his duty as SST (BPS-16).
- 2. That in the year 2004 the respondents asked applications for the post of Subject Specialist (SS) on contract basis. That after appearing in the test conducted through EATA, the appellant was appointed on the post of S.S (BPS-17) on contract basis for a period of six months. Copies of the

advertisement and appointment order are attached as annexure.....A&B.

3. That it is pertinent to mention here that the contract period was renewed/ extended for another period vide notification dated 24-03-2006. Copy of the notification dated 24-03-2006 is attached as annexure.....C.

4. That it is worth to mention here that a notification was issued by the respondent department that in-service teachers appointed on contract basis as SS should get leave without pay and the same was granted to the appellant by the department vide order dated 15-09-2005. Copy of the order dated 15-09-2005 is attached as annexureD.

5. That it is pertinent to mention her that the entry with regard to the leave without pay was made on the service book of the appellant. Copy of the service book is attached as annexureE.

6. That after the expiry of the contract period the same was once again renewed/ extended vide notification dated 20-10-2007, but the department refused to sanction leave without pay to the appellant and thus the appellant was deprived to continue service as SS.

7. That vide advertisement dated August, 2007 the posts of SS were once again advertised but through this advertisement the in-service teachers were debarred to appear in the test, hence the appellant was also not allowed to be appointed/ selected on the post of SS on contract basis. Copy of the advertisement is attached as annexureF.

8. That it is important to mention here that before regular appointment of the contract appointees were regularized vide Notification dated 24-10-2009 and 11-12-2009 and thereby permanently depriving the appellant from appointment on contract basis on the post of SS as well as through this regularization the right of promotion of the appellant to the post of SS was also curtailed. Copies of the regularization Act dated 24-10-2009 and notification dated 11-12-2009 are attached as annexure.....G&H.

9. That appellant feeling aggrieved from the action of the respondents and from the impugned regularization dated 24-10-2009 and notification dated 11-12-2009, preferred departmental appeal followed by a writ petition No. 741-A/2010 before the August Peshawar High Court, Abbottabad Bench which was decided on 24-11-2020 with the observation that the matter pertaining to terms and conditions therefore, ***"For what has been discussed***

hereinabove, this petition is dismissed being not maintainable. However, the petitioners shall be at liberty to knock at the door of the competent forum for redressal of their grievance, if so desired." Copies of the departmental appeal, memo of writ petition and judgment dated 24-11-2020 are attached as annexureI, J &K.

10. That having no other remedy the appellant preferred the instant appeal on the following grounds amongst others.

GROUND:

- A- That by not promoting the appellant to the post of S.S (BPS-17) w-e-f 2009 i.e. the date when the adhoc/ contract S.S (BPS-17) have been regularized with all back benefits including seniority is against the law, facts, norms of natural justice and materials on the record hence not tenable and liable to be modified/rectified to the extent of the appellant be promoted w-e-f 2009 with all back benefits including seniority.
- B- That appellant has not been treated by the respondent Department in accordance with law and rules on the subject noted above and as such the respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973.
- C- That, the treatment meted out to the appellant is clearly based on discrimination and malafide and as such the respondents violated the principle of natural justice.
- D- That appellant is fully entitled to be promoted to the post of S.S (BPS-17) w-e-f 2009 i.e. the date when the adhoc/ contract S.S (BPS-17) have been regularized with all back benefits including seniority in light of the section 9 of the Khyber Pakhtunkhwa Civil Servant Act, 1973 read with the Khyber Pakhtunkhwa Civil Servant (Appointment, Promotion and Transfer) Rules, 1989.
- E- That appellant is also entitled for his promotion w-e-f 2009 with all back benefits.
- F- That respondents violated Article 38(e) of the Constitution of Islamic Republic of Pakistan 1973, according to which state is bound to eliminate disparity in the income and earning of individuals including persons in the services of the Federation, thus in light of the above quoted Article of the Constitution the respondents are duty bound to promote the appellant to the post of S.S (BPS-17) w-e-f 2009 i.e. the

date when the adhoc/ contract S.S (BPS-17) have been regularized with all back benefits including seniority.

- G- That appellant seeks permission to advance other grounds and proofs at the time of hearing.

It is therefore, most humbly prayed that the appeal of the appellant may very graciously be accepted as prayed for, please.

Dated: 08-01-2021

APPELLANT

ABDULLAH JAVED

**THROUGH:
NOOR MOHAMMAD KHATTAK**

KAMRAN KHAN

UMER FAROOQ

SHAHZULLAH YOUSAFZAI

**MIR ZAMAN SAFI
ADVOCATES**

-21-1/07

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR



Service Appeal No. 2756/2021

Date of Institution ... 27.01.2021
Date of Decision ... 02.02.2022

Mr. Abdullah Javed, SST (BPS-16) ASDEO (Male), District Haripur. (Appellant)

VERSUS

The Secretary Elementary & Secondary Education Department Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and three others. (Respondents)

Noor Muhammad Khattak, Advocate ... For Appellant

Muhammad Adeel Butt, Additional Advocate General ... For respondents

AHMAD SULTAN TAREEN ... **CHAIRMAN**
ATIQ-UR-REHMAN WAZIR ... **MEMBER (EXECUTIVE)**

JUDGMENT

ATIQ-UR-REHMAN WAZIR MEMBER (E):- This single

judgment shall dispose of instant service appeal as well as the following connected service appeals, as common question of law and facts are involved therein.

1. 2757/2021 titled Qazi Javed Iqbal
2. 2758/2021 titled Nasir Ali
3. 2759/2021 titled Qazi Behram
4. 2760/2021 titled Qazi Shaheen Iqbal
5. 2761/2021 titled Azra Bibi
6. 2762/2021 titled Qazi Sikandar

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Advocate

02. Brief facts of the case are that the appellant is employee of the respondent department and performing duty as SST (BPS-16). In the year 2004, the respondents invited applications for the post of subject specialist on contract basis and after due process of selection, the appellant was appointed as Subject Specialist (BPS-17) on contract basis for a period of six months vide order dated 10-09-2005. The contract period was renewed/extended for another period vide notification dated 24.03.2006. It is worth to mention here that a notification was issued by the respondent department that in-service teachers, who are also appointed on contract basis as SS(BPS-17) should get leave without pay from their original post of SS(BPS-16), if they want to continue their contractual appointments. The appellant applied for extra ordinary leave, which was granted to the appellant by the department vide order dated 28.02.2006. It is pertinent to mention here that the entry with regard to the leave without pay was made on the service book of the appellant. After expiry of the contract period the same was once again renewed/extended vide notification dated 20.10.2007, but the department refused to sanction leave without pay to the appellant and thus the appellant was deprived to continue service as Subject Specialist on contract basis; hence the appellant returned to his original post of SS (BPS-16). Vide advertisement dated August, 2007 the posts of Subject Specialist were once again advertised but through this advertisement the in-service teachers were debarred to appear in the test, hence the appellant was also not allowed to be appointed/selected on the post of SS on contract basis. In the meanwhile the contract appointees were regularized vide notifications dated 24.10.2009 and 11.12.2009 and thereby permanently depriving the appellant from appointment on contract basis on the post of SS as well as through this regularization the right of promotion of the appellant to the post of SS was also curtailed. The appellant feeling aggrieved from the action of the respondents and from the impugned regularization dated 24.10.2009 and notification dated 11.12.2009, preferred departmental appeal

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 Advocate

followed by a Writ Petition No. 741-A/2010 before the Honorable Peshawar High Court Abbottabad Bench which was decided vide judgment dated 24.11.2020 with the observation that the matter pertaining to terms and conditions, therefore, the petition was dismissed being not maintainable. However, the petitioners were given liberty to knock at the door of the competent forum for redressal of their grievance, if so desired, hence the appellant filed the instant service appeal with prayers that the appellant may be considered for promotion to the post of subject specialist (BPS-17) with effect from 2009 i.e. the date when adhoc/contract SS (BPS-17) had been regularized with all back benefits including seniority.

03. Learned counsel for the appellant argued that by not promoting the appellant to the post of SS (BPS-17) w.e.f. 2009 i.e. the date when the adhoc/contract S.S (BPS-17) have been regularized with all back benefits including seniority is against the law, facts, norms of natural justice and material on the record hence not tenable and liable to be modified/rectified to the extent of the appellant be promoted w.e.f. 2009 with all back benefits including seniority; the appellant has not been treated by the respondent department in accordance with law and rules on the subject noted above and as such the respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973; that the treatment meted out to the appellant is clearly based on discrimination and malafide as such the respondents violated the principle of natural justice; that the appellant is fully entitled to be promoted to the post of SS (BPS-17) w.e.f. 2009 i.e. the date when the adhoc/contract SS have been regularized with all back benefits including seniority in light of Section 9 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 read with Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989; that the respondents violated Article 38(e) of the Constitution of Islamic Republic of Pakistan, 1973, according to which state is bound to eliminate disparity in the income and earning of individuals including

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Khyber Pakhtunkhwa

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Advocate

persons in the services of the Federation, thus in light of the above quoted Article of the Constitution the respondents are duty bound to promote the appellant to the post of SS (BPS-17) w.e.f. 2009 i.e. the date when the ad-hoc/contract Subject Specialist have been regularized with all back benefits.

04. Learned Additional Advocate General appearing on behalf of respondents has contended that the respondent department advertised some posts of Subject Specialist BS-17 purely on contract basis for a period of six months in the year, 2004; that the contract was extended for further six months in the light of notification dated 24.03.2006; that as per terms and conditions in-service teachers were not allowed to apply against the post of six month contract being regular employee of the department. He added that matter was also decided by the Hon'ble Peshawar High Court Peshawar in Writ Petition No. 2905-P/2009 titled "Atta Ullah and others Versus The Chief Secretary Khyber Pakhtunkhwa etc." which was disposed of in the following terms:-

7/11/10

- (i) that the Act, XVI of 2009, commonly known as (Regularization of Services) Act, 2009 is held as beneficial and remedial legislation, to which no interference is advisable hence, upheld.
- (ii) Official respondents are directed to work out the backlog of the promotion quota as per above mentioned example, within 30 days and consider the in-service employees, till the backlog is washed out, till then there would be complete ban on fresh recruitment.

ATTESTED

JUDGE
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

05. We have heard learned counsel for the parties and have perused the record.

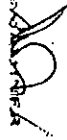
06. Record reveals that the appellant was serving as subject specialist (BPS-16) against a regular post. In 2004 some posts of subject specialists in BPS-17 were advertised and the appellant also applied for the

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Advocate

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same through proper channel and with permission of the respondents and was selected and appointed as such vide order dated 10-09-2005 for a period of six months, which was further extended for another period of six months vide order dated 24-03-2006. In the meanwhile, the respondents issued a notification dated 15-09-2005 that in-service candidates, who wish to join the contractual post of SS (BPS-17), can join the post with the condition that either they shall resign from their existing post or get leave without pay from their regular posts. In compliance the appellant requested for leave without pay, which was granted vide order dated 28-02-2006. The contractual period of the post of SS(BPS-17) was again extended for another period of six months vide order dated 20-10-2007, but the appellant was not granted leave without pay after expiry of his previous leave without pay, thus the appellant was compelled to return to his original post of SS(BPS-16). In August 2007, the posts of SS (BPS:17) were again advertised, but in-service teachers were debarred to appear in the test, but before such appointments were made, the contract appointees were regularized vide order dated 24-10-2009 and 11-12-2009.

07. In a situation, the appellant was deprived of his contractual post of SS (BPS-17) in the first place due to refusal of leave without pay, which was admissible to him as per notification dated 15-09-2005 and secondly he was deprived of regularization against that post. Stance of the appellant hold force to the effect that if he was granted leave without pay, he would have served against the contractual post of SS (BPS-17) till its regularization and he would have been regularized alongwith his batch-mates, but the respondents violated its own order dated 15-09-2005 by not granting him leave without pay. It is also worthy to note that the respondents initially allowed in-service teachers to work against the contractual post of SS(BPS-17) either to obtain leave without pay or resign from their original post and later on refused the same facility without


 of the Appellant
 Khyber Pakhtunkhwa
 Educational Commission

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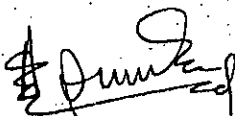
-26- 8/12


supersession of order dated 15-09-2005, which however was not warranted.

08. We are of the considered opinion that the appellant has not been treated in accordance with law, as the appellant served against the contractual post of SS (BPS-17) alongwith his batch-mates for quite longer but just before its regularization, the appellant was refused leave without pay, which compelled him to return to his original position of SS(BPS-16), thus deprived him of the benefits, which were admissible to him after his regularization against SS (BPS-17) on the one hand and on the other hand the appellants promotion/seniority was also blocked by inducting huge number of BPS-17 through their regularization. The irregularity committed by the respondents was refusal of leave without pay, which however was admissible to him under notification dated 15-09-2005 and which created the whole mess, due to which the appellant suffered for the unlawful act of the respondents. Equity and fair play demands that the appellant must avail the benefits accrued to him against the contractual post of SS (BPS-17), which was later on regularized and against which the appellant served for quite longer time, but was illegally detached from such post, which however was not warranted.


09. In view of the foregoing discussion, the instant appeal as well as connected service appeals are accepted as prayed for. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
02.02.2022


(AHMAD SULTAN TAREEN)
CHAIRMAN


(ATIQ-UR-REHMAN WAZIR)
MEMBER (E)

Certified to be true copy


EXAMINER
Khyber-Pakhtunkhwa
Tribunal

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Advocate

To

"F" - 27-

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

Through Proper Channel

Subject: DEPARTMENTAL APPEAL AGAINST THE IMPUGNED INACTION BY NOT PROMOTING THE APPELLANT TO THE POST OF S.S (BPS-17) W-E-F 2009 I.E. FROM THE DATE WHEN THE ADHOC/ CONTRACT SUBJECT SPECIALIST HAVE BEEN REGULARIZED.

Respected Sir,

1. That the appellant is the employee of the respondent department and performing his duty as SST (G) (BPS-16).
2. That in the year 2004 the respondents invited applications for the post of Subject Specialist (SS) on contract basis whereafter the appellant applied for the said post. That after appearing in the test conducted through EATA and after successfully passing the exam and other codal formalities, the appellant was appointed on the post of S.S (BPS-17) on contract basis for a period of six months and was subsequently appointed as SS Islamiyat (BPS-17) at GHSS Butyal, Shangla post vide order dated 10.09.2005.
3. That astonishingly vide para No.10 of the terms and condition of the appointment order issued by the respondent department stated that candidates already in service cannot join the post of SS (BPS-17) and the concerned District Education Officer also refused to take charge of the appellant.
4. That it is important that the advertisement issued by the respondent department for the post of SS (BPS-17) did not mention that in-service candidates shall not be allowed to join the said post.
5. That it is pertinent to mention here that the colleagues of appellant already in service after successfully passing the same exam were appointed against the post of SS (BPS-17) and their contract period was renewed/ extended few times by the respondent department and later on they were regularized vide regularization Act, 2009.
6. That by introducing the Act ibid some of the colleagues of the appellant who were not allowed any more to perform their duty under the pretext of term and condition No. 10, knocked the door of the Honorable Peshawar High Court Abbottabad Bench in writ petition No.741-A/2010 which was decided vide judgment dated 24.11.2020 with the observation that the matter pertaining to terms and condition, therefore the petition was dismissed -being not

maintainable, however the petitioners were given liberty to knock at the door of the competent forum for redressal of their grievance.

7. That colleagues of the appellant then filed appeals before this Honorable tribunal and that were decided vide judgment dated 02.02.2022 in appeal No. 2756/2021.

GROUNDS:

- A- That by not promoting the appellant to the post of S.S (BPS-17) w-e-f 2009 i.e. the date when the adhoc/contract S.S (BPS-17) have been regularized with all back benefits including seniority is against the law, facts, norms of natural justice and materials on the record hence not tenable and liable to be modified/rectified to the extent of the appellant be promoted w-e-f 2009 with all back benefits including seniority.
- B- That appellant has not been treated by the respondent Department in accordance with law and rules on the subject noted above and as such the respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973.
- C- That appellant is fully entitled to be promoted to the post of S.S (BPS-17) w-e-f 2009 i.e. the date when the adhoc/ contract S.S (BPS-17) have been regularized with all back benefits including seniority in light of the section 9 of the Khyber Pakhtunkhwa Civil Servant Act, 1973 read with the Khyber Pakhtunkhwa Civil Servant (Appointment, Promotion and Transfer) Rules, 1989.
- D- That appellant is also entitled for his promotion w-e-f 2009 with all back benefits.

It is therefore most humbly prayed that on acceptance of this departmental appeal the appellant may please be promoted to the post of S.S (BPS-17) w-e-f 2009 i.e. from the date when the adhoc/ contract have been regularized with all back benefits.

Dated: 14/12/2022

Yours Obediently

FAZAL-E-MANAN

SST (BPS-16),

GHS Dard Pura, District Shangla.

VAKALATNAMA
BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

APPEAL NO: _____ OF 20__

Fazal-E-Manan.

(APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

Govt Deptt.

(RESPONDENT)
(DEFENDANT)

I/We Appellant

Do hereby appoint and constitute **Noor Mohammad Khattak Advocate Supreme Court** to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate Counsel on my/our cost. I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter.

Dated. ____/____/202

CLIENT

ACCEPTED

NOOR MOHAMMAD KHATTAK
ADVOCATE SUPREME COURT
(BC-10-0853)
(15401-0705985-5)

KAMRAN KHAN

UMAR FAROOQ MOHMAND

WALEED ADNAN

&

MUHAMMAD AYUB
ADVOCATES

OFFICE:

Flat No. (TF) 291-292 3rd Floor,
Deans Trade Centre, Peshawar Cantt.
(0311-9314232)

VAKALATNAMA
BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

APPEAL NO: _____ OF 20__

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