

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.**

BEFORE: **KALIM ARSHAD KHAN ... CHAIRMAN**
SALAH UD DIN ... MEMBER (Judicial)

Service Appeal No.12780/2020

Date of presentation of appeal.....12.10.2020
Dates of Hearing.....07.03.2023, 08.03.2023 and 14.03.2023
Date of Decision.....14.03.2023

Shams un Nehar, (daughter of Bashir Ahmad) Arabic Teacher (AT)
resident of House No.646/C Mohallah Jewan Singh District Bannu.
.....*Appellant*

Versus

1. **Government of Khyber Pakhtunkhwa through Secretary Education** Khyber Pakhtunkhwa Education, Civil Secretariat, Peshawar.
2. **Director Education**, Khyber Pakhtunkhwa, Peshawar.
3. **District Education Officer (Female)**, Bannu.
4. **District Accounts Officer**, Bannu.
5. **Shazia Bibi** daughter of Asal Jan Arabic Teacher posted at GGHS Kotkha Bilawar Khan Bannu (deleted vide order 07.03.2023)
.....*(Respondents)*

Present:

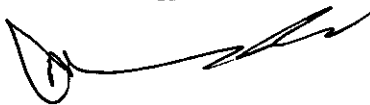
Mr. Masood ur Rehman Wazir,
Advocate.....For the appellant.

Muhammad Adeel Butt,
Additional Advocate GeneralFor respondents
(on 07.03.2023 & 08.03.2023) and

Fazal Shah Mohmand
Additional Advocate General and

Muhammad Jan District Attorney.....For Respondents
(on 14.03.2023)

Respondent No.3 District Education Officer (Female), Bannu
on court notice on 14.03.2023.



SCANNED
KPSGT
Peshawar

Service Appeal No.12781/2020

Date of presentation of appeal.....12.10.2020
Dates of Hearing.....07.03.2023, 08.03.2023 and 14.03.2023
Date of Decision.....14.03.2023

Romana Bashir, (daughter of Bashir Ahmad)Theology Teacher (TT)
resident of House No.646/C Mohallah Jewan Singh District Bannu.
.....**Appellant**

Versus

1. **Government of Khyber Pakhtunkhwa through Secretary Education** Khyber Pakhtunkhwa Education, Civil Secretariat, Peshawar.
2. **Director Education**, Khyber Pakhtunkhwa, Peshawar.
3. **District Education Officer (Female)**, Bannu.
4. **District Accounts Officer**, Bannu.
5. **Fozia Aslam** daughter of Muhammad Theology Teacher posted at GHS No.3 Bannu (deleted vide order 07.03.2023)
.....**(Respondents)**

Present:

Mr. Masood ur Rehman Wazir, Advocate.....For the appellant.

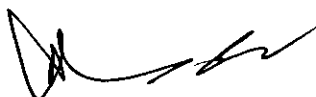
Muhammad Adeel Butt,
Additional Advocate GeneralFor respondents
(on 07.03.2023 & 08.03.2023) and

Fazal Shah Mohmand
Additional Advocate General and

Muhammad Jan District Attorney.....For Respondents
(on 14.03.2023)

Respondent No.3 District Education Officer(Female) Bannu
on court notice on 14.03.2023.

**APPEALS UNDER SECTION 4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974
AGAINST FOR GRANT OF SENIORITY/ARREAR OF PAY
AND OTHER BENEFITS WITH EFFECT FROM
07.10.2010 TO 19.07.20219 WHICH WERE GRANTED TO
RESPONDENT NO.5 ALONG WITH OTHER TEACHERS
WHO WERE APPOINTED AND DENIED TO THE
APPELLANT THEREFORE DISCRIMINATORY AND**



VIOLATIVE OF ARTICLE 25 OF CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN, 1973

CONSOLIDATED JUDGMENT

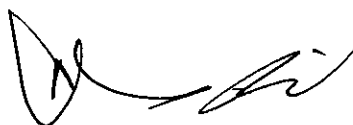
KALIM ARSHAD KHAN CHAIRMAN: Through this judgment, this appeal and the connected service Appeal No.12781/2020 titled "*Romana Bashir versus the Government of Khyber Pakhtunkhwa and others*", both are being decided as the issue involved in both the appeals is the same with same facts and circumstances, therefore, can be conveniently decided together.

2. According to the memoranda and grounds of appeals, in response to the advertisement dated 24.04.2010, the appellants submitted applications for appointment on different posts; appeared in the test and interview but were dropped from appointment due to the appointments, made on 07.10.2010, of the persons with fake degree and accommodation of less merit candidates on political intervention; that the appellants filed writ petitions No.454/2016 and 449/2016 in the Peshawar High Court, which were decided on 09.05.2017 vide consolidated judgment directing to terminate all the bogus certificate holders and appoint the appellants and others on merit; that against the judgment CPLAs No.2022, 2023, 2024, 2383, 2384, 2491, 2844 & 2845 of 2017 were filed by the aggrieved persons before the Supreme Court of Pakistan, which directed the official respondents to give seniority; that on 19.07.2019, the appellants along with others were appointed as Arabic Teacher and Theology Teacher denying them the seniority and other benefits, which were extended to the private



respondents and others; that the appellants and those, who were given seniority and other benefits, were appointed on the basis of the same advertisement and merit list, so the appellants made departmental representations on 15.06.2020 respondent No.1 but those were not decided compelling the appellants to file these appeals.

3. On receipt of the appeals and admission to full hearing, the respondents were summoned. Respondents put appearance and contested the appeals by filing written replies raising therein numerous legal and factual objections. The defence setup was a total denial of the claim of the appellant. While not denying the fact that the appellants had applied for the posts against the advertisement made on 24.04.2010 together with those who are placed above the appellants, it was contended by the official respondents that the appellants had been dropped due to less merit score; that they were appointed on 19.07.2019 as fresh candidates because the process, which was completed in 2010, at that time the appellants failed in the written test; that the appellants were treated in accordance with law and policy and as per judgment of Supreme Court of Pakistan passed in CPLA No.2022 dated 07.03.2018, wherein it was clearly ordered that the service they rendered in the past be counted, consequently service of the appellant Shams un Nehar was counted but she illegally maneuvered to draw arrears, without proper procedure by affixing fake signatures of the DDO illegally and her monthly salary was stopped due to fake signatures; while in the case of the appellant Romana Bashir it was contended that she was not aggrieved because previously she was in service as government teacher before her fresh



appointment and that in the light of judgment of Supreme Court in CPLA No.2022/2016, seniority was given to only those teachers who had no service at their credit before fresh appointment.

4. We have heard learned counsel for the appellants and learned Additional Advocate Generals, learned District Attorney for the respondents and the District Education Officer (Female) Bannu.

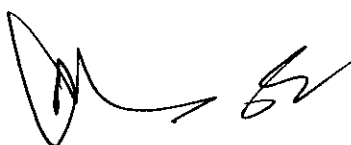
5. The Learned counsel for the appellants reiterated the facts and grounds detailed in the memos and grounds of the appeals while the learned law officers refuted the same.

6. There is no ifs ands or buts about the fact that the appellants had applied in response to the advertisement dated 24.04.2010 and in compliance with the judgment of the Supreme Court of Pakistan delivered in CPs. No.2022, 2023, 2024, 2383, 2384, 2491, 2844 & 2845 of 2017 handed down on 07.03.2018, the process of selection was started afresh, wherein both the appellants were selected and consequently appointed. It is the case of the appellants that they should be extended the same benefits which were extended to the private respondents. It is important enough to mention here that private respondents in both the appeals were arrayed only for the purpose to rely on their case to seek similar treatment. They were neither necessary nor proper parties, therefore, their names were deleted. The official respondents contended that the appellant Shams un Nehar got some financial benefits through illegal means, which she was not otherwise



entitled while the appellant Romana Bashir was in the government service before her appointment as TT, therefore, she was also not entitled to financial benefits. Regarding the alleged illegal financial gain by the appellant Shams un Nehar, the department is always at liberty to take disciplinary action while the contention of the respondents that the appellant Romana Bashir being already in government service was also not entitled to the relief prayed by her as according to the judgment of the Supreme Court seniority could be granted to only those teachers who were previously serving and the appellant Romana Bashir was not previously serving. This contention seems misconceived, vague and self-confusing. Yes, it can be tenable to the extent of grant of financial benefits to the appellant Romana Bashir, who undeniably being in the government service prior to the instant one, and she was duly being paid but as regards the question of determination of seniority of both the appellants or for that matter the persons selected in one combined competitive examination, they will squarely be belonging to the same batch and their inter se seniority was necessarily to be determined in accordance with their respective orders of merit prepared by the selection authority, as required by section-8 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 and rule 17 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Transfer and Promotion) Rules, 1989. Both the provisions are reproduced as under:

"8. Seniority:- (1) For proper administration of a service, cadre or [post], the appointing authority shall cause a seniority list of the members for the time being of such service, cadre or [post] to be prepared, but nothing herein contained shall be construed to confer any vested right to a particular



seniority in such service, cadre or [post] as the case may be.

(2) Subject to the provisions of sub-section (1), the seniority of a civil servant shall be reckoned in relation to other civil servants belonging to the same service or 6 [cadre] whether serving the same department or office or not, as may be prescribed.

(3) Seniority on initial appointment to a service, [cadre] or post shall be determined as may be prescribed.

(4) Seniority in a post, service or cadre to which a civil servant is promoted shall take effect from the date of regular appointment to that post; Provided that civil servants who are selected for promotion to a higher post in one batch shall, on their promotion to the higher post, retain their inter-seniority as in the lower post.

(5) The seniority lists prepared under sub-section(1), shall be revised and notified in the official Gazette at least once in a calendar year, preferably in the month of January."

"17. Seniority :-(1) the seniority inter se of civil servants (appointed to a service, cadre or post) shall be determined:-

(a) in the case of persons appointed by initial recruitment, in accordance with the order of merit assigned by the Commission [or as the case may be, the Departmental Selection Committee;] provided that persons selected for appointment to post in an earlier selection shall rank senior to the persons selected in a later selection; and

(b)

Explanation-I:-.....

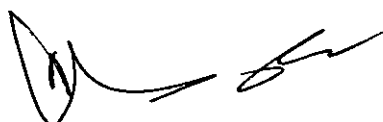
Explanation-II:-.....

Explanation-III:-.....

(2)

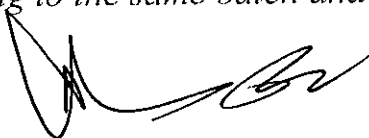
(3)

(4)



The appellants have been initially appointed, therefore, the official respondents were bound to determine their seniority by following the provisions of section 8 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 and rule 17 (1) (a) of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, which, as the record reflects or/and the facts and circumstances brought before us, was never done rather the respondents seem to have acted under a total misconceived stance that the appellants had initially failed in 2010 and others were appointed and that they were freshly appointed after their selection in the fresh process conducted on the direction of the Supreme Court. From every stretch of imagination, the appellants were selected in the same selection process having appeared in the examination and interview in response to the advertisement of 2010, wherein the private respondents and others had been selected, therefore, under the above provisions of law and rules, their seniority had to be determined accordingly as the determination and fixation of seniority other than the above two provisions would be totally contrary to the law & rules as well as against this long and well settled principles and doing that would also be a sort of self-designed noval introduction of determination of seniority on initial appointment. Such an exercise having no place in the law cannot sustain. We are fortified by the following pronouncements.

- i. *2002 SCMR 889 titled "Government of NWFP through Secretary Irrigation and 4 others", wherein the august Supreme Court of Pakistan was pleased to have observed that Appointments made as a result of selection in one combined competitive examination would be deemed to be belonging to the same batch and notwithstanding*



recommendation made by the Public Service Commission in parts, the seniority inter se. the appointees, of the same batch, would be determined in the light of merit assigned to them by the Public Service Commission.

- ii. 2002 PLC(CS) 780 titled "Shafiq Ahmad and others versus the Registrar Lahore High Court and others" wherein it was found that the If the civil servants despite having been declared successful earlier by the Commission, were not appointed at relevant time they could not be made to suffer-- Appointment and seniority were entirely two different things and delayed appointment of the civil servants could not affect their right to seniority in accordance with the rules."*
- iii. The above judgment was affirmed by the august Supreme Court of Pakistan in PLJ 2002 SC 234 titled "Muhammad Amjid Ali and others versus Shafiq Ahmad and others" by holding that "Seniority. The seniority inter se of the members of the Service in the various grades thereof shall be determined-*

(a) in the case of members appointed by initial recruitment, in accordance with the order of merit assigned by the Commission provided that persons selected for the Service in an earlier selection shall rank senior to the persons selected in a later selection;"

13. Respondents Nos. 1 to 5 were candidates in the Competitive Examinations held in 1988 and 1989 and were taken from the merit list prepared as a result of competitive examination, 1987, therefore, there can be no cavil with the proposition that they belong to 1988 batch and their seniority is to be determined accordingly. It will be pertinent to mention here that the appeal before the Tribunal was not seriously contested by the Appointing Authority, namely, the Lahore High Court in view of its stance taken at the stage of preparation of the seniority list of the parties by the Government of the Punjab that the contesting respondents apparently belonged to 1988 batch.



14. Acceptance of the offer of appointment against future vacancies by the respondents being traceable to the observations made in the judgment passed in the Intra-Court Appeal can have no bearing on the question of their seniority. Similarly the matter had become past and closed only to the extent of appointment of the respondents as Civil Judges against future posts and the question of their seniority remained open.

iv. PLC 1993 (CS) 116 titled M. Tahir Rasheed versus Secretary Establishment Division, Islamabad and others, wherein the Federal Service Tribunal held that Inter se seniority of candidates at one selection was to be determined on the basis of merit assigned to the candidates by the Public Service Commission/Selection Committee in pursuance of general principles of seniority and not the dates of joining duty.

7. We have been informed that certain persons had allegedly filed writ challenging the appointments of the appellants and others but that would have no affect on the decision of these appeals as those are said to be regarding appointments and even if those are decided in favour of the Petitioners, that would be acted accordingly and the seniority being entirely different thing would only be affected in case the writ petitioners or any of them are found above the appellants in the merit list. In that eventuality the department would proper revised seniority list accordingly.

8. Therefore, these appeals are allowed. The seniority of the appellants is directed to be fixed in accordance with their respective merit orders as assigned by the selection authority. We direct that the costs of the appeals shall follow the result. Copy of this judgment be placed in the connected



appeal No.12781/2020 titled "Romana Bashir versus Government etc".

Consign.

9. *Pronounced in open Court at Peshawar and given under our hands*

and the seal of the Tribunal on this 14th day of March, 2023.



KALIM ARSHAD KHAN
Chairman



SALAH UD DIN
Member (Judicial)

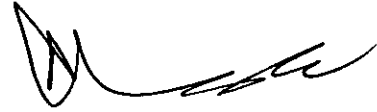
ORDER

14th March, 2023

1. Learned counsel for the appellant present. Mr. Fazal Shah Mohmand, Addl: AG, Mr. Muhammad Jan, District Attorney alongwith DEO (Female) Bannu (respondent No. 3) for the respondents present.

2. Vide our detailed judgement of today placed on file, these appeals are allowed. The seniority of the appellants is directed to be fixed in accordance with their respective merit orders as assigned by the selection authority. We direct that the costs of the appeals shall follow the result. Copy of this judgment be placed in the connected appeal No.12781/2020 titled "Romana Bashir versus Government etc". Costs shall follow the event. Consign.

3. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 14th day of March, 2023.*



(Kalim Arshad Khan)
Chairman



(Salah Ud Din)
Member(Judicial)