

Diary No. 485

Dated 13/4/2023

Ph: 9214461  
Fax: 9220406

REGISTERED  
No. C.P. 570-P,579-P/2016 - SCJ  
**SUPREME COURT OF PAKISTAN**

Islamabad, dated 06-03 2023

From The Registrar,  
Supreme Court of Pakistan,  
Islamabad.

To The Registrar,  
K.P.K. Service Tribunal,  
Peshawar.

Subject: CIVIL PETITION NOS. 570-P AND 579-P OF 2016

Govt. of K.P. through Chief Secretary, Peshawar & others

(in C.P.570-P/2016)

(in C.P.579-P/2016)

Versus

Nilofar Begum

(in C.P.570-P/2016)

Mst. Saira Gul & others

(in C.P.579-P/2016)

On appeal from the Order/Judgment of the K.P.K. Service Tribunal,  
Peshawar dated 02/09/2016 in Appeal.743/2013,468/2013

Dear Sir,

I am directed to enclose herewith a certified copy of the Order of this  
Court dated 25/01/2023 dismissing the above cited cases in the terms stated therein for  
information and further necessary action.

Please acknowledge receipt of this letter along with its enclosure  
immediately.

Encl: Order:

*Saw*  
*13/3/23*

Yours faithfully,

*Muhammad*

(MUHAMMAD MUJAHID MEHMOOD)  
ASSISTANT REGISTRAR (IMP)  
FOR REGISTRAR

*As the enclosed.*

*Fawaz*  
*17/3/23*

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**Bench-V:**

Mr. Justice Syed Mansoor Ali Shah  
Mrs. Justice Ayesha A. Malik

**C.P.570-P/2016 and C.P.579-P/2016**

*(Against the judgment of Khyber Pakhtunkhwa Service Tribunal dated 02.09.2016 passed in Service Appeal Nos.468 and 473 of 2013)*

Govt. of K.P. through Chief Secretary, Peshawar, etc.

..... **Petitioner(s)**

**Versus**

Nilofar Begum (In CP 570-P/2016)  
Mst. Saira Gul, etc. (In CP 579-P/2016)

....**Respondent(s)**

For the petitioner(s): Mr. Muhammad Sohail, AAG.  
a/w Eid Muhammad, Assistant  
(Through V.L. Peshawar Registry)


For the respondent(s): N.R.

Date of hearing: 25.01.2023

**ORDER**

**Syed Mansoor Ali Shah, J.**- Brief facts of the case are that respondents were recommended by the Khyber Pakhtunkhwa Public Service Commission ("**Commission**") for the post of Secondary School Teacher (SST Sc) BS-16 vide recommendation letter dated 20.12.2011. Thereafter, the respondents were appointed vide Notification dated 28.12.2011. Almost after a year on 13.12.2012 the Commission withdrew the recommendations given in favour of the respondents "due to some official mistake" and as a result the concerned department was requested by the Commission to return the applications of the respondents. Consequent upon the withdrawal of the recommendations the department also withdrew the appointment of respondents vide order dated 17.12.2012. The said withdrawal was challenged by the respondents before the Khyber Pakhtunkhwa Service Tribunal ("**Tribunal**"), and the said withdrawal was set aside through the impugned judgment.


**ATTESTED** 

  
**Court Associate**  
**Supreme Court of Pakistan**  
Islamabad

2. We have examined the Khyber Pakhtunkhwa Public Service Commission Ordinance, 1978 ("**Ordinance**"), the Khyber Pakhtunkhwa Public Service Commission (Functions) Rules, 1983 ("**Rules**") and the Khyber Pakhtunkhwa Public Service Commission Regulations 2003 ("**Regulations**"). Under Regulation 35 of the Regulations, the Commission after conducting the test and examination sends its recommendations for appointment of the candidates to the concerned department. On receipt of the recommendations, the concerned department enjoys the authority to make appointments in accordance with law. However, once the recommendations have been dispatched by the Commission to the concerned department, the Commission becomes *functus officio* and cannot revisit, re-examine, alter or withdraw its recommendations already sent to the concerned department as there is no such power available with the Commission under the Ordinance, Rules or Regulations mentioned above.

3. In the instant case, after almost a year on 13.12.2012, the Commission allegedly detected some "official mistake" in the tabulation of its recommendations sent to the department and decided to unilaterally withdraw the recommendations of the respondents. Relying on the said withdrawal of recommendations, the department withdrew the appointments of the respondents vide notification dated 17.12.2012. Firstly, the recommendations could not have been withdrawn by the Commission as no such power is vested in the Commission under the Ordinance, Rules or Regulations. Secondly, the Commission after having dispatched the recommendations became *functus officio* and could not revisit its earlier recommendations. The Commission at best could have informed the concerned department regarding the "official mistake" in the recommendations sent earlier and it would have been for the department to probe into the matter and satisfy itself if such a mistake had a material bearing on the appointment of the candidates and, if so, to initiate proceedings against the respondent. No such process was adopted in the instant case. The Commission simply withdrew its recommendations and the department without carrying out any probe or issuing any notice to the respondents withdrew the appointments of the respondents with a single stroke of pen offending the constitutional guarantee of due process and fair trial under

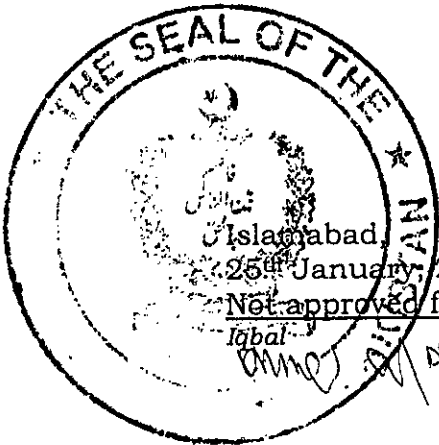
ATTESTED 

  
Court Associate  
Supreme Court of Pakistan  
Islamabad

Article 4 and 10A of the Constitution. It was in this background that the Tribunal granted the relief to the respondents and set aside the withdrawal of their appointments. For these reasons, we are not persuaded to interfere in the impugned judgment. However, if the department is convinced after carrying out the probe in the matter that a mistake had taken place in the recommendations that offends the merits and eligibility of the respondents, the department may, if so advised, initiate departmental proceedings after issuing them show cause notice.

4. These petitions are dismissed with the above observations. Leave refused.

scj - - - - - J  
scj - - - - - J



Not approved for reporting  
Islamabad

Certified to be True Copy

*[Signature]*  
Court Associate  
Supreme Court of Pakistan  
Islamabad