

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
AT CAMP COURT SWAT.**

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

Service Appeal No.6701/2019

Date of presentation of appeal.....01.07.2023
Dates of Hearing.....03.04.2023
Date of Decision.....03.04.2023

**Abdul Ahad S/o Abdul Ghani, STT Government High School
Duresh Khela Tehsil Matta, District Swat.**

.....*Appellant*)

Versus

1. **Government of Khyber Pakhtunkhwa** through Secretary Elementary & Secondary Education, Peshawar.
2. **Director** Elementary & Secondary Education Khyber Pakhtunkhwa, Peshawar.
3. **District Education Officer (Male)** Saidu Shairf, Swat.
4. **Zia Ullah, SST GHS Labat Tehsil Matta, Swat.**

.....*(Respondents)*

Present:

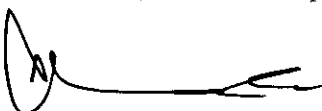
Mr. Akhtar Saeed,
Advocate.....For appellant.

Mr. Fazal Shah Mohmand,
Additional Advocate General.....For respondents

**APPEAL UNDER SECTION 4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974.**

JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: According to the memorandum and grounds of appeal, the appellant was appointed as Theology Teacher in the year 2005; that various posts of Senior Theology Teachers (BPS-16) fell vacant in District Swat, which were to be filled by way of promotion amongst the Theology Teacher; that consequent upon the recommendation of the Departmental Promotion



committee, the appellant alongwith 53 others teachers were promoted as Senior Theology Teacher (BPS-16) vide order dated 27.02.2013; that the respondent/ department had circulated seniority list whereby the appellant was enlisted at serial No. 60 of the said list, on the other hand, junior teachers in terms of qualification and age were placed senior to the appellant; that the appellant feeling aggrieved of the said seniority list filed departmental appeal to respondent No.2 on 22.03.2021, which was not responded within the statutory period of ninety days compelling him to file this appeal.

2. On receipt of the appeal and its admission to full hearing, the respondents were summoned. Respondents put appearance and contested the appeal by filing written reply raising therein numerous legal and factual objections. The defence setup was a total denial of the claim of the appellant.

3. We have heard learned counsel for the appellant and learned Additional Advocate General for the respondents.

4. The Learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned Additional Advocate General controverted the same by supporting the impugned order(s).

5. The appellant contends that he was to rank senior to respondent No. 4 and 5 on the pretext that the years of birth of the appellant was 1969 while that of the respondent No. 4 and 5 were 1980 and 1973 respectively. Similarly the appellant has assumed the charge of the post on 27.03.2005 and so did respondent No.5 while respondent No. 4 assumed the post on 29.03.2005; that in terms of academic



qualification the appellant had preference even the private respondent no.5, therefore, he ought to have been senior to the private respondent.

6. It is submitted by the learned Additional Advocate General that initially appointment of the appellant and others was though through the prescribed procedure but was on contract basis made vide office order (Annexure-A). The learned Additional Advocate General further assisted that on amending the Khyber Pakhtunkhwa Civil Servant Act, 1973 in the year 2005 especially Section-19(4) the persons appointed to the service or post on or after the 1st July 2001 till 23rd July, 2005 on contract basis would be deemed to have been appointed on regular basis. When the appellant and others appointed at that time were deemed to have been regularly appointed their seniority was to be determined under Section-8 of the Khyber Pakhtunkhwa Civil Servant Act, 1973 read with Rule-17 of Khyber Pakhtunkhwa (Appointment, Promotion and Transfer) Rules 1989. Rule-17-A is relevant and is reproduced as under:-

"In the case of persons appointed by initial recruitment, in accordance with the order of merit assigned by the Commission ²[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".

7. The above provision requires that the inter-se-seniority of the persons appointed through initial recruitment had to be determined in accordance with the merit assigned by the authority the respondents in para-5 of the reply of the fact has also taken the same stance by mentioning the marks obtained by the appellant as well as by private respondents. According to that and on perusal of the initial appointment order it reveals that the appellant had secured 63.37 marks, respondent No.4 secured 65.16 marks and respondent No.5 secured 68.15 marks, therefore, the



appellant has rightly been placed below the respondents in order of merit as per the merit position assigned by the selection authority, rendering this appeal groundless, which is accordingly, dismissed with costs. Costs shall follow the events. Consign.

8. *Pronounced in open Court at Swat and given under our hands and the seal of the Tribunal on this 3rd day of April, 2023.*



KALIM ARSHAD KHAN
Chairman
Camp Court Swat



SALAH UD DIN
Member (Judicial)
Camp Court Swat

***Adnan Shah, PA*