

17th April, 2023

1. Counsel for the appellant present. Mr. Muhammad Jan, District Attorney alongwith Mr. Muhammad Zahid Khan, SDEO for the respondents present.

2. Arguments heard. Learned senior counsel for the appellant wants to make some more submission. He may do make on 08.05.2023 before the D.B. P.P given to the parties.

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(Fareeha Paul)
Member (E)

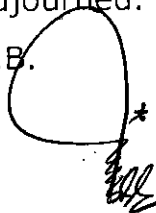

(Kalim Arshad Khan)
Chairman

**Adnan Shah, P.A.

19.09.2022

Clerk of learned counsel for the appellant present. Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present.

Learned Member (Judicial) Mr. Salah-ud-Din is on leave, therefore, arguments could not be heard. Adjourned. To come up for arguments on 29.11.2022 before the D.B.


(Mian Muhammad)
Member (Executive)

29.11.2022


Due to rush of work. This case has been deleted. To come up for the same as before on 20.02.2023.

Cyaf.
Reader.

20.02.2023

Appellant present in person. Naseer Ud Din Shah, Learned Assistant Advocate General for the respondents present.


Mrs. Rozina Rehman, Learned Member (Judicial) is on leave, therefore, case is adjourned to 17.04.2023 for arguments before D.B.


(Muhammad Akbar Khan)
Member (E)

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07.02.2022

Due to retirement of the Hon'able Chairman, the case is adjourned to 18.04.2022 before S.B for the same.


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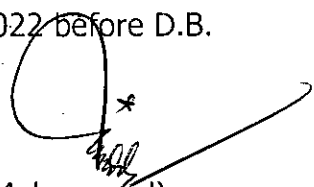
18.04.2022

Counsel for the appellant present. Mr. Asif Masood, Dy: District Attorney alongwith Mr. Wisal Khan, ADEO for respondents present. Preliminary arguments heard.

In pursuance of the order sheet dated 10.12.2021, reply/para-wise comments on behalf of respondent No.2 and 3 submitted whereas reply/comments in respect of respondent No.1, as per statement of representative of the department, are not required. Learned counsel for the appellant pointed out that similar nature connected cases have already been provisionally admitted and are fixed for regular hearing before D.B. He therefore, requested that it may also be posted for D.B on the same date.

*Rs-500/-
Appellant Deposited
Security & Process Fee
Atuff with
19/4/22*

The appeal is admitted for regular hearing subject to all just legal objections. The appellant is directed to deposit security and process fee within 10 days. To come up for arguments on 11.05.2022 before D.B.


(Mian Muhammad)
Member(E)



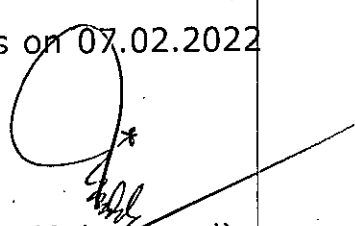
11-5-22 Proper DB not available the case is adjourned on 25-7-22

*that
proper DB not available to come up
for the same as before on 19-9-22
Rind*

Form- A
FORM OF ORDER SHEET

Court of _____

Case No.- 7556 /2021

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	06/10/2021	<p>The appeal of Mr. Bacha Khan presented today by Mr. Mir Zaman Safi Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-		<p>This case is entrusted to S. Bench at Peshawar for preliminary hearing to be put up there on <u>10/12/21</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
	10.12.2021	<p>Learned counsel for the appellant present. Preliminary arguments heard.</p> <p>As there is no original or appellate order to have been issued and assailed in the instant appeal, it is therefore deemed appropriate to issue pre-admission notices to the respondents for submission of reply on the next date. To come up for reply and preliminary arguments on 07.02.2022 before S.B.</p> <p style="text-align: right;"> (Mian Muhammad) Member (E)</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. 2556 /2021

BACHA KHAN

VS

EDUCATION DEPTT:

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APPELLANT

THROUGH:


MIR ZAMAN SAFI
ADVOCATE

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. _____/2021

Mr. Bacha Khan, SCT (BPS-16),
GHS Soor Kamar, District Charsadda APPELLANT

VERSUS

- 1- The Government of Khyber Pakhtunkhwa through Secretary (E&SE) Department, Khyber Pakhtunkhwa, Peshawar.
 - 2- The Director (E&SE) Department, Khyber Pakhtunkhwa, Peshawar.
 - 3- The District Education Officer (M), District Charsadda.
- RESPONDENTS

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE INACTION OF THE RESPONDENTS BY NOT GRANTING/ALLOWING PROMOTION TO THE APPELLANT TO THE POST OF SECONDARY SCHOOL TEACHER (BPS-16) FROM THE DATE WHEN THE PROMOTION QUOTA WAS FILLED BY THE RESPONDENTS THROUGH INITIAL RECRUITMENT OR FROM THE DATE OF COMMENCEMENT OF THE ACT NO.XVI OF 2009 COMMONLY KNOWN AS REGULARIZATION OF SERVICES ACT, 2009 NOTIFIED IN THE OFFICIAL GAZETTE ON 24.10.2009 WITH ALL BACK BENEFITS INCLUDING SENIORITY AND AGAINST NOT TAKING ACTION ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS

PRAYERS:

That on acceptance of this appeal the respondents may kindly be directed to consider the appellant for promotion to the post of Secondary School Teacher (BPS-16) from the date when the promotion quota have been filled by the respondents through initial recruitment or from the date of Commencement of the Act No.XVI of 2009 commonly known as Regularization of Services Act, 2009 Notified in the official gazette on 24.10.2009 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/SHEWETH:

ON FACTS:

Brief facts giving rise to the present appeal are as under:-

- 1- That initially the appellant was appointed as CT in the respondents Department vide order dated 15.12.1994. Copies of the appointment order is attached as annexure A.
- 2- That during service as certified teacher the appellant was in the promotion zone to the post of SST (BPS-16) but the respondents instead promoting the appellant advertised the said posts of SST (BPS-16) on adhoc/contract basis. Copy of the advertisement is attached as annexure B.

That under protest the appellant and his colleagues applied for the said post through initial recruitment but the same was also refused to the appellant and colleagues of the appellant on the pretext that regular employees are not entitled to apply for the adhoc/contract posts of SST (BPS-16), thus appellant and his colleagues were deprived from prospects of promotion. That it is pertinent to mention that at the time of above mentioned advertisement the post/cadre of C.T (BPS-15) to which the appellant belongs have no prospects of promotion.

4- That in light of the said advertisement new appointments were made by the respondents on adhoc basis and even the promotion quota was also filled by the respondents through initial recruitment.

5- That in the meanwhile the Provincial Government Promulgated the employee's regularization Act, 2009 whereby all the adhoc employees who were appointed as SST on temporary basis were regularized thus further affected the cadre to which the appellant belongs. That the promotion quota for which the appellant and his colleagues have waited for decades has been washed by operation of the said Act of 2009. Copy of the Act is attached as annexure C.

6- That feeling aggrieved some colleagues of the appellant knocked the door of the Peshawar High Court through various writ petitions. That vide consolidated judgments dated 26.1.2015 the said writ petitions were disposed of with the directions that:

(i)- 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 thirty days and consider the in service employees, till the backlog is washed out, till then there would be complete ban on fresh recruit.

Copy of the Judgment is attached as annexure D.

7- That the respondents assailed the said judgment of the august Peshawar High Court Peshawar in CPLAS No.127-P to 129-P/2015 but the same were dismissed as withdrawn vide judgment dated 20.9.2017. That then after the appellant and his colleagues time and again visited the respondents for their promotion to the next higher scale but the respondents instead of redressing the grievance of the appellant and his colleagues advertised the posts through initial recruitment through various advertisements. Copies of the judgment and advertisements are attached as annexure E & F.

8- That it is pertinent to mention that during service the appellant was allowed promotion to the post of Senior Certified Teacher (BPS-16) vide order dated 04.03.2021. That it is pertinent to mention that appellant is the senior most SCT (BPS-16) of the respondent department and also eligible in all respect for promotion to the post of SST (BPS-16). Copies of the order, service rules and educational testimonials are attached as Annexure G, H & I.

9-

That feeling aggrieved colleagues of the appellant knocked the door of august Peshawar High Court, Peshawar in various COC Petitions and the same has been disposed of vide judgment dated 8.11.2018 with directions to approached the august Service Tribunal for claiming of promotion and seniority. Copy of the judgment is attached as annexure J.

10- That feeling aggrieved the appellant preferred Departmental appeal but no response has been received so far. Hence the present appeal on the following grounds amongst the others. Copy of the Departmental appeal is attached as annexure K.

GROUND:

- A- That the inaction of the respondents by not allowing/granting ante dated promotion to the appellant to the post of SST (BPS-16) is against the law, facts, norms of natural justice and materials on the record.
- B- That appellant has not been treated in accordance with law and rules by the respondent Department 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 inaction of the respondents by not allowing/granting ante dated promotion to the appellant to the post of SST (BPS-16) is based on mala fide and arbitrary intentions and as such the same is violative of the principle of natural justice.
- D- That, the respondents acted in a malafide manner by not promoting the appellant to the post of SST (BPS-16) inspite of eligibility, seniority and fitness.
- E- That the respondents acted in arbitrary and malafide manner by not ante dated promotion to appellant to the post of SST (BPS-16) despite the fact that the appellant was not allowed in the initial recruitment process because of the fact that he is in regular promotion zone and will soon be promoted to the post of SST (BPS-16).
- F- That the inaction of the respondents by not allowing/granting promotion to the appellant to the post of SST (BPS-16) is violative of section-9 of the Civil Servant Act 1973 read with Rule-7 of the (Appointment, Promotion & Transfer) Rules 1989.
- G- That as per Rules and regulation the appellant is entitle for promotion to the post of SST (BPS-16) with all consequential benefits including seniority.
- H- That according to Article 38(e) of the Constitution of Pakistan, 1973 the state is bound to reduce disparity in the income and earnings of individual including persons in the services of Federation.

I- 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 be accepted as prayed for.

Dated: 28.09.2021

APPELLANT



BACHA KHAN

THROUGH:



MIR ZAMAN SAFI
ADVOCATE

CERTIFICATE:

It is certified that no other earlier appeal was filed between the parties.



DEPONENT

LIST OF BOOKS:

- 1- CONSTITUTION OF PAKISTAN, 1973
- 2- SERVICES LAWS BOOKS
- 3- ANY OTHER CASE LAW AS PER NEED

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. _____/2021

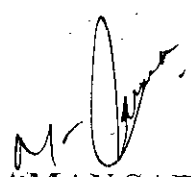
BACHA KHAN

VS

EDUCATION DEPTT:

AFFIDAVIT

I Mir Zaman Safi Advocate, on the instructions and on behalf of my client 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.


MIR ZAMAN SAFI,
Advocate
High Court, Peshawar

ADJUSTMENT/APPOINTMENT.

A-6

Consequent upon the approval of the Departmental Selection Committee the following CT trained candidates are temporarily appointed/adjusted on Rs. 1605/- PM in BPS-9 and Rs. 2055/- PM BPS-14 for those who are BA/B.Sc in 2nd Division or on their own pay and BPS in case of serving personal which ever is more beneficial to them plus usual allowances as admissible under the rules w.e. from the dates of their over charge in the schools noted against their names:-

S/No.	Name/Father name	Posted at	Remarks.
1).	Mr. Basha Khan BA S/O Sardar Khan	GMS Qalagai (Mohmand Agy:)	Against a vacant CT post vice Abdul Wadood promoted to SPT post.
2).	Mr. Mujahid Khan BA S/O Rehmat Khan	GMS Navi Killi Gandhab (Mohmand)	Against a vacant SV post vice Mojeeb Ali SV transferred.
3).	Khan Jan BA S/O Mir Alam Khan PTC GMS Khadi Khel (Mohmand Agency).	GMS Qalagai (Mohmand Agy:)	Against a vacant SV post vice Abdul Jalil SV, xxxxxx provided on long leave.
4).	Mr. Gul Rehman S/O Khan Khel	GMS Janakor (P.R. Peshawar)	Vice Muzaffar Khan did not join the post.
5).	Mr. Muhammad Aslam BA S/O Mir Hassan.	GMS Janakor (P.R. Pesh:)	Vice Mohammad Saleem did not join CT post.

NOTES:-

- Charge reports should be submitted in duplicate to all concerned.
- Their appointment are being made purely on temporarily basis & are liable to termination at any time without notice & without assigning. In case they wishes to resign their post they shall have to give one month's prior notice or forfeit one month's pay in lieu thereof.
- The original qualification, Date of Birth & Domicile certificate should be checked before they are handed over charge of the post and attested copies thereof be kept on the record of school.
- TA/DA etc: is not allowed, on first appointment.
- They should be sent to the Agency Civil surgeon concerned for Medical Examination the day on which they report their arrival for duty and no pay should be drawn for them unless and until they produce their health and Age Certificates from the said Surgeon.

ATTESTED

HEAD MASTER
G.H.S. Zahid Abad
Charadada

ENDST: NO: 33785-88 /A-Y/Merit list/CT/Dated Pesh: the 5/12/94

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Copy forwarded for information and necessary action to the:-

- 1) Agency Education Officer (Mohmand Agency) at Ghallanai.
- 2) Headmaster GHS Junkor (FR. Peshawar) w/r to his memo: No. 1102 dated 11.12.94.
- 3) Candidates concerned.
- 4) PA to Director of Education (FATA).

[Signature]
 By: Director of Education
 (FATA), NWFP Peshawar.
 11/12

[Signature]
 HEADMASTER
 GHS JUNKOR
 PESHAWAR

Irshad

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C - 89

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

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- (c) "Government" means the Government of the⁹[Khyber Pakhtunkhwa];
- (d) "Government Department" means any department constituted under rule 3 of the¹⁰[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 the¹¹[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.

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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.

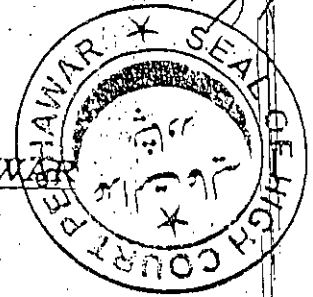
5. Repeal.---The North-West Frontier Province Employees (Regularization of Services) Ordinance, 2009 (N.-W.F.P. Ordinance No. VII of 2009) is hereby repealed.

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JUDGMENT SHEET

PESHAWAR HIGH COURT, PESHAWAR
(JUDICIAL DEPARTMENT)



Writ Petition No.2905 of 2009.

ATTA ULLAH AND OTHERS.....PETITIONERS.

VERSUS.

THE CHIEF SECRETARY KPK ETC....RESPONDENTS..

JUDGMENT.

Date of hearing 26.01.2015

Appellant/Petitioner by Ghulam Nabi Khan Advocate.

Respondent by Sardar Ali Raza Advocate & Waqar Ahmad Khan AAG.

WAQAR AHMAD SETH, J:- Through this single

judgment we propose to dispose of the instant Writ Petition

No.2905 OF 2009 as well as the connected Writ Petition

Nos.2941, 2967,2968,3016. 3025,3053,3189,3251,3292 of

2009,496,556,664,1256,1662,1685,1696,2176,2230,2501,2696,

2728 of 2010 & 206, 355,435 & 877 of 2011 as common

question of law and fact is involved in all these petitions.

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EXAMINER
Peshawar High Court

08 MAR 2018

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2- The petitioners in all the writ petitions have approached this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 with the following relief:-

"It is, therefore, prayed that on acceptance of the Amended Writ Petition the above noted Act No.XVI 2009 namely 'The North West Province Employees (Regularization of Services) Act, 2009 dated 24th October, 2009' being illegal unlawful, without authority and jurisdiction, based on malafide intentions and being unconstitutional as well as ultra vires to the basic rights as mentioned in the constitution be set-aside and the respondents be directed to fill up the above noted posts after going through the legal and lawful and the normal procedure as prescribed under the prevailing laws instead of using the short cuts for obliging their own person.

It is further prayed that the notification No.A-14/SET(M) dated 11.12.2009 and Notification No.A-17/SET(5) Contract-Apptt:2009 dated 11.12.2009, as well as Notification No.SO(G)ES/1/85/2009/SS(Contract) dated

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EXAMINER
Peshawar High Court

08 MAR 2018

(14)

(20)

31.05.2010 issued as a result of above noted impugned Act whereby all the private respondents have been regularized may also be set-aside in the light of the above submissions, being illegal, unlawful, unconstitutional and against the fundamental rights of the petitioners.

Any other relief deemed fit and proper in the circumstances and has not been particular asked for in the noted Writ Petition may also be very graciously granted to the petitioners".

3- It is averred in the petition that the petitioners are serving in the Education Department of KPK working posted as PST, CT, DM, PET, AT, TT, Qari and SET in different Schools; that respondents No.9 to 1359 were appointed on adhoc/contract basis on different times and later on their service were regularised through the North West Frontier Province Employees (Regularization of Services) Act, 2009; that almost all the petitioners have got the required qualifications and also got at their credit the length of service; that as per notification No.SO(S)6-2/97 dated 03/06/1998

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EXAMINE
Peshawar High Court

08 MAR 2018

(13) 2

the qualification for appointment/promotion of the SET Teachers BPS-16 was prescribed that 75% SETs shall be selected through Departmental Selection Committee on the basis of batchwise/yearwise open merit from amongst the candidates having the prescribed qualification and remaining 25% by initial recruitment through Public Service Commission whereas through the same notification, the qualification for the appointment/promotion of the Subject Specialist Teachers BPS-17 was prescribed that 50% shall be selected by promotion on the basis of seniority cum fitness amongst the SETs possessing the qualification prescribed for initial recruitment having five years service and remaining 50 by initial recruitment through the Public Service Commission and the above procedure was adopted by the Education Department till 22/09/2002 and the appointments on the above noted posts were made in the light of the above notification. It was further averred that the Ordinance No. XXVII of 2002 notified on 09/08/2002 was promulgated under the shadow of which some 1681 posts of different cadres were advertised by the Public Service Commission.

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EXAMINER
Peshawar High Court

08 MAR 2018

(16)
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That before the promulgation of Act No.XVI of 2009, it was practice of the Education Department that instead of promoting the eligible and competent persons amongst the teachers community, they have been advertising the above noted posts of SET (BPS-16) and Subject Specialist (BPS-17) on the basis of open merit/adhoc/contract wherein it was clearly mentioned that the said posts will be temporary and will continue only for a tenure of six months or till the appointment by the Public Serviced Commission or Departmental Selection Committee. That after passing the KPK Act No.XVI of 2009 by the Provincial Assembly the fresh appointees of six months and one year on the adhoc and contract basis including respondents no.9 to 1351 with a clear affidavit for not adopting any legal course to make their services regularized, have been made permanent and regular employees whereas the employees and teaching staff of the Education Department having at their credit a service of minimum 15 to maximum 30 years have been ignored. That as per contract Policy issued on 26/10/2002 the Education Department was not authorised/entitled to

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EXAMINER
 Peshawar High Court

08 MAR 2013

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make appointments in BPS-16 and above on the contract basis as the only appointing authority under the rules was Public Service Commission. That after the publication made by the Public Service Commission thousands of teachers eligible for the above said posts have already applied but they are still waiting for their calls and that through the above Act thousands of the adhoc teachers have been regularized which has been adversely effected the rights of the petitioners, thus having no efficacious and adequate remedy available to the petitioners, they have knocked the door of this Court through the aforesaid constitutional petitions.

4- The concerned official respondents have furnished parawise comments wherein they raised certain legal and factual objections including the question of maintainability of the writ petitions. It was further stated that Rule 3(2) of the N.W.F.P. Civil Servants (Appointment, Promotion & Transfer) Rules 1989, authorised a department to lay down method of appointment, qualification and other conditions applicable to post in consultation with Establishment & Administration Department and the Finance Department.

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EXAMINER
Peshawar High Court

08 MAR 2018

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That to improve/uplist the standard of education, the Government replaced/amended the old procedure i.e. 100% including SETs through Public Service Commission KPK for recruitment of SETs B-16 vide Notification No.SO(PE)4-5/SS-RC/Vol-III-dated 18/01/2011 wherein 50% SSTs (SET) shall be selected by promotion on the basis of seniority cum fitness in the following manner:-

(i) Forty percent from CT (Gen), CT(Agr), CT(Indust: Art) with at least 5 years service as such and having the qualification mentioned in column 3.

(ii) Four percent from amongst the DM with at least 5 years service as such and having qualification in column 3.

(iii) Four percent from amongst the PET with at least 5 years service as such and having qualification mentioned in column 3.

(iv) One percent amongst Instructional Material Specialists with at least 5 years

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ATTESTED
EXAMINER
Peshawar High Court
08 MAR 2018

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service and having qualification mentioned
in column 3."

It is further stated in the comments that due to the degradation/fall of quality education the Government abandoned the previous recruitment policy of promotion/appointment/recruitment and in order to improve the standard of teaching cadre in Elementary & Secondary Education Department of KPK, vide Notification dated 09/04/2004 wherein at serial No. 1.5 in column 5 the appointment of SS prescribed as by the initial recruitment and that the (North West Frontier Provincial) Khyber Pakhtunkhwa Employees(Regularization of Services)Act, 2009 (ACT.No.XVI of 2009 dated 24th October, 2009 is legal, lawful and in accordance with the Constitution of Pakistan which was issued by the competent authority and jurisdiction, therefore, all the writ petitions are liable to be dismissed.

5- We have heard the learned counsel for the parties and have gone through the record as well as the law on the subject.

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EXAMINER
Peshawar High Court

08 MAR 2018

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6- The grievance of the petitioners is two fold in respect of Khyber Pakhtunkhwa, Employees (Regularization of Services) Act, 2009 firstly; they are alleging that regular post in different cadres were advertised through Public Service Commission in which petitioners were competing with high profile carrier but due to promulgation of Act *ibid*, they could not made through it as no further proceedings were conducted against the advertised post and secondly, they are agitating the legitimate expectancy regarding their promotion, which has been blocked due to the in block induction / regularization in a huge number, courtesy Act, No. XVI of 2009.

7- As for as, the first contention of advertisement and in block regularization of employees is concerned in this respect it is an admitted fact that the Government has the right and prerogative to withdraw some posts, already advertised; at any stage from Public Service Commission and secondly no one knows that who could be selected in open merit case, however, the right of competition is reserved. In the instant case KPK, employees

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(Regularization of Services) Act, 2009, was promulgated, which in-fact was not the first in the line rather N.W.F.P. (now Khyber Pakhtunkhwa) Civil Servants (Regularization of Services) Act, 1988, NWFP (now Khyber Pakhtunkhwa) (Regulation of Services) Act, 1989 & NWFP (now Khyber Pakhtunkhwa) Adhoc Civil Servants (Regularization of Services) Act, 1987 were also promulgated and were never challenged by anyone.

8- In order to comment upon the Act, *ibid*, it is important to go through the relevant provision which reads as under:-

S.2 Definitions. (1)---

a)----

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

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basis or who are paid out of contingencies;

----- whereas,

S. 3 reads:-

Regularization of services of certain employees.---- All employees including recommendee of the High Court appointed on contract or adhoc 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;

9- The plain reading of above sections of the Act, *ibid*, would show that the Provincial Government, has regularized the "duly qualified persons", who were appointed on contract basis under the Contract Policy, and the said Contract Policy was never ever challenged by any one and the same remained in practice till the commencement of the said Act. Petitioners in their writ petitions have not quoted any single incident / precedent showing that the regularized employees under the said Act, were not qualified for the post against

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which they are regularized, nor had placed on record any documents showing that at the time of their appointment on contract they had made any objection. Even otherwise, the superior courts have time and again reinstated employees whose appointments were declared irregular by the Government Authorities, because authorities being responsible for making irregular appointments on purely temporary and contract basis, could not subsequently turned round and terminate services because of no lack of qualification but on manner of selection and the benefit of the lapses committed on part of authorities could not be given to the employees. In the instant case, as well, at the time of appointment no one objected to, rather the authorities committed lapses, while appointing the private respondent's and others, hence at this belated stage in view of number of judgments, Act, No. XVI of 2009 was promulgated. Interestingly this Act, is not applicable to the education department only, rather all the employees of the Provincial Government, recruited on contract basis till 31st December 2008 or till the commencement of this Act have been


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regularized and those employees of to other departments who have been regularized are not party to this writ petition.

10- All the employees have been regularized under the Act, *ibid* are duly qualified, eligible and competent for the post against which they were appointed on contract basis and this practice remained in operation for years. Majority of those employees getting the benefit of Act, *ibid* may have become overage, by now for the purpose of recruitment against the fresh post.

11- The law has defined such type of legislation as "beneficial and remedial". A beneficial legislation is a statute which purports to confer a benefit on individuals or a class of persons. The nature of such benefit is to be extended relief to said persons of onerous obligations under contracts. A law enacted for the purpose of correcting a defect in a prior law, or in order to provide a remedy where non previously existed. According to the definition of Corpus Juris Secundum, a remedial statute is designed to correct an existence law, redress an existence grievance, or introduced regularization conducive to the public goods. The challenged

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Act, 2009, seems to be a curative statute as for years the then Provincial Governments, appointed employees on contract basis but admittedly all those contract appointments were made after proper advertisement and on the recommendations of Departmental Selection Committees.

12- In order to appreciate the arguments regarding beneficial legislation it is important to understand the scope and meaning of beneficial, remedial and curative legislation.

Previously these words have been explained by N.S. Bindra in interpretation of statute, tenth edition in the following manners:-

"A statute which purports to confer a benefit on individuals or a class of persons, by relieving them of onerous obligations under contracts entered into by them or which tend to protect persons against oppressive act from individuals with whom they stand in certain relations, is called a beneficial legislations....In interpreting such a statute, the principle established is that there is no room for taking a narrow view but that the court is entitled to be generous towards the persons on whom the benefit has

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been conferred. It is the duty of the court to interpret a provision, especially a beneficial provision, liberally so as to give it a wider meaning rather than a restrictive meaning which would negate the very object of the rule. It is a well settled canon of construction that in constructing the provision of beneficent enactments, the court should adopt that construction which advances, fulfils, and furthers the object of the Act, rather than the one which would defeat the same and render the protection illusory..... Beneficial provisions call for liberal and broad interpretation so that the real purpose, underlying such enactments, is achieved and full effect is given to the principles underlying such legislation."

Remedial or curative statutes on the other hand have been explained as:-

"A remedial statute is one which remedies defect in the pre existing law, statutory or otherwise. Their purpose is to keep pace with the views of society. They serve to keep our system of jurisprudence up to date and in

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harmony with new ideas or conceptions of what constitute just and proper human conduct. Their legitimate purpose is to advance human rights and relationships. Unless they do this, they are not entitled to be known as remedial legislation nor to be liberally construed. Manifestly a construction that promotes improvements in the administration of justice and the eradication of defect in the system of jurisprudence should be favoured over one that perpetuates a wrong".

Justice Antonin Scalia of the U.S. Supreme Court in his book on Interpretation of Statute states that:

"Remedial statutes are those which are made to supply such defects, and abridge such superfluities, in the common law, as arise from either the general imperfection of all human law, from change of time and circumstances, from the mistakes and unadvised determinations of unlearned (or even learned) judges, or from any other cause whatsoever."

13- The legal proposition that emerges is that generally beneficial legislation is to be given liberal interpretation, the beneficial legislation must carry curative or remedial content.

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Such legislation must therefore, either clarify an ambiguity or an omission in the existence and must therefore, the explanatory or clarificatory in nature. Since the petitioners does not have the vested rights to be appointed to any particular post, even advertised one and private respondents who have being regularized are having the requisite qualification for the post against which they were appointed, vide challenged Act, 2009, which is not effecting the vested right of anyone, hence, the same is deemed to be a beneficial, remedial and curative legislation of the Parliament.

14- This court in its earlier judgment dated 26th November 2009 in WP No. 2905 of 2009, wherein the same Khyber Pakhtunkhwa (Regularization of Servers) Act, 2009, vires were challenged has held that this court has got no jurisdiction to entertain the writ petition in view of Article 212 of the Constitution of Islamic Republic of Pakistan, 1973, as an Act, Rule or Notification effecting the terms and conditions of service, would not be an exception, to that, if seen in the light of the spirit of the ratio rendered in the case of

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I.A.Sherwani & others Versus Government of Pakistan,

reported in 1991 SCMR 1041. Even otherwise, under Rule 3

(2) of the Khyber Pakhtunkhwa (Civil Servants)

(appointment), promotion and transfer) Rules 1989, authorize

a department to lay down method of appointment,

qualification and other conditions applicable to the post in

consultation with Establishment & Administrative Department

and the Finance Department. In the instant case the duly

elected Provincial Assembly has passed the Bill/Act, which

was presented through proper channel i.e Law and

Establishment Department, which cannot be quashed or

declared illegal at this stage.

15- Now coming to the second aspect of the case, that

petitioners legitimate expectancy in the shape of promotion

has suffered due to the promulgation of Act, *ibid*, in this

respect, it is a long standing principle that promotion is not a

vested right but it is also an established principle that when

ever any law, rules or instructions regarding promotion are

violated then it become vested right. No doubt petitioners in

the first instance cannot claim promotion as a vested right

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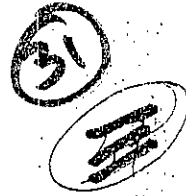
but those who fall within the promotion zone do have the right to be considered for promotion.

16- Since the Act, XVI of 2009 has been declared a beneficial and remedial Act, for the purpose of all those employees who were appointed on contract and may have become overage and the promulgation of the Act, was necessary to given them the protection therefore, the other side of the picture could not be brushed a side simply. It is the vested right of in service employees to be considered for promotion at their own turn. Where a valid and proper rules for promotion have been framed which are not given effect, such omission on the part of Government agency amounts to failure to perform a duty by law and in such cases, High Court always has the jurisdiction to interfere. In service employees / civil servants could not claim promotion to a higher position as a matter of legal right, at the same time, it had to be kept in mind that all public powers were in the nature of a sacred trust and its functionary are required to exercise same in a fair, reasonable and transparent manner strictly in accordance with law. Any transgression from such

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principles was liable to be restrained by the superior courts in their jurisdiction under Article 199 of the Constitution. One could not overlook that even in the absence of strict legal right there was always legitimate expectancy on the part of a senior, competent and honest career civil servant to be promoted to a higher position or to be considered for promotion and which could only be denied for good, proper and valid reasons.

17- Indeed the petitioners can not claim their initial appointments on a higher post but they have every right to be considered for promotion in accordance with the promotion rules, in field. It is the object of the establishment of the courts and the continue existence of courts of law is to dispense and foster justice and to right the wrong ones. Purpose can never be completely achieved unless the injustice done was undone and unless the courts stepped in and refused to perpetuate what was patently unjust, unfair and unlawful. Moreover, it is the duty of public authorities as appointment is a trust in the hands of public authorities and it is their legal and moral duty to discharge their functions as

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trustee with complete transparency as per requirement of law, so that no person who is eligible and entitle to hold such post is excluded from the purpose of selection and is not deprived of his any right.

18- Considering the above settled principles we are of the firm opinion that Act, XVI of 2009 is although beneficial and remedial legislation but its enactment has effected the in service employees who were in the promotion zone, therefore, we are convinced that to the extent of in service employees / petitioners, who fall within the promotion zone have suffered, and in order to rectify the inadvertent mistake of the respondents/Department, it is recommended that the promotion rules in field be implemented and those employees in a particular cadre to which certain quota for promotion is reserved for in service employees, the same be filled in on promotion basis. In order to remove the ambiguity and confusion in this respect an example is quoted, " If in any cadre as per existence rules, appointment is to be made on 50/50 % basis i.e 50 % initial recruitment and 50 % promotion quota then all the employees have been

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regularized under the Act in question be calculated in that cadre and equal number i.e remaining. 50 % are to promoted from amongst the eligible in service employees, other wise, eligible for promotion on the basis of sonority cum fitness."

19- In view of the above, this writ petition is disposed of in the following terms:-

(i) "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 workout 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 recruitments.

Order accordingly.

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Announced.
26th January 2015

JUDGE

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CERTIFIED TO BE TRUE COPY

Examiner
Peshawar High Court Peshawar
Authorized Under Article 177 of
The Constitution of Pakistan Order 1984

08 MAR 2015

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IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

E-034

PRESENT:
MR. JUSTICE EJAZ AFZAL KHAN,
MR. JUSTICE SH. AZMAT SAEED,
MR. JUSTICE IJAZ UL AHSAN.

CIVIL PETITIONS NO. 127-P TO 129-P OF 2015,
[Against the judgment dated 26.1.2015 of the
Peshawar High Court, Peshawar passed in writ
Petition No.2905 of 2009, 3-4-2009, 204 of 2010]

The Chief Secretary, Govt. of KPK., Peshawar and others. ... Petitioner(s)
(in all cases)

Versus

Attaullah and others,
Nasruminullah and others,
Mukhtar Ahmda and others. ... Respondent(s)

For the petitioner(s): Mr. Mujahid Ali Khan, Addl. A.G.-KPK


For the respondent(s): Mr. Ghulam Nabi Khan, ASC
Mr. Abdul Qayyum Sarwar, AOR

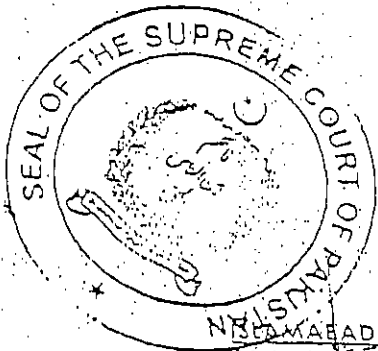
Date of Hearing: 20.09.2017.

ORDER

Ejaz Afzal Khan, J. The learned Additional Advocate General
appearing on behalf of the Govt. of KPK stated at the bar that as per
instructions of the Government he does not press these petitions. Dismissed
as such.

Sd/-Ejaz Afzal Khan, J
Sd/-Sh. Azmat Saeed, J
Sd/-Ijaz ul Ahsan, J
Certified to be True Copy.


29/9/17
Court Associate
Supreme Court of Pakistan
Islamabad



NSM/MAEAD
20.09.2017
M. Azhar Malik

25/9/17

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GR No: 14572/17 Civil/Criminal

Date of Presentation: 29-9-17

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Date of delivery copy: 29/9/17

Compared by/Prepared by: [Signature]

Received by: 19/12/17

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**OFFICE OF THE
DISTRICT EDUCATION OFFICER
MALE CHARSAKDA**

PH NO. 091-9220161-82
EMAIL: EDINCHARSAKDA@YAHOO.COM

OFFICE ORDER

Consequent upon the recommendations of the Departmental Promotion Committee and in pursuance of the Government of Khyber Pakhtunkhwa Elementary & Secondary Education Notification No SO(B&A)I-18/E&SE/2012 dated 11.07.2012 Finance Department Endorsement No SO(FR)/FD/10-22(E)/2010 dated 16.07.2012 and order issued by the Director E&SE Khyber Pakhtunkhwa Peshawar Endstb No 2727-33 F.No.1/Promotion B-16 dated 25.02.2020, the following Male CTs 11-15 are hereby promoted to the post of Senior CT BPS-16 (Rs.18910-1520-61510) plus usual allowances as admissible under the rules on regular basis under the existing policy of the Provincial Government, in teaching cadre on the terms and conditions given below with immediate effect, and further posted in the Higher/High Schools noted against each against the newly upgraded Senior CT BPS-16 posts:

S.No	Name of Teacher/Desk:	Name of Present School	New Destination/ Place of Posting
01.	Muhammad Younas CT	GMS Station Killi	GHSS Sherpan
02.	Zafar Ali Shah CT	GHS Haleem Zai	GHSS Marh Maghul Khel No.02
03.	Pazeer Ahmad CT	GHS Sro Killi Shahqadar	Govt. Shahheed S. of Ullah Duranni HS Shahqadar
04.	Ghufraan Ud Din CT	GMS Amir Abad Rajjar	GHS Saff Abad
05.	Sadiq Ahmad CT	GHS Charakda Khas	GHS Turandi
06.	Haron Ahmad CT	GMS Mian Killi	GHS Sro Killi Shahqadar
07.	Ahmad Jan CT	GMS Ajoon Killi	Govt. Shahheed H. Waza Kakar HS Umarzal
08.	Bacha Khan CT	GHS Soor Kananar	GHS Soor Kananar
09.	Shaukat Ali CT	GHSS Bopbak	GHSS Bopbak
10.	Noor Alam CT	GHS Marthand	GHS Marthand
11.	Gohar Ali CT	GMS Mirzagan	Govt. Shahheed Umar Hayat HS Charakda
12.	Waqar Ahmad CT	GHS Sheikh Santheri	GHS Wardaga
13.	Muhammad Ismail CT	GMS Palay	GHS Rustain Khas
14.	Hanif Ullah CT	GHS Kuland	GHSS Umarzal
15.	Ayub Jan CT	GMS Sheikh Killi	GHS Agra
16.	Muhammad Ayaz CT	GHSS Anshaher	GHSS Anshaher
17.	Hafiz Abdur Rahman CT	GHSS Tamab	GHSS Umarzal
18.	Nasrat Khan CT	GMS Ajoon Killi	Govt. Shahheed N. Mujal Tariq GHS Torungza
19.	Dawood Shah CT	GHS Agra	GHS Agra

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20.	Abdul Saeed CT	GHS Matta Maghul Khel No.01	GHS Rustam Khan
21.	Shabeer Ahmad CT	GHS Dalgamun	GHS Mirzodher
22.	Yasir Ahmad CT	GHS Matta Maghul Khel No.01	GHS Shoolag
23.	Zahid Shah CT	GHS Mandani	GHS Mandani
24.	Muhammad Rashid CT	GHS Matta Maghul Khel No.01	GHS Rajjar No.01
25.	Waqar Ahmad Khan CT	GHS Ghazgi	GHS Zarbab Garhi
26.	Hazrat Bilal CT	GMS Awal Din Killi	GHS Rustam Khan Killi
27.	Nasir Ul Haq CT	GHS Hassan Zai	GHS Hassan Zai
28.	Tauheed Ullah CT	GHS Dheri Sikandar Khan	GHS Dheri Sikandar Khan

Terms and Conditions:

1. They would be on probation for a period of one year extendable for another one year.
2. They will be governed by such rules and regulations as may be issued from time to time by the govt.
3. Their services can be terminated at any time, in case their performance is found unsatisfactory during probationary period. In case of misconduct, they shall be proceeded under the rules framed from time to time.
4. Charge report should be submitted to all concerned.
5. Their inter-Se- seniority on lower post will remain intact.
6. No TA/DA is allowed for joining his duty.
7. They will be given an under taking to be recorded in their service books/personal files to the effect that if any over payment made to them in light this order will be recovered and are any one wrongly promoted will be reversed.
8. The DDO is directed to verify their related documents from the concerned University/Board before releasing their pay Sr.CT in BPS-16.

(JEHANGIR KHAN)
DISTRICT EDUCATION OFFICER
(MALE) CHARSADEA

Endst: No 3289-3325 / File No.2/ Up-Gradation CTs B-16 dated 04/03/2020

Copy forwarded for information & necessary action to the:-

1. Director E&SE Khyber Pakhtunkhwa Peshawar.
2. District Accounts Officer, Charsadda.
3. Deputy Commissioner Charsadda.
4. DMO(IMU) E&SE Charsadda.
5. Principals/Head Masters Concerned.
6. Officials concerned.
7. Cashier local office.
8. Master File.

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DISTRICT EDUCATION OFFICER
(MALE) CHARSADEA

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GOVERNMENT OF THE KHYBER PAKHTUNKHWA
ELEMENTARY AND SECONDARY EDUCATION DEPARTMENT.

NOTIFICATION

Peshawar, dated the November 13, 2012.

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No. SO(PE) I-S/SSRC/Meeting/2012/Teaching Cadre:- In pursuance of the provisions contained in sub rule (2) of rule 3 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 and in supersession of all Notifications issued in this behalf, the Elementary and Secondary Education Department in consultation with the Establishment Department and the Finance Department hereby lays down the method of recruitment, qualification and other conditions specified in the Appendix to this Notification which shall be applicable to all the posts specified in Column No. 2 of the said Appendix and the schedule therewith.

KPK
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SECRETARY TO GOVERNMENT OF THE KHYBER PAKHTUNKHWA
ELEMENTARY AND SECONDARY EDUCATION DEPARTMENT.

Encl. No. & Date as above.

Copy forwarded to:-

1. The Secretary to Govt. of Khyber Pakhtunkhwa, Establishment Department.
2. The Secretary to Govt. of Khyber Pakhtunkhwa, Finance Department.
3. The Secretary to Govt. of Khyber Pakhtunkhwa, Law Department.
4. The Secretary Khyber Pakhtunkhwa, Public Service Commission Peshawar.
5. The Accountant General, Khyber Pakhtunkhwa Peshawar.
6. The Director (E&SE) Khyber Pakhtunkhwa Peshawar.
7. The Director Education (FATA), Peshawar.
8. Copy to Manager Usman KPK

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8. The Director Curriculum & Teachers Education Abbottabad.
9. The Director (PITE) Khyber Pakhtunkhwa Peshawar.
10. The Director ESRU, Elementary & Secondary Education Khyber Pakhtunkhwa, Peshawar.
11. The Deputy Director Database (EMIS) E&SE Department.
12. All District Coordination Officers in Khyber Pakhtunkhwa.
13. All Executive District Officers Elementary & Secondary Education in Khyber Pakhtunkhwa.
14. All District Accounts Officers in Khyber Pakhtunkhwa / Agency Accounts Officers FATA.
15. All Agency-Education Officers FATA.
16. P.S to Governor, Khyber Pakhtunkhwa.
17. P.S to Chief Minister, Khyber Pakhtunkhwa.
18. P.S to Chief Secretary, Khyber Pakhtunkhwa.
19. P.S to Minister E&SE Khyber Pakhtunkhwa Peshawar.
20. P.S to Secretary E&SE Department.
21. Master File.

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Section Officer (Primary)

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APPENDIX

S.NO.	Nomenclature of the post	Minimum qualification and experience for initial appointment or by transfer	Age limit	Method of recruitment.
1.	2.	3.	4.	5.
1.	Secondary School Teacher (BPS-16)	<p>(i) Second class Bachelor's Degree with two subjects as Chemistry, Botany, Zoology, Physics, Mathematics, Statistics Humanities and other equivalent groups from a recognized University: or</p> <p>(ii) M.A in Education or Bachelor's Degree in Education from a recognized university.</p>	18 to 35 Years.	<p>(a) Fifty percent by promotion on the basis of seniority-cum-fitness in the following manners.</p> <p>(i) forty percent from amongst the certified Teachers (General). Certified Teachers (Industrial Arts) and Certified Teachers (Home Economics) with at least five years service as such and having qualification mentioned in column No. 3.</p> <p>(ii) four percent from amongst the Drawing Masters with at least five years service as such and having qualification mentioned in column No. 3.</p> <p>(iii) four percent from amongst the Physical Education Teachers with at least five years service</p>

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Redesignated

No quota has been allocated for PST's cadre.

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		<p>(iv) one percent from amongst the Instructional Material Specialists, with at least five years service as such and having qualification mentioned in column No. 3, and</p> <p>(v) one percent from amongst the Arabic Teachers with at least five years service as such and having qualification mentioned in Column No. 3, and</p> <p>(b) fifty percent by initial recruitment.</p>
2.	Seniority Arabic Teacher (SAT) (BPS-16)	By promotion on the basis of seniority-cum-fitness from amongst Arabic Teachers with at least five years service as such and having qualification as prescribed for initial recruitment of Arabic Teacher.
3.	Senior Theology Teacher (STT) (BPS-16)	By promotion on the basis of seniority-cum-fitness from amongst Theology Teachers with at least five years service as such and having qualification as prescribed for initial recruitment of Theology Teacher.
4.	Senior Certified Teacher (SCT) (General) (BPS-16)	By promotion on the basis of seniority-cum-fitness from amongst Certified Teachers with at least five years service as such and having qualification as prescribed for initial recruitment of Certified Teacher (General).

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10.	Arabic Teacher (AT) (BPS-15)	(i) Second Class Secondary School Certificate from a recognized Board with Shahdatul Alamia Fil Uloomul Arabia wal Islamia from or Darul Uloom Saidu Sharif Swat, Darul Uloom Darosh Chitral, Government run Darul Uloom, as notified by the Government from time to time; or (ii) Second Class Master's Degree in Arabia from a recognized University.	By initial recruitment
11.	Theology Teacher (TT) (BPS-15)	(i) Second Class Secondary School Certificate from a recognized Board with Shahdatul Alamia Fil Uloomul Arabia wal Islamia from or Darul Uloom Saidu Sharif Swat, Darul Uloom Darosh Chitral, Government run Darul Uloom; as notified by the Government from time to time; or (ii) Second Class Master's Degree in Arabia from a recognized University.	(a) Seventy five percent by initial recruitment; and (b) twenty five percent by promotion on the basis of seniority-cum-fitness from amongst the senior Qaris with at least five years service and having qualification prescribed for initial recruitment of Theology Teacher; Note: In case of non availability of suitable person for promotion then by initial recruitment.
12.	Senior Qari (BPS-15)	m	By promotion on the basis of seniority-cum-fitness from amongst Qaris with at least five years service as such and having qualification as prescribed for initial recruitment.
13.	Certified Teacher (General)	Bechlors Degree or equivalent qualification from a recognized	(a) Forty percent by initial recruitment; and

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		<p>Certified or two years Associate Degree in Education from a recognized University or eighteen months Diploma in Education.</p>	<p>(b) sixty percent by promotion on the basis of seniority-cum-fitness from amongst the Primary School Head Teachers with at least five years service and having qualification prescribed for initial recruitment of Certified Teacher (General). Provide that if no suitable candidate is available amongst the Primary School Head Teachers for transfer, then the posts will be filled by promotion on the basis of seniority-cum-fitness from amongst senior primary school teachers with at least five years service and having qualification prescribed for initial recruitment of certified teacher (General). Note: In case of non availability of suitable person for promotion then by initial recruitment.</p>
<p>14.</p>	<p>Certified Teacher (Industrial Arts) (BPS-15)</p>	<p>(i) Bachelor's Degree from a recognized University with two years training in the relevant technical subjects from any Government industrial or Govt. Technical vocational Institute or Centre; or (b) Bachelor's Degree from a recognized</p>	<p>(a) Forty percent by initial recruitment; and (b) sixty percent by promotion on the basis of seniority-cum-fitness from amongst the primary school head teachers with at least five years service and having qualification prescribed for initial recruitment of certified teacher</p>

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APPENDIX



S.No.	Nomenclature of the post.	Minimum qualification and experience for initial appointment or by transfer.	Age limit.	Method of recruitment.
1.	Secondary School Teacher (HPS-16).	(i) Second class Bachelor's Degree with two subjects as Chemistry, Botany, Zoology, Physics, Mathematics, Statistics Humanities and other equivalent groups from a recognized University; or (ii) M.A in Education or Bachelor's Degree in Education, from a recognized University.	18 to 35 years.	(a) Fifty percent by promotion on the basis of seniority-cum-fitness, in the following manner: (i) forty per cent from amongst the Certified Teachers (General), Certified Teachers (Agriculture), Certified Teachers (Industrial Arts) and Certified Teachers (Home Economics) with at least five years service as such and having qualification mentioned in column No. 3; (ii) four per cent from amongst the Drawing Masters with at least five years service as such and having qualification mentioned in column No.3; (iii) four per cent from amongst the Physical Education Teachers with at least five years service as such and having qualification mentioned in column No. 3;

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		<p>(iv) one per cent from amongst the Instructional Material Specialists, with atleast five years service as such and having qualification mentioned in column No. 3; and</p> <p>(v) one per cent from amongst the Arabic Teachers with at least five years service as such and having qualification mentioned in Column No. 3; and</p> <p>(b) fifty per cent by initial recruitment.</p>
2. Senior Arabic Teacher (SAT) (BPS-16)	<p>KPK</p> <p><i>[Handwritten signature]</i></p>	<p>By promotion, on the basis of seniority-cum-fitness, from amongst Arabic Teachers, with at least five years service as such and having qualification as prescribed for initial recruitment of Arabic Teacher.</p>
3. Senior Theology Teacher (STT) (B-16).		<p>By promotion, on the basis of seniority-cum-fitness, from amongst Theology Teachers, with at least five years service as such and having qualification as prescribed for initial recruitment of Theology Teacher.</p>
4. Senior Certified Teacher (SCT) (General) (BPS-16).		<p>By promotion, on the basis of seniority-cum-fitness, from amongst Certified Teachers (General), with at least five years service as such and having qualification as prescribed for initial recruitment of Certified Teacher (General).</p>

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<p>10. Arabic Teacher (AT) (BPS-15)</p>	<p>(i) Second Class Secondary School Certificate, from a recognized Board with Shadadatul Alamia Fil-Uloomul Arabia wal Islamia from a recognized Tanzimatul Wafaqul Madaris or Darul Uloom Sifatu Sharif Swat, Darul Uloom Charbagh Swat, Darul Uloom Chitral, Darul Uloom Darosh Chitral and any other Government Darul Uloom, as notified by the Government from time to time; or the Government from time to time; or Second Class Master's Degree in Arabic from a recognized University.</p>	<p>20 to 35 years.</p>	<p>By initial recruitment</p>
<p>11. Theology Teacher (TT) (BPS-15)</p>	<p>(i) Second Class Secondary School Certificate, from a recognized Board with Shadadatul Alamia from a recognized Tanzimatul Wafaqul Madaris or Darul Uloom Sifatu Sharif Swat, Darul Uloom Charbagh Swat, Darul Uloom Chitral, Darul Uloom Darosh Chitral and any other Government Darul Uloom, as notified by the Government from time to time; or (ii) Second Class Master's Degree in Islamiyat from a recognized University.</p>	<p>20 to 35 years.</p>	<p>(a) Seventy-five per cent by initial recruitment and twenty-five per cent by promotion, on the basis of seniority-cum-fitness. From amongst the Senior Qaris, with at least five years service and having qualification prescribed for initial recruitment of Theology Teacher. Note: In case of non-availability of suitable person for promotion, then by initial recruitment.</p>
<p>12. Senior Qari (BPS-15)</p>	<p>(iii) Second Class Master's Degree in Islamiyat from a recognized University.</p>	<p>18 to 35 years.</p>	<p>By promotion, on the basis of seniority-cum-fitness, from amongst Qaris, with at least five years service as such and having qualification prescribed for initial recruitment.</p>
<p>13. Certified Teacher (General) (BPS-15)</p>	<p>Bachelor's Degree or equivalent qualification from a recognized University with Certified Teacher</p>	<p>18 to 35 years.</p>	<p>(a) Forty per cent by initial recruitment; and</p>

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		Certificate or two years Associate Degree in Education from a recognized University or eighteen months Diploma in Education.		(b) sixty per cent by promotion, on the basis of seniority-cum-fitness, from amongst the Primary School Head Teachers with at least five years service and having qualification prescribed for initial recruitment of Certified Teacher (General). Provided that if no suitable candidate is available amongst the Primary School Head Teachers for transfer, then the posts will be filled by promotion on the basis of seniority-cum-fitness, from amongst Senior Primary School Teachers with at least five years service and having qualification prescribed for initial recruitment of Certified Teacher (General). Note: In case of non availability of suitable person for promotion, then by initial recruitment.
14.	Certified Teacher (Industrial Arts) (HPS-15) ✓	(i) Bachelor's Degree from a recognized University with two years training in the relevant technical subjects from any Government Industrial or Govt. Technical Vocational Institute or Center; or (b) Bachelor's Degree from a recognized	18 to 35 years.	(a) Forty per cent by initial recruitment; and (b) sixty per cent by promotion, on the basis of seniority-cum-fitness, from amongst the Primary School Head Teachers with at least five years service and having qualification prescribed for initial recruitment of Certified Teacher

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Primary School Teacher

Category of Qualification	Total Marks 180 For Humanities group at Intermediate Level	For Candidate of Science group
SSC	Marks obtained X 20 / total marks =	5 Extra marks for F.Sc. 5 Extra marks for B.Sc and 5 Extra marks for M.Sc will be added to the total score obtained by a candidate during these sections
HSSC	Marks obtained X 10 / total marks =	
B.Ed/B.Sc	Marks obtained X 25 / total marks =	0
PST Certificate/ Diploma in Education/AIDE	Marks obtained X 20 / total marks =	
AI/MS/AL/ED/MA Edu	Marks obtained X 20 / total marks =	
AI/HR/Ph.D	Marks = 05	

Other conditions:-

1. The concerned appointing Authority will scrutinize and verify the documents and make the appointment as per prescribed rule and the will get the documents verified after the issuance of appointment orders within shortest possible time, not exceeding ninety (90) days.
2. The vacant post concerned by the concerned appointing authority shall be advertised for ten days to receive the applications/offer letters. If any, will issue the final merit list after necessary corrections while addressing the observations/objections/supplies, follows. The requisite appointment orders, merit list, offer (making necessary corrections) and final job(s) found fake/ forged/ bogus upon scrutiny/verifying the service of the teacher concerned shall be returned and the amount paid for him as salary shall be recovered from him and an FIR shall be lodged against him on account of forgery found under the advertisement.
3. In case of the concerned job(s) found fake/ forged/ bogus upon scrutiny/verifying the service of the teacher concerned shall be returned and the amount paid for him as salary shall be recovered from him and an FIR shall be lodged against him on account of forgery found under the advertisement.
4. Don't attend from recognized Governmental/High school Malawi, Darul Uloom Saidu Sharif Swat, Darul Uloom Charbagh Swat, Darul Uloom Chitral, Darul Uloom Dargoh Chitral and any other Government and Darul Uloom as notified by the Government from time to time will be liable for the purpose of appointment against the posts of Arabic Teachers or Pedagogy Teachers as the case may be.

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BOARD OF INTERMEDIATE AND SECONDARY EDUCATION

S.No: 505413

Roll No: 3968

پشاور

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BOARD OF INTERMEDIATE AND SECONDARY EDUCATION



Peshawar, N.W.F.P., Pakistan
Secondary School Certificate Examination

SESSION 1986 (ANNUAL)

Bacha Khan

Sardar Khan

and a student of Govt. High School, Hari Chand, Peshawar has passed the Secondary School Certificate Examination of the Board of Intermediate & Secondary Education, Peshawar held in April 1986 as a Regular candidate. He/She obtained 599 Marks out of 850.

and has been placed in Grade I representing an Excellent

The Candidate passed in the following subjects:
1. English 3. Islamiyat 5. Pak. Studies 7. Mathematics
2. Urdu 4. Physics 6. Chemistry 8. Biology

He/She has been awarded Grade I on the basis of internal assessment by the institution concerned.

Date of birth according to admission form is: Second February 1970
Seventy One

Asstt. Secretary
This certificate is issued without alteration of Persu

TESTED

s.No 198616

Roll No. 2786

بِسْمِ اللّٰهِ الرَّحْمٰنِ الرَّحِیْمِ

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BOARD OF INTERMEDIATE AND SECONDARY EDUCATION



Peshawar N.W.F.P. Pakistan
INTERMEDIATE EXAMINATION

Pre-Engineering Group

SESSION 1988 (ANNUAL)

THIS IS TO CERTIFY THAT Bacha Khan
Son/Daughter of Sardar Khen
and a student of Islamia College, Peshawar
Registered No. 253-B/1-86 has passed the *Intermediate Examination* of
the Board of Intermediate & Secondary Education, Peshawar held in July/Aug 1988
as a *Regular candidate*. He/She obtained 619 Marks out of 1100
and has been placed in Grade Representing Good
He/She has been awarded Grade on the basis of internal assessment
by the Institution concerned.

The Examination was taken as a whole.

Asstt. Secretary

Secretary

This certificate is issued without alteration or erasure.

u

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

University of Peshawar (Pakistan)



Session ANNUAL 1990

BACHA KHAN Son of SARDAR KHAN and a student
of ISLAMIA COLLEGE PESHAWAR having passed the prescribed Examination
held in August 1990 is this day admitted by the University of Peshawar
to the Degree of
Bachelor of Arts

in the SECOND Division

ATTESTED

The Examination was taken as a whole/in parts

Serial No. 000448



Rezaul Ahmad
Registrar

Countersigned

[Signature]
Vice-Chancellor

Registered No. 68-1-12518

Roll No. 13879

Result Declared on 16TH MARCH 1991

بِسْمِ اللّٰهِ الرَّحْمٰنِ الرَّحِیْمِ

University of Peshawar (Pakistan)



Session ANNUAL 1996

BACHA KHAN

Son / Daughter of

SARDAR KHAN

DISTRICT CHARSADDA

and a student of the

who had passed the prescribed examination in OCTOBER 17, 1996 under Roll No. 15528

and was admitted by the University of Peshawar to the Degree of

Master of ARTS IN POLITICAL SCIENCE

in the THIRD Division

was permitted to appear in the same examination for

Improvement of Division

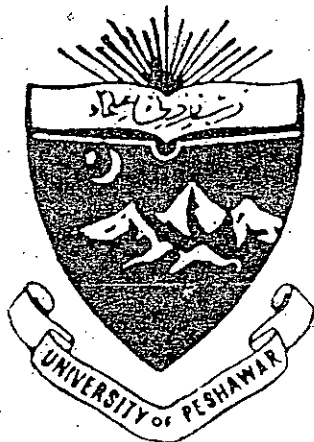
He/She re-appeared in APRIL, 1997 and obtained SECOND Division.

Serial No. 000265

Registered No. 88-1-12518

Roll No. 14856

Result declared on SEPTEMBER 20, 1997



[Signature]
Registrar

Countersigned

[Signature]
Vice-Chancellor

بِسْمِ اللّٰهِ الرَّحْمٰنِ الرَّحِیْمِ

سلسلہ نمبر

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رول نمبر

حکومت پاکستان
وفاقی نظامت تعلیمات، اسلام آباد

(۵۲)



سی ٹی (ایگریکچر) امتحان ۱۹۹۲ء

سجاد خان

تصدیق کی جاتی ہے کہ ماسی / مسماة

سردار خان

بن / بنت

فیڈرل کالج آف ایجوکیشن ایچ - ۹ اسلام آباد

امیدوار

نے مندرجہ بالا امتحان ۲۶۲ نمبر حاصل کر کے درجہ سوم میں پاس کر لیا ہے۔ اس بنا پر ان کو

سرٹیفکیٹ ان ٹیچنگ (سی ٹی ایگریکچر) (۱۳۰۰)

عطا کیا جاتا ہے، جن کی رو سے وہ وسطانی و ثانوی سکولوں کی وسطانی جماعتوں کو ایگریکچرل سائنس
(زرعی تعلیم گروپ) پڑھانے کے اہل قرار پائے ہیں۔

ATTESTED

رہبر محکمانہ امتحانات
برائے ناظم اعلیٰ تعلیمات

اسلام آباد

مورخہ ۳۱ - ۵ - دسمبر ۱۹۹۲ء

ایگریکچر

یٹن کنتہ

مرتب کنتہ



University of Peshawar

(Pakistan)

Session ANNUAL 1995



BACHA KHAN

SON

of

SARDAR KHAN

and a student

of DISTRICT CHARGADDA

held in OCTOBER 1995

is this day admitted by the University of Peshawar to the Degree of

Bachelor of Education

In the SECOND Division in Theory

In the SECOND Division in Teaching Practice

In the SECOND Division in Aggregate

Passed also in GENERAL SCIENCE as an Optional Subject

The Examination was taken as a whole ~~in parts~~

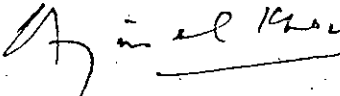
Serial No. 910858

Registration No. 88-1-12518

Roll No. 623

Result declared on MAY 6, 1996



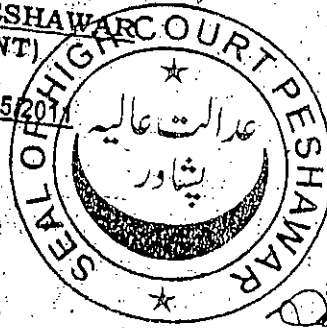

Registrar

Countersigned


Vice-Chancellor

JUDGMENT SHEET
PESHAWAR HIGH COURT, PESHAWAR
(JUDICIAL DEPARTMENT)

COC No. 105-P/2018 in WP No. 355/2017



J. 54

JUDGMENT

Date of hearing: 08.11.2018

Petitioner (s): *Nisar Ahmad Khan, Mr. Nisar Muhammad Khan*

Respondent (s): *Muhammad Azam Khan, Syed Qaiser Ali*
Plt. Secy.

WAQAR AHMAD SETH, CJ:-

Through this

single judgment, we propose to dispose of instant contempt petition as well as connected COC No. 107-P/2018 in WP No. 1662/2010, COC No. 108-P/2018 in WP No. 2967/2009 & COC No. 109-P/2018 in WP No. 3189/2009 because in all the petitions, the petitioners have sought initiation of contempt of court proceedings against the respondents for not implementing the judgment/order dated 26.01.2015.

2. Facts in brief are that the petitioners had filed Writ Petitions before this Court and prayed that the Act No. XVI 2009, namely, 'The North West Province Employees (Regularization of Services) Act, 2009 dated 24th October, 2009' being illegal, unlawful, without authority and jurisdiction, based on malafide intentions and being unconstitutional as well as ultra vires to the basic rights as mentioned in the constitution be set-aside and the respondents be directed to fill up the above noted posts after going through the legal and lawful and the normal procedure as prescribed under the prevailing laws instead of using the short cuts for

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Peshawar High Court

30 NOV 2018

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obliging their own person. They further prayed that the notification No. A-14 / SET (M) dated 11.12.2009 and Notification No. A-17 / SET (S) Contract-Appnt: 2009 dated 11.12.2009, as well as Notification No. SO(G) / ES / 185 / 2009 / SS(Contract) dated 31.05.2010 issued as a result of above noted impugned Act whereby all the private respondents have been regularized may also be set-aside in the light of the above submission, being illegal, unlawful, unconstitutional and against the fundamental rights of the petitioners. The writ petitions came up for hearing and vide judgment/order dated 26.01.2015, the same were disposed of in the following terms:-

- (i) 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 workout 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 recruitments".

3. After passing the above said judgment, the petitioners were quite hopeful regarding their promotion to the next higher grade being senior most employees but the respondents have again started recruitment process by advertising the posts of various cadres for initial recruitment in various Districts of Khyber Pakhtunkhwa and as such, the inaction of respondents squarely fall within the ambit of

ATTESTED
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 Peshawar High Court
 30 NOV 2019

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contempt of court and they are liable to be proceeded and punished under the law; hence, the instant petitions.

4. Respondents No. 2 & 3 have filed reply to the show cause and prayed for dismissal of instant petitions.

5. Arguments heard and record perused.

6. While deciding writ petition No. 2905/2009, vide judgment dated 26.1.2015 which has been upheld by the apex Court, the respondents-department was directed to workout the backlog of the promotion quota and consider in service employees for promotion against the vacant post, till the backlog is washout. In this respect record is suggestive that the backlog was worked out and by that time 2725 employees / teachers were in the promotion zone and as such were promoted. Moreover, by virtue of Regularization Act, 2009, Act No. XVI of 2009, 1766 employees / teachers got regularization and as such, when worked out, the promotion quota was fully exhausted. The judgment in this respect was not for all the times to come for promotion purposes. Once the promotion quota, which was given advantage, in view of Regularization Act, 2009, cannot be claimed again and again. By now it's the question of fact that as to whether any employee / teacher was not promoted and by that time when Act 2009 was enforced they were in the promotion zone. Even otherwise, once backlog was worked out and promotion was done then claiming seniority and promotion is the job of service tribunal.

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EXAMINED
Dist. War High Court
30 NOV 2014

7. In view of the above, the instant as well as connected contempt petitions are disposed of in terms above. Show cause notice issued to respondents is hereby recalled.

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ANNOUNCED.
Dated: 08.11.2018

Chief Justice

Judge

Newab Shah ACS (DB) Justice Waqar Ahmad Bath CJ & Justice Muhammad Ayub Khan J

No. 15807

Date of Presentation of Application 25/11/18

No of Pages 5

Copying Fee 20

Preparation of Copy 25/11/18

Number of Copy 3

Received by [Signature]

CERTIFIED TO BE TRUE COPY

EXAMINER
Peshawar High Court, Peshawar
Authorized Under Article 177 of
The Constitution of Pakistan Order 1974

30 NOV 2018

ATTESTED

11/11/18

15807

To,

The Secretary (E&SE) Department,
Khyber Pakhtunkhwa, Peshawar.

K-58

DEPARTMENTAL APPEAL FOR THE GRANT OF PROMOTION TO THE POST OF SECONDARY SCHOOL TEACHER (BPS-16) FROM THE DATE WHEN THE PROMOTION QUOTA WAS FILLED UP THROUGH INITIAL RECRUITMENT OR FROM THE DATE OF COMMENCEMENT OF THE ACT NO.XVI OF 2009 COMMONLY KNOWN AS REGULARIZATION OF SERVICES ACT, 2009 NOTIFIED IN THE OFFICIAL GAZETTE ON 24.10.2009 WITH ALL BACK BENEFITS.

Respected Sir,

With due respect it stated that I was initially appointed as CT in your good self-Department vide order dated 15.12.1994. During service as CT I was in the promotion zone to the post of SST (BPS-16) but the concerned authority instead of promoting me advertised the said posts of SST (BPS-16) on adhoc/contract basis. I was under protest and my colleagues applied for the said post through initial recruitment but the same was also refused to me and my colleagues on the pretext that regular employees are not entitle to apply for the adhoc/contract posts of SST (BPS-16), thus me and my colleagues were deprived from the prospects of promotion. It is pertinent to mention that at the time of above mentioned advertisement the post/cadre of CT (BPS-15) to which I belong have no prospects of promotion. In light of the said advertisement new appointments were made by the authorities on adhoc basis and even the promotion quota was also filled by the authority through initial recruitment. In the meanwhile the Provincial Government Promulgated the employee's regularization Act, 2009 whereby all the adhoc employees who were appointed as SST on temporary basis were regularized, thus further affected the cadre to which I belong. That the promotion quota for which me and my colleagues have waited for decades has been washed by operation of the said Act of 2009. Feeling aggrieved my other colleagues knocked the door of the Peshawar High Court through various writ petitions. That vide consolidated judgments dated 26.1.2015 the said writ petitions were disposed of with the directions that:

(i)- 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 thirty days and consider the in service employees, till the backlog is washed out, till then there would be complete ban on fresh recruit. The concerned authority assailed the said judgment of the august Peshawar High Court Peshawar in CPLA No.127-P to 129-P/2015 but the same was dismissed as withdrawn vide judgment dated 20.9.2017. That then after me and my colleagues time and again visited the concerned quarter for our promotion to the next higher scale but the concerned authority instead of redressing the grievances advertised the posts through initial recruitment through various advertisements. During service I have promoted to the

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post of SCT (BPS-16) vide order dated 04.03.2021. That it is pertinent to mention that I am the senior most employee of your good self Department and also eligible in all respect for promotion to the post of SST (BPS-16) but of no avail. I am feeling aggrieved, filed this Departmental appeal before your good self for redressal of my grievances.

It is therefore, most humbly prayed that on acceptance of this Departmental appeal I may very kindly be promoted to the post of SST (BPS-16) including seniority with all back benefits w.e.f. the date when the promotion quota was filled up through initial recruitment.

Dated: 17.06.2021

Your Obediently



BACHA KHAN, SCT (BPS-16),
GHS Soor Kamar, District Charsadda

VAKALATNAMA

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

_____ OF 2021

Bacha Khan

(APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

Education Department

(RESPONDENT)
(DEFENDANT)

I/We Bacha Khan

Do hereby appoint and constitute **MIR ZAMAN SAFI, Advocate, Peshawar** 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. ____/____/2021

CLIENT



ACCEPTED

MIR ZAMAN SAFI
ADVOCATE

OFFICE:

Room No.6-E, 5th Floor,
Rahim Medical Centre, G.T Road,
Hashtnagri, Peshawar.
Mobile No.0323-9295295

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BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 7556/2021

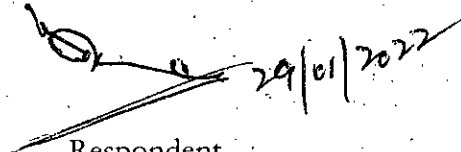
Bacha Khan

Vs

Govt of Khyber Pakhtunkhwa & others

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3	Copy of Judgment	A	4-8


Respondent
DISTRICT EDUCATION OFFICER
(MALE) CHARSAJDA

**BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR**

Service Appeal No. 7556/2021

Bacha Khan

Vs

Govt of Khyber Pakhtunkhwa & others

Written comments on behalf of Respondents

Preliminary Objections:

Respectfully Sheweth:

- A. That the Appellant has no locus standi and cause of action.
- B. That the present Appeal is wrong, baseless and not maintainable, it shows no cause to be taken for adjudication, therefore, the Appeal is liable to be rejected/dismissed.
- C. That the Appeal is unjustifiable, baseless, false, frivolous and vexatious. Hence the same is liable to be dismissed with the order of special compensatory costs in favour of Respondents.
- D. That no legal right of the appellant has been violated, therefore, the appellant has no right to file the instant appeal.
- E. That the Appellant is completely estopped/precluded by his own conduct to file this Appeal.
- G. That the Appellant has not come to this Hon' able Tribunal with clean hands. The Appeal also suffers from misstatements and concealment of facts and as such the Appellant is not entitled to equitable relief.
- H. That the Appellant has no right to file the instant Appeal and the Hon' able Services Tribunal has got no jurisdiction to adjudicate upon and the Appeal is liable to be dismissed.
- I. That the instant appeal is barred by law and limitation.

PARA WISE REPLY ON FACTS:

1. That the Para as stated is subject to cogent evidence.
2. That the Para as stated is replied as such that the department has advertised the posts on contract basis for a period of one year to overcome the immediate shortage of teachers.
3. That it was clearly mentioned in the advertisement that in service employees can't apply to these posts as fresh appointments were on contract basis and as per rules already employees have to tender resignation on their fresh appointment.
4. That the para needs no comments.
5. That it is prerogative of the government to make such laws which are beneficial and in the best interest of public and Act of 2009 was passed by the Khyber Pakhtunkhwa provincial Assembly in the larger interest of ~~public~~ ^{Public} ✓
6. That the para needs no comments.
7. That the issue had been settled once for all by Hon `able Peshawar High Court and then by Hon `able Apex court of Pakistan and promotion in the instant case was based on seniority cum fitness. The appellant did not meet the criteria as evident from the decision of H kp service tribunal announced on 08.11.2021.
(Judgment is annexed as A)
8. That the appellant was initially appointed as C.T in District Mohmand and then transferred to Peshawar District and now is performing his duties in District Charsadda, therefore, his seniority was affected and has been placed at bottom in District Charsadda as per rules for inter district transfers. It is pertinent to mention here, that earlier the appellant filed an appeal before this Hon `able Tribunal for seniority and was dismissed accordingly because of his several transfers to different districts.
9. That the Hon `able Peshawar High Court Peshawar quoted in its judgment in COC attached with the appeal of the appellant in para No.6 that in this respect record is suggestive, that backlog was workout and 2725 teachers/employees were in the promotion zone and such were promoted, meaning thereby that the appellant at time was not in promotion zone, therefore could not be promoted.
10. That the appellant has no right to file the instant appeal and is liable to be dismissed on the following grounds amongst others:

GROUND

- A. That the appellant was not in the promotion zone that time, therefore, had no right to be promoted to the post of SST.
- B. That the appellant earlier to this appeal filed an appeal No. 38/2019 for seniority which was dismissed by this Hon `able kp service Tribunal.
- C. As is replied in the above para No. B on grounds.
- D. That the appellant was not in the promotion zone, hence, should have to wait till his turn in the seniority list.
- E. That the posts were advertised for recruitment on contractual basis and the appellant was at liberty to apply for fresh appointment.
- F. Incorrect, the appellant has been transferred from District Mohmand to District Peshawar and then to District charsadda and had been placed at bottom of seniority list on his proper place, therefore, will be promoted on his turn.
- G. Incorrect, the appellant was not entitled for promotion rather will be promoted on his turn in the seniority list.
- H. That the para as stated is irrelevant, hence, needs no comments.
- I. That the answering Respondents seek, permission of this Hon `able Tribunal to advance other grounds/documents at the time of hearing of the appeal.

Director

142- Director E & SE.

27/01/2022
Respondent

3-

DISTRICT EDUCATION OFFICER
(MALE) CHARSADDA

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR

Service Appeal No: 7556/2021

Bacha Khan

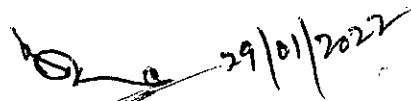
Vs

Govt of Khyber Pakhtunkhwa & others

AFIDAVIT

I Mr. Umar Zaman DEO (M) Charsadda do hereby solemnly affirms that the information provided by the DEO (M) and the contents of the Para-wise comments submitted by respondents are true and correct and nothing has been concealed intentionally from this Hon' able tribunal.

Deponent

 29/01/2022

(Umar Zaman)

DISTRICT EDUCATION OFFICER
(MALE) CHARSADDA

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

PESHAWAR

Khyber Pakhtunkhwa
Service Tribunal

Service Appeal No. 38 /2018

Diary No. 17

Dated 4-1-2019

**Bachā Khan (Certified Teacher) (BPS-15), Government High School Sur Kamar,
District Charsadda**

VS

1. Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat Peshawar
2. Chief Secretary, Khyber Pakhtunkhwa, Civil Secretariat Peshawar
3. Secretary to Government of Khyber Pakhtunkhwa, Elementary & Secondary Education (E&S Edu), Civil Secretariat Peshawar
4. Director, Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar
5. District Education Officer (Male) (DEO), District Charsadda



SERVICE APPEAL UNDER SECTION 04 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974 AGAINST THE REJECTION OF THE DEPARTMENTAL APPEAL DATED: 26/11/2018 WHICH WAS PREFERRED IN RESPECT OF PROMOTION TO THE POST OF "SST" KEEPING IN VIEW THE FACT THAT THE APPELLANT HAS BEEN APPOINTED ON THE POST OF "CT" ON 15/12/1994 AND SO FAR, HAS NOT BEEN PROMOTED DESPITE THE LAPSE OF MORE THAN ABOUT 24 YEARS ON THE SAME POST

The appellant is pleased to beseech before this Honorable Tribunal as under;

Mentio-day
Register at
11/11/19
Resubmitted to day
10/11/19

1. That the appellant was appointed as "Certified Teacher" (CT) BPS-14 at "GMS Qalagai, Mohmand Agency" by the approval of departmental selection committee on 15/12/1994 and having on his credit M.Ed, Master of Political Science degrees. (Copies of Appointment Order, Pay Slip and Academic Documents are attached as F/A)
2. That after serving for more than about a decade in Mohmand Agency, the appellant was transferred to district Peshawar at "GMS Sarband" Peshawar from "GMS Qalagai" on 30/9/2003. (Copy of Transfer Order Dated: 30/9/2003 is attached as F/B)

ATTESTED

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.38/2019

Date of Institution ... 04.01.2019
Date of Decision ... 08.11.2021

Bacha Khan (Certified Teacher) (BPS-15) Government High School Sur Kamar, District Charsadda.

(Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat Peshawar and four others.

(Respondents)

Muhammad Iqbal,
Advocate

... For appellant.

Muhammad Adeel Butt,
Additional Advocate General

... For respondents.

Ahmad Sultan Tareen
Rozina Rehman

... Chairman
... Member (J)

JUDGMENT

Rozina Rehman, Member(J): Brief facts of the case are that appellant was appointed as Certified Teacher at GMS Qalagāi, Mohmand Agency. He was transferred to District Peshawar and then to G.H.S Zahid Abad District Charsadda on 07.02.2012. He was not considered for promotion despite repeated requests, hence, the present service appeal.

2. We have heard Muhammad Iqbal Advocate learned counsel for appellant and Muhammad Adeel Butt, learned Additional Advocate General for the respondents and have gone through the record and the proceedings of the case in minute particulars.

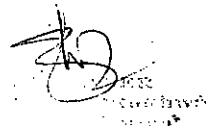
ATTENDED

MEMBER
KHYBER PAKHTUNKHWA

3. Muhammad Iqbal Advocate, learned counsel for appellant submitted that the appellant is highly qualified having Master Degree in Political Science and an experience of more than 23 years in Education Department. He submitted that the appellant has been serving on the post of C.T since inception of his service in the year 1994 and he was ignored which is not warranted by law. He submitted that the touchstone and rules regarding keeping a civil servant at the bottom of the seniority list after transfer to another district is an open and brazen violation of the fundamental rights of the civil servants and that the appellant being appointed initially in Mohmand Agency was later on transferred to Peshawar and then to District Charsadda by the competent authority without consent of the appellant and lastly he submitted that the seniority was requested to be maintained at the place where the appellant was initially appointed i.e. Mohmand Agency because the appellant remained in the same department and remained under the same authority for more than two decades and thus by throwing the appellant to the bottom of seniority list is tantamount to spoil the career of the appellant.

4. Conversely, learned A.A.G submitted that the appellant may be highly qualified but he is at the bottom of the seniority list, therefore, cannot be promoted. He submitted that the appellant was transferred from FATA Directorate to District Peshawar on his own choice while possessing the District Cadre Post. Lastly, it was argued that the seniority of the appellant has been placed at his proper place with the counterparts in District Charsadda and now he is at Serial No.332 because of his several transfers from Mohmand Agency to District Peshawar and then to District Charsadda.

RECORDED



5. From the record it is evident that upon the approval of Departmental Selection Committee, the preset appellant Mr. Bacha Khan alongwith four others were appointed as C.T vide appointment/adjustment order dated 15.12.1994. He is a highly qualified teacher which is not denied. He was transferred/adjusted from Mohmand Agency to GHS Sarband Peshawar on 30.09.2003. Vide office order dated 12.05.2011, he was transferred from GHS Sarband Peshawar to G.H.S.S Peshawar Cantt. Upon the approval given by the competent authority in relaxation of ban, present appellant was transferred from G.H.S.S No.1 Peshawar Cantt. to GHS Zahid Abadd District Charsadda vide office order dated 07.02.2012, wherein, it has been clearly mentioned that his seniority will be determined at the bottom of seniority list under the rules. He was then transferred from GHS Zahid Abad to GHS Sur Kamar on 15.11.2014. His name was included in the seniority list w.e.f 29.02.2012 as per rules and policy. This entry in the office order bearing endorsement No.393-98 dated 07.02.2012 was never challenged by the appellant and he submitted an application in respect of his promotion to the post of S.S.T to the Director Elementary & Secondary Education which is undated and is available on file but from the contents of the said application in form of departmental appeal, it is evident that the same was submitted when the appellant was serving in GHS Sur Kamar, Charsadda and as per transfer order dated 15.11.2014 appellant was transferred from GHS Zahid Abad to GHS Sur Kamar. It means that after determination of his seniority at the bottom of the seniority list under the rules in the year 2012, properly communicated to the




ATTESTED

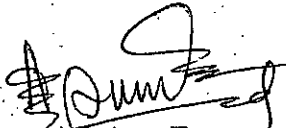


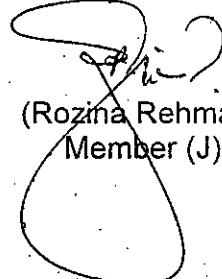
WITNESSED

appellant was assailed in the year 2014 while the present service appeal was filed in the year 2019.

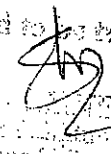
6. Having considered the matter from all angles in the light of material available on file, we do not find any merit in the instant service appeal which is hereby dismissed. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED.
08.11.2021


(Ahmad Sultan Tareen)
Chairman


(Rozina Rehman)
Member (J)

Date of Appointment: 08/12/21
2000
22/-
22/-
21/12/21
21/12/21

Certified to be true copy

Service Tribunal
Pakistan