

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE  
TRIBUNAL PESHAWAR**

Mr. Falak Naz Khan & Another SA/84-~~8~~/2023 (Appellant)

Versus

Government of Khyber Pakhtunkhwa

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 5/66

Dated 8/5/2023

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6 Authority letter  
8/5/23

125  
hms  
DEPONENT  
CNIC No.17101-0377128-9  
Cell# 0346-9148582

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

**Service Appeal No. 84-85 of 2023**

**Mr. Falak Naz Khan & Another..... (Appellant)**

**Versus**

**Government of Khyber Pakhtunkhwa**

**AFFIDAVIT**

I Syed Nabi Gul, Superintendent (Lit), Directorate of Social Welfare, Special Education & Women Empowerment Khyber Pakhtunkhwa, do hereby solemnly affirm and declare on oath that the contents of the accompanying reply/comment are true and correct to the best of my knowledge and belief and that nothing has been concealed therein from this Hon'ble Tribunal.



**DEPONENT**

**CNIC No.17101-0377128-9**

**Cell# 03469148582**



At: .....

**BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR**

**Service Appeal No. 84 - 85/ 2023**

Falak Naz Khan S/O Mian Azad Gul R/O Ziarat Shiekh Allah-Daad Tehsil & District Kohat.....**Appellant**

**VERSUS**

1. Govt. of Khyber Pakhtunkhwa through Chief Secretary
2. Govt. of Khyber Pakhtunkhwa through Secretary Social Welfare, Special Education & Women Empowerment Department Peshawar
3. Director, Social Welfare, Special Education & Women Empowerment Peshawar
4. Secretary Establishment Govt of Khyber Pakhtunkhwa Peshawar
5. Secretary Finance Govt of Khyber Pakhtunkhwa Peshawar ..... **Respondents**

**Respectfully Sheweth:**

**PARA-WISE COMMENT ON BEHALF OF RESPONDENTS**

**PRE-LIMINARY OBJECTIONS:**

1. The appellant has got no cause of action to file this service appeal.
2. That the appeal is not maintainable in its present form.
3. That the appellant has no locus standi to file the present service appeal.
4. The appeal is badly time barred. Therefore, the appeal is not maintainable.
5. That the Honorable Khyber Pakhtunkhwa Service Tribunal Peshawar vide judgment dated 12.05.2016 has already dismissed identical case in light of the judgment of august Supreme Court of Pakistan dated 17.02.2017 delivered in Civil Appeal No. 101 & 102-P of 2011 that the Service Tribunal have no jurisdiction to entertain any appeal involving the issue of up-gradation (**Annexure-A**). Therefore, the appeal in hand is not maintainable.

**FACTS:**

1. No comments.
2. Pertains to record.
3. Correct to the extent that prior to devolution, the respective department of the appellant was under the administrative control of Federal Govt under Ministry of Social Welfare and Special Education, Government of Pakistan.

4. Correct.
5. Pertains to record.
6. Incorrect, hence denied. The respondent department has implemented all the sections of the Act/Ordinance i.e. Pension, Gratuity leave encashment except benevolent fund issues, for which a case with the Federal Govt. regarding mechanism of GP Fund transfer to Province of Khyber Pakhtunkhwa shall be taken.
7. Incorrect, hence denied. The appellant was devolved to Provincial Govt. of Khyber Pakhtunkhwa under the 18<sup>th</sup> Constitutional Amendment and was absorbed as a regular employee in the same scale and post i.e. BPS-18 in the Special Education Institute (Devolved). As far as 4-tier formula is concerned, in this connection it is stated that prior to devolution the Directorate General of Special Education, Government of Pakistan Islamabad implemented the said formula on teaching as well administrative cadres under their administrative control. The 4-tier formula has never been introduced / implemented by the Government of Khyber Pakhtunkhwa on the employees of Special Education Institutions worked / working under their administrative control—before and after devolution. The Government of Khyber Pakhtunkhwa has framed its own rules / regulation for promotion / award of higher pay scale. As far as the fate of devolved employees is concerned, this Honorable Tribunal is informed that draft service structure has been proposed and is under process, as and when the said service structure is approved from the competent forum, the appellant as well as his colleagues shall be promoted / up-graded in next higher pay scale based on seniority-cum-fitness.
8. Incorrect, hence denied. As per judgment dated 21.11.2016 of the Honorable Islamabad High Court, Islamabad the devolved employees have been absorbed w.e.f January 2018, treated as Civil Servants and also had been awarded promotions / up-gradation / award of higher pay scales etc in light of Provincial Government (Social Welfare, Special Education & Women Empowerment Department) policy. So far the service structure etc is concerned, in this connection factual position has been explained in Para-7 above.

9. Incorrect, hence denied. The said judgment has been implemented in letter and spirit. About 4-tier formula factual position has been explained in the preceding paras.
10. Incorrect, hence denied. The appellant has been absorbed and treated as civil servant of the Government of Khyber Pakhtunkhwa. His basic rights are protected / guaranteed as per law. As far as 4-tier formula provided by the Federal Government is concerned, in this connection it is stated that the Directorate General of Special Education Govt. of Pakistan had no such policy for the teachers under their administrative control. The policy of award of higher pay scales for the teachers of Special Education Institutions have been formulated by the Government of Khyber Pakhtunkhwa. The provincial government has meager resources and cannot bear the expenses of two different formulas i.e. 4-tier formula and award of higher pay scale.
11. Incorrect, hence denied. The factual position has been explained in the preceding paras.
12. Incorrect, hence denied. The appellant has no cause of action to file the instant service appeal.

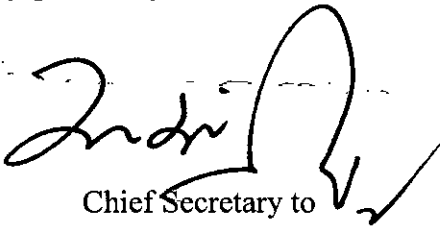
**GROUND:**

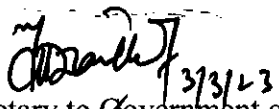
- A. No comments.
- B. Incorrect, hence denied. The factual position has been explained in the preceding paras of the facts.
- C. Incorrect, hence denied. Each Province / Department has their own rules, regulations / formulas for up-gradation / promotion keeping in view of the basic rights of the civil servants. The Provinces / Department adopt / prescribe criteria for providing up-gradation / promotion to their employees keeping in view the financial implications / sources / requirement in light of the total sanctioned strength. The Department of Social Welfare, Special Education & Women Empowerment Khyber Pakhtunkhwa providing one running basic pay (**Freeze on 30.06.2022**) 25% teaching allowance in addition to the monthly pay to the employees of Special Education Institutions (Devolved) under the 18<sup>th</sup> constitutional amendment. Besides above, the teachers of Special Education Institutions are also enjoying award of higher pay scale policy in light of Notification dated 24.07.1986 issued by the Govt. of Khyber Pakhtunkhwa, Finance Department (**Annexure-B**) as well as up-gradation in light of Notification dated 30.06.2015 (**Annexure-C**), therefore, claim of the appellant with

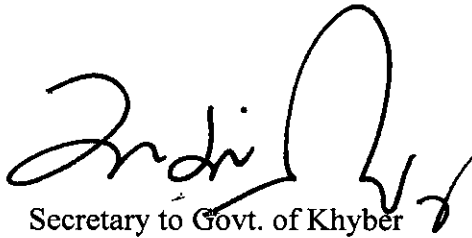
regard to Education Sector, Education Departments across the Province, Higher Education Department or Elementary & Secondary Education Department of Khyber Pakhtunkhwa is total baseless and un-justified.


- D. Incorrect, hence denied. The factual position has been explained in the preceding paras.
- E. In reply to Para-E of the grounds, it is submitted that the factual position has been explained in the preceding paras.
- F. Incorrect, hence denied. The factual position has been explained in Para-7 of the facts above.
- G. Incorrect, hence denied. The appellant was appointed in 2001 in BPS-17 and was upgraded to BPS-18 w.e.f 14.06.2008 just after approximately 07 years' service under the Directorate General of Special Education Govt of Pakistan Islamabad, therefore claim of BPS-20 w.e.f 2015 is baseless, against the rules / policy.
- H. Incorrect, hence denied. The factual position has been explained in the preceding paras.
- I. Incorrect, hence denied. The factual position has been explained in the preceding paras.
- J. The respondents also seek permission of this Honorable Tribunal to raise additional grounds at the time of hearing.

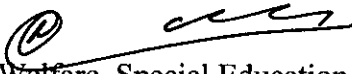
Keeping in view the above facts, it is humbly requested that the appeal devoid of any merit may graciously be dismissed.

  
 Chief Secretary to  
 Government of Khyber Pakhtunkhwa  
 (Respondent No. 1)

  
 Secretary to Government of Khyber  
 Pakhtunkhwa, Social Welfare, Special  
 Education & Women Empowerment  
 Department  
 (Respondent No. 2)

  
 Secretary to Govt. of Khyber  
 Pakhtunkhwa,  
 Establishment Department  
 (Respondent No. 4)

  
 Secretary to Govt. of Khyber  
 Pakhtunkhwa,  
 Finance Department  
 (Respondent No. 5)

  
 Director, Social Welfare, Special Education and  
 Women Empowerment,  
 Govt. of Khyber Pakhtunkhwa  
 (Respondent No. 3)

**Before the KPK Service Tribunal Peshawar**

Appeal No. 1869/2011

**Umar Zarin, Investigator, Directorate of social welfare and Womer  
Development Department Khyber Pakhtunkhwa Peshawar**

..... Appellant

**Versus**

1866  
08/12-11

1. Government of KPK through Chief Secretary KPK Peshawar.
2. Government of KPK through Secretary Finance Department Peshawar.
3. Government of KPK through secretary welfare and special Education and women Development Department Peshawar.
4. Director, Social welfare and women Development Department Peshawar.

..... Respondents

Appeal under section 4 of KPK Service Tribunal Act,  
1974 for upgradation of and re-designation of  
Investigator (BPS-16) as Assistant Director (BPS-17)  
with effect from 17-8-2011 with all back benefits.

100  
7/12/11

**Respectfully Shewith:**

The appellant respectfully submits as under:

1. That the appellant is presently serving as Investigator (BPS-16) in Directorate of Social welfare and women Development Department Peshawar.
2. That the four provinces of the country i.e Punjab, Sindh, Baluchistan , KPK as well as the Federal Bureau of statistics have upgraded the posts of statistical Investigators (BPS-16) and have redesignated as statistical officers (BPS-17).

Copies are attached at annexures A,B,C,D and E respectively.

3. That the appellant having similar nature of duty and qualification alike the statistical officers (BPS-17) in Punjab, Sindh, Baluchistan, KPK and Federal Bureau of Statistics but has been deprived for not upgradina of his

*[Handwritten signature]*  
 Asstt. Director (Litigation)  
 Social Welfare, SE and WE,  
 Knyber Pakhtunkhwa.

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL  
PESHAWAR.

APPEAL NO.1869/2011

(Umar Zarin-vs- Govt: of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa, Peshawar and others).

12.05.2016

JUDGMENT

PIR BAKHSH SHAH, MEMBER:

Counsel for the appellant (Mr. Aslam Khan Khattak, Advocate) and Mr. Muhammad Jan, GP for respondents present.

In the instant appeal issue of up-gradation is involved and according to the judgment of august Supreme Court of Pakistan dated 17.02.2016 delivered in Civil Appeal No. 101 & 102-P of 2011 the service Tribunals have no jurisdiction to entertain any appeal involving the issue of up-gradation as it does not part of terms and conditions of service of the Civil servants.

In view of the above the appeal was not found maintainable by this Tribunal for want of jurisdiction. The same is therefore dismissed. The appellant may seek his remedy before any other appropriate forum if so advised. File be consigned to the record room.

Announced  
12.05.2016

*PIR BAKHSH SHAH*  
Member

*M. Aamir Nazir*  
Member

*[Signature]*  
*[Signature]*

Asstt. Director (Litigation,  
Social Welfare, SE and WE  
Khyber Pakhtunkhwa.



Annex B14

8

Annex B

No. FD(SR-I)1-95/84-III

GOVERNMENT OF N.W.F.P.  
FINANCE DEPARTMENT

Dated Peshawar, the 24th July, 1986

From

Muhammad Ullah Jan,  
Secretary to  
Government of N.W.F.P.,  
Finance Department,  
Peshawar.

195 (11)

The Secretary to  
Government of N.W.F.P.,  
Health and Social Welfare Department,  
Peshawar.

Subject: REVISION OF PAY SCALES OF THE TEACHERS WORKING  
IN THE INSTITUTIONS FOR THE HANDICAPPED

Sir,  
I am directed to refer to the subject noted above and to say that the matter regarding grant of enhanced pay scales to different categories of teachers working in the institutions for the handicapped (i.e., Blind, Deaf & Dumb, Physically Handicapped and Mentally Retarded) has been under consideration of the Government for sometime. It has been decided to prescribe new scales of pay for these teachers working in the above institutions with immediate effect. The new scales of pay, showing the qualifications prescribed for teachers are as under:-

(1) DEAF AND DUMB INSTITUTIONS.

- (a) Trained Graduate Teachers (B.A./B.Sc., B.Ed.) with adequate knowledge in the Education of deaf and dumb to be certified by the Social Welfare Directorate. B-17
- (b) Untrained Graduate and post-Graduate Teachers (M.A./B.Sc., M.A./M.Sc.) with adequate knowledge in the Education of deaf and dumb, to be certified by the Social Welfare Directorate. B-16 These teachers must acquire B.Ed. within a period of three years.
- (c) Trained under-Graduate teachers (Matric/P.A./etc.) with C.T. or P.T.C. etc. B-14 These teachers must acquire the qualification of B.A./B.Sc./B.Ed. five years as at (a) above.

ATTACHED

*[Handwritten signature]*

*Attested to true copy*

*Wakid*  
Asstt. Director (Litigation)  
Social Welfare, SE and WE,  
Knyber Pakhtunkhwa.

(42)

(d) Untrained; under Graduate B-11 Teachers with adequate knowledge of teaching deaf and dumb (to be certified by the Social Welfare Directorate)

These teachers should continue in B-11, till such time they cross the next stages of B-14/16.

(20)

(2) BLINDS INSTITUTIONS:

(a) Trained Graduate Teachers B-17 (B.A./D.Sc., B.Ed.) with adequate knowledge of Braille or teaching the blind (to be certified by the Social Welfare Directorate)

To be Reclassified as Senior Special Educators Teachers

(b) Un-trained Graduate and post-Graduate teachers (B.A./B.Sc., M.A./M.Sc.) with adequate knowledge of Braille or teaching the blind (to be certified by the Social Welfare Directorate)

These teachers must acquire B.Ed. within a period of three years.

To be re-designated as Junior Special Educators Teachers

(c) Trained under-Graduate teachers B-14

These teachers must acquire the qualification of B.A./B.Sc., B.Ed. within five years as at (a) above.

- i) P.A., C.T., and proficiency in Braille or adequate knowledge of teaching the blind (to be certified by the Social Welfare Directorate)
- ii) Matric, P.T.C., S.V. and proficiency in Braille or with adequate knowledge of teaching the blind (to be certified by the Social Welfare Directorate)
- iii) Matric with Diploma Certificate in a trade from a Blind Institute and proficiency in Braille or with adequate knowledge in teaching the blind (to be certified by the Social Welfare Directorate)

To be re-designated as Assistant Special Educators Teachers

(d) Un-trained, under Graduate Teachers with proficiency in Braille or adequate knowledge of teaching the blind (to be certified by the Social Welfare Directorate)

These teachers should continue in B-11, till such time they cross the next stages of B-14/16.

(3) MENTALLY RETARDED/PHYSICALLY HANDICAPPED INSTITUTIONS.

(a) Trained Graduate Teachers B-17 (B.A./B.Sc., B.Ed.) with adequate knowledge of teaching the mentally retarded and physically disabled (to be certified by the Social Welfare Directorate)

(b) Untrained Graduate and Post-Graduate Teachers (B.A./B.Sc./M.A./M.Sc.) with adequate knowledge of

These teachers must acquire B.Ed. within a period of three years.

*Attested*  
*D. K. Singh*

Asstt: Director (Litigation)  
Social Welfare, SE and WE.  
Knybo: Pakhtunkhwa

teaching the mentally  
retarded and physically  
disabled (to be certified  
by the Social Welfare  
Directorate.)

(c) Trained under-Graduate  
(B.A./B.Sc. with C.T./  
B.T.C./B.V.) with adequate  
knowledge of teaching the  
mentally retarded & physically  
disabled (to be certified by  
the Social Welfare Directorate)

(d) Untrained under-Graduate  
Teachers with adequate  
knowledge of teaching the  
mentally retarded & physically  
disabled (to be certified by  
the Social Welfare Director-  
ate.)

B-14

These teachers must acquire  
the qualification of B.A./  
B.Sc. B.V. within a period  
years as at (a) above.

These teachers should con-  
tinue in B-11, till such  
time they cross the next  
stages of B-14/16.

All special pays sanctioned for the above categories  
of teachers shall be discontinued with immediate effect.

Your obedient servant.

(SARDAR ALI KHAN)  
ADDL. FINANCE SECRETARY-I  
GOVERNMENT OF N.W.F.P.

Encl. No. FD(SR-I)1-95/84-III. Dated Pesh. the 24th July, 1986

Copy of the above is forwarded to:-

- 1) The Accountant General, N.W.F.P., Peshawar.
- 2) The Director, Social Welfare, N.W.F.P., Peshawar.

(SAEED AHMAD ALVI)  
DEPUTY SECRETARY (REGULATION)  
FINANCE DEPARTMENT.

Encl. No. FD(SR-I)1-95/84-III. Dated Pesh. the 24th July, 1986.

A copy is also forwarded to:-

- 1) The Secretary to Government of the Punjab,  
Finance Department, Lahore.
- 2) The Secretary to Government of Sind,  
Finance Department, Karachi.
- 3) The Secretary to Government of Baluchistan,  
Finance Department, Quetta.
- 4) The Secretary to Government of Azad Jammu and Kashmir,  
Finance Department, Muzaffargarh.

(FAKIR ULLAH)  
SECTION OFFICER (SR I)

ATTESTED

Attested by

Asstt. Director (Litigation)  
Social Welfare, SE and WF,  
Khyber Pakhtunkhwa

BETTER COPY

Annex B

11

No. FD (SR-1)1-95/84-III  
GOVERNMENT OF N.W.F.P  
FINANCE DEPARTMENT

Dated, Peshawar, the 24<sup>th</sup> July, 1986

From

Saeed Ulla Jan,  
Secretary to  
Government of N.W.F.P  
Finance Department  
Peshawar

To

Secretary to  
Government of N.W.F.P  
Health And Social Welfare Deptt:  
Peshawar.

Subject:

REVISION OF PAY SCALES OF THE TEACHERS WORKING IN  
THE INSTITUTIONS FOR THE HANDICAPPED.

Sir,

I am directed to refer to the subject noted above and to say that the matter regarding grant of enhanced pay scales to different categories of teachers working in the institutions for the handicapped (i.e. blinds, Deaf & Dumb, Physically Handicapped and Mentally Retarded) has been under consideration of the Govt. for some time. It has been decided to prescribe new scales of pay effect. The new scales of pay showing the qualifications prescribed for teachers are as under.

**(1) DEAF AND DUMB INSTITUTIONS**

- |  |             |  |
|--|-------------|--|
| (a) Trained Graduate Teachers<br>B.A/B.Sc, B.Ed with the adequate<br>Knowledge in the Education of deaf<br>to be certified by the Director Social<br>Welfare Directorate.              | <b>B-17</b> |  |
| (b) Un-trained Graduate and post-graduate<br>Teachers (B.A/B.Sc.M.A/M.Sc) with<br>adequate knowledge in the education of<br>deaf to be certified by the Social Welfare<br>Directorate. | <b>B-16</b> | These teachers must acquire<br>B.Ed within a period of three<br>years.                                   |
| (c) Trained under-Graduate Teachers<br>(Matric/F.A/F.Sc) with C.T or PTC<br>Or T.D etc.  | <b>B-14</b> | These teachers must acquire<br>the qualification of B.A/B.Sc/<br>B.Ed within 5 years as at (a)<br>above. |
| (d) Untrained, under-graduate Teachers<br>with adequate knowledge of teaching<br>deaf (to be certified by the Social Welfare<br>Directorate).  | <b>B-11</b> | These teachers should<br>continue in B-11, till such<br>time they cross to the next<br>Stage or B-14/16. |



Asstt. Director (Litigation)  
Social Welfare, SE and WE,  
Khyber Pakhtunkhwa.

**(2) BLIND INSTITUTIONS.**

- (a) Trained Graduate Teachers (B.A/B.Sc/B.Ed) with adequate Knowledge of Braille or teaching the blind (to be certified by the Social Welfare Directorate). **B-17**
- (b) Un-trained Graduate and post Graduate teachers (B.A/B.Sc., M.A/M.Sc.) with adequate knowledge Of Braille or teaching the blind ( to be certified by the Social Welfare Directorate). **B-16** These teachers must acquire B.Ed within a period of three years.
- (c) Trained under-Graduate Teachers. **B-14** These teachers must acquire the qualification of B.A/B.Sc, B.Ed with in five years as at (a) above).
  - (1) F.A, C.T & proficiency in Braille or adequate knowledge of teaching the blind (to be certified by the Social Welfare Directorate).
  - (2) Matric, P.T.C., S.V., & proficiency in Braille or with adequate knowledge of teaching the blind ( to be certified by Social Welfare Directorate).
  - (3) Matric with Diploma/Certificate in a Trade from a Blind Institute and Proficiency in Braille or with adequate Knowledge in teaching the blind (to be certified by the Social Welfare Directorate).
- (d) Un-trained, under-Graduate Teachers with proficiency in Braille or adequate knowledge of teaching the blind (to be certified by the Social Welfare Directorate). **B-11** These teachers should continue in B-11, till such time they cross to the next stages of B-14/16.

**(3) MENTALLY RETARDED & PHYSICALLY HANDICAPPED INSTITUTIONS.**

- (a) Trained Graduate Teachers (B.A./B.Sc.B.Ed.) with adequate Knowledge of teaching the mentally retarded & physically disabled (to be certified by the Social Welfare Directorate). **B-17**
- (b) Un-trained Graduate and (C.S.T- Graduate Teachers (B.A/B.Sc. M.A/M.Sc) with adequate knowledge of teaching the mentally retarded & physically disabled ( to be certified by the Social Welfare Directorate). **B-16** These teachers must acquire B.Ed within a period of three years
- (c) Trained under-Graduate (F.A/ F.Sc C.T/P.T.C/S.V with adequate Knowledge of teaching the mentally Retarded & physically disabled (to be certified by Social Welfare **B-14** These teachers must acquire the qualification of B.A/B.Sc, B.Ed with in 5 years as at (a) above.

*[Handwritten Signature]*  
 Asstt. Director (Litigation)  
 Social Welfare, SE and WF,  
 Knyber Pakhtunkhwa.

Directorate).

- (d) Un-trained under-Graduate Teachers, with adequate Knowledge of teaching the mentally retarded & physically disabled disabled(to be certified by Social Welfare Directorate). **B-11** These teachers should continue in B-11, till such time they cross to the next stage of B-14/16.

All special pays sanctioned for the above categories of teachers shall be discontinued with immediate effect.

Your Obedient Servant

(SAFDAR ALI KHAN)  
ADDL: FINANCE SECRETARY-I  
GOVERNMENT OF N.W.F.P

**ENDST. NO. FD(SR-1)1-95/84-11, DATED PESHAWAR THE 24<sup>TH</sup> JULY 1986**

COPY OF THE ABOVE IS FORWARDED TO:

- 1. THE ACCOUNTANT GENERAL NWFP, PESHAWAR.
- 2. THE DIRECTOR SOCIAL WELFARE NWFP PESHAWAR.
- 3.

(SAEED AHMED ALVI)  
DEPUTY SECRETARY  
(REGULATION)  
FINANCE DEPARTMENT

**ENDST: NO. FD (SR-1)1-95/84-III DATED PESHAWAR THE 24<sup>TH</sup> JULY 1986**

A copy is also forwarded to:

- 1) The Secretary to Government of the Punjab Finance Department Lahore.
- 2) The Secretary to Government of the Sindh Finance Department Karachi.
- 3) The Secretary to Government of the Baluchistan Finance Department Quetta.
- 4) The Secretary to Government of Azad Jammu and Kashmir Finance Department, Muzafarabad.

(FAKHAR-UZ-ZAMAN)  
SECTION OFFICER (SR-1)

*(Signature)*  
*(Signature)*  
Asstt: Director (Litigation)  
Social Welfare. SE and WE,  
Knyber Pakhtunkhwa.



Armed C

14

**GOVERNMENT OF KHYBER PAKHTUNKHWA  
FINANCE DEPARTMENT  
(REGULATION WING)**

Dated Peshawar, the 30-06-2015

**NOTIFICATION**

**NO.FD/SO(FR)7-20/2015** The competent authority has been pleased to accord approval to the upgradation of pay scales of the following provincial government employees with effect from 01-07-2015:


- a) Two pay scale upgradation will be allowed to all provincial government employees from BS-01 to BS-05.
  - b) One pay scale upgradation will be allowed to all provincial government employees from BS-06 to BS-15
  - c) Special Compensatory Allowance equal to difference of notional upgradation of BS-16 to BS-17 will be allowed to all provincial government employees in BS-16 in lieu of upgradation.
  - d) Upgradation will be applicable to both pay and allowances with freezing limits and other conditions currently in vogue unless revised by the government.
  - e) Pay fixation on upgradation will be applicable w.e.f. 01-07-2015 or 01-12-2015 on the option to be given by the concerned employee.
  - f) All provincial government employees who have been upgraded en-block or individually in last five years starting from 01-07-2010 or have been granted special allowance / pay equal to 40 % or more of their normal pay shall not be entitled for the instant upgradation.
2. Pay of existing incumbents of the posts shall be fixed in higher pay scales at a stage next above the pay in the lower pay scale.
  3. All the concerned Departments will amend their respective service rules to the same effect in the prescribed manner.
  4. The above upgradation scheme shall not be applicable to employees of Autonomous Bodies, Semi Autonomous Bodies and Public Sector Companies.
  5. Explanatory note and subsidiary instructions on the subject will be issued separately.

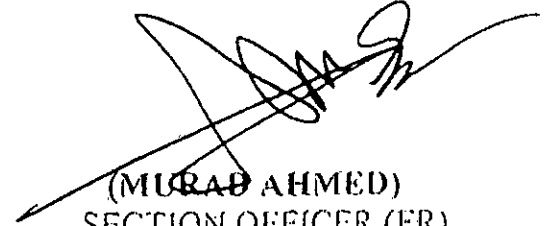
Asstt. Director (Litigation)  
Social Welfare, SE and WE,  
Khyber Pakhtunkhwa.

**SECRETARY TO GOVT OF KHYBER PAKHTUNKHWA  
FINANCE DEPARTMENT**

Endst No. & Date even.Copy of the above is forwarded for information and necessary action to the: -

- 1) PS to Additional Chief Secretary, FATA.
- 2) All Administrative Secretaries Government of Khyber Pakhtunkhwa.
- 3) Senior Member, Board of Revenue, Khyber Pakhtunkhwa Peshawar.
- 4) Accountant General, Khyber Pakhtunkhwa, Peshawar.
- 5) Secretary to Governor, Khyber Pakhtunkhwa, Peshawar
- 6) Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
- 7) Secretary Provincial Assembly, Khyber Pakhtunkhwa.
- 8) All Heads of Attached Departments in Khyber Pakhtunkhwa.
- 9) Registrar, Peshawar High Court, Peshawar.
- 10) All Deputy Commissioners, Political Agents, District & Sessions Judges / Executive District Officers in Khyber Pakhtunkhwa.
- 11) Chairman, Khyber Pakhtunkhwa, Public Service Commission, Peshawar.
- 12) Registrar, Service Tribunal Khyber Pakhtunkhwa.
- 13) Secretary to Govt; of Punjab, Sindh and Baluchistan, Finance Department, Lahore, Karachi and Quetta.
- 14) The District Comptroller of Accounts, Peshawar, Mardan, Kohat, Bannu, Abbottabad, Swat and D.I Khan.
- 15) The Senior District Accounts Officer Nowshera, Swabi, Charsadda, Haripur, Mansehra and Dir Lower.
- 16) The Treasury Officer, Peshawar.
- 17) All District/Agency Accounts Officers in Khyber Pakhtunkhwa / FATA.
- 18) PSO to Senior Minister for Finance, Khyber Pakhtunkhwa.
- 19) PSO to Chief Secretary, Khyber Pakhtunkhwa.
- 20) Director Local Fund Audit, Khyber Pakhtunkhwa Peshawar.
- 21) PS to Finance Secretary.
- 22) PAs to All Additional Secretaries/ Deputy Secretaries in Finance Department
- 23) All Section Officers/Budget Officers in Finance Department.
- 24) Mr. Jabir Hussain Bangash, President, Class-IV Association, Civil Secretariat, Khyber Pakhtunkhwa Peshawar.
- 25) Mr. Manzoor Khan, President, Civil Secretariat Driver Association Khyber Pakhtunkhwa, Peshawar.
- 26) Mr. Akbar Khan Mohmand, Provincial President, Class-IV Association, Khyber Pakhtunkhwa, Peshawar

  
 Asstt. Director (Litigation)  
 Social Welfare, SE and WE,  
 Khyber Pakhtunkhwa.

  
 (MURAB AHMED)  
 SECTION OFFICER (FR)



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**BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICES  
TRIBUNAL, PESHAWAR**

In Service Appeal No. \_\_\_\_\_ /2022

**FALAK NAZ KHAN  
VERSUS  
GOVT. OF KPK & OTHERS**

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Dated: 23-06-2022

*Javed Iqbal Gulbena*  
Appellant

Through

*Attested*  
*Asstt. Director*  
Asstt: Director (Litigation)  
Social Welfare, SE and WE,  
Khyber Pakhtunkhwa.

*Javed Iqbal Gulbena*  
Advocate,  
Supreme Court of Pakistan  
0302-5990617

**BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR**

In Service Appeal No. \_\_\_\_\_ /2022

561-1  
27-6-2022

Falak Naz Khan S/o Mian Azad Gul R/o Ziarat Shiekh Allah-daad, Tehsil & District Kohat

**VERSUS**

1. Government of Khyber Pakhtunkhwa, through Chief Secretary.
2. Secretary Social Welfare, Special Education at Women Empowerment Department, Govt. of Khyber Pakhtunkhwa, Peshawar.
3. Director Special Education, Directorate of Special Education, Govt. of Khyber Pakhtunkhwa, Peshawar.
4. Secretary Establishment, Govt. of Khyber Pakhtunkhwa, Peshawar.
5. Secretary Finance, Govt. of Khyber Pakhtunkhwa, Peshawar.

**APPEAL U/S 4 OF THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL ACT- 1974 FOR DIRECTIONING THE RESPONDENTS TO PROVIDE SERVICE STRUCTURE, i.e., 4-TIER FORMULA AS PREVALENT & APPLIED TO THE APPELLANT PRIOR TO DEVOLUTION TO PROVINCIAL GOVT. & THEREAFTER TO PROMOTE THE APPELLANT TO NEXT PROMOTION POST OF SENIOR PRINCIPAL (BPS-20) W.E.F 2015 & PRINCIPAL (BPS-19) W.E.F. 2012.**

RESPECTFULLY SHEWETH,

That the Appellant is naturally born bona fide citizen of Islamic Republic of Pakistan and hails from a respectable family.

Asstt: Director (Litigation) Social Welfare, SE and WF Khyber Pakhtunkhwa.

That initially the Appellant was appointed as Certified Teacher (C.T) in (BS-14) in Kohat Dated: 16<sup>th</sup> October 1993 under the Provincial Government Education Department of NWFP, where the Appellant served till 19<sup>th</sup> November 1996 and after selection by the PAEC assumed charge as Trained Graduate Teacher in

BPS-16 in Pakistan Atomic Energy Commission under Center for Nuclear Studies (Nilore) Islamabad, on 19<sup>th</sup> November 1996 through proper channel. Whereafter the Appellant for serving there for about five years, qualified the Federal Public Service Commission and resultantly was appointed as Senior Teacher in BPS-17 wherein he took charge of the post on 18<sup>th</sup> August 2001 at Nishter Special Education Centre, Kohat Under the Directorate General of Special Education, Islamabad (Federal Government). In 2004, he was transferred from Nishter Special Education Center Kohat to Special Education Complex Hayatabad, Peshawar. On 14<sup>th</sup> June 2008, he along with his other colleagues of the same cadre and post, were promoted on regular basis as per holding the requisite/prescribed merit standard by the Federal Government to BPS-18 as Vice Principal under the 4-tier formula structure. (Copies of, the Appointment Letter as C.T Dated: 16<sup>th</sup> October 1993, Appointment Letter of Trained Graduate Teacher bearing no. Esst-6(986)/96 Dated: 27-01-1997, Notification Dated: 03-10-2004 & Notification No-F.2/2008-All Dated: 14-06-2008 is annexed here as Annexure "A", "B", "C" & "D" respectively)

3. That before going to vent out spleen upon the stagnant and sluggishness of the Respondent and there candid and indifferent approach towards their statutory obligation, it is pertinent to mention here that the respective department of the Appellant had been used to be under the Federal Govt. under its Ministry of Social Welfare and Special Education, Government of Pakistan.

4. This department devolved to provinces in the light of the 18<sup>th</sup> Constitutional (Amendment) Act of 2010, and since then this Department of Special Education, or rather the Directorate of Special Education is run & managed by provincial Governments, Department of Social Welfare, Special Education & Women Empowerment Department. Initially, all the employees/civili

*Attested*  
*Wakid*

Asstt: Director (Litigation)  
Social Welfare, SE and WE  
Knyber Pakhtunkhwa.

servants were sent/transferred to provincial supervision under Section 10 of the Civil Servants Act- 1973, i.e., on "Deputation" basis & thereafter, passing the relevant enactment from the Provincial Assembly, all the employees who had initially been transferred under section 10 of the Civil Servants Act-1973 became the Provincial Civil Servants for all intents & purposes.

5. That before transfer of the employees of the Special Education, to Provincial Autonomy, a notification bearing no. F4-9/2003CR/COORD Dated: 12 -12-2007 was issued by Govt. of Pakistan, Ministry of Social Affairs & Special Education, Director General of Special Education in the gazette of Pakistan whereby the 4-tier formula of service structure was sanctioned & implemented in the Department of Special Education. (Copies of Notification bearing No. F4-9/2003CR/COORD Dated: 12 -12-2007 is annexed here as Annexure "E")
6. That the aforementioned notification was followed by devolution plan in the light of the 18<sup>th</sup> Constitutional Amendment of 2010, whereafter in ordinance called as Civil Servant (Amended) Ordinance 2013 was issued & published in extra ordinary gazette of Pakistan on 24-05-2013 which provided, inter-alia.

"Section 11-B

(2) All such Federal Govt. employees; -


(a) If their relevant cadre is available in Govt., shall be absorbed in the said cadre in the prescribed manner; and

(b) If no relevant cadre is available in Govt., shall be deemed to have been appointed on regular basis to various cadres' posts to be created for this purpose.

Provided that on such appointment or absorption, as the case may be.

(i) Their seniority shall be determined in accordance with the provision of this Act; and

(ii) Their liabilities about pension, gratuity, group insurance, benevolent fund and leave encashment shall

  
Asstt. Director (Litigation)  
Social Welfare, SE and WE,  
Khyber Pakhtunkhwa.

be proportionally shared between the Federal Government and Government in such a manner as may be agreed upon.

(3) Govt. shall constitute a committee consisting of Secretary to Govt. Establishment Department, Secretary to Govt, Finance Department, Secretary to Inter-Provincial Coordination Department and Secretary of the concerned Department to remove difficulties, if any, in implementation of this section."

This ordinance was later replaced or rather, further authenticated by an Act of the Parliament which reproduced the same S. (2) & (3) when it was published in the extra-ordinary gazette of Pakistan 22-03-2016, under the rules of Civil Servant (Amendment) Act 2016. (Copies of the Ordinance 2013 & Act of 2016 are annexed here as "F & G")

7. That by saying so the Appellant & all other his colleagues are entitled for the same 4-tier formula as their basic service structure, and they were accordingly entitled for their pending promotion but alas this is not the case.

8. That this was dubious situation rather a violative and vague scenario that erupted in the eve of devolution pan which put the whole future career of the Appellant and all their colleagues in doldrum, which constraints the colleagues of the Appellant to approach the Islamabad High Court, Islamabad for the needful to be done, creation for protection of service rules and applicability of the 4-tier formula in a Writ Petition No. 2350 of 2014, under the title of Qismat Khan etc. v/s Federation of Pakistan. The Hon'ble Islamabad High. Court, Islamabad by disposing the Writ Petition, hold that such:

"The Secretary Special Education Department Government of Sindh, Karachi categorically stated in his written statement that rules are likely to be framed within two weeks therefore formalities would be completed for adjustment/absorption of Petitioners as Sindh Civil Servants. Likewise, it is stated that all other Departments of respective Governments of KPK, Punjab & Baluchistan have also

*[Handwritten Signature]*  
Director (Litigation)  
Welfare, SF  
Khyber Pakhtun...

amended the law and in this regard, committees have been constituted. At this verge, the Petitioner No. 1 & 6 appeared and disclosed that they have joined their respective departments in their respective provinces, but other formalities about other benefits have not been fulfilled. It is pointed out by learned counsel for Respondent No. 5 that committee is to be constituted for finalization of rules for which approval of competent authority is awaited. In view of above, the grievances of the Petitioners raised through present writ petition seem to be redressed, else the Petitioners would be at liberty to file a fresh petition. This writ petition stands disposed of with the direction that above process initiated by various provinces be completed within one month from receipt of this order. Compliance report be submitted."

(Copies of Judgment of Islamabad High Court, Islamabad Dated: 21-11-2016 is annexed here as Annexure "H")

9. That although the Islamabad High Court, Islamabad issued sections for completion of the given task i.e., providing a 4-tier service structure & other job guarantees to the Appellant and rest of the employees of the Special Education, but till now the Appellant is steering their ways for any needful to be done, but all become mirage.
10. That although the Provincial Act i.e., Khyber Pakhtunkhwa Civil Services Act-1973, has been amended by including S.11-B therein which specially provides for absorption of the Appellant & his colleagues and which has categorically provided, inter-alia, that all employees of devolved department -i.e., the Appellant etc., shall be deemed to be Civil Servants of the Province of Khyber Pakhtunkhwa for all intents & purposes but even then they could not provide the basic right of service structure etc., to the Appellant which was provided to them where they were under the Federal Govt., but was made deprived of the same in the eve of devolution plan, which although had repeatedly been given protection via Ordinance and Act of Parliament as well as the Islamabad High Court,

*Attested*  
*[Signature]*

Asstt: Director (Litigation)  
Social Welfare, SE and WE,  
Khyber Pakhtunkhwa.

Islamabad Judgments besides Khyber Pakhtunkhwa Civil Servants Act-1973. (Copies of Khyber Pakhtunkhwa Civil Servants Act-1973 is annexed here as Annexure "I")

11. That this is the background, wherein the Appellant moved repeated applications for promotions and for 4-tier formula but all efforts on part of the Appellant went futile. (Copies of the Applications are annexed here as Annexure "J")

12. That feeling highly aggrieved, the Appellant approaches this Hon'ble Tribunal for service structure, 4-tier formula, and his due promotion with all back benefits, upon the following grounds, inter-alia:

GROUND:

A. That the Appellant is a naturally born *bonafide* citizen of Islamic Republic of Pakistan where law requires a thing to be done in a manner, the same is to be done in that very manner and not otherwise.

B. That where all the rights that Appellant had been enjoying prior to devolution plan had protected, not once but repeatedly via different mechanisms, then how come the devolution plan can snatch or strip off all such rights from the Appellant?

C. That even otherwise the Appellant is from Education Sector and the same 4-tier formula is made applicable to all the Education Sector and Education Departments across the provinces whether it is Higher Education Department or the Elementary & Secondary Education of Khyber Pakhtunkhwa.

D. That where the same 4-tier formula is sanctioned and implemented across the province even besides HED, E&SE Departments even in Commerce Colleges, Technical Colleges etc. then how come the Appellant or rather the employees of

Asstt. Director (Litigation)  
Social Welfare, SE and WE,  
Khyber Pakhtunkhwa.

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the Secondary Education can be kept at abbey form the same 4-tier formula.

- E. That even otherwise when the Hon'ble Islamabad High court Islamabad issued directions for framing rules and all most more than a decade gas passed away even then no service structure is provided in the Special Education Department, which speaks volumes of the sluggishness and indifferent attitude of the Respondents.
- F. That no matter the Appointment, Posting & Transfer (APT) Rules-1939 in the Section 3 are categorically if rules are to be framed by the concerned Department but the concerned department with the concurrence of the Establishment & Finance Department, but SRC meeting could never took place in more than a decade. So, what can be the other example of this classical & unfettered discretionary power vested in the Respondents.
- G. That the Appellant had been entitled to BPS-20 back in the year 2015, if had not been envisaged to such formidable consequences of arbitrariness of the Respondents, but aias the Appellant is still serving as VP in BPS-18.
- H. That even otherwise as per the clarification issued from establishment wing, providing a defined length of service structure in each grade, the Appellant is entitled to BPS-20, since 2015. (Copy of Clearance of Establishment Wing is annexed here as Annexure "K")
- I. That from every angle the appellant is liable to be promoted as Principal (BPS-19) w.e.f 2012 & Senior Principal (BPS-20) w.e.f 2015 with all back benefits.

Asstt. Director (Litigation)  
Social Welfare, SE and WE,  
Khyber Pakhtunkhwa.



J. That any other ground not raised here may graciously be allowed at the time of arguments.

It is, therefore, most humbly prayed that on acceptance of the instant Service Appeal, the Appellant be declared & held extended to BPS-19, as Principal w.e.f 2012, and as Senior Principal BPS-20 w.e.f.2015 and Respondents be directed to promote the Appellant as such with all back benefits w.e.f. 2012 & 2015 respectively.

It is further prayed that the Respondents be directed to frame rules & apply the 4-tier formula of service structure to the Appellant & Special Education and thereafter carry out the due promotion of the Appellant strictly as per law.

Any other relief not specifically asked for may also graciously be extended in favor of the appellant in the circumstances of the case.

Dated:23-06-2022

*[Signature]*  
Appellant

Through

*[Signature]*  
*[Signature]*

Javed Iqbal Gulbela  
Advocate,  
Supreme Court of Pakistan.

Saghir Iqbal Gulbela,

Asstt. Director (Litigation)  
Social Welfare, SE and WE,  
Knyber Pakhtunkhwa.

Ahsan Sardar  
&  
Hamza Durrani  
Advocates, High Court  
Peshawar.

NOTE:

No such like appeal for the same appellant, upon the same subject matter has earlier been filed by me, prior to the instant one, before this Hon'ble Tribunal.

*[Signature]*  
Advocate.

SO 047  
S.W.  
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Government of Khyber Pakhtunkhwa  
Social Welfare, Special Education & Women  
Empowerment Department  
Dated Peshawar the 28-03-2023

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**AUTHORITY LETTER**

Syed Nabi Gul, Superintendent Litigation Section, Directorate of Social Welfare, Special Education & Women Empowerment Peshawar is hereby authorized to submit para-wise reply /comments in Service Appeal No.84-85 of 2023 Titled Falak Naz Khan & Another V/S Government of Khyber Pakhtunkhwa on behalf of Secretary to Government of Khyber Pakhtunkhwa, Zakat, Usher, Social Welfare, Special Education & Women Empowerment Department.

Section Officer (Lit)

8/5/23