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BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR

S.A No. 232/2022

Hussan Basri versus Director & Others

REJOINDER

Respectfully Sheweth,

PRELIMINARY OBJECTION

All the 10 Preliminary Objections are illegal and incorrect. No reason in support of the same is ever given as to why appellant has no cause of action / locus standi, she is not aggrieved within the meaning of Article 212, appeal is badly time barred, has concealed material facts, not come to the hon'ble Tribunal with clean hands, not entitled for relief claimed for, appeal is against prevailing law and rules, this hon'ble Tribunal has got no jurisdiction, final list dated 02-02-2021 is per the mandate of law and appellant was correctly placed in the seniority list dated 02-03-2021.

ON FACTS

1-5. These paras of the appeal are admitted correct by the respondents regarding appointment of appellant as PET on 26-06-1997 by placing at S. No. 28, award of degree of MSc on 06-05-2006, promotion to the post of DPE B-16 on regular basis by placing her name at S. No. 24, issuance of Notification for up-gradation to the post of Librarian and Director Physical Education from B-16 to B-17 on regular basis by awarding her degree MSc on 06-05-2006 with B-17, Final Seniority List dated 31-03-2009 at S. No. 70.

6. Not correct. The para of the appeal is correct regarding rules for the purpose as prior to 16-05-2009, no such rules were in existence. The para of reply is without proof regarding presence of rules and structure.

7. Not correct. The Para of appeal is correct. Seniority list dated 01-01-2017 is not per the mandate of seniority rules, for example incumbent from S. No. 01 to 07 were shown on 19-05-2019 while incumbent at S. No. 09 was shown in B-17 on 16-08-2016, rest of the other incumbents were shown on 19-05-2009. Similarly incumbents at S. No. 15, 16, 18, 23 where shown of the year 2010, 2013, 2016, etc. were show senior to the incumbents at S. No. 10-14 and so on, meaning thereby that this seniority list was not prepared as per the seniority rules where seniors where shown juniors and juniors were shown senior.

8. Totally false and absolutely incorrect. The Principal of the school has forwarded such representation dated 04-02-2017 to the DEO (F) Peshawar vide covering letter No. 484 dated 04-02-2017, then how the same is denied by the respondents.

9. Not correct. The para of the appeal is correct as is evident from the same which is re-affirmed.

10. Not correct. The para of the appeal is correct. Appellant name was not figured at proper place being senior. Juniors were placed seniors with dates mentioned against their names. How an incumbent at S. No. 08 with 16-08-2016 could be placed at S. No. 08 and incumbent from S. No. 09 to S. No. 23, etc. except at S. No. 16 could be placed senior to them.

11. Not correct. The para of the appeal is correct from the dates mentioned against the name of appellant viz-a-viz others were shown senior for no legal reason but due to the mis-use of powers by the authority to favor juniors by placing them seniors.

12. Not correct. The para of the appeal is correct. Departmental appeal at Page No. 33 annex "K" was daired vide Dairy No. 4145, dated 01-11-2021 is the ample proof of the department.

GROUNDS:

a. Not correct. The ground of the appeal is correct wherein full description were given therein.

b. Not correct. The ground of the appeal is correct as stated above.

c. Not correct. From each and every seniority list of the respondents, if glanced upon, then the dates entered therein clearly shows that juniors were shown seniors and seniors were shown juniors.

d. Not correct. The ground of the appeal is correct. Every seniority list gives fresh cause of action to the aggrieved person.

e. Not correct. Full description were given in ground "E" of the appeal.

f. Totally false and absolutely incorrect. The line of the letter dated 13-11-2007 annex "D" Page No. 14 by saying, **"however their existing seniority will remain intact"** is in total disregard of law and rules on the subject (seniority). How a Finance Department can direct education department to impose restriction on seniority. Seniority shall be reckoned from the date of entry into service, and from the date of regular service. This embargo nowhere exists in other departments.

g. Not correct. The ground of the appeal is correct. Junior cannot be placed over the senior as per seniority rules.

h. Not correct. Seniority in each scale and cadre can be maintained per the dates and not any other angle.

i. Not correct. The stand of the appellant is quite per the mandate of law by keeping the merit position while preparing seniority position.

j. Not correct. The ground of the appeal is correct. Service structure came into force in the year 2009. As and when department makes changes in seniority position already assigned to employee, then notice for such change is mandatory by showing reason of the change.

In the seniority lists many changes were made not per the mandate of law but per the mandate of whims and wishes of the authority. Such change infringed the vested rights of the appellant.

The department made promotions when the seniority list was in-dispute amongst appellant viz-a-viz contesting respondents. In such a situation no promotion could be made until and unless seniority dispute is resolved as per the judgments of the apex court.

Appellant made written request to the authorities to not make any promotion but no heed was paid to the same. Even false certificate was given that the subject matter is not under litigation in any legal forum. (copies attached)

It is, therefore, most humbly prayed that the appeal be accepted as prayed for.

Appellant

Through

Saadullah Khan Marwat

Dated: 26-06 -2023

Advocate,

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(31)

Secretary
Government of Khyber Pakhtunkhwa,
Elementary and Secondary Education Department
Block-A, Opp: MPAs Hostel, Civil Secretariat
Peshawar.

Subject: **DEPARTMENTAL REPRESENTATION AGAINST THE NOTIFICATION NO.SO(S/F)E&SE./4-24/2021/ FINAL SENIORITY LIST OF SIEPs (BS-18) DATED 26.10.2021.**

Respected Sir,

1) That the appellant is serving as Senior Instructor Physical Education (female) in the Elementary and Secondary Education Department, Govt. of KP.

2) That the department vide order dated 26.10.2021 vide the above notification issued a seniority list of the incumbents of the department a seniority list as stood on 02.03.2021.

3) That the appellant being senior and eligible to be considered as senior to the other incumbents of the department whose are stood senior vide the seniority list at S.No.5, 10, 11, 13, 18, 21, 24, 25, 29, 31, 37, 41, 43, 44 and 48 are considered and stood senior to the appellant.

4) That the instant seniority list is illegal, against law and against the facts and the policy of the department in regard to seniority of the appellant.

5) That the appellant is senior by virtue of education, qualification, date of initial appointment and date of promotion to BPS-17 against the mentioned incumbents which are stood senior to the appellant as per seniority list.

6) That the instant seniority list issued by the department the mentioned incumbents are illegally ranked and stood senior to the appellant which is violation of law and rules and policy on the subject.

7) That the instant seniority list is also the violation of case law and judgments of the Khyber Pakhtunkhwa Services Tribunal, Peshawar in respect of the appellant as well as other incumbents.

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Dated: 1-11-2021

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It is, therefore, prayed that notification dated 26.10.2021 may please be modified to the extent of undersigned and corrigendum may kindly be issued in respect of the said incumbents as per law and rules and the appellant be ranked and be corrected as senior.

Any other relief which deems appropriate in the circumstances of the case may kindly also be granted.

Yours Sincerely

H. Basri

Mrs.Hussan Basri
Govt. Girls Higher Secondary School
Landi Arbab, Peshawar
Senior Instructor Physical Education (female) in the Elementary and Secondary Education Department, Govt. of KP.
CNIC No. 17301-0137503-0
Cell: 0322-9175076

Dated: 29.10.2021

Attested

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To,

1. The Chief Secretary,
   Government of Khyber Pakhtunkhwa,
   Peshawar.

2. Secretary,
   Government of Khyber Pakhtunkhwa,
   Elementary & Secondary Education Department
   Peshawar.

Subject: **Application for Non-Promotion Senior Instructor of Physical Education to Chief Instructor of Physical Education BPS – 18 to BPS-19.**

It is submitted that it has come to the knowledge of the applicants that Department is going to make further promotion to the post of Senior Instructor of Physical Education to Chief Instructor of Physical Education BPS – 18 to BPS-19.

2. It is to inform that the subject matter regarding the said issue is pending disposal before the honorable Service Tribunal and notice of the appeal of the applicant has already been served upon you. Appeal No.231 to 234 dated October 2022.

3. It is therefore most humbly requested that promotion process to the post of Senior Instructor Physical Education to Chief Instructor of Physical Education BPS – 18 to BPS-19 may be stopped till the decision of the appeal of applicant.

Yours Obediently

1. Afsheen Mumtaz, SIPE
   Govt. Girls Higher Secondary School,
   Khyber Colony, Peshawar

2. Rehana Yasmin, SIPE
   Govt. Girls Higher Secondary School,
   Wadpaga Peshawar.

3. Hussain Basari, SIPE
   Govt. Girls Higher Secondary School,
   Landi Arbab, Peshawar

4. Arifa Saleem, SIPE
   Govt. Girls Higher Secondary School,
   Nishterabad, Peshawar.

C.C to

Director, Directorate of Elementary and Secondary Education Department Peshawar.