

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

Service Appeal No.887/2020

Date of Institution ... 10.02.2020

Date of Decision... 31.05.2023

Jan Baz Khan S/O Muhammad Nawaz Khan, R/O Kaki Khas P/O Kaki Khas
Tehsil & District Bannu, Arabic Teacher (BS-15) Government Middle School,
(GMS) No. 1 Bannu. ... (Appellant)

VERSUS

Directorate of Elementary & Secondary Education, Khyber Pakhtunkhwa,
Near GHSS No. 1 Firdos, Peshawar and 41 others. ... (Respondents)

MR. INAYAT ULLAH KHAN,
Advocate

--- For appellant.

MR. ASIF MASOOD ALI SHAH,
Deputy District Attorney

--- For official respondents.

MR. MIR ZAMAN SAFI,
Advocate

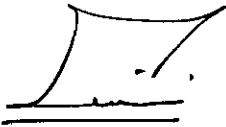
--- For private respondents No. 3 & 4.

MR. SALAH-UD-DIN
MR. MUHAMMAD AKBAR KHAN

--- MEMBER (JUDICIAL)
--- MEMBER (EXECUTIVE)

JUDGMENT:

SALAH-UD-DIN, MEMBER:- Precise facts as alleged by the
appellant in his appeal are that he was appointed as Arabic Teacher
(BPS-15) on contract basis on 22.05.2014 through National Testing
Service (NTS) and was later on regularized vide Notification bearing
Endorsement No. 1833-61/AE-1/Estab dated 21.03.2018; that initially a
seniority list dated 15.10.2019 in respect of Middle School Arabic
Teachers was circulated, wherein the name of the appellant was
mentioned at serial No. 84, while the names of private respondents
No. 3 & 4 were at serial No. 120 & 124 respectively; that the




afore-mentioned seniority list dated 15.10.2019 was prepared age-wise but subsequently another seniority list dated 26.10.2019 in respect of Middle School Arabic Teachers was circulated, wherein the appellant was shown junior to private respondents No. 3 & 4, constraining the appellant to file objection petition before the District Education Officer (Male) Bannu, however the same was not responded; that the appellant then filed departmental appeal before the Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar but the same was also not responded; that the appellant then submitted another application to the District Education Officer (Male) Bannu for disposal of objection petition earlier filed by him; that the District Education Officer (Male) Bannu passed hand written order on the application that the applicant being low in his merit position than the competing candidates, was not entitled for promotion and that he shall be promoted on his own turn subject to availability of the posts; that the impugned seniority list dated 26.10.2019 of Middle School Arabic Teachers has been prepared in violation of Clause-8 of terms and conditions prescribed in regularization Notification bearing endorsement No. No. 1833-61/AE-1/Estab dated 21.03.2018 as well as sub-section-2 of Section-4 of Khyber Pakhtunkhwa Employees of Elementary & Secondary Education Department (Appointment and Regularization of Services) Act, 2017, therefore, the same is liable to be corrected.

2. On admission of the appeal for regular hearing, notices were issued to the respondents. Official respondents No. 1 & 2 as well as private respondents No. 3 & 4 contested the appeal by way of filing of

replies, wherein they refuted the assertion raised by the appellant in his appeal. Rest of private respondents were proceeded ex-parte vide order dated 12.01.2023.

3. Learned counsel for the appellant has addressed his arguments supporting the grounds agitated by the appellant in his service appeal. On the other hand, learned Deputy District Attorney for official respondents No. 1 & 2 as well as learned counsel for private respondents No. 3 & 4 have controverted the arguments of learned counsel for the appellant and have supported the comments submitted by them.

4. Arguments have already been heard and record perused.



5. A perusal of the record would show that the appellant as well as private respondents were appointed as Arabic Teachers (BPS-15) on contract basis vide appointment order bearing endorsement No.5390-6440/AE-II-Male/AT/Adhoc/Apptt dated 22.05.2014. During the course of their service, Khyber Pakhtunkhwa Employees of the Elementary and Secondary Education Department (Appointment and Regularization of Services) Act, 2017 was enacted and vide Notification bearing Endorsement No. 1833-61/AE-1/Estab: dated 21.03.2018 their services were regularized with effect from the date of their initial appointment. Clause-8 of Terms and Conditions as mentioned in regularization Notification dated 21.03.2018 is regarding determination of seniority, which is reproduced as below:-

“Their Seniority shall be determined on the basis of their continuous service in cadre, provided that if the date of continuous service

in the case of two or more employees is the same, the employees older in age shall rank senior to the younger one.”(Emphasis provided)

6. Moreover, the criteria for determination of seniority inter-se of the employees regularized under Khyber Pakhtunkhwa Employees of the Elementary and Secondary Education Department (Appointment and Regularization of Services) Act, 2017 has been provided in Sub-Section 2 of Section-4 of the said Act, which is reproduced as below:-

“4. Determination of seniority.---

(1).....

(2) The seniority inter-se of those employees, whose services are regularized under this Act within the Cadre, shall be determined on the basis of their continuous service in Cadre:

Provided that if the date of continuous service in the case of two or more employees is the same, the employee older in age shall rank senior to the younger one.” (Emphasis supplied.)

7. Furthermore, according to Section-5 of the Khyber Pakhtunkhwa Employees of the Elementary and Secondary Education Department (Appointment and Regularization of Services) Act, 2017, the provisions of the said act shall have an overriding effect and the provisions of any such law or rules to the extent of inconsistency with the said Act shall cease to have effect.


8. The appellant as well as private respondents were appointed on contract basis on the same date i.e 22.05.2014 and were regularized


through same Notification dated 21.03.2018, therefore, in view of Clause-8 of Notification bearing Endorsement No. 1833-61/AE-1/Estab: dated 21.03.2018 as well as proviso to Sub-Section-2 of Section-4 of Khyber Pakhtunkhwa Employees of the Elementary and Secondary Education Department (Appointment and Regularization of Services) Act, 2017, their seniority inter-se was to be determined age-wise. While going through the impugned seniority list dated 26.10.2019, it is evident that inter-se seniority of the appellant and private respondents has been determined on the basis of score obtained by them in written test conducted through NTS, which was not a correct criteria for determination of their inter-se seniority. The NTS score was relevant for their appointment and not for determining their seniority inter-se. The impugned seniority list dated 26.10.2019 to extent of appellant as well as private respondents was prepared wrongly and requires to be corrected in accordance with Clause-8 of terms and condition of Notification bearing Endorsement No. 1833-61/AE-1/Estab: dated 21.03.2018 as well as Sub-Section 2 of Section-4 of Khyber Pakhtunkhwa Employees of the Elementary and Secondary Education Department (Appointment and Regularization of Services) Act, 2017.

9. In view of the above discussion, the impugned seniority list dated 26.10.2019 stands set-aside to the extent of those Arabic Teachers, who were appointed on contract basis on 22.05.2014 and whose services were regularized vide Notification bearing Endorsement No. 1833-61/AE-1/Estab: dated 21.03.2018 and it is directed that their inter-se seniority shall be determined age-wise on the basis of ibid Notification

dated 21.03.2018 as well as Sub-Section-2 of Section-4 of Khyber Pakhtunkhwa Employees of the Elementary and Secondary Education Department (Appointment and Regularization of Services) Act, 2017 by placing the name of the appellant at correct position in the seniority list of the concerned Arabic Teachers with all consequential benefits. The appeal in hand stands allowed in the said terms. Needless to mention that this judgment shall have no bearing upon those Arabic Teachers, whose appointments have been made through any order/judgment of court or Tribunal. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
31.05.2023


(Muhammad Akbar Khan)
Member (Executive)


(Salah-Ud-Din)
Member (Judicial)