

BEFORE THE HONORABLE SERVICE TRIBUNAL,
KHYBER PAKHTUNKHWA.

SERVICE APPEAL NO. 562/2023

PROF. ABDUL JABBAR

.....(Appellant)

VERSUS

GOVERNMENT OF KHYBER PAKHTUNKHWA
THROUGH SECRETARY HIGHER EDUCATION,
DEPARTMENT.

.....(Respondents)

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SECTION OFFICER (LIT)
HIGHER EDUCATION DEPARTMENT

①

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

PESHAWAR.

Khyber Pakhtunkhwa
Service Tribunal

SERVICE APPEAL NO. 562/2023

Diary No. 6713

Dated 26/07/23

Prof. Abdul Jabbar

..... *Appellant.*

VERSUS

Government of Khyber Pakhtunkhwa and others

..... *Respondents.*

JOINT PARA-WISE COMMENTS ON BEHALF OF RESPONDENT NO. 1, 2 And 3.

Respectfully Sheweth: -

PRELIMINARY OBJECTIONS: -

1. The appellant has neither cause of action nor locus standi to file the instant service appeal in this honorable Service Tribunal.
2. That the Appellant is estopped by his own conduct to file the instant appeal.
3. The appellant has not come with clean hands to this honorable tribunal and concealed material facts disclosure thereof may disentitle the appellant from the relief as prayed for.
4. That filing of this appeal is futile exercise and wastage of precious time of this Honorable Service Tribunal, liable to be dismissed forthwith.
5. That the instant appeal is not maintainable in its present form.
6. That the appeal in hand is barred by limitation.
7. The instant appeal is bad for non-joinder of necessary parties.

ON FACTS: -

1. Correct. However, the appellant assumed charge as lecturer in Botany on 11.11.1987.
2. Correct. However, services of the appellant were regularized w.e.f 23.01.1988.
3. Pertains to record.
4. Pertains to record.
5. Pertains to record.
6. Pertains to record.
7. Correct, with further explanation that merely approval was accorded to the 5-tier formula by the Finance Department while SSRC rules were notified on 12.09.2022 (**Annex-A**) after the retirement of the appellant and thus came into force after the notification *ibid*.
8. Correct, with further explanation that the implementation of 5-tier formula is not possible without issuance of Audit Copy from Finance Department which is part of the process that is completed after the approval and notification of SSRC Rules.
9. Pertains to record however, the appellant alongwith other applicants submitted numerous applications from time to time for the implementation of the formula *ibid* and requested for promotion to the post of Professor (BPS-21) which were sent to the Directorate of

Higher Education Department to work on the Working Paper with regards to the Appellant which was replied to by the Director Higher Education that the Service Rules of Five-Tier formula for the post of Professor (BPS-21) have not been notified yet and cases under the same formula/service structure will be processed after its proper approval/Notification. It is worth mentioning here that the formula ibid (SSRC Rules) has been properly approved and notified on 12.09.2022. (Annex-B)

- 10. Correct, with further explanation that such meetings were scheduled from time to time for the purpose of finalizing SSRC Rules/implementation of 5-tier formula.
- 11. Correct, with further explanation that as the Appellant himself stated that Draft Rules were sent for approval which does not mean Implementation of the said Rules as the same were discussed and amended from time to time before proper approval/notification of the said Rules after the SSRC Meeting i.e. 12.09.2022.
- 12. Correct, with further explanations that as the appellant/applicants submitted numerous applications for the implementation of the formula ibid from time to time prior to the proper approval and notification of the Service Rules by the concerned Authority. Therefore, the promotion of the appellants to the post of Professor (BPS-21) could not be considered without Service Rules which are necessary for Promotion and working on such posts/positions. Moreover, the appellant stood retired from Government Service on 16.04.2021 (Annex-C) long before the Notification of Service Rules that is i.e 12.09.2022.
- 13. Correct, with further explanation that the implementation of the said formula was in pipeline, therefore, due to which the promotion cases to the post of Professor (BPS-21) could not be processed.
- 14. Incorrect, hence denied. As the appellant could not be considered for promotion before the approval/Notification of said formula, therefore, the appellant has no legal grounds to file and to obtain any relief in the instant case.


ON GROUNDS: -


- A. Incorrect, hence denied. The appellant has been dealt with in accordance with law and no discrimination has been done to him.
- B. Incorrect, hence denied. The appellant has been dealt within the four corners of law/Rules.
- C. Incorrect, hence denied. The appellant has been treated in accordance with Law & Rules. Without any discrimination.
- D. Para is Legal, hence left to the wisdom of this Honorable Tribunal.
- E. Para is Legal, hence left to the wisdom of this Honorable Tribunal.
- F. Incorrect, hence denied, as explained in the preceding paras "on facts".
- G. Para is Legal, hence left to the wisdom of this Honorable Tribunal.
- H. Para is Legal, hence left to the wisdom of this Honorable Tribunal.
- I. Incorrect, hence denied. The appellant has been dealt in accordance with law and there is nothing malafide on part of the respondents.
- J. Incorrect, hence denied. The appellant has been dealt within the four corners of law/Rules.

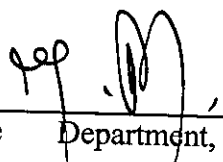
- K. Incorrect, hence denied. The appellant has been dealt within the four corners of law/Rules.
- L. Incorrect, hence denied. The appellant has been dealt within the four corners of law/Rules.
- M. Incorrect, hence denied. The appellant has been dealt within the four corners of law/Rules.
- N. That the respondents may also be allowed to raise further grounds at the time of arguments before the honorable Service Tribunal.

Prayer: -

In view of the above submissions, it is humbly prayed that the Service Appeal in hand may graciously be dismissed with costs.


Respondent No. 1. _____
Chief Secretary, Government of Khyber
Pakhtunkhwa, Peshawar.


Respondent No. 2. _____
Secretary, Higher Education Department, Khyber
Pakhtunkhwa, Peshawar.


Respondent No. 3. _____
Secretary, Finance Department, Khyber
Pakhtunkhwa, Peshawar.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

4

SERVICE APPEAL NO.562/2023

PROF. ABDUL JABBAR

..... Appellant.

Versus

GOVT. OF KHYBER PAKHTUNKHWA
& OTHERS

..... Respondents.

AFFIDAVIT

I, Qazi Muhammad Ayaz, Section Officer Litigation/ Litigation Officer (BPS-17), Higher Education Department do hereby solemnly declare and affirm on oath, that the contents of para wise comments on Behalf of Respondents is correct to the best of my knowledge and belief and that nothing has been concealed therein from this Hon'able Court. It is further submitted on oath that the respondents have neither been placed ex-party nor that defense have been struck-off/CoSB.

[Handwritten Signature]
26/7/23
Deponent

CNIC No.17301-7027499-5

Tel/Mob:091-9211027

26 JUL 2023



Annexure A



GOVERNMENT OF KHYBER PAKHTUNKHWA HIGHER EDUCATION, ARCHIVES & LIBRARIES DEPARTMENT

Dated Peshawar the 12th September, 2022

NOTIFICATION

NO.SO(C-II)/HED/2-5/2022/SSRC / 4057-62 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 previous Notifications issued in this behalf, the Higher Education, Archives and Libraries Department, in consultation with the Establishment Department and the Finance Department hereby lays down the method of appointment, qualification and other conditions specified in the column No. 3 to 5 of the APPENDIX which shall be applicable to the posts in the faculty of General College Cadre as specified in column No. 2 of the APPENDIX:

APPENDIX

S. No.	Nomenclature of Post	Minimum Qualification for appointment by initial recruitment	Age Limit	Method of Recruitment
1.	Principal (BPS-21)	---	---	By promotion on the basis of seniority-cum-fitness from amongst the holder of the posts of the Professors (BPS-20) with at least three years' service as such and have successfully completed mandatory training of four (04) months.
2.	Principal (BPS-20)/ Principal (BPS-19)	---	---	By transfer from amongst the Professors (BPS-20) or Associate Professor (BPS-19), as the case may be.

Section Officer (C.I.I)
Govt. Of Khyber Pakhtunkhwa
Higher Education,
Archives & Libraries Department

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18 SEP 2022

Date # 9154 Page # 256

Section Officer (Appointment)
Higher Education, Archives
& Libraries Department
Khyber Pakhtunkhwa

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16/09/22

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<p>3. Professor (BPS-20)</p>	<p>Ph.D in the relevant subject with twelve (12) years' experience in College Cadre or a HEC Recognized Universities/ DAI's having published (05) research papers in HEC recognized journals</p>	<p>40-50 years</p>	<p>(a) 90% by promotion, on the basis of seniority-cum-fitness, from amongst the persons holding the post in BPS-19 in the College Cadre having successful completion of mandatory training of thirty (30) days with at least:-</p> <ul style="list-style-type: none"> (i) Five (5) years' service in BPS-19 as such in case of person initially appointed in BPS-19; or (ii) Twelve (12) years' service in BPS-18 as such and above in case of person initially appointed in BPS-18; or (iii) Seventeen (17) years' service in BPS-17 and above; <p>(b) 10% by initial recruitment.</p>
<p>4. Associate Professor (BPS-19)</p> <p><i>Arif Khalid</i> 12/9/22 Section Officer (C.II) Govt. Of Khyber Pakhtunkhwa Higher Education, Archives & Libraries Department</p>	<p>(i) Ph.D or equivalent qualification in the relevant subject from recognized University with nine (09) years teaching/research experience in a recognized College/University or professional experience in the relevant field and at least Two (02) research publications as a Principal author in HEC recognized journals;</p> <p style="text-align: center;">or</p> <p>(ii) MS/M.Phil or equivalent qualification in the relevant subject from a recognized University with eleven (11) years teaching/research experience in a recognized College/University or professional experience in the relevant field with at least Four (04) research publications as a Principal author in a HEC recognized journals;</p> <p style="text-align: center;">or</p> <p>(iii) Second Class Master's degree or equivalent qualification in the relevant subject from a recognized University with Twelve (12) years teaching/research experience in the recognized College /University"</p>	<p>30-45 years</p>	<p>(a) 80% by promotion on seniority-cum-fitness basis, from amongst the Assistant Professors (BPS-18) having successful completion of mandatory training of thirty (30) days with at least;</p> <ul style="list-style-type: none"> (i) Seven (07) years' service in BPS-18 in case of person initially appointed in BPS -18; or (ii) Twelve (12) years' service in BPS-17 and above; and <p>(b) 20% by initial recruitment.</p> <p style="text-align: right;"><i>Arif Khalid</i> Section Officer (Litigation) Higher Education, Archives & Libraries Department Khyber Pakhtunkhwa</p>

5.	Assistant Professor (BPS-18)	<p>(i) Ph.D in the relevant subject from a recognized University with three (03) years teaching/research experience in a recognized College/University;</p> <p>or</p> <p>(ii) MS/M.Phil. or equivalent qualification in the relevant subject from a recognized University with five (05) years teaching /research experience in a recognized College/University;</p> <p>or</p> <p>(iii) Second Class Master's degree or equivalent qualification in the relevant subject from a recognized University with seven (07) years' experience in a College Cadre or recognized Universities/ DAI's.</p>	25-40 years	<p>(a) 80 % by promotion, on seniority-cum-fitness basis, from amongst the Lecturers with at least five (05) years' service in BPS-17 as such and having successful completion of mandatory training prescribed by the Government for College Teachers in BPS-17 from time to time; and</p> <p>(b) 20 % by initial recruitment.</p>
6.	Lecturer (BPS-17)	Second Class Master's degree or equivalent qualification in the relevant subject from a recognized University.	21-30 years	By initial recruitment.

Note: College Cadre Teachers in BPS-19 and BPS-20 shall be exempted from the mandatory training after attaining the age of 58 years or above.

Endst: No.SO(C-II)/HED/2-5/2022/SSRC

Copy is forwarded to the: -

1. Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. Secretaries to Govt. of Khyber Pakhtunkhwa, Establishment, Finance & Law Department.
3. Secretary to Govt. of Khyber Pakhtunkhwa, Public Service Commission, Peshawar.
4. Manager Printing Press Khyber Pakhtunkhwa Peshawar with the request for publishing in official gazette.
5. Director Higher Education, Khyber Pakhtunkhwa, Peshawar.
6. Director-IT, (HEMIS Cell), Higher Education Department.
7. PS to Minister for Higher Education Department.
8. PS to Secretary Higher Education Department.
9. Master File.

Attended
9/12/22
 Section Officer (Litigation)
 Higher Education, Archives
 & Libraries Department
 Khyber Pakhtunkhwa

SECRETARY TO GOVT.
 OF KHYBER PAKHTUNKHWA
 HIGHER EDUCATION DEPARTMENT

AKL 12/9/22
 SECTION OFFICER (COLLEGES-II)

Section Officer (C.II)
 Govt. Of Khyber Pakhtunkhwa

(8)

Amesure B



GOVERNMENT OF KHYBER PAKHTUNKHWA
HIGHER EDUCATION, ARCHIVES &
LIBRARIES DEPARTMENT
CIVIL SECRETARIAT

NO.SO(C-I)/HE/1-1/Joint Appeal for Promotion /6472.
Dated Peshawar the 14/04/2021


To


The Director,
Higher Education Khyber Pakhtunkhwa,
Peshawar.

Subject: - JOINT APPEAL FOR COMPLETE IMPLEMENTATION OF 5-TIER FORMULA AND CONVENING PROVINCIAL SELECTION BOARD MEETING FOR PROMOTION TO BPS-21, PRIOR TO RETIREMENTS.

I am directed to refer to the subject noted above and to enclose herewith a copy of self-explanatory application submitted by Prof. Sharif Gul and Prof. Abdul Jabbar with the request to work on the Working Paper with regard to these officers, so that the same may be sent to Establishment Department for the forthcoming PSB meeting, please.

Encl. As above.


SECTION OFFICER (COLLEGES-I)


Section Officer (Litigation)
Higher Education, Archives
& Libraries Department
Khyber Pakhtunkhwa

DD (E)

22/23/4/21

Director of Higher Education
Khyber Pakhtunkhwa
PESHAWAR

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885 The Secretary to Government of Khyber Pakhtunkhwa.
17/3/2021
Higher Education Archives and Libraries Department Peshawar.

Through Proper Channel,

Subject: JOINT APPEAL FOR COMPLETE IMPLEMENTATION OF 5-TIER FORMULA AND CONVENING PROVINCIAL SELECTION BOARD MEETING FOR PROMOTION TO BPS-21, PRIOR TO OUR RETIREMENT

R/Sir,

We the senior professors of Higher Education Department College Sector humbly submit the following facts and figures for your kind consideration and necessary action that:

1. The Government of Khyber Pakhtunkhwa has accorded approval to the 5-tier formula for college teachers of the Higher Education Department w.e.f 1st July 2020.
2. Consequent upon the partial implementation of the same 5-tier formula, many college teachers got posting, transfer and promotion to the higher grades on these newly created posts, ranging from BPS-17 to BPS-20, while promotion of 5th tier i.e. BPS-21 is still awaited for want of convening PSB meeting and delay in the notification of the approved minutes of S.S.R.C meeting for drafting the document in legal language.
3. We are the senior most Professors of the Higher Education Department in BPS.20, and fully entitled for promotion to BPS-21 but due to partial implementation of the 5-tier formula in the Higher Education Department we are deprived of our genuine right of timely promotion.
4. Keeping in view our meritorious services for more than 30 years in the Higher Education Department, we the senior most professors submit a humble request for complete implementation of 5-tier formula and convening PSB meeting for our promotion to BPS-21 before our retirement in April, 2021. Hope that our genuine request mentioned in the subject above, will be honored in the last days of our active service. We will be thankful for the quick action and support extended to us for a genuine cause based on justice and equality.

Best regards.
Your Sincerely,

[Signature] 15/03/2021

1. Prof: Sharif Gul.
Principal GSSC Peshawar
Date of retirement 01-04-2021.
Cell # 03339139880

2. Prof: Abdul Jabbar,
Principal GDC Kohi Sher Haider, Bara
Date of retirement. 17-04-2021
Cell # 03339103767

Copy for information to the:

1. PS to the Chief Secretary, Higher Education Department, Government of Khyber Pakhtunkhwa, Peshawar.

[Signature]
Section Officer (Communication)
Higher Education, Archives
& Libraries Department
Khyber Pakhtunkhwa

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[Signature]

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The Secretary,
Higher Education Department,
Government of Khyber Pakhtunkhwa, Peshawar.

THROUGH PROPER CHANNEL.

Subject: - **IMPLEMENTATION OF 5-TIER FORMULA.**

R/Sir,

It is humbly submitted before your esteemed and venerated office that the Government of Khyber Pakhtunkhwa very kindly accorded approval to the 5-tier formula for the teachers of Higher Education Department.

In this regard, I have the following submissions to present before your honor.

1. Minutes of the meeting of S.S.R.C have been approved and some of our colleagues have got promotions on the basis of the new 5-tier formula i.e. formula implemented from BPS-17 to BPS-20.
2. The issuance of Notification of BPS-21 is still pending in the plea that the same is being checked and amended by the law department as per legal language being the requirement of such documents. As per my assessment, this is being done to delay the case.
3. I am the Principal (BPS-20) of Government Superior Science College, Peshawar. My retirement is due on 1st April 2021. Like a number of our colleagues who got retired without getting their due right of promotion to BPS-21, this delay in the issuance of Notification will deprive me as well as a number of other grade 20 officers of HED, of our due right of promotion to BPS-21.

It is therefore, requested that the matter may please be intervened in personally and a special P.S.B meeting may please be convened for the promotion of BPS-20 officers in early March 2020, thus enabling us to be honored with Grade 21 and rid of a sense of frustration and deprivation.

Best regards.

Yours truly,

(Signature)
Section Officer (Liaison)
Higher Education, Archives
& Libraries Department
Khyber Pakhtunkhwa

(Signature)
Principal
GSSC, Peshawar

Copy for information to the:

1. PS to the Chief Secretary, Higher Education Department, Government of Khyber Pakhtunkhwa, Peshawar.



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DIRECTORATE OF HIGHER EDUCATION

KHYBER PAKHTUNKHWA

Rano Garhi, Peshawar

Tel # 091-2650025 / 2650024

E-mail:- dhekpkesh@gmail.com Facebook.com/dhekpkeshawar Twitter.com/dhekpkeshawar

No. 2209 / CA-I/ Estn Branch/A-12/Abdul Jabbar/ Botany Dated Peshawar the 6/5 /2021

To

The Secretary
Govt; of Khyber Pakhtunkhwa
Higher Education Department, Peshawar.

SUBJECT JOINT APPEAL FOR COMPLETE IMPLEMENTATION OF 5-TIER FORMULA AND CONVENING PROVINCIAL SELECTION BOARD MEETING FOR PROMOTION TO BPS-21 PRIOR TO RETIREMENTS.

Respected Sir, السلام عليكم

I am directed to refer to your letter No. SO(Colleges-I)/HE/1-1/Joint Appeal for Promotion/6472 dated 14.04.2021 on the subject cited above and to state that the Service Rules of 5-tier formula for the post of Professor (B-21) has not been notified yet and cases under the same formula /service structure will be framed after its proper approval/ Notification, please.

Yours Faithfully,

S. Bashir
6/5/2021
(Mohammad Bashir)

BY: DIRECTOR (ESTABLISHMENT)

Attested
Section Officer (Litigation)
Higher Education, Archives
& Libraries Department
Khyber Pakhtunkhwa



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DIRECTORATE OF HIGHER EDUCATION

KHYBER PAKHTUNKHWA
KHYBER ROAD, PESHAWAR

Tel # 091-9210242 / 9211025 Fax # 091-9210215

E-mail:- dhekpkesh@gmail.com Facebook.com/dhekpkeshavar Twitter.com/dhekpkeshavar1

No. 7500 / CA-I/ Estt: Branch/A-12/Abdul Jabbar/Botany Dated Peshawar the 21 / 4 /2021

To

The Secretary
Govt; of Khyber Pakhtunkhwa,
Higher Education Department Peshawar.

SUBJECT LEAVE ENCASHMENT/ RETIREMENT.

Respected Sir, السلام عليكم

I am directed to enclose herewith a self-explanatory application for retirement w.e.f 16.04.2021 (A.N) on attaining superannuation alongwith original leave application on prescribed form for the grant of leave encashment for 365 days in lieu of LPR-and-other enclosures in respect of Mr. Abdul Jabbar, Ex-Professor of Botany/Principal, (B-20), Govt; Degree College, Kohi Sher Haider, Khyber District and to state that he joined this Department as Lecturer in Botany on ad-hoc basis on 11.11.1987 and his ad-hoc services were regularized w.e.f 23.01.1988 (Copies of contract and regularization Notifications are enclosed). He was promoted to the post of Professor (B-20) on 21.11.2014. His date of birth as per matric Certificate is 17.04.1961 and he stood retired from Govt; service w.e.f 16.04.2021 (A.N) on attaining superannuation.

It is requested that the officer concerned may be allowed to proceed on superannuation retirement w.e.f 16.04.2021 (A.N) and to avail leave encashment for 365 days leave in lieu of LPR in light of leave admissibility report recorded by the District Accounts Officer, concerned on the body of leave application form.

Certified that neither he is involved in any departmental/ Anti-Corruption case nor any inquiry is pending against him.

Yours Faithfully,

Endst: No. 2501

M. H. J.
Section Officer (Administration)
Higher Education, Archives
& Libraries Department
Khyber Pakhtunkhwa

[Signature]
DY: DIRECTOR (ESTABLISHMENT)

Copy of the above is forwarded to the Principal, Govt; Degree College, Kohi Sher Haider, Khyber District with reference to his Endst: No. 300 dated 18.03.2021.

[Signature]
DY: DIRECTOR (ESTABLISHMENT)

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**GOVERNMENT OF KHYBER PAKHTUNKHWA
HIGHER EDUCATION, ARCHIVES &
LIBRARIES DEPARTMENT**

AUTHORITY LETTER

Mr. Qazi Muhammad Ayaz, Section Officer Litigation/ Litigation Officer (BPS-17), Higher Education Department, is hereby authorized to submit Joint para wise comments in the Khyber Pakhtunkwa Service Tribunal, Peshawar in SA No. 562/2023 titled Prof. Abdul Jabbar VS Govt. of Khyber Pakhtunkwa & others on behalf of official Respondents.

DEPUTY SECRETARY (LIT)
HIGHER EDUCATION DEPARTMENT
Govt. of Khyber Pakhtunkhwa
Higher Education Archives &
Libraries Department