

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,
PESHAWAR

12(2) Application No. 638/2023

C.M 12 (2) CPC No. _____/2023

In

Service Appeal No.231/2022

Mst. Parveen & others.....Applicants/Petitioners

V E R S U S

Rehana Yasmeen & others.....Respondents

I N D E X

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Through


Petitioners

Adnan Aman

Advocates High Court (s)

Dated 13.09.2023

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,
PESHAWAR

12(2) Application No. 638/2023

C.M.12 (2) CPC No. _____/2023

In

Service Appeal No.231/2022.

- (1) Mst. Parveen Akhtar, SIPE, GGHSS Akora Khattak
- (2) Mst. Yahya Begum, SIPE, GGHSS Pir Pai, Nowshera
- (3) Mst. Maryam Rasool, SIPE, GGHSS Kala But Township
2, Haripur
- (4) Mst. Mussaraj Iqbal, SIPE GGHSS Esak Chuntra Karak
- (5) Mst. Shahida Begum, SIPE GGHSS Esak Chuntra Karak
.....**Petitioners**

V E R S U S

1. Rehana Yasmeen Wife of Fazal Akbar, Senior
Instructor Physical Education, GGHSS Wadpagga
Peshawar
2. Director Elementary & Secondary Education, Khyber
Pakhtunkhwa Peshawar
3. Secretary Elementary & Secondary Education,
Khyber Pakhtunkhwa Peshawar
.....**Respondents**

PETITION U/S 12 (2) CPC 1908 AGAINST
THE IMPUGNED ORDER/JUDGMENT
DATED 27.07.2023 PASSED IN S.A
NO.231/2022, BEING OBTAINED ON
FRAUD "MISREPRESENTATION AND
CONCEALMENT OF FACTS.

Prayer

By accepting this petition, the
impugned order dated 27.07.2023 may
please be set aside and consequently
the service appeal No.231/2023 may
please be restored to its original
number and thereafter the same be
decide on its own merits, after
affording an opportunity of hearing to
the petitioners.

Respectfully Sheweth:

1. That the petitioners and respondent No.1 before
this Hon'ble Court are serving as Senior
Instructors Physical Education (S.I.P.E) BPS-18 who
were promoted to BPS-18 on 3rd May 2018. (Copy
of the order dated 23.05.2018 is attached as
Annexure "A").

2. That prior to their promotion, the petitioner's and respondent no.1, were performing their duty on Director Physical Education (DPE) in BPS-16 when on 13.11.2007, the then Govt. of NWFP (Now KP) was pleased to accord sanction for upgradation of posts of librarians and Director Physical Education from BPS-16 to BPS-17 who have Master's Degree in their relevant subject.

It is worth to mention here that it has clearly been mentioned in the aforesaid notification that those incumbents who hold diploma will stay in BPS-16 till the acquiring of Master's Degree in the relevant subject, **"however their existing seniority will remain intact"**. (Copy of the Notification is attached as Annexure "B").

3. That thereafter numerous meetings of the DPC were held with different intervals of time and the colleagues of the petitioner's and respondent No:1 (Male & Female) were promoted to BPS-17.

4. That it was in the year 2009 when some of the male colleagues of petitioner's and respondent No.1, approached this worthy tribunal, through fourteen (14) different service appeals bearing No.1667 of 2009 to 1680 of 2009, titled Ghulam Nabi and Others Versus The Secretary etc praying therein that their promotion/upgradation be made effective from 13.11.2007 instead of immediate effect which was decided by this tribunal through consolidated judgment dated 04.03.2010 and the department of E&SE was directed to upgrade the posts of the DPE's from 13.11.2007, strictly in accordance with notification of even date. **(Copy of judgment dated 04.03.2010 is attached as Annexure "C")**.
5. That in light of the judgment of the worthy tribunal dated 04.03.2010, a Note was prepared for the worthy Chief Secretary, that the judgment of Ghulam Nabi supra be implemented in light of principles laid down by the Apex Court reported as 1996 SCMR 1185 and resultantly all the DPE's were promoted/upgraded to BPS-17 w.e.f

13.11.2007 irrespective of the fact that whether they have litigated or not,

It again merits to mention here that the seniority was kept intact as on 13.11.2007: **(Copy of the summary note and approval by Chief Secretary is attached as Annexure "D")**.

6. That after the aforesaid efforts, one male colleague (of petitioner's and respondent No.1) namely M. Arif managed to get an order/judgment dated 07.05.2010 with respect to ante-dation of his promotion. **(Copy of the judgment is attached as Annexure "E")**.

It merits to mention here that during the course of execution proceedings the other male colleagues preferred a 12 (2) petition, like the instant one and the 12 (2) petition was decided by this Hon'ble Court vide order dated 12.07.2023. **(Copies of 12 (2) petition and order dated 12.07.2023 are attached as Annexure "F & F/1")**.

7. That similarly the respondent No.1 also managed to get an order dated 27.07.2023 passed in S.A

No.231 of 25022 however the worthy tribunal was not properly assisted with respect to the issue in hand as the petitioner 's (through were made party) were not properly served for the dates of hearing. **(Copy of the order dated 27.07.2023 is attached as Annexure "G").**

8. That the petitioners got knowledge of the whole episode when during the course of execution proceedings, the promotion cases of the petitioners were stopped by this court vide order dated 15.08.2023. **(Copies of Order dated 15.08.2023 is attached as annexure "H").**
9. That the petitioners being aggrieved of the aforesaid impugned order dated 27.07.2023 now prefers this petition under section 12 (2) CPC for the following amongst other grounds:

GROUND S:

- A. That the impugned order/judgment dated 27.07.2023 passed by this Hon'ble Court (with due respect) badly suffers from Doctrine of sub silentio as this Hon'ble Court was not properly assisted by

the parties nor this Hon'ble Court was provided with the copy of order already passed in 12 (2) petition of male colleagues and thus this Hon'ble Tribunal needs to interfere to avoid conflict orders/judgment.

B. That the issue of awarding of seniority and arrears has already been decided by this Hon'ble Court in case of Ghulam Nabi and others by holding that the same should be in light of notification dated 13.11.2007 however the respondent No.01 has tried to conceal all those facts from this Hon'ble Court which necessitated of fling instant 12 (2) petition.

C. That as stated in the body of petition that the petitioners were not afforded an opportunity of hearing despite the fact that the respondent No.1 is claiming her seniority over them and as such valuable rights of the petitioners are involved, therefore this Hon'ble Tribunal needs to restore the original appeal, by affording an opportunity of hearing to the petitioners and thereafter decide

the same on its own merits, strictly in accordance with the already laid orders/judgments.

- D. That a plain reading of the notification dated 13.11.2007 would reveals that it has categorically been mentioned therein that the then existing seniority, at the time of upgradation would remain intact and thus keeping in view the aforesaid directions, the respondent No.1 has rightly been placed at her due place in the final seniority list but respondent No.1 under the garb of the impugned judgment is pressing hard to become senior most, even from those officers whose date of appointment is much, much earlier than respondent No.1.
- E. That even otherwise in identical cases, already decided by this Hon'ble Tribunal, only the case of promotion and grant of arrears has been implemented, hence the issue of seniority is as same as it stood on the date of notification dated 13.11.2007, therefore a different yardstick cannot be applied to the case of respondent No.1.

F. That the petitioners have been treated against the law and have also been deprived of equal protection of law.

It is therefore most humbly prayed that By accepting this petition, the impugned order dated 27.07.2023 may please be set aside and consequently the service appeal No.231/2023 may please be restored to its original number and thereafter the same be decide on its own merits, after affording an opportunity of hearing to the petitioners

Through


Petitioners


Adnan Aman

Advocates High Court (s)

Dated 13.09.2023

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,
PESHAWAR

C.M 12 (2) CPC No. _____/2023

In

Service Appeal No.231/2022

Mst. Parveen & others.....**Applicants/Petitioners**

V E R S U S

Rehana Yasmeen & others.....**Respondents**

A F F I D A V I T

I, Mst. Parveen Akhtar, SIPE, GGSS Akora Khattak, do hereby solemnly affirm and declare on oath that the contents of the accompanying **petition 12 (2)** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.



[Handwritten Signature]
 DEPONENT

10-A

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,
PESHAWAR

C.M 12 (2) CPC No. _____/2023

In

Service Appeal No.231/2022

Mst. Parveen & others.....**Applicants/Petitioners**

V E R S U S

Rehana Yasmeen & others.....**Respondents**

**APPLICATION FOR SUSPENSION OF
THE IMPUGNED JUDGMENT DATED
27.07.2023, TILL THE DECISION OF THE
INSTANT 12 (2) PETITION.**


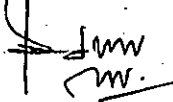
Respectfully Sheweth:

1. That the titled petition U/S 12 (2) CPC is being filed before this Hon'ble Tribunal in which no date of hearing is fixed.
2. That the grounds of main petition may be considered as integral part of this application.
3. That the balance of convenience also lies in favour of the applicants.

- 4. That the applicants have a good prima facie case and all the three ingredients are in favour of the applicants.
- 5. That if the operation of the impugned judgment dated 27.07.2023 is not suspended then the applicants would suffer irreparable loss.

It is, therefore, most humbly prayed that by accepting this application, the operation of the impugned judgment dated 27.07.2023 may please be suspended, till the final disposal of the instant 12 (2) petition.

Through


Applicants/Petitioners


Adnan Aman
Advocates High Court (s)

Dated 13.09.2022

10-C

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL
PESHAWAR

C.M 12 (2) CPC No. _____/2023
In
Service Appeal No.231/2022

Mst. Parveen & others.....**Applicants/Petitioners**

VERSUS

Rehana Yasmeen & others.....**Respondents**

AFFIDAVIT

I, Mst. Parveen Akhtar, SIPE, GGHSS Akora Khattak, do hereby solemnly affirm and declare on oath that the contents of the accompanying **application** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.

[Handwritten Signature]
[Handwritten Name]
DEPONENT



BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,
PESHAWAR

C.M 12 (2) CPC No. _____/2023

In
Service Appeal No.231/2022

Mst. Parveen & others.....**Applicants/Petitioners**

V E R S U S

Rehana Yasmeen & others.....**Respondents**

ADDRESSES OF PARTIES

PETITIONERS


- (1) Mst. Parveen Akhtar, SIPE, GGHSS Akora Khattak
- (2) Mst. Yahya Begum, SIPE, GGHSS Pir Pai, Nowshera
- (3) Mst. Maryam Rasool, SIPE, GGHSS Kala But Township 2, Haripur
- (4) Mst. Mussaraj Iqbal, SIPE GGHSS Esak Chuntra Karak
- (5) Mst. Shahida Begum, SIPE GGHSS Esak Chuntra Karak

R E S P O N D E N T S

- 1. Rehana Yasmeen Wife of Fazal Akbar, Senior Instructor Physical Education, GGHSS Wadpagg Peshawar
- 2. Director Elementary & Secondary Education, Khyber Pakhtunkhwa Peshawar
- 3. Secretary Elementary & Secondary Education, Khyber Pakhtunkhwa Peshawar

Petitioners

Through


Adnan Aman
Advocates High Court (s)

Dated 13.09.2023



H
GOVERNMENT OF
KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION
DEPARTMENT

24
23-5-18
Dated: Peshawar the May 23rd, 2018

NOTIFICATION

Consequent upon recommendations of the Provincial Selection Board in its meeting held on 15-05-2018, the Competent Authority is pleased to promote the following sixty (60) Female Instructor Physical Education (BS-17) to Senior Instructor Physical Education (BS-18) of Elementary & Secondary Education Department on regular/acting charge basis with immediate effect:

Annexure

"A"
12

Sl#	Name of Officer	Present Station
1	Mst. Naghma Akbar	GGHSS Qamar Zaman Mandew Bannu
2	Mst. Samina Habib	GGHSS Bilitang Kohat
3	Mst. Dilshad Begum	GGHSS No. 2 Bannu City
4	Mst. Safina Babar	GGHSS BSD Peshawar
5	Mst. Shaheen Anwar	GGHSS Abbottabad
6	Mst. Rehana Parveen	GGHSS Parova D.I.Khan
7	Mst. Shahida Begum	GGHSS Nowshera Kalan
8	Mst. Shabnam Jadoon	GGHSS Dharmtour Abbottabad
9	Mst. Tamsila Naz	RITE (F) D.I.Khan
10	Mst. Nargen Anwar	RITE (F) Peshawar
11	Mst. Saeda Begum	GGHSS Chanikani Peshawar
12	Mst. Misbah Seema	GGHSS Chah Said Munawar Shah No. 6 D.I.Khan
13	Mst. Rahila Bano	GGHSS No. 5 Qasaban D.I.Khan
14	Mst. Rafia Khattak	GGHSS Khyber Colony Peshawar
15	Mst. Hamida Begum	GGHSS No. 9 Dinpur D.I.Khan
16	Mst. Abida Parveen	GGHSS Malgkpora Abbottabad
17	Mst. Robina Shaheen	GGHSS SK Bala Bannu
18	Mst. Nabila Tabasum	GGHSS No. 2 Peshawar Cantt
19	Mst. Parveen Akhtar	GGHSS Akora Khattak Nowshera (acting charge basis)
20	Mst. Danish Begum	GGHSS Shahdhand Baba Mardan
21	Mst. Sughra Afandi	GGHSS Rustam Khel Mardan
22	Mst. Nigar Akhtar	GGHSS Nowshera Cantt
23	Mst. Yahya Begum	GGHSS Peshawar City (acting charge basis)
24	Mst. Rehana Khatoon	GGHSS Chokara Karak
25	Mst. Naheed Gohar	GGHSS Babri Banda Kohat
26	Mst. Mufceeda Begum	GGHSS Shahbaz Garhi Mardan (acting charge basis)
27	Mst. Samina Akhtar	GGHSS Pirpai Nowshera (acting charge basis)
28	Mst. Asma Quraishi	GGHSS Ludy Griffith Peshawar
29	Mst. Munaza Jabeen	GGHSS Tamab Peshawar
30	Mst. Azra Naz	GGHSS Toru Mardan
31	Mst. Ghazala Naeem	GGHSS Behazadi Chakar Kot Kohat
32	Mst. Sujhat Begum	GGHSS Takhtbhai Mardan
33	Mst. Adceba Nahced	GEC (F) Jamrud Khyber Agency
34	Mst. Tasleem Kausar	GGHSS Sakhakot Malakand (acting charge basis)
35	Mst. Saima Gul	GGHSS Palinpur D.I.Khan
36	Mst. Rohila Gul	GGHSS Koli Sadat Bannu
37	Mst. Shahana	GGHSS Daimai Bannu

APPROVED

39	Mst. Saima Andaleeb	GGHSS Kot Najibullah Haripur
40	Mst. Imtiaz Tabassum	GGHSS Jogiwara Peshawar
41	Mst. Bascerat Afzal	GGHSS Parkho Dheri, Mehmoodabad Mardan
42	Mst. Fakhar-e-Anjum	GGHSS Sawal Dheri Mardan
43	Mst. Nighat Seema	DCTE Abbottabad
44	Mst. Maryam Rasool	GGHSS KTS No. 2 Haripur (acting charge basis)
45	Mst. Shaheen Ali	GGHSS Shawa Svabi
46	Mst. Gul Dari	GGHSS Ismail Mama Khel Bannu (acting charge basis)
47	Mst. Mussajj Iqbal	GGHSS Kotka Bilawar Khan Bannu (acting charge basis)
48	Mst. Sardar Bibi	GGHSS No. 1 Karak
49	Mst. Sheraz Taj	GGHSS Gujrat Mardan
50	Mst. Afsheen Mumtaz	GGHSS Khyber Colony Peshawar
51	Mst. Sadia Hazrat	GGHSS Koper Malakand
52	Mst. Shahida Begum	GGHSS Esak Chountra Karak (acting charge basis)
53	Mst. Rehana Yasmeen	GGHSS Wadpaga Peshawar
54	Mst. Hassan Basri	GGHSS Sufaid Sung Peshawar
55	Mst. Saira Iltaf	GGHSS Kakul Abbottabad
56	Mst. Sajida Nousheen	GGHSS BSD Peshawar
57	Mst. Nazma Shihreen	GGHSS Larama Peshawar (acting charge basis)
58	Mst. Robinn Shaheen	GGHSS Rashakai Nowshera
59	Mst. Riffat Shaheen	GGHSS Baffa Manschra
60	Mst. Arifa Saleem	GGHSS University Town Peshawar

2. In terms of Section 6 (2) of Khyber Pakhtunkhwa Civil Servants Act, 1973 read with rule-19 (i) of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) rules, 1989 the above female officers of the Teaching Cadre on their promotion shall be on probation for a period of one

3. The posting/ transfer of the above named Instructor Physical Education shall be notified later on.

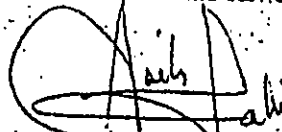
4. No TA/DA will be allowed for joining their duties.

SECRETARY

Endst: of even No. & date:

Copy forwarded to the:

1. Accountant General Khyber Pakhtunkhwa, Peshawar.
2. Director E&SE Khyber Pakhtunkhwa, Peshawar.
3. Director Education (FATA) FATA Secretariat Warsak Road Peshawar.
4. Director DCTE Abbottabad.
5. Director PITE Khyber Pakhtunkhwa.
6. Director RITE (F) Khyber Pakhtunkhwa.
7. District Education Officers (Female) concerned. Pesh
8. District Accounts Officers concerned.
9. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa, Peshawar.
10. PS to Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
11. PS to Minister E&SE Khyber Pakhtunkhwa Peshawar.
12. PS to Secretary E&SE Department.
13. PS to Special Secretary, E&SE Department.
14. Incharge EMISE, E&SE Department for uploading at official website at the earliest.
15. Senior Instructor Physical Education concerned.
16. Office order file.


(ANEELA FAHIM) 23/05/18

SECTION OFFICER (SCHOOLS FEMALE)

ATTACHED

13-11-07

Annexure
"B"

GOVERNMENT OF N.W.F.P.
SCHOOLS & LITERACY DEPARTMENT
Dated, Peshawar the 13-11-2007.

NOTIFICATION.

No. SOG/S&L/1-69/06/Vol-1/DPE/LIB: Sanction of the competent authority is hereby accorded to the upgradation of the posts of Librarians and Directors Physical Education (D.P.Es) from BS-16 to BS-17 (Regular) for the existing incumbents who hold Master Degree in the relevant subject Schools & Literacy Department NWFP with immediate effect as per following details:-

1. Promotion against the upgraded posts (from BS-16 to BS-17) shall be made in the prescribed manner, and in accordance with the service rules to be framed as per relevant provisions of the NWFP Civil Servants (Appointment, Promotion and Transfer) Rules 1989 read with the NWFP, Civil Servants Act, 1973.
2. The Librarians and D.P.Es who hold the diploma in the relevant subject will stay in BS-16 till such time, they acquire Master Degree in the respective subject. On Acquiring Master Degree in the relevant subject, their posts will be upgraded on case to case basis from BS-16 to BS-17 (Regular) and promotion (from BS-16 to BS-17) would be given as per laid down procedure and in accordance with the service rules to be framed. However their existing seniority will remain intact.
3. All the vacant posts of Librarians and D.P.Es in Schools & Literacy department in BS-16 are hereby upgraded to BS-17 appointments against which would be made from amongst the persons who hold Master Degree in the relevant subject, in the prescribed manner.
4. In future Librarians and D.P.Es will initially be recruited on the basis of Master Degree in the relevant subject in BS-17 (Regular).
5. Henceforth no appointment of Librarians and D.P.Es in BS-16 shall be made on the basis of diploma, being declared as "Denying Cadre".

Sd/-

SECRETARY TO GOVERNMENT OF NWFP
SCHOOLS & LITERACY DEPARTMENT.

ATTSTED

15

Endst: No. FD(SOSR-II) 10-7/03/VOL-III Dated, Peshawar the, 13/11/2007.
Copy forwarded for information and necessary action to:-

1. The Accountant General, NWFP, Peshawar.
2. All Districts Accounts Officers in NWFP.
3. All Agency Accounts Officers in NWFP.

(15)

Endst: No. & Date Even.

Copy forwarded to:-

1. Secretary to Government of NWFP, Establishment Department.
2. Secretary to Government of NWFP, Finance Department.
3. P.S to Chief Minister NWFP, Peshawar.
4. P.S to Chief Secretary NWFP, Peshawar.
5. Director Schools & Literacy, NWFP, Peshawar.
6. Director. Curr: & Teachers Edu: NWFP, Mandian Abbottabad.
7. Director of Education FATA NWFP, Peshawar.
8. P.S to Minister of Education, NWFP, Peshawar.
9. P.S to Secretary Schools & Literacy NWFP, Peshawar.
10. Office File.

ATTSTED

Before the N.W.F.P. Service Tribunal, Peshawar

Service Appeal No. 1617 / 2009.

A.W. Service Tribunal
Office No. 1812
Date: 27-9-09

Ghulam Nadeem D.P.E., Government Higher
Secondary School Gujar Gurdia Mardan.

Annexure
"C"

.....(Appellant)

VERSUS

16

The Secretary, Elementary & Secondary Education Deptt., Govt. of
N.W.F.P., Peshawar.(Respondent)

Appeal under Section 4 of the N.W.F.P. Service Tribunal Act, 1974 to the effect that Notification No,SO(PE)2-6/E&SE/DPC/Lib/DPEs (Bs-16 to BS-17) 09 dated 19/05/2009 to the extent of allowing upgradation from B-16 to B-17 to the DPEs including Appellant with immediate effect i.e. 19/05/2009 instead of 13/11/2007 is illegal, void and against the principles of natural justice.

11-10-09
Registrar
27/9/09
Sd/-
Principal
Gujar Gurdia
Mardan

Sd/-
Principal
Gujar Gurdia, Mardan

1. That the appellant reported as D.P.E. (BS-16) in the Education Department, Government of N.W.F.P. and holds Master Degree in the same subject.

ATTESTED

[Handwritten signature]

1
Date of Order
or proceedings

2
Date of Order
or proceeding

3
Order or other Proceedings with Signature of Judge or
Magistrate and that of parties or counsel where necessary.

Appeal No. 1667/2009

(Ghulam Nabi-vs-Secretary E&S Education Deptt)

04.03.2010

Appellant with counsel and Mr. Zahid Karim, AGP
alongwith Khurshid Khan, S.O for respondent present.
Arguments heard and record perused.

Since this appeal and the below listed appeals pertain
to the same question of upgradation from B-16 to B-17 to the
Directors Physical Education (D.P.Es) with effect from
13.11.2007, instead of 19.5.2009, vide impugned Notification
dated 19.5.2009, this single order is also directed to dispose
of the following appeals:-

- | S.No. | Appeal No. | Name of appellant |
|-------|------------|-------------------|
| 1. | 1668/2009 | Sarwar Shah |
| 2. | 1669/2009 | Muhammiad Naeem |
| 3. | 1670/2009 | Sardar Khan |
| 4. | 1671/2009 | Sabir Ali |
| 5. | 1672/2009 | Muhammad Israr |
| 6. | 1673/2009 | Sher Kamal |
| 7. | 1674/2009 | Sahir Khan |
| 8. | 1675/2009 | Muhammad Nawaz |
| 9. | 1676/2009 | Mst. Azra Naz |
| 10. | 1677/2009 | Mst. Danish Begum |
| 11. | 1678/2009 | Mst. Sheraz Taj |
| 12. | 1679/2009 | Muhammad Ali |
| 13. | 1680/2009 | Chamni Khan |

The appellants, who are serving in the Education
Department as Directors Physical Education (DPEs) in BPS-
16 and are holding Master Degrees; and have, therefore, on-

Attested
Principal
G.H.S. 2, Muzaffargarh

17

18

the basis of higher qualification, claimed eligibility to the grant of upgradation from BPS-16 to BPS-17 on the basis of Notification of the Provincial Government dated 13.11.2007; but they have been allowed upgradation w.e.f 19.5.2009 vide Notification of the even date; hence this appeal, inter-alia, on the grounds that the impugned order is in violation of the original Notification; and that the appellants fulfilled all the requisite terms and conditions for the grant of the benefit prayed for from 13.11.2007.

The respondents resisted the appeal, but admitted in their written reply/comments that the posts of DPEs and Librarians were upgraded from B-16 to B-17 vide Notification dated 13.11.2007. The respondents, however, contended the plea of the appellants with regard to upgradation from the date of Notification on the ground that extending the benefit to the appellants required framing of rules and recommendation of their upgradation by the Departmental Promotion Committee. As such, the appellants were allowed the benefit after fulfillment of all the codal formalities w.e.f. 19.5.2009.

Notwithstanding the plea of the respondents with regard to fulfillment of the codal formalities, the Notification with regard to upgradation of the post of DPE dated 13/11/2007 is clear to the effect that the upgradation will be effective from that date i.e. 13.11.2007. On the basis of this legal position, this Tribunal dealt with the issue and decided in principle, in the case of Senior English Teachers (Appeal No.266/09 titled "Haroon-ur-Rashid-vs-Secretary(B&S) Education Department and another") that the upgradation of

*Submitted
Munir Iqbal
Principal*

ATTESTED

the respective posts and appointment of the appellants to the posts shall be declared effective from the date from which it was intended to be effective in the original Notification of the Authority. The Tribunal, however, held, vide its above referred decision dated 3.7.2009, that as the upgradation and posting shall be one time only and shall be personal to the appellants and their similarly placed colleagues, as per the contents of the Notification quoted above.

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In the light of the above explained legal position and decision of this Tribunal, referred to above, this appeal and all the afore-mentioned connected appeals are accepted to the extent that upgradation of the posts of DPTs be made effective from 13.11.2007 in accordance with the Notification of the even date as well as in accordance with the subsequent Notifications, if any, applicable to the case of the appellants. No order as to costs.

SA
Principal
U.S. & Union Member

ANNOUNCED
04.03.2010

MEMBER

CHAIRMAN

4-3-10
10
13-3-10
13-3-10

Attested
Principal
U.S. & Union Member

ATTES



NOTE FOR CHIEF SECRETARY
KHYBER PAKHTUNKHWA

Annexure

Subject:- IMPLEMENTATION OF JUDGMENT DATED 4-3-2010 PASSED BY KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR IN SERVICE APPEAL NO.959/05 GHULAM NABI DPE AND OTHERS VERSUS GOVERNMENT.

1. Elementary and Secondary Education Department notified promotion of One Hundred and Fifteen (115) Male and Thirty Eight (38) Female Director Physical Education (DPEs) from BS-13 to B-17 on regular basis with immediate effect vide Notification Dated 19-5-2009 (Flag-A). Few of the said DPEs including Ghulam Nabi and other 13 colleagues (total 14) filed appeals No.1667/2009 upto 1680 Versus Secretary E&SE Department in the Khyber Pakhtunkhwa Service Tribunal. The Service Tribunal accepted the appeal on 4-3-2010 to the extent that upgradation/promotion of the DPEs be made effective from 13-11-2007 (Flag-B), in light of the prevalent rules notified on 13-11-2007 (Flag-C) instead of with immediate effect.

2. The Law Department vide letter No.LJ/LD/1-9(29)E&SEDI/2010/8071-74 Dated 22-1-2010 (Flag-D) intimated that it is not a fit case for filing CPLA in the Supreme Court of Pakistan. Law Department further added in letter No.OP.15(24)LD/2011/4638 Dated 24-3-2011 (Flag-E) that in Harid Akhtar Niaz case(1996 SCMR 1185), 2005 SCMR 499 & subsequent case 2009 SCMR Page 1, the august Supreme Court of Pakistan has consistently held that if the Service Tribunal or Supreme Court decides a point of law relating to the terms and conditions of service of civil servants, which covers not only the case of civil servant who litigated but also of other civil servants, who may have not taken any legal proceedings, in such a case, the dictates of justice and rule of good governance demands that the benefit of said decision of court be extended to other civil servants who may not be parties to the litigation instead of compelling them to approach the Service Tribunal or any other forum.

3. Law Department is of the view that the rule of good governance demands that Promotion/Upgradation may be allowed to all the DPEs from BS-16 to BS-17 with effect from 13-11-2007 having Master degree in relevant subject prior to 13-11-2007 irrespective of the fact that whether they have litigated or not on the point in issue.

4. The Finance Department has requested this Department to take necessary action in the matter after obtaining approval from the competent authority in light of the Service Tribunal judgment which has become a fait accompli as per notification dated 13-11-2007 and Law Department's advice dated 24-3-2011(Flag-F).

5. This Department sent a Draft Notification to Finance Department for vetting (Flag-G). The Finance Department advised this Department to move note for the approval of competent authority (Flag-H).

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In view of the above this Department proposes to Promote/Upgrade all the DPEs from BS-16 to BS-17 with effect from 13-11-2007 having Master degree in relevant subject prior to 13-11-2007, irrespective of the fact that whether they have litigated or not.

7 The Chief Secretary Khyber Pakhtunkhwa is requested to approve the proposal contained in Para-6/N above.

9/3/2014
SECRETARY
ELEMENTARY & SECONDARY
EDUCATION DEPARTMENT

CHIEF SECRETARY
KHYBER PAKHTUNKHWA.

ll. examine

Sury Estal


12/3
Chief Secretary
Govt. of Khyber Pakhtunkhwa

ATTACHED

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(22)

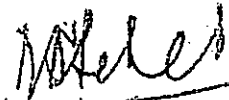
9. Note has been examined and observed that both Law and Finance Departments advised the Elementary & Secondary Education Department to implement the judgment of the Service Tribunal with approval of the competent authority. As the case involves upgradation and huge financial implications, Finance Department may add views before placing the case for approval of the Chief Secretary.


(Sikander Qayyum)
Secretary Establishment
March 17, 2014

Chief Secretary, Khyber Pakhtunkhwa.

Views pl.

Secy Finance



22/3.

Chief Secretary
Govt. of Khyber Pakhtunkhwa

ATTESTED



Subject: IMPLEMENTATION OF JUDGEMENT DATED 04.03.2010 PASSED BY KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR IN SERVICE APPEAL NO.959/05 GHULAM NABI DPE AND OTHERS VERSUS GOVERNMENT

11. The judgments quoted by the Administrative Department are judgments in persona and not judgments in rem. Therefore, Finance Department does not support the proposal of Elementary & Secondary Education Department contained in para-06 of the note.

Syed Said Badshah Bukhari
02.4.2014
Syed Said Badshah Bukhari
Finance Secretary

Chief Secretary

12. *para 6 approved*

Self case

M. H. Khan
04
Chief Secretary
Govt. of Khyber Pakhtunkhwa

11/4/2014

Sd. Secy

A.A.
D.S.
9

Secy (PE)
P. 4 draft out for action
Please
15/4
DC/13

APPROVED



ADDE
2/5/2014

(24)

GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION DEPARTMENT

Dated Peshawar the 29-04-2014.

A.D.C. Sports

21/5/2014

ADCS
4/5/15

NOTIFICATION.

NO.SO(PE)9-10/DPE/Ghulam Nabi. In pursuance of the judgement of Khyber Pakhtunkhwa Service Tribunal Peshawar dated 4-3-2010 in appeal No. 1667/2009 (Ghulam Nabi) 1668/2009 (Sarwar Shah), 1669/2009 (Muhammad Naeem), 1670/2009 (Sardar Khan), 1671/2009 (Sabir Ali), 1672/2009 (Muhammad Israr), 1673/2009 (Sher Kamal), 1674/2009 (Salar Khan), 1675/2009 (Muhammad Nawaz), 1676/2009 (Azra Naz), 1677/2009 (Danish Begum), 1678/2009 (Sheraz Taj), 1679/2009 (Muhammad Ali) and 1680/2009 (Chamni Khan), the competent authority is pleased to promote the following Directors Physical Education (DPEs) BS-16 To BS-17 on regular basis wef; 13-11-2007 instead of 19-5-2009 as notified vide this department No. SO(PE)/2-6/E&SE/DPC/DPEs dated 19-5-2009:-

S. No.	Name & Designation	Date of acquiring Master Degree in Physical Education
1	Ghulam Nabi DPE	20-11-1995
2	Sarwar Shah DPE	30-5-2005
3	Muhammad Naeem DPE	24-8-1993
4	Sardar Khan DPE	7-1-1993
5	Sabir Ali DPE	21-12-2002
6	Muhammad Israr DPE	30-5-2005
7	Sher Kamal DPE	30-5-2005
8	Salar Khan DPE	23-10-1994
9	Muhammad Nawaz DPE	19-9-2006
10	Azra Naz DPE	30-5-2005
11	Danish Begum DPE	23-6-2007
12	Sheraz Taj DPE	1-12-2007
13	Muhammad Ali DPE	30-5-2005
14	Chamni Khan DPE	30-5-2005

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2. The competent authority has further been pleased to promote the following DPEs who acquired prescribed qualification on or before, 13-11-2007 but they did not challenge this department notification of even No. dated 19-5-2009:

5/5/14 1059

70/6/15

S. No.	Name & Designation	Date of acquiring Master Degree in Physical Education
1	Mr. Bahadur Sher DPE	5-3-1983
2	Mr. Asmatullah DPE	21-10-1986
3	Mr. Talat Mahmood DPE	1-9-1991
4	Mr. Hazrat Ali DPE	31-12-1989
5	Mr. Shamsul Islam DPE	30-5-1988
6	Mr. Tajamul Zaman DPE	31-12-1989
7	Mr. Anwar Zad Khan DPE	31-12-1989
8	Mr. Khahd Tanveer DPE	30-5-1988
9	Mr. Misal Khan DPE	30-5-1988
10	Mr. Hussain Wali DPE	30-5-1988
11	Mr. Istam Rosh DPE	30-5-2005
12	Mr. Gul Aslam DPE	16-6-1985
13	Mr. Said Nawaz DPE	21-10-1986
14	Mr. Abdul Sarwar DPE	3-11-1990
15	Mr. Samiullah DPE	9-4-1996
16	Mr. Fazie Baqi DPE	20-5-1996
17	Mr. Iftikhar Ahmad DPE	2-8-1994
18	Mr. Ali Badshah DPE	4-8-1985
19	Mr. Azizullah DPE	30-5-1988
20	Mr. Mohiblah Khan DPE	26-12-1988
21	Mr. Said Bakht Shah DPE	6-5-2006
22	Mr. Hamidullah DPE	26-12-1988
23	Mr. Shah Mahmood DPE	3-11-1990
24	Mr. Ihtashamud Din DPE	30-5-2005
25	Mr. Abdullah Shah DPE	4-11-1991
26	Mr. Rukh Niaz DPE	31-12-1989
27	Mr. Gul Badshah DPE	30-4-1995

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28	Mr. Safdar Jan DPE	3-11-1990
29	Mr. Lal Mar Jan DPE	23-8-1992
30	Mr. Ahmad Nawaz DPE	24-8-1993
31	Mr. S. Ibadur Rahman DPE	7-1-1993
32	Mr. Kiramatullah DPE	12-4-1994
33	Mr. Mushlaq Khan DPE	15-3-1992
34	Mr. Mujeebur Rahman DPE	20-11-1995
35	Mr. Abdul Qadir Khan DPE	24-8-1993
36	Mr. Amjad Khan DPE	30-5-2005
37	Mr. Nikhatullah Khan DPE	16-12-2006
38	Mr. Farid Zaman DPE	24-8-1993
39	Mr. Ikramullah DPE	23-10-1994
40	Mr. Muhammad Usman DPE	6-7-1995
41	Mr. Waris Khan DPE	24-8-1993
42	Mr. Ashraf Ali DPE	12-8-1997
43	Mr. Fateh Sher DPE	17-7-1996
44	Mr. Muhammad Sharif DPE	20-11-1995
45	Mr. Said Khan DPE	23-10-1994
46	Mr. Muhammad Gul DPE	20-11-1995
47	Mr. Nasir Khan DPE	30-4-1995
48	Mr. Muhammad Haroon DPE	18-11-1996
49	Mr. Muhammad Iqbal Khan DPE	7-10-1998
50	Mr. Farmanullah DPE	1-12-1996
51	Mr. Hamza Ali Khan DPE	3-11-1990
52	Mr. Abdul Mateen Khan DPE	25-11-1995
53	Mr. Altaullah Khan DPE	15-3-1992
54	Mr. Sadiqur Rahman DPE	19-6-1995
55	Mr. Wali Dad Khan DPE	2-8-1994
56	Mr. Shahid ur Rahman DPE	19-6-1995

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57	Mr. Hakim Said DPE	17-7-1996
58	Mr. Qaiser Khan DPE	17-7-1997
59	Mr. Hukam Zad DPE	17-7-1999
60	Mr. Muhammad Alam DPE	23-6-2007
61	Mr. Muhammad Shahidullah DPE	20-6-1995
62	Mr. Muhammad Khalil DPE	12-11-1997
63	Mr. Noor Muhammad Shah DPE	29-5-1998
64	Mr. Murad Ali DPE	17-7-1999
65	Mr. Muhammad Ghani DPE	24-8-1993
66	Mr. Hazrat Ali DPE	02-09-1999
67	Mr. Arshad Hussain DPE	2-8-1994
68	Mr. Nowsher Zaman DPE	23-2-1999
69	Mr. Muhammad Kaleem DPE	05-2-2008
70	Mr. Kaleemullah Khan DPE	6-5-2006
71	Mr. Wajid Ali DPE	30-5-2005
72	Mr. Fariq Gul DPE	16-6-1999
73	Mr. Muhammad Ayaz DPE	17-6-1998
74	Mr. Taimur Riaz DPE	12-12-2001
75	Mr. Naik Zada DPE	6-5-2006
76	Mr. Yousaf Khan DPE	18-11-1996
77	Mr. Muhammad Ashfaq	27-8-2007
78	Mr. Mahboob Ali DPE	6-5-2006
79	Mr. Shaukatur Rahman DPE	17-6-1998
80	Mr. Dil Faraz Khan DPE	6-5-2006
81	Mr. Muhammad Kaleem DPE	12-12-2001
82	Mr. Alamzar Khan DPE	30-5-2005
83	Mr. Muhammad Ishaq DPE	1-6-2004
84	Mr. Muhammad Safdar Luqman DPE	30-5-2005

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Female

1.	Mst. Naghma Akbar DPE	6-6-1984
2.	Mst. Mussarat Parveen DPE	6-6-1984
3.	Mst. Dilshad Begum DPE	3-11-1990
4.	Mst. Shaheen Anwar DPE	15-3-1992
5.	Mst. Rehana Parveen DPE	3-11-1990
6.	Mst. Shahida Begum DPE	20-11-1995
7.	Mst. Shabnam Jadoon DPE	1-12-1994
8.	Mst. Tamseela Naz DPE	15-3-1992
9.	Mst. Noreen Anwar DPE	24-8-1993
10.	Mst. Shehnaz Begum DPE	24-8-1993
11.	Mst. Rafia Khattak DPE	17-6-1998
12.	Mst. Hamida Begum DPE	24-8-1993
13.	Mst. Nabeela Tabbasum DPE	16-9-1998
14.	Mst. Sa'eeda Begum DPE	30-5-2005
15.	Mst. Shabnum Raza Malik DPE	1-6-2004
16.	Mst. Nigar Akhtar DPE	9-9-2005
17.	Mst. Rehana Khatoon DPE	31-12-1989
18.	Mst. Naheed Gohar DPE	21-12-2002
19.	Mst. Asma Qureshi DPE	6-5-2006
20.	Mst. Munaza Jabeen DPE	6-5-2006
21.	Mst. Adeeba Naheed DPE	6-5-2006
22.	Mst. Sajida Sofi DPE	19-9-2006
23.	Mst. Rahila Gul DPE	30-5-2005
24.	Mst. Shahana DPE	6-6-2006
25.	Mst. Mariam Mustafa DPE	1-8-2002
26.	Mst. Saima Andaleep DPE	30-5-2005
27.	Mst. Imtiaz Tabbasum DPE	6-5-2006
28.	Mst. Fakhre Anjum DPE	12-12-2001

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29.	Mst. Nighat Seema DPE	1-6-2004
30.	Mst. Afsheen Mumtaz DPE	6-5-2006
31.	Mst. Rehana Yasmin DPE	6-5-2006
32.	Mst. Hassan Basri DPE	6-5-2006

SECRETARY

Dated Pesh: the, 29-04-2014

Endst. No. SO(PE)9-10/DPE/Ghulam Nabi.

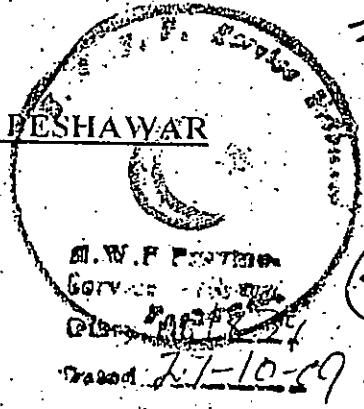
Copy forwarded to:-

1. Secretary to Govt. of Khyber Pakhtunkhwa, Establishment Department.
2. Special Secretary (Regulation), Establishment Department.
3. Secretary to Govt. of Khyber Pakhtunkhwa, Finance Department w/r to his letter No. SO(FR)/FD/10-22/9-10/ DATED 12-7-2012.
4. Secretary to Chief Minister Khyber Pakhtunkhwa.
5. PS to Chief Secretary Khyber Pakhtunkhwa.
6. All Directors in Elementary & Secondary Education Department. *E&SE, P, Peshawar*
7. Director Education FATA Warsak Road Peshawar.
8. All Commissioners/Deputy Commissioners in Khyber Pakhtunkhwa.
9. All District Education Officers (M/F) Elementary & Secondary Education in Khyber Pakhtunkhwa.
10. All Agency Education Officers in FATA.
11. Director Information Khyber Pakhtunkhwa Peshawar with the request to give wide publicity through media.
12. Secretary Public Service Commission Khyber Pakhtunkhwa, Peshawar.
13. PS to Minister E&SE Department.
14. PS to Secretary / Special Secretary / Additional Secretary E&SE Department Gov. of Khyber Pakhtunkhwa.
15. PA to Deputy Secretary (Admn.) Khyber Pakhtunkhwa.
16. Officers concerned.

Zamin Khan Momand
(ZAMIN KHAN MOMAND)
SECTION OFFICER (PRIMARY)

RECEIVED

BEFORE THE NWFP SERVICE TRIBUNAL PESHAWAR



Case No. 1776/2009

Muhammad Arif DPE Govt Higher Secondary School Bankhel, District Swabi.

(Appellant).

Annexure

"E"

VERSUS

1. Govt of NWFP through Secretary Elementary and Secondary Education NWFP Peshawar.
2. Secretary Finance, NWFP Peshawar.
3. Accountant General NWFP Peshawar.

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(Respondents)

Appeal under Section 4 of the NWFP Service Tribunal Act 1974 against the Notification No. SO (PE) 2-6/E&SE/DPCMEETING/LIB/09 DATED 15.6.2009 whereby the appellant has been promoted from BPS-16 to BPS-17 as DPE with immediate effect, the departmental appeal dated 04.7.2009 for the ante-dation of the promotion w.e.f 13.11.2007 was not responded despite the lapse of 90 days.

Filed to... 27/6/09

Prayer in Appeal:

On acceptance of this appeal the Notification dated 15.6.2009 may please be varied / modified and the same be given effect from 13.11.2007 with all consequential benefits.

Respectfully Submitted:

1. That the appellant was serving as DPE (BPS-16) in the respondent department, he has at his credit the Mr. Sc in.

TESTED EXAMINED NWFP SERVICE TRIBUNAL Peshawar

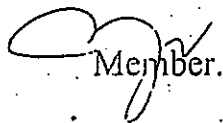
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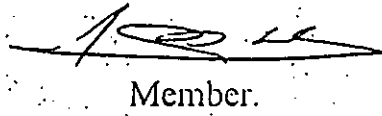
7.5.2010

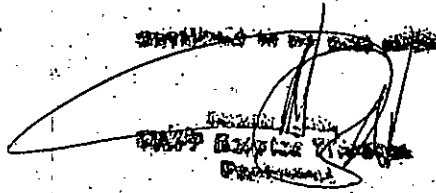
Counsel for the appellant and Zahid
Karim AGP for the respondents present.

Arguments heard and record perused. Vide
our detailed judgment of today in Appeal
No. 1712/2009, this appeal is accepted. No
order as to costs. File be consigned to the
record.

ANNOUNCED
7.5.2010.


Member.


Member.


Member.

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BEFORE THE K.P.K SERVICE TRIBUNAL PESHAWAR

Appeal No. 1712/2009

Date of institution - 09.10.2009

Date of decision - 07.05.2010

Murad Ali DPE Government Secondary School Thandkoi District Swabi
.....(Appellant)

VERSUS

1. Government of NWFP through Secretary Elementary and Secondary) Education NWRP Peshawar.
2. Secretary Finance, NWFP Peshawar.
3. Accountant General NWFP Peshawar..... (Respondents)

Appeal under Section 4 of the NWFP Service TribunalS Act 1974 against the Notification No. SO (PE) 2-6/E&SE/DPC/lib/DPEs (BPS-16) to BPS 17) whereby the appellant has been promoted from BPS 16 to BPS 17 as DPE with immediate effect, the Departmental appeal dated 13.6.2009 for the inte-dation of the promotion w.e.f 13.11.2007 was not responded despite the lapse of 90 days.

Mr. Ijaz Anwar, Advocate For Appellant
Mr. Zahid Karim A.G.P For Respondents

MR.ABDUL JALIL MEMBER
SYED MANZOOR ALI SHAH MEMBER

JUDGMENT

ABDUL JALIL, MEMBER: This appeal has been filed by the appellant against Notification No. SO (PE) 2-6/E&SE/DPC/lib/DPEs BPS-16 to BPS 17 whereby he has been promoted from BPS 16 to BPS 17 as DPE with immediate effect and his Departmental appeal dated 13.6.2009 for the ante-dation of the promotion w.e.f 13.11.2007 was not responded despite the lapse of 90 days. He has prayed that the notification dated 19.5.2009 may be varied/modified and the same be given effect from 13.11.2007 with all consequential benefits.

2. Brief facts of the case are that the appellant was serving as DPE (BPS 16) in the respondent department. He has at his credit the M.Sc in HPE. The Government of NWFP has vide circular letter dated 1.10.2007 decided to allow BPS 17 TO those DPE (BPS 16) who have at ^{their} his credit M.Sc in HPE. A proper notification to this effect was

NWFP SERVICE TRIBUNAL PESHAWAR
EXAMINER
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issued vide letter dated 13.11.2007. Accordingly the appellant was allowed BPS-17 in accordance with the above noted notifications. The pay of the appellant was also fixed in BPS 17 and he continued to receive the salary of the upgraded post. In the mean time the case of the appellant for promotion was also referred to DPC and accordingly on the recommendation of the DPC he was promoted as DPE (BPS 17) vide notification dated 19.5.2009 but with immediate effect. The appellant submitted his departmental appeal dated 13.6.2009, However, it was not replied despite the lapse of 90 days. Hence, this appeal.

3. Arguments heard and record perused.

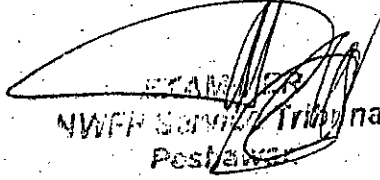
4. The learned counsel for the appellant argued that the appellant has not been treated in accordance with law, his rights secured and guaranteed under the Constitution 1973 were badly violated. The notification impugned is in violation of the original notification dated 13.11.2007, hence, liable for modification/variation. The appellant was holding the post carrying BPS 17 w.e.f 13.11.2007. He is also in receipt of the salary of the said scale ^{and} was entitled to promotion with effect from the date he was holding that post. The case of the appellant was covered under the original notification dated 13.11.2007. The post carrying BPS 17 was available since the notification dated 13.11.2007 and the appellant was holding that post since then, hence he is entitled to his promotion from 13.11.2007.

5. The A.G.P argued that being an administrative matter, Respondent No.3 has no concern with it and he has unnecessarily ^{been} made party. In the Notification dated 13.11.2007 the posts were up-graded and the DPC recommended suitable persons in its meeting held in 2009 for promotion against up-graded posts.

6. This Tribunal and the August Supreme Court of Pakistan have already decided numerous cases of subject specialists and have ordered ante-dation of their promotion.

7. In view of the decisions of this Tribunal in Appeal No. 1035 of 2008 and 517/2008, this appeal is also accepted with the same directions to the official respondents as already given in that judgments.


ATTESTED



 N.W.F.F. Service Tribunal
 Peshawar

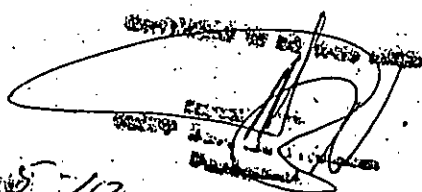
8. This judgment will also dispose of the other connected appeals bearing No. 1713/2009, 1714/2009, 1715/2009, 1775/2009 and 1776/2009 involving common question of law, in the same manner.

No order as to costs. File be consigned to the record.

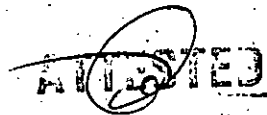
ANNOUNCED.
7.5.2010.


(SYED MANZOOR ALI SHAH)
MEMBER.


(ABDUL JALIL)
MEMBER.



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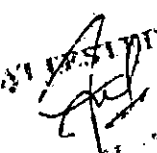
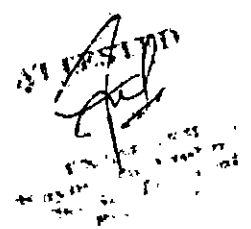




Annexure "F"

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,
PESHAWAR

C.M 12 (2) CPC No. 329 /2022
In
Service Appeal No.1776/2009

1. Sami Ullan, Director Physical, Education & Sports, DCTE, Abbottabad BPS-19.
2. Muhammad Fashim Khan, CIPE, BS-19, GHSS No.3, Peshawar City
3. Fazli Baqi, C IPE, GHSS Hall, Dir Lower BS-19
4. Abdul Rauf, SIPE, BS-18, GHSS No.2, Peshawar City.
5. M. Iqbal, SIPE, BS-18, GHSS Dak, Peshawar .
6. Gul Bad Shah, CIPE, BS-19, GHSS Technical, Gulbahar, Peshawar
7. Qadar Khan, SIPE BS-18, GHSS Nodeha Payan, Peshawar
8. Farid Zaman, CIFE BS-19, GHSS No.2, Peshawar Cantt
9. Saif ur Rehman, CIPE, BS-19, GHSS Tehkal, Peshawar
10. M. Kaleem Khan, SIPE, BS-18, GHSS Wazir Bagh, Peshawar

69. Khalid SIPE, BS-18, GHSS Dhakki Chersadda
.....Petitioners

Versus

- 1. Muhammad Arif, DPE, Govt. Higher Secondary School, Swabi
 - 2. The Govt. of KP through Secretary Elementary & Secondary Education, Peshawar
 - 3. The Secretary Finance, Govt. of Khyber Pakhtunkhwa, Peshawar
 - 4. The Accountant General, Khyber Pakhtunkhwa Peshawar
-Respondents

**PETITION U/S 12 (2) CPC 1908 AGAINST
THE IMPUGNED JUDGMENT AND ORDER
DATED 07.05.2010, BE'NG OBTAINED ON
FRAUD AND MIS- REPRESENTATION**

Prayer

By accepting this petition, the impugned judgment and order dated 07.05.2010 passed in Service Appeal No.1776/2009 may please be set aside and consequently, the service appeal No.1776/2009 be restored to its original number, by impleading the petitioners, being necessary party, as respondents.


ATTORNEY
[Handwritten Signature]

ATTESTED
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PUBLIC INQUIRY
Khyber Pakhtunkhwa
Service Commission
Peshawar

Respectfully Sheweth:

1. That all the petitioners before this Hon'ble Tribunal are serving SIPE & CIPE (BSP-19 & BPS-18) of Elementary & Secondary Education Department in different capacities, throughout the province.
2. That thirty one individuals (in which thirty are petitioners before this Hon'ble Court) including respondent No.1 were initially recommended as Directors Physical Education (DPE) (BPS-16) through Public Service Commission in the year 2006 wherein the respondent No.1 was placed at serial No.27 of the of the interse seniority as recommended by Public Service Commission. (Copy of interse seniority recommended by Public Service Commission is attached as Annexure "A").
3. That thereafter the Govt. of KP (then NWFP) was pleased to accord sanction for upgradation of the posts of Librarians and Director Physical Education from BPS-16 to BPS-17 who have Master's degree in the relevant subject with

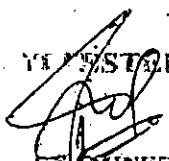
ATTSTED

ATTESTED

 Director
 Public Service Commission
 Islamabad

immediate effect. It is worth to mention here that it has clearly been mentioned in the aforesaid notification that those incumbents who hold diploma will stay in BPS-16 till the acquiring of Masters Degree in relevant subject however their existing seniority will remain intact. (Copy of Notification dated 13.11.2007 is attached as annexure "B").

- 4. That on 16.02.2009 and 03.04.2009, some necessary amendments were made w.r.t the qualification and appointment of Officers of Physical Education. (Copies of Notification dated 16.02.2009 and 03.04.2009 are attached as annexure "C & C/1" respectively)
- 5. That after the aforesaid developments, 1st meeting of Departmental Promotion Committee was held on 11.04.2009 and on the basis of the aforesaid DPC, promotion notification was issued on 19.05.2009 wherein respondent No.1 was deferred for his promotion. (Copy of Notification dated 11.04.2009 is attached as Annexure "D").

ATTACHED

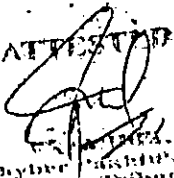

 DIRECTOR
 Federal Board of Intermediate & Secondary Education
 Islamabad

- 6. That another meeting of Departmental Promotion Committee was held on 29.05.2009 wherein respondent No.1 was considered suitable for promotion in BPS-17 and in this respect, notification was issued on 15.06.2009. (Copies of minutes of DPC and Notification as annexure "E & E/1" respectively).
- 7. That thereafter colleagues of petitioners namely Ghulam Nabi and (thirteen) 13 others preferred their respective service appeals, before this Hon'ble Tribunal praying therein that their upgradation be made effective from 13.11.2007 instead of 19.05.2009 and this Hon'ble Tribunal was pleased to allow their appeals vide judgment dated 04.03.2010. (Copy of the judgment is as annexure "F")

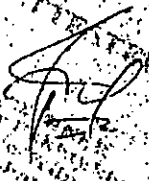
It merits to mention here that only promotion alongwith back benefits was granted to the appellants (Ghulam Nabi etc) whereas their seniority stood intact as it was on 13.11.2007.



ATTESTED

ATTESTED

 Member (Administrative)
 Service Tribunal
 Islamabad

- 8. That on the basis of the aforesaid judgment dated 04.03.2010 passed by this worthy Tribunal, a NOTE was prepared for the worthy Chief Secretary, that the judgment of Ghulam Nabi case, be implemented in light of principles laid down by the apex court reported as 1996 SCMR 1185 and resultantly all the DPE's were promoted /upgraded to BPS-17 w.e.f 13.11.2007, having Master's degree in the relevant subject, irrespective of the fact that whether they have litigated or not. (Copy of Summary NOTE is as annexure "G").
- 9. That the aforesaid NOTE was approved by the worthy Chief Secretary & resultantly notification dated 29.04.2014 was issued whereby eighty four (84) males and 32 female DPE's were promoted to BPS-16 to BPS-17 w.e.f 13.11.2017 and their seniority remained intact as stood on 13.11.2007. (Copy of the Notification is attached as annexure "H").

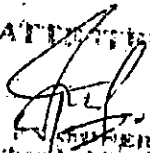

 Chief Secretary
 Government of Punjab
 Lahore


 ATTSTED

It is worth to mention here that after the afore-stated development, a well-reasoned and proper seniority list was notified which is still intact and hold the field, wherein the respondent No.1 is at serial No.107 of the combined seniority list. **(Copy of the seniority list is attached as annexure "I").**

10. That the petitioner's got the knowledge of the impugned judgment dated 07.05.2010 after the respondents department, conducted a fact finding inquiry and submitted its detail report on 15.12.2021, regarding the implementation of impugned judgment. **(Copy of the Inquiry report is attached as Annexure "J").**

11. That petitioner's being aggrieved of the impugned judgment dated 07.05.2010 are constrained to move this Hon'ble Court for the following amongst other grounds: **(Copy of the impugned judgment is attached as Annexure "K")**


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K. S. SURESH
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K. S. SURESH
K. S. SURESH
K. S. SURESH


ATTESTED

GROUND S:

- A. That as stated in the body of petition that the petitioners were not arrayed as party in the service appeal despite the fact that the respondent No.1 is claiming his seniority above them and as such valuable rights of the petitioners are involved, therefore this Hon'ble Tribunal needs to restore the original appeal, by impleading the petitioners as respondents and thereafter decide the same on its own merits.
- B. That a plain reading of the notification dated 13.11.2007 (Annexure-B) would reveals that it has categorically been mentioned therein that the then existing seniority, at the time of upgradation would remain intact and thus keeping in view the aforesaid directions, the respondent No.1 has rightly been placed at serial No.107 of the final seniority list but respondent No.1 under the garb of the impugned judgment is pressing hard to become senior most, even from those officers whose date of appointment is much, much earlier than respondent No.1.

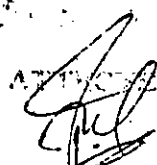
ATTESTED



SECRETARY
SERVICE TRIBUNAL
PUNJAB

ATTSTED

- C. That more so the respondents department, have conducted a fact finding inquiry regarding the seniority case of respondent No.1. the inquiry was conducted by two senior most officers of the Education Department, wherein they too, have recommended that per the notification dated 13.11.2007, the case of promotion of respondent No.1 alongwith back benefits be implemented w.e.f 13.11.2007, however while deciding the issue of seniority the education department, shall keep into consideration, the then seniority of the DPE's at the time of Notification dated 13.11.2007.
- D. That even otherwise in identical cases, already decided by this Hon'ble Tribunal, only the case of promotion and grant of arrears has been implemented, hence the issue of seniority is as same as it stood on the date of Notification dated 13.11.2007, therefore a different yardstick cannot be applied to the case of respondent No.1.
- E. That the petitioners have been treated against the law and have also been deprived of equal protection of laws.


 MEMBER
 Member (Labour & Industrial) &
 Service Tribunal
 Patna


 MEMBER

44

It is therefore most humbly prayed that by accepting this petition, the impugned judgment and order dated 07.05.2010 passed in Service Appeal No.1776/2019 may please be set aside and consequently, the service appeal No.1776/20098 be restored to its original number, by impleading the petitioners being necessary party, as respondents

Petitioners

Through

Nasir Naëem Umarkhalil

&

Adnan Aman
Advocates High Court (s)

Dated 01.06.2022

Date of Presentation	24/08/2023
No. of Pages	14/-
Number of Exhibits	70/-
Number of Affidavits	6/-
Number of Copies	78/-
Date of Filing	24/08/2023
Date of Admission	

REGISTERED

Annexure

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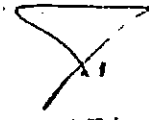
08.06.2023

Clerk of learned counsel for the petitioner present: Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present.

Clerk of learned counsel for the petitioner requested for adjournment on the ground that learned counsel for the petitioner is not available today due to strike of lawyers. Adjourned. To come up for arguments alongwith E.P No: 102/2016 on 12.07 2023 before the D.B. Parcha Peshi given to the parties.

SCANNED
KPST
Peshawar


(Fareeha Paul)
Member (E)


(Salah-ud-Din)
Member (J)

Noeem Amin

Petition U/S 12(2) CPC No.329/2022

ORDER

- 12th July, 2023. 1. Learned counsel for the petitioners present. Mr. Fazal Shah Mohmand, Additional Advocate General for the respondents present.
2. The learned counsel for the petitioners, after passage of the order disposing of Execution Application No.102/2016 of respondent No.1, submitted that before the findings in the execution application, the petitioners were apprehending their seniority on their initial appointments fixed on the basis of merit order of the Khyber Pakhtunkhwa Public Service Commission, might not be disturbed, but since the Tribunal has passed order in the execution application, clearly stating that the seniority, on the basis of merit order, as assigned by the Khyber Pakhtunkhwa Public Service Commission, was to hold good till end except otherwise disturbed in accordance with other provisions of Rule-17 of the Khyber Pakhtunkhwa

SCANNED
KPST
Peshawar





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Khyber
Service



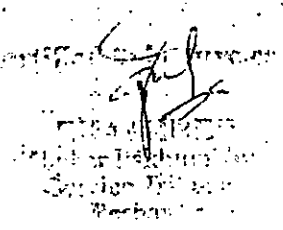
(Appointment, Promotion & Transfer) Rules, 1989, in case of supersession, deferment etc., to which, the learned counsel showed his satisfaction and did not press this petition. Since the only grievance of the petitioners was their apprehension of disturbance of their seniority, which according to them, they had gained on initial recruitment on the basis of merit assigned to them and others in according to merit order by the Khyber Pakhtunkhwa Public Service Commission, therefore, this petition is disposed of as in view of the above situation, there is nothing to be resolved by the Tribunal. Consign.

3. Pronounced in open Court at Peshawar and given under our hands and seal of the Tribunal on this 12th day of July, 2023.


(Farooq Paul)
Member (E)


(Kalim Arshad Khan)
Chairman

Mutazem Shah


Seal of the Tribunal
Peshawar

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Delivery of Copy	21	08/2023

FILED



Service Appeal No. 231/2022
Titled "Rehana Yasmeen-vs-Director Elementary and Secondary Education,
Khyber Pakhtunkhwa, Peshawar.

ORDER
27th July, 2023

KALIM ARSHAD KHAN, CHAIRMAN: Learned counsel for the appellant present. Mr. Fazal Shah Mohmand, Additional Advocate General for official respondents present.

Annexure
" 6 "
47

02. At the very outset learned counsel for the appellant produced copy of notification dated 29.04.2014 and contended that vide this notification the promotion of the appellant and others, mentioned in the notification from the post of Director Physical Education (DPE) (BPS-16 to BPS-17) on regular basis was given effect from 13.11.2007, instead of 19.05.2009.

Learned counsel for the appellant submitted that in the impugned seniority list of 02.03.2021 the date of promotion of the appellant was still written as 19.05.2009 instead of 13.11.2007 and submitted that the appeal might be disposed of with the direction to the official respondents to incorporate the date of promotion of the appellant from BPS-16 to BPS-17 as 13.11.2007 in the impugned seniority list. The learned Additional Advocate General when confronted with the situation submitted that the department ought to have mentioned the correct date of promotion in the notification. The appeal is thus disposed of in the above terms. Costs to follow the event. Consign.

03. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 27th day of July, 2023.*

(Fareeha Pua)
Member(Executive)

(Kalim Arshad Khan)
Chairman

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

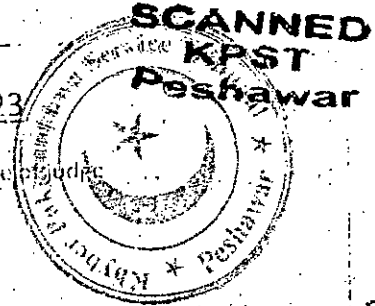
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FORM OF ORDER SHEET

Court of _____

Implementation Petition No. 573/2023



S.No. Date of order proceedings

1 2
1 10.08.2023

Order or other proceedings with signature of judge

3

The implementation petition of Mst. Rehana Yasmeen submitted today by Mr. Saadullah Khan Marwat Advocate. It is fixed for implementation report before Single Bench at Peshawar on 15.08.2023. Original file be requisitioned. AAG has noted the next date.

Annexure
"H"
48

By the order of Chairman

[Signature]
REGISTRAR

- 15.08.2023 1. Learned counsel for the petitioner present.
2. Notice be issued to respondents for submission of implementation report. Learned counsel for petitioner argued that respondents are going to promote juniors to petitioner on the basis of old seniority list which is injustice with the petitioner. In the meantime, respondents are directed not to promote any other official till implementation of order dated 27.07.2023. Adjourned. To come up for implementation report on 30.08.2023 before S.B. P.P given to learned counsel for the appellart.

Date of Presentation

17/08/2023

Number of Words

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Copying Fee

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Agent

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Total

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Name of Co.

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Date of Delivery of Copy

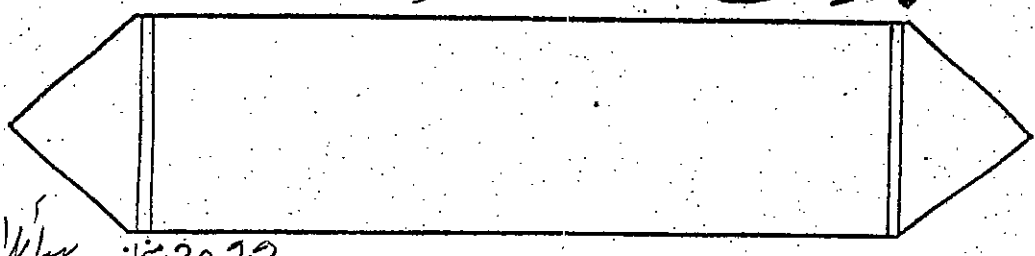
21/08/2023

[Signature]
(Rashida Bano)
Member (J)

Certified to be true copy

EXAMINED
Khyber Pakhtun
Service Tribunal
Peshawar

بعدالت جناب سپریم سروس ٹریبونل بنساور



2023 پنجاب سائبران سماعت بیرونی

سماعت بیرونی اجلاس پنجم
وجہ: _____
وجہ: _____

موزخہ _____
مقدمہ _____
دعویٰ _____
جرم _____

باعث تحریر آنکے

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کارروائی متعلقہ
آن مقام سروس ٹریبونل سیکرٹری عدالت امان ایڈووکیٹ

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا۔ نیز
وکیل صاحب کو راضی نامہ کرنے و تقرر ثالثہ فیصلہ بر حلف دیئے جواب دہی اور اقبال دعویٰ اور
بصورت ڈگری کرنے اجراء اور صولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق
زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی
نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور
کے کل یا جزوی کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار
ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ اختیارات حاصل ہوں گے اور اس کا ساختہ
پر واختم منظور قبول ہوگا۔ دوران مقدمہ میں جو شرط ہر جائزہ التوائے مقدمہ کے سبب سے ہوگا۔
کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی
مذکورہ کریں۔ لہذا ادکالت نامہ لکھ دیا کہ سندر ہے۔

المرقوم _____ ماہ _____ 20

واہ العب _____
Attested & Accepted
بمقام _____

کے لئے منظور ہے۔

[Handwritten signature]

S. Begum
سماعت سائبران
سماعت سہ ماہی
سماعت سہ ماہی

1 سماعت بیرونی اجلاس
2 سماعت بیرونی
3 سماعت بیرونی

[Handwritten signatures]