

(5)

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

Service Appeal No: 1702/2022

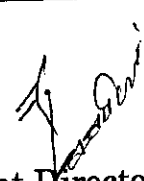
Hassan Farid District Bannu.....Appellant

VERSUS

Government of, Khyber Pakhtunkhwa through the Secretary E&SE Department &  
others.....Respondents

INDEX

S/#	Description of document	Annexure	Pages No.
1	Joint Para Wise Comments along with affidavit	-	1-3
2	Copy of the Notification dated 20-01-2010	A	4-7
3	Copy of the Judgment dated 05-11-2019.	B	8-9
4	Copy of Notification dated 05-09-2019.	C	10-11
5	Copy of the judgment dated 18-10-2022.	D	12-15
6	Authority Letter		16

  
Assistant Director (Lit: II)  
E&SE Khyber Pakhtunkhwa,  
Peshawar

**BEFORE THE HONORABLE KHYBER PAKHATUNKHWA SERVICE TRIBUNAL PESHAWAR.**

Service Appeal No: 1702/2022

Hassan Farid District Bannu.....Appellant

**VERSUS**

Government of, Khyber Pakhtunkhwa through the Secretary E&SE Department & others.....Respondents

**JOINT PARAWISE COMMENTS ON BEHALF OF RESPONDENTS No: 1-3.**

Respectfully Sheweth,

Khyber Pakhtunkhwa Service Tribunal

Diary No. 7798

Date: 22/09/23

**PRELIMINARY OBJECTIONS.**

- 1 *That* the appellant has got no cause of action.
- 2 *That* the appellant is not an aggrieved person within the meaning of Article 212 of the constitution of Islamic Republic of Pakistan.
- 3 *That* the appellant has concealed material facts from this Honorable Tribunal.
- 4 *That* the appellant has not come to this Honorable Court with clean hands.
- 5 *That* the appeal in hand is based on mala fide intentions for illegal service benefits.
- 6 *That* the matter in hand is barred by law in view of the law of limitation Act 1908.
- 7 *That* the case is bad for mis-joinder and non-joinder of the necessary parties.
- 8 *That* the appellant is not entitled to the grant of upgradation w.e.f. 01-10-2007 in the Department.

**ON FACTS.**

- 1 *That* Para-1 needs no comments.
- 2 *That* Para-2 is correct to the extent of the appointment as SET and one step upgradation of SST (G) (S) from BPS-16 to BPS-17 personal notified vide Notification dated 01-10-2007 and where under, the appellant along with other similarly placed SSTs/SET were upgraded in BPS-17(P) vide Notification No. SO (PE)2-6/SET(B-16) upgradation from BPS-16 to BPS-17(P) dated 20-01-2010 by the Respondent Department attached as *Annexure A* for ready reference.
- 3 *That* Para-3 is correct to the extent of disposal of the mentioned Service Appeal vide judgment dated 05-11-2012 on the analogy of judgment dated 07-07-2009 and 23-02-2010 wherein, the department has been directed to assertion that

the appellant is similarly placed person with those of the judgment holders, therefore, the appellant has upgradation in BPS-17 (P) vide Notification dated 26-01-2010 after processing the case of the appellant for upgradation by the department under the relevant provision of law & rules in field. (copy of the judgment dated 05-11-2012 is *Annexure-B*).

- 4 *That* Para-4 is also correct to the extent of the Notification No. SO (PE) E&SED/2-6/DPC meeting/2019 dated 05-09-2019 of the Respondent No.1 attached as *Annexure-C*.
- 5 *That* Para-5 is incorrect as the act of the Department with regard to the Notification dated 01-10-2010 is legal, hence, the appellant is not entitled to the grant of upgradation w.e.f 01-10-2007 on the grounds of being not a similarly placed person.
- 6 *That* para-6 is correct that vide judgment date 18-10-2022, the petition of the appellant has been dismissed by the Honorable Peshawar High Court, Peshawar attached as *Annexure-D*.
- 7 *That* para-7 is incorrect as the appellant is not an aggrieved person within the meaning of Article-212 of the constitution of 1973, hence, the case in hand is liable to be dismissed on the following grounds inter alia: -

#### ON GROUNDS.

- A. Incorrect & not admitted, the appellant has been treated as per law & rules by the Department vide Notification dated 20-01-2010.
- B. Incorrect & not admitted, the cited judgment dated 05-11-2012 is not applicable upon the case of the appellant.
- C. Incorrect & not admitted, as replied above.
- D. Incorrect & not admitted, the appellant is not entitled to upgradation w.e.f. 01-10-2007 against the SST post In the Department.
- E. Incorrect & not admitted, As replied above.
- F. Incorrect & not admitted, As already replied above by the Department.
- G. Incorrect & not admitted, however, the Respondents also seek leave of this Leaned Tribunal to submit additional grounds record & case law on the date fixed.

*Therefore, in view of the above made submissions, the appeal in hand may kindly be rejected in favor of the Department in the interest of justice.*

Dated. \_\_\_/\_\_\_/2023.



DIRECTOR  
E&SE Department Khyber  
Pakhtunkhwa, Peshawar.  
(Respondent No: 3)



SECRETARY

Finance Department Khyber  
Pakhtunkhwa, Peshawar.  
✓ (Respondent No: 2)



SECRETARY  
E&SE Department Khyber  
Pakhtunkhwa, Peshawar.  
(Respondent No: 1)

AFFIDAVIT

I, Dr. Hayat Khan Assistant Director (Litigation-II) E&SE Department Khyber Pakhtunkhwa, do hereby solemnly affirm & declare on oath that the contents of the instant para wise Comments are true & correct to the best of my knowledge & belief.



Deponent

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

**Service Appeal No: 1702/2022**

**Hassan Farid District Bannu .....Appellant**

**VERSUS**

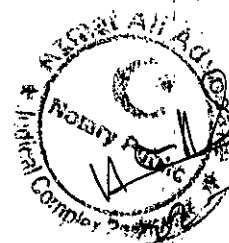
**Government of Khyber Pakhtunkhwa through the Secretary E&SE  
Department & others .....Respondents**

**AFFIDAVIT**

**I, Dr. Hayat Khan Assistant Director (Litigation-II) E&SE Department  
Khyber Pakhtunkhwa, do hereby solemnly affirm & declare on oath that the contents of  
the instant para wise Comments are true & correct to the best of my knowledge & belief.  
It is further stated on oath that in this appeal the answering Respondents  
have neither been placed Ex-Parte nor their defense has been struck off/cost.**

**Deponent**

**ATTESTED**





GOVERNMENT OF NWFP  
ELEMENTARY & SECONDARY EDUCATION  
DEPARTMENT

Dated: 20-01-2010

NOTIFICATION

No. SO(PE)2-G/SET(B-16) Upgradation to B-17. The Competent Authority on the recommendation of Departmental Promotion Committee is pleased to allow up gradation from B-16 to B-17 (Personal) to the following 100 SETs: Male: 20; SETs of Female and 80 SETs (Technical) Male with immediate effect subject to the condition that the posts of SETs shall be downgraded from B-17 to B-16 as and when vacated by the incumbents.

100 MALE SETs

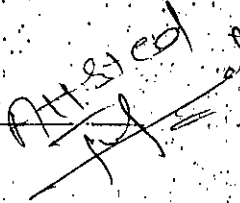
S.No.	Seniority List No.	Name of Officer & Present Place of Posting
1.	959	Ismael Khan, SET GMS Goan, Orakzai Agency
2.	906	Jamal Aliqad Mirza SET GHS No. 5, D.I.Khan
3.	1046	Ijaz Ahmad SET GHS Ghori, Habibiullah, Mansohra
4.	1185-A	Mohammad Yaqoob, SET GMS Din Mohammad, FR Tank
5.	1185-B	Nasrullah Jan, SET GHS Bagu, Kohat, Lakki
6.	1284-A	Hayat Ullah, SET GHS Kanun, All Khol FR Bannu
7.	1207	Muhammad Aurangzeb, SET GHS Shahgi Mansohra
9.	1353	Hamza Gul SET GHS No. 3 Kohat
8.	1474	Ahmad -ud- Din SET GHS, Kohat Kot Wana
10.	1477	Mohammad Yasir SET GHS Birala A. Abad
11.	1640-A	Rasheed Ahmad SET GHS Oghi Mansohra
12.	1600-A	Abdul Wahid SET GHS Barghmat FR Bannu
13.	1728-A	Gulzar Ahmad SET GHS Tarbela Haripur
14.	1687	Munazir Hussain Shah SET, Hovial A. Abad
15.	1905-A	Haji Yousaf Jan SET GMS Landaki Charsadda
16.	1905-C	Sardar Azam SET GHSS Shah gram Chitral
17.	2013-A	Raza Muhammad, SET GMS Wacha Dera Sival
18.	2022-A	Hassan Farid SET GMS Tarkhuba Khurd FR, Bannu
19.	2022-b	Ghulam Jah, SET GMS Sum Swal
20.	2052-A	Mubarak Khan SET GHS Raghzi Kalla NWA
21.	2123-A	Fazal Karim SET GHS Adzur Rehman Kijli- FR-Peshawar
22.	2139(1)	Doctor Wali, SET GHS Risher, Chitral
23.	2139(2)	Nasim ur Rehman SET GMS Lashkashil, Chitral
24.	2139(3)	Mohammad Kamal-ud-Din SET GMS Jughoor, Chitral
25.	2139(4)	Rajull Khan SET GHS-Kuju, Chitral
26.	2139(5)	Zia -ud -Din SET GCMS Chitral

AM 28/1/10  
17/1/10

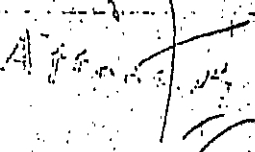
ATTESTED TO BE TRUE COPY

4-7  
ANNEXURE A

27.	2159-A	Ghulain Hussain Qammar SET Rangpur, Shemali D.I. KHAN
28.	2479-A	Shir-ur-Rahman SET GHS Lassan Nawah Manshra
29.	2224-a	Rohmat Ullahi SET GMS Banhul Jadeed FR Tank
30.	2239-A	Liaqat Ali SET GMS Mominia Khel FR Bannu
31.	2261-A	Said Kamal SET GHS Hoi Lundaki Mardan
32.	2263-A	Abdul Earl SET GHS Zaida Swabi
33.	2266-a	Zia ur Rehman SET ADO (Male) Nowshera
34.	2269-A	Gulab Din SET GHS Banglu Manshra
35.	2273 A	Khalil ur Rahman SET GHS Shaghi Swat
36.	2289 B	Ali Haf Hussain SET GMS No. 2 D.I. Khan
37.	2321-A	Ghulam Sarwar SET GHS Nujhla Qaddem, Peshawar
38.	2322-A	Said Ullah Jan SET GHS Abakhel, Lakk
39.	2325-A	Mir Akbar Khan SET GHS Mori Lashi, Chitral
40.	2330-A	Abul Munsaf SET GMS Jamu FR Kohat
41.	2330(2)	Abdul Azam SET GHS Ujno Chitral
42.	2330(3)	Bohan Jan SET GHS Morpl, Chitral
43.	2330(5)	Syad Abdul Hasir SET GHS Koshi Chitral
44.	2330(6)	Mohammad Ayub SET GHS Chumarkon, Chitral
45.	2330(7)	Mir Ajam, ADO Local Office Chitral
46.	2336(1)	Syad Nazir, Jamal Shah SET GHS Dahri Katti Khel Nowshera
47.	2336(7)	Iqbal ud Din SET GHS Morai Chitral
48.	2337(4)	Abdur Rahmat ADO (P&O) EDO Office, Chitral
49.	2337(5)	Shahir Khan SET GHS Broap, Chitral
50.	2337(7)	Noor Gul SET GMS Abdul Kor Mohmand Agency
51.	2337(14)	Khalil ur Rahman SET GMS Shishi, Chitral
52.	2337(16)	Maseeh ur Rahman SET GMS Ayaz Kot NWA
53.	2337(18)	Noor Ahmad All Shah SET GHS Alam Gudar Khy. Agency
54.	2337(19)	Muhammad Abbas SET GHS Chuprial, Swat
55.	2337(21)	Mehrab Shah, SET GHS Bajra Manshra
56.	2337(24)	Badr-uz Zaman SET GHS Doshra Charsadda
57.	2337(26)	Abdul Samad SET GMS Ridi Chitral
58.	2337(29)	Majid Ullah SET GHS Bandal Swat
59.	2337(30)	Hidayat Ullah SET GHS Dabi Lowaghar, Karak
60.	2337(31)	Alam Zeb SET GHS Bahdar Khel Karak
61.	2337(32)	Umar Siddiq SET GHS Jahangri Karak
62.	2337(33)	Liaqat Ali Khan SET GHS Asala Swat
63.	2337(34)	Raham Zad SET GMS Ahmad Khel Karak
64.	2337(37)	Abdul Wahed SET GHS No. 3 A/Abad
65.	2337(39)	Magal Khan SET GHS Deha Bahadur Peshawar
66.	2337(40)	Muhammad Iqbal SET GHS Himat D.I. KHAN
67.	2337(41)	Iftikhar Ahmad SET GHS Bagra Haf Pur
68.	2337(43)	Zar Hiyat SET GHS Shoghor, Chitral
69.	2337(44)	Dilaram Khan SET GMS Bahmi Chitral
70.	2337(45)	Sadar Ali SET GHS Broap Chitral
71.	2337(46)	Adina Khan SET GHS Parabeg, Chitral

Att. signed  


ATTESTED TO BE  
 TRUE COPY



ATTESTED TO BE  
 TRUE COPY

	2337(47)	Syed Hasan Shah SET GHSS Gram Chaama
	2337(48)	Syed Ali Dina SET GHS Mohajira Chitral
74.	2337(49)	Mohammad Raheem Bop SET GHS Charun Chitral
75.	2337(50)	Adur Rahman SET GHS Charun Chitral
76.	2337(51)	Kamal Din SET GHS Kosh Chitral
77.	2337(52)	Shah Zor Khaj SET GHS Righzal Kalli NWA
78.	2337(53)	Sardar Ali SET GHS No.3 Peshawar City
79.	2337(60)	Ghulam Murtaza SET GHS Masloog Chitral
80.	2337(61)	Mohammad Khalid Maleen SET GMS Anad Khan Swabi
81.	2337(63)	Falz ul Qamar SET GHSS No.3 Peshawar City
82.	2337(64)	S.Sadiq Hussain Shah SET GHS Kanshan Manshra
83.	2337(65)	Siraj ul Haq SET GHS Shehal Mazaulah Manshra
84.	2337(66)	S.Mehboob Shah SET GHS Khairabad Manshra
85.	2337(67)	Khwaja Mohammad SET GHS Khaki Manshra
86.	2337(68)	Liaqat Ali SET GHSS No.1 Manshra
87.	2337(69)	Anwar Zeb SET GHSS Daryal Manshra
88.	2337(70)	Munawar Khan SET GHSS Balal Manshra
89.	2337(71)	Shabir Ahmad ADO MALE Manshra
90.	2337(72)	Niamat Ullah SET GMS Aman Gar Nowshera
91.	2337(73)	Hazrat Younis SET GHS Kokaral Swal
92.	2337(74)	Saloom Ullah SET GHSS Mangora Swal
93.	2337(75)	Habib ur Rehman GCMHS Peshawar City
94.	2337(76)	Shah Johan SET GHS Mohandari Manshra
95.	2337(77)	Muhammad Asif SET GHS No.2 A/Abad
96.	2337(78)	Abdur Rasheed SET GHSS Nawasher A/Abad
97.	2337(79)	Arshad Khan SET GHST Sheikhan A/Abad
98.	2337(80)	Muhammad Javald SET GHS Sheikhi Bandi A/Abad
99.	2337(80)A	Nasir ud Din SET GHS Bhorikand Manshra
100.	2337(81)	Munir Gul SET GHS Haro Azizabad A/Abad
101.	2337(82)	Nasem Iqbal SET GHS No.4 A/Abad
102.	2337(83)	Gul Muhammad SET GCMHS Balagram
103.	2337(84)	Lal Khan SET GHSS Mir Pur A/Abad
104.	2337(85)	Muhammad Akhtar Khan SET GHS Nagal Pur -Haripur
105.	2337(87)	Shafi ud Din SET GHS Ashraf Chitral
106.	2337(88)	Abdul Lateef SET GHS Khan Pur Haripur
107.	2337(89)	Iqbal Hussain SET GMS Los pur Chitral
108.	2337(90)	Kifayat ur Rahman SET GHS Sheikh Darf Swabi
109.	2337(91)	Said Kamal SET GHS Tarkal Swabi
110.	2337(92)	Azhar Iqbal SET GHS Jhawan Shingla
111.	2337(93)	Rehmat Ali SET GHS Parra Swal
112.	2337(94)	Inayat Ullah SET GHS Goll Bagh Swal
113.	2337(95)	Javald Khan ADC Charsadda
114.	2337(96)	Races Khan SET GHS Shah Ibrahim Kuram
115.	2337(97)	Zahid Hussain SET GHS No.2 Angl Charsadda
116.	2337(98)	Ibnal Yamin SET GHS Dhamtor A/Abad

Attested  
Tuf

ATTESTED TO BE  
TRUE COPY

ATTESTED TO BE  
TRUE COPY



- 44
3. Secretary to Govt. of NWFP Finance Department
  4. Director Elementary & Secondary Education NWFP Peshawar
  5. Director PITE NWFP Peshawar
  6. Director Education IATA NWFP Peshawar
  7. All EDOs E&SE in NWFP
  8. All District Agency Accounts Officers
  9. PS to Chief Secretary NWFP
  10. Officers concerned
  11. PS to Minister Elementary & Secondary Education NWFP
  12. PS to Secretary Elementary & Secondary Education NWFP
  13. Office Order File

7

(ARIF JAMIL)  
SECTION OFFICER (PRIMARY)

ATTESTED TO BE  
TRUE COPY

Attested  
[Signature]

ATTESTED TO BE  
TRUE COPY

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Appeal No. 1241/2011

Rahmatullah, SET, GMS Baghul Jadd,  
F.R Tank.

(Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary, Elementary & Secondary Education, Peshawar.
2. Secretary, Finance Department, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
3. Chief Secretary, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
4. Director (E&SE), Khyber Pakhtunkhwa, Peshawar. (Respondents)

APPEAL U/S 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974 TO THE EFFECT THAT NOTIFICATION NO:SO(PE)2-6/DPC/UPGRADATION/SET'S BS-16 TO BS-17 DATED 3.11.2010 TO THE EXTENT OF ALLOWING ONE TIME UPGRADATION FROM BPS-16 TO BPS-17 TO THE SET'S INCLUDING APPELLANT W.E.F. 20.1.2010 INSTEAD OF 1.10.2007 AND DIRECTION TO THE RESPONDENTS TO SUBSTITUTE THE WORD (PERSONAL) WITH NOTIFICATION AND ALSO TO GRANT THE ANNUAL INCREMENT TO THE APPELLANT FOR GRADE-1/.

S.No.	Date of hearing	Order or other proceedings with signature of Judge/Magistrate
1	5.11.2012	3 Counsel for the appellant, and Mr. Sher Afgan Ikhattak, AAG present. The respondents have been placed ex-parte on 13.6.2012 yet Abbas Ali, S.O (Litigation), Mosam Khan, AD and Muhammad Irshad, SO (Litigation) on behalf of the respondents present to assist the Tribunal. Ex-parte arguments heard and available record perused.  2. This appeal has been filed under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974, with the prayer that notification dated 20.1.2010 may be modified and treating the same w.e.f. 1.10.2007 and omitting one time and personal from the same. The appellant further prayed that upgradation/promotion may be treated as

*Handwritten signature and stamp*

*Handwritten signature*

TESTED TO BE TRUE

*Handwritten signature and stamp*

ANNEX B  
8

3. The learned counsel for the appellant stated that similar nature cases of other colleagues of the appellant have already been decided by this Tribunal vide judgment dated 3/7/2009 in Service Appeal No. 266/2009 titled "Haroon ur Rashid Versus the Secretary (E&SE) Government of Khyber Pakhtunkhwa, Peshawar" and dated 23/2/2010 in Service Appeal No. 41/2010 titled "Hukum Khan Versus Government of Khyber Pakhtunkhwa through Secretary, E&SE, Peshawar and another". He further stated that the present appellant is also entitled to the same treatment as per judgment of august Supreme Court of Pakistan as reported in 1996-SCMR-1185. He requested that the appeal may be accepted as prayed for. Representatives of the respondents also confirmed about judgment of this Tribunal in the aforementioned Service Appeals.

4. In view of the above, this appeal is also decided in the same terms and with the same directions as issued in Service Appeal No. 266/2009 and 41/2010 decided on 3/7/2009 and 23/2/2010 respectively. However, the respondents should ascertain that the present appellant is similarly placed person to the appellants in the aforementioned Service Appeals or otherwise. Parties are left to bear their own costs. File be consigned to the record.

5. This order will also dispose of other connected Service Appeals No. 1242/2011, Ghulam Habib, 1243/2011 Nasrullah Jan, No. 1244/2011 Akbar Zaman, No. 1245/2011 Muhammad Yaqoob, and No. 1246/2011 Muhammad Shafiq in the same manner.

ANNOUNCED  
5.11.2012.

*Sd/- Sajid Mansoor Ali Khan*  
*Sd/- Mansoor Ali Khan*

*Attested*  
*[Signature]*

ATTESTED TO BE  
[Signature]

ATTESTED TO BE  
[Signature]

Date of  
27/11/2012



GOVERNMENT OF KHYBER PAKHTUNKHWA  
ELEMENTARY & SECONDARY EDUCATION  
DEPARTMENT

Dated Peshawar the 05.09.2019

ANNEX 2  
10

NOTIFICATION

No.SO (PE)E&SE/2-6/DPC Meeting/2019:- On the recommendations of Departmental Promotion Committee (DPC) in its meeting held 10.07.2019, the Competent Authority (Chief Secretary Khyber Pakhtunkhwa) is pleased to upgrade /promote the following SSTs (Male/Female) from BS-16 to BS-17 (Personal & Regular), in light of Court Judgement/acceptance of appeal by the competent authority as mentioned against each name:-

S.No	Name & Present Place of Posting	Date of Birth	Date of Appointment	Remarks
1	Musavvleh Jmi, Ex-SST, GHS Bagu Khet, Lakki Marwat	27.10.1958	09.06.1987	Upgraded from DPS-16 to DPS-17 (Personal) w.e.f 01.10.2007 instead of 20.01.2010 in the Light of Khyber Pakhtunkhwa Service Tribunal Judgment dated 05.11.2012.
2	Muhammad Yaqoob, Ex-SST, GMS Din Muhammad, FR Tank	25.12.1956	21.11.1987	Upgraded from DPS-16 to DPS-17 (Personal) w.e.f 01.10.2007 instead of 20.01.2010 in the Light of Khyber Pakhtunkhwa Service Tribunal Judgment dated 05.11.2012.
3	Rakmat Ullah, Ex-SST, GMS Baghul Jandoo, FR Tank	25.08.1958	01.01.1991	Upgraded from DPS-16 to DPS-17 (Personal) w.e.f 01.10.2007 instead of 20.01.2010 in the Light of Khyber Pakhtunkhwa Service Tribunal Judgment dated 05.11.2012.
4	Muhammad Shafique Khan, Ex-SST, GHS Top Tahini Khet, Lakki Marwat	28.07.1967	10.11.1994	Upgraded from DPS-16 to DPS-17 (Personal) w.e.f 01.10.2007 instead of 20.01.2010 in the Light of Khyber Pakhtunkhwa Service Tribunal Judgment dated 05.11.2012.
5	Akbar Zaman, SST, GHS Nar Muzaffar, Lakki Marwat	04.09.1963	12.10.1995	Upgraded from DPS-16 to DPS-17 (Personal) w.e.f 01.10.2007 instead of 20.01.2010 in the Light of Khyber Pakhtunkhwa Service Tribunal Judgment dated 05.11.2012.
6	Mr. Shokat Hussain, Ex-SST, Govt. Shaheed Iqbal High School Para Chinar, Kurram	26.08.1954	17.12.1992	Upgraded from DPS-16 to DPS-17 (Personal) in the Light of Peshawar High Court Judgment Dated 16.05.2018 w.e.f 01.10.2007 subject to the outcome of CPLA pending in Supreme Court of Pakistan in the case titled "Shokat Hussain VS Govt. of Khyber Pakhtunkhwa through Secretary E&SE Departments & Others.
7	Mrs. Safia Begum, H/M, BS-17, CGHS Polesal Mughdarzal, Peshawar.	01.05.1956	26.09.1988	Promoted as H/M, BS-17 w.e.f 17.03.2016 on regular basis instead of 18.04.2017 in light of acceptance of appeal by the competent authority.

Enst. No. & date as above.

SECRETARY

Attested  
[Signature]

ATTESTED TO BE TRUE COPY

ATTESTED TO BE TRUE COPY

Copy forwarded to:

1. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. The Secretary to Govt. of Khyber Pakhtunkhwa, Finance Department.
3. The Secretary to Govt. of Khyber Pakhtunkhwa, Establishment Department.
4. PSO to Chief Secretary to Govt. of Khyber Pakhtunkhwa.
5. PSO to Additional Chief Secretary FATA.
6. The Director (E&SE) Khyber Pakhtunkhwa Peshawar.
7. The Director ESRU, Khyber Pakhtunkhwa.
8. The Director, Curriculum and Teacher Education, Abbottabad.
9. The Director Education (Newly Merged Districts), Warsak Road Peshawar.
10. The Deputy Director EMIS, E&SE Department, with the request to upload this notification on E&SE Department website ([www.knese.gov.pk](http://www.knese.gov.pk)).
11. The Section Officers (Male/Female), E&SE Department, Peshawar.
12. The District Education Officers, Elementary & Secondary Education concerned.
13. The District Accounts Officers concerned.
14. The Principal/Headmaster/Headmistress concerned.
15. PS to Secretary, E&SE Department.
16. PA to Additional Secretary (Estab), E&SE Department.
17. Officers concerned.

100  
11  
12

SECTION OFFICER (PRIMARY)

Attested  
H

*[Handwritten signature]*

Divisional Education Officer Male Bann

ATTESTED TO BE TRUE COPY

ATTESTED TO BE

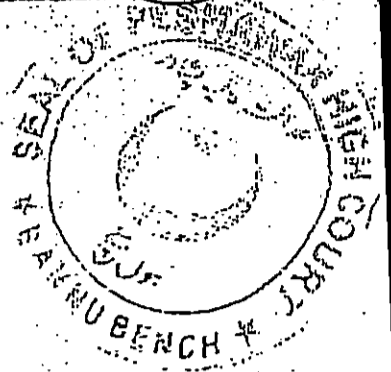
IN THE PESHAWAR HIGH COURT  
BANNU BENCH.

(Judicial Department)

W.P No. 672-B of 2020

Hayatullah and others  
Vs.

Govt. of Khyber Pakhtunkhwa etc.



JUDGEMENT.

Date of hearing 18.10.2022

For petitioner: Mr. Ikramullah Khan Marwat.  
For respondent: Sardar Muhammad Asif Asstt: A.G

\*\*\*\*\*

SAHIBZADA ASADULLAH, J.— The petitioner approached this Court by invoking its jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, with the prayer "It is therefore, most humbly prayed that on acceptance of this writ petition, the hon'ble Court may be pleased to: (1) Declare the inaction and not treating the petitioner at par with their colleague whom granted same relief (upgradation BPS-16 to 17, w.e. from 01.10.2007) vide notification dated 05.09.2019 may be declared as illegal, unconstitutional without authority and discriminatory. (2) Direct. The respondents may further please be directed to treat the petitioner at par with Rehmatullah and others colleagues whom granted relief of Up-gradation from BPS 16 to BPS 17 w.e. from 01.01.2007 vide notification dated 05.09.2019 and the same may also be allowed to the petitioners from their due date 01.10.2007.

Attested  
H/2

ATTESTED

EXCISE CLERK  
Peshawar High Court  
Bannu Bench  
ATTESTED TO BE TRUE

Handwritten initials and a circled number '13' in the top right corner.

with all consequential benefits under the principle laid down by the Supreme Court in judgment reported as 2009 SCMR 1 & 2018 SCMR 380. Any other remedy which this hon'ble Court deems fit & appropriate that may also be granted in favour of petitioners. "

Handwritten flourish or mark on the left side of the page.

2. Brief facts of the case leading to file the instant writ petition are that, initially the petitioners were appointed on temporary bases and thereafter their service was regularized. Thereafter, on 01.10.2007 the Government of Khyber Pakhtunkhwa issued a notification for up-gradation of their posts to BPS-17. In compliance of the notification some of their colleagues were upgraded from BPS-16 to BPS-17, but the petitioners and some others were ignored, therefore, some of the colleagues of the petitioners have filed appeal before the Service tribunal, Peshawar which was accepted vide judgment dated 05.11.2012. The department in compliance of the judgment dated 05.11.2012 upgraded the petitioners and others vide order dated 05.09.2019. The petitioners moved an application to the department for up gradation of petitioners in light of the judgment of service tribunal, but the respondents turned deaf ear. Hence, the instant writ petition.

3. The learned counsel for the petitioners alongwith Asstt: Advocate General were heard at length and with their valuable assistance the record was gone through.

Handwritten signature and the text "ATTESTED TO BE TRUE COPY" in the bottom left corner.

ATTESTED  
Handwritten signature and the text "Peshawar High Court" and "Bannu Bench" in the bottom right corner.

*(Handwritten marks)*

*(Handwritten marks)*  
14

4. The controversy brought for resolution before this court is the retrospective effect to the up-gradation granted in favour of the petitioners. Though this court is conscious of the fact that in case of up-gradation it has competency to intervene, but once the posts are upgraded, then in that eventuality, its prospective or retrospective effect does not fall within the competence and jurisdiction of this court, as in case of asking for seniority or otherwise it is the competent forum that has been created for the purpose. The learned counsel for the petitioner wanted the indulgence of this court by referring to few judgments passed by superior courts of the land and we keenly went through the same. We are afraid that the precedent relied upon by the petitioners do not support the stance of the petitioners, as in those judgments it has been clarified that in case of up-gradation high court is competent enough to entertain, but before us is not the question of up-gradation, rather, it's after math.

5. The learned counsel for the petitioners referred to the case of similar placed employees, who approached the provincial Service Tribunal and that their appeals were allowed. The learned counsel wanted this court to press into service the rule of consistency and to allow the petitioners on that score too, but we are mindful of the facts that Service Tribunal has ample powers to implement its order/

*(Handwritten signature)*

REGISTERED  
 REGISTRAR (Hq) Court  
 Bikaner



*(Handwritten marks)*

*(15)*

judgment, if petitioners want indulgence of this court on that score alone, then again they are to approach the said forum by asking implementation of the judgment passed in case of similar placed employees, but, if the petitioners want indulgence of this court for providing retrospective effect then we are afraid that this court cannot.

6. The cumulative effect of what has been stated above, leads this court nowhere but to hold that this court is lacking competency. A clog has been put on its powers under Article 212 of the Constitution of Islamic Republic of Pakistan, 1973, and that being civil servants, the petitioners should approach the competent forum, which is no other than the Provincial Service Tribunal for redressal of their grievances. The instant writ petition is lacking substance as such the same is answered in negative. However, the petitioners are at liberty to approach the competent forum for redressal of their grievances.

Announced.  
18.10.2022  
\*Azam/P.S\*

CERTIFIED TO BE TRUE COPY

*(Signature)*  
Peshawar High Court Bahawal Branch  
Authorised Under Article 87 of  
The Qanun-e-Shahadat Ordinance 1989

(D.D)  
Hon'ble Mr. Justice Bahiuddin Aslam  
Hon'ble Mr. Justice Shahid Khan

ATTESTED TO BE TRUE COPY

SCANNED  
20 OCT 2022  
*(Handwritten marks)*

*(Handwritten signature)*