

(9)

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

Service Appeal No: 1703/2022


Shah Zar Khan District Bannu.....Appellant

VERSUS

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

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

(b)

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

Service Appeal No: 1703/2022

Shah Zar Khan 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,

PRELIMINARY OBJECTIONS.

Khyber Pakhtunkhwa Service Tribunal
7800
22/09/23

- 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

(W)

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: -

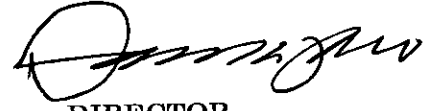
ON GROUNDS.

- 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.

(12)

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)



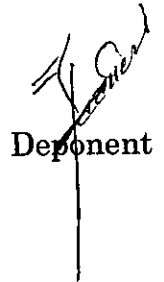
SECRETARY
Finance Department Khyber
Pakhtunkhwa, Peshawar.
(Respondent No: 2)



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: 1703/2022

Shah Zar Khan District Bannu Appellant

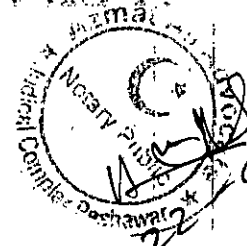
VERSUS

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.

Dr. Hayat Khan
Deponent



Annexure - J

39

4-7
ANNEXURE A



GOVERNMENT OF NWFP
ELEMENTARY & SECONDARY EDUCATION
DEPARTMENT

Dated: 20-01-2010

NOTIFICATION

No. SO(PE)2-6/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 108 SETs Male, 20 SETs Female and 02 SETs (Technical) Male with immediate effect subject to the condition that the posts of SETs shall be downgraded from B-17 to B-16 and when vacated by the incumbents:

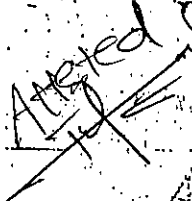
168 MALE SETs

S.No.	Seniority List No.	Name of Officer & Present Place of Posting
1.	050	Ismail Khaj. SET GMS Goon, Orakzai Agency
2.	998	Jamal Ahinud Mirza SET GHS No. 5, D.I. Khan
3.	1046	Ijaz Ahmad SET GHS Ghafi, Habbibullah, Mansohra
4.	1185-A	Mohammad Yaqoob, SET GMS Dln Mohammad, FR Tank
5.	1195-B	Nasrullah Jan, SET GHS Bagu Kohat, Lakk
6.	1204-A	Hayat Ullah, SET GHS Kahum, All Khol FR Bannu
7.	1207	Muhammad, Nuraigzeb, SET GHS Shahgl Mansohra
8.	1263	Hamza Gul SET GHS No. 3 Kohat
9.	1474	Ahmad -ud- Din SET GHS, Kohat Kot Wana
10.	1477	Mohammad Yasir SET GHS Birala A. Abad
11.	1640-A	Rashood Ahmad SET GHS Oghi Munachra
12.	1689-A	Abdul Wahid SET GHS Bargmat FR Bannu
13.	1728-A	Gulzar Ahmad SET GHS Farbela Haripur
14.	1887	Munazir Husain Shah SET, Hovlal A. Abad
15.	1905-A	Haji Yousaf Jan SET GMS Landaki Charsadda
16.	1905-G	Sardar Azam SET GHSS Shah gram Chitral
17.	2013-A	Raza Muhammad, SET GMS Wacha Dara Swat
18.	2022-A	Hassan Farid SET GMS Tarkhuba Khurd FR. Bannu
19.	2022-b	Ghulam Jan, SET GHS Sam Swat
20.	2552-A	Mubarak Khan SET GHS Raghzi Kella NWA
21.	2123-A	Fazal Karim SET GMS Azizur Rehman Kijil- FR-Poshawan
22.	2139(1)	Doctor Wali, SET GHS Rajshah, 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)	Rajuli Khan SET GHS Kulu, Chitral
26.	2139(5)	Zia -ud- Din SET GMS Chitral

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27.	2159-A	Ghulam Hussain Qammar, SET, Rangpur, Shomal D.I. KHAN
28.	2279-A	Shah-ur-Rahman SET GHS Lissan Nawab Manshra
29.	22243-A	Rahmat Ullahi SET GMS Bahul Jadeed FR Tan
30.	2219-A	Liaqat Ali SET, GMS Momilla Khel FR Bannu
31.	2261-A	Said Kamal SET GHS Hail Lundak Mardan
32.	2263-A	Abdul Bari, SET, GHSS Zaida Swabi
33.	2266-a	Zia ur Rahman SET ADO (Male) Nowshera
34.	2269-A	Gulab Din SET GHS Bangla Manshra
35.	2273 A	Khalil ur Rahman SET GHS Shaghi Swat
36.	2289 B	Aliat Hussain SET GMS No. 2 D.I. Khan
37.	2321-A	Ghulam Sarwar SET GHS Nuthla Qaddem, Peshawar
38.	2322-A	Sand Ullah Jan, SET GHSS Abakhal, Lakki
39.	2325-A	Mir Akbar Khan SET GHSS Mori Cashi, Chitral
40.	2330-A	Abul Munaf SET, GMS Jamu FR Kohat
41.	2330(2)	Abdul Azam SET GHS Ujno Chitral
42.	2330(3)	Belah Jan, SET GHS Morai, Chitral
43.	2330(5)	Syad Abdul Masir SET GHS Koshi Chitral
44.	2330(6)	Mohammad Ayub SET GHS Chumukon, Chitral
45.	2330(7)	Mir Ajam, ADO Local Qilica Chitral
46.	2336(1)	Syad Nazir Jamal Shah SET GHS Dahri Kallikhal Nowshera
47.	2336(7)	Iqbal ud Din SET GHS Morai Chitral
48.	2337(4)	Abdur Rahmat ADO (P&D) 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)	Khalir ur Rahman SET GMS Shishi, Chitral
52.	2337(16)	Masoch ur Rahman SET GMS Ayaz Kot NWA
53.	2337(18)	Noor Ahmad Ali Shah SET GHS Ajam Gudar Khy. Agency
54.	2337(19)	Muhammad Abbas SET GHS Chuprial, Swat
55.	2337(21)	Mehrab Shah, SET GHS Bajna Manshra
56.	2337(24)	Badi-uz Zaman SET GHS Doshra Charsadda
57.	2337(26)	Abdul Samad SET GMS Rind Chitral
58.	2337(29)	Majid Ullah SET GHS Bandal Swat
59.	2337(30)	Hidayat Ullah SET GHS Dabli Lawaghar, Karak
60.	2337(31)	Alam Zeb SET GHS Bahdar Khel Karak
61.	2337(32)	Umar Siddiq SET GHSS Jahangir 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 Wahced SET GHS No. 3 A/Abad
65.	2337(39)	Magal Khan SET GHS Delta Bahadur Peshawar
66.	2337(40)	Muhammad Iqbal SET GHS Himat D.I. KHAN
67.	2337(41)	Ifukhar Ahmad SET GHS Bagro Harl 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 Parabog, Chitral.

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	2337(47)	Syed Hasan Shah SET GHSS Gram Chasma
	2337(48)	Syed Ali Dina SET GHS Hachina Chitral
74.	2337(49)	Mohammad Raheem Begg SET GHS Charun Chitral
75.	2337(50)	Adur Rahman SET GHS Chitral Chitral
76.	2337(51)	Kamal Din SET GHS Koshi Chitral
77.	2337(52)	Shah Zor Khan SET GHS Righzal Koli NYA
78.	2337(53)	Sardar Ali SET GHS No.3 Peshawar City
79.	2337(60)	Ghulam Mustafa SET GHS Mastoog Chitral
80.	2337(61)	Mohammad Khalid Mateen SET GMS Ahad Khan Swabi
81.	2337(63)	Faiz ul Qamar SET GHSS No.5 Peshawar City
82.	2337(64)	S.Sadiq Hussain Shah SET GHS Karshlan Manshra
83.	2337(65)	Siraj ul Haq SET GHS Shohal Mazaulah Manshra
84.	2337(66)	S.Mehboob Shah SET GHS Khakr Abad Manshra
85.	2337(67)	Khawaja Mohammad SET GHS Khaki Manshra
86.	2337(68)	Liaquat Ali SET GHSS No.1 Manshra
87.	2337(69)	Anwar Zeb SET GHSS Daryal Manshra
88.	2337(70)	Munawar Khin 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)	Sateem 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 Sheikhu Bandi A/Abad
99.	2337(80A)	Nasir ul Din SET GHS Bhorikand Manshra
100.	2337(81)	Munir Gul SET GHS Harro 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 Lod pur Chitral
108.	2337(90)	Kifayat ur Rahman SET GHS Sholkh Darl Swabi
109.	2337(91)	Said Kamal SET GHS Tarkal Swabi
110.	2337(92)	Azhar Iqbal SET GHS Jhawgn, Shangla
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 Tangi Charsadda
116.	2337(98)	Ibnl Yamin SET GHS Dhamlor A/Abad

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- 3. Secretary to Govt. of NWFP Finance Department
- 4. Director Elementary & Secondary Education NWFP Peshawar
- 5. Director PITE NWFP Peshawar
- 6. Director Education I ATA 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

(ARIF JAMIL)

SECTION OFFICER (PRIMARY)

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Appeal No. 1241/2011

Rahmatullah, SET, GMS Baghul Jaddi,
F.N 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-17.

S.No.	Date of hearing	Order or other proceedings with signature of Judge/Magistrate
1	5.11.2012	<p>Counsel for the appellant and Mr. Sherulgan Khattak, 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.</p> <p>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</p>

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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 "Haroonur 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/- Ghulam Muneer Ali Qazi
Sd/- Muneer Ali Qazi

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TRUE

ATTESTED TO BE
TRUE

Handwritten notes and signatures in the left margin, including "Date of filing" and "23/11/2012".



GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION
DEPARTMENT

Dated Peshawar the 05.09.2019

ANNEXURE
10

NOTIFICATION

No.SO (PE)E&SEED/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	Musellih Jan, Ex-SST, GMS Bagu Khel, Lakki Marwat	27.10.1958	09.05.1987	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	Relana Ullah, Ex-SST, GMS Baghal Jandee, 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, GMS Top Takhal Khel, 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, GMS Nur 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, OGMS Palasni Mughdarzal, Peshawar.	01.05.1956	26.09.1958	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.

Encl. No. & date as above.

Agreed
[Signature]

SECRETARY

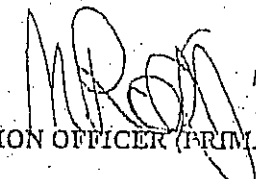
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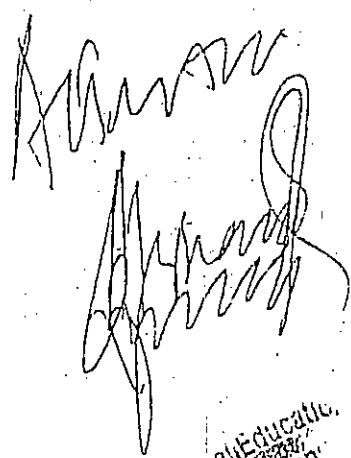
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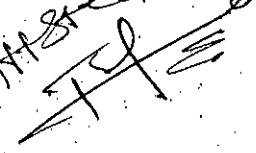
Copy forwarded to:

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.knase.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.

11


SECTION OFFICER (PRIMARY)



Attested


Divisional Education
Officer Male Bannu

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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 Assit: A.G

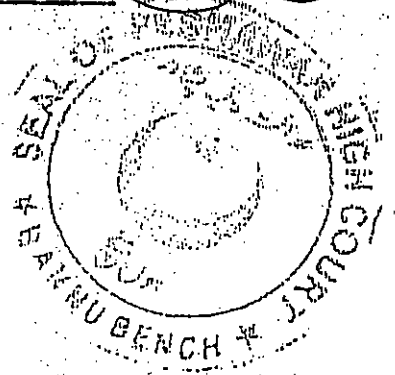
SAHIBZADA ASADULLAH, J.— The petitioner approached this Court by invoking its jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, with the prayer "It is therefore, most humbly prayed that on acceptance of this writ petition, the hon'ble Court may be pleased to: (1) Declare 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

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PESHAWAR HIGH COURT
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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. "

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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.

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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.

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Peshawar High Court
Bannu Bench

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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/

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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

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(Signature)
Peshawar High Court Bannu Bench
Authorised Under Article 87 of
The Qanun-e-Shahadat Ordinance 1983

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

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20 OCT 2022
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