

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

Application No _____ /2023 in Service Appeal No: 2756.2022/2021


**Abdullah Javeed SST BPS-16 District Haripur & 06 others Appellant now
respondents**

VERSUS

Govt. of KP through Secretary E&SE Department & others..... Respondents now applicant.

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Asstt: Director (Lit: II)
E&SE Department, Khyber
Pakhtunkhwa, Peshawar.

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BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE

TRIBUNAL PESHAWAR.

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 7938

Application No: _____ /2023 in Service Appeals No.2756-2762/2021 26-09-23
Dated 26-09-23

*Abdullah Javeed SST (BPS-16) District Haripur & 06
others.....Appellant now Respondents*

VERSUS

*Govt. of KP through Secretary E&SE Department & others
.....Respondents now Applicants.*

**OBJECTION PETITION UNDER SECTION-47 CPC 1908 AGAINST THE
CONSOLIDATED JUDGMENT DATED 02-02-2022 IN THE TILTED CASE IN
TERMS OF:**

1. PREVAILING PROMOTION RULES/POLICY NOTIFIED VIDE
NO.SO(PE)4-5/SSRC/MEETING/2013/TEACHING CADRE DATED
24-07-2014
2. JUDGEMENT DATED 08-05-2023 OF THE HONOURABLE
SERVICE TRIBUNAL, PESHAWAR IN SERVICE APPEAL NO.
1382/2019 IN CASE TITLE USMAN GHANI VS GOVT OF KP.
3. JUDGEMENTS DATED 08-11-2018 & 26-01-2015 OF THE
HONORABLE PESHAWAR HIGH COURT, PESHAWAR IN COC
NO. 105-P/2018 IN W.P NO. 355/2011 & W.P NO. 2905/2009
RESPECTIVELY.

PRAYER:

**ON THE ACCEPTANCE OF THIS PETITION, THE CONSOLIDATED
JUDGMENT DATED 02-02-2022 UNDER CASE TITLE ABDULLAH
JAVED & 06 OTHERS VS GOVT; OF KHYBER PAKHTUNKHWA &
OTHERS MAY VERY GRIEVOUSLY BE PLEASED TO SET-
ASIDE/RECALLED IN TERMS OF THE ABOVE REFERRED
PROVISION OF LAW /GROUNDS 1 & 2 IN FAVOR OF THE
APPLICANTS PLEASE.**

Respectfully Sheweth:-

The applicants/E&SE Khyber Pakhtunkhwa Peshawar submits as under: -

ON FACTS:

1. That the titled execution petition is pending before this Honorable Tribunal for implementation of the judgment dated 02-02-2022 on behalf of the Respondent Department which is fixed for hearing on dated 27-09-2021.

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2. That as per memorandum of the Service Appeal No. 2656/2021, the appellants had claimed service benefits with the prayer, reproduced as under in verbatim for perusal & ready reference:

PRAYER:

“That on acceptance of this appeal the Respondent may kindly be directed to considered the appellant for promotion to the post Subject Specialist (BS-17) w.e.f 2009 i.e., the date when the adhoc/contract SS (BS-17) have been regularized with all back benefits including seniority. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.”

3. That this Honorable Tribunal decided the titled appeals vide consolidated judgment dated 02-02-2022, whereby, the appeals were accepted “as prayed for, where against the Respondent Department has filed CPLA before the august Supreme Court of Pakistan which is still pending adjudication. Subsequently, the appellant has filed he titled execution petition for implementation of the judgment ibid.
4. That so far as prayer of the appellant (reproduced in para-02) is concerned, promotion of appellants to the post of Subject Specialist (BS-17) is not possible as per the prevailing Law, Rules & policy in vogue because promotion to the post in question is normally made from the post of SST (BS-16) /provincial cadre post while the appellants were working against the district cadre posts. Particular/posts of the appellants are given in the following table for perusal & ready reference:

S.#	Name of the petitioner	District	Post held	Date of appointment with Endst No
1	Abdullah Javeed	Haripur	CT(BS-14)	17-12-2003 vide No. 26753-26950
2	Qazi Javeed Iqbal	Haripur	DM(BS-09)	29-12-1990 vide No. 140
3	Nasir Ali	Haripur	AWI(BS-07)	04-06-1983 vide No. 11140-44
4	Qazi Behram	Haripur	PTC/PST(BS-07)	28-07-1997 vide No. 3016-4110, S.No. 21
5	Qazi Shaheen Iqbal	Haripur	PTC/PST(BS-07)	15-12-1986 vide No. 20628-20702
6	Qazi Sikandar	Haripur	PTC/PST(BS-07)	25-06-1997 vide No. 2603-2745
7	Azra Bibi	Haripur	PTC/PST(BS-07)	09-02-1998 vide No. 4172-4203

5. It is imperative to apprise that the provincial Govt; of Khyber Pakhtunkhwa has framed rules through amendments for promotion to the post of SS(BS-17) & notified vide S.No. 1 of the Notification No. SO(PE) 4-5/SSR/Meeting/2013/Teaching Cadre dated 24-07-2014. Rules for promotion to the post of SS (BS-17) falling at S.No. 1 of the Notification ibid is reproduced in verbatim as under for perusal & ready reference:

1	2	3	4	5
1	Subject Specialist (BPS-17)	i. At least second-class Master's Degree or four years BS Degree in	23 to 35 years	a. Fifty percent by promotion, on the basis of seniority-cum-fitness, for the relevant subject from amongst the Secondary School Teacher (BPS-16),

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	the relevant subject; and ii. Bachelor of Education or Master of Education (Industrial Art or Business Education) or M.A Education or equivalent qualification from a recognized University.		with at least five years' service as such and having qualification mentioned in column No. 3 Note: if no suitable candidate is available in the relevant subject the post falling in their promotion quota shall be filled by initial recruitment; and
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(Copy of the Notification dated 24-07-2014 is Annex-A)

6. That the same nature issue has already been decided by the Honorable Peshawar High, Peshawar vide judgment dated 26-01-2015 rendered in W.P No. 2905/2009 in the case titled Attaullah & others Vs Chief Secretary KP & others, the dictum late down in Para-19 of the judgment supra is hereby reproduced in verbatim for perusal & ready reference:

- i. *"The Act, XVI of 2009, commonly known as (Regularization of Services) Act, 2009 is held as beneficial and remedial legislation, to which no interference is advisable hence, upheld.*
- ii. *Official respondents are directed to work out the backlog of the promotion quota as per above mentioned example, within 30 days and consider the in-service employees, till the backlog is washed out, till then there would be complete ban on fresh recruitments. (Copy of the judgment dated 26-01-2015 attached as Annex-B).*

7. In the meantime, the petitioners filed a COC No. 157-P/2015 in W.P No. 2905 of 2009 before the Honorable Peshawar High court, Peshawar for implementation of the judgment dated 26-01-2015 which was decided vide order dated 10-11-2015, wherein, it was held that *"the learned AAG produced district wise detail of in-service teachers both male/female which were promoted during the month of June & July 2015, and stated at the bar that 2715 employees/teachers have been promoted & 1766 have been regularized as directed by this court & its judgment dated 26-01-2015, further stated that the judgment of this court has been complied with in letter & spirit". It was further held vide para-03 of the judgment ibid that "the instant COC has served its purpose that as such disposed of accordingly". (Copy of the order dated 10-11-2015 attached as Annex-C)*

8. In this regard, another judgment dated 08-11-2018 has been passed by the Honorable Peshawar High Court, Peshawar in COC No. 105-P/2018 in W.P No. 355/2011, wherein, it was held that:

“ While deciding W.P No. 2905/2009 vide judgment dated 26-01-2015 which has been upheld by the apex court, the Respondent Department was directed to work out the backlog of the promotion quota & consider in-service employees for promotion against the vacant post, till the backlog is washed out in this respect regard is suggestive that the backlog was worked out & by the time 2725 employees/teachers were in the promotion zone & as such were promoted moreover, by virtue of regularization Act, 2009, Act No. XVI of 2009, 1766 employees/teacher got regularization & as such, when worked out, the promotion quota was fully exhausted. The judgment in this respect was not for all the times to come for promotion purposes. Once the promotion quota which was given advantage, in view of regularization Act, 2009, cannot be claimed again & again by now it's the question of fact that as to whether any employee/teacher was not promoted & by that time when Act, 2009 was enforced they were in the promotion zone. Even otherwise, once backlog was worked out & promotion was done then claiming seniority & promotion is the job of Service Tribunal”. (Copy of the judgement dated 08-11-2018 is Annex-D).

9. That the Honorable Khyber Pakhtunkhwa Service Tribunal Peshawar has decided similar nature service appeals No. 1382/2019 & other (29) connected appeals vide order dated 08-05-2023, whereby, appeals of the appellant have been remitted to the Department for disposal in the light of judgment dated 08-11-2018 of the Honorable Peshawar High Court, Peshawar rendered in COC No. 105-P/2018 in W.P No. 355/2011. (Copy of the order dated 08-05-2023 is Annex-E). Hence, the Respondent Department further submit on the following grounds inter alia:

ON GROUNDS

- A. *That* the appellant has been treated as per law & rules by the Respondent Department as the existing promotion Rules/policy dated 24-07-2014 does not allow the Respondent Department to promote incumbents holding District Cadre post (PST, CT, DM etc) to the post of Subject Specialist (BS-17), hence, the appellants are not entitled for the promotion to the post of SS BS-17 as per Law, Rules & policy in field.
- B. *That* the act of the Respondents Department is within legal sphere and liable to be maintained in favor of the applicants/Department duly endorsed by the Honorable Service Tribunal Peshawar vide consolidated judgment dated 08-05-2023 in service

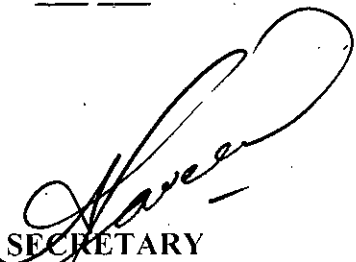
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appeal No. 1382/2019 & Honorable Peshawar High Court, Peshawar vide judgment dated 08-11-2018 in the COC No. 105-P/2018 in W.P No. 355/2011 & judgment dated 26-01-2015 in W.P No. 2905/2209 under case titled Attaullah & others Vs Govt; of KP & others.

- C. *That* valuable legal rights are attached with the instant case of the Respondents/Petitioners.
- D. *That* the instant objection petition against the judgment dated 02-02-2022 is within limitation. Furthermore, the judgment ibid has been impugned before the Apex Court which is pending which is still adjudication before the august Supreme Court of Pakistan for disposal.
- E. *That* the appellant is habitual litigant against the Department for no cause of action accrued to him & the Tribunal has thus passed the impugned orders without criteria against the Respondent Department which if implemented would amount to huge financial losses to the Government Treasury.
- F. That the Appellant now Respondent in the instant application is a habitual litigant against the Department for no cause of action. Moreover, if the judgment dated 02-02-2022 is implemented by the Respondent Department, it would open a flood gate for similarly placed employees/teachers & would create huge litigation for the Respondent Department as well as for this Honorable Court, hence, the implementation of the order ibid would amount to huge financial losses to the Government Treasury & the same may be re-called in the interest of justice.

It is therefore, humbly requested that on the acceptance of this petition under section 47-CPC, 1908 the Judgment dated 02-02-2022 of this Honorable Tribunal in the titled appeals may kindly be set-aside in favor of the Applicants/E&SE Department in term of the above made factual & legal grounds in the interest of justice please.

Dated: ___/___/2023.



SECRETARY

Elementary & Secondary Education Department
Khyber Pakhtunkhwa Peshawar.



DIRECTOR

Elementary & Secondary Education Khyber
Pakhtunkhwa Peshawar.

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

Application No: _____/2023 in Service Appeals No.2756-2762/2021

*Abdullah Javeed SST (BPS-16) District Haripur & 06
others.....Appellant now Respondents*

VERSUS

*Govt. of KP through Secretary E&SE Department & others
.....Respondents now Applicants.*

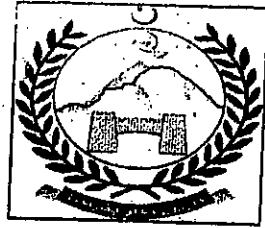
AFFIDAVIT

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 petition under 47 CPC 1908 against the Judgment dated 02-02-2022 of this Honorable Service Tribunal in the titled Service Appeal are true & correct to the best of my knowledge & belief.


Deponent

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"Annex - A"



GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION DEPARTMENT

Peshawar, dated the 24th July, 2014.

C (13)

NOTIFICATION

No.SO(PE)4-5/SSRC/Meeting/2013/Teaching-Cadre:- In pursuance of the provisions contained in sub rule (2) of rule 3 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, the Elementary and Secondary Education Department in consultation with the Establishment Department and the Finance Department hereby directs that in this Department's Notifications No.SO(G)S&LD/1-28/2003/Vol-II dated, 09-04-2004, Notification No.SO(G)S&L/1-69/06/Vol-1/DPE/LIB dated, 13-11-2007, and Notification No.SO(PE) 4-5/SSRC/Meeting/2012/Teaching Cadre, dated, 13.11.2012, the following further amendments shall be made, namely:

AMENDMENTS

In the Appendix,-

- (i) Serial No. 1 shall be renumbered as 1B and before Serial No. 1B, as so renumbered, the following new entries shall be inserted in respective columns, namely:

1	2	3	4	5
"1.	Subject Specialist (BPS-17)	i. At least second class Master's Degree or four years BS Degree in the relevant subject; and ii. Bachelor of Education or Master of Education (Industrial Art or Business Education) or M.A Education or equivalent qualification from a recognized University.	23 to 35 years	(a) Fifty per cent by promotion, on the basis of seniority-cum-fitness, for the relevant subject from amongst the Secondary School Teachers (BPS-16), with at least five years service as such and having qualification mentioned in column No. 3. Note: If no suitable candidate is available in the relevant subject the post falling in their promotion quota shall be filled by initial

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				recruitment; and (b) fifty percent by initial recruitment.
1A	Director Physical Education (BPS-17)	At least second class Master's Degree in Physical Education from a recognized University.	22-35 years	(a) Fifty percent by promotion, on the basis of seniority-cum-fitness, from amongst Senior Physical Education Teachers (BPS-16), with at least five years service as Senior Physical Education Teacher and Physical Education Teacher and having qualification mentioned in column No. 3: Provided that if no suitable person is available from amongst Senior Physical Education Teachers for promotion then the post shall be filled by promotion, on the basis of seniority-cum-fitness, from amongst the Physical Education Teachers, with at least five years service as such and having qualification mentioned in column No. 3; Note:- If no suitable candidate is available in the relevant cadres of the above teachers, the post falling in their promotion quota shall be filled by 'initial recruitment; and (b) fifty percent by initial recruitment"; and

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(ii) against Serial No. 1B, as so renumbered, for the existing entries, the following shall be substituted, in respective columns, namely:

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1	2	3	4	5
1B	Secondary School Teacher (BPS-16)	<p>I. At least second class Bachelor Degree's from a recognized University on need basis from the following groups with two subject</p> <p>(a) (Chemistry, Botany or Zoology), Or (b) (Physics, Maths "A" or "B" or Statistics) Or c.s</p> <p>(c) (Humanities and other equivalent groups at degree level with English as compulsory subject;</p> <p style="text-align: center;">and</p> <p>II. Bachelor of Education or Master of Education (Industrial Art or Business Education) or M.A Education or equivalent qualifications from a recognized University.</p>	21 to 35 years.	<p>1. Seventy Five per cent by promotion, on the basis of seniority-cum-fitness, from the district concerned in the following manner:</p> <p>(a) forty per cent from amongst the Senior Certified Teachers (BPS-16), with at least five years service as Senior Certified Teacher and Certified Teacher and having qualification mentioned in column No.3:</p> <p style="padding-left: 40px;">Provided that if no suitable candidate is available from amongst Senior Certified Teachers for promotion then the post shall be filled by promotion, on the basis of seniority-cum-fitness, from amongst Certified Teachers, with at least five years service as such and having qualification mentioned in column No. 3;</p> <p>(b) four per cent from amongst the Senior Drawing Masters(BPS-16), with at least five years service as Senior Drawing Masters and Drawing Masters and having qualification mentioned in column No.3:</p>

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Provided that if no suitable candidate is available from amongst Senior Drawing Masters for promotion then the post shall be filled by promotion, on the basis of seniority-cum-fitness, from amongst Drawing Masters with at least five years service as such and having qualification mentioned in column No. 3;

(c) four per cent from amongst the Senior Arabic Teachers(BPS-16), with at least five years service as Senior Arabic Teachers and Arabic Teachers, and having qualification mentioned in column No.3:

Provided that if no suitable candidate is available from amongst Senior Arabic Teachers for promotion then the post shall be filled by promotion, on the basis of seniority-cum-fitness, from Arabic Teachers with at least five years service as such and having qualification mentioned in column No. 3;

(d) four per cent from amongst the Senior Theology Teachers(BPS-16), with at least five years service as Senior Theology Teachers and Theology Teachers and having qualification mentioned in column No.3:

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				<p>Provided that if no suitable candidate is available from amongst Senior Theology Teachers for promotion then the post shall be filled by promotion, on the basis of seniority-cum-fitness, from amongst Theology Teachers with at least five years service as such and having qualification mentioned in column No. 3;</p> <p>(e) three per cent from amongst the Senior Qaris (BPS-16), with at least five years service as Senior Qari and Qari and having qualification mentioned in column No. 3:</p> <p>Provided that if no suitable candidate is available from amongst the Senior Qaris then the post shall be filled by promotion, on the basis of seniority-cum-fitness, from Qaris with at least five years service as such and having qualification mentioned in column No. 3;</p> <p>(f) twenty per cent from amongst the Primary School Head Teachers (BPS-16), with at least seven years service as Primary School Head Teachers and Senior Primary School Teachers and Primary School Teachers and having qualification mentioned in column No. 3:</p> <p>Provided that if no suitable candidate is available from amongst</p>
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				<p>Primary School Head Teachers for promotion then the post shall be filled by promotion, on the basis of seniority-cum-fitness, from amongst Senior Primary School Teachers with at least seven years service as Senior Primary School Teachers and Primary School Teachers and having qualification mentioned in column No.3:</p> <p>Provided further that if no suitable candidate is available from amongst Senior Primary School Teachers for promotion then the post shall be filled from amongst Primary School Teachers with at least seven years service as such and having qualification mentioned in column No. 3; and</p> <p>(ii) twenty Five percent by initial recruitment.</p> <p>Note:</p> <p>I. If no suitable candidate is available in the relevant cadre of the above teachers, the post falling in their promotion quota shall be filled by initial recruitment.</p> <p>II. Posts of General SST and SSTs-1 Science and SST-2 Science shall be filled by promotion or initial recruitment, each on need basis separately."</p>
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ATTACHED

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**SECRETARY TO GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION DEPARTMENT**

Endst : of even No & date:

1. The Secretary to Government of Khyber Pakhtunkhwa, Establishment and Administration Department Peshawar.
2. The Secretary to Government of Khyber Pakhtunkhwa, Finance Department Peshawar.
3. The Secretary to Government of Khyber Pakhtunkhwa, Law Department Peshawar
4. The Secretary Khyber Pakhtunkhwa, Public Service Commission Peshawar.
5. The Accountant General Khyber Pakhtunkhwa Peshawar.
6. The Director, Elementary and Secondary Education Department Khyber Pakhtunkhwa Peshawar.
7. The Director of Education (FATA) Peshawar.
8. The Director, Curriculum and Teacher Education Khyber Pakhtunkhwa Abbottabad.
9. The Director, (PITE) Khyber Pakhtunkhwa Peshawar.
10. The Director, ESRU Elementary and Secondary Education Department Khyber Pakhtunkhwa Peshawar.
11. Manager Government Printing Press Khyber Pakhtunkhwa Peshawar.
12. The Deputy Director, EMIS (S&SE) Department Khyber Pakhtunkhwa Peshawar.
13. All District Education Officer (M&F) in Khyber Pakhtunkhwa.
14. All District Account Officer in Khyber Pakhtunkhwa.
15. All Agency Education Officer in FATA
16. All Agency Account Officer in FATA.
17. PS to Governor Khyber Pakhtunkhwa. Peshawar.
18. PS to Chief Minister Khyber Pakhtunkhwa. Peshawar.
19. PS to Chief Secretary Khyber Pakhtunkhwa. Peshawar.
20. PS to Minister E&SE Khyber Pakhtunkhwa. Peshawar.
21. PS to Secretary E&SE Khyber Pakhtunkhwa. Peshawar.
22. Master file

(ZAMIN KHAN MOMAND)
SECTION OFFICER (PRIMARY)

"Annex - B"

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Page - 110-11

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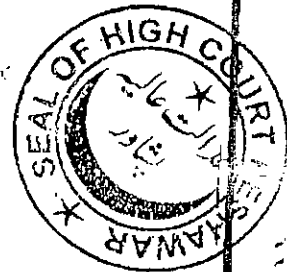
A - (7)

BEFORE THE PESHAWAR HIGH COURT, PESHAWAR

Amended Writ Petition No. _____ / of 2010

IN RE:

Writ Petition No. 2905 / of 2009



1. Atta Ullah PST
GPS Kanjabori Tehsil
and District Batagram.
2. Gul Zarin CT, GHS Chapper Gram
Tehsil and District Batagram.
3. Shams-ul-Hadi CT, GHS Chapper Gram
Tehsil and District Batagram.
4. Muhammad Bashir CT GCMS Batagram
Tehsil and District Batagram.
5. Muhammad Amir Khan CT GCMS
Batagram Tehsil & District Batagram.
6. Fazal Mabood CT GMS Batagram
Tehsil & District Batagram.
7. Banaras Khan CT, GCMS Batagram
Tehsil and District Batagram.
8. Niaz Muhammad CT, GMS Dashwal
District Batagram.
9. Haq Nawaz CT, GCMS Batagram
Tehsil & District Batagram.
10. Hafeez-ur-Rehman CT,
GCMS District Batagram.
11. Abdul Qadoos CT,
GCMS Batagram District Batagram.
12. Faqir Muhammad CT, GMS Bana
Tehsil & District Batagram.

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FILED TODAY
24 DEC 2010

Muhammad Israel CT, GHS Chapper Gram
District Batagram.

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EXAMINER
Peshawar High Court

10 JAN 2018

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JUDGMENT SHEET

PESHAWAR HIGH COURT, PESHAWAR
(JUDICIAL DEPARTMENT)



Writ Petition No.2905 of 2009.

ATTA ULLAH AND OTHERS.....PETITIONERS.

VERSUS.

THE CHIEF SECRETARY KPK ETC....RESPONDENTS..

JUDGMENT.

Date of hearing 26.01.2015

Appellant/Petitioner by Ghulam Nabi Khan Advocate

Respondent by Sardar Ali Raza Advocate & Waqar Ahmad Khan A.A.

WAQAR AHMAD SETH, J:- Through this single

judgment we propose to dispose of the instant Writ Petition No.2905 OF 2009 as well as the connected Writ Petition Nos.2941, 2967,2968,3016. 3025,3053,3189,3251,3292 of 2009, 496,556,664,1256,1662,1685,1696,2176,2230,2501,2696, 2728 of 2010 & 206, 355,435 & 877 of 2011 as common question of law and fact is involved in all these petitions.

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EXAMINER
Peshawar High Court
10 JAN 2015

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2- The petitioners in all the writ petitions have approached this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 with the following relief:-

"It is, therefore, prayed that on acceptance of the Amended Writ Petition the above noted Act No.XVI 2009 namely 'The North West Province Employees (Regularization of Services) Act, 2009 dated 24th October, 2009' being illegal unlawful, without authority and jurisdiction, based on malafide intentions and being unconstitutional as well as ultra vires to the basic rights as mentioned in the constitution be set-aside and the respondents be directed to fill up the above noted posts after going through the legal and lawful and the normal procedure as prescribed under the prevailing laws instead of using the short cuts for obliging their own person.

It is further prayed that the notification No.A-14/SET(M) dated 11.12.2009 and Notification No.A-17/SET(5) Contract-Apptt:2009 dated 11.12.2009, as well as Notification No.SO(G)ES/1/85/2009/SS(Contract) dated

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EXAMINER
Peshawar High Court

18 JAN 2018

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31.05.2010 issued as a result of above noted impugned Act whereby all the private respondents have been regularized may also be set-aside in the light of the above submissions, being illegal, unlawful, unconstitutional and against the fundamental rights of the petitioners.

Any other relief deemed fit and proper in the circumstances and has not been particular asked for in the noted Writ Petition may also be very graciously granted to the petitioners".

3- It is averred in the petition that the petitioners are serving in the Education Department of KPK working posted as PST, CT, DM, PET, AT, TT, Qari and SET in different Schools; that respondents No.9 to 1359 were appointed on adhoc/contract basis on different times and later on their service were regularised through the North West Frontier Province Employees (Regularization of Services) Act, 2009; that almost all the petitioners have got the required qualifications and also got at their credit the length of service; that as per notification No.SO(S)6-2/97 dated 03/06/1998

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EXAMINER
Pishawar High Court

10 JAN 2018

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the qualification for appointment/promotion of the SET Teachers BPS-16 was prescribed that 75% SETs shall be selected through Departmental Selection Committee on the basis of batchwise/yearwise open merit from amongst the candidates having the prescribed qualification and remaining 25% by initial recruitment through Public Service Commission whereas through the same notification the qualification for the appointment/promotion of the Subject Specialist Teachers BPS-17 was prescribed that 50% shall be selected by promotion on the basis of seniority cum fitness amongst the SETs possessing the qualification prescribed for initial recruitment having five years service and remaining 50 by initial recruitment through the Public Service Commission and the above procedure was adopted by the Education Department till 22/09/2002 and the appointments on the above noted posts were made in the light of the above notification. It was further averred that the Ordinance No.XXVII of 2002 notified on 09/08/2002 was promulgated under the shadow of which some 1681 posts of different cadres were advertised by the Public Service Commission.

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EXAMINER
Peshwar High Court

10 JAN 2013

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the qualification for appointment/promotion of the SET Teachers BPS-16 was prescribed that 75% SETs shall be selected through Departmental Selection Committee on the basis of batchwise/yearwise open merit from amongst the candidates having the prescribed qualification and remaining 25% by initial recruitment through Public Service Commission whereas through the same notification the qualification for the appointment/promotion of the Subject Specialist Teachers BPS-17 was prescribed that 50% shall be selected by promotion on the basis of seniority cum fitness amongst the SETs possessing the qualification prescribed for initial recruitment having five years service and remaining 50 by initial recruitment through the Public Service Commission and the above procedure was adopted by the Education Department till 22/09/2002 and the appointments on the above noted posts were made in the light of the above notification. It was further averred that the Ordinance No. XXVII of 2002 notified on 09/08/2002 was promulgated under the shadow of which some 1681 posts of different cadres were advertised by the Public Service Commission.

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ATTESTED

EXAMINER
Peshawar High Court

10 JAN 2018

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That before the promulgation of Act No.XVI of 2009, it was practice of the Education Department that instead of promoting the eligible and competent persons amongst the teachers community, they have been advertising the above noted posts of SET (BPS-16) and Subject Specialist (BPS-17) on the basis of open merit/adhoc/contract wherein it was clearly mentioned that the said posts will be temporary and will continue only for a tenure of six months or till the appointment by the Public Serviced Commission or Departmental Selection Committee That after passing the KPK Act No.XVI of 2009 by the Provincial Assembly the fresh appointees of six months and one year on the adhoc and contract basis including respondents no.9 to 1351 with a clear affidavit for not adopting any legal course to make their services regularized, have been made permanent and regular employees whereas the employees and teaching staff of the Education Department having at their credit a service of minimum 15 to maximum 30 years have been ignored. That as per contract Policy issued on 26/10/2002 the Education Department was not authorised/entitled to

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make appointments in BPS-16 and above on the contract basis as the only appointing authority under the rules was Public Service Commission. That after the publication made by the Public Service Commission thousands of teachers eligible for the above said posts have already applied but they are still waiting for their calls and that through the above Act thousands of the adhoc teachers have been regularized which has been adversely effected the rights of the petitioners, thus having no efficacious and adequate remedy available to the petitioners, they have knocked the door of this Court through the aforesaid constitutional petitions.

4- The concerned official respondents have furnished parawise comments wherein they raised certain legal and factual objections including the question of maintainability of the writ petitions. It was further stated that Rule 3(2) of the N.W.F.P. Civil Servants (Appointment, Promotion & Transfer) Rules 1989, authorised a department to lay down method of appointment, qualification and other conditions applicable to post in consultation with Establishment & Administration Department and the Finance Department.

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That to improve/uplist the standard of education, the Government replaced/amended the old procedure i.e. 100% including SETs through Public Service Commission KPK for recruitment of SETs B-16 vide Notification No. SO(PE)4-5/SS-RC/Vol-III dated 18/01/2011 wherein 50% SSTs (SET) shall be selected by promotion on the basis of seniority cum fitness in the following manner:-

- (i) Forty percent from CT (Gen), CT(Agr), CT(Indust: Art) with at least 5 years service as such and having the qualification mentioned in column 3.
- (ii) Four percent from amongst the DM with at least 5 years service as such and having qualification in column 3.
- (iii) Four percent from amongst the PET with at least 5 years service as such and having qualification mentioned in column 3.
- (iv) One percent amongst Instructional Material Specialists with at least 5 years

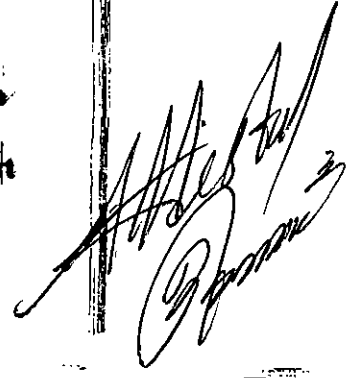
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Deshawar High Court

10 JAN 2016



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service and having qualification mentioned
in column 3."

It is further stated in the comments that due to the degradation/fall of quality education the Government abandoned the previous recruitment policy of promotion/appointment/recruitment and in order to improve the standard of teaching cadre in Elementary & Secondary Education Department of KPK, vide Notification dated 09/04/2004 wherein at serial No. 1.5 in column 5 the appointment of SS prescribed as by the initial recruitment and that the (North West Frontier Provincial) Khyber Pakhtunkhwa Employees(Regularization of Services)Act, 2009 (ACT No.XVI of 2009 dated 24th October, 2009 is legal, lawful and in accordance with the Constitution of Pakistan which was issued by the competent authority and jurisdiction, therefore, all the writ petitions are liable to be dismissed.

5- We have heard the learned counsel for the parties and have gone through the record as well as the law on the subject.

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6- The grievance of the petitioners is two fold in respect of Khyber Pakhtunkhwa, Employees (Regularization of Services) Act, 2009 firstly, they are alleging that regular post in different cadres were advertised through Public Service Commission in which petitioners were competing with high profile carrier but due to promulgation of Act *ibid*, they could not made through it as no further proceedings were conducted against the advertised post and secondly, they are agitating the legitimate expoctancy regarding their promotion, which has been blocked due to the in block induction / regularization in a huge number, courtesy Act, No. XVI of 2009.

7- As for as, the first contention of advertisement and in block regularization of employees is concerned in this respect it is an admitted fact that the Government has the right and prerogative to withdraw some posts, already advertised, at any stage from Public Service Commission and secondly no one knows that who could be selected in open merit case, however, the right of competition is reserved. In the instant case KPK, employees

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(Regularization of Services) Act, 2009, was promulgated, which in-fact was not the first in the line rather N.W.F.P (now Khyber Pakhtunkhwa) Civil Servants (Regularization of Services) Act, 1988, NWFP (now Khyber Pakhtunkhwa) (Regulation of Services) Act, 1989 & NWFP (now Khyber Pakhtunkhwa) Adhoc Civil Servants (Regularization of Services) Act, 1987 were also promulgated and were never challenged by anyone.

8- In order to comment upon the Act, *ibid*, it is important to go through the relevant provision which reads as under:-

S.2 Definitions. (1)---

a)----

- aa) "contract appointment" means appointment of a duly qualified person made otherwise than in accordance with the prescribed method of recruitment.
- b) "employee" means an adhoc or a contract employee appointed by Government on adhoc or contract basis or second shift/night shift but does not include the employees for project post or appointed on work charge

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Peshawar High Court

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basis or who are paid out of contingencies;
----- whereas,

S. 3 reads:-

Regularization of services of certain employees.---- All employees including recommendee of the High Court appointed on contract or adhoc basis and holding that post on 31st December, 2008 or till the commencement of this Act shall be deemed to have been validly appointed on regular basis having the same qualification and experience for a regular post;

9- The plain reading of above sections of the Act, *ibid*, would show that the Provincial Government, has regularized the "duly qualified persons", who were appointed on contract basis under the Contract Policy, and the said Contract Policy was never ever challenged by any one and the same remained in practice till the commencement of the said Act. Petitioners in their writ petitions have not quoted any single incident / precedent showing that the regularized employees under the said Act, were not qualified for the post against

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which they are regularized, nor had placed on record any documents showing that at the time of their appointment on contract they had made any objection. Even otherwise, the superior courts have time and again reinstated employees whose appointments were declared irregular by the Government Authorities, because authorities being responsible for making irregular appointments on purely temporary and contract basis, could not subsequently turned round and terminate services because of no lack of qualification but on manner of selection and the benefit of the lapses committed on part of authorities could not be given to the employees. In the instant case, as well, at the time of appointment no one objected to, rather the authorities committed lapses, while appointing the private respondent's and others, hence at this belated stage in view of number of judgments, Act, No. XVI of 2009 was promulgated. Interestingly this Act, is not applicable to the education department only, rather all the employees of the Provincial Government, recruited on contract basis till 31st December 2008 or till the commencement of this Act³ have been

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regularized and those employees of to other departments who have been regularized are not party to this writ petition.

10- All the employees have been regularized under the Act, *ibid* are duly qualified, eligible and competent for the post against which they were appointed on contract basis and this practice remained in operation for years. Majority of those employees getting the benefit of Act, *ibid* may have become overage, by now for the purpose of recruitment against the fresh post.

11- The law has defined such type of legislation as "beneficial and remedial". A beneficial legislation is a statute which purports to confer a benefit on individuals or a class of persons. The nature of such benefit is to be extended relief to said persons of onerous obligations under contracts. A law enacted for the purpose of correcting a defect in a prior law, or in order to provide a remedy where non previously existed. According to the definition of *Corpus Juris Secundum*, a remedial statute is designed to correct an existence law, redress an existence grievance, or introduced regularization conducive to the public goods. The challenged

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Act, 2009, seems to be a curative statue as for years the then Provincial Governments, appointed employees on contract basis but admittedly all those contract appointments were made after proper advertisement and on the recommendations of Departmental Selection Committees.

12- In order to appreciate the arguments regarding beneficial legislation it is important to understand the scope and meaning of beneficial, remedial and curative legislation. Previously these words have been explained by N.S Bindra in interpretation of statute, tenth edition in the following manners:-

"A statue which purports to confer a benefit on individuals or a class of persons, by reliving them of onerous obligations under contracts entered into by them or which tend to protect persons against oppressive act from individuals with whom they stand in certain relations, is called a beneficial legislations....In interpreting such a statue, the principle established is that there is no room for taking a narrow view but that the court is entitled to be generous towards the persons on whom the benefit has

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been conferred. It is the duty of the court to interpret a provision, especially a beneficial provision, liberally so as to give it a wider meaning rather than a restrictive meaning which would negate the very object of the rule. It is a well settled canon of construction that in constructing the provision of beneficent enactments, the court should adopt that construction which advances, fulfils, and furthers the object of the Act, rather than the one which would defeat the same and render the protection illusory..... Beneficial provisions call for liberal and broad interpretation so that the real purpose, underlying such enactments, is achieved and full effect is given to the principles underlying such legislation."

Remedial or curative statues on the other hand have been explained as:-

"A remedial statute is one which remedies defect in the pre existing law, statutory or otherwise. Their purpose is to keep pace with the views of society. They serve to keep our system of jurisprudence up to date and in

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harmony with new ideas or conceptions of what constitute just and proper human conduct. Their legitimate purpose is to advance human rights and relationships. Unless they do this, they are not entitled to be known as remedial legislation nor to be liberally construed. Manifestly a construction that promotes improvements in the administration of justice and the eradication of defect in the system of jurisprudence should be favoured over one that perpetuates a wrong".

Justice Antonin Scalia of the U.S. Supreme Court in his book on Interpretation of Statute states that:

"Remedial statutes are those which are made to supply such defects, and abridge such superfluities, in the common law, as arise from either the general imperfection of all human law, from change of time and circumstances, from the mistakes and unadvised determinations of unlearned (or even learned) judges, or from any other cause whatsoever."

13+ The legal proposition that emerges is that generally beneficial legislation is to be given liberal interpretation, the beneficial legislation must carry curative or remedial content.

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Peshwar High Court
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Such legislation must therefore, either clarify an ambiguity or an omission in the existence and must therefore, the explanatory or clarificatory in nature. Since the petitioners does not have the vested rights to be appointed to any particular post, even advertised one and private respondents who have being regularized are having the requisite qualification for the post against which the were appointed, vide challenged Act, 2009, which is not effecting the vested right of anyone, hence, the same is deemed to be a beneficial, remedial and curative legislation of the Parliament.

14- This court in its earlier judgment dated 26th November 2009 in WP No. 2905 of 2009, wherein the same Khyber Pakhtunkhwa (Regularization of Servers) Act, 2009, vires were challenged has held that this court has got no jurisdiction to entertain the writ petition in view of Article 212 of the Constitution of Islamic Republic of Pakistan, 1973, as an Act, Rule or Notification effecting the terms and conditions of service, would not be an exception to that, if seen in the light of the spirit of the ratio rendered in the case of

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I.A. Sherwani & others Versus Government of Pakistan,

reported in 1991 SCMR 1041. Even otherwise, under Rule 3

(2) of the Khyber Pakhtunkhwa (Civil Servants) (appointment), promotion and transfer) Rules 1989, authorize a department to lay down method of appointment, qualification and other conditions applicable to the post in consultation with Establishment & Administrative Department and the Finance Department. In the instant case the duly elected Provincial Assembly has passed the Bill/Act, which was presented through proper channel i.e Law and Establishment Department, which cannot be quashed or declared illegal at this stage.

15- Now coming to the second aspect of the case, the petitioners legitimate expectancy in the shape of promotion has suffered due to the promulgation of Act, ibid, in this respect, it is a long standing principle that promotion is not a vested right but it is also an established principle that whenever any law, rules or instructions regarding promotion are violated then it become vested right. No doubt petitioners in the first instance cannot claim promotion as a vested right.

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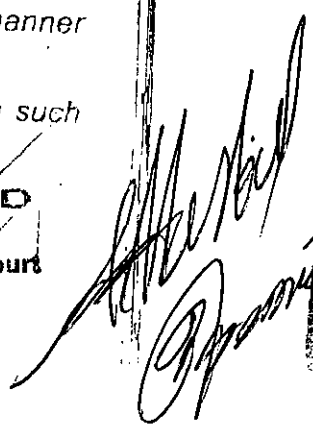
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but those who fall within the promotion zone do have the right to be considered for promotion.

16- Since the Act, XVI of 2009 has been declared a beneficial and remedial Act, for the purpose of all those employees who were appointed on contract and may have become overage and the promulgation of the Act, was necessary to given them the protection therefore, the other side of the picture could not be brushed a side simply. It is the vested right of in service employees to be considered for promotion at their own turn. Where a valid and proper rules for promotion have been framed which are not given effect, such omission on the part of Government agency amounts to failure to perform a duty by law and in such cases, High Court always has the jurisdiction to interfere. In service employees / civil servants could not claim promotion to a higher position as a matter of legal right, at the same time, it had to be kept in mind that all public powers were in the nature of a sacred trust and its functionary are required to exercise same in a fair, reasonable and transparent manner strictly in accordance with law. Any transgression from such

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Peshawar High Court
10 JAN 2018



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principles was liable to be restrained by the superior courts in their jurisdiction under Article 199 of the Constitution. One could not overlook that even in the absence of strict legal right there was always legitimate expectancy on the part of a senior, competent and honest carrier civil servant to be promoted to a higher position or to be considered for promotion and which could only be denied for good, proper and valid reasons.

17- Indeed the petitioners can not claim their initial appointments on a higher post but they have every right to be considered for promotion in accordance with the promotion rules, in field. It is the object of the establishment of the courts and the continue existence of courts of law is to dispense and foster justice and to right the wrong ones. Purpose can never be completely achieved unless the in justice done was undone and unless the courts stepped in and refused to perpetuate what was patently unjust, unfair and unlawful. Moreover, it is the duty of public authorities as appointment is a trust in the hands of public authorities and it is their legal and moral duty to discharge their functions as

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trustee with complete transparency as per requirement of law, so that no person who is eligible and entitle to hold such post is excluded from the purpose of selection and is not deprived of his any right.

18- Considering the above settled principles we are of the firm opinion that Act, XVI of 2009 is although beneficial and remedial legislation but its enactment has effected the in service employees who were in the promotion zone, therefore, we are convinced that to the extent of in service employees / petitioners, who fall within the promotion zone have suffered, and in order to rectify the inadvertent mistake of the respondents/Department, it is recommended that the promotion rules in field be implemented and those employees in a particular cadre to which certain quota for promotion is reserved for in service employees, the same be filled in on promotion basis. In order to remove the ambiguity and confusion in this respect an example is quoted, " If in any cadre as per existence rules, appointment is to be made on 50/50 % basis i.e 50 % initial recruitment and 50 % promotion quota then all the employees have been

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regularized under the Act in question be calculated in that cadre and equal number i.e remaining. 50 % are to promoted from amongst the eligible in service employees, other wise, eligible for promotion on the basis of sonority cum fitness."

19- In view of the above, this writ petition is disposed of in the following terms:-

(i) "The Act, XVI of 2009, commonly known as (Regularization Of Services) Act, 2009 is held as beneficial and remedial legislation, to which no interference is advisable hence, upheld.

(ii) Official respondents are directed to workout the backlog of the promotion quota as per above mentioned example, within 30 days and consider the in service employees, till the backlog is washed out, till then there would be complete ban on fresh recruitments.

Order accordingly.



Announced.
26th January 2015

Signature of Judge

JUDGE

Signature of Judge

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No. 5352
 Date of Presentation of Application 22/1/15
 No. of Pages 227
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Peshawar High Court, Peshawar
Authenticated by Article 67 of
the Constitution of Pakistan Order 186

JAN 2018

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PESHAWAR HIGH COURT PESHAWAR
ORDER SHEET

HS

Date of Order or Proceedings	Order or other Proceedings with Signature of Judge or that of parties or counsel where necessary
1	2
10.11.2015	<p><u>COC No. 157-P of 2015 N in WP No. 2905/2009 (D).</u></p> <p>Present: Barrister Mian Tajamul Shah, advocate for the petitioners.</p> <p>Mian Arshad Jan, AAG for respondent's alongwith Majeedullah, Litigation Officer.</p> <p>*****</p> <p><u>WAQAR AHMAD SETH, J:-</u> Learned AAG produced district wise detail of in service teachers both (Male / Female) which were promoted during the month of June & July 2015, and stated at the bar that 2,725/- employees / teachers have been promoted and 1766/- have been regularized as directed by this Court in its judgment dated 26.01.2015, further stated that the judgment of this Court has been complied with in letter and spirit.</p> <p>2. Learned counsel for the petitioners when confronted with the assertion of learned AAG, he straight away conceded and stats that the COC has served its purpose.</p>

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3. In view of above the instant COC has served its purpose and as such disposed of accordingly.

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Announced.
10.11.2015.

El-Nagar Ahmed Sect 5
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Peshawar High Court Peshawar
Authorized Under Article 27 of
The Qanun-e-Shahadat Order 1988

APR 2016

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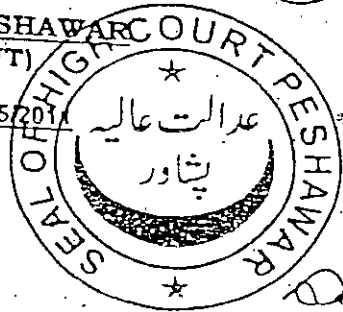
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JUDGMENT SHEET
PESHAWAR HIGH COURT, PESHAWAR
(JUDICIAL DEPARTMENT)

COC No. 105-P/2018 in WP No. 355/2018



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JUDGMENT

Date of hearing: 08.11.2018

Petitioner (s): Nisar Ahmad Q. Mr. Noor Mahmood Usmani

Respondent (s): A. Muhammad (Dum Khan) by: J. Q. Khan

WAQAR AHMAD SETH, CJ:- Through this

single judgment, we propose to dispose of instant contempt petition as well as connected COC No. 107-P/2018 in WP No. 1662/2010, COC No. 108-P/2018 in WP No. 2967/2009 & COC No. 109-P/2018 in WP No. 3189/2009 because in all the petitions, the petitioners have sought initiation of contempt of court proceedings against the respondents for not implementing the judgment/order dated 26.01.2015.

2. Facts in brief are that the petitioners had filed Writ Petitions before this Court and prayed that the Act No. XVI 2009, namely, 'The North West Province Employees (Regularization of Services) Act, 2009 dated 24th October, 2009' being illegal, unlawful, without authority and jurisdiction, based on malafide intentions and being unconstitutional as well as ultra vires to the basic rights as mentioned in the constitution be set-aside and the respondents be directed to fill up the above noted posts after going through the legal and lawful and the normal procedure as prescribed under the prevailing laws instead of using the short cuts for

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Peshawar High Court
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obliging their own person. They further prayed that the notification No. A-14 / SET (M) dated 11.12.2009 and Notification No. A-17 / SET (S) Contract-Appnt: 2009 dated 11.12.2009, as well as Notification No. SO(G) / ES / 185 / 2009 / SS(Contract) dated 31.05.2010 issued as a result of above noted impugned Act whereby all the private respondents have been regularized may also be set-aside in the light of the above submission, being illegal, unlawful, unconstitutional and against the fundamental rights of the petitioners. The writ petitions came up for hearing and vide judgment/order dated 26.01.2015, the same were disposed of in the following terms:-

- “(i) The Act, XVI of 2009, commonly known as (Regularization of Services) Act, 2009 is held as beneficial and remedial legislation, to which no interference is advisable hence, upheld.
- ✓ (ii) Official respondents are directed to workout the backlog of the promotion quota as per above mentioned example, within 30 days and consider the in service employees, till the backlog is washed out, till then there would be complete ban on fresh recruitments”.

3. After passing the above said judgment, the petitioners were quite hopeful regarding their promotion to the next higher grade being senior most employees but the respondents have again started recruitment process by advertising the posts of various cadres for initial recruitment in various Districts of Khyber Pakhtunkhwa and as such, the inaction of respondents squarely fall within the ambit of

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contempt of court and they are liable to be proceeded and punished under the law; hence, the instant petitions:-

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4. Respondents No. 2 & 3 have filed reply to the show cause and prayed for dismissal of instant petitions.

5. Arguments heard and record perused.

6. While deciding writ petition No. 2905/2009, vide judgment dated 26.1.2015 which has been upheld by the apex Court, the respondents-department was directed to workout the backlog of the promotion quota and consider in service employees for promotion against the vacant post, till the backlog is washout. In this respect record is suggestive that the backlog was worked out and by that time 2725 employees / teachers were in the promotion zone and as such were promoted. Moreover, by virtue of Regularization Act, 2009, Act No. XVI of 2009, 1766 employees / teachers got regularization and as such, when worked out, the promotion quota was fully exhausted. The judgment in this respect was not for all the times to come for promotion purposes. Once the promotion quota, which was given advantage, in view of Regularization Act, 2009, cannot be claimed again and again. By now it's the question of fact that as to whether any employee / teacher was not promoted and by that time when Act 2009 was enforced they were in the promotion zone. Even otherwise, once backlog was worked out and promotion was done then claiming seniority and promotion is the job of service tribunal.

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7. in view of the above, the instant as well as connected contempt petitions are disposed of in terms above. Show cause notice issued to respondents is hereby recalled.

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ANNOUNCED.
Dated: 08.11.2018

Chief Justice

Judge

Justice Shah SCS (CR) Justice Wazir Ahmad SCS CJ & Justice Muhammad Ayub Khan J

No. 15857

Date of Presentation of Application 25/11/18

No of Pages 5

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Peshawar High Court, Peshawar
Authorized Under Article 187 of
The Constitution of Pakistan Order 1947

30 NOV 2018

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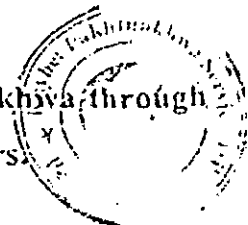
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Annex-E

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Service Appeal No. 1382/2019

Usman Ghani Vs Government of Khyber Pakhtunkhwa through
Secretary Education and others.



ORDER

08th May, 2023

KALIM ARSIAD KHAN, CHAIRMAN: Learned Counsel for the appellant present. Mr. Fazal Shah Mohamand, Additional Advocate General for the respondents present.

2. Through this single order this appeal and the connected Service Appeal No. 1230/2019 titled "Shamshad Khan Vs Government of Khyber Pakhtunkhwa through Secretary Education and others". Service Appeal No. 1231/2019 titled "Akbar Zeb Vs Government of Khyber Pakhtunkhwa through Secretary Education and others", Service Appeal No. 1232/2019 titled "Sher Ali Khan Vs Government of Khyber Pakhtunkhwa through Secretary Education and others", Service Appeal No. 1233/2019 titled "Shah Nawaz Vs Government of Khyber Pakhtunkhwa through Secretary Education and others", Service Appeal No. 1234/2019 titled "Ibni Amin Vs Government of Khyber Pakhtunkhwa through Secretary Education and others". Service Appeal No. 1235/2019 titled "Muhammad Laiq Vs Government of Khyber Pakhtunkhwa through Secretary Education and others", Service Appeal No. 1236/2019 titled "Misbah Ud Din Vs Government of Khyber Pakhtunkhwa through Secretary Education and others", Service Appeal No. 1237/2019 titled "Raham Karam Vs Government of Khyber Pakhtunkhwa through Secretary Education and others", Service Appeal No. 1238/2019 titled "Salah Ud Din Vs Government of Khyber Pakhtunkhwa through Secretary Education and others", Service Appeal No. 1239/2019 titled "Nascer Hassan

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Service Tribunal
Peshawar

Vs Government of Khyber Pakhtunkhwa through Secretary Education and others", Service Appeal No. 1305/2019 titled "Mizaj Ud Din Vs Government of Khyber Pakhtunkhwa through Secretary Education and others", Service Appeal No. 1306/2019 titled "Ismail Vs Government of Khyber Pakhtunkhwa through Secretary Education and others", Service Appeal No. 1307/2019 titled "Amir Hatam Vs Government of Khyber Pakhtunkhwa through Secretary Education and others", Service Appeal No. 1308/2019 titled "Fazal Rahim Vs Government of Khyber Pakhtunkhwa through Secretary Education and others", Service Appeal No. 1309/2019 titled "Muhammad Feroz Vs Government of Khyber Pakhtunkhwa through Secretary Education and others", Service Appeal No. 1383/2019 titled "Tahir Mulk Vs Government of Khyber Pakhtunkhwa through Secretary Education and others", Service Appeal No. 1384/2019 titled "Kamran Ali Vs Government of Khyber Pakhtunkhwa through Secretary Education and others", Service Appeal No. 1385/2019 titled "Khurshid Vs Government of Khyber Pakhtunkhwa through Secretary Education and others", Service Appeal No. 1386/2019 titled "Mian Said Ali Vs Government of Khyber Pakhtunkhwa through Secretary Education and others", Service Appeal No. 1387/2019 titled "Maslih Ud Din Vs Government of Khyber Pakhtunkhwa through Secretary Education and others", Service Appeal No. 1388/2019 titled "Aziz Ahmad Vs Government of Khyber Pakhtunkhwa through Secretary Education and others", Service Appeal No. 1691/2019 titled "Nisar Muhammad Vs Government of Khyber Pakhtunkhwa through Secretary Education and others", Service Appeal No. 1692/2019 titled "Fazal Manan Vs Government of Khyber Pakhtunkhwa

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ATTESTED

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 EXAMINER
 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar

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through Secretary Education and others" Service Appeal No. 1693/2019 titled "Momin Khan Vs Government of Khyber Pakhtunkhwa through Secretary Education and others", Service Appeal No. 1694/2019 titled "Hameed Ullah Vs Government of Khyber Pakhtunkhwa through Secretary Education and others". Service Appeal No. 1695/2019 titled "Melmoood Khan Vs Government of Khyber Pakhtunkhwa through Secretary Education and others" Service Appeal No. 64/2020 titled "Bahramand Khan Vs Government of Khyber Pakhtunkhwa through Secretary Education and others" Service Appeal No. 4830/2021 titled "Nisar Ahmad Vs Government of Khyber Pakhtunkhwa through Secretary Education and others" & Service Appeal No. 7556/2021 titled "Bacha Khan Vs Government of Khyber Pakhtunkhwa through Secretary Education and others" are decided as all the same and can conveniently be decided together.

3. During the course of arguments consensus was developed that for considering the contention of the appellant that 50% quota of promotees was not exhausted whereas learned AAG while refuting the contention that in view of the Judgment of the Hon'ble Peshawar High Court, Peshawar in COC No.105-P/2018 in W.P no. 355/2011 and the said quota had already been exhausted, both of them while fairly assisting the Tribunal submitted that it would be appropriate that the department should make proper calculation of the number of posts, in the light of the above judgment coupled with the eligibility of appellants and to ascertain the quota accordingly. Order accordingly. Such exercise should be undertaken within a period of 90 days from the receipt of this order

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SECRETARY
Khyber Pakhtunkhwa
Peshawar


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with the directions to the authorities to associate the appellants with the proceedings and for the purpose if a committee is necessary to be constituted, the authority may consider that. Consign.

4. Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 08th day of May, 2023.


(Kabeer Paul)
Member (E)


(Kalim Arshad Khan)
Chairman

Kabeer Ullah

Certified to be true copy



Date of Presentation of Application - 09/5/23
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