

*Service Appeal No.106/2022 titled "Najeeb Ullah versus Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education, Civil Secretariat, Peshawar and others". decided on 18.10.2023 by Division Bench comprising of Mr. Kalim Arshad Khan, Chairman, and Mr. Salah-Ud-Din, Member Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar, at Camp Court. D.I.Khan.*

further promotions ought to be made on the basis of fresh seniority list prepared in accordance with the terms of the above judgment. Disposed of accordingly. Consign.

**7. Pronounced in open Court at D.I.Khan and given under our hands and the seal of the Tribunal on this 18<sup>th</sup> day of October, 2023.**



**KALIM ARSHAD KHAN**  
Chairman



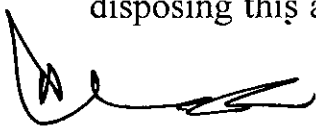
**SALAH-UD-DIN**  
Member (Judicial)

*\*Mutazem Shah\**

*seniority of the PSTs regularized through Notification dated 07.04.2018 has been determined on the basis of score obtained by them in written test conducted through NTS, which was not a correct criteria for determining their inter-se seniority. The NTS score was relevant for appointment and not for determining seniority inter-se of the regularized PSTs.*

*12. In view of the above discussion, it is directed that the inter-se seniority of those PSTs, who were regularized through Notification bearing Endorsement No. 2344-3253/AE-I/Estab dated 07.04.2018, shall be determined on the basis of Clause-8 of terms and conditions of regularization Notification dated 07.04.2018 as well as Sub-Section-2 of Section-4 of Khyber Pakhtunkhwa Employees of the Elementary and Secondary Education Department (Appointment and Regularization of Services) Act, 2017 by placing the names of the appellants at correct seniority positions with all consequential benefits. The appeals are allowed in the said terms. Parties are left to bear their own costs. File be consigned to the record room."*

*6. The case of the appellant is admitted by the respondents to be no different than the above. Therefore, in view of the above mentioned judgment, the department should have recast the seniority list in accordance with the terms of the judgment. The apprehension of the learned counsel for the appellant is that they should not make further promotions, thus, while disposing this appeal in terms of the said judgment, it is needless to say that*



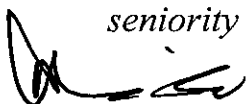
*other employees belonging to the same Cadre, who are in service on regular basis on the commencement of this Act, and shall also rank junior to such other persons, if any, who, in pursuance of the recommendation of the Commission made before the commencement of this Act, or to be appointed to the Cadre, irrespective of their actual date of appointment.*

*(2) The seniority inter-se of those employees, whose services are regularized under this Act within the Cadre, shall be determined on the basis of their continuous service in Cadre:*

*Provided that if the date of continuous service in the case of two or more employees is the same, the employee older in age shall rank senior to the younger one." (Emphasis supplied.)*

10. *It is also worth mentioning that according to Section-5 of the Khyber Pakhtunkhwa Employees of the Elementary and Secondary Education Department (Appointment and Regularization of Services) Act, 2017, the provisions of the said act shall have an overriding effect and the provisions of any such law or rules to the extent of inconsistency with the said Act shall cease to have effect.*

11. *In view of Clause-8 of regularization Notification bearing Endorsement No. No. 2344-3253/AE/Estab dated 07.04.2018 as well as Sub-Section-2 of Section-4 of Khyber Pakhtunkhwa Employees of the Elementary and Secondary Education Department (Appointment and Regularization of Services) Act, 2017, the seniority inter-se of the regularized PSTs was to be determined on the basis of their continuous service in cadre provided that if the date of continuous service in the case of two or more employees was the same, the employee older in age shall rank senior to the younger one. While going the impugned seniority list attached by the appellants with their appeals, the inter-se*



*appellant and private respondents in Service Appeal No. 2079/2019 were appointed as PSTs on contract basis vide Notification bearing endorsement No. 4672-5990/AE-1-Male/PST/Adhoc/Apptt: Dated Bannu the 06.05.2017. During the course of their service, Khyber Pakhtunkhwa Employees of the Elementary and Secondary Education Department (Appointment and Regularization of Services) Act, 2017 was enacted and vide Notification bearing Endorsement No. 2344-3253/AE/Estab dated 07.04.2018, their services were regularized with effect from the date of their initial appointments. Clause-8 of Terms and Conditions as mentioned in the afore-mentioned regularization Notification dated 07.04.2018 is regarding determination of seniority, which is reproduced as below:-*

*"Their Seniority shall be determined on the basis of their continuous service in cadre, provided that if the date of continuous service in the case of two or more employees is the same, the employees older in age shall rank senior to the younger one." (Emphasis provided)*

*9. Moreover, the criteria for determination of seniority inter-se of the employees regularized under Khyber Pakhtunkhwa Employees of the Elementary and Secondary Education Department (Appointment and Regularization of Services) Act, 2017 has been provided in Sub-Section 2 of Section-4 of the said Act, which is reproduced as below:-*

***"4. Determination of seniority.---(1)The employees whose services are regularized under this Act or in the process of attaining service at the commencement of this Act, shall rank junior to all***



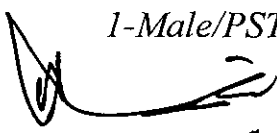
2. On admission of the appeal for regular hearing, notices were issued to the respondents. They contested the appeal by way of filing of reply, wherein they refuted the assertion raised by the appellant in his appeal.

3. Learned counsel for the appellant has addressed his arguments supporting the grounds agitated by the appellant in his service appeal. On the other hand, learned District Attorney for respondents has controverted the arguments of learned counsel for the appellant and has supported the comments submitted by the respondents.

4. Arguments have already been heard and record perused.

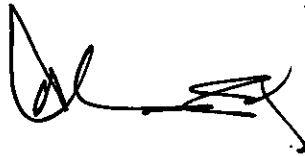
5. This Tribunal in a recent consolidated judgment in Service Appeal No.2069/2019 tiled "Abid Noor Vs. Directorate of Elementary & Secondary Education Khyber Pakhtunkhwa, Peshawar & 55 others", in a similar nature matter of seniority of the teachers, has held as under:

*"A perusal of the record would show that the appellants as well as private respondents in Service Appeals No. 2069/2019 to 2074/2019 as well as Service Appeals No. 2077/2019 and 2078/2019 were appointed as PSTs (BPS-12) on contract basis vide Notification bearing endorsement No. 8313-8514/PST/adhoc/ dated: Bannu the 23.07.2014 DEO/(M), while appellants as well as private respondents in Service Appeals No. 2075/2019 and 2076/2019 were appointed as PSTs on contract basis vide Notification bearing endorsement No. 1922-28/AE-1-Male/PST/Adhoc/ Apptt: Dated Bannu the 28.03.2016, whereas the*



## **JUDGMENT**

**KALIM ARSHAD KHAN CHAIRMAN:** Brief facts of the case are that appellant was appointed as SST (BIO & CHEMISTRY) in BPS 16 on contract basis vide Notification bearing endorsement No. 4472/File No.2/A-14/SST/Adhoc/Appt: Dated Peshawar the 26.04.2017. During course of his service, Khyber Pakhtunkhwa Employees of Elementary and Secondary Education Department (Appointment and Regularization of Services) Act, 2017 was promulgated and in light of the same, his services were regularized vide Notification bearing Endorsement No. 4588-95/File No.15/A-14/SST/Adhoc/Appt: Dated Peshawar the 22.03.2018 with effect from the date of initial appointment. The seniority list of the appellant was drawn on the basis of the score obtained by the candidates in the test conducted by National Testing Service (NTS). The appellant was of the view that their seniority inter-se was required to have been fixed age-wise in view of Clause-8 of terms and conditions of the regularization Notification dated 07.04.2018 as well as Sub-Section-2 of Section-4 of Khyber Pakhtunkhwa Employees of Elementary & Secondary Education Department (Appointment and Regularization of Services) Act, 2017, therefore, he filed departmental appeal against the seniority list on 21.06.2021, however, the same was not responded, hence, he filed the instant service appeal.



**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,**  
**PESHAWAR**  
**AT CAMP COURT, D.I.KHAN**

BEFORE: **KALIM ARSHAD KHAN ... CHAIRMAN**  
**SALAH-UD-DIN ... MEMBER (Judicial)**

*Service Appeal No.106/2022*

Date of presentation of Appeal.....19.01.2022  
Date of Hearing.....18.10.2023  
Date of Decision.....18.10.2023

**Najeeb Ullah SST (BPS-16) Government Higher Secondary School,  
Kachi Paidn Khan, District Dera Ismail Khan.....Appellant**

Versus

1. **The Government of Khyber Pakhtunkhwa Peshawar through Secretary Elementary & Secondary Education, Peshawar**
2. **Director, Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.**
3. **District Education Officer, (Male) D.I.Khan.....(Respondents)**

Present:

Mr. Muhammad Ismail Alizai, Advocate.....For the appellant  
Mr. Farhaj Sikandar, District Attorney .....For respondents

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**SERVICE APPEAL UNDER SECTION 4 OF THE  
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT,  
1974 AGAINST FINAL SENIORITY LIST OF SST  
GENERAL/BIO & CHEMISTRY/MATH &  
PHYSICS/TECHNICAL & COMMERCE AS NOTIFIED  
BY DIRECTORATE OF ELEMENTARY &  
SECONDARY EDUCATION, KHYBER  
PAKHTUNKHWA, VIDE ENDST: NO.F.NO.A-  
10/SST/FINAL SENIORITY/NAJEEBULLAH, DATED  
13.09.2021 BEING AGAINST THE SPIRIT OF KHYBER  
PAKHTUNKHWA EMPLOYEES OF ELEMENTARY &  
SECONDARY EDUCATION DEPARTMENT (APP: &  
REGULARIZATION OF SERVICES) ACT, 2017**

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