

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR AT CAMP COURT, ABBOTTABAD

BEFORE: **KALIM ARSHAD KHAN** ... **CHAIRMAN**
FAREEHA PAUL ... **MEMBER(Executive)**

Service Appeal No.4964/2021

Date of presentation of Appeal.....23.04.2021
Date of Hearing.....23.10.2023
Date of Decision.....23.10.2023

**Phool Bibi daughter of Sardar Shah, SST Government Girls
Higher Secondary School Behali District Mansehra, resident of
Tehsil and District Abbottabad.....Appellant**

Versus

1. **Government of Khyber Pakhtunkhwa through Chief Secretary
Khyber Pakhtunkhwa Peshawar**
2. **Government of Khyber Pakhtunkhwa, through Secretary
Elementary & Secondary Education Department, Peshawar.**
3. **Director Elementary & Secondary Education Department Khyber
Pakhtunkhwa, Peshawar.**
4. **District Education Officer (Female), Mansehra.**
5. **Parveen Bibi daughter of Yousaf Khan presently residing at
Government Girls Higher Secondary School Shahbaz Azmat Khail
Bannu.....(Respondents)**

Present:

Mr. Ibrar Ahmad, Advocate.....For the appellant
Mr. Asif Masood Ali Shah Deputy District AttorneyFor respondents

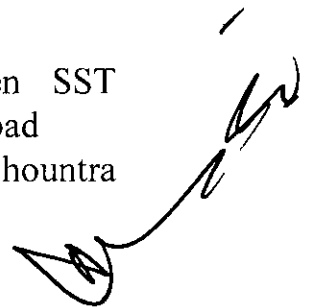
Service Appeal No.5968/2019

Date of presentation of Appeal.....25.05.2021
Date of Hearing.....23.10.2023
Date of Decision.....23.10.2023

**Naima Sultana daughter of Amin ul Haq SST Government
Girls High School Battal, Mansehra.....(Appellant)**

Versus

1. **Government of Khyber Pakhtunkhwa through Chief Secretary
Khyber Pakhtunkhwa Peshawar**
2. **Government of Khyber Pakhtunkhwa, through Secretary
Elementary & Secondary Education Department, Peshawar.**
3. **Director Elementary & Secondary Education Department Khyber
Pakhtunkhwa, Peshawar.**
4. **District Education Officer (Female), Mansehra.**
5. **Mst. Sughra Bibi daughter of Muhammad Miskeen SST
Government Girls Higher Secondary School Lora Abbottabad**
6. **Mst. Nighat Suriya SS Chemistry, GGHSS Esak Chountra
Karak.**



7. **Mst. Kalsoom Kousar**, daughter of Qaiser Khan SS Chemistry GGHSS Baghicha Dheri Mardan.
8. **Parveen Sajjad**, daughter of Yousaf Khan GGHSS SS Chemistry Shahbaz Azmat Khail Bannu.....(**Respondents**)

Present:

Mr. Ibrar Ahmad, Advocate.....For the appellant
Mr. Asif Masood Ali Shah Deputy District AttorneyFor respondents

CONSOLIDATED JUDGMENT

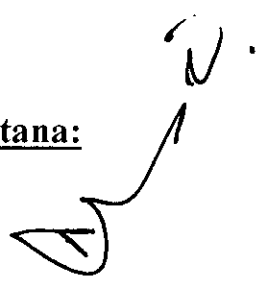
KALIM ARSHAD KHAN CHAIRMAN: Through this single judgment the above two appeals are going to be decided as both are against the same issue, therefore, can be conveniently taken up and decided together.

2. Brief facts of the appeals are as under:

i. SA No.4967/2021 Phool Bibi:

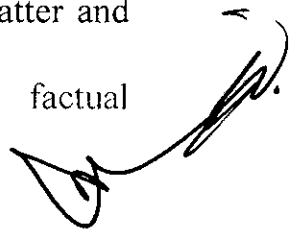
The appellant was working as SST (B)-17 at GGHS Behali Mansehra; that she had possessed M.Sc Chemistry and was placed in the Seniority List of SST (Female), dated 10.10.2016, at Serial No.1715; that the department issued letter dated 28.11.2016 for submission of PERs to concerned Principal of the School and accordingly, she submitted all relevant documents i.e. PER/ACR, Bio Data and other documents; that in the seniority list, she was placed at Serial No.1715 and private respondent No.5 (Parveen Bibi) was at Serial No.1820, below the name of appellant; that vide Notification dated 15.03.2018, the private respondent No.5 was promoted to the post of Subject Specialist (Chemistry) and the appellant was left; that feeling aggrieved, she filed departmental appeal 21.02.2021 but the same was not responded, hence, the instant service appeal.

ii. S.A No.5962/2021 Naima Sultana:



The appellant was working as SST (B)-17 at GGHS Battal, Mansehra; that she had possessed M.Sc Chemistry and was placed in the Seniority List of SST (Female), dated 10.10.2016, at Serial No.1330; that the respondent No.4 directed to the concerned Principal of the School, for submission of PERs and accordingly, the appellant submitted all relevant documents i.e. PER/ACR, Bio Data and other documents; that in the seniority list of SSTs, she was placed at Serial No.1330 and private respondent No.5 (Mst. Sughra Bibi Bibi) was at Serial No.1414, private respondent No.6 (Mst. Nighat Suriya) was at Serial No.2487, private respondent No.7 (Mst. Kalsoom Kousar) was at Serial No.1506 and private respondent No.8 (Parveen Sajjad) was at Serial No.1812, below the name of appellant; that vide impugned Notification dated 15.03.2018, the private respondents were promoted to the post of Subject Specialist and the appellant was not; that feeling aggrieved, she filed departmental appeal 16.02.2021 but the same was not responded, hence, the instant service appeal.

3. On receipt of the appeals and their admission to full hearing, the respondents were summoned, official respondents No.1 to 4 submitted reply in Service Appeal No.5962/2021 titled "Naima Sultana Vs. Government of Khyber Pakhtunkhwa" while the private respondent(s) failed to file reply, hence, they were placed ex-parte. In the Service Appeal No.4964/2021, the official respondents did not file reply and during the course of arguments, relied on the reply filed in Service Appeal No.5962/2021 as both are in respect of the same issue/subject matter and the official respondents raised therein numerous legal and factual

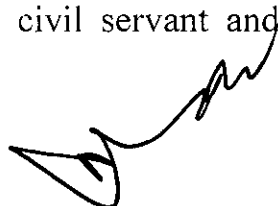


objections. The defense setup was a total denial of the claim of the appellants.

4. We have heard learned counsel for the appellants and learned Deputy District Attorney for the official respondents.

5. The learned counsel for the appellants reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned Deputy District Attorney controverted the same by supporting the impugned order.

6. The minutes of the Departmental Promotion Committee and working paper for promotion of SST (Female) BPS-16 to Subject Specialist (BPS-17) have been produced. Neither in the working paper nor in the minutes of the DPC, names of the appellants figure. The appellants claim to be senior to the private respondent(s) in para-06 of the appeal, which claim of their seniority is not rebutted by the official respondents in their reply. As reply to para-6 does not utter a single word regarding the claim of the appellant to be senior to the private respondent(s). This per-se is an evasive denial, otherwise, amounting to admission. However, the official respondents contend that the appellants were not considered because of their not producing the requisite papers i.e. PERs/ACRs and some certificates, which, according to them, were necessary for their promotion to the next higher grades. This would mean that the appellants were to be considered for promotion but were not as such considered for want of some documents, at the relevant point of time. Non-consideration for promotion of the eligible civil servants is mainly because of two reasons. One is on any ground for supersession of the civil servant and the second is any



reason for deferment of the civil servant. But in these cases, we could not see any of the two reasons to have been stated or explained in the working paper, the minutes or the reply of the respondents. Otherwise, as aforesaid, the appellants are apparently said to have not been considered because of their non-production of documents. We have seen in most of the cases that departments, especially the Education Department, do not come up with clear stance, nor do they produce the documents in support of their claim or for that matter, assistance of the Tribunal to reach a just conclusion, which at times, result in remission of the matters to the department.

7. In these cases also we are constrained to remit the matters to the concerned authorities with direction to consider the cases of the appellants for promotion, in case they are otherwise eligible, and to pass a detailed and well reasoned order, if the appellants could not be promoted. Copy of this judgment be placed in the connected Service Appeal No.5962/2021 titled "Naima Sultana Vs. Government of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa, Peshawar & others". Consign.

8. *Pronounced in open Court at Abbottabad and given under our hands and the seal of the Tribunal on this 23rd day of October, 2023.*



KALIM ARSHAD KHAN
Chairman



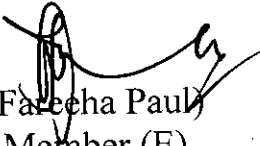
FAREEHA PAUL
Member (Executive)

S.A #.4964/2021

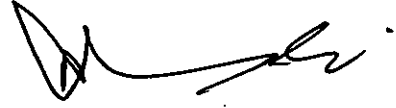
ORDER

23rd Oct. 2023

1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah learned Deputy District Attorney present and heard.
2. Vide our detailed judgment of today placed on file, we are constrained to remit the matter to the concerned authorities with the direction to consider the case of the appellant for promotion, in case she is otherwise eligible, and to pass a detailed and well reasoned order, if the appellant could not be promoted. Consign.
3. *Pronounced in open Court at Camp Court, Abbottabad and given under our hands and the seal of the Tribunal on this 23rd day of October, 2023.*



(Fareeha Paul)
Member (E)
Camp Court, Abbottabad



(Kalim Arshad Khan)
Chairman
Camp Court, Abbottabad