

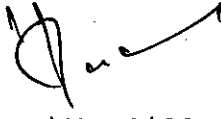


22.05.2018 Counsel for the appellant and Addl: AG alongwith Mr. Waheed Gul, ADEO for the respondents present. Arguments could not be heard due to incomplete bench. Adjourned. To come up for rejoinder and arguments on 02.08.2018 before D.B.


(Muhammad Amin Khan Kundi)
Member

02.08.2018 learned counsel for the appellant and Mr. Kabir Ullah Khattak learned Additional Advocate General present. Learned counsel for the appellant requested for adjournment. Adjourned. To come up for arguments on 26.09.2018 before D.B.


(Ahmad Hassan)
Member



(Muhammad Hamid Mughal)
Member

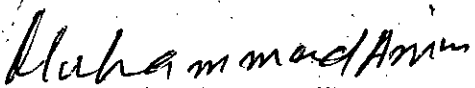
Order

26.09.2018 Appellant with counsel present. Mr. Ziaullah, Deputy District Attorney for respondents present. Arguments heard and record perused.

This appeal is also dismissed as per detailed judgment of today placed on file in connected service appeal No. 1366/2017 titled "Mohammad Salahuddin-vs- Govt: of Khyber Pakhtunkhwa through Secretary Elementary and Secondary Education Civil Secretariat Peshawar and two others". Parties are left to bear their own cost. File be consigned to the record room.


Announced:
26.09.2018


(Ahmad Hassan)
Member


(Muhammad Amin Khan Kundi)
Member


05.03.2018

Clerk of the counsel for appellant and Assistant AG for the respondent present. Written reply not submitted. Learned Assistant AG requested for further time adjournment. Request accepted. To come up for written reply/comments on 20.03.2018 before S.B.


(Gul Zohra Khan)
Member

20.03.2018

None present on behalf of appellant and his counsel. Mr. Kabir Ullah Khattak Additional AG present. Representative of the respondent department is absent. Therefore fresh notice be issued to the appellant and his counsel as well as respondent department for attendance. To come up for written reply and comments on 19.04.2018 before S.B.


Member

19.04.2018

Counsel for the appellant and Addl. AG alongwith Mr. Wahid Gul, ADO (Lit) for the respondents present. Written reply submitted. Counsel for the appellant stated that the similar nature case is also fixed on 22.05.2018. The instant appeal may be fixed on 22.05.2018. Request accepted. To come up for rejoinder and arguments on **22.05.2018** before D.B alongwith connected appeal bearing No. 11/2018.


Member

17.01.2018

Counsel for the appellant present. Preliminary arguments heard. It was contended by learned counsel for the appellant that the appellant was appointed as untrained teacher vide order dated 31.01.1991. It was further contended that later on the appellant passed PTC exam and the department has also issued certificate to the appellant. It was further contended that after passing the PTC examination the appellant was regularized by the department. It was further contended that the respondent-department was required to regularize his untrained period of service and issue seniority list from the date of his appointment in the light of judgments of the Supreme Court of Pakistan but the respondent-department reluctant to issue seniority of the appellant from the date of his appointment therefore, the appellant filed department appeal but the same was also not responded hence, the present service appeal. It was further contended that since there is a judgment of apex court that the untrained service will be counted towards seniority therefore, the respondent-department is duly bound to count the untrained service period of the appellant toward seniority.

The contentions raised by learned counsel for the appellant need consideration. The appeal is admitted for regular hearing subject to deposit of security and process fee within 10 days, thereafter notice be issued to the respondents for written reply/comments for 05.03.2018 before S.B.




Appellant Deposited
Security & Process Fee


(Muhammad Amin Khan Kundi)
Member

FORM OF ORDERSHEET

Court of _____

Case No. 1367/2017

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	11/12/2017	<p>The appeal of Mr. Sajjad Ali presented today by Mr. Ahmad Shah Afridi Advocate may be entered in the Institution Register and put up to Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR 11/12/17</p>
2-	15/12/17. 1.1.2018	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>01/01/18</u>.</p> <p style="text-align: right;"> CHAIRMAN</p> <p>Appellant in person present and seeks adjournment on the ground that learned senior counsel for the appellant is not available today. Adjourned. To come up for preliminary hearing on 17.01.2018 before S.B.</p> <p style="text-align: right;"> (Gul Zeb Khan) Member (E)</p>

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Appeal No. 1367/2017

Sajjad Ali V/s Govt. of Khyber Pakhtunkhwa and Others

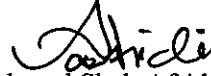
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06-	Application to Director (E&SE), dt.17.07.2017	"C"	14
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07/12/2017


Appellant

Through:


Ahmed Shah Afridi
Advocate, Peshawar

1

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Appeal No. 1367 /2017

Khyber Pakhtukhwa
Service Tribunal

Diary No. 1402

Dated 11-12-2017

Sajjad Ali S/o Abdullah Khan
PTC Teacher, GPS Koto Manz
R/o Jungle Khel, Kohat

.....(Appellant)

Versus

1. ✓ **Government of Khyber Pakhtunkhwa**
Through Secretary, Elementary and Secondary Education
Civil Secretariat, Peshawar
2. ✓ **Director of Elementary and Secondary Education**
Directorate of Elementary and Secondary Education
3. ✓ **District Education Officer (Male), Kohat**
Office of DEO (Male), Kohat

.....(Respondents)

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974, FOR
SENIORITY AND PAYMENT OF ANNUAL INCREMENTS/PAY
FROM DATE OF FIRST APPOINTMENT AND ANY OTHER
BENEFITS WITHOUT DISTINCTION BETWEEN TRAINED AND
UNTRAINED TEACHERS IN VIEW OF THE JUDGEMENT OF
THE SUPREME COURT OF PAKISTAN

Filed to-day
Registrar
11/12/17

Prayer in Appeal:

On acceptance of this appeal, the appellant be allowed seniority and receive graded pay effective from the date of first appointment, rather than date of qualification, without making distinction between trained and untrained PST

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Teachers in accordance with the judgement of the Honourable Supreme and any other back benefits that is due under the relevant laws and rules.

Respectfully Sheweth;

1. **That** the appellant belong to a respectable family of his locality and have carried out exemplary service for decades at the post of PTC Teacher, since the date first of appointment, carrying out his duties with diligence, due care, efficiency, devotion and to the great satisfaction of his superiors, with no adverse remarks towards ACR's and imparting quality education upon his students.
2. **That** Appellant was hired vide Appointment Letter No.1780-88/Apptt/PTC/I.AG, dated 31.01.1991, he appeared for and passed his exams, with the result being declared on 06.06.2003 and his Primary Teaching Certificate being issued on 05.11.2008.

(True copy of Appointment Letter, Certificate and other documents are attached as **Annexure-A**)

3. **That** the appellant along with other PST Teaches filed an application with Respondent No.3 on 17.07.2017, requesting that in light of the Judgement of the Honourable Supreme Court of Pakistan, dated 19.03.2016, the appellants be offered seniority and all due financial benefits for period of service from the date of appointment till the date of regularization/qualification attained.

(True copy of application dt.17.07.2017 is attached as **Annexure-B**)

4. **That** the appellant along with other PST Teachers furthermore submitted an application with Respondent No.2 on 17.07.2017, requesting to be granted seniority and all due financial back benefits from the date of first appointment in light of the Judgement of the Honourable Supreme Court of Pakistan, dated 19.03.2016.

(True copy of application dt.17.07.2017 is attached as **Annexure-C**)

5. **That** the Office of the District Education Officer (Male), Kohat, sent Letter No.10290, dated 07.09.2017, to Respondent No.2 on the subject matter of the application submitted by the appellant requesting seniority and back benefits from the date of first appointment.

(True copy of the Letter dt. 07.09.2017 is attached as **Annexure-D**)

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6. **That** feeling aggrieved by the inaction and lethargic behaviour of the concerned authorities, the appellant seek to invoke the jurisdiction of this Honourable Tribunal, *inter-alia*, on the following grounds:

GROUND

- A. **Because** the actions or the lack of as well as the lacklustre, sluggish and slothful behaviour of the respondents is illegal, patently wrong, unlawful, arbitrary, capricious, unwarranted, malafide and against the relevant provisions of the law and rules and thus the appellant is liable to be granted relief.
- B. **Because** the behaviour and inaction of the Respondents is against settled precedence set down by the Honourable Supreme Court of Pakistan in numerous judgement including judgement dated 19.03.2016.
- C. **Because** the appellant rights are enshrined and protected under the Constitution of the Islamic Republic of Pakistan, such as under **Article 25**, which is being blatantly violated by the respondents. Therefore, the appellant deserves to be treated at par with their peers, in accordance to the Constitution and thus, should be given due seniority.
- D. **Because** the appellant has carried out his service in exemplary manner for decades without any complaints from his superiors and that the inability of the respondents to provide relief as well as the failure to accord seniority to the appellant is harsh and demonstrates a lack of concern from the respondents towards the honest hard work and years of service of the appellant.
- E. **Because** the appellant belongs to a poor but respectable family of his locality, who deserves to have his service recognized by the relevant authorities (Respondents),

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have his service acknowledged and be granted due seniority from the date of his first appointment (untrained period).

F. **Because** the appellant seeks permission of this honourable Tribunal, to rely upon additional grounds and seek any other relief at the time of hearing of the appeal.

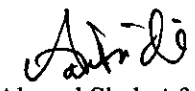
It is, therefore, humbly prayed that upon acceptance of this appeal, appellant be accorded seniority and be granted all due financial benefits from the date of first appointment.

Any other relief this honourable Tribunal deems fit in the circumstances of the case may also be granted

Dated: 07.12.2017


Appellant

Through:


Ahmed Shah Afridi
Advocate, Peshawar

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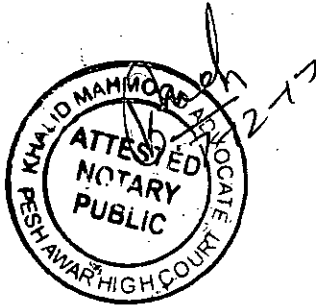
BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR


Appeal No. _____/2017

Sajjad Ali V/s Govt. of Khyber Pakhtunkhwa and Others

AFFIDAVIT

I, **Sajjad Ali** S/o Abdullah Khan, R/o Kohat, affirm and declare that the contents of the accompanied Departmental Appeal are true and correct and nothing material has been concealed therein from this honourable Tribunal.




Deponent

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BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Appeal No. _____/2017

Sajjad Ali V/s Govt. of Khyber Pakhtunkhwa and Others

MEMO OF ADDRESSES

Sajjad Ali S/o Abdullah Khan
PTC Teacher, GPS Koto Manz
R/o Jungle Khel, Kohat

.....(Appellant)

Versus

1. **Government of Khyber Pakhtunkhwa**
Through Secretary, Elementary and Secondary Education
Civil Secretariat, Peshawar
2. **Director of Elementary and Secondary Education**
Directorate of Elementary and Secondary Education
3. **District Education Officer (Male), Kohat**
Office of DEO (Male), Kohat

.....(Respondents)

Distt. Educ. Officer
(M) Kohat

(M) Kohat

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APPOINTMENT

Appointment of the following trained/Untrained candidates are hereby ordered against the post of F.T.C. on temporary and adhoc bases in BFS-7(Rs.750-34-1370)/Rs.750/- fixed plus usual allowances in the interest of public service with effect from the date of taking over their charge.

S.No.	Name & Address of Candidate.	Posted at	Remarks
1.	Mr. Zohid Khan S/O Khushdil Khan R/O Awan Colony, Kohat	NPS. Khurmast Khel (Hangu)	A.V. Posts
2.	Mr. Amanst Gul S/O Mir Zamir R/O Tahab Beraka, Kohat	MPS. Dakasi Killi (Hangu)	" "
3.	Mr. Rehmat Ali S/O Taj Ali R/O Tappi, Kohat	GPS. Maingi Khel (Hangu)	" "
4.	Mr. Sajad Ali S/O Abdullah Khan F/O Jengel Khel, Kohat	GPS. Koto Manz (Hangu)	" "
5.	Mr. Masroor Hussain S/O Jamshid Ali Kiyani, Usterzai Payan, Kohat	GPS. Maingi Khel (Hangu)	" "
6.	Mr. Munwar Shah S/O Mohammad Shsh R/O Shokariara, Kohat	GPS. Shinali Banda, Hangu	" "
7.	Mr. Mohammad Humayun S/O Mir Shahzada R/O Lachi Payan, Kohat	MPS. Tari Banda, Hangu	" "

TERMS AND CONDITIONS.

- No. TA/DA is allowed on fresh appointment/charges reports should be submitted to all concerned in duplicate.
- The appointment of candidates is/are purely temporary and liable to termination at any time without assigning any reasons.
- The candidate should produce his/their Medical & Age Certificate at from the Medical supdt. concerned.
- They/He should not be allowed to take over charge of their/his post if their/his age exceeds 25 years or below 18 years.
- In case of resignation they/he will have to submit one month prior notice or they/he shall forfeit one month pay to Govt.
- His appointment is subject for further conditions that they/he is /are domiciled in P.F.P.
- If they/he fail to take over charge of the post within a week of the receipt of this order the offer of appointment shall stand cancelled.

(GUL MOHIB KHAN)

DISTRICT EDUCATION OFFICER (MALE),
KOHATEnlist No. 1280-84 /Apptt/PTG/I-AG Dated 31/1/91.

Copy of the above is forwarded for information to the:-

- S.D.E.O. (M) Kohat/Hangu.
- Candidate Concerned

Assessed
District Education Officer
Kohat

Assessed
District Education Officer
Kohat

Alama Iqbal Open University
Islamabad

Serial No 185013



(8)

Certified that *Mr/Ms* SAJJAD

Son/Daughter of ABDULAH KHAN

Registration No. 01-NKT-0485

Roll No. 1-6120353

Semester AUTUMN 2002

having met all the requirements

under the semester system is this day awarded the

Primary Teaching Certificate

He/She has secured 54 % marks

and has been placed in C grade



Result declared on: June 06, 2003

Date of issue: November 05, 2008

[Signature]
Controller of Examinations

[Signature]
Asstt. Sub District Officer
Edu. Secy. Edu. Deptt.
Kohat

Note: This certificate is issued without alteration/erasure.
The detail of courses is overleaf.

[Signature]
ATTACHED
TO...

The detail of courses passed is as under

Course code	Title of the course	Percentage of Marks obtained
613	Principles of Education	13
614	Educational Psychology	53
615	School Organization and Management	18
616	School Community and Practical Arts	17
617	Teaching of Urdu	60
618	Teaching of Mathematics	53
619	Teaching of Science and Physical Education	51
620	Teaching of Islamiat and Social Studies	54
611	Practical Workshop and Teaching Practice	51

9

Total credit hours XXX
 Total credits AIUO XXX
 First semester: AUTUMN 2001

Obtained / Total marks 489 / 602
 Cumulative grade point average XXX
 Final semester AUTUMN 2001

80% and above:	A+ grade
70% to 79%	A grade
60% to 69%	B grade
50% to 59%	C grade
40% to 49%	D grade
Below 40%	Fail

[Signature]
 To Be Presented to
 Advocate

[Signature]
 Controller of Examinations

had
185

10

00162558

- 1. Name (نام) SAJJAD
- 2. Nationality and Religion Pakistani / Islam
(قومیت اور مذہب)
- 3. Residence (مستقل رہائش) Jungal Khel (Kohat)
- 4. Father's name and residence Abdullah Khan — Do —
(والد کا نام اور رہائش)
- 5. Date of birth by Christian era as nearly as can be ascertained (28.3.1966)
Twenty Eighth March NHA Secly
(تاریخ پیدائش مطابق سن عیسوی)
- 6. Exact height by measurement 1.70 m.
(قد و ناسطہ)
- 7. Personal mark for identification 143 - 88 - 180661
(نشان شناخت)

- 8. Left hand/right hand thumb and finger-impressions of (Non-gazetted) officer
(سر کی صورت میں بائیں اور عورت کی صورت میں دائیں ہاتھ کی انگلیوں کے نشانات)
- | | | |
|---------------------------|---------------------------------------|---------------------|
| Little Finger (چھٹکیا) | Ring Finger (چھٹکیا کے ساتھ کی انگلی) | Middle Finger (مڈل) |
| Fore Finger (انگشت شہادت) | Thumb (انگوٹھا) | |

- 9. Signature of Government servant
(سرکاری ملازم کے دستخط)
- 10. Signature and designation of the Head of the Office, or other Attesting Officer
(تصدیق کنندہ افسر کے دستخط اور سر)

Sajjad

Attested

Asstt. Sub District Officer
Edu. Secy. Edu. Deptt.
Kohat

Note.—The entries in this page should be renewed or re-attested at least every five years and the entries in lines 9 and 10 should be dated. Finger prints need not be taken after every 5 years under the

نوٹ۔ اس صفحہ کے مندرجات کم از کم ہر پانچ سال بعد تصدیق ہونا ضروری ہیں اور نمبر 9 و 10 میں دستخطوں کے لیے تاریخ ہونی چاہئے۔ انگلیوں کے نشانات کے لیے ہر پانچ سال کے بعد تصدیق کی ضرورت نہیں۔

Attested

0-11/13



1	2	3	4	5	6	7	8	9	
Name of post دورہ کے نام	Whether substantive or officiating and whether permanent or temporary تاریف کا نام	If retentive, state— (i) on what date appointed or (ii) whether service contract for period under G.O. (P.A.) Volume II اگر مانتی ہے تو کا نام مکانی پتہ مستحق ہے	Pay in substantive position تعارف کا نام	Additional pay for officiating زائد تعارف کا نام	Other emoluments under the term "pay" تعارف کے علاوہ	Date of appointment تاریخ	Signature of Government servant دستخط	Signature and designation of the Head of the Office or other Attesting officer in attestation of column 1 to 8 تعمیراتی مجاز	
PTC 7-7-5 Kotamang off				750/-		2 2/91	Sajjad		
Mrs. Sajjad Marginal	22/Temp			750/-		19 5/91	F.N.		
		RPS (1095-60-1995)							
Do.	D	Rs. 1095/-				6 1/91			
Do.	D	Rs. 1095/-				12 1/91			
Do.	D	Rs. 1095/-				12 1/92			
Mrs. Sajjad	D	Rs. 1095/-				12 1/93			
		Attest Asst. Sub District Officer							
				Adm 25					

1	2	3	4	5	6	7	8	9
<p>Signature and attestation of the Head of the office or other official in the Government of service</p>	<p>Whether subordinate and whether appointment or retention is temporary</p>	<p>If officiating (i) substantive or (ii) whether service count for pension under rules 320 of C.S.R. (P.B.) Volume II</p>	<p>Pay in substantive post</p>	<p>Additional pay for officiating</p>	<p>Other emoluments falling under the "pay" term</p>	<p>Date of appointment</p>	<p>Signature and attestation of column 1 to 8</p>	
<p>12/20/2002</p>	<p>12/20/2002</p>	<p>Rs. 2340/-</p>	<p>Rs. 2340/-</p>	<p>12/20/2002</p>	<p>12/20/2002</p>	<p>12/20/2002</p>	<p>12/20/2002</p>	<p>12/20/2002</p>
<p>12/20/2002</p>	<p>12/20/2002</p>	<p>Rs. 2340/-</p>	<p>Rs. 2340/-</p>	<p>12/20/2002</p>	<p>12/20/2002</p>	<p>12/20/2002</p>	<p>12/20/2002</p>	<p>12/20/2002</p>
<p>12/20/2002</p>	<p>12/20/2002</p>	<p>Rs. 2340/-</p>	<p>Rs. 2340/-</p>	<p>12/20/2002</p>	<p>12/20/2002</p>	<p>12/20/2002</p>	<p>12/20/2002</p>	<p>12/20/2002</p>

AGRIC. SUB-DIVISION OFFICER
12/20/2002

12/20/2002

12/20/2002

12

محفوظ جناب ڈسٹرکٹ ایجوکیشن آفیسر (عمردانہ) کوپاٹ

لومبارڈت صحت سے متعلق SDPE کے تحت درخواست

جناب عالی کے تحت سناری کی بنیاد پر متعلقہ مراعات فراہم کی جائیں

جناب عالی کے تحت سناری کی بنیاد پر متعلقہ مراعات فراہم کی جائیں

1۔ یہ کہ سائلان حکم تعلیم میں بطور PST اساتذہ تعینات ہیں۔ جو ریکارڈ سے صاف ظاہر ہے۔

2۔ یہ کہ سائلان تقریباً ۲۷ یا ۳۰ سال سے اپنے فرائض منصبی بطور PST سرانجام دیتے چلے آ رہے ہیں۔

3۔ یہ کہ مطابق فیصلہ عدالت عظمیٰ اسلام آباد مورچہ 19-03-16 سے سائلان کو سناری کی تاریخ تقریباً ۳۰ سالوں سے فراہم کی جائے نہ کہ تاریخ Passing PTC سے۔ چونکہ سائلان کی تاریخ تقریباً ۳۰ سالوں سے ایسی خدمات سرانجام دے رہے ہیں۔ تاکہ سائلان کی حق تلفی نہ ہو۔ بدین وجہ مطابق سپریم کورٹ آف پاکستان کے فیصلہ کی رو سے مراعات کے حقدار ہیں۔ جو اس سے قبل صورت پنجاب میں فیصلہ سپریم کورٹ کے مطابق عملدرآمد ممکن بنایا جا چکا ہے۔

لہذا استدعا ہے کہ منظوری درخواست فورا مناسب احکامات صادر فرمائیں۔

ان میں یہ امر بھی قابل ذکر ہے کہ سائلان کی سناری کی Untrained PTC کے پورے سے دی جائے۔ نیز Postfacto Sanction کی منظوری بھی حاصل کی جائے۔

یاد دہانی کے طور پر یہ بھی لکھی بنایا جائے۔

یاد دہانی کے طور پر یہ بھی لکھی بنایا جائے۔

یاد دہانی کے طور پر یہ بھی لکھی بنایا جائے۔

Attested
Asst. Sub-District Officer
Gen. Secy Edu. Deptt
Kohat

SPST جی بی ایس تحصیل کوپاٹ
PST جی بی ایس تحصیل کوپاٹ
PST جی بی ایس تحصیل کوپاٹ
PST جی بی ایس تحصیل کوپاٹ
PST جی بی ایس تحصیل کوپاٹ

ATTESTED



محفوظ جناب ڈائریکٹر صاحب ایلیمنٹری اینڈ سیکنڈری ایجوکیشن KPK پشاور

- ۱) محمد صلاح الدین SPST جی پی ایس Mc1 کوپاٹ
- ۲) محمد شاکر PST جی پی ایس تحصیل گیٹ کوپاٹ
- ۳) سجاد PSI جی پی ایس تحصیل گیٹ کوپاٹ

(سائلان)

عنوان :- درخواست بمراد SST کیلئے بنائی گئی DPC میں شمولیت

جناب عالی! سائلان ذیل معرض رساں ہیں:

- ۱- یہ کہ سائلان حکمہ تعلیم میں بطور PST اساتذہ تعینات ہیں۔ جو کہ ریکارڈ سے صاف ظاہر اور ثابت شدہ ہے۔
 - ۲- یہ کہ تقریباً ۱۷ یا ۱۸ سالوں سے اپنے فرائض منصبی بطور PST پھرنے لگے ہیں۔
 - ۳- یہ کہ بمطابق فیصلہ سپریم کورٹ آف پاکستان مورخہ 19-03-2016 سے سائلان کو سنیاری تاریخ تقریبی Date of First appointment بشمول Untrained پیپرڈ سے فراہم کی جائے نہ کہ تاریخ Passing PTC سے نیز سائلان کو 10-07-2017 میں SST کے لیے ہونے والی DPC میں بھی شامل کیا جائے کیونکہ سائلان کی SST پوسٹ کے لیے تعلیمی و پیشہ وارانہ قابلیت بھی پوری ہے۔
- لہذا استدعا ہے کہ بمطابق فیصلہ سپریم کورٹ آف پاکستان سائلان کی دائرہ سے فرمائے ہوئے ان کا حق دینے کے احکامات صادر فرمائے جائیں
- (متعلقہ فیصلہ سپریم کورٹ آف پاکستان لف ہذا ہے)
- مورخہ 17-07-2017

محمد شاکر PST

Attested

Asst. Sub District Officer
Edu. Secy. Educ. Deptt.
Peshawar

Attested

ATTESTED

محمد صلاح الدین SPST

محمد شاکر PST

سجاد PST

ANNEX D

OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) KOHAT

No. 10190 dated 7/9/2017

15

To
The Director
Elementary & Secondary Education
Khyber Pakhtunkhwa Peshawar

Subject: - APPLICATION FOR REGULARIZATION IN THE LIGHT OF ORDE
PASSED BY THE SUPREME COURT OF PAKISTAN

Memo:-
I am directed to enclosed herewith the application along with above cited judgment is submitted for your kind perusal and with the request that the PST teachers demanding the Seniority from the date of 1st appointment (Untrained period) whether they are entitled for the seniority from the date of 1st appointment or otherwise.

Hence in this regard this office may kindly be guided please.

[Signature] 06/9/17
DY DISTRICT EDUCATION OFFICER
(MALE) KOHAT

Endst.No.

Copy to the:-

- 1. SDEO (M) Kohat
- 2. Teachers concerned

[Signature] 06/9/17
DY DISTRICT EDUCATION OFFICER
(MALE) KOHAT

Attested

Asst. Sub District Officer
Ele. Secy. Edu. Dept.

[Signature]
ATTESTED

IN THE COURT OF JUDGE PROVINCIAL SERVICES
TRIBUNAL, PESHAWAR

Appeal No. 1367/2017 **Wakalatnama**

Sajjad Ali V/s Gov. of Khyber Pakhtunkhwa & Others

I, **Sajjad Ali** S/o Abdullah Khan, R/o Kohat, do hereby appoint **Advocate Ahmed Shah**

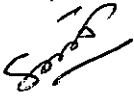
Afridi, Advocate in the above mentioned case, to do all or any of the following acts, deeds and things:-

- 1- To appear, act and plead for me/us in the above mentioned case in this Court/Tribunal in which the same may be tried or heard, and any other proceedings arising out of or connected therewith.
- 2- To sign and verify and file, petitions, appeals, affidavits and applications as may be deemed necessary or advisable by them for the conduct, prosecution or defense of the said case at all its stages.
- 3- To receive payment of, and issue receipts for, all moneys that may be or become due and payable to us during the course of the proceedings.
- 4- To do any act necessary or ancillary to the above acts, deeds and things.
- 5- To employ any other legal practitioner authorizing him to exercise the power and authorities hereby conferred on the advocate whenever he may think fit to do so.

AND I/We hereby agree to ratify whatever the advocates or their substitute shall do in the premises.

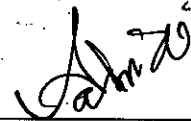
AND I/We hereby agree that in the event of the whole or any part of the fee agreed by us to be paid to the advocates remaining unpaid they shall be entitled to withdraw from the prosecution of the said until the same is paid.

In witness whereof I have signed this Wakalatnama hereunder, the contents of which have been read/explained to me and fully understood by me on 1st day of December 2017.



Signature of Executant

Attested & Accepted by:



Ahmed Shah Afridi
Advocate, District Peshawar

OFFICE: 60-C, 2nd Street, Defence Officers Colony, Khyber Road, Peshawar

BEFORE THE HONOURABLE KP
SERVICE TRIBUNAL

Sajjad Ali

V/S

Govt. of KP and Others

Adjournment Application

Respectfully Sheweth;

- 1) That the above titled case ~~has~~ is placed today before this honourable Tribunal for adjudication.
- 2) That the counsel in this case, due to unforeseeable circumstances, is unable to argue this case today.

It is therefore, most humbly prayed that the above titled case may please be placed for adjudication on any other date as the honourable Tribunal may see fit.

Appellant

Through

Counsel

Advocate Ahmed Shah Afridi

Afridi

29/12/2017

BEFORE THE HONOURABLE SERVICE TRIBUNAL
PESHAWAR
SERVICE APPEAL NO. 1367/2017

SAJJAD ALI APPELLANT

V/S

DISTT EDUCATION OFFICER (MALE) KOHAT & OTHER..... RESPONDENTS

Parawise comments on behalf of Respondent No: 1 to 3

Respectfully Sheweth

Preliminary objections:

1. That the appellant has got no cause of action/locus standi.
2. That the instant Service appeal is badly time barred.
3. That the appellant has concealed material facts from the Hon'able Tribunal in the instant service appeal.
4. That the instant service appeal is against the relevant provisions of law.
5. That the appellant has not come to this Hon'able Tribunal with clean hands.
6. That the instant appeal is liable to be dismissed for mis-joinder & non-joinder of the necessary parties to the present appeal.
7. That the appellant is estopped by his own conduct to file the instant appeal.
8. That the instant service appeal is not maintainable in the present form & circumstances of the case.
9. That the Hon'able Tribunal has no jurisdiction to adjudicate the matter.

FACTS

1. No comments pertain to record.
2. Correct to the extent that appellant was appointed as PST post in the respondent department as untrained PST post vide appointment order dated 09.11.1990 on his own application/request for the appointment against the said post.
3. Incorrect, Appx Supreme Court of Pakistan vide order dated 19.03.2016 granted Annual Increment to the untrained teachers and ancillary privileges of pay which cannot be linked with seniority, while Govt of Khyber Pakhtunkhwa Finance Department letter No FD/PRC issued on 05.02.2002 & dated 30.10.2009, wherein annual increments on running pay to the untrained teachers has been allowed but without arrear & with immediate effect. So far as Seniority of Untrained teachers

is concerned it is submitted that under the provision of Section 8 (4) chapter II of the NWFP now Khyber Pakhtunkhwa Civil Servant act 1973 (NWFP) (now KPK) act No: XVIII of 1973 the seniority can not be considered from the date of appointment as untrained rather it would be reckoned from the regular appointment to the post, from the date of passing the prescribed qualification in case of untrained appointment to a post, Similar nature appeal has been dismissed by this Hon'able Tribunal (Copy of the relevant rules is attached as Annex A & B)

4. Incorrect, the judgment of Appx Supreme Court of Pakistan has already been implemented and extended benefit of Annual increments to all untrained teachers and seniority is always commenced from the date of regular appointment or from the date of passing the professional qualification.
5. Incorrect/ misleading , on the persistent request of appellant his application was submitted to respondent No: 2 merely for seeking guidance which can not be turned as Departmental appeal further since his appointment so many seniority list have been issued by the Department but non has been challenged by the appellant.
6. Incorrect on going through above stated para, the appeal in hand is libel to be strict down on the following grounds inter alia.

GROUNDS

- A. Incorrect and denied. The appellant has been treated strictly in accordance with law & rules/ regulations and the act of the respondent departments is within the legal sphere, having no question of illegality, exceed of jurisdiction and un lawful authority. Hence, libel to be maintained.
- B. Incorrect and denied. The appellant is not entitled for the grant of Seniority for his untrained period without possessing/ acquiring the prescribed professional qualification at the time of his induction in the respondent department as PST.
- C. Incorrect. There is a no rules and regulation for the grant of seniority for untrained period in respondent of any teaching cadre post therefore the act of the respondents department regarding non grant of the seniority for the untrained period to the appellant is within legal sphere. The appellant has been treated on the principle "sauce for the goose is the sauce for the gander" and

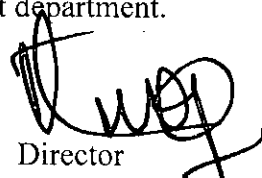
the rule in question is unanimously implement on each and every one, and question of article 25 of the constitution of Pakistan does not attracted in the instant case.


D. Incorrect. The respondent department can not have any malafide against any one as there is a crystal clear rules without the shadow of any doubt as enumerated above under which the respondent department has been treated the appellant.

E. No comments. It pertain to personal open of the appellant however the appellant is not entitled for the seniority for untrained period according to rules.

In view of the above made submission, it is most humbly prayed that this Hon'able, Tribunal may very graciously be pleased to dismissed the instant service appeal with cost in favour of respondent department.


District Education Officer
(Male) Kohat


Director
Elementary & Secy Education
Khyber Pakhtunkhwa Peshawar


Secretary
Government of Khyber Pakhtunkhwa
Elementary & Secy Education Department

BEFORE THE HONOURABLE SERVICE TRIBUNAL
PESHAWAR
SERVICE APPEAL NO. 1367/2017

SAJJID ALI APPELLANT

V/S

DISTT EDUCATION OFFICER (MALE) KOHAT & OTHER..... RESPONDENTS

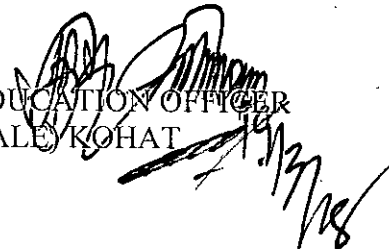
Parawise comments on behalf of Respondent No: 1 to 3

Affidavit

I, District Education Officer (Male) Kohat do hereby solemnly affirm and declare on oath that the contents of the accompanying Parawise comments are true and correct to the best of my knowledge and belief and nothing has been concealed withheld from this Honourable court.

Deponent

DISTRICT EDUCATION OFFICER
(MALE) KOHAT

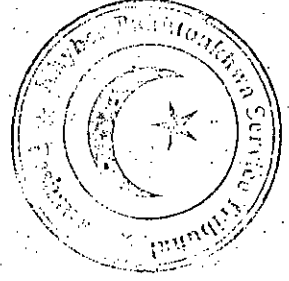


8

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

SERVICE APPEAL NO. 115/2016

Date of institution ... 30.11.2015
Date of judgment ... 17.01.2017



Abid Ali Shaukat S/o Shaukat Ali
SPST, GPS Nundrale, Nowshera.

... (Appellant)

VERSUS

1. Secretary Education, Khyber Pakhtunkhwa, Civil Secretariat Peshawar.
2. Director of Education, Khyber Pakhtunkhwa, Dabgari Garden Peshawar.
3. District Education Officer, Nowshera.
4. M. Asad Khan, PSHT GPS No.2, ZKKS presently at G.P.S Tarkhel Bala District Nowshera and 36 other private respondents.

... (Respondents)

APPEAL UNDER SECTION-4 OF THE SERVICE TRIBUNAL ACT, 1974
AGAINST THE IMPUGNED SENIORITY LIST DATED 07.02.2015 OF
RESPONDENT NO. 3 AND IMPUGNED NOTIFICATION NO. 3641/46
DATED 27.07.2015 OF RESPONDENT NO. 3 AND AGAINST THE IN
ACTION OF RESPONDENT NO. 3 IN RESPONSE TO DEPARTMENTAL
APPEAL WHEREBY PROMOTION/UP-GRADATION OF THE
PETITIONER TO BPS-15 AS PSHT/SPST HAS BEEN REFUSED.

Mr. Abdul Ghaffar Khan, Advocate.
Mr. Ziaullah, Government Pleader

For appellant.
For official respondents No. 1 to 3.

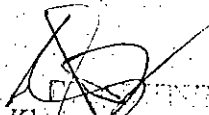
MR. ASHFAQUE TAJ
MR. AHMAD HASSAN

MEMBER (JUDICIAL)
MEMBER (EXECUTIVE)

JUDGMENT

ASHFAQUE TAJ, MEMBER:- Abid Ali Shaukat hereinafter called appellant has moved instant service appeal under section-4 of Service Tribunal Act, 1974 against impugned seniority list dated 07.02.2015 and impugned notification dated 27.07.2015 issued by respondent No. 3. And against inaction of respondent No. 3

ATTESTED


Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

against departmental appeal whereby promotion/up-gradation of appellant to BPS-15 was refused.

2. Facts in brief are that appellant joined Education Department as SPST on 04.09.1989. That initially the appellant was appointed in BPS-7 as untrained teacher but subsequently regularized against his post on completing the required training on his turn. That the appellant was ready for training from day first of his appointment but due to lack of institutions he could not do his training in time, so non-performance of training at earlier was not his fault. That in year 2015 seniority lists were prepared but the appellant was shown junior to many of his junior colleagues. Appellant objected to tentative seniority list for promotion to BPS-14/15 but the same was not considered. That on the basis of second seniority list notification No. 3641/46 was issued on 27.07.2015. The teachers junior to appellant were promoted. That appointment and retirement of the appellant are considered from the date of appointment as untrained teachers. That earlier appellant was granted promotion/up-gradation on the basis of same qualification length of service earlier to the respondents. The prayer of the appellant is that impugned notification and seniority list might be set-aside and that appellant be promoted from the date of his original appointment.

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3. Learned counsel for appellant contended that in reply to letter dated 02.12.2008 Accountant General Office Peshawar gave opinion on up-gradation of various posts of teachers by submitting that temporary/officiating services followed by confirmation rendered on the relevant posts which are reckonable towards pension can also be counted for the purpose of length of service required for up-gradation. He added that question was asked in above mentioned letter that whether 10 years services will be counted from date of initial recruitment as untrained teacher from the date of passing PTC exam. He was of the view that on this analogy when his service was counted from the date of initial appointment as untrained teacher then his seniority also had to be determined from the date of initial appointment.

ATTESTED

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Sub...
Peshawar

4. The learned Government Pleader for respondents controverted that it is a settled rule duly communicated to the Executive District Officer vide letter No. 2296/A-88/KC/SET(M&F)SI/Inform dated 31.08.2012, regard to guidance for preparation of seniority list/promotion/up-gradation of various cadres of teaching staff. The seniority cannot be considered from the date of appointment as untrained teacher. The seniority is considered from the date of regular appointment or from the date of passing the prescribed qualification in case of untrained appointment. Further at serial No. 3 of letter it is recorded that the name of the untrained teachers could not be enlisted in the seniority list unless he passes the prescribed rules. So, the rule is clear on the matter and on the basis of said rule the seniority list was prepared in year 2013 first time and many deserving were promoted which was never challenged. He also pointed that the above mentioned rules were also challenged before this Tribunal in Service Appeal No.1343/2012 dated 31.05.2016 titled "Javed Iqbal PST-vs-Government of Khyber Pakhtunkhwa, through Elementary & Secondary Education, Peshawar" was dismissed, meaning thereby appellant was praying for the matter which had already been decided by this Tribunal.

17.08.2017
 17.08.2017
 17.08.2017

5. The Tribunal observed that appellant came up with prayer that since his service was counted from the date of initial appointment as untrained teacher for purpose of up-gradation, so on this analogy he is entitled to get seniority and further promotion. We are afraid that this matter has already been decided by this Tribunal vide judgment dated 31.05.2016 in Service Appeal No. 1343/2012. Over and above this, the Tribunal agrees with the arguments/stance of Additional Advocate General that rules on the subject were circulated vide letter dated 31.08.2012 inter-alia untrained teacher cannot be enlisted in the seniority list unless he passes the prescribed professional qualification are palpable and conspicuous reality. The appellant had not asserted that he had been not given due seniority after getting requisite professional training. At an end appellant

ATTESTED

[Signature]
 Khyber Pakhtunkhwa
 Service Appeal
 Peshawar

had likewise failed to point out that he had applied for training but was refused or kept waiting and that fault was not on his part.

6. In view of above the appeal in hand stands dismissed. Parties are left to bear their own costs. File be consigned to the record room.

7. Vide our this detail judgment we would also like to dispose of identical Service Appeals No. 111/2016 titled "Zahid Ali-vs- Secretary Education, KPK, Civil Secretariat Peshawar" etc, 112/2016 titled "Murad Khan-vs- Secretary Education, KPK, Civil Secretariat Peshawar" etc, 113/2016 titled "Faraz Muhammad-vs-Secretary Education, KPK, Civil Secretariat Peshawar" etc, 114/2016 titled "Amin-ur-Rehman-vs- Secretary Education, KPK, Civil Secretariat Peshawar" etc, and 116/2016 titled "Zia Ullah Shah-vs- Secretary Education, KPK, Civil Secretariat Peshawar" etc as similar question of law and facts are involved, all service appeals stands disposed of accordingly.

ANNOUNCED
17.01.2017

(ASHFAQUE TAJ)
MEMBER

Copy
Secretary
Peshawar

(AHMAD HASSAN)
MEMBER

Date of Payment	1600
Number of	10.00
Cost	2.00
Department	12.00
Total	
Name of	
Date of	09-03-18
Date of	09-03-18