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REGISTERED
No. C.P.449-P/2022 - SCJ
SUPREME COURT OF PAKISTAN

Islamabad, dated 07/11/2023

From The Registrar,
Supreme Court of Pakistan,
Islamabad.

Khyber Pakhtunkhwa
Service Tribunal

To The Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

Case No. 9199

Dated 17-11-2023

Subject: **CIVIL PETITION NO. 449 - P OF 2022**

Government of Khyber Pakhtunkhwa through Chief Secretary, Civil
Secretariat, Peshawar and others
Versus
Jamal Shah

On appeal from the Judgment/Order of the Khyber Pakhtunkhwa
Service Tribunal, Peshawar dated 02/02/2022 in Appeal-666/2020.


Dear Sir,

I am directed to enclose herewith a certified copy of the Order/Judgment
of this Court dated 17/10/2023 dismissing the above cited case in the terms stated
therein for information and further necessary action.

Please acknowledge receipt of this letter along with its enclosure
immediately.

Encl: Order/Judgment:

Yours faithfully,



(MUHAMMAD MUJAHID MEHMOOD)
ASSISTANT REGISTRAR (IMP)
FOR REGISTRAR

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Jamal Khan Mandokhail
Mr. Justice Syed Hasan Azhar Rizvi

Civil Petition No.449-P of 2022

*(Against the judgment dated 02.02.2022 of the
Khyber Pakhtunkhwa Service Tribunal Peshawar in Service Appeal No.666 of 2020)*

Government of
Khyber Pakhtunkhwa and others

Petitioner(s)

VERSUS

Jamal Shah

...Respondent(s)

For the Petitioner(s): Mr. Sultan Mazhar Sher Khan,
Additional Advocate General, KPK
Sardar Bahadur, Deputy Secretary,
Finance Department
Qayyum Khan, Deputy Director,
Social Welfare Department

For the Respondent(s): N.R.


Date of hearing: 17.10.2023.

...
JUDGMENT

Syed Hasan Azhar Rizvi, J.- Through this petition, the petitioners have challenged the judgment dated 02.02.2022 passed by the Khyber Pakhtunkhwa Service Tribunal, Peshawar (**Tribunal**) whereby his Service Appeal bearing No.666 of 2020 was allowed.

2. Facts of the case, leading to filing of the instant petition, are that the respondent was appointed as Social Case Worker (BPS-16) through order dated 22.11.2016. As per the previous rules notified on 21.09.2006, the respondent had the channel of promotion to the post of Superintendent (BPS-17) and Social Welfare Officer (BPS-17). Through order dated 29.11.2011, such rules were further amended, in that, 50% quota was reserved for the cadres of Manager/Field Officer to the post

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Court Associate
Supreme Court of Pakistan
Islamabad

of Superintendent/Manager (BPS-17). The seniority list issued on 19.03.2019 of Social Case Worker reflects that the respondent was to be promoted against nine vacant posts; likewise, his promotion was due for the cadre of Manager/Superintendent (BPS-17) against twelve vacant posts. In the meanwhile, a notification dated 25.09.2009 was issued and impugned service rules were brought in field, according to which, promotion quota of the respondent to the posts of Manager/Superintendent/Social Welfare Officer (BPS-17) was taken away being a blocked cadre. Being dissatisfied with the above action, the respondent filed a department appeal, which was dismissed *vide* order dated 16.12.2019.

The respondent approached the Tribunal by filing a service appeal which was allowed in the terms: "*the impugned service rules dated 25.09.2019 is set aside to the extent of Social Case Workers and the service rules, 2006 amended in 2011 are revived for the purpose of promotion of the appellant as well as his other colleagues till the time, proper service rules are framed for Social Case Workers*". Hence, this petition seeking leave to appeal.

3. Learned Additional Advocate General, Khyber Pakhtunkhwa, appearing on behalf of the petitioners, contends that framing of rules and subsequent amendments therein are the sole prerogative of the competent authority and the respondent/ employee has no right to claim particular rules as per his will and wish; that the amendments in the rules were made with *bona fide* by extending the benefits of promotions to all the employees as in the previous rules, most of the employees were deprived of the benefits of promotion; that the impugned judgment suffers from material irregularity or illegality; that the Tribunal has not properly exercised its jurisdiction, thus the

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impugned judgment is liable to be set aside for safe administration of justice.

4. Heard the Law Officer and perused the record with his able assistance. The record reflects that in the earlier rules notified on 21.09.2016, 100% quota was reserved for promotion from Social Case Worker (BPS-16) to Superintendent Welfare Officer (BPS-17) from amongst the posts of Social Case Worker/Field Officer/ Supervisor with at least five years service as such. In addition to the above, 20% promotion was also to be made to the post of Social Welfare Officer (BPS-17) from Social Case Workers/Supervisors/Field Officers with at least service as such. Through notification dated 29.11.2011 rules were amended whereby 50% promotion was made to the post of Manager/Superintendent Welfare Home (BPS-17) from amongst Social Case Workers/Supervisors/Field Officers. Through another notification dated 25.09.2019, the post of Manager (BPS-17) was to be filled in @10% by promotion from amongst the Administrative Officers with at least three years experience as such and the post of the Social Welfare Officer (BPS-17) was to be filled in @ 10% by promotion amongst the post of Field Officers with at least five years service as such. The cadre of the respondent being Social Case Worker was removed from the line of promotion.

5. We find that removal of cadre of the respondent from the channel of promotion is unfounded because in the previous rules the cadre of the respondent was at a foremost position, whereas in the disputed rules the said cadre has been removed. The respondent along with his colleagues was waiting for his promotion, however, on account of new disputed rules, his cadre does not exist. The rules are meant for the welfare of the employees and it is the sole prerogative of the

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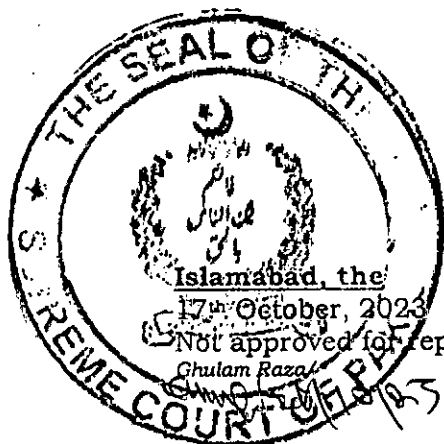
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competent authority to frame rules and make amendments therein, however, such should not be injurious to the fundamental rights/ interests of its employees and if so, same cannot be allowed by the Courts.

6. The Tribunal while taking into consideration all aspects of the matter, has rightly allowed the service appeal of the respondent and we are in complete agreement with the same. No substantial question of law of public importance within the contemplation of Article 212(3) of the Constitution of the Islamic Republic of Pakistan, 1973 has been raised which could persuade us to interfere in the impugned judgment which is based on sound and cogent reasoning.

7. For what has been discussed above, this petition lacking merit is dismissed and leave refused.

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[Signature]
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