

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No.1920 of 2023

Azhar Ali

Appellant

Versus

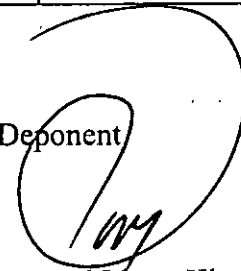
Govt of Khyber Pakhtunkhwa
Through Chief Secretary Peshawar & others

Respondents

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Deponent



Muhammad Idrees Khan,
Secretary to Govt of Khyber Pakhtunkhwa
C&W Department, Peshawar
(Respondent No.1&2)

①

**BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR
SERVICE APPEAL NO. 1920 OF 2023**

MR. AZHAR ALI
SDO/Assistant Engineer
C&WD Peshawar

--- **Appellant**

VERSUS

1. Chief Secretary Govt of Khyber Pakhtunkhwa
Peshawar
2. Secretary to Govt of Khyber Pakhtunkhwa
C&W Department
3. Secretary to Govt of Khyber Pakhtunkhwa
Finance Department Peshawar

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 9912

Dated 14-12-2023

--- **Respondents**

PARA-WISE COMMENTS ON BEHALF OF RESPONDENTS NO. 1,2 & 3

PRELIMINARY OBJECTIONS:-

- i. That appellant herein has not come to the court with clean hands and has not stated the facts of the case.
- ii. That the appellant does not come within the definition of **aggrieved person** by any stretch of imagination.
- iii. That subject service appeal is squarely hit by **laches**.
- iv. That by abusing the process of this court the appellant is making a designed attempt to circumvent the statute of limitation because the only statutory remedy available to him under the KP Service Tribunal Act, 1974 has been rendered time barred. This alone disentitles the appellant to seek any respite in equity.
- v. The appellant herein is not entitled to any of the reliefs listed in the prayer.
- vi. The appellant has got no lucus standi to file the service appeal.

FACTS:-

1. Pertains to record need no reply.
2. Incorrect, background of the case is that, during a symbolic protest of Engineering Community of the Province i.e KPK Association of Govt. Engineers (KPAGE) for various demands, including technical allowance. Therefore, a committee was constituted to discuss various demands including Technical Allowance presented by the Government Engineers. After detail discussion, the Provincial Govt. in consultation with Finance Department sanctioned Technical Allowance to all Engineers, holding the Engineering qualification from the accredited Engineering Program of Higher Education institutions (HEI) / Universities duly recognized by Higher Education Commission (HEC) and registered with Pakistan Engineering Council (PEC), serving against the sanctioned posts in the C&W, Irrigation, Public Health Engineering and Local Government Departments, Govt. of Khyber Pakhtunkhwa with effect from 1st November 2018 (**Annex-I**).

3. Incorrect, the main reason of not allowing Technical Allowance to B.Tech (Hons) Degree Holders is that as they were not registered with PEC. Section 27(5A) of PEC Act 1976 clearly mentioned as under (Annex-II).

“That only Engineering graduates of PEC accredited Engineering Programs of Higher Education institutions (HEIs) are registered by PEC as Profession Engineer (PE)/Registered Engineer (RE), whereas, rest of all can never be termed as PE/RE. All other persons who are not registered with PEC are not entitled to undertake any engineering work”

4. Incorrect and misconceived, hence denied. Appellant cannot claim for any policy decisions of the government. The government has to keep in consideration the relevant provisions of Pakistan Engineering Council Act, 1976 (PEC Act), which provides that non-engineers could not be appointed against posts meant for professional engineers. Because B-Tech (Hon.) degree/diploma holders do not come within the definition of Engineers/Professional Engineers as prescribed in the PEC Act, 1976.

5. The Departmental Appeal/Representation of the appellant received which was processed and filled having no weightage.

6. Incorrect.

GROUND:-

A. Incorrect, neither discrimination to any individual, including the appellant was done nor any rule or principle of law infringed, the apprehensions of the appellant are misleading.

B. Incorrect, as the University Grant Commission in its 39th meeting held on 12.02.1998 has categorically mentioned that:- (Annex-III)

“The degree of B-Tech (Hons) is not similar to B.E/B.Sc Engineering Degree. Both the Degrees of B.E/B.Sc Engineering & B-Tech (Hons) be considered as two distinct disciplines of knowledge in the field of Engineering & Technology and should run parallel to each other. The committee further noted that it was upto the Employer to determine the type of qualifications required for a particular job”.

(Authority U.G.C. Islamabad letter No. 8-36/UGC-A&C/2002/1666 dated 23.01.2002).

C. In-Correct, the Supreme Court of Pakistan has announced judgment on 03.10.2018, the operative part of the referred judgment may be perused as under (Annex-IV):

“The government shall not allow or permit any person to perform professional engineering work as defined in the PEC Act, who does not possess accredited engineering qualification from the accredited engineering institution and his name is not registered as registered engineer or professional engineer under the PEC Act”

D. Incorrect. Pakistan Engineering Council (PEC) is a regulatory body, which was created to regulate, maintain and enhance the standards of Engineering Profession and Education in the country. PEC is the only authority that equate any qualification with Engineering Education and it is held by the Apex Court in its judgment reproduced in PLD 1995, (SC) 701, in para-09 as under:

“the PEC, however, has exclusive domain to decide, as to whether any particular qualification could be equaled with another qualification”

E. As explained in Para-D above.

F. Incorrect, misconceived, hence denied as the policy decisions of other Provinces (if any), are not binding on the answering respondents as they make their own policies, rules and laws in good faith and that too for the public benefit.

G. Incorrect and misleading, hence denied. The answering respondents have acted in good faith and in strict compliance of law.

H. Incorrect, as explained in para-2 and 4 of the facts. Moreover, neither discrimination to any individual, including the petitioner was done nor any rule or principle of law infringed, the apprehensions of the petitioner are misleading.

I. Incorrect. As explained in para-1 of the facts. Therefore, the petitioner was not entitled for Technical Allowance under the policy and was correctly dealt in accordance with law/quality. No right of the petitioner has been infringed/jeopardized.

J. Incorrect. The Government is empowered to award or financial benefit to the Government servants as per Financial Rules & Regulations.

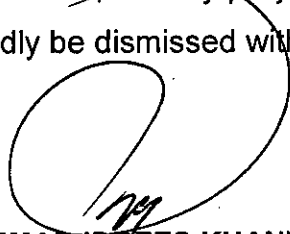
K. Incorrect and misconceived, hence denied. Petitioner cannot claim for against any policy decisions of the government.

L. Incorrect, as explained in para-2 above, there is no mala-fide, discrimination or violation of rights of the appellant have ever been made.

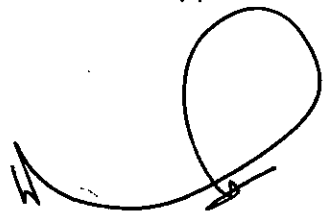
M. The Respondents would like to seek permission of this Hon'able court to advance more grounds during the time of arguments.

N. That the respondents also seek permission to raise further points at the time of arguments.

It is therefore, humbly prayed that the instant service appeal being devoid of any merit may kindly be dismissed with cost.



(MUHAMMAD IDREES KHAN)
SECRETARY to
Govt. of Khyber Pakhtunkhwa
C&W Department, Peshawar
(Respondent No.1 & 2)



(AMIR SULTAN TAREEN)
SECRETARY to
Govt. of Khyber Pakhtunkhwa
Finance Department, Peshawar
(Respondent No.3)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No.1920 of 2023

Azhar Ali --- Appellant

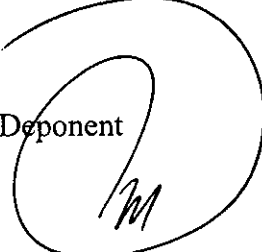
Versus

Govt of Khyber Pakhtunkhwa
Through Chief Secretary Peshawar & others --- Respondents

AFFIDAVIT

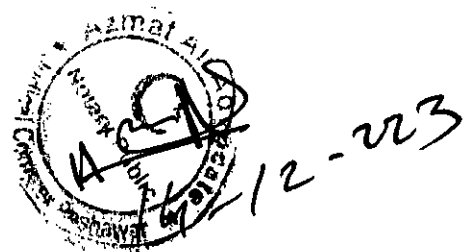
I, Muhammad Idress Khan, Secretary to Govt of Khyber Pakhtunkhwa C&W Department, Peshawar (Respondent No.1&2) do hereby affirm and declare that all the contents of the Parawise comments are correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.

It is further stated on oath that in this appeal, the answering respondent neither has been placed ex-party nor their defence has been struck off.

Deponent


Muhammad Idress Khan,
Secretary to Govt of Khyber Pakhtunkhwa
C&W Department, Peshawar
(Respondent No.1&2)

ATTESTED





**GOVERNMENT OF KHYBER PAKHTUNKHWA
COMMUNICATION & WORKS DEPARTMENT**

NO. SO (Lit.)C&W/3-482/2023
Dated Peshawar, the November 07,2023

AUTHORITY LETTER

Mr. Zahid Ullah, Section Officer Litigation (BS-17), C&W Peshawar having CNIC 14203-2044698-7 is hereby authorized to file the Joint Parawise Comments in case titled "Service Appeal No. 1920 Of 2023 Azhar Ali Vs Govt of Khyber Pakhtunkhwa & others" on behalf of Secretary C&W Department.


SECRETARY

to Govt of Khyber Pakhtunkhwa
C&W Department, Peshawar.

Muhammad Idrees Khan



Annex-I

Government of Khyber Pakhtunkhwa
Finance Department
(Regulation Wing)



Dated Peshawar the 19th October, 2018

NOTIFICATION

No FD (SO SR-II) 8-7/2018-19: The Government of Khyber-Pakhtunkhwa has been pleased to sanction Technical Allowance as per the following rates to Engineers holding Engineering qualification from the accredited engineering programme of Higher Education Institutions (HEI) / Universities duly recognized by Higher Education Commission (HEC) and registered with Pakistan Engineering Council (PEC), serving against the sanctioned posts in the C&W, Irrigation, Public Health Engineering and Local Government Departments, Govt. of Khyber-Pakhtunkhwa with effect from 1st November 2018 :-

S.#	Pay Scales	Initial Basic Pay of Pay Scales 2017	Rate of Technical Allowance Per Month (@ 1.5 initial Basic Pays as per Pay Scales 2017)
i.	Engineers in BS - 20	Rs 69,090/-	Rs 1,03,635/-
ii.	Engineers in BS - 19	Rs 59,210/-	Rs 88,815/-
iii.	Engineers in BS - 18	Rs 38,350/-	Rs 57,525/-
iv.	Engineers in BS - 17	Rs 30,370/-	Rs 45,550/-

2. The above allowance will be admissible subject to the following conditions:-
- It will not be counted towards pension or gratuity.
 - It will not be admissible in any kind of leave as well as posting against OSD and leave reserve posts.
 - The Engineers in receipt of such allowances other than regular allowances as classified under major object A012-1 A012-2 shall be entitled to one of the allowances, whichever is more beneficial.
 - It will not be admissible to deputationists.

Secretary to Government
of Khyber Pakhtunkhwa
Finance Department

Endst: No & Date Even

- The Accountant General, Khyber Pakhtunkhwa, Peshawar
- The Additional Chief Secretary P&D Department
- The Principal Secretary to Chief Minister, Khyber-Pakhtunkhwa
- All the Administrative Secretaries to Govt of Khyber-Pakhtunkhwa
- All the Divisional Commissioners in Khyber-Pakhtunkhwa
- All The Deputy Commissioners in Khyber-Pakhtunkhwa
- All the District Accounts Officers in Khyber-Pakhtunkhwa
- Director, FMIU, Finance Department
- PSO to Chief Secretary, Khyber-Pakhtunkhwa, Peshawar
- All Budget Officer, Finance Department
- PS to Secretary Finance Department
- PS to Special Secretary Finance Department
- Assistant Director (HR Data Base) Finance Department
- PA to Additional Secretary (Regulation) Finance Department
- PA to Deputy Secretary (Regulation-II), Finance Department

Accepted

(Naem Tabassum)
Section Officer (SR-II)

19/10/18



Pakistan Engineering Council

(Constituted under Pakistan Engineering Council Act, 1976 enacted by the Parliament)

Annex-II

7

PEC/Coord/KPK/C&W/2018

January 30, 2018

Mr. Usman Jan
Section Officer
Communication & Works Department
Government of Khyber Pakhtunkhwa
Peshawar

Subject: TO SETTLE THE GRIEVANCES OF KPAGE ON SSRC MEETING SCHEDULED ON 28TH NOV, 2017 FOR SPECIFYING 20% QUOTA FOR NON-ENGINEERS, B-TECH DEGREE HOLDERS

This is with reference to your letter No. SOE/C&WD/8-12/2017 dated December 06, 2017, seeking comments of PEC, on the above subject. After going through the letter/details submitted by Khyber Pakhtunkhwa Association of Government Engineers (KPAGE), the Competent Authority has directed to inform that the contentions placed in their letter are correct due to the following reasons:-

- That only engineering graduates of PEC accredited engineering programs of Higher Education Institutions (HEIs) are registered by PEC as Professional Engineer (PE)/ Registered Engineer (RE), whereas, rest of all can never be termed as PE/RE. All other persons who are not registered with PEC are not entitled to undertake any engineering work as per Section 27 (5A) of PEC Act 1976.
- Furthermore, non-engineers, under the meaning of PEC Act 1976 cannot be promoted/placed on any engineering post and in case of violation it may attract the penal provisions of PEC Act 1976.

Forgoing in view, it is hoped that the above explanation may suffice the queries.

With regards,

Attestee
Jan

Engr. Muhammad Sohail
Deputy Registrar (Coord.)

Annex-III (9)

UNIVERSITY GRANTS COMMISSION
H-9, Islamabad - Pakistan
Tel: +92-51-9257600, 9257651-55, Fax: 51-9250128
E-mail: ugc@isb.paknet.com.pk

No. S-36/UGC-A&C/2002/1666 Dated 23.01.2002.

Mr. Yousaf Khan,
IS-II,
Tench Dhatfa Subdivision,
Bakra Mandi Chowk,
Rawalpindi.

Subject:- EQUIVALENCES OF B.TECH (HONS) DEGREE

Dear Sir,

Reference your application dated 19.01.2002 on the above subject. Appended below is a decision of the Equivalence Committee of UGC taken in its 39th meeting held on 12.02.1998.

"The degree of B.Tech (Hons) is not similar to B.E/B.Sc Engineering degree. Both the degrees of B.E/B.Sc Engineering & B.Tech (Hons) be considered as two distinct disciplines of knowledge in the field of Engineering and Technology and should run parallel to each other. However, B.Tech (Hons) may be treated at par and comparable with B.E/B.Sc Engineering degree holders as far as grades, pay and promotions and other benefits are concerned. The Committee further noted that it was up to the employer to determine the type of qualification required for a particular job."

Yours sincerely,

Dr. Muhammad Latif Virk
Adviser (A&C)

Amir

SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:
Mr. Justice Gulzar Ahmed
Mr. Justice Qazi Faez Isa
Mr. Justice Sardar Tariq Masood

C.P.No.78-K of 2015

[On appeal against order dated 21.11.2014
passed by the Sindh Service Tribunal,
Karachi, in Appeal No.195 of 2014]

Maula Bux Shaikh & others

Petitioner(s)

VERSUS

Chief Minister Sindh & others

Respondent(s)

- For Petitioner No.1 : Mr. Safat-ud-Din Ahmed, ASC
- For Petitioner Nos.2-3 : Mr. Rasheed A Rizvi, Sr. ASC
- For Respondent Nos.1-4 : Mr. Sabtain Mahmood, Asstt.A.G. Sindh
- For Respondent No.5 : Mr. Ghulam Haidar Shaikh, ASC
- For Respondent Nos.6-7 & 9 : None
- For Respondent Nos.8 & 12 : Dr. Muhammad Farouq Naseem, ASC
- For Respondent Nos.10-11, 13-17 : Mr. M. Aqil Awan, Sr. ASC
- Date of Hearing : 24.01.2018

JUDGMENT

GULZAR AHMED, J. — Maula Bux Shaikh, Petitioner No.1, (the Petitioner) had filed a Service Appeal before the Sindh Service Tribunal, Karachi, (the Tribunal) challenging Notification No.SOI(W&S)E/12-1/2005 dated 19.03.2014 to be ultra vires the Pakistan Engineering Council Act, 1976 (PEC Act). The circumstances under which the Service Appeal was filed by the Petitioner are that he was employed as Sub Engineer BS-13 in the year 1985 in the Works and Services Department, Government of Sindh, Karachi. He was

Attested
Qazi

ATTESTED

Court Associate
Supreme Court of Pakistan
Islamabad

J-CR.No.783 of 2011.doc

promoted as Assistant Engineer BS-17 in the year 1997 and since then has been serving in such post in his said department. The case of the Petitioner is that he is a qualified engineer holding degree of Bachelor of Engineering. He has unblemished service record and is eligible for promotion to the post of Executive Engineer BS-18 but on account of the notification, referred to above, his chance for promotion as Executive Engineer BS-18 has been gravely diminished for the reason that said notification has provided 13% promotion quota to Diploma holders and 7% promotion quota to B.Tech (Hons) Degree holders for the post of Executive Engineer BS-18. The grievance of the Petitioner is that the post of Executive Engineer BS-18 being that of a purely professional engineering work could only be performed by a professional engineer holding accredited engineering qualification, as provided in the PEC Act.

2. We have heard learned ASCs for the parties at length and have gone through the record of the case. The learned ASCs for the parties have also filed their written note of arguments, which too have been perused by us.

3. The notification dated 19.03.2014 is as follows:

NOTIFICATION

No.SOI(WES)E.W/12-1/2005: In pursuance of Sub-Rule (2) of Rule-3 of the Sindh Civil Servants (Appointment, Promotion and Transfer) Rules 1974 and in consultation with the Services, General Administration & Coordination Department, Government of Sindh, and in partial modification of the Department's Notification No. Et(CAW)1-34/81-84(HG) dated 14.07.1987, the method, qualification and other conditions for appointment in respect of the post of Executive Engineer (BS-18) (Civil/Mechanical/Electrical) in Works & Services Department, Government of Sindh, mentioned in column-2 of the table below:-


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Court Associate
Supreme Court of Pakistan
Islamabad



supervisor and overseer etc at best could be a skilled workman who may work independently or under the supervision of professional engineer and for such technician, mechanic, draftsman, foreman, supervisor and overseer, ^{etc} the employer may not require holding of professional engineering degree. However, if the person is required to perform any of professional engineering works as defined under the PEC Act, the provisions of this Act will come into operation for ensuring as the work of professional engineer can and only be performed by professional engineer as recognized by PEC Act. The professional engineering work has been clearly defined under section 2(xxv) of the PEC Act which has already been reproduced above and lays down in sufficient details the works which are noted to be as professional engineering works and such works as mandatorily required by the PEC Act to be performed by a professional engineer possessing accredited engineering qualification from accredited engineering institutions in Pakistan and abroad with experience and passing of test of the Council and no other person is allowed to perform professional engineering works be that be a diploma holder or B.Tech. degree holder. This aspect of the matter has been substantially addressed by the PEC Act itself when making provision of section 27(5A) that "no person shall unless registered as a registered engineer or professional engineer, hold any post in an engineering organization where he has to perform professional engineering work." Thus professional engineering work can only be performed by a person who is registered as registered engineer or professional engineer and both registered engineer and professional engineer in terms of the PEC Act are by law required to possess accredited engineering qualification as prescribed by the PEC Act from accredited engineering institution.

Attest for


ATTESTED

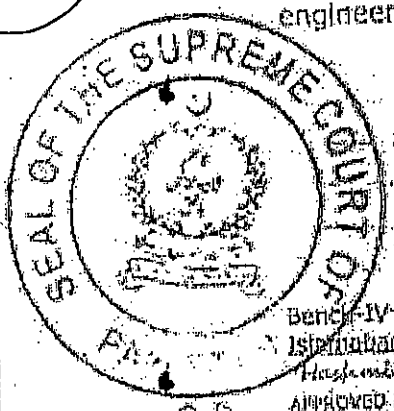
Court Associate
 Supreme Court of Pakistan
 Islamabad



22. We may further observe that section 27 of the PEC Act provides for penalty for a person who undertakes any professional engineering work if his name is not borne on the Register but it also makes the employer who employs for any professional engineering work any person whose name is not, for the time being, borne on the Register to perform professional engineering work, shall also be liable for penalty as prescribed in the PEC Act itself. Thus both civil servant/employee and their employer would be liable to penalty as provided under section 27 if they undertake or allow a person to undertake professional engineering work whose name is not borne on register under PEC Act.

23. The net result of above discussion is that this petition fails. It is dismissed and leave refused, however with note of caution that government shall not allow or permit any person to perform professional engineering work as defined in the PEC Act, who does not possess accredited engineering qualification from the accredited engineering institution and his name is not registered as a registered engineer or professional engineer under the PEC Act.

Alister
Ok



Ok

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Certified to be True Copy

[Signature]
Court Associate
Supreme Court of Pakistan
Islamabad

Announced in open Court on 03.10.2018

[Signature]
JUDGE