KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR AT CAMP COURT ABBOTTABAD

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

Service Appeal No. 888/2022

Zahoor Khan S/O Muhammad Irfan presently serving as Senior Drawing Master (SDM) at Government High School Banda Pir Khan, Abbottabad. *(Appellant)*

Versus

Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Peshawar and 02 others. *(Respondents)*

Present:

Mr. Ch. Abdur Rauf Chohan, Advocate.....For the appellant
Mr. Asif Masood Ali Shah, Deputy District Attorney .....For the respondents

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Date of presentation of Appeal.....18.04.2022
Date of Hearing.....28.11.2023
Date of Decision.....29.11.2023

JUDGMENT

SALAH-UD-DIN, MEMBER: The appellant has invoked the jurisdiction of this Tribunal through filing of the instant appeal with the prayer copied as below:-

> *"On acceptance of instant appeal, the impugned act of respondents by not promoting the appellant as SST from the date of his initial appointment 09.05.1992 seniority list may graciously be declared as null and void and the respondents be directed to promote the appellant as SST according to the law, rules and policy on the subject. Any other relief which this honourable court deems fit and proper in the circumstances of the case may please be given to the appellant."*

2. Precise averments as per memo of the appeal are the appellant was appointed as un-trained Drawing Master (BPS-9) alongwith other vide appointment order dated 09.05.1992 and he took over the charge of his post on 23.05.1992. The appellant passed professional qualification examination of Drawing Master

on 09.01.1995.The respondent-department had prepared seniority list of Drawing Masters for promotion to the post of SST, however the name of the appellant was wrongly placed at serial No. 68 and those Drawing Masters, who were appointed alongwith the appellant and were junior to him, were promoted to the post of SST despite the fact that the appellant was older in age to them. The appellant submitted an application to the District Education Officer (Male) Abbottabad on 29.10.2019 for his promotion to the post of SST, however he was not promoted. The appellant again preferred departmental appeal to the District Education Officer (Male) Abbottabad on 04.11.2019 for his promotion to the post of SST, however both the departmental appeals were rejected vide same order dated 12.12.2019. The appellant challenged the said order through filing of an appeal before the Respondent No. 2/Director Elementary and Secondary Education Khyber Pakhtunkhwa Peshawar on 28.12.2019, which was not responded. The appellant then approached this Tribunal by way of filing Service Appeal No. 5781/2020, which was dismissed in *limine* vide order dated 30.12.2021 with the observations that the appellant would be at liberty to file a fresh appeal for correction of his seniority, if he has got the case that his seniority was wrongly fixed. The appellant has now approached this Tribunal by way of filing instant appeal for redressal of his grievance.

3. On receipt of the appeal and its admission to regular hearing, respondents were summoned, who put appearance

through their representative and contested the appeal by way of filing written reply raising therein numerous legal as well as factual objections.

4. Learned counsel for the appellant has addressed his arguments supporting the grounds agitated by the appellants in their service appeals. On the other hand, learned Deputy District Attorney for respondents has controverted the arguments of learned counsel for the appellant and have supported the comments submitted by the respondents.

5. Arguments have already been heard and record perused.

6. A perusal of the record would show that it is an admitted fact that the appellant was appointed as un-trained Drawing Master (BPS-09) vide appointment order dated 09.05.1992 and later on he passed the required professional qualification examination of Drawing Master on 09.01.1995. It is the main contention of the appellant that his seniority as Drawing Master was to be fixed on the basis of date of his initial appointment i.e 09.05.1992 instead of the date of passing of professional qualification examination i.e 09.01.1995. The appellant had acquired the prescribed qualification on 09.01.1995, therefore, his stance of granting him seniority with effect from the date of his initial appointment as un-trained Drawing Master i.e 09.05.1992 holds no force. Moreover, the impugned seniority list of Drawing Masters as it stood on 31.12.2012 would show that none of them have been assigned seniority from the period of their initial appointment as

un-trained Drawing Master. Identical nature Service Appeals bearing No. 309/2013, 11/2015 and 637/2016 had already been dismissed by this Tribunal vide judgments dated 05.07.2017, 13.06.2016 and 28.08.2017 respectively.

7. The appellant had previously filed Service Appeal No. 5781/2020 wherein too he had challenged Notification dated 14.02.2020 whereby promotions of certain Drawing Masters were made to the post of SST (General). The said service appeal of the appellant was dismissed in *limine* vide order dated 30.12.2021, which is reproduced as below:-

> *"Appellant alongwith counsel present. Preliminary arguments have been heard.*
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> *According to prayer set up in appeal, the appellant has impugned the promotion notification to the extent of private respondents and sought to declare the same against the spirit of law and its setting aside with further prayer for his promotion as SST (General) w.e.f. 14.02.2020 with all back benefits. In view of the nature of the prayer as set up in Memorandum of Appeal read with the facts and grounds given in it and from the annexures, the prayer of the appellant is misconceived. Actually, the private respondents namely Hukam Dad and Ijaz Ahmad were promoted vide impugned notification on the basis of their seniority reflected in the list annexed with the appeal as it stood on 31.12.2012 wherein they respectively figure out at Serial No. 56 & 57 while the appellant figures out at Serial No. 58. The private respondents have been promoted in*

their own right on the basis of existing seniority list, which is liable to correction under due course, if appellant is advised to challenge the same under due course of law; but as far as promotion of private respondents is concerned, he has got no locus-standi to challenge the same. Therefore, the appeal of the appellant in its present form is not competent. Thus, it is not fit for regular hearing. However, the appellant would be at liberty to file a fresh appeal for correction of his seniority, if he has got the case that his seniority was wrongly fixed. With the given observations, this appeal is dismissed in limine with liberty to the appellant to file fresh appeal in proper form subject to all legal formalities. File be consigned to the record room."

8. While going through the above-mentioned reproduced order dated 30.12.2021 passed by this Tribunal in previous service appeal of the appellant, it can be seen that the appellant was at liberty to file fresh appeal for correction of his seniority, however while going through the prayer made in the memo of appeal, the appellant has again sought promotion to the post of SST.

9. Moreover, the appellant had preferred departmental appeals/representations dated 29.10.2019 as well as 05.11.2019 before the District Education Officer (Male) Abbottabad, which were rejected vide single order dated 12.12.2019. The appellant, instead of filing Service Appeal against the afore-mentioned order, submitted another departmental appeal before the Director Elementary & Secondary Education

Khyber Pakhtunkhwa Peshawar on 28.12.2019. The order dated 12.12.2019, whereby the departmental appeals/ representations of the appellant were rejected, has not been challenged by the appellant in the instant appeal.

10. Consequently, the appeal in hand being devoid of any merit stands dismissed. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
29.11.2023

(SALAH-UD-DIN)
MEMBER (JUDICIAL)
CAMP COURT ABBOTTABAD

(KALIM ARSHAD KHAN)
CHAIRMAN
CAMP COURT ABBOTTABAD

Naeem Amin

ORDER
29.11.2023

Learned counsel for the appellant present. Mr. Sohail Ahmed Zeb, Assistant alongwith Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present. Arguments have already been heard and record perused.

Vide our detailed judgment of today, separately placed on file, the appeal in hand being devoid of any merit stands dismissed. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
29.11.2023

(Kalim Arshad Khan)
Chairman
Camp Court Abbottabad

(Salah-Ud-Din)
Member (Judicial)
Camp Court Abbottabad

Naeem Amin