

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

12 (2) Application No. 638/2023

BEFORE: MRS. RASHIDA BANO ... MEMBER (J)  
MR. MUHAMMAD AKBAR KHAN ... MEMBER (E)

1. Mst. Parveen Akhtar, SIPE, GGHSS Akora Khattak
  2. Mst. Yahya Begum, SIPE, GGHSS PirPai, Nowshera.
  3. Mst. Maryam Rasool, SIPE, GGHSS Kala But Township Haripur.
  4. Mst. Mussaraj Iqbal, SIPE GGHSS Esak Chuntra Karak
  5. Mst. Shahida Begum, SIPE GGHSS Esak Chuntra Karak.
- .... (Petitioners)

VERSUS

1. Rehana Yasmeeen W/O Fazal Akbar, SIPE, GGHSS Wadpaga Peshawar.
2. Director Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
3. Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Civil Secretariat, Peshawar.

.... (Respondents)

Mr. Adnan Aman  
Advocate

... For Petitioners

Mr. Arbab Saiful Kamal  
Advocate

... For Respondent No. 1

Mr. Muhammad Jan  
District Attorney

... For Respondent No. 2&3

Date of Institution.....14.09.2023  
Date of Hearing.....07.11.2023  
Date of Decision.....07.11.2023

JUDGMENT

**RASHIDA BANO, MEMBER (J):** The instant petition under section 12(2) CPC 1908 against the impugned order/judgment dated 27.07.2023 passed in Service Appeal No.231/2022 being obtained



on fraud, misrepresentation and concealment of facts with the prayer that on accepting the petition, the impugned order may please be set aside and consequently the service appeal may be please be restored to its original number and thereafter the same be decide on its own merits, after affording an opportunity of hearing to the petitioner.

2. Perusal of record reveals that respondent No. 1 filed service appeal No. 231/2022, challenging seniority list issued on 02.03.2021 with the prayer to place her senior to private respondent on the ground that on 13.11.2007 Secretary Education Government of Khyber Pakhtunkhwa Schools and Literacy Department issue notification and accorded up-gradation to the post of Libertarian and Director Physical Education from BS-16 to BS-17 regular of existing incumbents who hold Master Degree in the relevant subject. Her existing seniority position will remain intact. Appellant contended that she was awarded degree M.Sc on 06.05.2006 with BS-17 and she was senior but in the seniority list was placed at her due position/place, therefore, she filed departmental representation, which was not decided. In short appellant requested for her placement at due place and position in the seniority list. It was on 27.07.2023 learned counsel for the appellant produced copy of notification dated 29.04.2014 and contended that vide this notification promotion of the appellant and others mentioned in the notification from the post of Director Physical Education BS-16 to BS-17 on regular basis was given effect from 13.11.2007 instead of 19.05.2009 and requested for incorporation of date of promotion as



13.11.2007 instead of 19.05.2009 in the seniority list. Direction was issued to respondent to mention correct date of promotion in the notification and appeal was disposed of.

3. Petitioner filed instant application under section 12(2) CPC by challenging order passed by this Tribunal in service appeal No. 231/22 on 27.7.2023 on the ground of its obtaining on the basis of fraud, misrepresentation and concealment of facts. Perusal of order dated 27.07.2023 passed by this Tribunal reveals that vide it respondents are directed to incorporate the date of promotion of the appellant from BPS-16 to BPS-17 as 13.11.2007 in the impugned seniority list. Petitioners were properly served in appeal No. 231/2022 and also appeared before the Tribunal on 07.03.2023 and seek time for submission of written reply, that's why case was adjourned to 27.07.2023 for submission of written reply of private respondent. But on 27.04.2023 they absented themselves so tribunal proceeded against them ex-parte vide order dated 27.04.2023. When petitioner had knowledge of the matter as they themselves opted not to appear before this Tribunal then in such a situation now they cannot challenge order of this Tribunal on the basis of not providing of opportunity of hearing.

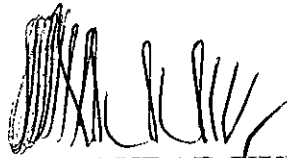
4. In our humble view, no fraud or misrepresentation had been committed by the respondent at the time of obtaining impugned order dated 27.07.2023. They simply requested for incorporation of the date of promotion to BPS-17 from BPS-16 in the seniority list which have nothing to do with determination of seniority and has to be dealt with



in accordance with Rule 17 of (Appointment, Promotion and Transfer) Rules 1989. Mere mentioning of date of promotion in the seniority list in no case, means that respondent will be senior to petitioner until and unless place senior at due place and position. As mentioning date of promotion in the seniority list have no concerned with actual seniority, therefore in our humble view petitioner rights are not affected from impugned order dated 27.07.2023. Moreover, all the three essential ingredient for filing application under section 12(2) CPC are missing in the instant case. Therefore, application in hand is no merit in it.

5. As a sequel to above discussion, we dismissed the instant application being devoid of merits. Costs shall follow the event. Consign.

6. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 7<sup>th</sup> day of November, 2023.*



**(MUHAMMAD AKBAR KHAN)**  
Member (E)




**(RASHIDA BANO)**  
Member (J)

**ORDER**

7<sup>th</sup> Nov, 2023 1. Learned counsel for the petitioner present. Mr. Muhammad Jan learned District Attorney alongwith Dr. Hayat Khan, A.D for the official respondents present. Learned counsel for private respondent present.

2. Vide our detailed judgement of today placed on file, we dismissed the instant 12(2) application being devoid of merits. Costs shall follow the event. Consign.

3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 7<sup>th</sup> day of November, 2023.*

  
**(Muhammad Akbar Khan)**  
Member (E)

**(RashidaBano)**  
Member (J)

Kaleemullah