


project/adhoc/contract employees whose services were regularized at the strength of Khyber Pakhtunkhwa (Employees Regularization of Services) Act, 2018. Costs shall follow the event. Consign.

*14/11/23* Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 13<sup>th</sup> day of November, 2023.

  
(MUHAMMAD AKBAR KHAN)  
Member (E)

  
(RASHIDA BANO)  
Member (J)

\*Kaleemulah

Pakhtunkhwa Regularization of Service Act 2018 deals with considering appointment of all the adhoc and project employees as validly appointed on regular basis from the date of commencement of this Act which means post of project employee who hold it under project will be deem to have been regular post and its incumbent will be consider validly appointed on a regular post after commencement of this Act.

12. For regularization of services, there are general conditions which will have to be fulfilled before regularization of service of a project or adhoc employees out of which is; (iv) The service of such employees shall be deemed to have been regularized only on the publication of their names in the official gazette. So publication of names of the regularized employees in the official gazette is condition pre-requisite for giving effect to their regularization. Until and unless names of the regularized employees were not published in official gazette, their services will not be considered regularized in accordance with above mentioned condition. This condition is embodied in the statute which will have to be given preference upon all others decision or policy if any on the subject. Respondent names were published in the official gazette on 29<sup>th</sup> June 2022 even after issuance of final seniority list dated 25.05.2022, therefore, respondent No. 7, 8 and 9 are juniors to the appellant because at the time of issuance of seniority list, services of the project and adhoc employees were not legally regularized, keeping in view of condition No 4 mentioned in general condition of section 5 of the Khyber Pakhtunkhwa Regularization of Service Act 2018, therefore in our humble view respondent No. 7 to 9 are not senior to the appellant who in accordance with judgment of apex court reported in 2013 SCMR 1752, will rank senior to the regularized employees.

13. In view of above discussion, the appeal in hand is partially accepted to extent that appellant is senior to respondent No. 7 to 9 the

- iii) The employees have not resigned from their services or terminated from service on account of misconduct, inefficiency or any other grounds before the commencement of this Act; and
- iv) The services of such employees shall be deemed to have been regularized only on the publication of their names in the Official Gazette.

14 Respondent after promulgation of this Khyber Pakhtunkhwa Regularization Act of 2018 issued notification dated 09.01.2020 whereby newly regularized components/units of planning & development department and planning cell of administrative department were encadred in planning cadre BPS-17 and above through addition to schedule 1 of Provincial Planning Service Rules of the 2018. Government of Khyber Pakhtunkhwa vide letter dated 17.05.2019 issue direction to all administrative secretary to government for provision of planning related post/officers in BPS-17 and above for assessment/suitability for its inclusion in schedule data of PPS cadre. Respondent after absorption of all the cadres issued/seniority list dated 20.02.2020, wherein appellant was shown at serial No.8 of the seniority list upon which appellant filed his objection but instead of answering objection of the petitioner respondent again issued another seniority list on 23.10.2020 which is totally in negation of settled service rule and judgment of apex court reported in 2013 SCMR 1752 which was duly sent to administrative department by Government of Khyber Pakhtunkhwa vide letter dated 31.01.2014. Appellant was placed at serial 13 from Serial no.8 in the seniority list of BPS-18 issued on 23.10.2020 without any pleasurable. Appellant also filed objection upon this tentative seniority list which was rejected in violation of law and rules on 04.07.2022 and final seniority list of BPS-18 was issued on 25.02.2022. For determination of controversy in issue there are three provisions i.e. section 3, 4 and 5 in the Khyber Pakhtunkhwa Employees (Regularization of Service, Act 2018). Section 3 and 4 of the Khyber

Protection is given to the service structure and seniority of in service civil servant in section 6 which deals which the seniority and read as;

Seniority.---(1) Except the employees mentioned in the proviso to section 4 of his Act, whose services are to be regulated by their respective laws and rules, all other employees whose services are regularized under this Act or in the process of attaining service at the commencement of this Act, shall rank junior to all civil servants belonging to the same service or cadre, as the case may be, who are in service on regular basis on the commencement of this Act, and shall also rank junior to such other persons, if any, who, in pursuance of the recommendation of the Commission or Departmental Selection Committee, as the case may be, made before the commencement of this Act, are to be appointed in the respective service or cadre, irrespective of their actual date of appointment.

(2) The seniority inter-se of the employees, whose services are regularized under this Act within the same service or cadre, shall be determined on the basis of their continuous officiation in such service or cadre.

10. In accordance with section 6 civil servant whose services are regulated under this act shall rank junior to all civil servants belonging to same service or cadre. The matter of inter-se-seniority of the civil servants who services are regularized as a result of Khyber Pakhtunkhwa Regularization of Act, 2018 is also dealt with in section 6 and which will be determined on the basis of their continuous officiation in such service or cadre.

The most important factor is general condition for regularization of services of project/contract and adhoc employees which are prerequisite for regularization and are given in Section 5 of the act which are:

**“5. General conditions for regularization:---**For the purpose of regularization of the employees under this Act, the following general conditions shall be observed:

- i) The service promotion quota of all service cadres shall not be affected;
- ii) The employees shall possess the same qualification and experience as required for a regular post;

initial recruitment, promotion and training of planning service cadre and entire service structure for Khyber Pakhtunkhwa Province. Beside these two no other mode and method of recruitment to a post is available/mention in these rules. Khyber Pakhtunkhwa Assembly passed Khyber Pakhtunkhwa Employees (Regularization of Service Act 2018 which was assented by the Governor on 7<sup>th</sup> March, 2018. Section 3 and 4 Act provides for regularization of the Adhoc and project employees which will take effect from the date of commencement of the Act both section are reproduce here for ready reference;

**“3. Regularization of Service of Adhoc Employees:---**

Notwithstanding anything contained in any law or rules, the employees at sub-clause (i) of clause (e) of sub-section (1) of section 2 of this Act, appointed on Adhoc basis against civil posts and holding such civil posts till the commencement of this Act, shall be deemed to have been validly appointed on regular basis, from the date of commencement of this Act, subject to verification of their qualifications and other credentials by the concerned Government Department.

**4. Regularization of Service of Project Employees:---**

Notwithstanding anything contained in any law or rules, the employees at sub-clause (e) of sub-section (1) of section 2 of this Act, appointed on contract basis against project posts and holding such project posts till the commencement of this Act, shall be deemed to have been validly appointed on regular basis from the date of commencement of this Act, subject to verification of their qualifications and other credentials by the concerned Government Department:

Provided that the terms and conditions of services of employees reflected at S.No.5 of the Schedule shall further be governed under the National Disaster Management Authority Act, 2010 (Act No. XXIV of 2010) and Regulations made thereunder; and the terms and conditions of services of employees reflected at S.No.6 & 7 of the Schedule shall be governed under the Khyber Pakhtunkhwa Emergency Rescue Services Act, 2012 (Khyber Pakhtunkhwa Act No.XV of 2012).”

transitional passage to officer seniority, who were brought on the strength of the Service. Rule 8 of the Rules provide transitional which read as;

*The seniority position of the various officers appointed in planning cadres of various department and brought on the strength of the service on coming into force of these rules shall be considered from the date of their regular appointment to the posts in their present basic scales of pay.*

*Provided that where two or more civil servants have been appointed to their present basic scale on the same day. The older in age shall be considered senior. So Rule 8 gave protection to the seniority of employees who were already in service.*

8. Claim of the appellant is that he is senior to respondent No 4, 5, 6, 10 and 11 is negated by above mentioned Rule 8 because appellants was selected by Public Service Commission in BPS-17, he was promoted in BPS-18 on 02.04.2012 and was further promoted to BPS-19 on 24.01.2019, while respondent No. 4, 5, 6, 10 and 11 were promoted to BPS-18 much before promotion of the appellant to BPS-18 and they were encadred in PPS cadre as regular civil servants in BPS-18. So it is held that respondent 4, 5, 6, 10 and 11 were regular civil servant in BPS-18 before promulgation of Khyber Pakhtunkhwa Provincial Planning Service Rules, 2018 and their post alongwith its incumbents were included in planning service cadre are rightly placed senior to appellants as Rule 8 of PPS Rules, 2018 provide transitional and protection to their seniority.

9. Now come towards respondent No. 7, 8, 9 whose services were regularized after promulgation of PPS Rules 2018 on the basis of Khyber Pakhtunkhwa Employees (Regularization of Service) Act 2018. The Khyber Pakhtunkhwa Provincial Planning Service Rules, 2018 provide method of

PPS Cadre. It is also pertinent to mention here that private respondent No.1 (Mohammad Tariq Khan) was initially appointed through Public Service Commission on 08.06.1997 in BPS-17, who was promoted to BPS-18 on 01.10.1999 and was further promoted to BPS-19 on 22.10.2019. He regained his seniority w.e.f 26.09.2017 on the strength of notification dated 07.01.2020 which means that effect to his promotion was given from the date when for the first time PSB consider his case but same was deffered due to the fact that Provincial Planning Service Rules were not framed. Similarly private respondent No. 10 (Mr. Shah Nawaz) was appointed regularly in BPS-18 upon recommendation of Public Service Commission on 12.06.2008 and was further promoted to BPS-19 on 22.10.2019 who regained his seniority w.e.f 24.01.2019. So far as respondent No.5 (Adil Saeed) is concerned he was appointed upon recommendation of PSC on 01.11.2004 who was promoted to the post of BPS-19 on 26.09.2017 and now promoted to BPS-20 and is no more in the seniority list of BPS-19. Respondent No. 6 (Mian Khalid) was regularly appointed upon recommendation of PSC in BPS-17 on 11.02.1996 and was promoted to BPS-18 on 14.11.2018 and was further promoted to BPS-19 on 04.01.2018. Similarly respondent No. 11 (Mr. Javid khan) was also regularly appointed upon recommendation of PSC in BPS-17 vide order dated 29.02.1992. He was promoted to BPS-18 on 13.10.2011 and was further promoted to BPS-19 on 24.01.2009. Respondent No. 7, 8 and 9 were the project employees whose services were regularized on the strength of Khyber Pakhtunkhwa Employees Regularization of Service Act, 2018 vide notification 28.05.2018 w.e.f 02.03.2018. Respondent No 4,5,6,10 and 11 were regular employees serving in BPS-18 when they were encadred in PPS cadre, while their posts alongwith incumbents were included in Schedule-1 of the Khyber Pakhtunkhwa Provincial Planning Service Rules 2018 with effect from 22.02.2018 from the date of promulgation of Rules. These rules provided

Notification dated 09.01.2020. Since the regularized employees were included in the Schedule-I of the PPS Service Rules alongwith posts, therefore, they did not affect promotion quota of the appellant rather inclusion of posts widen/enhanced the promotion prospects of the PPS Officers.

6. Perusal of record reveals that appellant was appointed in BPS-17 in planning service cadre of Government of Khyber Pakhtunkhwa vide order dated 30.01.1989, who was promoted to BPS-18 vide order dated 02.04.2012 as Senior Planning Officer and was further promoted to BPS-19 as Chief Planning Officer on 24.01.2019. In the meanwhile, Provincial Planning Service cadre was established. The Government promulgated on 22.02.2018 Khyber Pakhtunkhwa Planning Service Rules 2018 which regulate the planning service cadre and the service structure of its employees. The Government of Khyber Pakhtunkhwa also passed the Khyber Pakhtunkhwa Employees (Regulation of Service) Act 2018 on 7<sup>th</sup> March 2018, this Act regularized service of employees working against project post under the P&D Department of Government of Khyber Pakhtunkhwa and planning service cadre. Government after approval of Provincial Cabinet encadred all the officer and their post in one cadre with the name of PPS vide notification dated 09.05.2019. All the posts related to the planning cadre working in various departments of the Government of Khyber Pakhtunkhwa were made part of PPS alongwith its incumbents irrespective of the fact that their services were regularized before or at the strength of Regularization of services Act 2018. Appellant and respondents were encadred in PPS cadre.

7. Appellant contention is that he is senior from private respondent on the ground that initially he was regularly appointed through Public Service Commission prior to regularization and inclusion of private respondents into






avail.

3. Respondents were put on notice who submitted written replies/comments on the appeal. We have heard the learned counsel for the appellant as well as the learned Assistant Advocate General and perused the case file with connected documents in detail.

4. Learned counsel for the appellant argued that appellant has not been treated in accordance with law and respondents violated Article 4, 8, 9, 18 and 25 of the Constitution of the Islamic Republic of Pakistan, 1973. He further argued that appellant under the law is required to be placed at serial No. 8 of the seniority list instead of serial No. 13 and private respondents have wrongly placed senior to the appellant and the appellant has been discriminated against by going in negation of the Khyber Pakhtunkhwa Provincial Planning Service Rules, 2018 and the said deviation and negation is unwarranted and not recognized by the law. He submitted that seniority of the appellant issued by the respondents are substantially against the Regularization of Employees Act, 2018 but also in violation of the Appointment, Promotion and Transfer Rules, 1989.

5. Conversely, learned Assistant Advocate General contended that the appellant has been treated in accordance with law and rules and no fundamental rights of the appellant have been violated and no illegal and unjust acts have been done by the respondents. He further contended that respondents by taking into account the PPS Service Rules and in light of the Provincial Cabinet decision made in its meeting held on 09.05.2019, all planning oriented posts in BPS-17 and above of newly regularized components/units of P&D Department and Planning Cell of Administration Departments, Civil Secretariat alongwith incumbents as well as left over posts were included in the Schedule-I of the PPS Service Rules vide



Pakhtunkhwa (Regularization of Services) Act, 2018 was passed and after receiving assent of the Governor in the March, 2018 was promulgated. The said Act resulted in regularization of services of employees working against project post under the P&D Department of Government of Khyber Pakhtunkhwa. The department issued a tentative seniority list, wherein, the appellant already holding the post in regular service of the Planning Cadre and those other officers whose services were regularized on the strength of Khyber Pakhtunkhwa Employees (Regularization of Services) Act, 2018, were dealt with by the department in the common seniority list. In the tentative seniority list, so issued on 20.02.2020, the appellant was shown at Serial No.8 which according to him is not a proper place and he filed representation against the said seniority list on 25.02.2020. Subsequently, the respondents issued another seniority list on 23.10.2020 and the appellant who was initially shown at serial No. 8 of the tentative dated 20.02.2020 for employees in BPS-18, was suddenly sent to Serial No.13 of the subsequent seniority list. The appellant also filed representation against the subsequent seniority list on 06.11.2020 but no response was given from the department. He believes that his seniority was disturbed due to encadrement of the outsiders. The appellant concluded factual part of his appeal with the submission in respect of the illegality committed by issuance of the tentative seniority list dated 23.10.2020 and encadrement of employees notified vide notification dated 19.01.2020 by including them in the Provincial Planning Service Cadre. The appellant has approached this Tribunal for the solicited relief described under the prayer part of his memorandum of appeal at its end. By filling appeal No. 5964/2021 wherein respondent were directed to decide the departmental appeal/objection upon seniority list vide order dated 14.07.2021. During pendency of execution petition final seniority list was issued on 16.05.2022 wherein appellant was placed at serial No.13, which is against the law. Appellant filed departmental representation but no



JUDGMENT

RASHIDA BANO, MEMBER (J): The instant service appeal has been instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as below:

**“In view of the above, it is humbly prayed that this honorable Court may graciously be pleased to:**

- a) **Declare the final seniority list No.SO(E)P&D/3-4/PPS/SLs/2020 dated 16-05-2022 to be arbitrary, illegal, unlawful and without any authority and that the appellant be placed at seniority list above the respondents who were regularized into service as against regular appointment into service.**
- b) **Direct the respondents that the judgment of the Honorable Supreme Court reported in 2013 SCMR 1752 be implemented in letter and spirit in respect of the Khyber Pakhtunkhwa Provincial Planning Service Cadre and violation of the said judgment be strike down.**
- c) **Direct that the appellant be treated in accordance with the law and that all actions in negation of the law are to be strike down.**
- d) **Any other relief deemed appropriate in the circumstance of the case may also be granted.”**

2. Brief facts of the case, as given in the memorandum of appeal, are that appellant was part of the planning Service Cadre of the Government of Khyber Pakhtunkhwa who after getting the appointment in BPS-17 in the said cadre on 30.01.1989 was promoted to BPS-18 on 02.04.2012 and was further promoted to BPS-19 24.01.219 as Chief Planning Officer. In the meantime, the Government of Khyber Pakhtunkhwa Planning Service Rules 2018 were promulgated providing to regulate the Planning service cadre and the service structure. The ibid rules were published in through Notification No. SO(E)P&D/6-1/SR/PPD/2018 dated 22.02.2018. Subsequently, the Khyber



KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 347/2023

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

Mr. Qaisar Alam, Chief of Section, P&D Department, Presently Posted as  
Chief Planning Officer, Health Department, Peshawar.

.... (*Appellant*)

VERSUS

1. The Government of Khyber Pakhtunkhwa, through Chief Secretary, Civil Secretariat, Peshawar.
2. The Establishment Department, Government of Khyber Pakhtunkhwa, through Secretary Establishment, Civil Secretariat, Peshawar.
3. The Planning & Development Department, Government of Khyber Pakhtunkhwa, through Secretary P & D, Civil Secretariat, Peshawar.
4. Muhammad Tariq Khan (Chief Planning Officer, Minerals Development Department, Peshawar.
5. Mr. Adil Saeed, Chief Minsiter Secretariat, Peshawar.
6. Mr. Khalid Ullah Jan, Chief Section Industries, P&D, Department.
7. Mr. Sher Azam Khan, Director (South), M&E, P&D, Department.
8. Mr. Muhammad Ayaz (Chief Planning Officer Sports Department.
9. Mr. Syed Zain Ullah Shah (Chief of Section PP&H, P&D Department.
10. Mr. Shah Nawaz Khan (Chief Planning Officer Local Government Election & Rural development Department.
11. Mr. Javed Khan (Chief of Section Coordination P&D Department).

.... (*Respondents*)

Mr. Ali Gohar Durrani  
Advocate ... For appellant

Mr. Asad Ali Khan  
Assistant Advocate General ... For respondents

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Date of Institution.....10.02.2023  
Date of Hearing.....13.11.2023  
Date of Decision.....13.11.2023