

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 828/2023

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

Mr. Shah Fazil S/o Sardar Hussain, Senior Manager (Operation) LSU,  
SLDR, Khyber Pakhtunkhwa, 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. Planning & Development Department, Government of Khyber Pakhtunkhwa, through Secretary P & D, Civil Secretariat, Peshawar.
4. The Finance Department, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
5. Mr. Sher Afzal, SPO, Social Welfare Department, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
6. Mr. Ahmad Nawaz, Chief Planning Officer, Agriculture Department, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
7. Mr. Abid Noor, Director (Tech) Irrigation Department, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
8. Mr. Abdul Rehman, Dy: Secretary-II P&D Department, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
9. Mr. Syed Qamar Abbas, (Chief Coordinator) P&D Department, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
10. Engr. Nadir Iqbal, Project Director Small Dams, Irrigation Department, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
11. Mr. Abdul Basit, Senior Planning Officer, ST & IT Department, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
12. Mr. Engineer Saleem Shah, Dy: Director (M&E), Peshawar Division SDV Building Gate 05, Khyber Road, Peshawar.
13. Mr. Akhtar Shahzad Bangash, Deputy Director (Eco), (M7E), P&D Department, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
14. Mr. Asim Riaz Muhammad Ali, Assistant Chief, PSDP, P&D Department, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
15. Mr. Hidayat Ullah Khan, Dy: Director (M&E), Bannu Division, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
16. Muhammad Ayaz, Assistant Chief (water), P&D Department, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
17. Mr. Tehsil Zaman, Assistant Chief (industries) P&D Department, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
18. Mr. Engineer Asif Shahab, on deputation to Upper SDA, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
19. Mr. Amin Khan Bangash, Assistant Chief, (Rule of law) P&D Department, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.



20. Ms. Palwasha Rehman, AC, PPP Cell, P&D Department, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
21. Mr. Rafiq Jan, Deputy Director, PHC, Peshawar High Court.
22. Dr. Kashif Nazir, SPO-II, Health Department, Khyber Road, Peshawar.
23. Mr. Abdul Aziz Abbasi, Awaiting post in P&D Department, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
24. Mr. Muhammad Imran Khan, Taxation Analyst/SPO, Excise & Taxation Department, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
25. Mr. Aftab Haider, Dy Director (M&E), Kohat Division, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
26. Mr. Sikandar Khan, Director (P&T) PERRA, ATD, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
27. Mr. Muhammad Shoab, Assistant Economic Advisor, Industries Department, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
28. Mr. Hamayun Khan, Communication Specialist, (UPU), P&D Department, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
29. Ms. Hina Gul, M&E Specialist, (UPU), P&D Department, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
30. Syed Nasir Jamil, Senior GIS Specialist, (UPU), P&D Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
31. Mr. Shahzad Khan, Deputy Director (M&E), Mardan Division, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
32. Mr. Ashfaq Khan, Deputy Director (M&E), Malakand Division, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
33. Mr. Riaz Noor, Urban Economist (UPU), P&D Department, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
34. Mr. Adnan Salim Khan, Project Director M.P.P, UPU, P&D Department, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
35. Mr. Afrasiyab Khattak, Dy. Director (M&E), (HQ), P&D Department, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
36. Mr. Engineer Alam Zeb, Economist Irrigation Department, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.

....(Respondents)

Mr. Ali Gohar Durrani  
Advocate

... For appellant

Mr. Asad Ali Khan  
Assistant Advocate General

... For official respondents

Date of Institution.....07.04.2023  
Date of Hearing.....13.11.2023  
Date of Decision.....13.11.2023

### 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/SL/2020 dated 06-12-2022 to be arbitrary, illegal, unlawful and without any authority and that the Appellant be placed at seniority list above the private respondents, who rank junior to the appellant.**
- 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 placed at Serial No.18 of the seniority list of BPS-18 Planning Service Cadre and above the private respondents.**
- d) 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.**
- e) Any other relief deemed appropriate in the circumstance of the case may also be granted.”**

2. Through this single judgment we intend to dispose of instant service appeal as well as connected (i) Service Appeal No. 863/2023 titled “Muhammad Imran Kazim Vs. Government of Khyber Pakhtunkhwa through Chief Secretary and others” (ii) Service Appeal No. 895/2023 titled “Muhammad Hashim Vs. Government of Khyber Pakhtunkhwa through Chief Secretary and others”(iii) Service Appeal No. 896/2023 titled “Imdad Ullah Vs. Government of Khyber Pakhtunkhwa through Chief Secretary and others” (iv) Service Appeal No. 897/2023 titled “Naseer Ahmad Vs. Government of Khyber Pakhtunkhwa through Chief Secretary and others” (v) Service Appeal No. 1163/2023 titled “Sami Uddin Vs. Government of Khyber Pakhtunkhwa

through Chief Secretary and others” and (vi) Service Appeal No. 1480/2023 titled “Muhammad Iqbal Vs. Government of Khyber Pakhtunkhwa through Chief Secretary and others” as in all these appeals common question of law and facts are involved.

3. Brief facts of the case, as given in the memoranda of appeals, are that appellants were 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 25.02.2008 was further promoted to BPS-18 on 22.07.2019 as Senior Planning Officer. In the meantime, the Government of Khyber Pakhtunkhwa Planning Service Rules 2018 were promulgated which regulate the Planning Service Cadre and the service structure of its employees. 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 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.23 which according to him is not a proper place and he filed representation against the said seniority list on 04.03.2020. Subsequently, the respondents issued another seniority list on 23.10.2020 and the appellant who was initially shown at serial No. 23 of the tentative seniority list dated 20.02.2020 for employees in BPS-18, was suddenly sent to Serial

No.50 of the subsequent seniority list. The appellant also filed representation against the subsequent seniority list on 17.11.2020 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 bearing No. 3521/2021, which was partially accepted by this Tribunal and respondents 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 25.02.2022 wherein appellant was placed at serial No.50 which is against the law. Appellant filed departmental representation but of no avail.

4. 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.


5. 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. 23 of the seniority list instead of serial No. 50 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.

6. 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 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.

7. Perusal of record reveals that appellant was appointed in BPS-17 in planning service cadre of Government of Khyber Pakhtunkhwa vide order dated 25.02.2008 who was promoted to BPS-18 vide order dated 22.07.2019 as Senior Planning Officer w.e.f 24.01.2019. It is pertinent to mention here appellants in all the appeals mentioned though promoted on different dated but later on effect to their promotion in BPS-18 was given from 24.01.2019, which means that they were promoted on 24.01.2019. The Government promulgated



Khyber Pakhtunkhwa Provincial Planning Service Rules 2018 on 22.02.2018, which regulates the planning service cadre and their service structure. Government of Khyber Pakhtunkhwa also passed the Khyber Pakhtunkhwa Employees (Regulation of Services Act), 2018 on 7<sup>th</sup> March 2018, this act regularized services of employees working against project post under the P&D Department of Government of Khyber Pakhtunkhwa and planning service cadre. The Government after approval of Provincial Cabinet in cadre 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 incumbent 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. It is pertinent to mention here that private respondent No. 5 whose services in BPS-18 was regularized vide notification 27.09.2011 in compliance of order of Peshawar High Court, Peshawar dated .08.09.2011 in COC No. 38/2011 filed in writ petition No. 917/2007. Services of private respondent No.6 was regularized in BPS-18 vide notification dated 05.04.2012 in compliance of Peshawar High Court, Peshawar order dated 23.02.2012 in review petition bearing No. 101/2011. Services of private respondent No.7 was regularized in BPS-18 vide notification dated 04.08.2020 w.e.f 18.05.2006. Services of private respondent No.8 was regularized in BPS-18 vide notification dated 31.10.2016. Services of private respondent No 9 & 10 were regularized vide notification dated 28.11.2017 on the basis of Khyber Pakhtunkhwa Planning and Monitoring Cell Irrigation Employees (Regularization of Service) Act 2017, which was promulgated on 13<sup>th</sup> March 2017. Private respondent No. 11 was regularly appointed in BPS-18 vide notification dated 01.04.2019. Respondent No 5 to




11 were in regular BPS-18, 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 transitional passage to officer seniority, who were brought on the strength of the Service. Rules 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.”*

8. So Rule 8 give protection to the seniority of respondent No. 5 to 11 whose services were already regularized in BPS-18 before inclusion of their post alongwith its incumbents in PPS cadre and they were promoted in BPS-18 earlier to the appellant. Claim of the appellant that they are senior to respondents No. 5 to 11 is negated by above mentioned Rule 8 because appellant was selected by Public Service Commission in BPS-17, who were allowed to regain his seniority w.e.f 24.01.2019, and he was promoted in BPS-18 on 22.10.2019 while respondent No 5 to 11 service were regularized much before the promotion of the appellant to BPS-18 on the dates mentioned above. So it is held that respondent No. 5 to 11 were already regularized civil servants in BPS-18 before promulgation of Khyber Pakhtunkhwa Provincial Planning Service Rules, 2018 and whose post along its incumbents were included in planning service cadre, therefore, they are rightly placed senior to appellants as Rule 8 of PPS Rules 2018 provide transitional to them.





9. Now come towards private respondent No. 12 to 36 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 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 of Khyber Pakhtunkhwa on 7<sup>th</sup> March 2018. Section 3 and 4 of the 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).”

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 this 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 servants whose services were 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 whose services were regularized as a result of the 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 for regularization of services of project/contract and adhoc employees are the general conditions 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;
- 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.

11. Respondent after promulgation of the 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 of BPS-17 and above through addition to schedule 1 of Provincial





Planning Service Rules of 2018. The Government of Khyber Pakhtunkhwa vide letter dated 17.05.2019 issued directions 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.23 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 55 from Serial no.23 in the seniority list of BPS-18 issued on 23.10.2020 without any plausible reason. 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 act 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 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 the Act. 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.

12. 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 issue of final seniority list on 25.05.2022, therefore, they 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 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 are not senior to the appellant who came through passing competitive exam in year 2018, who in accordance with judgment of apex court reported in 2013 SCMR 1752, will rank senior to the regularized employees.

13. In view of the above discussion, instant appeal as well as connected service appeals are partially accepted to the extent that appellants are senior to private respondent No. 12 to 36 the project/adhoc/contract employees whose services were regularized at the strength of Khyber Pakhtunkhwa (Employees Regularization of Service Act), 2018.

14. *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)