

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 27/2022

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

Ashfaq Ahmad, Assistant Professor, Education Department, Khyber
Pakhtunkhwa, Peshawar.

.... (Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa through Chief Secretary.
2. Secretary Higher Education, Archives and Libraries, Khyber
Pakhtunkhwa, Peshawar
3. Director General Commerce Education, Khyber Pakhtunkhwa, at Rano
Garhi, Peshawar.
4. Zaheer Alam, Assistant Professor at CGMS Abbottabad.
5. Noor Rehman, Assistant Professor at CGMS, Peshawar.
6. Ibadullah, Assistant Professor at CGMS, Peshawar
7. Atta-ur-Rehman, Assistant Professor at CGMS, Mardan.
8. Syed Muhammad Tausif Shah, Assistant Professor at GCMS Mardan.
9. Fatehullah, Assistant Professor at GCMS D.I. Khan.
10. Jamshed Raza, Assistant Professor at GCMS Karak.
11. Farman Ullah Khan, Assistant Professor at GCMS Charsadda.
12. Anwar Khan, Assistant Professor at GCMS Bunir.
13. Wajahat Hussain, Assistant Professor at GCMS Bunir.
14. Muhammad Wasim Ihsan, Assistant Professor at GCMS Lakki Marwat.
15. Muhammad Riaz Alam, Assistant Professor at GCMS Miranshah.
16. Kamran, Assistant Professor at GCMS Jamrud.
17. Muhammad Yasir, Assistant Professor at GCMS D.I.Khan.
18. Muhammad Tariq, Assistant Professor at GCMS Mansehra.
19. Junaid Nawaz Khan, Assistant Professor at GCMS Mansehra.
20. Shahid Hussain, Assistant Professor at GCMS WariDir Upper.
21. Ajaz Ahmad, Assistant Professor at GCMS Chitral.
22. Fazal e Wahab, Assistant Professor at GCMS Charsadda.
23. Syed Rahim Shah, Assistant Professor at GCMS, Peshawar.
24. Muhammad Nawaz Khan, Assistant Professor at GCMS, Wari Upper Dir.
25. Amanullah, Assistant Professor at GCMS, Bannu.
26. Rahatullah, Assistant Professor at GCC No.2 Mardan.
27. Gulzeb, Assistant Professor at GCMS Abbottabad.
28. Mir Sajid Khan, Assistant Professor at GCMS, Miranshah.
29. Muhammad Ali Shah, Assistant Professor at GCMS, D.I.Khan.
30. Mrs. Noor-ul-Ain, Assistant Professor at Abbottabad.
31. KalimUllah Khan, Assistant Professor at GCMS, Abbottabad.
32. Nisarullah, Assistant Professor at GCMS, Bunir.

.... (Respondents)

Mr. Javed Iqbal Gulbela Advocate	...	For appellant
Mr. Muhammad Jan District Attorney	...	For official respondents
Mr. Ali Gohar Durrani Advocate	...	For private respondents

Date of Institution.....20.12.2021
Date of Hearing.....13.11.2023
Date of Decision.....15.11.2023

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:

“It is, therefore, most humbly prayed that on acceptance of the instant Appeal, the impugned Notification No. SO(CE&MS)HED/1-23/21-4(1-2), dated:17/06/2021 may graciously be declare wrong, illegal, void ab-initio and be set aside and by doing so, the seniority list circulated/issued there under may also graciously set aside and the seniority of the appellant may very graciously be restored with all back benefits and be placed ahead of the private respondents i.e. to be brought to Serial No.112. Any other relief not specifically asked for may also graciously be extended in favour of the appellant in the circumstances of the case.”

2. Through this judgment we intend to dispose of instant service appeal as well as connected service appeals which are:

1. Service Appeal No. 28/2022
2. Service Appeal No. 29/2022
3. Service Appeal No. 30/2022
4. Service Appeal No. 31/2022
5. Service Appeal No. 32/2022
6. Service Appeal No. 33/2022



7. Service Appeal No. 34/2022
8. Service Appeal No. 35/2022
9. Service Appeal No. 43/2022
10. Service Appeal No. 44/2022

In view of common questions of law and facts, the above captioned appeals are being disposed of by this order.

3. Brief facts of the case, as given in the memorandum of appeal, are that the appellants were appointed as Lecturers through Khyber Pakhtunkhwa Public Service Commission in the year 2009 and the appellants were given his due place in the seniority list. The seniority remained intact till the year 2018, when the appellant with rest of the colleagues were promoted as Assistant Professor (BS-18) and even upon promotion the inter se seniority of the appellant remained intact and was afforded due place in the seniority list of the Assistant Professor. Impugned seniority list dated 17.06.2021 was issued wherein junior to the appellants were shown senior, feeling aggrieved, appellants preferred departmental appeal, which was not responded, hence, the present service appeal.

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 District Attorney and perused the case file with connected documents in detail.

5. Learned counsel for the appellant argued that the impugned notification as well as seniority list issued there under are wrong, void, ab-initio and are liable to be discarded and set aside. He further argued that impugned seniority list framed on the caprices and whims of the competent authority which under the law is not allowed. He further contended that



seniority list have been disturbed just to accommodate the blue eyed ones and to honor them by placing ahead of the appellant. He further argued that the seniority inter-se of civil servants appointed to a service, cadre or post shall be determined that in case of persons appointed by initial recruitment, in accordance with the order of merit assigned by the Commission or as the case may be, the departmental selection committee provided that persons selected for appointment to post is in earlier selection shall rank senior to the persons selected in a later selection. He further contended that upon completion of recruitment process seniority lists were duly issued wherein all the appointees were given their due places strictly in accordance with law. Now more than a decade was passed and even promotions to the next grade were made, the seniority list was disputed for certain ulterior motives just to benefit certain blue eyed person. He requested for acceptance of the instant service appeal as prayed for.

6. The learned District Attorney contended that on the basis of three different advertisements, many individual had applied for the post and appointments were made against these advertisements. The issue of seniority was raised and to tackle such issue, proper committee was constituted in accordance with law. The committee provided comprehensive report and it was recommended that those who applied in prior advertisement would be placed senior to those who applied in later advertisement. The committee further clarified that in fixation of seniority, the time of completion of recruitment was insignificant, which means that the incumbents of earlier advertisement would be considered senior irrespective of the time of completion of their recruitment process. He further contended that after thorough examination and scrutinizing the issue, it was found that the



advertisement No.3/2009 and 8/2009 were disturb.

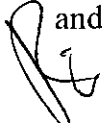
8. Appellant and respondents were appointed upon recommendation of Public Service Commission. Controversy in issue in this appeal is the determination of fact that who amongst civil servant i.e. appellant and respondents who are selectees of three different open advertisements appellant, selectees of advertisement No.8/2009 and 3/2009 or respondent selectees of open advertisement No.1/2009 are senior civil servant.

9. It is admitted fact that respondent applied in response to advertisement No.1/2009 published on 26/1/2009. One of their batch mate Mst. Noor ul Ain selectee of open advertisement No.1 as a result of recommendation of Public Service Commission joined service on February 2010 out of total 29 selectees/recommendees of January 2009 advertisement which was published earlier than other two subsequent open advertisements No.3/2009 in April 2009 and 8/2009 published in October 2009. As per rule 17 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules 1989, the seniority inter-se of civil servants (appointed to a service, cadre or post) shall be determined;

(a) In the case of persons appointed by initial recruitment, in accordance with the order of merit assigned by the Commission or as the case may be, the Departmental Selection Committee provided that persons selected for appointment to post in an earlier selection shall rank senior to the persons selected in a later selection; and


(b) In the case civil servants appointed otherwise, with reference to the date of their continuous regular appointment in the post; provided that civil servants selected for promotion to a higher post in one batch shall, on their promotion to the higher post, retain their inter-se seniority"

10. The words that persons selected for appointment to the post in an earlier selection shall rank senior to persons selected in a later section are more relevant

 and significant for deciding matter before us. Process of selection started from the

appellant was wrongly placed senior from the other appointees. He further contended that inter-se-seniority of the candidates at one selection was to be determined on the basis of merit assigned to the candidates by the Public Service Commission. In case of civil servants who applied in response to subsequent advertisement, were finalized earlier whereas cases of co-civil servants who applied in response to earlier advertisement, were finalized later for no fault on their part, the seniority inter-se of civil servants was to be reckoned not from the date of joining but would be determined through earlier open advertisement. He requested that the appeal may be dismissed.

7. Perusal of record reveal that appellant was appointed as lecturer in year 2010 upon recommendation of Public Service Commission. Public Service Commission advertised three different publications in different disciplines through different advertisement bearing No.1/2009 published on 26/01/2009, 3/2009 published on 22/04/2009 and 8/2009 published on 24/10/2009. That recruitment process completed in light of advertisement No.3/2009 followed by completion of recruitment process in light of advertisement No.8/2009 in the year 2010. Recruitment process of both advertisements was published later in time and completed earlier than advertisement No.1/2009 which was published on 26/1/2009. Appellant was recommended and selected as lecturer in light of advertisement No.8/2009 vide order dated 11.11.2010. After selection and appointment as lecturer the appellant was placed in his due place in the seniority list of lecturers which seniority of the appellant remain intact till year 2018 when appellant alongwith his colleagues were promoted and even after promotion to (BPS-18) *inter se seniority* of appellant remain intact and he was placed at his due place in seniority list. That all of sudden seniority list was circulated on

 17.06.2021 wherein seniority of the appellant and selection in light of

date of publication of open advertisement, which is in the instant case is 26 January 2009 of advertisement No.1/2009. So in our humble once advertisement published/advertized process of selection started and on the principle of earlier selection selectee or recommendees of the advertisement No.1/2009 will be rank senior to selectees of other two subsequent advertisements No.3/2009 and 8/2009 advertised in April and October 2009 irrespective of date that of their recommendation and joining service later. The apex court of the country in its judgment reported as 1995 PLC (c.s) 956 has determine the question which is involved in the instant appeal and has held that:

“It is not unsafe to hold that inter-se-seniority of the candidate at one selection was to be determine on the basis of merit assigned to the candidates by the Public Service Commission. It was clearly held that cases of Civil Servants who applied in response to subsequent advertisement, were finalized earlier whereas cases of co-civil servants who applied in response to earlier advertisement, were finalized later for no fault on their part, the seniority inter-se of civil servants was to be reckoned not from the date of joining but would be determined through earlier open advertisement”


11. Miss. Noor-UI-Ain one of the batch-mate of respondents who are selectees/recommendees of advertisement No.1/2009 had joined service on 2nd February 2010 and it was held by the apex court in its judgment dated 10th November 2020 in CA No. 762 to 766 of 2012 that “in case a group of person is selected for initial appointment at one time, the earliest date on which any one out of group joined the service will be deemed to be the date of appointment for all the person in group. The word batch was defined people deal with as a group of the same time, Miss. Noor-UI-Ain when joined service on 2nd February 2010 also paved way for the respondents being selectee of January 2009 advertisement being batch mate to be deemed to have been appointed on the same date i.e. 2nd

February 2010 which is earlier then date of joining service by appellant i.e.

11.11.2010 and 26.11.201. So it is held that respondent rightly fixed seniority of the parties and placed all of them in their due place in seniority list.

12. For what has been discussed above, instant appeal as well as connected service appeals are dismissed being devoid of merits. Costs shall follow the event. Consign.

13. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 15th day of November, 2023.*


(MUHAMMAD AKBAR KHAN)
Member (M)


(RASHIDA BANO)
Member (J)