

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 36/2022

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

Sajjad Hussain, 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. Muhammad Waheed Ullah, Assistant Professor at GCMS Thana.
5. Ahmad Yar Khan, Assistant Professor at GCMS Thana.
6. Zia Ullah, Assistant Professor at Taimergara.
7. Aftab Khan, Assistant Professor at GCMS Mardan.
8. Muhammad Rashid, Assistant Professor at GCMS Kohat.
9. Masood Shah, Assistant Professor at GCMS Kohat.
10. Mustafa Kamal, Assistant Professor at GCMS No. 2 Mardan.
11. Nafia Gul, Assistant Professor at GCMS Charsadda.
12. Waheed Ahmed, Assistant Professor at GCMS Abbottabad.
13. Irfan Ullah, Assistant Professor at GCMS Lakki Marwat.
14. Tariq Ayub Khan, Assistant Professor at GCMS Haripur.
15. Behram Khan, Assistant Professor at GCMS D.I Khan.
16. Tahir Mehmood, Assistant Professor at GCMS Bannu.
17. Dr. Inayat Ur Rehman, Assistant Professor at GCC No. 2, Peshawar.
18. Muhammad Khalid, Assistant Professor at GCMS Balakot.
19. Imran Ullah, Assistant Professor at GCMS Karak.
20. Hafiz Shaukat Ali, Assistant Professor at GCMS Bannu.
21. Shakeel Ahmed, Assistant Professor at GCMS Karak.
22. Misbah Uddin, Assistant Professor at GCC No.2 Mardan.
23. Zulfiqar Ali, Assistant Professor at GCMS Mansehra.
24. Khurshid Ahmad, Assistant Professor at GCMS Haripur.

.... (*Respondents*)

Mr. Javed Iqbal Gulbela  
Advocate

... For appellant

Mr. Muhammad Jan  
District Attorney

... For official respondents

Mr. Ali Gohar Durrani  
Advocate

... For private respondents

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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.67. 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.37/2022
2. Service Appeal No. 38/2022
3. Service Appeal No. 39/2022
4. Service Appeal No. 40/2022
5. Service Appeal No. 41/2022



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 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 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 2009 upon recommendation of Public Service Commission. Public Service Commission advertised two different publications in different disciplines through different advertisement bearing No.1/2008 published on 05.01.2008 and 3/2008 published on 20.05.2008. That recruitment process completed in light of advertisement No.3/2008 followed by completion of recruitment process in light of advertisement No.1/2008 in the year 2009. Recruitment process of advertisement No.3/2008 published later in time and completed earlier than advertisement No.1/2008 which was published on 05.01.2008. Appellant was recommended and selected as lecturer in light of advertisement No.3/2008 vide order dated 19.03.2009. 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 advertisement No.3/2008 was 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 two different open advertisements appellant, selectees of advertisement No.3/2008 or respondents selectees of open



advertisement No.1/2008 are senior civil servant.

9. It is admitted fact that respondent applied in response to advertisement No.1/2008 published on 05/1/2008 and appellants were appointed vide order dated 22.04/2009, 23.04.2009, 12.01.2010, 20.05.2010 and 26.05.2010. For deciding controversy of seniority neither date of appointment nor date of joining duty are relevant which will have to be decided in accordance with 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 date of publication of open advertisement, which is in the instant case is 5<sup>th</sup> January 2008 of advertisement No.1/2008. 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.1/2008 will be rank senior to selectees of subsequent advertisements No.3/2008 advertised on 20.05.2008 irrespective of date 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”*

So it is held that respondent rightly fixed seniority of the parties and placed all of them in their due place in seniority list. Having regard to the principle of earlier selection mentioned in Rules 17 (2) of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules 1989.

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


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

  
(MUHAMMAD AKBAR KHAN)  
Member (M)

  
(RASHIDA BANO)  
Member (J)

**ORDER**  
15.11.2023

1. Learned counsel for the appellant present. Mr. Mohammad Jan learned District Attorney for the official respondents present. Learned counsel for private respondents present.
2. Vide our detailed judgment of today placed on file, the instant appeal as well as connected service are dismissed being devoid of merits. Costs shall follow the events. Consign.
3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 15<sup>th</sup> day of November, 2023.*

  
(Muhammad Akbar Khan)  
Member (M)

  
(Rashida Bano)  
Member (J)