
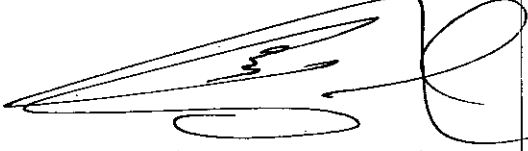
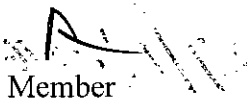


S.No. of order or proceedings	Date of Order or proceedings.	Order or other proceedings with signature of Judge or Magistrate and that of parties where necessary.
1	2	3
	15.04.2016	<p style="text-align: center;"><u>KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR</u></p> <p style="text-align: center;"><u>SERVICE APPEAL NO. 856/2012</u></p> <p style="text-align: center;"><u>(Muhammad Irshad-vs-Secretary, Govt. of KPK, Finance Department, Peshawar and two others).</u></p> <p style="text-align: center;"><u>JUDGMENT</u></p> <p><u>PIR BAKHSH SHAH, MEMBER: -</u> Counsel for the appellant and Mr. Khurshid Khan, SO alongwith Mr. Usman Ghani, Senior Government Pleader for respondents present.</p> <p>In the instant appeal issue of up-gradation is involved and according to the judgment of august Supreme Court of Pakistan dated 17.2.2016 delivered in Civil Appeals No. 101 & 102-P of 2011 the Service Tribunals have no jurisdiction to entertain any appeal involving the issue of up-gradation as it does not part of terms and conditions of service of the civil servants.</p> <p>In view of the above the appeal is not maintainable by this Tribunal for want of jurisdiction. The same is therefore dismissed. The appellant may seek his remedy before any other appropriate forum if so advised. File be consigned to the record room.</p> <p><u>ANNOUNCED</u> 15.04.2016</p> <div style="display: flex; justify-content: space-around; align-items: flex-end;"> <div style="text-align: center;">  (ABDUL LATIF) MEMBER </div> <div style="text-align: center;">  (PIR BAKHSH SHAH) MEMBER </div> </div>

11.04.2016

Counsel for the appellant present and submitted an application for early hearing. Application is allowed. To come up for arguments on 15.04.2016 instead of 20.07.2016.


Member


Member

11.04.2016

29.09.2015

Counsel for the appellant and Mr. Hameed-ur-Rehman, AD (Lit) alongwith Addl: AG for respondents present. Arguments could not be heard due to learned Member (Judicial) is on official tour to D.I. Khan, therefore, case is adjourned to 29/11/2016 for arguments.


Member

29.01.2016

Counsel for the appellant and Mr. Hameed-ur-Rehman, AD (Litigation) alongwith Addl: AG for respondents present. Arguments could not be heard due to shortage of time. Therefore, the case is adjourned to 30-3-16 for arguments.


MEMBER


MEMBER

30.03.2016

Counsel for the appellant and Addl: A.G for respondents present. Learned counsel for the appellant requested for adjournment. Adjourned for final hearing to 20.7.2016 before D.B.


Member
(Executive)


Chairman

10.09.2014

Counsel for the appellant, Mr. Muhammad Adeel Butt, AAG with Sultan Shah, Assistant, Hammad Ahmad, Assistant and Khursheed Khan, SO for respondents present. The learned Member is on leave. To come up for the same on 2.2.2015.


READER

2.2.2015

Junior for counsel for the appellant and Mr. Muhammad Jan, GP with Khursheed Khan, SO for the respondents present. Counsel for the appellant was stated to be busy in the Hon'ble High Court. To come up for arguments on 09.3.2015.


MEMBER


MEMBER

09.3.2015

Counsel for the appellant, Mr. Muahmmad Jan, GP with Sultan Shah, Assistant for the respondents present. The learned Member-II of the bench is on leave, therefore, case to come up for arguments on 28.9.2015.


MEMBER

22.10.2013.

Junior to counsel for the appellant and Mr. Muhammad Jan, GP present. Notices be issued to the respondents positively. To come up for written reply on 6.1.2014.

MEMBER

MEMBER

6.1.2014.

Counsel for the appellant and Mr. Muhammad Adeel Butt, AAG with Khursheed Khan, SO, Mosam Khan, AD and Muhammad Irshad, Supdt. for the respondents present and reply filed. Copy handed over to counsel for the appellant. To come up for rejoinder on 31.3.2014.

MEMBER

MEMBER

27.3.2014.

Counsel for the appellant and Mr. Muhammad Jan, GP with Khursheed Khan, SO for the respondents present. Counsel for the appellant needs time. To come up for arguments on 2.7.2014. Rejoinder, if any, in the meantime.

MEMBER

MEMBER

2.7.2014.

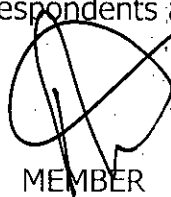
Counsel for the appellant and Mr. Muhammad Jan, GP with Khursheed Khan, SO and Sultan Shah, Assistant for the respondents present. Counsel for the appellant needs time. To come up for arguments on 10.9.2014.

MEMBER

MEMBER

14.3.13

Junior to counsel for the appellant present and submitted an application for permission to deposit security and process fee. Request is accepted. Security and process fee be deposited within 10 days. Notices be issued to the respondents and case to come up for written reply on 28.5.2013.


MEMBER

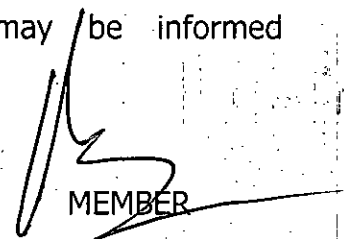
28.05.2013.

Clerk to counsel for the appellant and Usman Ghani, SGP for the respondents present. In pursuance of promulgation of Khyber Pakhtunkhwa Service Tribunal (Amendment) Ordinance 2013, the Tribunal is incomplete. To come up for the same on 22.8.2013.


READER

23.8.2013

Since 22nd August 2013 has been declared as local holiday on account of By-Election, therefore, case is adjourned to 21.10.2013. Parties may be informed accordingly.


MEMBER

*Appellant deposited
Process fee & Security
Rs. 180/- Bank Receipt
Attached with file*

Appeal No. 856/2012.
Muhammad Yaqoob

5. 3.12.2012

Counsel for the appellant present and heard. Contended that the appellant is entitled to the grant of BPS-17 on acquiring higher qualification of Master's Degree according to the judgments of the Hon'ble Supreme Court of Pakistan but he has been ignored. The appellant preferred a departmental appeal but the same has been filed on 29.6.2012. Hence, the present appeal. Points raised at the Bar need consideration. The appeal is admitted to full hearing, subject to all legal objections. The appellant is directed to deposit the security amount and process fee within 10 days. Thereafter, notice be issued to the respondents. Case adjourned to 15.1.2013 for submission of written reply.


Member.

6. 3.12.2012

This case be put before the Final Bench TS for further proceedings.


Chairman

15.01.2013

Counsel for the appellant present and submitted an application for extension of time to deposit security and process fee. Request is accepted and further seven days is granted to him to deposit security and process fee. Notices be issued to the respondents and case to come up for written reply on 14.3.2013.


MEMBER


MEMBER

18.9.2012

No one is present for the appellant. Notice be issued to the appellant and his counsel for preliminary hearing on 23-10-2012.

MEMBER

4. 23-10-2012.

No one is present for the appellant. To come up for P.H. on 3-12-2012.

Member.

FORM "A"

FORM OF ORDER SHEET

Court of.....

Case No. 856/2012of.....

Serial No. of Order or Proceedings 1	Date of Order or Proceedings 2	Order or other Proceedings with Signature of Judge or Magistrate and that of parties or counsel where necessary 3
1-	01/08/2012	<p>The appeal of Mr. Muhammad Irshad presented today by Mr. Saadullah Khan Advocate, may be entered in the Institution Register and put up to the Worthy Chairman for preliminary hearing.</p> <p style="text-align: right;"><i>[Signature]</i> REGISTRAR</p>
2-	8-8-2012	<p>This appeal is entrusted to Primary Bench for preliminary hearing to be put up there on <u>18-9-2012</u>.</p> <p style="text-align: right;"><i>[Signature]</i> CHAIRMAN</p>

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

S.A. No. 856/12012

Muhammad Irshad

Versus

Secretary & others

I N D E X

S.#	Description of Documents	Annex	Page
1.	Memo of Appeal		1-4
2.	Master Degree in Lib. Science	"A"	5
3.	Appointment as Librarian, 30.05.1994	"B"	6-7
4.	Supreme Court Judgment, 22.02.2010	"C"	8-11
5.	Representation, 20-4-12	"D"	12
6.	Rejection order, 29-6-12	"E"	13

Dated. 31.07.2012

Through

&

Appellant

Saad Ullah Khan Marwat

Arbab Saif Ul Kamal

Advocates.

21-A Nasir Mension,
Shoba Bazar, Peshawar.

Ph: 0300-5872676

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

S.A No. 856 /2012

Muhammad Irshad S/o Fida Muhammad,
Librarian, GHSS, Peer Piyai Nowshehra.Appellant

Versus

1. Secretary, Govt. of KPK, Finance Department, Peshawar
2. Secretary; Govt. of KPK, Elementary and Secondary Education, Peshawar.
3. Secretary, Establishment Department, Govt. of KPK, PeshawarRespondents

AWJ
856
01-8-12

1/8/12

⇔<=>⇔<=>⇔<=>⇔<=>⇔

**APPEAL UNDER SECTION 4 OF
THE KPK SERVICE TRIBUNAL ACT
AGAINST ORDER DATED
29.06.2012 OF R.NO.1 WHEREBY
BENEFITS/ UPGRADATION TO
THE POST OF BPS-17 WAS
REFUSED TO APPELLANT FOR NO
LEGAL REASON.**

⇔<=>⇔<=>⇔<=>⇔<=>⇔

Respectfully Sheweth:

1. That appellant has degree of Master of Library and Information Science in his credit, passed in 2nd division. (Copy as annex "A")

2. That on 30.05.1994, appellant was appointed as Librarian in BPS-16 at S.No.20 on the recommendation of the then NWFP, Public Service Commission, Peshawar. (Copy as annex "B")
3. That appeal was filed by Bibi Musrat, Shahid Ali, Nasir Khan, etc. before this hon'ble Tribunal for the grant/upgradation of the post of Librarian from BPS-16 to BPS-17 on regular basis from the date having acquired their higher qualifications i.e. Master's Degree in the discipline of Library Science.
4. That after completion of the requisite formalities, the hon'ble Tribunal was pleased to dismiss their appeals vide judgment dated 12.08.2003. Feeling aggrieved of the aforesaid judgment of the hon'ble Tribunal, the aforesaid appellants filed Civil Petition for Leave to Appeal (CPLA) before the August Supreme Court of Pakistan which were allowed vide judgment dated 22.02.2010.

The concluding para reads as under:-

"In view of judgments cited above favoring the present appellants and because of Notification of 1995, if not followed, would discriminate the present appellants. These appeals are, therefore, allowed. The judgment of the NWFP Service Tribunal, Peshawar is set aside and the respondents are directed to grant BPS-17 to the appellants with effect from the date of their Master's Degree acquiring higher qualifications,"
(Copy as annex "C")

5. That on smelling of the benefits of co-employees namely Nasir Khan and Shahid Ali at S.No.9 & 11 of the appointment order dated 30.05.1994, appellant also filed

representation before R.No.2 on 20.04.2012 for award of BPS-17 from the date of his appointment which was rejected on 29.06.2012. (Copies as annex "D & E")

Hence this appeal, inter alia, on the following grounds:-

GROUND S:-

- a. That admittedly, appellant has Master's Degree in his credit.
- b. That as per the judgment of the apex Supreme Court of Pakistan, appellant is entitled for grant of BPS-17 with effect from acquiring of the Master's Degree or from the date of his appointment, which ever is earlier for all benefits.
- c. That similarly and equally placed employees shall be treated similarly and equally and no discrimination is required for grant of any benefit to any class.
- d. That in the judgments, reported in "1996 SCMR 1185(c), 2009 SCMR 1 and 2010 SCMR 421," it was held that relief given to one class shall be extended to other class, who are in equal footing in order to avoid discrimination. because it is the demand of good governance of law and justice.
- e. That in the judgment dated 22.02.2010 of the August Supreme Court of Pakistan benefits of BPS-17 to M/s Nasir Khan and Shahid Ali were given. The aforesaid incumbents are at S.No.9 & 11 of the order of appointment dated 30.05.1994. The name of appellant also figures in the aforesaid order of appointment but he was not benefited.
- f. That decision made in order/letter dated 05.01.2012 is not on legal and sound footing as the Notification mentioned therein is of no avail to the respondents. The vices of the same has been discussed in the

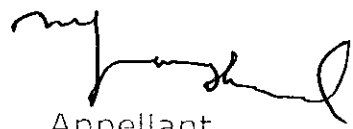
aforesaid judgment. No benefit of the same was extended to the department, rather to appellants.

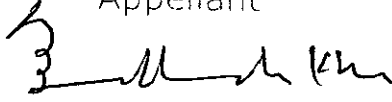
- g. That by now, appellant has been awarded BPS-17.
- h. That refusal of respondents by not granting benefits of BPS-17 to appellant on acquiring of higher qualifications of Master's Degree is based on malafide and discrimination.

It is, therefore, most humbly prayed that on acceptance of appeal, order dated 29.06.2012 of the respondents be set aside and appellant be awarded benefits of BPS-17 from the date of appointment or acquiring of the Master Degree which ever is earlier, with such other relief as may be deem proper and just in circumstances of the case.

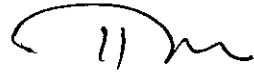
Dated. 07.2012

Through


Appellant


Saad Ullah Khan Marwat

&


Arbab Saif Ul Kamal
Advocates.

NOTE:

Appeal No.162/2011 to 170/2011 have already been admitted to regular hearing and are fixed for 24.09.2012 for submission of reply by respondents.

اسم الذی یجوز الحیض

University of Peshawar (Pakistan)

Session ANNUAL 1991

51

MUHAMMAD IRSHAD SON of FIDA MUHAMMAD

and a student of the Department of Library and Information Science having passed the prescribed examination in MAY, 1992 is this day admitted by the University of Peshawar to the Degree of

Master of Library & Information Science

in the SECOND Class

The examination was taken as a whole/in parts

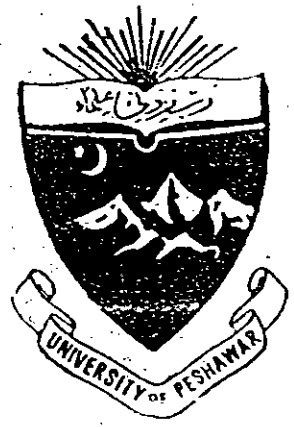
A

Serial No. 000264

Registered No. 86-N-2588

Roll No. 95

23RD AUGUST, 1992.



[Signature]
GUL DARYAB KHAN
Subject Specialist BPS
GHSS Pir Pisi (Nowshera) Registrar

Countersigned

[Signature]
Vice-Chancellor

[Signature]

B

6

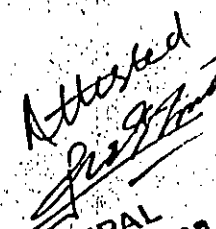
30-5-94

OFFICE OF THE DIRECTOR OF SECONDARY EDUCATION N.W.F.P., PESHAWAR.

APPOINTMENT/NOTIFICATION.

Consequent upon the recommendation of the NWFP Public Service Commission, Peshawar the Director of Secondary Education, NWFP, Peshawar is pleased to appoint the following candidates as Librarians in the Schools noted against each in BPS-16 carrying pay scale of Rs. 1275-146-4065 in the interest of public service with effect from the dates of their taking over charge.

S/No.	Name of Candidate.	Appointed/ Adjusted as.	Remarks.
1/	Mr. Waheedur Rehman S/O Sultan Badshah Vill: & P.O. Warana Teh: & District Karak.	G.H.S.S, Gul Imam (D.I. Khan).	Against vacant Post.
2/	Mr. Bashir Muhammad S/O Muntas Khan Vill: & P.O. Kheshgi Payan Mohallah Noohyan (Nowshera).	G.H.S.S, Fir Pad, (Nowshera).	-do-
3/	Mr. Shaukat Hussain S/O Oddin Khan Gen: Librarian Director Edu: Near Air H/Quarter, Peshawar.	G.H.S.S, Lora, Haz:	-do-
4/	Mr. Sajjad Ahmad S/O Saifullah Khan Shahid Cloth Merchant, Saffi Market Badkar Road Takhtbai (Mardan).	G.H.S.S, Ziarat Talash (Dir).	-do-
5/	Mr. Muhammad Arif S/O Saifur Rehman Vill: & P.O. Akbar Pura, Nowshera.	G.H.S.S, Akbar Pura, (Nowshera).	-do-
6/	Mr. Imran Ali Shah S/O Ibrahim Shah Muslim Public School, Pesh: Cantt.	G.H.S.S, Adowai, (Peshawar).	-do-
7/	Mr. S. Arshad Ali Shah S/O S. Sajjad Ali Shah, Syed Colony Dura Road O/S Bilour Housing Society Sheikhabad, No. 2, Peshawar.	G.H.S.S, Umar Payan.	-do-
8/	Mr. Qazi Shahbur Rehman S/O Qazi Jamilur Rehman Quarter No. CB-33 University Campus, Pesh: University.	G.H.S.S, Nathya Galki.	-do-
9/	Mr. Nasir Khan S/O Adnan Khan Vill: & P.O. Katlang (Mardan).	G.H.S.S, Kabgani, (Swabi).	-do-
10/	Mr. Abdus Samad S/O Muhabat Khan Main Road Hussain Khan Street, Afghan Colony Block-B, Peshawar.	G.H.S.S, Nizampur. (Nowshera).	-do-
11/	Mr. Shahid Ali S/O Sher Muhammad Vill: & P.O. Gujrat (Mardan).	G.H.S.S, Lal Qilla, (Dir).	-do-
12/	Mr. Tufail Muhammad S/O Muhammad Shafiq Vill: Ghano Dheri P.O. Umar Abad Teh: & Distt: Takhtbai (Mardan).	G.H.S.S, Totali, Swat.	-do-
13/	Mr. Illaud Din S/O Shahbud Din Mingora Fog Gas Airport Road, Swat.	G.H.S.S, Charbagh, Swat.	-do-

Attested

 PRINCIPAL
 G.H.S.S. Warana
 Karak.

(P-2)

7

- | | | | |
|-----|--|---------------------------|----------------------|
| 14/ | Mr. Israr Hussain S/C Mehfooz Ali C/O Tajir Travel Agency Dandar Road, Parachinar, Kur: Agency: | GHSS, Baffa Manshra. | Against vacant Post. |
| 15/ | Mr. Muhammad Habibur Rehman S/O Niamatullah C/O Andoz Khan Shop Keeper Jamrud Bazar, Khy: Agency. | GHSS, Parhania, (Hazara). | -do- |
| 16/ | Mr. Noor Zada S/O Purdil Khan Vill: Shamlat Zarify P.O. Sher Garh, Takht Bai (Mardan). | GHSS, Samarbagh, (Dir). | -do- |
| 17/ | Mr. Suleman S/C Imran Vill: P.O. Chakesar Teh: Alpuri, Distt: Swat. | GHSS, Wari (Dir). | -do- |
| 18/ | Mr. Dil Nawaz Khan S/O Muhammad Ayub Khan C/O Saifraz Khan Lib: Pashto Academy Pesh: University. | GHSS, Lissan Nawabi. | -do- |
| 19/ | Mr. Muhammad Naeem S/O Rochul Amin Hostel No. 4, Room No. 27, Pesh: Engg: University, Peshawar University. | GHSS, Ouch (Dir). | -do- |
| 20/ | Mr. Muhammad Arshad S/O Fida Muhammad, Karimi Town P.O. For Sons Labortables Teh: & Distt: Nowshera. | GHSS, Battal, (Manshra). | -do- |

The terms and conditions of their appointments shall be as under:-

- 1; Their services will be liable to termination of 14-days notice from either side. In case of their resignation without notice their 14-days salary and allowances. If any will be forfeited to Government.
- 2; The declaration of assets should please be obtained from them immediately and placed on record.
- 3; Their inter-se-seniority will be fixed according to the order of merit assigned by the Commission.
- 4; Charge reports should be submitted to all concerned.

(SYED ABU SAIED BACHA)
DIRECTOR OF SECONDARY EDUCATION,
N.W.F.P., PESHAWAR.

Endst No. 5132-82

14/Librarian.

Dated 30/5/1994.

- 1; Copy of the above is forwarded to the:-
 - 2; Director Bureau of Curr: Dev: & Edu: Ext: Services, NWFP, Peshawar.
 - 3; Director of Education (P.M.) NWFP, Peshawar.
 - 4; Chairman, N.W.F.P. Public Service Commission, Peshawar.
 - 5; All Divl: Directors of Edu: (Schools) in N.W.F.P.
 - 6; All Principals concerned. (6:)
 - 7; All candidates concerned.
- P/A to Director of Secondary Education NWFP, Peshawar.

Deputy Director Secondary,
Education NWFP, Peshawar.

Farid Khan

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C 8

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:
MR. JUSTICE JAVED IQBAL
MR. JUSTICE MUHAMMAD SAIR ALI
MR. JUSTICE TARIQ PARVEZ

CIVIL APPEALS NO.1114 TO 1116 OF 2006

(On appeal from the judgments dated 12.08.2003 of the NWFP Service Tribunal, Peshawar passed in Appeal No.536 of 2000)

- | | | |
|----|--------------------------|----------------------------|
| 1. | Bibi Mussarat, Librarian | Appellant in CA No.1114/06 |
| 2. | Shahid Ali | Appellant in CA No.1115/06 |
| 3. | Nasir Khan | Appellant in CA No.1116/06 |

Versus.

Province of NWFP through Secretary Education,
Peshawar and two others Respondents in all cases.

For the Appellants in all Cases:	Mr. Roohul Amin Khan, ASC
For the Respdts: in all Cases:	Hafiz Aman, ASC
Date of Hearing:	22.02.2010

JUDGMENT

Tariq Parvez J: For the reasons that similar question of law and almost similar facts are involved in three connected appeals, therefore these are disposed of through this single judgment.

2. Short facts of the case are that the appellants herein are serving a librarian in Education Department. In the case of Bibi Mussarat, she was last serving as Librarian in Government Degree College for Women, Mandian;

Abbottabad while the appellant Shahid Ali as Librarian in Government Higher Secondary School, Mardan and so is the case of Nasir Khan appellant.

They claim to be granted grade BPS-17 on regular basis from the date they have acquired higher qualifications i.e. Master's Degree in the discipline of Library Sciences.

3. The appellants on their respective ends having approached the departmental hierarchy by making various representations/appeals were finally constrained to knock at the door of the NWFP Service Tribunal, Peshawar but their such approach for seeking relief proved abortive, they, therefore filed three separate petitions before this Court.

4. All the three petitions of the appellants were heard on 28.06.2006 and with the leave to appeal granted by the Court, petitions were converted into appeals, inter-alia, on the ground to consider effect of two judgments delivered by this Court, whether they were in conflict with each other, judgments referred to in the leave granting order are **Government of NWFP etc. v. Muhammad Aslam Khan** (C.A. No. 172 of 1998) decided on 16.10.2002 and **Government of NWFP etc. V. Gul Aslam and others** (C.Ps. No.52-P of 1003) decided on 12.03.2003 and against the above referred judgments another case of **Deputy Director Technical Education, Peshawar v. Muhammad Ikram and others** (CP Nos.395-P to 398-P, 415-P to 419-P of 2001).

In the former two judgments relief of granting grade BPS-17 on the basis of higher qualifications was given to the appellants therein whereas relief were denied in the later judgment.

5. From the perusal of the judgment referred to above as were read out and cited before us, the latter judgment of this Court has referred to notification dated 04.08.1993 of the Finance Department of the Government of NWFP, Peshawar where the provincial Government had held that post of Librarian in grade BPA-16 in junior scale and BPS-17 in senior scale are separate posts under the relevant recruitment rules and the initial recruitment is to be made through the Public Service Commission, because there is no provision in the rules for granting higher pay scale on the basis of acquiring higher education i.e. Master's Degree. It was therefore, that this Court refused to grant prayer for upgradation of Librarian from BPS-16 to 17 on the ground of procuring higher qualification.

6. The former two judgments, this Court had passed inot the sevice, principle of discrimination on the ground that the Librarian who was working in the Colleges and had acquired higher qualifications were given grad BPS-17 but those who were working in the Schools were denied grant of grade BPS-17 despite having acquired Master's Degree. This court concluded that whether performing functions in a College or in a School but as Librarian and when both the incumbents are having acquired higher Master's Degree they are to be considered at par with each other and refusal on the ground that grade BPS-17 can only be given to Librarian working in the Colleges was an act of discrimination based on no logic and was therefore, unreasonable.

7. Today, learned counsel appearing for the appellants ahs produced before us a copy of notification dated 20.06.1995 of Government of NWFP, Peshawar Education Department, where the Governor of the province was pleased to accord sanction as a special case to the upgradation of 113 posts of Librarian from BPS-16 to BPS-17 to persons whose names appeared in the annexure to the notification of 1995.

There is no bar under the Rules rather there appears to be consistent practice which was applied in fovour of Librarian in the past and they were given the higher grade from BPS-16 to BPS-17 on acquiring Master's Degree in the Library Sciences including notification dated 20.06.1995, but denial by the Government and not accepted by NWFP Service Tribunal, Peshawar, would be against the rules of discrimination amongst equals and similarly placed employees.

8. An impression taken from the leave granting order that the two judgments fo this Court are at variance would be divided of force because in the case of **Government of NWFP vs. Muhammad Ikram and others** (supra) reliance was placed on notification of year 1993 which is itself does not contain any statutory backing but a policy or desire. Subsequently, in the year 1995 despite notification of 1993 the Government of NWFP had upgraded 113 posts of Librarian, from BPS-16 to BPS-17 the denial to the present appellants the grant fo grade BPS-17 would be a case of discrimination and therefore, their cases would squarely fall in the category of cases as were decided by this Court in Civil Appeal No.172 of 1998 and Civil Petitions No. 52-P to 58-P of 2003 and not the case of **Deputy Director Technical Education** (supra).

11

9. Very recently in Civil Petitions No. 491-P to 500-P of 2006, decided on 3.4.2009 by this Court and relying on the judgment passed in Civil Petitions No. 52-P/2003 etc. (supra) similar view was maintained and in addition, it was ruled that the appellants therein will be entitled to grade BPS-17 not with immediate effect but from the date they acquired higher qualifications.

In view of judgments cited above favouring the present appellants and because of notification of 1995, if not followed, would discriminate the present appellants. These appeals are therefore, allowed. The judgments of the NWFP Service Tribunal, Peshawar is set aside and the respondents are directed to grant BPS-17 to the appellants with effect from the date of their Master's Degree acquiring higher qualifications. However, there is no order as to costs.

Attested
by

Sd- Javed Iqbal J
Sd- Muhammad Sair A. J
Sd- Tariq Parvez. J

To:

The Secretary,
Elementary & Secondary Education,
Deptt Govt. of KPK, Peshawar.

Subject:-

APPLICATION FOR THE GRANT OF BPS-17 FROM
ON REGULAR BASIS FROM THE DATE
APPOINTMENT AS LIBRARIAN BPS-16 VIDE
NO.5132-82/A-14/Librarian DATED 30-05-1994.

R/Sir,

With humble request I beg to state that I was appointed as Librarian vide order No. 5132-82/A-14/Librarian, dated 30-05-1994 as BPS-16 and afterwards the government of KPK allotted BPS-17 to Librarian's post vide order No. SO(PE)2-6/E&SE/DPC/Librarian (BPS-16 to BPS-17)/08, dated 26-12-2008. I received pay slip for BPS-17 on 01-01-2009, but my due right is from the date of my appointment i-e from 01-06-1994 (order attached). A number of Librarians registered case for their due rights in the Supreme Court of Pakistan. The Supreme Court of Pakistan gave its judgment in favour of the Librarian as to give them all the benefits of BPS-17 from their date of appointment (order is hereby attached).

Therefore, in the light of the Supreme Court of Pakistan judgment I request you kindly to grant me BPS-17 and related benefits as regular basis from the date of my appointment.

Great thanks.

Dated 20/04/2012.

Muhammad Irshad
my

Yours obediently.

Muhammad Irshad

(MUHAMMAD IRSHAD)
Librarian
GHSS Pir Piai (NSR)

20/04/2012
20/04/2012
20/04/2012

12/13
20/04/2012

12
DO (AM)/DA
Process as per rules
23/12

20/04/12
D



E

13

GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION DEPARTMENT
No. SO(PE)9-2/Librarian /09/Vol. III
Dated Peshawar the 29-6-2012

To,

The Director
Elementary & Secondary Education
Khyber Pakhtunkhwa, Peshawar.

Subject:- APPLICATION FOR THE GRANT OF BS-17 FROM BS-16 ON REGULAR BASIS FROM THE DATE OF APPOINTMENT AS LIBRARIAN BS-16 VIDE ORDER NO. 132-82/a-14/LIBRARIAN DATED 30-5-1994.

I am directed to refer to your letter No. 1043/File No. 17/General Cases of Librarian (M) dated 8-6-2012 on the subject noted above and to state that Mr. Muhammad Irshad Librarian GHSS Pir Pa Nowshera was appointed on 1-6-1994 i.e. after the concession had been withdrawn on 4-8-1993 by the Finance Department.

2. In this connection a copy of minutes/decision in similar cases has already been forwarded to your Directorate vide this Department letter of even No. dated 5-1-2012.
3. It is, therefore, requested that the Librarian concerned may be informed of the factual position.

(MUHAMMAD AYUB KHAN)
SECTION OFFICER (PRIMARY)

Muhammad Ayub Khan
27/7/12

بعدالت سرس ٹریڈ سوسائٹی

21/2 پنجاب اسٹریٹ
محکمہ آرٹس و بنام مسکیر سوسائٹی

اصل

مورخہ
مقدمہ
دعویٰ
جرم

باعث تحریر آنکے

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ
آن مقام کے لئے سر کیلئے سدا انہر کاوی درو اور اس سوسائٹی کو
مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز
وکیل صاحب کو راضی نامہ کرنے و تقرر ثالثہ فیصلہ بر حلف دیئے جواب دہی اور اقبال دعویٰ اور
بصورت ڈگری کرنے اجراء اور صولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق
زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی
نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور
کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار
ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ با اختیارات حاصل ہوں گے اور اس کا ساختہ
پرواختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ دہر چاہئے اتوائے مقدمہ کے سبب سے وہ ہوگا۔
کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی
مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سند ہے۔

المرقوم لکھنؤ 20/2

واہ العب

کے لئے منظور ہے۔

بمقام

Advocate

ارباب سوسائٹی

اپر سب

Before the Service Tribunal, KPK, Peshawar.

Muhammad Ishaq vs Education

Application for Extension of time for depositing Security etc

Respectfully sheweth,

- 1- That the above mentioned appeal is fixed for reply of respondents.
- 2- That due to some mistake, the appellants could not deposit the Security, process fees etc in time.

It is therefore most humbly prayed that appellants may be allowed to deposit security process fees and the date may be adjourned to some other date as to fix by the honorable Tribunal.

DT 15/04/13

Appellant II
through
Abbas Saifullah
Advocate Peshawar

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal # 856/2012.

Muhammad Irshad Librarian, GHSS Peer Piyai District Nowshera.....Appellant
VERSUS

Secretary Elementary & Secondary Education Peshawar & others..... Respondents

Written reply/ Para wise comments for & on behalf of Respondents.

**Respectfully Sheweth,
Preliminary Objections:-**

1. The appellant has no cause of action/ locus standi.
2. The instant appeal is badly time barred.
3. The appellant has concealed the material facts from this Hon 'able Tribunal, hence liable to be dismissed.
4. The appellant has not come to this Hon 'able court with clean hands.
5. The appellant has filed the instant appeal just to pressurize the Respondents.
6. The present appeal is liable to be dismissed for non joinder / misjoinder of necessary parties.
7. The appellant has filed the instant appeal on malafide motives.
8. The instant appeal is against the prevailing law and rules.
9. The appellant is estopped by his own conduct to file the instant appeal.
10. The instant appeal is not maintainable in the present form and also in the present circumstances of the issue.

FACTS.

1. This para is related to academic record of the appellant. However, it is pertinent to mention here that the appellant passed the mentioned Master Degree on 23-08-1992 as (Annexure-A of the appeal).
2. This para is related to service record of the appellant, while the Annexure-B of the appeal shows that the appellant was appointed against BS-16 post with effect from the date of their taking over charge on 30-05-1994.
3. This para also pertains to the record of the Apex Courts. However, it would not be out of place to mention here that the annexed judgment of the Apex Court is not judgment in rem and has no concern to appeal of the instant petitioner.
4. Incorrect and not admitted. The minutes of the meeting dated 26-12-2011 (Annexure of the appeal) is very clear according to the prevailing rules. It is pointed out in the said minutes of the meeting that the Finance Department vide civil services pay revision rules 1978, allowed award of BS-17 (Personal) to Librarians on the basis of having master degree in Library Science. The said concession was, however, subsequently withdrawn, this concession of BS-17 (Personal) on 04-08-1993, with some reservations/ observations (Annexure-A), while the present appellant was inducted into the Education

Department in year 1994, after withdrawal of the said concession hence the appellant is not eligible/ entitled of award of BS-17. Hence this appeal is liable to be dismissed inter alia on the following grounds.

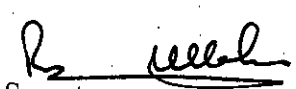
ON GROUNDS.

- a. This para is related to appellant academic record, hence needs not comments.
- b. Incorrect and not admitted. The appellant misconceived/ misapprehend/ and misconstrued the said judgment.
- c. The statement of the appellant in this para has no concern to case of the appellant.
- d. The contents of this para is also related to record of the Apex Courts, hence no comments. No injustice committed by the Respondent.
- e. Incorrect. The said judgment of the Apex Court is judgment in personam and thereby mentioned and directed to grant BS-17 to the appellant from the date of degree acquiring higher qualification.
- f. Incorrect and not admitted. The minutes of the meeting held on 26-12-2011 is legal and based on cogent reasons.
- g. No comments.
- h. Incorrect and not admitted. The appointment order of the appellant is very clear. The appellant is appointed against the advertised BS-16 post of Librarian with effect from the date of taking their charge, and the appellant did not raised any objection at that time and accepted the said order by taking over charge. Now at this belated stage the appellant has no right to claim BS-17 against the post advertised as Librarian BS-17.

In view of the above made submissions, it is requested that Honourable Tribunal may very graciously be pleased to dismiss the present appeal in favour of the Respondent Department.


Secretary,
E&SE Department,


Secretary,
Establishment Department.


Secretary,
Finance Department.