BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.7148/2021

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

Zahab Khan S/O Mohammad Riaz R/O Rehan Colony P/O Och Tehsil Oun ai District Lower Dir. ... (Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
2. The SecretaryElementary & Secondary Education Department, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
3. The Director Elementary & Secondary Education Department, Peshawar.

... (Respondents)

Mr. Nawab Ali Noor
Advocate ... For appellant

Mr. Muhammad Jan
District Attorney ... For respondents

Date of Institution.....09.07.2021
Date of Hearing.....13.12.2023
Date of Decision.....13.12.2023

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:

> **"On acceptance of this appeal, this hon'ble court may graciously be pleased to set aside/declare, null and void /amended/modified the impugned service rules/notification dated 24.07.2014 to the extent of S.No. No.1B column No.3 of the table by including/inserting service rules as well as service rules 24.04.2018 also may kindly be /inserting/amending /modifying to the extent of S.No.2 Colum No.5 and may please allocate promotion quota for appellant as PST IT for the promotion to the post of SST IT BPS-16 will all back benefits."**

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

1. Service Appeal No. 7149/2021
2. Service Appeal No. 7150/2021
3. Service Appeal No. 7151/2021
4. Service Appeal No. 7152/2021
5. Service Appeal No. 7153/2021
6. Service Appeal No. 7154/2021
7. Service Appeal No. 7155/2021
8. Service Appeal No. 7156/2021
9. Service Appeal No. 7157/2021
10. Service Appeal No. 7158/2021
11. Service Appeal No. 7159/2021
12. Service Appeal No. 7160/2021
13. Service Appeal No. 7161/2021
14. Service Appeal No. 7162/2021
15. Service Appeal No. 7163/2021
16. Service Appeal No. 7164/2021
17. Service Appeal No. 7165/2021
18. Service Appeal No. 7166/2021
19. Service Appeal No. 7167/2021
20. Service Appeal No. 7168/2021
21. Service Appeal No. 7169/2021
22. Service Appeal No. 7170/2021
23. Service Appeal No. 7171/2021
24. Service Appeal No. 7172/2021
25. Service Appeal No. 7173/2021
26. Service Appeal No. 7174/2021
27. Service Appeal No. 7175/2021
28. Service Appeal No. 7176/2021
29. Service Appeal No. 7177/2021
30. Service Appeal No. 7178/2021
31. Service Appeal No. 7179/2021
32. Service Appeal No. 7180/2021
33. Service Appeal No. 7181/2021

34. Service Appeal No. 7182/2021
35. Service Appeal No. 7183/2021
36. Service Appeal No. 7184/2021
37. Service Appeal No. 7185/2021
38. Service Appeal No. 7186/2021
39. Service Appeal No. 7187/2021
40. Service Appeal No. 7188/2021
41. Service Appeal No. 7189/2021
42. Service Appeal No. 7190/2021
43. Service Appeal No. 7191/2021
44. Service Appeal No. 7192/2021
45. Service Appeal No. 7193/2021
46. Service Appeal No. 7194/2021
47. Service Appeal No. 7195/2021
48. Service Appeal No. 7196/2021

As in all these appeals common question of law and facts are involved.

3. Brief facts of the case as given in the memorandum of appeal are that, the appellants are working as Primary School Teacher in Education Department. Respondents framed service rules of appellant cadre as well other teaching cadre vide notification dated 24.07.2014, wherein at Sr. No. 1B the of post SST (BPS-16) for which the qualification and eligibility has been mentioned in column No.3.Respondent included all subjects except the subject of appellant i.e. Computer Sciencein the eligibility criteria. Respondents vide another notification dated 24.04.2018 notified Service Rules for the different cadre of Information Technology including the post of SST-IT mentioned at Sr. No. 2 in column No.5 of the table wherein eligibility for promotion to the post of SST-IT was fifty percent by initial recruitment and fifty percent by promotion on the basis of seniority-cum-fitness from amongst the CT-IT with five year service as such and having the qualification prescribed for the post of SST-IT. But in the said rules again the cadre/subject of the appellant was ignored i.e PST-Computer Science. Feeling aggrieved

from both the notifications, appellant alongwith others filed departmental appeal, which was not responded, hence the instant 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 for the respondents and perused the case file with connected documents in detail.

5. Learned counsel for the appellant argued that by not including the subject of computer science in the impugned service rules dated 24.07.2014 and not allocating the quota for appellant cadre i.e PST Computer Science in the impugned service rules dated 24.08.2018 is against the law, facts, norms of natural justice and material on the record, hence not tenable and liable to be modified/rectified to the extent of inclusion of subject of computer science in the eligibility criteria in the service rules. He further argued that theappellant has not been treated in accordance with law and rules and respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973. He contended that the said service rules are violative of Section 9 of the Civil Servant Act, 1973 read with Rule-7 of the (Appointment, Promotion and Transfer) Rules,1989.

6. Conversely, learned District Attorney on behalf of respondents contended that appellants have been treated in accordance with law and rules. He further contended that framing service rules/structure for promotion to different teaching cadre employee of the department including the appellant against the SST (Science/General) posts under the specified reserved quota for promotion are prerogative of respondent department which they notified vide notification dated 24.07.2014. He further contended that service rules/structure are mainly based on natural justice and equality, wherein, each and every

teaching cadre has a prospect of promotion to the higher post in the department on the basis of seniority-cum-fitness.

7. Perusal of record reveals that appellants seeks modification in the service rules notified on 24.07.2014 to the extent of inserting the computer science subject of the appellant in Column No. 3 and service rules dated 24.04.2018 in column No. 5 by allocating promotion quota for the appellant's cadre i.e PST. The appellants were appointed as PST BPS-12 in education department vide order dated 10.05.2010, having qualification of B.Sc in Computer Science and B.Ed and M.Ed. In accordance with service rules framed and notified on 24.07.2014 qualification and eligibility for the post of SST BPS-16has been mentioned in column No.3 of organogram, wherein subject of the appellant computer science was not mentioned and includes all other subjects which is as under:

> 1. *At least second class Bachelor Degree's from a recognized University on need basis from the following groups with two subject*
> *(a) Chemistry, Botany or Zoology or*
> *(b) Physics, Maths "A" or "B" or Statistics or*
> *(c) Humanities and other equivalent groups at degree level with English as compulsory subject; and*
> *(II) Bachelor of Education or Master of Education (Industrial Art or BusinessEducation) or M.A Education or equivalent qualification for a recognized University.*

So subject of the appellant was ignored in 2014 service rules. Appellant also ignored in service rules framed in the field of information technology by the respondents notified on 24.04.2018 wherein post of Secondary School Teacher Information Technology (BPS-16) was included at serial No.2 and in column No.5 of the table of eligibility for promotion to the post of SST-IT which is as follows:

(a) 50% by promotion on the basis of seniority cum fitness from amongst the CT-IT with 5 year service as such and having the qualification prescribed for the post of SST-IT.

(b) *50% by initial recruitment*

8. So appellants having higher education in the subject of Computer Science were treated discriminatory as they were deprived from further prospects of promotion which every civil servant have during his service. Appellants are civil servants like all others specially in their own cadre and teaching line, ignoring appellants subject in 2014 service rule by mentioning all other subjects is the disparity and anomaly in service rules of the teaching cadre. Although appellants possessed professional qualification of B.Ed and M.Ed but due to not mentioning their subject of Computer Science in upper portion of qualification and eligibility deprive appellants from promotion, which is against the settled norms of justice and Constitution of Islamic Republic of Pakistan beside Section 7 of (Appointment, Promotion and Transfer) Rules, 1989 and Section 9 of Civil Servants Act, 1973. So it is anomaly therefore, we sent the matter to the authority for considering appellant's subject of computer science and its inclusionin column No. 3 of the Service Rules of 2014. Costs shall follow the event. Consign.

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

(MUHAMMAD AKBAR KHAN)
Member (E)

(RASHIDA BANO)
Member (J)

*Kaleemullah

ORDER

13.12.2023

1. Learned counsel for the appellant present. Mr. Muhammad Jan learned District Attorney alongwith Mr. Behramand Khan, A.D and Faheem Khan, Assistant for the respondents present.

2. Vide our detailed judgement of today separately placed on file, we sent the matter to the authority for considering appellant's subject of computer science and its inclusion in column No. 3 of the Service Rules of 2014.Costs shall follow the event. Consign.

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

(Muhammad Akbar Khan)
Member (E)

(Rashida Bano)
Member (J)

*Kaleemullah