

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL
PESHAWAR

SERVICE APPEAL NO. 2325/2023

Mr. Shaukat Ullah Shah
Retired Assistant Engineer C&WD

--- Appellant

VERSUS

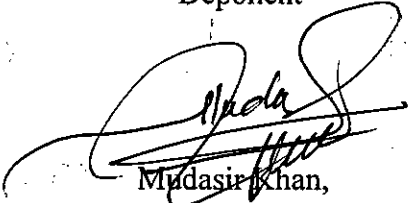
Secretary to Govt of Khyber Pakhtunkhwa
C&W Department, Peshawar & Others

--- Respondent

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Deponent


Madasir Khan,

Section Officer (Litigation)
C&W Department, Peshawar.

22-02-2024
Peshawar

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BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL
PESHAWAR
SERVICE APPEAL NO. 2325/2023

Mr. Shaukat Ullah Shah
Retired Assistant Engineer C&WD

--- Appellant

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 11279

VERSUS

Secretary to Govt of Khyber Pakhtunkhwa
C&W Department, Peshawar & Others

--- Respondent

Dated 22-02-2024

PARA-WISE COMMENTS ON BEHALF OF RESPONDENTS NO.1 to 06

PRELIMINARY OBJECTIONS

- i. That subject service appeal is not maintainable as the same has been filed in violation of Article 174 of the constitution.
- ii. That appellant herein has not come to the court with clean hands and has not stated the facts of the case.
- iii. That no **legal right** vests in the appellant which could possibly be enforced through the process of court.
- iv. That the appellant does not come within the definition of **aggrieved person** by any stretch of imagination.
- v. Furthermore, there exists no corresponding **legal obligation** which the answering respondents could be caused of violating even remotely.
- vi. That subject service appeal is squarely hit by **laches**.
- vii. The appeal in hand is pregnant with **mala-fide** and ulterior motives. Therefore, it is liable to be dismissed.
- viii. The appellant herein is not entitled to any of the reliefs listed in the prayer.
- ix. The appellant has got no locus standi to file the service appeal.

FACTS:

1. Incorrect, as the Department has enhanced 3.5% quota to 10% for promotion of B.Tech (Hons) Sub Engineers to the rank of Assistant Engineer/SDO BS-17 C&W Department through Notification No.SOE/ C&WD/8-12/2014 dated 26.03.2018. Moreover, the Department also considered the promotion of B.Tech (Hons) Assistant Engineers / SDOs (BS-17) to the rank of BS-18 in light of court orders as well as high level committee which was constituted under the chairmanship of Additional Chief Secretary P&D Department. Finally a Notification dated **25.11.2022** in this behalf has been issued after fulfillment of all codal formalities (**Annex-I**). In light of the referred Notification, the promotion of Assistant Engineer/SDO (BS-17) C&W Department to the rank of BS-18 will be considered as per their seniority with at-least Five (05) years services as such and have passed the Professional Examination, as prescribed in West Pakistan Buildings & Roads Code, irrespective of any discipline.
2. Incorrect, the Existing Service Rules were framed and notified by the Provincial Government on **25.03.2010** and recent amendment has been made on **25.11.2022** for promotion of B.Tech (Hons) Assistant Engineers / SDOs (BS-17) C&W Department to the rank of BS-18, which was its sole

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prerogative and competency. And while framing these Rules none has been ignored. In doing so, the government had to keep in consideration the relevant provisions of Pakistan Engineering Council Act, 1976 (PEC Act), which provides that non-engineers could not be appointed against posts meant for professional engineers. Because B-Tech (Hon.) degree/diploma holders do not come within the definition of Engineers/ Professional Engineers as prescribed in the PEC Act, 1976. The Government is empowered to frame or amend the service rules of any Department through Standing Service Rules Committee (SSRC).

3. Incorrect. The appellant was appointed in C&W Department as Diploma Holder Sub Engineer, who enhanced his qualification further as B-Tech (Hons). Moreover, he was promoted to the post of Sub Divisional Officer (BS-17) on **04.11.2016** and subsequently retired from Govt service on attaining the age of superannuation i.e. 60 years **with effect from 27.08.2022**, while posted as Assistant Engineer O/O Chief Engineer (Centre) C&W Peshawar.
4. As explained in para-2 above
5. Incorrect. Pakistan Engineering Council (PEC) is a regulatory body, which was created to regulate, maintain and enhance the standards of Engineering Profession and Education in the country. PEC is the only authority that equate any qualification with Engineering Education and it is held by the Apex Court in its judgment reproduced in PLD 1995, (SC) 701, in para-09 as under:

“the PEC, however, has exclusive domain to decide, as to whether any particular qualification could be equaled with another qualification”
6. Incorrect, as the University Grant Commission in its 39th meeting held on 12.02.1998 has categorically mentioned that:- **(Annex-II)**

“The degree of B-Tech (Hons) is not similar to BE/B.BSc Engineering Degree. Both the Degrees of B.E/B.Sc Engineering and B-Tech (Hons) be considered as two distinct disciplines of knowledge in the field of Engineering & Technology and should run parallel to each other. The committee further noted that it was upto the Employer to determine the type of qualifications required for a particular job”.

(Authority U.G.C. Islamabad letter No. 8-36/UGC-A&C/2002/1666 dated 23.01.2002).
7. As explained in para-1 of the facts.
8. Incorrect and misconstrued, hence denied. The appellant cannot claim any vested right on policy decisions of the government. The Government has formulated and framed its Rules correctly and in public good. There is thus no scope / need of amending them in order to appease and accommodate few and that too at the expense of over-all functioning of the entire department. Moreover, the Government is empowered to frame or amend the service rules of the Department through SSRC.
9. As explained in para-2 of the facts.



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10. Incorrect, misconceived, hence denied as the policy decisions of other Provinces (if any), are not binding on the answering respondents as they make their own policies, rules and laws in good faith and that too for the public benefit.
11. Incorrect, Supreme Court of Pakistan has announced judgment on **03.10.2018**, the operative part of the referred judgment may be perused as under: **(Annex-III)**

“the net result of above discussion is that this petition falls. It is dismissed and leave refused, however with note of caution that government shall not allow or permit any person to perform professional engineering work as defined in the PEC Act, who does not possess accredited engineering qualification from the accredited engineering institution and his name is not registered as registered engineer or professional engineer under the PEC Act”
12. Incorrect. The fact is that as per directions of Peshawar High Court Peshawar in its judgment in writ petition No.2707-P/2021 as well as minutes of the high level committee, the working papers for amendment in the existing service rules of C&W Department for promotion to the post of (BS-18) from B.Tech (Hons)/Diploma holder Assistant Engineer/SDO (BS-17) were submitted to Establishment Department for placing before SSRC for consideration **(Annex-IV)**. Accordingly, Establishment Department scheduled a meeting of SSRC on **29.07.2022**, which was postponed and rescheduled on **18.08.2022**. After detail discussion, the forum unanimously agreed to defer the agenda item and directed the departmental representative to resubmit the revised working paper on prescribed format. In compliance, a revised working paper was prepared and submitted to Establishment Department for consideration of SSRC. A meeting of the SSRC was held on **16.09.2022** and after threadbare discussion, the forum unanimously approved the amendment **(Annex-1)**. It is further mentioned that a similar nature service appeal has been dismissed by the Hon'able service tribunal on **15.09.2023** **(Annex-V)**.
13. As explained in para-12 of the facts.
14. As explained in para-11 of the facts.
15. As explained in para-12 of the facts.
16. Pertain to the record of Anti-Corruption Establishment Khyber Pakhtunkhwa.
17. Incorrect, prompt action was taken by all the concerned offices and after fulfillment of all codal formalities, necessary Notification has been issued accordingly **(Annex-I)**.
18. Incorrect, as explained in para-15 above. The Government is empowered to frame or amend the Service Rules of any Departments through SSRC forum.
19. Incorrect. The answering respondents have not violated any right of appellant nor caused any mala-fide or discrimination. In fact, the Department has followed the rules/policy strictly in the cases of promotion of officers/officials of the Department. Hence the stance taken in the petition is not justified.

GROUND:

1. Incorrect. As explained in para-1 of the facts. Therefore, the appellant was not entitled for regular promotion to BS-18 under the prevailing Service Rules and was correctly dealt in accordance with law/quality. No right of the appellant has been infringed/jeopardized.
2. Incorrect. The answering respondents have not violated any right of the appellant nor caused any malafide or discrimination. In fact, the Department is followed rules/policy strictly in the cases of promotion of officers/officials of the Department.
3. Incorrect. The Department amended the existing service rules by issuance a Notification dated **25.11.2022 (Annex-I)** in light of recommendations of SSRC in its meeting held on 16.09.2022.
4. Incorrect. The Government is empowered to frame or amend the Service Rules of the any Departments through SSRC forum.
5. Incorrect, as the University Grant Commission of its 39th meeting held on 12.02.1998 has categorically mentioned that:- **(Annex-II)**


“The degree of B-Tech (Hons) is not similar to BE/B.BSc Engineering Degree. Both the Degrees of B.E/B.Sc Engineering and B-Tech (Hons) be considered as two distinct disciplines of knowledge in the field of Engineering & Technology and should run parallel to each other. The committee further noted that it was upto the Employer to determine the type of qualifications required for a particular job”.

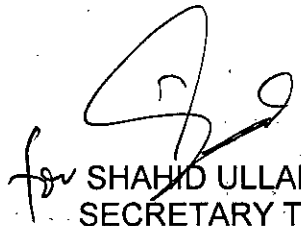
(Authority U.G.C. Islamabad letter No. 8-36/UGC-A&C/2002/1666 dated 23.01.2002).


6. Incorrect, as explained in para-1 of the facts. Moreover, neither discrimination to any individual, including the appellant was done nor any rule or principle of law infringed, the apprehensions of the appellant are misleading.
7. As explained in para-1 of the facts.
8. Incorrect. As explained in para-11 of the facts. Moreover, appellant cannot claim any vested right on policy decisions of the govt. The Department framed and formulated its rules, correctly and in public good. There is thus no scope / need of amending them in order to appease and accommodate few and that too at the expense of overall functioning of the entire department.
9. Miscalculated, false and incorrect, hence denied
10. As explained in para-3 of the facts
11. Incorrect, hence denied
12. Incorrect, as the policy decisions of other provinces (if any) are not binding on the answering respondents as they too make their own policies, rules and laws in good faith and that too for the public benefit.
13. Incorrect, as explained in para-11 of facts
14. Incorrect, as explained in para-3 of facts
15. Incorrect, as explained in para-11 of facts


16. Incorrect, as explained in para-11 of facts
17. Incorrect and misleading, hence denied. The answering respondents have acted in good faith and in strict compliance of law.
18. As explained in para-1 of the facts.
19. As explained in para-11 of the facts.
20. As explained in para-12 of the facts.
21. No comments
22. The Respondents would like to seek permission of this Hon'able court to advance more grounds during the time of arguments.

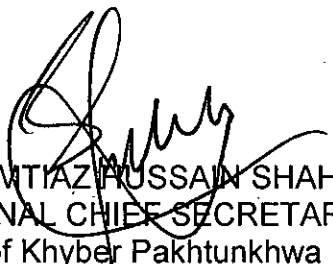
It is therefore, humbly prayed that the instant the appellant being devoid of any merit may kindly be dismissed with cost.


SECRETARY TO
Govt of Khyber Pakhtunkhwa
C&W Department, Peshawar
(Respondent No.1 & 6)
(*Muhammad Saeed Mawani*)


for SHAHID ULLAH
SECRETARY TO
Govt of Khyber Pakhtunkhwa
Establishment Department,
Peshawar
(Respondent No.2)


AKHTAR SAEED TURK
SECRETARY TO
Govt of Khyber Pakhtunkhwa
LAW DEPARTMENT, PESHAWAR
(Respondent No.3)


AMIR SULTAN TAREEN
SECRETARY TO
Govt of Khyber Pakhtunkhwa
Finance Department, Peshawar
✓ (Respondent No.4)


SYED IMTIAZ HUSSAIN SHAH
ADDITIONAL CHIEF SECRETARY
Govt of Khyber Pakhtunkhwa
P&D Department, Peshawar
(Respondent No.5)

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BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL
PESHAWAR

SERVICE APPEAL NO. 2325/2023

Mr. Shaukat Ullah Shah
Retired Assistant Engineer C&WD

--- Appellant

VERSUS

Secretary to Govt of Khyber Pakhtunkhwa
C&W Department, Peshawar & Others

--- Respondent

AFFIDAVIT

I, Muhammad Javed Marwat, Secretary to Govt of Khyber Pakhtunkhwa, C&W Department, Peshawar hereby affirm and declare that all the contents of the Parawise comments are correct to the best of my knowledge and belief and nothing has been concealed.

It is further stated on oath that in this appeal, the answering respondent neither has been placed ex-parte nor their defence has been struck off *cost*.

Deponent

M. Javed
MUHAMMAD JAVED MARWAT
SECRETARY
to Govt of Khyber Pakhtunkhwa
C&W Peshawar.
(Respondent No.1 & 6)

(Add charge)

ATTESTED



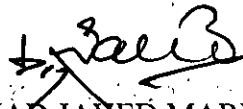


**GOVERNMENT OF KHYBER PAKHTUNKHWA
COMMUNICATION & WORKS DEPARTMENT**

NO. SO (Lit.)C&W/3-501/2023
Dated Peshawar, the January 08,2024

AUTHORITY LETTER

Mr. Mudasir Khan, Section Officer (Litigation), C&W Peshawar having CNIC 11101-3599327-1 is hereby authorized to file the Joint Parawise Comments in case titled "Service Appeal No. 2325 of 2023 Shaukat Ullah Shah Vs Govt Of Khyber Pakhtunkhwa Through Secretary C&W Peshawar" on behalf of Secretary C&W Department.


MUHAMMAD JAVED MARWAT (Addl. charge)
SECRETARY
to Govt of Khyber Pakhtunkhwa
C&W Peshawar.
(Respondent No.1 & 6)

Annex-I

TO BE SUBSTITUTED FOR THE SAME NUMBER AND DATE



GOVERNMENT OF KHYBER PAKHTUNKHWA
COMMUNICATION & WORKS DEPARTMENT

Dated Peshawar, Nov 25, 2022

NOTIFICATION:

No.SOE/C&WD/8-12/2022: In pursuance of the provision contained in sub-rule (2) of rule 3 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, the Communication and Works Department, in consultation with the Establishment Department and the Finance Department, hereby directs that in this Department's Notification No.SOE/C&WD/8-12/2009, dated 25th March, 2010, the following further amendment shall be made, namely:

AMENDMENTS

In the APPENDIX, under the heading "ENGINEERING SERVICE", for Serial No. 3, the following shall be substituted, namely:

1	2	3	4	5
"3.	Executive Engineer/ Design Engineer/ Senior Engineer/ Research Officer/ Deputy Director Technical/ Senior Engineer (Survey and RMU) (BPS-18).	--	--	By promotion, on the basis of senior cum-fitness, from amongst the holders the posts of Sub Divisional Office Assistant Engineer, Junior Engineer & Assistant Research Officer with at least (five) years service as such and has passed the Professional Examination prescribed in West Pakistan Building and Roads, Code".

SECRETARY TO
Government of the Khyber Pakhtunkhwa
Communication and Works Department

Endst of even number and date

Copy is forwarded to the:-

1. All Administrative Secretaries, Govt of Khyber Pakhtunkhwa
2. Secretary to Governor Khyber Pakhtunkhwa, Peshawar
3. Principal Secretary to Chief Minister Khyber Pakhtunkhwa, Peshawar
4. All Chief Engineers C&W Department
5. Managing Director PKHA Peshawar
6. Secretary Khyber Pakhtunkhwa Public Service Commission Peshawar
7. All Superintending Engineers C&W Circles
8. Superintending Engineer Maintenance Peshawar
9. Superintending Engineer C&W Circle North Waristan at Bannu
10. Superintending Engineer Mega Projects
11. All Executive Engineers C&W/Building/Highway Divisions
12. Section Officer (R-V) Establishment Department, Peshawar
13. Section Officer (Policy) Establishment Department, Peshawar
14. Deputy Legislation Officer-IV, Law Department, Peshawar
15. Managing Printing Press for publication in the issue of next Govt gazette
16. PS to Chief Secretary Khyber Pakhtunkhwa, Peshawar.
17. PS to Advisor to Chief Minister Khyber Pakhtunkhwa for C&W Department
18. PS to Secretary, C&W Department, Peshawar
19. PA to Addl: Secretary, C&W Department, Peshawar
20. PA to Deputy Secretary (Admn), C&W Deptt; Peshawar
21. Office File

Attested
[Signature]

[Signature]
(IJAZ KHAN)

SECTION OFFICER (Estb)

Annex-II
9
UNIVERSITY GRANTS COMMISSION

H-9, Islamabad - Pakistan
Tel: +92-51-925766, 9257651-55, Fax: 51-9250128
E-mail: ugc@isb.paknet.com.pk

No. S-36/UGC-A&C/2002/1666

Dated : 23.01.2002.

Mr. Yousaf Khan,
LS-II,
Teach Bhatta Subdivision,
Bakra Mandi Chowk,
Rawalpindi.

Subject:- EQUIVALENCE OF B.TECH (HONS) DEGREE

Dear Sir,

Reference your application dated 19.01.2002 on the above subject. Appended below is a decision of the Equivalence Committee of UGC taken in its 39th meeting held on 12.02.1998.

"The degree of B.Tech (Hons) is not similar to B.E/B.Sc Engineering degree. Both the degrees of B.E/B.Sc Engineering & B.Tech (Hons) be considered as two distinct disciplines of knowledge in the field of Engineering and Technology and should run parallel to each other. However, B.Tech (Hons) may be treated at par and comparable with B.E/B.Sc Engineering degree holders as far as grades, pay and promotions and other benefits are concerned. The Committee further noted that it was up to the employer to determine the type of qualification required for a particular job."

Yours sincerely,

Dr. Muhammad Latif Virk
Adviser (A&C)

Attested
Amir

Amex-III

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SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:
Mr. Justice Gulzar Ahmed
Mr. Justice Qazi Faez Isa
Mr. Justice Sardar Tariq Masood

C.P. No. 78-K of 2015
(On appeal against order dated 21.11.2014
passed by the Sindh Service Tribunal,
Karachi, in Appeal No. 195 of 2014)

Maula Bux Shaikh & others Petitioner(s)

VERSUS

Chief Minister Sindh & others Respondent(s)

- For Petitioner No.1 : Mr. Sabih-ud-Din Ahmed, ASC
- For Petitioner Nos.2-3 : Mr. Rasheed A Rizvi, Sr. ASC
- For Respondent Nos.1-4 : Mr. Sabtain Mahmood, Asstt.A.G. Sindh
- For Respondent No.5 : Mr. Ghulam Halder Shaikh, ASC
- For Respondent Nos.6-7 & 9 : Nony
- For Respondent Nos.8 & 12 : Dr. Muhammad Farouh Naseem, ASC
- For Resplnt Nos.10-11, 13-17 : Mr. M. Aqil Awan, Sr. ASC
- Date of Hearing : 24.05.2016

JUDGMENT

GULZAR AHMED, J.— Maula Bux Shaikh, Petitioner No.1, (the Petitioner) had filed a Service Appeal before the Sindh Service Tribunal, Karachi, (the Tribunal) challenging Notification No.SOI(W&S)E/12-1/2005 dated 19.03.2014 to be ultra vires the Pakistan Engineering Council Act, 1976 (PEC Act). The circumstances under which the Service Appeal was filed by the Petitioner are that he was employed as Sub-Engineer BS-11 in the year 1985 in the Works and Services Department, Government of Sindh, Karachi. He was

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Court Associate
Supreme Court of Pakistan
Islamabad

promoted as Assistant Engineer BS-17 in the year 1997 and since then has been serving in such post in his said department. The case of the Petitioner is that he is a qualified engineer holding degree of Bachelor of Engineering. He has unblemished service record and is eligible for promotion to the post of Executive Engineer BS-18 but on account of the notification referred to above, his chance for promotion as Executive Engineer BS-18 has been gravely diminished for the reason that said notification has provided 13% promotion quota to Diploma holders and 7% promotion quota to B.Tech (Hons) Degree holders for the post of Executive Engineer BS-18. The grievance of the Petitioner is that the post of Executive Engineer BS-18 being that of a purely professional engineering work could only be performed by a professional engineer holding accredited engineering qualification, as provided in the PEC Act.

2. We have heard learned ASCs for the parties at length and have gone through the record of the case. The learned ASCs for the parties have also filed their written note of arguments, which too have been perused by us.

3. The notification dated 19.03.2014 is as follows:

NOTIFICATION

No.SOI(W&S)E.W/12-1/2005: In pursuance of Sub-Rule (2) of Rule-3 of the Sindh Civil Servants (Appointment, Promotion and Transfer) Rules 1974 and in consultation with the Services, General Administration & Coordination Department, Government of Sindh, and in partial modification of this Department's Notification No. EI(C&W)1-34/81-84(DG) dated 14.01.1987, the method, qualification and other conditions for appointment in respect of the post of Executive Engineer (BPS-18) (Civil/Mechanical/Electrical) in Works & Services Department, Government of Sindh mentioned in column-2 of the table below:-

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[Signature]

Court Associate
Supreme Court of Pakistan
Islamabad



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TABLE

Names of the post with BS	METHOD OF APPOINTMENT
1	2
Executive Engineer (Civil/Mechanical & Electrical) (BPS-18)	i) Eighty percent by promotion from amongst the Assistant Engineers B.E. in Civil, Electrical or Mechanical Engineering with atleast five years service in BPS-17 on seniority-cum-fitness basis with their respective technology. ii) Thirteen percent by promotion from amongst the Diploma holder Assistant Engineers having Diploma in Civil, Electrical or Mechanical Engineering with atleast five year service in BPS-17 on seniority-cum-fitness basis with their respective technology and iii) Seven percent by promotion from amongst the Assistant Engineers having B.Tech (Hons) degree in Civil, Electrical or Mechanical Engineering with atleast five years service in BPS-17 on seniority-cum-fitness basis with their respective technology.

GAZI SHAHID PERVEZ
SECRETARY TO GOVT. OF SINDH

4. In order to regulate the engineering profession, the Parliament has passed PEC Act on 10.01.1976. Section 2(ii) of the PEC Act defines accredited engineering qualification, which is as follows:

"accredited engineering qualification" means any of the qualification included in the First Schedule or the Second Schedule

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5. It is common ground that neither Diploma nor B.Tech (Hons) Degree are accredited engineering qualification for the reason that there is no reference to the Diploma and B.Tech (Hons) Degree in the accredited engineering qualification provided in the first and second schedule of the PEC Act. Thus, accredited engineering qualification is ascribed to those who hold Bachelor Degree in Engineering from

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Supreme Court of Pakistan
Islamabad



engineering, electrical engineering, mechanical engineering and biomedical engineering etc;

(h) organizing, managing and conducting the teaching and training in engineering universities, colleges, institutions, Government colleges of technology, polytechnic institutions and technical training institutions;

(i) preparing standard bidding or contract documents, construction cost data, conciliation and arbitration procedures, guidelines for bid evaluation, prequalification and price adjustments for construction and consultancy contracts; and

(j) any other work which the Council may, by notification in the official Gazette, declare to be an engineering work for the purposes of this Act;

8. Registered Engineer is defined in Section 2(xxvii) as follows:

"registered engineer" means a person who holds an accredited engineering qualification, whether working privately or in the employment of an engineering public organization and is registered as such by the Council. Registered Engineer shall perform all professional engineering works except independently signing design.

9. Section 10(1) of the PEC Act provides:

"The engineering qualifications granted by engineering institutions in Pakistan which are included in the First Schedule shall be the accredited engineering qualifications for the purposes of this Act."

10. While section 11(1) provides:

"The engineering qualifications granted by engineering institutions outside Pakistan which are included in the Second Schedule shall be accredited engineering qualifications for the purposes of this Act."

11. Section 27 of the PEC Act provides for penalties and procedure, which is as follows:

"27. Penalties and procedure.— (1) After such date as the Federal Government may, after consultation with the Council, by notification in the official Gazette, appoint in this behalf, whoever undertakes any professional engineering work shall, if his name is not for the time being borne on the Register, be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both, and, in the case of a continuing offence, with a further fine which may extend to two hundred rupees for every day after the first during which the offence continues.

Attested
My MC

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Court Associate
Supreme Court of Pakistan
Islamabad



accredited Engineering Universities/Institutions in Pakistan and abroad.

6. Professional Engineer is defined in Section 2(xxii); which is as follows:

"professional engineer" means a person who holds an accredited engineering qualification and after obtaining a professional experience of five years, whether working privately or in the employment of an engineering public organization, has passed the prescribed engineering practice examination and is registered as such by the Council;

7. Professional Engineering Work is defined in Section 2(xxv) as follows:

"professional engineering work" means the giving of professional advice and opinions, the making of measurements and layouts, the preparation of reports, computations, designs, drawings, plans and specifications, and the construction, inspection and supervision of engineering works, in respect of—

(a) railways, aerodromes, bridges, tunnels and metalled roads;

(b) dams, canals, harbours, light houses;

(c) works of an electrical, mechanical, hydraulic, communication, aeronautical, power, engineering, geological or mining character;

(d) waterworks, sewers, filtration, purification and incinerator works;

(e) residential and non-residential buildings, including foundations framework and electrical and mechanical systems thereof;

(f) structures accessory to engineering works and intended to house them;

(g) imparting or promotion of engineering education, training and planning, designing, development, construction, commissioning, operation, maintenance and management of engineering works in respect of computer engineering, environmental engineering, chemical engineering, structural engineering, industrial engineering, production engineering, marine engineering and naval architecture, petroleum and gas engineering, metallurgical engineering, agricultural engineering, telecommunication engineering, avionics and space engineering, transportation engineering, air-conditioning, ventilation, cold storage works, system engineering, electronics, radio and television engineering, civil

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ATTESTED

Court Associate
Supreme Court of Pakistan
Islamabad



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(2) After the date appointed as aforesaid, whoever employs for any professional engineering work any person whose name is not for the time being borne on the Register shall be punishable, on first conviction, with imprisonment for a term which may extend to six months, or with fine which may extend to five thousand rupees, or with both, and on a second or subsequent conviction, with imprisonment for a term which may extend to one year, or with fine which may extend to ten thousand rupees, or with both.

(3) Whoever willfully procures or attempts to procure himself or itself to be registered under this Act as a registered engineer, professional engineer, consulting engineer, constructor or operator by making or producing or causing to be made or produced any false or fraudulent representation or declaration, either orally or in writing, and any person who assists him therein shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

(4) Whoever falsely pretends to be registered under this Act, or not being registered under this Act, uses with his name or title any words or letters representing that he is so registered, irrespective of whether any person is actually deceived by such pretence or representation or not, shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

(5) No person undertaking any professional engineering work shall, unless he is registered under this Act, be entitled to recover before any court or other authority any sum of money for services rendered in such work.

(5A) No person shall, unless registered as a registered engineer or professional engineer, hold any post in an engineering organization where he has to perform professional engineering work.

(6) No court shall take cognizance of any offence punishable under this Act save on complaint made by, or under the authority of, the Council.

(7) No court inferior to that of a Magistrate of the first class shall try any offence punishable under this Act.

12. The main gist of the arguments of the learned ASC appearing for the petitioners is that the work of Executive Engineer BS-18 is strictly that of a Professional Engineer and it can only be performed by a Professional Engineer, who has engineering degree from an Accredited Engineering Institution of Pakistan or abroad as included in the first and second schedule of the PEC Act, Diploma holders and B.Tech

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(Hons) Degree holders are not professional engineers and cannot perform work of a Professional Engineer and that law specifically provides penalties to those who perform professional engineering work without possessing accredited engineering qualification and registered as Professional Engineer by the Pakistan Engineering Council (the Council).

13. On the other hand, learned ASC appearing for the respondents have contended that this very issue has come up before this Court number of times and this Court has dealt with it time and again and held that in the matter of employment and promotion etc, the Government Institutions are legally entitled to take decisions as a matter of policy to grant promotion to employees in Engineering Public Organization who are Diploma holders in engineering and B.Tech (Hons) Degree holders.

14. We have noted that the Tribunal in the impugned judgment has referred to number of judgments of this Court and the point in issue in those judgments substantially also deals with the present controversy before us. Thus before dilating upon the matter, it is essential that we examine the judgments, which this Court has already delivered and are also referred in the impugned judgment of the Tribunal. The first case in line is a judgment of three members bench of this Court in the cases of PAKISTAN DIPLOMA ENGINEERS FEDERATION (REGISTERED) THROUGH ITS CHAIRMAN V/s FEDERATION OF PAKISTAN THROUGH SECRETARY MINISTRY OF WATER & POWER, GOVERNMENT OF PAKISTAN, ISLAMABAD & 9 OTHERS (1994 SCMR 1807). In this case the question involved was whether the Diploma Engineers employed in Pakistan Railways can be debarred from promotion to Grade-18 on the

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ground that they are not registered as "professional engineers and consulting engineers" with Pakistan Engineering Council even though they were otherwise by reasons of their seniority etc eligible for promotion to Grade-18. While referring to the case of MUHAMMAD AZIM JAMALI AND 11 OTHERS V/S GOVERNMENT OF PAKISTAN, THROUGH SECRETARY/ CHAIRMAN, MINISTRY OF RAILWAYS AND 23 OTHERS (PLD 1992 Karachi 1) = (1992 PLC(CS) 637), where split decision was given by two Hon'ble Judges of Sindh High Court and ultimately it was referred to a Referee Judge for his opinion. This Court in dealing with the case before it relied upon the conclusion reached by the Referee Judge and quoted the same in the judgment as follows:-

"16. The conclusion of the learned Chief Justice was expressed as follows:

"A careful reading of subsections (1) and (2) of section 27 of the Act will show that the penalties prescribed in the section are attracted only against those persons who are not registered under the Act but undertake any professional engineering work as defined in the Act. Similarly, the person who employs a person who is not registered under the Act, on a professional engineering work, is equally liable for punishment under the Act. The above provisions are wide enough to include the cases of those persons who may be employed in any private or Governmental organization and are called upon to undertake any professional engineering work. The provisions of the Act, regarding registration of professional engineer and consulting engineer, therefore, in my view, would not be applicable to the persons serving as engineer with the Railways, as in course of their such employment they neither act as professional engineer nor as consulting engineer. However, if such persons undertake any professional engineering work as defined under the Act, then the provisions regarding registration under the Act will be attracted and they could also be punished in accordance with the provision of section 27 of the Act for violating the provision of the Act."

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1971. The Federal Government, in order to encourage the diploma holders to improve their academic qualification resolved to prescribe courses namely B.Tech (Pass) and B.Tech (Hons). The later was treated as equivalent to B.Sc. (Engineering) and Bachelor of Engineering for the purpose of promotion. Petitioner having passed B.Tech (Pass) and B.Tech (Hons) was denied promotion in BPS-17 for the reasons that B.Tech (Hons) was not recognized by Pakistan Engineering Council as equivalent to B.Sc. (Engineering) Degree. Petitioner filed Service Appeal, which was dismissed. The Appeal filed by the petitioner before this Court was also dismissed. The petitioner then applied for review, which was allowed and the judgment dismissing the Civil Appeal was recalled and his appeal was allowed with directions to consider the petitioner's case of promotion to BS-17. The Court while allowing relief to the petitioner observed as follows:

"In this regard, we may point out that it is the domain of the Government concerned to decide whether a particular academic qualification of a civil servant/employee is sufficient for promotion from one Grade to another higher Grade and whereas it is in the domain of the Pakistan Engineering Council to decide, as to whether a particular academic qualification can be equated with another academic qualification, but it has no power to say that the civil servants/employees holding particular academic qualification cannot be promoted from a particular Grade to a higher Grade. The main object of the Act as pointed out by one of us (Ajmal Khan, J.) and Saaduzzaman Siddiqui, C.J. (as he then was) in the above High Court judgment is to regulate the working of professional engineers and consulting engineers and not to regulate the qualification or the working of the engineers in the Government or semi-Government departments. The definitions of the terms "professional engineer" and "professional engineering work" given in clauses (j) and (k) of section 2 of the Act are to be read together and, therefore, as a corollary to the same, it must follow that the term "professional engineering work" as defined in clause (k) of section 2 of the Act is to be performed by a professional engineer as defined in clause (j) thereof, which is evident from section 8 of the Act, which defines the functions of the Pakistan Engineering Council as under:-

8. Functions of the Council--- The following shall be the functions of the Council, namely:--

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for promotion to UPS-17 keeping in view the admitted fact that a number of other civil servants/employees in the same department in the same position have been promoted by the departments/organisations concerned. In this behalf, it may be pertinent to refer to the case of Mukhtar Ahmad and 37 others v. Government of West Pakistan through the Secretary, Food and Agriculture, Civil Secretariat, Lahore and another (PLD 1971-SC 846). The fact of the above case were that the persons possessing the qualifications mentioned in Rule 7 of the West Pakistan Agricultural Engineering Service (Class II) Rules, 1963 were not available. The Government launched a scheme for training of Assistant Agricultural Engineers, whereunder 40 Graduates in B.Sc. Agriculture were to be selected for appointment as Assistant Agricultural Engineers after their successful completion of two years' diploma course at an Agricultural University. The above scheme was discussed by the government with the Public Service Commission. The candidates selected by the Public Service Commission, who were about to complete their training of two years, were informed by the government that they would have to appear again before the Public Service Commission to be selected for appointment to the posts of Assistant Agricultural Engineers (Class-II). The candidates asserted that after the completion of their training they were entitled to be appointed as Assistant Agricultural Engineers (Class-II) in terms of the offer made to them and they could not be required to appear again before the Public Service Commission for such appointment. On the other hand, the Government contended that the candidates did not possess the qualification prescribed by Rule 7 of the West Pakistan Agricultural Engineering Service (Class II) Rules, 1963, for appointment to such posts. The matter came up for hearing before this Court in the form of an appeal with the leave of this Court filed by the candidates against the judgment of a Division Bench of the erstwhile High Court of West Pakistan. The same was allowed and inter alia the following was concluded:-

"The offer of the Government and its acceptance by the appellants constituted a valid agreement and the Governor's order dated the 1st July, 1965 provided the authority for such an agreement. This agreement is capable of being enforced in law. The Government was both competent and obliged to implement that agreement. When the Governor's order, dated the 1st July, 1965, provided a special authority for recruitment to the 46 posts of Assistant Agricultural Engineers, rule 7 of the Recruitment Rules was not applicable in this case."

11. The above case supports the petitioner's stand. Another aspect which escaped notice of this Court in the judgment under review is that some of the other civil servants/employees placed in the same position as the petitioner was had been considered for promotion to UPS-17 and in fact were promoted, whereas the petitioner was

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10. Referring to the merits of the present case, as pointed out hereinabove, that the petitioner pursued the above decision of the Government of Pakistan dated 26.10.1973 passed by B.Tech (Pass) in 1977 and B.Tech (Honours) in March, 1981, from the NED University (Karachi) and, therefore, acted upon the above representation of the Government, in the view of the matter, it is not just and fair not to consider the petitioner

would be attracted and not otherwise.
above clause (k) of section 2, the provisions of the Act in professional engineering work as envisaged by the Act in professional engineer as defined in the Act for performing Government organizations, if the Government or any persons who are employed in the Government or any professional engineers and consulting engineers and not to regulate the persons qualified to practice as Pakistan Engineering Council is vested with the functions of the above quoted section shows that the

A perusal of the above quoted section shows that the

- (a) maintenance of a register of person qualified to practice as professional engineers and consulting engineers;
- (b) recognition of engineering qualifications for the purpose of registration of professional engineers and consulting engineers;
- (c) removal of names from the Register and restoration to the Register of names which have been removed;
- (d) laying down of standards of conduct for the members;
- (e) safeguarding the interest of the members;
- (f) promotion of reforms in the engineering profession;
- (g) management of the funds and properties of the Council;
- (h) promotion of engineering education and review of courses of studies in consultation with the Universities;
- (i) levy and collection of fees from applicants for registration or temporary licences and members;
- (j) exercise of such disciplinary powers over the members and servants of the Council as may be prescribed;
- (k) formation of such committees as may be prescribed; and
- (l) performance of all other functions connected with, or incidental or incidental to, the aforesaid functions.

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No.1 was Bachelor of Engineering (Electrical). The respondent No.1 challenged the promotions of petitioners in the High Court. The High Court set aside all promotions of petitioners on the ground that they did not hold valid engineering degree. This Court in the reported judgment has dealt with the matter and observed as follows:-

3. Admittedly the petitioners were Assistant Directors in the respondent Authority with at least 5 years service in the relevant field and hence in our opinion they fulfill the requirement. It would be seen that when the petitioners were considered for promotion in 2012 the rules in force were the Pakistan Standards Institution Recruitment Rules for class one posts wherein per rule 5 the post of deputy Directors to be filled in by promotion could be done from amongst Assistant Directors category one with at least 5 years service in the Institution. Nowhere in the said rules was it provided that they would be professional engineers or for that matter even diploma holders. If fact such condition is prescribed in rule 6 which provides for direct appointments whereby per the schedule to the same an Assistant Director must hold a Master's Degree in Science or Bachelor's Degree in Engineering in the specified field from a recognized university with at least 3 years experience in that field etc. Admittedly, the petitioners were appointed by promotion and hence in our opinion no such condition can be placed upon them as in the case of a direct appointees. Insofar as the case of Muhammad Younis Aarsh (supra) is concerned, the same is distinguishable on facts as therein it was found that under Sindh Council Unified Grades Services Rules the basic qualification for promotion to BS-20 was that the candidates should have B.Sc. Degree in Engineering. As observed above this is not the case in the present matter. It would further be seen that now per section 26 of the Pakistan Standards and Quality Control Authority Act, 1996 rules have been framed which have been notified in the official gazette on 15th May, 2013. Under Rule 5 promotion to the post in BS-1 to 19 shall be made on the basis of seniority-cum-fitness etc. and he or she should also fulfill the conditions contained in schedule to the rules according to which for promotion to the post of Deputy Director Technical the eligible person would be an Assistant Director Technical and he should have 5 years experience in BS-17 in technical matters. Nowhere has it been prescribed that he or she should be a qualified engineer.

7. In the circumstances, we find that the impugned order has unnecessarily been influenced by the comments of the Pakistan Engineering Council that no post carrying any Engineering responsibility could be entrusted to non-engineering graduates. In our opinion, it is for the department/institution itself to determine as to whether the persons in its service are fit to hold a particular position. In the present case it has been done by the

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denied the above benefit which amounted to violation of inter alia Article 25 of the Constitution of the Islamic Republic of Pakistan, 1973. In this regard, reference may be made to the case of J.A. Sherwani and others v. Government of Pakistan through Secretary, Finance Division, Islamabad and others (1991 SCMR 1041).

12. The judgment of this Court in the case of Muhammad Siddique Nasim (supra) relied upon by the Tribunal is distinguishable for more than one reason. Firstly, in the above case the notification of the Government of Punjab dated B-2-1961, equating B.Tech (Honours) with B.Sc Engineering degree was withdrawn on 15.03.1985, whereas the petitioner received degree of B.Tech (Honours) in June, 1985, i.e. after the withdrawal of the notification whereas in the present case, admittedly the petitioner passed his B.Tech (Honours) in March, 1981, before the Pakistan Engineering Council through its Registrar's above letter dated 24.4.1984 stated that there was typographical error in the above-quoted portion of its Registrar's letter dated 30.04.1981. Secondly, in the judgment in the case of Pakistan Diploma Engineers Federation (Registered) through its Chairman (supra), this Court affirmed the majority view of the High Court of Sindh in the case of Muhammad Azim Jamali (supra), in which it has been held that the provisions of the Act are applicable only to professional engineers and consulting engineers who are in practice and not to the persons working in the Government departments, autonomous bodies, local authorities and private firms or companies.

13. We may again observe that it is exclusively within the domain of the Government to decide whether a particular qualification will be considered sufficient for promotion from a particular Grade to a higher Grade and it is also within the domain of the Government to change the above policy from time to time as nobody can claim any vested right in the policy. However, it cannot abdicate its power to decide the above question in favour of a corporate body which is not in its control nor it can act in a manner which may be violative of Article 25 of the Constitution on account of being discriminatory. It is still open to the Government for future to provide that academic qualification of B.Tech (Honours) will not be considered sufficient for promotion from BPS-16 to BPS-17 if the same does not violate the above principle.

17. Next case is a judgment of two members bench of this Court in the case of MUHAMMAD YOUSUF AARAIN V/S PROVINCE OF SINDH THROUGH CHIEF SECRETARY, SINDH, KARACHI & 10 OTHERS (2007 SCMR 134). The case before the Court was of promotion to BPS-20 by a Diploma holder employee. The Court dealt with the subject and observed as follows:

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17. The basic qualification for a professional engineer under the law is B.Sc. degree in engineering from a recognized institution in Pakistan and diploma in engineering is not a recognized qualification for a professional engineer in terms of PEC Act, 1976. The service rules governing the service of the petitioner (SCUG Service Rules, 1982) and the promotion policy of the Government of Sindh, would neither override the provisions of the above Act nor relax the requirement of basic qualification of professional engineer for a promotion to BPS-20 in the engineering branch of Government of Sindh. The relevant provision of SCUG Service Rules, 1982, is reproduced hereunder:-

"V-Engineering Branch,

1. Grade 20: By selection on merit from among the members of the service in Grade-19 of the Engineering Branch with at least 17 years experience as such in Grade-17 and above."

8. The above rule envisages clearly that a person can be considered for promotion to BPS-20 in the Engineering Branch of Government of Sindh, subject to fulfilment of the condition of basic qualification of a professional engineer prescribed under Pakistan Engineering Council Act, 1976 and a diploma holder being not a professional engineer in terms of PEC Act, 1976 cannot hold a post carrying responsibilities of a qualified professional engineer. The eligibility of a person for promotion from BPS-19 to BPS-20 in the Engineering Department of Government of Sindh is subject to the fulfilment of the requirement of basic qualification with requisite experience as provided in SCUG Service Rules, 1982 in the relevant field therefore, neither any concession could be given to the petitioner in the matter of his eligibility to hold the post in BPS-20 nor the requirement of basic qualification could be relaxed by the Court or by Selection Board. The careful examination of rules on the basis of which petitioner asserted the claim of promotion to BPS-20 against the post carrying responsibilities of a professional engineer, would show that his claim was without any substance and that a diploma holder on the basis of his experience alone, would stand at par to a person registered as professional engineer with Pakistan Engineering Council."

18. The other case is a judgment of three members bench of this Court in the case of NAZIR-UL-HASAN & 2 OTHERS V/S SYEDANWAR IQBAL & OTHERS (2014 SCMR 1827). In this case, respondent No.1 was working as an Assistant Director BS-17. The petitioners were senior to him and were promoted to BS-18 despite the fact that petitioners were holding qualification of Diploma whereas respondent

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servants/employees under Sindh Civil Servants Act, 1973 and Rules made thereunder while PEC Act does not overreach or put an embargo upon the government in the matter of prescribing of qualification and other conditions of service of civil servants/employees for their promotion to higher grade. Yet again, we note that although the vires of notification dated 19.03.2014 has been challenged but we observe that this very notification has been issued under sub-rule (2) of Rule 3 of Sindh Civil Servants (Appointment, Promotion & Transfer) Rules, 1974, which rules have been made under section 26 of Sindh Civil Servants Act, 1973. Neither rule 3(2) of said rules nor section 26 of the Act, 1973, have been challenged nor their vires called in question before us. Thus from this also it is quite apparent that the petitioner does not challenge the government power for prescribing qualification and conditions of service of civil servants/employees for their promotion to higher grade. In any case, we note that the provisions of PEC Act nor the rules and regulations made under it will operate as bar on government to prescribe for qualification and other conditions of service of civil servants/employees for promotion to higher grade.

21. The PEC Act as its preamble itself shows so also reading of the whole Act shows that it essentially deals with regulations of engineering profession in it, *inter alia*, it prescribes for qualification of professional engineers, maintenance of register of professional engineers and accrediting of engineering universities etc and not as a regulator of employment be that be of government service or in the private service. The reasons for it could be found that all sort of engineering work could not be and may not be a professional engineering work for performance of which professional engineers are required. For example, technician, mechanic, draftsman, foreman,

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supervisor and overseer etc. at best could be a skilled workman who may work independently or under the supervision of professional engineer and for such technician, mechanic, draftsman, foreman, supervisor and overseer, the employer may not require holding of professional engineering degree. However, if the person is required to perform any of professional engineering works as defined under the PEC Act, the provisions of this Act will come into operation for ensuring as the work of professional engineer can and only be performed by professional engineer as recognized by PEC Act. The professional engineering work has been clearly defined under section 2(xxv) of the PEC Act which has already been reproduced above and lays down in sufficient details the works which are noted to be as professional engineering works and such works as mandatorily required by the PEC Act to be performed by a professional engineer possessing accredited engineering qualification from accredited engineering institutions in Pakistan and abroad with experience and passing of test of the Council and no other person is allowed to perform professional engineering works be that be a diploma holder or B.Tech. degree holder. This aspect of the matter has been substantially addressed by the PEC Act itself when making provision of section 27(SA) that "no person shall unless registered as a registered engineer or professional engineer, hold any post in an engineering organization where he has to perform professional engineering work." This professional engineering work can only be performed by a person who is registered as registered engineer or professional engineer and both registered engineer and professional engineer in terms of the PEC Act are by law required to possess accredited engineering qualification as prescribed by the PEC Act from accredited engineering institution.

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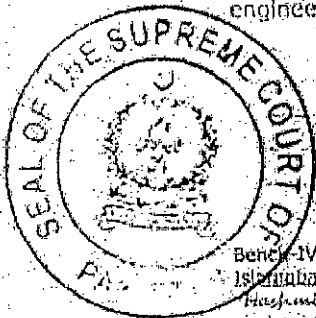
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Supreme Court of Pakistan
Islamabad



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22. We may further observe that section 27 of the PEC Act provides for penalty for a person who undertakes any professional engineering work if his name is not borne on the Register but it also makes the employer who employs for any professional engineering work any person whose name is not, for the time being, borne on the Register to perform professional engineering work, shall also be liable for penalty as prescribed in the PEC Act itself. Thus both civil servant/employee and their employer would be liable to penalty as provided under section 27 if they undertake or allow a person to undertake professional engineering work whose name is not borne on register under PEC Act.

23. The net result of above discussion is that this petition fails. It is dismissed and leave refused, however with note of caution that government shall not allow or permit any person to perform professional engineering work as defined in the PEC Act, who does not possess accredited engineering qualification from the accredited engineering institution and his name is not registered as a registered engineer or professional engineer under the PEC Act.



Bench-IV
Islamabad
APPROVED FOR REPORTING

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[Signature]
Court Associate
Supreme Court of Pakistan
Islamabad

Announced in open Court on 03.10.2018

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JUDGE

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WORKING PAPER FOR S.S.R.C

SUBJECT: AMENDMENT IN THE EXISTING SERVICE RULES OF C&W DEPARTMENT FOR PROMOTION OF ASSISTANT ENGINEERS B-TECH (HONS)/ASSISTANT ENGINEERS DIPLOMA HOLDER (BS-17) TO THE POST OF EXECUTIVE ENGINEER (BPS-18)

The B-Tech (Hons) holder Assistant Engineers (BS-17) C&WD filed writ petition No.2707-P/2021 & writ petition No.1539-P/2021 in Peshawar High Court Peshawar with the pray to create/reserve 20% quota in the posts of BS-18 & above for the employees having B-Tech (Hons) degree serving as Sub Divisional Officers/Assistant Engineers (BS-17) in respondent Department (C&WD) Annex-I. In the meanwhile, a high level committee was constituted under the chairmanship of Additional Chief Secretary Khyber Pakhtunkhwa in light of Competent Authority (Chief Secretary) directions to be based the TORs mentioned in the referred Notification (Annex-II).

2. In the afore-referred writ petitions, Peshawar High Court Peshawar has passed the orders on 24.03.2022 (Annex-III) with the verdicts "The committee is directed to finalize its recommendations within 60 days positively".

3. Now in this regard Establishment & Admn: Department has forwarded minutes of the meeting held on 20.04.2022 for further necessary action (Annex-IV). In the minutes, the committee has referred the operative part of the Supreme Court of Pakistan judgment dated 24.04.2018 (Annex-V), which stipulates that "the net result of above discussion is that this petition fails. It is dismissed and leave refused, however, with note of caution that Government shall not allow or permit any person to perform professional engineering work as defined in the PEC Act, who does not possess accredited engineering qualification from the accredited engineering institutions and this name is not registered as a register engineer or professional engineer under the PEC Act".

4. In the concluding para, the committee has mentioned that after thread bare discussion, in light of Supreme Court Judgment, the Khyber Pakhtunkhwa Civil Servants Act, 1973, APT Rules, 1989 and the Peshawar High Court Judgment dated 24.03.2022 regarding convening of SSRC meeting, it was unanimously recommended that C&W Department may review its existing service rules by providing opportunity/ chances of promotion to the B-Tech (Hons) Degree holders and Diploma Holders Assistant Engineers on the analogy of other technical departments i.e. Irrigation, Energy & Power and PHE Departments (Annex-VI).

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5. In this connection, C&W Department is of view in light of operative part of Supreme Court of Pakistan judgment dated **24.05.2018** that non-professional posts not exist in C&W Department to consider the promotion of Assistant Engineers (BS-17) holding the B-Tech (Hons) and Diploma Holders, except two (02) Nos post of Deputy Director Technical (BS-18) and one number post of the Senior Engineer (Survey/RMU) (BS-18) are available against which the promotion of the referred cadres can be considered under the referred Supreme Court of Pakistan judgment. Moreover, as per 10% quota under the existing Service Rules of C&W Department, **23 Nos posts** of Assistant Engineers/SDOs (BS-17) are filled by way of promotion from amongst B-Tech (Hons) Sub Engineers.

6. In order to implement the court directions as well as High Level Committee recommendations, C&W Department suggest the following two proposals for placing before SSRC committee for deliberation and decision:

- i. Standing Service Rules Committee (SSRC) is requested to consider the amendment in the existing Service Rules of C&W Department, 2010 for promotion of Assistant Engineers (BS-17) holding the B-Tech (Hons) and Diploma Holders against non-professional posts in the department according to the judgment of Supreme Court of Pakistan and for this purpose a sub-committee may be constituted to analyze and differentiate the existing posts in C&W department in BS-18, 19 & 20 into purely professional and non-professional posts and accordingly submit proposal for amendment in promotion rules of BS-18 in C&W Department.

OR

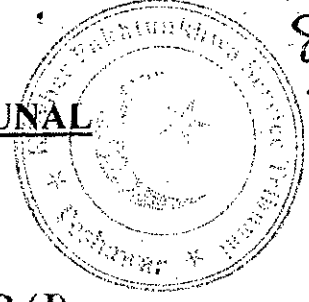
- ii. Standing Service Rules Committee (SSRC) is requested to consider the amendment in the existing Service Rules of C&W Department, 2010 for promotion of Assistant Engineers (BS-17) holding the B-Tech (Hons) and Diploma Holders according to their existing strength to BS-18 on the analogy of other line Departments as recommended by the High Level Committee headed by Additional Chief Secretary.

Sahib Khan
DEPUTY SECRETARY (ADMN)
C&W DEPARTMENT

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Annex - V

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**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR**

Service Appeal No. 813/2023

BEFORE: MR. SALAH-UD-DIN ... MEMBER (J)
MISS FAREEHA PAUL ... MEMBER (E)

**Muhammad Ghazanfarullah, Sub Divisional Officer (Mega Projects),
Division-II, C&W Department, Peshawar. (Appellant)**

Versus

1. The Government of Khyber Pakhtunkhwa through Chief Secretary Civil Secretariat, Peshawar.
2. The Secretary, Government of Khyber Pakhtunkhwa Communication & Works Department, Civil Secretariat, Peshawar.
3. The Secretary, Government of Khyber Pakhtunkhwa, Establishment Department, Civil Secretariat, Peshawar.
4. The Secretary, Government of Khyber Pakhtunkhwa, Finance Department, Civil Secretariat, Peshawar. (Respondents)

M/S Khalid Rehman & Zartaj Anwar,
Advocates ... For appellants

Mr. Asad Ali Khan,
Assistant Advocate General ... For respondents

Date of Institution..... 11.04.2023
 Date of Hearing..... 14.09.2023
 Date of Decision..... 15.09.2023

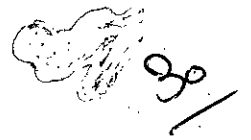
JUDGEMENT

FAREEHA PAUL, MEMBER (E): Through this single judgment, we intend to dispose of instant appeal as well as connected Service Appeal No. 812/2023 titled "Farhat Ali Versus The Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar and others", Service Appeal No. 867/2023 titled "Sher Wali Jhang Versus the Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar and others", Service Appeal No. 864/2023 titled "Muhammad Humayun Versus the Government of Khyber Pakhtunkhwa

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 Member (E)
 Khyber Pakhtunkhwa Service Tribunal
 Peshawar

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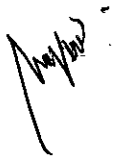


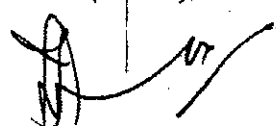
through Chief Secretary, Civil Secretariat, Peshawar and others”, Service Appeal No. 865/2023 titled “Aurangzeb Khan Versus the Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar and others, and Service Appeal No. 866/2023 titled “Azhar Ali Versus the Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat Peshawar and others” as in all the appeals common questions of law and facts are involved.

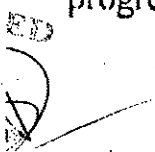
2. The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 with the prayer that on acceptance of the appeal, the impugned notification dated 25.11.2022 might be struck down being ultra-vires, discriminatory and unreasonable and the respondents might be directed to act in the matter in accordance with law and to amend the impugned notification dated 25.11.2022 in line with the recommendations of the high level committee and reserve separate promotion quota of 20% to the B.Tech.(Hons) Degree holder SDOs/Assistant Engineers (BPS-17) to the post of Executive Engineer (BPS-18) in the C&W Department alongwith any other remedy, which the Tribunal deemed fit and appropriate.

3. Brief facts of the case, as given in the memorandum of appeal, are that the appellant joined the C&W Department as Sub Engineer (BPS-11) on 21.10.1986 and had got more than 37 years service at his credit. Due to poor service structure and non-existent chances of promotion, the appellant and his other similarly placed colleagues were deprived of their due career progression inspite of acquiring the higher qualification of B.Tech. (Hons)

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Degree. The department, by means of notifications dated 14.10.2014 and 26.03.2016, allocated separate quota for B.Tech (Hons) Degree holder Sub-Engineers for promotion to the post of Sub Divisional Officer/Assistant Engineer (BPS-17) and in pursuance of that, the appellant got promoted to BPS-17 on 04.11.2016 after long 30 years of service. As no promotion quota to BPS-18 was reserved for B.Tech. (Hons) Degree holder SDOs/Assistant Engineers (BPS-17), therefore, the Provincial Government constituted a high level committee under the chairmanship of Additional Chief Secretary vide notification dated 07.09.2021 to resolve the issue. The Committee delayed the matter, therefore, the appellant alongwith other officers filed two Writ Petitions bearing No. 1539/2021 and 2707/2021 before the Hon'ble Peshawar High Court for directing the Committee to finalize the matter at the earliest in accordance with law. Both the Writ Petitions were heard together and disposed of vide judgment dated 24.03.2022. The Irrigation Department, Government of Khyber Pakhtunkhwa vide notification dated 24.08.2021 reserved 12% quota for promotion of SDOs (BPS-17) holding B.Tech. (Hons) Degrees to the post of Executive Engineer (BPS-18). Similarly, the Public Health Engineering Department vide notification dated 31.01.2022 substituted the quota from 03% to 8%. In the like manner, the Local Government & Rural Development Department also earmarked 20% quota vide notification dated 13.05.2016. The Energy & Power Department also separated the B.Tech. (Hons) Degree holders for the purpose of promotion to BPS-18 vide notification dated 14.09.2018. Other sister provinces also kept such quota. After the judgment of the Hon'ble Peshawar High Court, the high level committee, after threadbare discussion

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submitted its report dated 10.06.2022 to the competent authority and made favourable recommendations in para-8 which were as follows:-

“8. After threadbare discussion in light of the Supreme Court Judgment referred to above, the Khyber Pakhtunkhwa Civil Servants Act, 1973, APT Rules, 1989 and the Peshawar High Court judgment dated 24.03.2022 regarding convening of SSRC meeting, it was unanimously recommended that C&W Department may review its existing service rules by providing opportunities/chances of promotion to the B.Tech (Hons) degree holders and Diploma holders Assistant Engineers on the analogy of other technical departments i.e. Irrigation, E&P and PHE Department.”

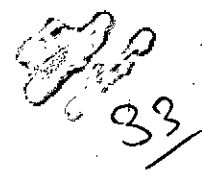
The matter was referred to the Standing Service Rules Committee for framing/amending the existing service Rules. The C&W Department accordingly prepared Working Paper wherein, instead of following the recommendations of the high level committee, two proposals were submitted to the SSRC. Meeting of the SSRC was held on 16.09.2022 wherein it approved the proposal of the C&W Department. The appellant alongwith others meanwhile appealed on 15.09.2022 to the Secretary Establishment, Government of Khyber Pakhtunkhwa for reserving 20% quota instead and for stopping the promotion till then, but it was not responded. Finally the impugned notification dated 25.11.2022 was issued against which the appellant preferred a departmental appeal on 14.12.2022 which was not decided within the statutory period of 90 days, hence this appeal.

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4. Respondents were put on notice. They submitted their joint written reply/comments on the appeal. We heard the learned counsel for the appellant as well as the learned Assistant Advocate General for the respondents and perused the case file with connected documents in detail.

5. Learned counsel for the appellant, after presenting the case in detail, contended that the respondents had not treated the appellant in accordance with law, rules and policy on the subject and acted in violation of Article 4 of the Constitution of Islamic Republic of Pakistan, 1973. He argued that the appellant had been meted out a discriminatory treatment in violation of Article 25 and 27 of the Constitution as other similarly placed officers/counterparts of the appellant serving in identical circumstances in other departments of the provincial government had been earmarked specific quota for their career progression. He further argued that inspite of clear recommendations, the SSRC was misled into concurring with the C&W Department's proposal and thus did not reserve separate quota as per recommendations of the high level committee. He requested that the appeal might be accepted as prayed for.

6. Learned Assistant Advocate General, while rebutting the arguments of learned counsel for the appellant, argued that the department had enhanced 3.5% quota to 10% for promotion of B.Tech (Hons) Sub Engineers to the rank of Assistant Engineer/SDO (BS-17) in the C&W Department through notification dated 26.03.2018. The department also considered the promotion of B.Tech (Hons) Assistant Engineers/SDOs (BS-17) to the rank of BS-18 in the light of court orders as well as high level

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committee which was constituted under the chairmanship of Additional Chief Secretary P&D Department and a notification in that behalf was issued after fulfillment of all codal formalities. He argued that the promotion of Assistant Engineer/SDO (BS-17) C&W Department to the rank of BS-18 would be considered as per seniority list with at-least five (05) years service as such and who had passed the Professional Examination, as prescribed in West Pakistan Buildings & Roads Code, irrespective of any discipline. He further argued that the Government was empowered to frame or amend the service rules of any Department through Standing Service Rules Committee. He requested that the appeal might be dismissed.

7. Through the instant service appeal, the appellants have impugned the amendment in Service Rules. Through a notification dated 25.11.2022, the Government of Khyber Pakhtunkhwa, Communication and Works Department amended the Service Rules by substituting serial No. 3 of the head "Engineering Service" as follows:-

Sr. No.	Nomenclature of the post	Method of Recruitment.
1	2	5
3	Executive Engineer/Design Engineer/Senior Engineer/ Research Officer/ Deputy Director Technical/ Senior Engineer (Survey/RMU) (BPS-18)	By promotion, on the basis of seniority-cum-fitness, from amongst the Sub Divisional Officer, Assistant Engineer, Junior Engineer and Assistant Research Officers with at least 05 (five) years service as such and have passed the Professional Examination as prescribed in West Pakistan Buildings and Roads Code."

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The plea taken by the appellant is that no quota for promotion to BS-

18 has been reserved for B.Tech (Hons.) Degree holder SDOs/Assistant


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Engineers (BPS-17). He has given example of other works related departments of the provincial government where separate quota has been reserved for such category of engineers. Arguments and record presented before us show that prior to 2014, the employees in the C&W Department of provincial government, having B.Tech (Hons.) Degree, were deprived of any career progression. It was through a notification dated 14.10.2014 that an opportunity of promotion was afforded to different categories of engineers and they were promoted to the post of Sub-Divisional Officer/Assistant Engineer (BS-17) by assigning specific quota to every category. Initially 3.5% quota was reserved for employees holding degree of B.Tech (Hons.) but it was later on enhanced to 10% vide Notification dated 26.03.2018. Through the impugned notification, the provincial government has further provided an opportunity to the B.Tech (Hons) degree holders for their promotion to BS-18, which in our view is a positive step taken in the right direction.

9. It is an undisputed fact that making of rules for civil servants is an exclusive domain of the executive, which in the instant case is the Government of Khyber Pakhtunkhwa. In the light of the Constitution of Islamic Republic of Pakistan, there is trichotomy of powers; legislature has the power of making laws, executive is vested with the power of enforcing and implementing those laws whereas the judiciary interprets the laws. This trichotomy provides a balance in the affairs of the state. When the roles of every constituent are defined, then how can this Tribunal interfere in the domain of the provincial government?

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 ATTORNEY GENERAL
 KHYBER PAKHTUNKHWA




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In view of the above discussion, the appeal in hand as well as connected appeals are dismissed. Costs shall follow the event. Consign.

11. Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 15th of September, 2023.


(FARZEHA PAUL)
Member (E)


(SALAH-UD-DIN)
Member (J)

Fazle Subhan, P.S

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Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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Sept. 2023 01. Mr. Khalid Rehman, Advocate for the appellant present. Mr. Asad Ali Khan, Assistant Advocate General for the respondents present. Arguments heard and record perused.

2. Vide our detailed judgment consisting of 08 pages, the appeal in hand is dismissed. Costs shall follow the event. Consign.

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


(FAREEHA PAUL)
Member (E)


(SALAH-UD-DIN)
Member (J)

Fazle Subhan, P.S

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