

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 1749/2022

BEFORE: RASHIDA BANO --- MEMBER (J)
MUHAMMAD AKBAR KHAN--- MEMBER(E)

Mr. Amjad Ali Khan, PET (BPS-15), GMS Asia Gate, District Peshawar..... (Appellant)

VERSUS

1. The Secretary Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
2. The Secretary Establishment Department, Khyber Pakhtunkhwa, Peshawar.
3. The Secretary Finance Department, Khyber Pakhtunkhwa, Peshawar.
4. The Director, Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar..... (Respondents)

Present:

NOOR MUHAMMAD KHATTAK,
Advocate, --- For Appellant.

MR. ASIF MASOOD ALI SHAH,
Deputy District Attorney --- For respondents

Date of Institution ... 16.11.2022
Date of hearing ... 02.02.2024
Date of Decision ... 02.02.2024

CONSOLIDATED JUDGMENT.

MUHAMMAD AKBAR KHAN, MEMBER(E):- The instant service appeal has been instituted with the prayer "that on acceptance of this appeal the impugned notification dated 24.07.2014 may very kindly be rectified/modified in the light of the notification dated 13.12.2012 to the extent of allocation of quota for the cadre of the appellant i.e. PET cadre may kindly be restored and the appellant may kindly be considered for promotion



to the post of SST BPS-16 with all back and consequential benefit. Any other remedy which this august Tribunal deems fit, may also be awarded in favor of the appellant.”

02. Our this single judgment shall dispose of the instant service appeal as well as connected service appeals bearing No. 1750/2022 titled “Jehangir Khan versus The Secretary, Elementary & Secondary Education, Khyber Pakhtunkhwa Peshawar and others”, service appeal bearing No. 1751/2022 titled “Sher Malik versus The Secretary, Elementary & Secondary Education, Khyber Pakhtunkhwa Peshawar and others”, service appeal bearing No. 1752/2022 titled “Akbar Ali versus The Secretary, Elementary & Secondary Education, Khyber Pakhtunkhwa Peshawar and others”, service appeal bearing No. 1753/2022 titled “Wajid ur Rehman versus The Secretary, Elementary & Secondary Education, Khyber Pakhtunkhwa Peshawar and others”, service appeal bearing No. 1754/2022 titled “Ahmad Ali versus The Secretary, Elementary & Secondary Education, Khyber Pakhtunkhwa Peshawar and others”, service appeal bearing No. 1755/2022 “titled Irfan Ullah versus The Secretary, Elementary & Secondary Education, Khyber Pakhtunkhwa Peshawar and others”, service appeal bearing No. 1756/2022 titled “Subhan Ullah versus The Secretary, Elementary & Secondary Education, Khyber Pakhtunkhwa Peshawar and others”, service appeal bearing No. 1757/2022 titled “Tariq Hussain versus The Secretary, Elementary & Secondary Education, Khyber Pakhtunkhwa Peshawar and others”, service appeal bearing No. 1758/2022 titled “Islam Badshah versus The Secretary, Elementary & Secondary Education, Khyber Pakhtunkhwa Peshawar and others”, service appeal bearing No. 1759/2022 titled “Fazal Mawjood versus The Secretary, Elementary & Secondary Education, Khyber

Pakhtunkhwa Peshawar and others”, and service appeal bearing No. 1760/2022 titled “Ajmal Shahid versus The Secretary, Elementary & Secondary Education, Khyber Pakhtunkhwa Peshawar and others”, as common question of law and facts are involved therein.

03. Brief facts of the instant case, as per memorandum of service appeal, are that the appellants were appointed as Physical Education Teacher (PET) BPS-15 vide order dated 18.03.2015. that in light of the Khyber Pakhtunkhwa Employees of the Elementary & Secondary, Department (Appointment and Regularization of Services) Act, 2018, the services of the appellants were regularized vide Notification dated 12.03.2018; that other colleagues of the appellants belonging to other cadres have been promoted to the post of SST (BPS-16) while the appellants were ignored; that the appellants have no prospects of promotion as per the impugned service rules dated 24.07.2014. That as per Notification dated 13.11.2012 there were 4% quota reserved for PET cadre in the promotion of SST BPS-16 with at least 5 years of service and having qualification of Second Class Bachelor degree with two subjects as Chemistry, Botany, Zoology, Physic, Mathematics, Statistic, Humanities and other equivalent groups from a recognized university or M.A in Education or Bachelor degree in Education from a recognized university; that the appellants have fulfilled the criteria and have the requisite qualification to be promoted to the post of SST BPs-16 under the old rules dated 13.11.2012 but to the impugned Notification the promotion quota has been done away in violation of Section-9 of the Civil Servants Act, 1973 read with rule-7 of the Khyber Pakhtunkhwa (Appointment Promotion & Transfer) Rules, 1989. Feeling aggrieved from the impugned Notification dated 24.07.2014, the appellants filed departmental appeal which were not

responded within the statutory period, hence preferred the instant service appeal.

04. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions raised by the appellant in his appeal. We have heard arguments of learned counsel for the appellant and learned Deputy District Attorney and have gone through the record with their valuable assistance.

05. Learned counsel for the appellants contended that the impugned Notification dated 24.07.2014 whereby 4% promotion quota reserved for PET cadre has been done away by the respondents which is against the law, facts, norms of natural justice and material on record hence not tenable and liable to be modified/rectified; that the appellants have not been treated in accordance with law and rules and violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan, 1973; that the impugned Notification dated 24.07.2014 whereby 4% promotion quota reserved for PET cadre has been done away by the respondents is also violative of Section 24(a) of the General Clauses Act, 1987; that not allocating promotion quota to the post of SST (BPS-16) to the cadre of the appellant is violative of Section-9 of the Civil Servants Act, 1973 and Rules-7 of the Khyber Pakhtunkhwa Government Servants (Appointment Promotion & Transfer) Rules, 1989; that the action and inaction of the respondents is violative of the Article 38(e) of the Constitution of Islamic Republic of Pakistan, 1973.

06. Learned District Attorney controverted the plea and stance taken by the learned counsel for appellants. He contended that the Service Rules

dated 24.07.2014 is within legal sphere and liable to be maintained in favor of the Department; that the plea of the appellants are against the factual position of the case as they have a separate Service Rules notified on 26.04.2018 by the respondent department; that the appellants have been treated as per law, rules & policy by the department having not violated the provision of Section-9 of the Civil Servants Act, 1973 read with Rule-7 of the Khyber Pakhtunkhwa Government Servants (Appointment Promotion & Transfer) Rules, 1989; that the act of the respondent department is not only legal but is also in accordance with the provision of Article 38 (e) of the Constitution of Islamic Republic of Pakistan, 1973.


07. Scrutiny of record reveals that the appellant joined the respondent department as PET, Teacher (BPS-15) on 18.03.2015. He was recruited under service rules framed and notified on 24.07.2014. The appellant has impugned the service rules dated 24.07.2014 on the ground that under the previous service rules notified on 13.11.2012 , 4% quota was available for PET Cadre for promotion to SST (BS-16) having Second Class Bachelor degree with two subjects as Chemistry, Botany, Zoology, Physics, Mathematics, Statistics, Humanities, and other equivalent subjects or M.A in Education or Bachelor Degree in Education. Record further reveals that in the year, 2014, the respondent department revised the service rules and done away with the 4% quota available for promotion of PETs to the post of SSTs (BS-16) available in the previous service rules of 2012. The reason for abolishing the said quota of PET Cadre was availability of service structure and career progression to the PETs who were provided opportunity for promotion to SPET (BS-16) and Instructor Physical Education (BS-17). The respondent department has further broadened

career progression of the cadre of PETs up to the level of BS-19 vide Service Rules Notified on 26.04.2018. In the said Service Rules 70% posts have been reserved for promotion to the post of SPETs and PETs to the post of Instructor Physical Education (BS-17) with atleast 05 years service having qualification of Second Class Master Degree in Physical Education with B.ed and if no candidate with B.ed degree is available then a candidate with only Master degree in Physical Education can be considered for promotion/appointment. Since a separate cadre has been established and career progression opportunity has duly been provided to the PETs, therefore, no justification exists for opening of another window for promotion to the same cadre.

08. In view of the forgoing discussion, we dismiss the instant appeal as well connected service appeal being devoid of legal merits. Costs shall follow the event. Consign.

09. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 02nd day of February, 2024.*


(RASHIDA BANO)
MEMBER (J)


(MUHAMMAD AKBAR KHAN)
MEMBER (E)

ORDER

02.02.2024

01. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for official respondents present. Arguments heard and record perused.

02. Vide our detailed judgment of today separately placed on file consisting of (06) pages, we dismiss the instant appeal as well connected service appeal being devoid of legal merits. Costs shall follow the event. Consign.

03. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal this 02nd day of February, 2024.*



(RASHIDA BANO)
MEMBER (J)



(MUHAMMAD AKBAR KHAN)
MEMBER (E)