

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

Service Appeal No. 2361/2023

BEFORE: MRS. RASHIDA BANO --- MEMBER (J)
MISS FAREEHA PAUL --- MEMBER (E)

Muhammad Iqbal PST, BPS-12, GPS Bedamai, District Dir Upper
... (Appellant)

VERSUS

1. Secretary Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
2. Director, Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
3. District Education Officer, (Male), District Dir-Upper.
... (Respondents)

Mr. Noor Muhammad Khattak
Advocate For appellants

Mr. Asif Masood Ali Shah
Deputy District Attorney For respondents

Date of Institution.....16.11.2023
Date of Hearing.....16.02.2024
Date of Decision.....16.02.2024


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 as copied below:

“On acceptance of instant appeal, the impugned seniority list dated 31.12.2022 may kindly be corrected/rectified to the extent that the appellant’s seniority may be determined on the basis of clause 9 of the terms and conditions of Regularization Notification dated 21.03.2018 as well as Sub Section (2) of Section 4 of the Khyber Pakhtunkhwa Employees of E&SE Department (Appointment & Regularization of Services) Act,

2017 by placing the name of the appellant at correct seniority position with all consequential benefits. Any other remedy which this august Tribunal deem fit may also be awarded in favour of appellant.”

2. Through this single judgment, we intend to dispose of the instant service appeal as well as connected service appeals, which are mentioned below as in all these appeals common questions of law and facts are involved.

1. Service Appeal No. 2362/2023
 2. Service Appeal No. 2363/2023
 3. Service Appeal No. 2364/2023
 4. Service Appeal No. 2365/2023
 5. Service Appeal No. 2366/2023
 6. Service Appeal No. 2367/2023
 7. Service Appeal No. 2368/2023
 8. Service Appeal No. 2369/2023
 9. Service Appeal No. 2370/2023
 10. Service Appeal No. 2371/2023
 11. Service Appeal No. 2372/2023
 12. Service Appeal No. 2373/2023
 13. Service Appeal No. 2374/2023
 14. Service Appeal No. 2375/2023
 15. Service Appeal No. 2376/2023
 16. Service Appeal No. 2377/2023
 17. Service Appeal No. 2378/2023
 18. Service Appeal No. 2379/2023
 19. Service Appeal No. 2380/2023
 20. Service Appeal No. 2381/2023
 21. Service Appeal No. 2382/2023
 22. Service Appeal No. 2383/2023
 23. Service Appeal No. 2384/2023
 24. Service Appeal No. 2385/2023
 25. Service Appeal No. 2386/2023
 26. Service Appeal No. 2387/2023
 27. Service Appeal No. 2388/2023
 28. Service Appeal No. 2389/2023
 29. Service Appeal No. 2390/2023
 30. Service Appeal No. 2391/2023
 31. Service Appeal No. 2392/2023
 32. Service Appeal No. 2393/2023
 33. Service Appeal No. 2394/2023
 34. Service Appeal No. 2395/2023
 35. Service Appeal No. 2396/2023
 36. Service Appeal No. 2397/2023
 37. Service Appeal No. 2398/2023
 38. Service Appeal No. 2399/2023
 39. Service Appeal No. 2400/2023
 40. Service Appeal No. 2401/2023
 41. Service Appeal No. 2402/2023
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42. Service Appeal No. 2403/2023
43. Service Appeal No. 2404/2023
44. Service Appeal No. 2405/2023
45. Service Appeal No. 2406/2023
46. Service Appeal No. 2407/2023
47. Service Appeal No. 2408/2023
48. Service Appeal No. 2409/2023
49. Service Appeal No. 2410/2023
50. Service Appeal No. 2411/2023
51. Service Appeal No. 2412/2023
52. Service Appeal No. 2413/2023
53. Service Appeal No. 2414/2023
54. Service Appeal No. 2415/2023
55. Service Appeal No. 2416/2023
56. Service Appeal No. 2417/2023
57. Service Appeal No. 2418/2023
58. Service Appeal No. 2419/2023
59. Service Appeal No. 2420/2023

3. Brief facts giving rise to the service appeals are that, the appellants were initially appointed as PSTs on contract basis vide Notification dated: 05.03.2016, 07.03.2016 and 03.05.2016 by the DEO (M) Dir Upper. During course of their service, Khyber Pakhtunkhwa Employees of Elementary and Secondary Education Department (Appointment and Regularization of Services) Act, 2017 was promulgated and in light of the same, their services were regularized vide Notification bearing Endorsement No. 1561-67/No. 158/DEO(M)ADO (P) PES/Estab dated 21.03.2018 with effect from the date of their initial appointment. The seniority list of the appellants, as well as other adhoc appointees whose services were regularized on the strength of Regularization Act, 2017 vide order dated 21.03.2018, was drawn on the basis of score obtained by them in test conducted by National Testing Service (NTS). The appellants are of the view that their inter-se-seniority was required to have been fixed date-wise in view of Clause-9 of terms and conditions of the regularization Notification dated 21.03.2018 as well as Sub-Section-2 of Section-4 of Khyber Pakhtunkhwa Employees of Elementary & Secondary Education Department (Appointment and Regularization of Services) Act, 2017, therefore, they filed objection on the seniority list on 17.08.2019,




however the same was not responded. The appellants, thereafter, submitted departmental appeal on 26.07.2023 but the same was also not responded, constraining them to file appeals before this Tribunal for redressal of their grievance.

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 Deputy District Attorney and perused the case file with connected documents in detail.

5. Learned counsel for the appellant argued that appellants have not been treated in accordance with law and rules on the subject and as such respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan, 1973. He further argued that impugned seniority list issued by the respondents, whereby the seniority of the appellant has been determined on the basis of merit position and not on the basis of clause 9 of the terms and condition of Regularization of Notification dated 21.03.2018 and Sub-Section 2 of the Section 4 of the Khyber Pakhtunkhwa Employees of the E&SE Department Appointment and Regularization Act, 2017 are against the law, facts, norms of natural justice and material on the record, hence not tenable and liable to be modified. He further argued that appellants are fully entitled for seniority, being eligible in all respect, therefore, he requested that instant appeal might be accepted.

6. Conversely learned Deputy District Attorney contended that the appellants have been treated in accordance with law and rules. He further contended that after promulgation of the Khyber Pakhtunkhwa Employees of Elementary and Secondary Education Department (Appointment and Regularization of Services) Act, 2017 appellants have been placed in the seniority list on the basis of merit accordingly as per section 17 (part-vi)



Seniority of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989. Furthermore, terms and condition No.9 of the regularization notification dated 21.03.2018, is for those candidates who are having same merit position in their first appointment order.

7. Perusal of record reveals that the appellants were appointed as PSTs (BPS-12) on contract basis vide Notification dated 05.03.2016, 07.03.2016 and 03.05.2016. During the course of their service, Khyber Pakhtunkhwa Employees of the Elementary and Secondary Education Department (Appointment and Regularization of Services) Act, 2017 was enacted and vide Notification bearing Endorsement No.1561-67-F.No. 158/DEO(M)/ADO(P)Estb dated 21.03.2018, their services were regularized with effect from the date of their initial appointments. Clause-9 of Terms and Conditions as mentioned in the afore-mentioned regularization Notification dated 21.03.2018 is regarding determination of seniority, which is reproduced as below:-

"Their Seniority shall be determined on the basis of their continuous service in cadre, provided that if the date of continuous service in the case of two or more employees is the same, the employees older in age shall rank senior to the younger one."

8. Moreover, the criteria for determination of inter-se-seniority of the employees regularized under Khyber Pakhtunkhwa Employees of the Elementary and Secondary Education Department (Appointment and Regularization of Services) Act, 2017 has been provided in Sub-Section 2 of Section-4 of the said Act, which is reproduced as below:-

"4. Determination of seniority.---(1)The employees whose services are regularized under this Act or in the process of attaining service at the commencement of this Act, shall rank



junior to all other employees belonging to the same Cadre, who are in service on regular basis on the commencement of this Act, and shall also rank junior to such other persons, if any, who, in pursuance of the recommendation of the Commission made before the commencement of this Act, or to be appointed to the Cadre, irrespective of their actual date of appointment.

(2) The seniority inter-se of those employees, whose services are regularized under this Act within the Cadre, shall be determined on the basis of their continuous service in Cadre:

Provided that if the date of continuous service in the case of two or more employees is the same, the employee older in age shall rank senior to the younger one."

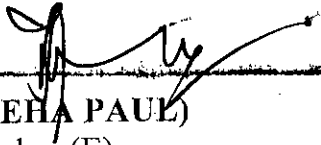
9. It is also worth mentioning that according to Section-5 of the Khyber Pakhtunkhwa Employees of the Elementary and Secondary Education Department (Appointment and Regularization of Services) Act, 2017, the provisions of the said act shall have an overriding effect and the provisions of any such law or rules to the extent of inconsistency with the said Act shall cease to have effect.


10. In view of Clause-9 of regularization notification bearing Endorsement No. dated 21.03.2018 as well as Sub-Section-2 of Section-4 of Khyber Pakhtunkhwa Employees of the Elementary and Secondary Education Department (Appointment and Regularization of Services) Act, 2017, the inter-se-seniority of the regularized PSTs was to be determined on the basis of their continuous service in cadre provided that if the date of continuous service in the case of two or more employees was the same, the employee older in age shall rank senior to the younger one. While going through the impugned seniority list attached by the appellants with their appeals, the inter-se seniority of the PSTs regularized through Notification dated 21.03.2018 has been determined, on the basis of score obtained by them in written test conducted through NTS, which was not a correct criteria for determining their

inter-se-seniority. The NTS score was relevant for appointment and not for determining inter-se-seniority of the regularized PSTs.

11. In view of the above discussion, it is directed that the inter-se seniority of those PSTs, who were regularized through notification bearing Endorsement No. 1561-67-F.No. 158/DEO(M)/ADO(P)Estb dated 21.03.2018, shall be determined on the basis of Clause-9 of terms and conditions of regularization Notification dated 21.03.2018 as well as Sub-Section-2 of Section-4 of Khyber Pakhtunkhwa Employees of the Elementary and Secondary Education Department (Appointment and Regularization of Services) Act, 2017 by placing the names of the appellants at correct seniority positions with all consequential benefits. The appeals are allowed in the said terms. Costs shall follow the events. Consign.

12. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 16th day of February, 2024.*


(FAREEHA PAUL)
Member (E)


(RASHIDA BANO)
Member (J)