

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 562/2023

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

Professor Abdul Jabbar, retired Principal (BS- 20) Government Degree College Kohi Sher Haider, District Khyber. (*Appellant*)

Versus

1. Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar.
2. The Higher Education Department through Secretary Higher Education to Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
3. The Finance Department through Secretary Finance to Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
.....(*Respondents*)

Mr. Ali Gohar Durrani, ... For appellant
Advocate

Mr. Asif Masood Ali Shah, ... For respondents
Deputy District Attorney

Date of Institution..... 01.03.2023
Date of Hearing..... 14.03.2024
Date of Decision..... 14.03.2024

JUDGEMENT

FAREEHA PAUL, MEMBER (E): Through this single judgment, we intend to dispose of instant service appeal as well as connected service appeal No. 563/2023, titled “Professor Sharif Gul Versus the Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar and others”, as in both 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 the respondents might be directed to grant notional promotion and also give retrospective effect to the notification dated 12.09.2022, alongwith any other relief which the Tribunal deemed appropriate.

3. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was appointed as an Ad-hoc Lecturer (BPS- 17) in Botany at Government Superior Science College Peshawar vide notification dated 21.10.1987. He was regularized vide notification dated 31.05.1988, where after he was freshly appointed as Assistant Professor (BPS- 18) vide notification dated 25.05.1999. He was then promoted to the post of Associate Professor (BPS- 19) and posted at Government Degree College Tangi, Charsadda, vide notification dated 26.05.2010. He was subsequently promoted to the post of Professor (BPS- 20) and posted as Principal, Government Postgraduate College Charsadda. A notification was issued on 28.04.2021 whereby sanction was accorded to the grant of 365-days leave encashment in lieu of LPR in respect of the appellant and he stood retired from government service with effect from 16.04.2021 on attaining the age of superannuation. On 14.09.2019, a notification was issued by the Secretary to Government of Khyber Pakhtunkhwa Higher Education Department, according to which, the cabinet approved the 5-tier formula. Subsequently on 30.07.2019, a sanction of the Government of Khyber Pakhtunkhwa Higher Education Department was accorded to the upgradation of total 1155 posts in BPS- 21, BPS- 20, BPS- 19 and BPS- 18 of the teaching cadre in government colleges of Khyber



Pakhtunkhwa which was forwarded to Finance Department for including the same in the budget book. On 05.08.2019, the Finance Department agreed to the cabinet decision and advised the administrative department to amend the rules to that effect and provide copies of audit to the Finance Department for authentication. On 19.08.2020 a request was made by the appellant to the Chief Secretary for implementation of 5-tier formula. On 12.10.2020 a meeting of Standing Service Rules Committee of Higher Education Department was held under the chairmanship of Secretary Higher Education and also attended by the other members. On 25.01.2021 minutes of the SSRC meeting were sent for vetting and draft rules were approved but for the reasons best known to the respondents, the matter was kept pending. On 08.03.2021, an application was made by the appellant to the Director Higher Education Khyber Pakhtunkhwa Peshawar for implementation of 5-tier formula. Another application was sent to the Secretary Higher Education Khyber Pakhtunkhwa Peshawar on 15.03.2021 for implementation of the 5-tier formula. After getting no response from the office, the appellant approached the Chief Secretary Government of Khyber Pakhtunkhwa Peshawar on 02.11.2022 for notional promotion on the basis of 5-tier formula but all in vain. Service rules were finally approved on 12.09.2022 and promotion was made based on the same in October, 2022. The appellant came to know about the rules and he preferred the final appeal on 02.11.2022; hence the instant service appeal.

4. Respondents were put on notice who submitted their joint parawise comments on the appeal. We heard the learned counsel for the appellant as



well as the learned Deputy District Attorney 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, argued that the appellant was in the promotion zone as per the seniority list at the time of retirement and at that time 21 vacant posts of Senior Professor (BPS- 21) were available. He further argued that the delay was not on the part of the appellant and he could not be made to suffer for the fault of others. He further argued that the constitutional rights of the appellant had been violated by the respondents in the denial of retrospective effect of a beneficial legislation. He referred to 2017 PLC (CS) 62 Peshawar, 2018 PLC (C.S) 381, and 2012 PLC(C.S) 137. He argued that promotion after retirement was permissible under the law, if otherwise an employee fulfilled the conditions of eligibility, suitability and fitness. He further argued that it was a well settled proposition of law laid down by the superior courts that when an employee had wrongly been prevented from promotion to the higher post, without his fault, despite availability of vacancy against the promotion quota, that employee was entitled to notional/anti-dated promotion. He requested that the appeal might be accepted as prayed.

6. Learned Deputy District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that the rules were notified on 12.09.2022, after retirement of the appellant. He further argued that implementation of 5-tier formula was not possible without issuance of Audit Copy from the Finance Department which was part of the process that was completed after the approval and notification of Service Rules. He further



argued that promotion of the appellant to the post of Professor (BPS- 21) could not be considered without the service rules which were necessary for promotion. Moreover, the appellant stood retired from Government service on 16.04.2021, before the notification of Service Rules was issued on 12.09.2022. He requested that the appeal might be dismissed.

7. From the arguments and record presented before us, it transpires that the provincial government approved a 5-tier formula for the teaching cadre in government colleges, both male and female. Accordingly posts were upgraded and 21 posts in BS- 21 were created for the male colleges. After necessary approval/sanction and their reflection in the provincial budget the administrative department was advised by the Finance Department to frame the service rules. The process for framing of service rules was finalized in September 2022. Through this service appeal, the appellants, who were serving as Professor (BS- 20) in the respondent department when the posts in BS- 21 were created in the year 2019-20, have requested for notional promotion on the ground that posts were available and they qualified at that time but were not considered for promotion. The plea taken by the respondent department before us was that for promotion, mere availability of posts was not enough, service rules were also required, framing of which took time and by the time they were finalized, the appellant stood retired from service.

8. Record presented before us shows that Professor Abdul Jabbar, appellant in service appeal No. 562/2023 stood retired on 16.04.2021, whereas Mr. Sharif Gul, appellant in connected service appeal No. 563/2023, retired on 01.04.2021. It is clear that the posts in BS- 21 were created in 2019 and



Finance Department of the provincial government agreed on it through its letter dated 06.08.2019 with the direction to the administrative department to amend the Service Rules and forward the audit copy for authentication. It is understood that whenever a new post is created, service rules for that post have to be framed first. There is also no second opinion that framing of service rules takes some time because first the Standing Service Rules Committee firms up its recommendations, which are then forwarded to the Law Department for necessary vetting, after which the approval of the government is sought. In the case before us, the rules were finalized and notified in September 2022. Before that, both the appellants stood retired.


9. Learned counsel for the appellants admits that the rules were notified at some later stage, after the retirement of the appellants but insists on notional promotion from the date when the posts were created/sanctioned. To a question put to him that in the absence of service rules, how could the promotion be notified, he could not respond. It is extremely clear that when the posts in BPS-21 were created, service rules did not exist and hence the claim of the appellant is not acceptable. Even at any later stage, when the rules were in the process of framing and then the approval of the provincial government was pending, how could anyone be considered for promotion?

10. In view of the above discussion, it is clear that service rules, duly approved by the provincial government are essential for considering any promotion. As the service rules for the post of BS- 21 were not finalized, approved and notified by the provincial government before the appellants stood retired from service, they could not be considered for any promotion.



The appeals are therefore dismissed, being groundless. Cost shall follow the event. Consign.

11. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 14th day of March, 2024.*


(FARVEHA PAUL)
Member (I)


(RASHIDA BANO)
Member (J)


Fazle Subhan, P.S

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14th Mar. 2024 01. Mr. Ali Gohar Durrani, Advocate for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present. Arguments heard and record perused.

02. Vide our detailed judgment consisting of 07 pages, the appeal in hand, is dismissed, being groundless. Cost shall follow the event. Consign.

03. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 14th day of March, 2024.*


(FAREEHA PAUL)
Member (E)


(RASHIDA BANO)
Member(J)

Fazal Subhan PS