

**BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.**

**Service Appeal No. 7135/2021**

**BEFORE: MR. KALIM ARSHAD KHAN ... CHAIRMAN**  
**MRS. RASHIDA BANO ... MEMBER (J)**

Naik Nawaz Khan S/O Amir Khan, SCT (BPS-16) GHS Thall Village,  
District North Waziristan, Miranshah.

... (Appellant)

**VERSUS**

1. The Secretary Elementary & Secondary Education Department, Khyber Pakhtunkhwa Peshawar and four others.
2. The Secretary Establishment Department, Khyber Pakhtunkhwa, Peshawar.
3. The Secretary Finance Department, Khyber Pakhtunkhwa, Peshawar.
4. The Director, Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.
5. The District Education Officer (Male), District North Waziristan.

... (Respondents)

Mr. Noor Muhammad Khattak  
Advocate

--- For appellant

Mr. Muhammad Jan  
District Attorney

--- For respondents

Date of Institution.....27.07.2021

Date of Hearing .....01.04.2024

Date of Decision .....01.04.2024

**CONSOLIDATED JUDGMENT**

**RASHIDA BANO, MEMBER (J):**The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 with the following prayer:

**“That on acceptance of this appeal, the impugned service rules dated 24.07.2014 may kindly be modified to the extent that the condition of 2<sup>nd</sup> Division/Class be**



expunged from Column No.3 (i), Serial No. 1B of the Table and the respondents may kindly be directed to consider the appellant for promotion to the post of Secondary School Teacher junior colleagues were promoted with all consequential back benefits including seniority. Any other remedy which this august Tribunal deems fit that may also be awarded in favour of the 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. 7136/2021
2. Service Appeal No. 7137/2021

3. Brief facts of the case as given in the memoranda of appeals are that the appellants have challenged the Notification No.SO(PE)4-5/SSRC/meeting/2013/Teaching Cadre dated 24<sup>th</sup> July, 2014 to the extent, whereby second class Bachelor Degree from a recognized University has been mentioned as first requirement for initial recruitment as well as promotion to the post of Secondary School Teacher (BPS-16). The appellants have alleged that as they have obtained Master Degrees in various/subjects, therefore, they were eligible to have been considered and promoted to the post of SST (BPS-16) particularly, when other colleagues of the appellants have been granted the same relief by worthy Peshawar High Court, Peshawar. The appellants availed departmental remedy through filing of departmental appeals, which were not responded, therefore, they have now invoked the jurisdiction of this Tribunal for redressal of their grievances.

4. Respondents were put on notice who submitted their comments on the appeal. We heard the learned counsel for the appellant as well as learned District Attorney for the respondents and perused the case file with connected documents in detail.

5. Learned counsel for the appellants has argued that the impugned Notification dated 24.07.2014 to the extent of requirement of Second Class



Bachelor Degree for promotion to the post of SST (BPS-16) is in violation of rights of the appellants guaranteed under Articles 4 & 25 of the constitution of Islamic Republic of Pakistan, 1973. He next argued that the appellants were though having 3<sup>rd</sup> Division Bachelor Degrees, however they have later on obtained Master Degrees, therefore, they cannot be denied promotion to the post of SST (BPS-16) on the pretext that they had passed Bachelor Degrees in 3<sup>rd</sup> Division. He further argued that as other colleagues of the appellants had been granted the same relief through judgments dated 28.01.2016 and 05.04.2016 passed by hon'ble Peshawar High Court in Writ Petition No. 73-B/2014 and Writ Petition No. 1041-A/201 respectively, therefore, the appellants being similarly placed employees were also entitled to the same relief. He next argued that the Establishment department has issued notification dated 15.12.2011, whereby amendment has been made in PMS Rules, 2007 by providing that a candidate who had obtained 3<sup>rd</sup> Division Bachelor Degree will be eligible for examination in case where he/she has obtained a higher Division in Master Degree.

6. Conversely, District Attorney for the respondents has contended that Second Class Bachelor Degree from a recognized university is first requirement for promotion to the post of SST (BPS-16), while the appellants have obtained Bachelor Degrees in 3<sup>rd</sup> Division, therefore, they are not at all eligible for promotion to the post of SST (BPS-16). He next contended that passing of Bachelor examination in 2<sup>nd</sup> Division was introduced through the impugned Notification for the purpose of enhancing quality of education, therefore, the appellants cannot claim that the same has violated their rights provided under Articles 4 & 25 of constitution of Islamic Republic of Pakistan. He further argued that the appellants have not put forward any legal and justified reason, which could be considered for declaring the condition of requirement of Second Class Bachelor Degree for promotion to the concerned post as ultra vires. He also argued that judgments dated 04.06.2015, 08.12.2015 and 05.04.2016 rendered by honourable Peshawar High Court, Peshawar are of no benefit to the appellants in view of order dated 06.04.2022 passed by August apex court in Civil Appeal, No. 2039 of 2019 and Civil Petitions No. 91-P and 92-P of 2016, whereby judgment dated 13.02.2017




passed by honourable Peshawar High Court, granting similar relief to petitioners in Writ Petition No. 559-A/2016, has been set-aside.

7. It is the main contention of the appellants that as some of their colleagues having 3<sup>rd</sup> Division Bachelor Degrees have been granted promotion in light of various judgments of honourable Peshawar High Court, Peshawar, therefore, the appellants being similarly placed employees are also entitled to the said relief. In this respect, reliance has been placed on judgment dated 05.04.2016 rendered in Writ Petition No. 1041-A/2015 titled "Muhammad Baqi Versus Government of Khyber Pakhtunkhwa through Secretary (Elementary & Secondary Education), Peshawar and two others". We have gone through the afore-mentioned judgment and have observed that while accepting the Writ Petition, reference has been made to judgment dated 04.06.2015 rendered by honourable Peshawar High Court in Writ Petition No. 58-B/2014 titled "Waris Khan Versus Government of Khyber Pakhtunkhwa and 05 others". August apex court in its order dated 06.04.2022, passed in Civil Appeal No. 2039 of 2019 and Civil Petitions No. 91-P and 92-P of 2016, has observed as below:-

*"4. We note that Civil Petition No.92-P/2016 has been filed against a judgment of the Peshawar High Court dated 08.12.2015 in Writ Petition No. 87-B/2014 titled "Mst. Yasmin Vs. Government of Khyber Pakhtunkhwa etc" and Civil Petition No. 91-P/2016 against a judgment of the Peshawar High Court dated 04.06.2015 in Writ Petition No. 58-B/2014 titled "Waris Khan Vs. Govt. of Khyber Pakhtunkhwa and 05 others". We have also been informed that the judgment in the case titled "Muhammad Baqi Vs. Government of Khyber Pakhtunkhwa through Secretary (Elementary & Secondary Education), Peshawar and 02 others" which has been relied upon by the Peshawar High Court in the impugned judgment was challenged before this Court but was dismissed on account of limitation and was not decided on merits.*

*5. Civil Petitions No. 91-P and 92-P/2016 have been filed beyond the period of limitation. The applications for condonation of delay (C.M.As.No.149-P and 151-P/2016) do not disclose any sufficient cause that may constitute basis within the contemplation of the Limitation Act, 1908 for condonation of delay. Consequently, the applications for condonation of delay are dismissed. The petitions are dismissed as*



barred by time. It is, however, clarified that the judgment dated 08.12.2015 rendered in Writ Petition No. 87-B/2014 titled "Mst. Yasmin Vs. Government of Khyber Pakhtunkhwa etc.", judgment dated 04.06.2015 rendered in Writ Petition No. 58-B/2014 titled "Waris Khan Vs. Govt. of Khyber Pakhtunkhwa and 05others" and the judgment dated 05.04.2016 rendered in Writ Petition No. 1041-A/2015 titled "Muhammad Baqi Vs. Government of Khyber Pakhtunkhwa through Secretary (Elementary & Secondary Education), Peshawar and 02 others" shall not be used as precedent in any other case."

8. In view of the above observations, rendered by August Apex court in its order dated 06.04.2022, the judgments of the honourable Peshawar High Court, Peshawar, relied upon by learned counsel for the appellants are of no avail to the appellants. Similarly, through the same order dated 06.04.2022 passed by August Apex court, judgment dated 13.02.2017 passed by honourable Peshawar High Court in Writ Petition No. 559-A/2016, whereby similarly placed 3<sup>rd</sup> Division Bachelor Degree holders were held entitled to promotion to the post of SST, has been set-aside.

9. We have observed that the requirement of 2<sup>nd</sup> Division/Class Bachelor Degree for promotion to the post of Secondary School Teacher (BPS-16) is not person specific and would be applicable for promotion as well as initial recruitment to the post of SST (BPS-16). While going through the contents of the appeal, we have observed that no allegation of any mala-fide has been raised by the appellants. It is a settled proposition that the Government is entitled to make service rules in the interest of expediency of service and to remove anomaly in service rules, which in the absence of demonstrable mala-fide could not be assailed. August Supreme Court of Pakistan in its judgment reported as 2004 SCMR 1427 has graciously held as below:-



*“The government is always empowered to change the promotion policy and the domain of the government to prescribe the qualification for a particular post through amendment in the relevant rules, is not challengeable. This is also a settled law that notwithstanding fulfillment of the required qualification and other conditions containing the rules, the promotion cannot be claimed as a vested right.”*

10. In view of the above discussion, we dismiss the appeal in hand as well as connected Service Appeals being devoid of merits Cost shall follow the event. Consign.

11. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 1<sup>st</sup> day of April, 2024.*



**(KALIM ARSHAD KHAN)**  
Chairman



**(RASHIDA BANO)**  
Member (J)

\*M.Khan