

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 12930/2020

BEFORE: MRS. RASHIDA BANO ... MEMBER (J)
MR. MUHAMMAD AKBAR KHAN ... MEMBER (E)

Jehangir Khan S/O Maz Ullah Khan, PST Teacher posted at GPS
Muhammad Khan Kakki Tehsil & District Bannu.

.... (Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa through Chief Secretary Education,
Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. Director education Khyber Pakhtunkhwa,
3. District Education Officer, Male, Bannu.
4. District Account Officer, Bannu.
5. Farooq Khan S/o Muhammad Arif PTC Teacher R/o Sabo Khel, Mandan,
Bannu.
6. Raqiaz Khan S/o Bahadar Sher PTC Teacher R/o Mandew District Bannu.
7. Atta Ullah Khan S/o Wali Ayaz Khan PTC Teacher R/o Mumir Kaki,
District Bannu.

.... (Respondents)

Mr. Masaoood ur Rehman
Advocate

... For appellant

Mr. Muhammad Jan
District Attorney

... For respondents

Date of Institution.....06.10.2020
Date of Hearing.....26.02.2024
Date of Decision.....28.02.2024

CONSOLIDATED 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 copied as below:



“On acceptance of instant service appeal and granting seniority arrear of pay and other back benefits which is granted to respondents No.5 to 7 alongwith above hundred other PST Teachers appointed from 25% quota A.I.O.U 1999 and other PST Teacher from 30/05/2000 till their appointment order who are standing on same footing, hence petitioner may be granted seniority arrears of pay and other back benefits.”

2. Through this single judgment, we intend to dispose of 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.12926/2020
2. Service Appeal No.12927/2020
3. Service Appeal No.12928/2020
4. Service Appeal No.12929/2020
5. Service Appeal No.12931/2020
6. Service Appeal No.12032/2020
7. Service Appeal No.2814/2021
8. Service Appeal No.2815/2021

3. Brief facts of the case, as given in the memorandum of appeal, are that respondent No.2 advertised certain posts of PTC in daily newspaper on 07.02.1999, to which the appellants being eligible and having Primary Teaching Certificates from Allama Iqbal Open University also applied and qualified test and interview. Merit list was prepared and those who were having Primary Teaching Certificate from Elementary Colleges were appointed while the appellants were ignored. The appellant being aggrieved, challenged the said recruitment process, before the Hon'ble Peshawar High Court, Bannu



Bench by filling Writ Petition No. 75-B/2003 which was allowed and consequently appellant was appointed as PTC on 25% quota vide order dated 30.09.2014. The appellant after joining the service preferred departmental appeal before respondents No.1 for allowing back benefits i.e. salaries and seniority which was not responded, 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 learned District Attorney for the respondents and perused the case file with connected documents in detail.

5. Learned counsel for the appellant argued that appellant has not been treated in accordance with law, rules and regulations and as per judgments of Worthy Peshawar High Court, Bannu and Abbotabad Bench. He further argued that respondents made discrimination to grant benefits to private respondent No. 5 to 7 while refusing the same to the appellants which is against norms of justice. He further argued that act of the respondents was based on malafide intention and in arbitrary manner as they had ignored the relevant law and facts on the subject. He requested that the appeal might be accepted as prayed for.

6. Learned District Attorney, while rebutting the arguments of learned counsel for the appellant argued that the appellant has been treated in accordance with law and rules. He further argued that appellant was not appointed in the year 1999 by the respondents

because as per advertisement in terms and condition No.16, 1st priority was to be given to elementary college diploma/certificate holders and then AIOU diploma/certificate holders. He further argued that appellant was appointed as PTC on 30.09.2014 from the date of taking over the charge and he is not entitled for back benefits as well as seniority on the principle of no work no pay.

7. Perusal of record reveals that in response to the advertisement dated 07.03.1999, the appellants submitted applications for different posts (PET), appeared in the test and interview but denied appointment on sole ground that they had got PTC certificates from Allama Iqbal Open University, Islamabad, the apex court of the country in C.A No.1904,1906,1907 of 2000 held that certificates are equal, hence in writ petition No.75/2004 titled Sharkat Ullah Vs Provincial Government 25% quota is allocated to those candidates who are denied appointment in 1999 on the ground of having certificate from Allama Iqbal Open University.

8. Appellants were appointed vide order dated 30.09.2014 as PTC teacher upon direction of civil court order dated 02.03.2014 which read as;

As a sequel to my detailed discussion above, the plaintiff is entitled to relief that he be considered for the post of PTC on the basis of 25% quota reserved for the candidates for effectees of Allama Iqbal Open University subject to availability of seats and eligibility/suitability on merit of the plaintiff for the post without affecting the rights of the third party.



From 25% denied quota judgment handed down by civil court remains intact till Peshawar High Court. Respondent No.5 to 7 along with hundred other PTC teachers who were appointed on denied 25% quota given seniority, arrear of pay and other back benefits upon direction of worthy Peshawar High Court Peshawar in writ petition No.543A/2012, 242B/2014. Appellants filed departmental appeals to respondents for claimed relief in instant appeal but same is not decided within statutory period.

9. Respondents contended that appellants were not appointed in the year 1999, therefore, they are not entitled for desired relief, they further contended that appointments will always be made with immediate effect and condition No.10 of the appellants appointment orders are very much clear in this respect. Record further reveals that appellants qualify test and interview for the posts of PST which were advertised by respondents on 07.02.1999. It is the case of appellants that they should be extended same benefits which were extended to private respondents.

10. It is pertinent to mention here that private respondents in all the appeals were arrayed only for the purpose of reference/rely on their case to seek similar relief, they were neither necessary nor proper parties, therefore, their names were deleted.

11. Admittedly appellants were not appointed in the year 1999, who were appointed later on which means they had not performed duties, therefore, on the principle of no work no pay, they are not

entitled for financial benefits, but as regards the question of determination of seniority of all the appellants or for that matter the persons selected in one combined competitive examination, they will squarely be belonging to the same batch and their inter se seniority was necessarily to be determined in accordance with their respective orders of merit prepared by the selection authority, as required by section-8 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 and rule 17 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Transfer and Promotion) Rules, 1989. Both the provisions are reproduced as under:

Khyber Pakhtunkhwa, Civil Servant Act, 1973:

"8. Seniority:- (1) For proper administration of a service, cadre or [post], the appointing authority shall cause a seniority list of the members for the time being of such service, cadre or [post] to be prepared, but nothing herein contained shall be construed to confer any vested right to a particular seniority in such service, cadre or [post] as the case may be.

(2) Subject to the provisions of sub-section (1), the seniority of a civil servant shall be reckoned in relation to other civil servants belonging to the same service or 6 [cadre] whether serving the same department or office or not, as may be prescribed.

(3) Seniority on initial appointment to a service, [cadre] or post shall be determined as may be prescribed.

(4) Seniority in a post, service or cadre to which a civil servant is promoted shall take effect from the date of regular appointment to that post; Provided that civil



servants who are selected for promotion to a higher post in one batch shall, on their promotion to the higher post, retain their inter-se-seniority as in the lower post.

(5) The seniority lists prepared under sub-section(1), shall be revised and notified in the official Gazette at least once in a calendar year, preferably in the month of January.

Khyber Pakhtunkhwa, Civil Servants (Appointment, Promotion & Transfer) Rules, 1989:

"17. Seniority :- (1) the seniority inter se of civil servants (appointed to a service, cadre or post) shall be determined:-

(a) in the case of persons appointed by initial recruitment, in accordance with the order of merit assigned by the Commission [or as the case may be, the Departmental Selection Committee;] provided that persons selected for appointment to post in an earlier selection shall rank senior to the persons selected in a later selection;"

12. The appellants have been initially appointed, therefore, the official respondents were bound to determine their seniority by following the provisions of section 8 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 and Rule 17 (1) (a) of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, which, as the record reflects or/and the facts and circumstances brought before us, was never done. From every stretch of imagination, the appellants were selected in the same selection process having appeared in the examination and interview in response to the advertisement of 1999, wherein the other recommendees of merit list of 1999 had been

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selected, therefore, under the above provisions of law and rules, their seniority had to be determined accordingly as the determination and fixation of seniority other than the above two provisions would be totally contrary to the law & rules as well as against this long practice and well settled principle and doing that would also be a sort of self-designed novel introduction of determination of seniority on initial appointment. Such an exercise having no place in the law cannot sustain. We are fortified by the following pronouncements.

i. *2002 SCMR 889 titled "Government of NWFP through Secretary Irrigation and 4 others", wherein the august Supreme Court of Pakistan was pleased to have observed that Appointments made as a result of selection in one combined competitive examination would be deemed to be belonging to the same batch and notwithstanding recommendation made by the Public Service Commission in parts, the seniority inter se, the appointees, of the same batch, would be determined in the light of merit assigned to them by the Public Service Commission.*


ii. *2002 PLC(CS) 780 titled "Shafiq Ahmad and others versus the Registrar Lahore High Court and others" wherein it was found that the If the civil servants despite having been declared successful earlier by the Commission, were not appointed at relevant time they could not be made to suffer-- Appointment and seniority were entirely two different things and delayed appointment of the civil servants could not affect*

their right to seniority in accordance with the rules."

- iii. *PLC 1993 (CS) 116 titled M. Tahir Rasheed Establishment Secretary Division, Islamabad and others, wherein the Federal Service Tribunal held that Inter se seniority of candidates at one selection was to be determined on the basis of merit assigned to the candidates by the Public Service Commission/Selection Committee in pursuance of general principles of seniority and not the dates of joining duty.*

13. As a sequel to above discussion, the instant appeal as well as connected service appeals are partially allowed and respondents are directed to fix the seniority of the appellants in accordance with their respective merit orders as assigned by the selection authority in the year 1999. Appellants are not entitled for arrears of pay and back benefits. Costs shall follow the event. Consign.

14. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 28th day of February, 2024.*



(MUHAMMAD AKBAR KHAN)
Member (E)


(RASHIDA BANO)
Member (J)

ORDER
28.02.2024

1. Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney for the respondent present.
2. Vide our detailed judgment of today placed on file appeal in hand is partially allowed and respondents are directed to fix the seniority of the appellants in accordance with their respective merit orders as assigned by the selection authority in the year 1999. Appellants are not entitled for arrears of pay and back benefits. Costs shall follow the event. Consign.

3. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 28th day of February, 2024.*


(MUHAMMAD AKBAR KHAN)
Member (E)


(RASHIDA BANO)
Member (J)

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