

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

BEFORE: **KALIM ARSHAD KHAN** ... CHAIRMAN  
**MUHAMMAD AKBAR KHAN** ... MEMBER (E)

*Service Appeal No. 4755/2020*

Date of presentation of Appeal.....25.03.2021  
Date of Hearing.....14.05.2024  
Date of Decision.....14.05.2024

Khadija Bibi W/o Muhammad Kifayat Ullah, PST, GGPS Muhammad Gul Killi Hassan Khel, Sub-Division (HSD), Peshawar.....(**Appellant**)

**VERSUS**

1. Govt. of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar.
2. Secretary Elementary & Secondary Education, Civil Secretariat, Peshawar.
3. Director Elementary Secondary Education, Near Govt. Higher Secondary School City No. 1 Peshawar.
4. District Education Officer, Hassan Khel, Sub Division (HSD), Peshawar.....(**Respondents**)

NASIR MEHMOOD KHATTAK,  
Advocate

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For appellant.

UMAIR AZAM,  
Additional Advocate General

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For respondents

**JUDGMENT**

**MUHAMMAD AKBAR KHAN, MEMBER (E)**:-The instant service appeal has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as under;

*"That on acceptance of this appeal, the impugned order dated 19.03.2021 may graciously be set aside, and appropriate directions be issued by declaring non-inclusion of the Primary School Teacher (PST) BPS-12*

*for promotion to the post of Physical Education Teacher (BPS-15) as illegal, discriminatory, against the fundamental rights as enshrined in the constitution, against the principal of policy, and be liable to be declared so, and the impugned Notification dated 13.11.2012 through which the Appointment, Promotion & Transfer Rules, 1989 were issued by the respondents/department may kindly be declared illegal and discriminatory to that extent by directing them to insert the post of PST (BPS-12) for promotion to the post of PET (BPS-15). Any other remedy which this Hon'ble Court deems appropriate in the circumstances of the case though not specifically asked for may kindly also be granted."*

02. Brief facts of the case are that the appellant was appointed as Primary School Teacher in the Community School, Hassan Khel Sub Division Peshawar vide order dated 25.09.2009; that later on she improved her qualification by getting B.A degree in the year 2011. On the basis of the said degree her services were regularized vide order dated 21.01.2013. She further improved her qualification by getting Master degree in Islamiat, B.Ed Certificate of Teaching (C.T) and also having diploma in Physical Education; that other colleagues of the appellants belonging to other cadres have been promoted to the post of SST (BPS-16) while the appellant was ignored; that the appellants have no prospects of promotion as per the service rules notified on 13.11.2012

there were 20% quota for promotion on the basis of seniority-cum-fitness, from amongst the Primary School Head Teacher with at least five years service and having qualification prescribed for initial recruitment of Physical Education Teacher; that vide Notification dated 24.07.2014 further amendment were made in the above rules ibid and for promotion to the post of SST (BPS-16) proviso was asserted that if no suitable candidate is available from amongst the Senior Primary School Teacher for promotion then the post shall be filled from amongst Primary School Teacher with at least seven years service; that for declaring the Notification dated 13.11.2012 of respondent No. 2 to be nullity in the eye of law and of no legal effect whereby the post of Primary School Teacher (BPS-12) has not been included in the relevant rules for promotion to the post of Physical Education Teacher (BPS-15) he approached the Hon'ble Peshawar High Court, through Writ Petition No. 3453-P/2020. The Hon'ble Peshawar High Court, treated the said petition as departmental appeal and send back to the respondents for decision in accordance with law. Resultantly, the respondent department treated the said petition as departmental appeal, rejected the same vide order dated 19.03.2021, hence preferred the instant service appeal on 25.03.2021.

03. 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 Additional Advocate General and have gone through the record with their valuable assistance.

04. Learned counsel for the appellants contended that the respondent No. 3 has illegally rejected the departmental appeal of the appellant, without giving any reason, thus the same is liable to be set aside; that the appellant has not been treated in accordance with law and the rights of the appellant for promotion have been violated which is not permissible in the law and Article 9 and 18 of the Constitution of Islamic Republic of Pakistan, 1973; that the fundamental rights of the appellant have been blatantly violated by the respondents and the appellant and other candidate having qualification of Diploma in Physical Education has been discriminated and has been denied his due rights; that the appellant is holding the prescribed qualification for promotion against the post of PET besides she has at her credit the higher qualification of Master Degree, B.Ed, CT and Diploma in Physical Education, however, in the rules on one side the PST (BPS-12) has been made eligible for the post of SST (BPS-16) but on the other hand PST (BPS-12) having qualification of Physical Education has been made ineligible for the post of PET (BPS-15) which is against the provision of the Article 3 & 4 of the Constitution of Islamic Republic of Pakistan, 1973 thus may be declared so.

05. Learned Additional Advocate General controverted the plea and stance taken by the learned counsel for appellant and contended that the respondent No. 3 is bound by law, rules and policy, having gone through the appeal/case and decided it according to the rules laid down by the Government for the post of PET and no rights of the appellant has been violated; that the appellant has the diploma of Physical Education but she

does not fall on the criteria which is needed for promotion to the said post; that the appellant is having the prescribed qualification but the post of PST (BPS-12) in which she is working not allowing her to be promoted to the post of PET, PSHT (BPS-15) and SPST (BPS-14) are allowed but PST (BPS-12) is not allowed for promotion to the post of Physical Education Teacher under the existing service rules and policy.

06. Scrutiny of record reveals that the appellant was first appointed as Primary School Teacher (PST-Female) BPS-07 against Project Post and posted at Female Community School Jamal Shah Kalli, in the erstwhile FR Peshawar vide order dated 25.09.2009. She was reappointed alongwith 15 other candidates against the same post and posted at Government Girls Primary School Noor Daman FR Peshawar vide order dated 21.01.2013. The stance of the appellant is that she has improved her academic and professional qualifications by getting degree of Master in Islamiyat, B.Ed, Certificate of Teaching (CT) and diploma in Physical Education. According to her stance she is eligible for the post of Physical Education Teacher (PET) (BS-15) but there is no provision available in the Service Rules for elevation of the appellant to the post of PET. The appellant contends that on the analogy of the post of SST, provision for the PST may also be made in the Service Rules for promotion to the post of PET. Stance of the appellant is not tenable given the fact that mere improving qualification does not make a civil servant entitled for promotion that too in a different sub-cadre. In the service rules of the respondent department a career structure has been provided to the sub-cadre of PST to which the appellant encadred herself by her own choice.

A PST can move up to level of SST (BS-16) and even to SS (BS-17) by way of promotion as per existing service rules. Since career progression opportunity has duly been provided to the cadre of PST in the existing service rules, therefore, no justification exists for opening of another window for promotion to the same cadre. Moreover, the Service Rules provide for Eighty percent initial/direct recruitment against the post of PET. There is no bar on the appellant to apply and compete for the post on the basis of her academic qualification and eligibility.

07. In view of foregoing findings the appeal in hand is dismissed being devoid of merit. Costs shall follow the event. Consign.

08. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 14<sup>th</sup> day of May, 2024.*



(KALIM ARSHAD KHAN)  
CHAIRMAN



(MUHAMMAD AKBAR KHAN)  
MEMBER (E)

ORDER

14.05.2024 1. Learned counsel for the appellant present. Mr. Umair

Azam, Additional Advocate General Attorney for the respondents present. Arguments heard and record perused.

2. Vide our detailed judgment of today separately placed on file, the appeal in hand is dismissed being devoid of merit. Costs shall follow the event. Consign.

03. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 14<sup>th</sup> day of May, 2024.*



(KALIM ARSHAD KHAN)  
CHAIRMAN



(MUHAMMAD AKBAR KHAN)  
MEMBER (E)

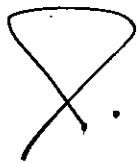
21.09.2023

Clerk of learned counsel for the appellant present.  
Mr. Arshad Ali, ADEO alongwith Mr. Asif Masood Ali Shah,  
Deputy District Attorney for the respondents present.

Clerk of learned counsel for the appellant requested for  
adjournment on the ground that learned counsel for the appellant is  
busy in the Hon'ble Peshawar High Court, Peshawar. Adjourned.  
To come up for arguments on 16.01.2024 before the D.B. Parcha  
Peshi given to the parties.

SCANNED  
KPST  
Peshawar


  
(Fareeha Paul)  
Member (E)

  
(Salah-ud-Din)  
Member (J)

\*Naeem Amin\*

16<sup>th</sup> Jan. 2024

1. Appellant alongwith his counsel present. Mr. Muhammad Jan,  
District Attorney for the respondents present.
2. Being not prepared, learned counsel for the appellant  
requested for adjournment. Adjourned. To come up for arguments on  
14.05.2024 before D.B. P.P given to the parties.

  
(Muhammad Akbar Khan)  
Member (E)

  
(Kalim Arshad Khan)  
Chairman

\*Mutazem Shah\*

SCANNED  
KPST  
Peshawar