

**BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR**

Service Appeal No. 2081/2023

Tabassum Appellant
VERSUS

Govt of KPK through Secretary Elementary & Secondary Education, Civil
Secretariat Peshawar and two others

..... Respondents

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Dated. 16.04.2024

Through

Gohar
Appellant
Amjad Ali
ADVOCATE
SUPREME COURT
Amjad Ali (Mardan)
Advocate
Supreme Court of Pakistan

10-05-24
Peshawar

①

**BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR**

Service Appeal No. 2081/2023

Tabassum **Appellant**
VERSUS

Govt of KPK through Secretary Elementary & Secondary Education, Civil
Secretariat Peshawar and two others
..... **Respondents**

REPLICATION/REJOINER ON BEHALF OF APPELLANT

Respectfully Sheweth:-

Appellant humbly submits as under:

**Khyber Pakhtunkhwa
Service Tribunal**

Diary No. 12199

PRELIMINARY OBJECTIONS:

Dated 16-04-2024

- 1-12. That all preliminary objections are incorrect and misconceived hence denied specifically.

ON FACTS:

- Para 1** That Para No.1 of the service appeal has not been denied, therefore, it has been admitted as correct.
- Para 2** That Para No 2 of the service appeal has not been denied, therefore, it has been admitted as correct.
- Para 3** That Para No 3 of the service appeal is correct while that of joint parawise comments is incorrect hence denied specifically. The act of the respondents is an utter violation of the directions of this Honorable Service Tribunal dated 03.07.2009 and 04.03.2010 in which the respondents have been directed to grant pre-mature increments alongwith other consequential benefits to all similarly placed persons w.e.f 01.10.2007 on account of upgradation of S.E.Ts.
- Para 4** That Para No 4 of the service appeal is correct while that of joint parawise comments is incorrect hence denied specifically. The respondents have deprived the appellant of the pre-mature increment alongwith consequential benefits w.e.f 01.10.2007 in light of the directions of this Honorable Tribunal dated 03.07.2009 and 04.03.2010 on account of upgradation of the post of S.E.T. The respondents are misconstrued. Appellant has been promoted on regular basis to BPS-17 (Head Mistress) vide order dated 14.11.2017 & appellant is entitled for promotion to BPS-18 as per criteria of seniority cum fitness on the strength of regular

(2)

promotion order dated 14.11.2017 to BPS-17 (Copy of the order dated 14.11.2017 is attached as Annexure R-1)

Para 5 That Para No 5 of the service appeal is correct while that of joint parawise comments is incorrect hence denied specifically. Moreover, explained in Para 4 above.

Para 6 That Para No 6 of the service appeal is correct while that of joint parawise comments is incorrect hence denied specifically.

ON GROUNDS:

- A** That ground A of the service appeal is correct while that of joint parawise comments is incorrect hence denied specifically. The respondents have ignored the directions dated 03.07.2009 and 04.03.2010 of this Honorable Service Tribunal and have denied pre-mature increment along with consequential benefits w.e.f 01.10.2007 to the appellant.
- B** That ground B of the service appeal is correct while that of joint parawise comments is incorrect hence denied specifically.
- C** That ground C of the service appeal is correct while that of joint parawise comments is incorrect hence denied specifically. The appellant is Head Mistree and has been promoted from BS-16 to BS-17. Being Head Mistress, the appellant is thoroughly similarly placed person and is entitled for pre-mature increment alongwith other consequential benefits w.e.f 01.10.2007 in light of judgments dated 03.07.2009 and 04.03.2010 of this Honorable Service Tribunal coupled with the fact that appellant is in grade 17 vide order dated 14.11.2017 already attached as Annexure R-1.
- D** That ground D of the appeal is correct while that of joint parawise comments is incorrect hence denied specifically.
- E** That ground E of the service appeal is correct while that of joint parawise comments is incorrect hence denied specifically. The appellant is similarly placed person being Head Mistress and rule 9-A is fully applicable to the appellant as her post of SST has already been upgraded from BS-16 to BS-17 (personal). Furthermore, appellant is granted promotion from BS-16 (SST) to BS-17 (Head Mistress) notification dated 14.11.2017. Moreover, respondents miserably failed to show as to what is dis-similarity in the case of appellant and others whom similar relief granted by Service Tribunal as well as Department.
- F** That ground F of the service appeal is correct while that of joint parawise comments is incorrect hence denied specifically. Appellant has recurring cause of action wherein no limitation runs

(3)

rather recurring (Copies of the judgments are attached as Annexure R-2)

- G That ground G of the appeal is correct while that of joint parawise is incorrect hence denied specifically.
- H That ground H of the appeal is correct while that of joint parawise comments is incorrect hence denied specifically.

It is therefore humbly prayed that the service appeal may please be accepted as prayed for.

Dated. 6.02.2024

Tabassum

Through

Appellant

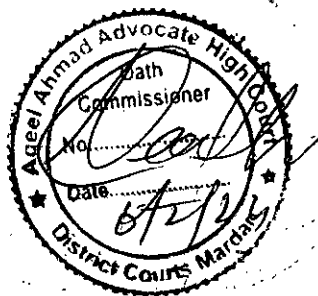

Amjad Ali (Mardan)
 Advocate
 Supreme Court of Pakistan

AFFIDAVIT

I, **Tabassum (appellant)** do hereby solemnly affirm and declare that the contents of the **replication/rejoinder** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Tribunal.

Tabassum

Deponent





GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION DEPARTMENT

Dated Peshawar the 14-11-2017

And R/1
(4)

NOTIFICATION

No. SO(PE)/2-6/DPC Meeting (03-10-2017). On the recommendations of the Departmental Promotion Committee, the Competent Authority is pleased to promote the following One Hundred and Eighty Five (185) Female SSTs (BS-16) to the post of Head Mistresses (BS-17) on regular basis with immediate effect.

S#	Senty list No.	Name of Officer and School Address	Proposed place of Posting	Remarks
1	3	Imtiaz Begum D/O Ikramul Haq MA/B.Ed GGCMS Tauheed Abad Charsadda	H/M BS-17 GGHS Boobak Charsadda	Against the vacant post
2	52	Jamila Azam SST D/O Saïd Azam BA BEd GGHS Khar Bajaur	Service placed at the disposal of FATA	Against the vacant post
3	58	Nabeed Aslam SST BA BEd GGMS Jaboori Manshira	H/M BS-17, GGHS Jaboori Manshira	Against the vacant post
4	67	Hidayat SST, MA, BEd D/O Ali Haider GGHS Badam Baghicha Mkd	H/M BS-17, GGHS Inzargai Malakand	Against the vacant post
5	71	Tahira Bibi, SST, MA, BEd GGHS Borki Parachinar Kurram Agency	Service placed at the disposal of FATA	Against the vacant post
6	75	Tahira Bibi, SST, BA, BEd GGHS Parachinar	Service placed at the disposal of FATA	Against the vacant post
7	102	Dishad Begum, SST, MA BEd GGMS Shok Dara Swat	H/M BS-17 GGHS Kalam Swat	Against the vacant post
8	103	Bibi Jamila D/O Abdul Hamid, SST, MA, BEd GGMS Drosh Chitral	H/M BS-17 GGHS Drosh Chitral	Against the vacant post
9	104	Bibi Zaib-un-Nisa D/O Abdur Rabi SST GGCMS Jujirat Chitral	H/M BS-17 GGHS Murdan Chitral	Against the vacant post
10	105	Bibi Khairun Nisa SST BA BEd GGHS Warijun Chitral	H/M BS-17 GGHS Panakot Dir Upper	Against the vacant post
11	106	Khalida Parveen SST BA BEd GGHS Chail Shagai Swat	H/M BS-17 GGHS Ghalegay Swat	Against the vacant post
12	107	Nighat Shaheen SST MSc MED GGHS Dargai Swabi	H/M BS-17 GGHS Mathra Dargai Swabi	Against the vacant post
13	108	Tabassum SST, MA B.Ed D/o Ihsanullah GGHS Kharki Mkd	Inst: RITE (F) Dargai	Against the vacant post
14	111	Shahida SST, BA, BEd GGCMS Syed Abad D. Alladand MKD	H/M BS-17, GGHS Totai Malakand	Against the vacant post
15	112	Malka Bibi SST GGMS Kandaro Mkd	H/M BS-17, GGHS Dag Gosam Dir Lower	Against the vacant post
16	113	Shahida Nabila, SST, MA, BEd GGMS, Shakarpura Peshawar	H/M BS-17, GGHS Inzargay Nowshera	Against the vacant post
17	114	Rubina Bibi D/O Umed Khan SST MA BEd GGHS Muldeh Chitral	H/M BS-17 GGHS Khot Chitral	Against the vacant post
18	115	Zahida Nageen SST BSc, BEd GGCMS Swabi	H/M BS-17 GGHS Yaqoobi Swabi	Against the vacant post
19	117	Sanila Farid SST BSc, BEd GGHS No.1 Manshira	H/M BS-17, GGHS Rerrh Manshira	Against the vacant post
20	118	Yasmeen Begum SST BSc BEd GGHS Baghdada Mardan	H/M BS-17 GGHS Gudi Bagh Sawaf Dher Mardan	Against the vacant post
21	119	Riffat Khanam SST BA BEd GGCMS Manshira	H/M BS-17, GGHS Shamdakra Manshira	Against the vacant post
22	120	Hasina Jamal SST MA BEd GGMS Landi Akhon Ahmad Peshawar	H/M BS-17 GGHS Kooper Mardan	Against the vacant post
23	121	Abida Inayat SST BA BEd GGHS Spelano Kas Jamrod	Service placed at the disposal of FATA	Against the vacant post

(Signature)
Supervisor

179.	422	Irabin Yousaf, SST BA BEd GGHS, Sajikot A/Abad	H/M BS-17 GGHS Sudher Swabi	Against vacant post	the
180.	424	Asmat Iqbal SST BA BEd GGHS Gwalerai Swat	Instructure BS-17 RTTE (I-) Barikot Swat	Against vacant post	the
181.	425	Khadija Begum, SST BA BEd GGHSS Khanpur Haripur	H/M BS-17 GGHS Sauga Ahmad Gul Killi Mardan	Against vacant post	the
182.	432	Nadeema Begum B.Ed/M.Ed GGHS Morana Dir Lower	H/M BS-17 GGHS Khad Dir Lower	Against vacant post	the
183.	433	Tafzeela Iqbal, SST BA BEd GGHS Morana Dir Lower	H/M BS-17 GGHS Morana Dir Lower	Against vacant post	the
184.	439	Zubaida Khatoon, SST BA BEd GGMS Shah Dau Dikhan	H/M BS-17 GGHS Dali Mela Karak	Against vacant post	the
185.	444	Noreen Naheed, SST BA BEd GGHS, Kala Killi Swat	H/M BS-17 GGHS Kala Killi Swat	Against vacant post	the

Consequential Posting/Transfer

S#	Name of Officer and School Address	Proposed place of Posting	Remarks
186.	Ambreen Alam HM GGHS Jehangira, Nowshera	H/M BS-17.GGHS Palosi Payan Nowshera	Against the Vacant Post
187.	Shahnaz Parveen HM, GGHS Jafozai Nowshera	SS BS-18, Islamiyat GGCHSS Peshawar	Against Vacant Post in her won pay and scale
188.	Naheed Akhtar SS Working against the HM post at GGHS No. 3 Lakki Marwat	SS BS-17, GGHS Ghazni Khel Lakki Marwat	Against the Vacant Post

2. On their promotion, the Head Mistresses concerned will be on probation for a period of one year in terms of Section 6(2) of NWFP Civil Servant Act, 1973 read with Rule 15(1) of the NWFP Civil Servant (Appointment, Promotion & Transfer) Rules, 1989.

3. No TA / DA allowed.

SECRETARY

Encls. No. & date as above.

Copy to:

1. The Additional Chief Secretary (FATA), FATA Secretariat Warsak Road Peshawar.
2. The Secretary to Govt. of Khyber Pakhtunkhwa, Finance Department.
3. The Secretary to Govt. of Khyber Pakhtunkhwa, Establishment Department.
4. The Accountant General Khyber Pakhtunkhwa, Peshawar.
5. PSO to Chief Secretary to Govt. of Khyber Pakhtunkhwa.
6. The Director (E&SE) Khyber Pakhtunkhwa Peshawar
7. The Director Education FATA, Warsak Road, Peshawar.
8. The Director Curriculum & Teachers Education, Abbotabad.
9. The Director ESRU, Khyber Pakhtunkhwa.
10. The Deputy Director (EMIS), E&SE Department, with the request to upload the notification of E&SE Department website (www.kpese.gov.pk).
11. The District Education Officers, Elementary & Secondary Education concerned.
12. The District Accounts Officers concerned.
13. PS to Secretary E&SE Department.
14. Headmistress concerned.
15. Office File.

(NAIK MUHAMMAD)
SECTION OFFICER (PRIMARY)

Amjad Siddiqi
ADJUTANT
SUPREME COURT

1998 P L C (C.S.) 911

[Supreme Court of Pakistan]

Present: Muhammad Munir Khan and Raja Afrasiab Khan, JJ

FEDERATION OF PAKISTAN through Secretary, Ministry of Finance,
Government of Pakistan, Islamabad and 3 others

versus

MUHAMMAD ISMAIL and another

Civil Petition for Leave to Appeal No. 654 of 1995, decided on 18th February,
1996.

(On appeal from the judgment of Federal Service Tribunal dated 27-8-1995, passed
in Appeal No. 196(R) of 1995).

Civil Servants Act (LXXI of 1973)---

---S. 17---Constitution of Pakistan (1973), Art. 212(3)---Increment---Rule of consistency---Application---Premature increment was allowed to civil servant for about 7 years when the same was withdrawn---Service Tribunal found civil servant to be entitled to benefits of premature increment with effect from the date, he was placed in BPS-16 from BPS-11---Validity--Benefit of premature increment in similar cases had been given to other officials of Department. therefore, impugned judgment of Service Tribunal was in accordance with rule of consistency --- Petitioners could not point out any misreading or non-consideration of material before Service Tribunal-- Impugned judgment was otherwise a fair order warranting no interference by Supreme Court under Art. 212(3) of the Constitution---Leave to appeal was refused in circumstances.

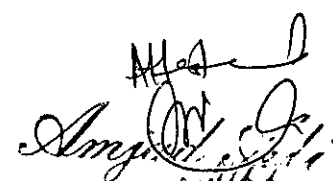
Raja Muhammad Bashir, Deputy Attorney-General for Pakistan instructed by Ch. Akhtar Ali, Advocate-on-Record for Petitioners.

Nemo for Respondents.

Date of hearing: 18th February, 1996.

ORDER

MUHAMMAD MUNIR KHAN, J.---This petition for Leave to Appeal No. 654 of 1995 directed against judgment dated 27-8-1995 of Federal Service Tribunal, Islamabad (hereinafter referred to as the Tribunal) arises from the facts that Muhammad Ismail respondent No. 1 while employed as Sub-Engineer BPS-11 was drawing pay of Rs.500 per month. On 15-1-1976, he was placed in Selection Grade BPS-16. He was allowed one premature increment fixing his pay as Rs.540 per month. He received the said amount alongwith increments. After about seven years, the premature increment was withdrawn. It so happened that the Tribunal accepted the appeal of Muhammad Sadiq Khokhar (Appeal No. 410(R) of 1989) which was exactly identical. On this the petitioner applied for restoration of his premature increment in the same manner as was done in the case of Muhammad Sadiq Khokhar. The Tribunal relying on the decision in the appeal of Muhammad Sadiq Khokhar, Appeal No. 410(R) of 1989 and two other appeals (Appeals Nos. 24(R) of 1992 and 15(P) of 1995) held that the respondent No. 1 was entitled to the benefit of premature increment with effect from the date he was placed in BPS-16 from BPS-11. So, the order of withdrawing premature increment of the respondent No. 1 was


SUPREME COURT

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set aside and the Federation of Pakistan and others, the present petitioners and respondent No. 2 were directed to fix the pay of the respondent No. 1 herein by allowing premature increment to him with effect from the date the said increment was withdrawn. They were also directed to refund the amount of increment, if any, deducted from the respondent's pay. Hence this petition for leave to appeal.

2. Learned Deputy Attorney-General has argued that the material on record was misread and the conclusion arrived at was legally not sustainable. Learned Deputy Attorney-General was of the view that the Tribunal was not legally justified on relying the case of Muhammad Sadiq Khokhar simply because the same was not challenged in the Supreme Court. It should have looked into the merits of the case in the light of material before it.

3. We have considered the submissions made by the learned Deputy Attorney-General with care. We do not agree with him. We find that the cases relied on by the Tribunal are on all fours with the case of respondent No. 1. Benefit of premature increment in similar cases has been given to the other officials of the Department/Government and the impugned judgment is in accordance with the rule of consistency. Learned Deputy Attorney-General has not been able to point out any misreading or non-consideration of material before the Tribunal. The impugned judgment is otherwise a fair order warranting no interference by the Supreme Court under Article 212(3) of the Constitution of the Islamic Republic of Pakistan, 1973.

4. Leave to appeal is, therefore, refused and the petition is dismissed.

A.A. /F-16/S

Leave refused.

Attested
Amjad Sidi
ADJUTANT
SUPREME COURT

8

[National Industrial Relation Commission]

Before Justice (Retd.) Tanvir Bashir Ansari, Chairman

Syed TASEER MUSTAFA and 52 others

versus

INDEPENDENT NEWSPAPERS CORPORATION
(PVT) LIMITED, KARACHI

Tanvir Bashir Ansari
Syed Taseer Mustafa
SUPREME COURT

Case No. IT(P)/98/05/C/2004, decided on 6th February, 2006.

Newspaper Employees (Conditions of Service) Act (LVIII of 1973)---

---S. 13(4)---Implementation Tribunal for Newspaper Employees (Procedure and Functions) Rules, 1977, Rr.16 & 17---Applications for payment of difference of admissible increment---Limitation---Applicants had pressed their claim for recovery of arrears of increment according to Fifth Wage Board Award---Factum of employment and respective grades/pay scales of each applicant, was not specifically denied---Such being the position, it was a simple question of calculation of difference of increment as had been given to applicant under Fifth Wage Board Award and the increment as per pay scale determined by Fifth Wage Board Award with effect from its enforcement---All applicants were found to be entitled to recovery of difference of increment between the Fourth Wage Board Award and Fifth Wage Board Award---Said arrears would be paid with effect from effective date of Fifth Wage Board Award---Keeping principle of consistency in view, management would pay 50% of total arrears to each applicant within specified period---Legal objection that applications were barred by limitation, had no force, in view of the fact that no specific period of limitation was provided for filing of application for implementation before the Tribunal---Applications could not be defeated on the ground of laches as non-payment of increment as per Fifth Wage Board Award, was a continuing and recurring cause of grievance and no question of laches in such case would arise, that was particularly so as it was legal obligation of the Management to implement by itself the conditions of prevailing Wage Board Award.

Implementation Tribunal for Newspaper Employees v. Matri Publications Ltd.
2001 PLC (Labour 662) ref.

Sadiq Muhammad Warriach for Petitioners.

Tariq Pervez, Manager (Human Resources), Daily Jang Rawalpindi along with
and Muhammad Ali Mazhar for Respondents.

ORDER

JUSTICE ???????(RETD.) TANVIR BASHIR ANSARI (CHAIRMAN).---This judgment shall decide applications filed under section 13(4) of the Newspaper Employees (Conditions of Service) Act, 1973 filed by as many as 53 petitioners in respect of the payment of the difference of admissible increment to each petitioner between the one allowed by the Fourth and Fifth Wage Board Awards.

2. The version of the petitioners is that the employees who were in regular service of the respondent management and had completed the minimum required length of service of six months as laid down in para 77 (iv) of the 5th Wage Board Award, were entitled to the arrears of the difference of annual increment as allowed by the 5th Wage Board Award against that which is being currently paid.

3. The learned counsel for the management, Mr. Muhammad Ali Mazhar controverted claim of the petitioner on the ground that para 77 (iv) did not create any right in the petitioner for receiving the increased annual increment as the petitioners had not completed six months regular service by the appointed date viz 15th April, 1990, the date on which the Fifth Wage Board Award became effective.

4. The learned counsel for the respondent further raised a legal objections on the ground of Limitation. According to the learned counsel as per rules 16 and 17 of the Implementation Tribunal for Newspaper Employees (Procedure and Functions) Rules, 1977; the petitions were barred by limitation as under rule 17. the procedure prescribed under the Civil Procedure Code 1908 with regard to civil suits may be followed as far as it can be made applicable in the proceedings before the Tribunal. It is further submitted that even if strictly speaking, the provisions of Limitation Act are not applicable, the petitions filed in the year 2004 are atleast barred by laches and are thus not maintainable.

Muhammad Ali Mazhar
Muhammad Ali Mazhar
Attorney

5. The learned counsel for the respondent further submitted that as no suo motu action was taken by the Tribunal, this would preclude the petitioners from filing their claims at this belated stage.

6. Both the learned counsel have been heard at length and record perused. At the very outset it is observed that earlier case No.IT-1-222/ 95 filed by the Secretary General, Daily Jang and Press Workers Union, Rawalpindi on 21st March, 1995 in respect of an identical cause of grievance was decided by this Tribunal vide judgment dated 22-8-1996. The objection raised by the management upon. the strength of their interpretation of para 77 (iv) of the 5th Wage Board Award was repelled and the petitioners in that case were allowed the difference in annual increment between the Fourth and Fifth Wage Board Awards to all those employees who had served the management for six months or more at a particular stage of pay scale. In compliance of the said order the management, in accordance with their undertaking has already disbursed 50% of the total amount due on account of difference in increments to the petitioners of the said petition.

It may be stated at this juncture that the aforesaid order of this Tribunal was assailed by the management in Writ Petition No.1759 of 1996 which was however dismissed by a learned Single Bench of the Lahore High Court vide judgment dated 9-5-2003 thereby upholding the judgment of this Tribunal. The learned Single Judge of the High Court approved the interpretation placed by the Tribunal upon the entitlement of the petitioners in that case to the receipt of the difference in increment as per the Fifth Wage Board Award.

7. It has been urged by the learned counsel for the respondent that the judgment passed by the learned Single Judge of the High Court has been challenged in an I.C.A. which is pending adjudication. It is not denied that there is no restraining order passed in the said I.C.A. for the reason that the management has already paid 50% of the increment dues to the claimants with the conditions that final status of further disbursement or refund shall depend upon ultimate decision in the I.C.A.

8. I find no force in the submission made by the learned counsel for the respondent that the present petition(s) are hit either by limitation or by the principle of laches. It needs no gainsaying that no specific period of limitation is provided for filing of-a petition for implementation before the Tribunal. The petitions cannot also be defeated on the ground of laches as non-payment of increment as per the Fifth Wage Board Award is a continuing and recurring cause of grievance and no question of laches in such case would arise. This is particularly so as it is legal obligation of the management to implement by itself the conditions of the prevailing Wage Board Award.

9. The petitioners have pressed their claim for recovery of the arrears of

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increment according to the Fifth Wage Board Award. The factum of employment and the respective grades/pay scales of each present petitioner is not specifically denied. This being the position it is a simple question of calculation of the difference of increment as has been given to the petitioners under the Fourth Wage Board Award and the increment as per pay scale determined by the Fifth Wage Board Award with effect from its enforcement. I am fortified by the dictum of the Hon'ble Supreme Court in the case of Implementation Tribunal for Newspaper Employees v. Matri Publications Ltd. 2001 PLC (Labour 662) where their lordships have held that where money due from the employer had been determined in the award/decision of the Wage Board, no further determination was required and the Tribunal was competent to issue direction for the recovery of money due against the employers. Decision of the Wage Board duly notified was binding on the employers and is within the competence and jurisdiction of the Tribunal to implement the same.

10. In view of the foregoing it is found that all the present petitioners are found entitled to the recovery of the difference of increment between the Fourth Wage Board Award and the Fifth Wage Board Award. These arrears shall be paid with effect from the effective date of the Fifth Wage Board Award. Keeping the principle of consistency in view, the respondent shall pay 50% of the total arrears to each of the employees/petitioners within a period of two months from today, with compliance report to this Tribunal through its Registrar. The question of refund of the arrears already received by the petitioners or payment of the balance 50% of arrears by the management shall follow the final judgment in the I.C.A.

H.B. T. /4/K.L.T.

??
?????????Applications allowed.

Attested
Amjad J. Siddiqui
ALICE T.
SUPREME COURT

2014 P L C (C.S.) 247

[Islamabad High Court]

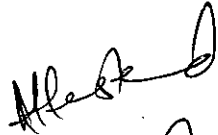
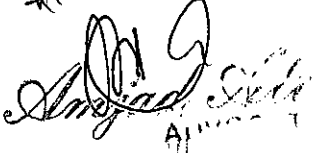
Before Riaz Ahmad Khan, J

RAKSHINDA HABIB

Versus

FEDERATION OF PAKISTAN and others

Writ Petition No.1021 of 2010, decided on 13th June, 2013.



AMIR SIDDIQI
JUDGE
SUPREME COURT

(a) Constitution of Pakistan---

---Art. 199---Constitutional petition---Civil service---Promotion---"Best of the best policy"---Supersession---Petitioner's deceased husband was superseded on the ground of "best of the best policy"---Validity---Petitioner's husband had attained required threshold, but had not been promoted due to the policy known as "best of the best" as well as the criteria of excellence and comparative merit---"Best of the best policy" had no basis and was liable to be struck down---Respondents were directed to consider the case of petitioner's late husband for promotion.

2011 SCMR 295 rel.

(b) Constitution of Pakistan---

---Art. 199---Constitutional petition---Civil service---Laches---Promotion---Recurring cause of action---Civil servant aggrieved by his supersession filed appeal before Service Tribunal---Appeal pending before Service Tribunal was abated due to the death of civil servant---Constitutional petition was filed by the wife of deceased civil servant after three years of the death of her husband---Validity---Loss in pensionary benefits being caused to the petitioner was on yearly basis, it was thus recurring loss---Constitutional petition did not suffer from laches, in circumstances and was allowed.

(c) Constitution of Pakistan---

---Art. 199---Constitutional petition---Civil service---Promotion---Claim of promotion by the legal heirs of deceased employee---Scope---Pensionary benefits of promotion to legal heirs of deceased civil servant---Entitlement---Petitioner's deceased husband was superseded who had filed appeal before Service Tribunal---Appeal pending before Service Tribunal had been abated due to the death of civil servant---Wife of deceased civil servant had filed constitutional petition seeking promotion of his late husband---Validity---Civil servant could not be promoted after his death, however, pensionary benefits of promotion could be extended to the legal heirs of the deceased employee---Authorities were directed to consider the case of deceased civil servant for promotion and if he would be found entitled, the benefits of promotion be extended to legal heirs.

2005 PLC (C.S.) 1424 rel.

Abdul Rahim Bhatti and Yasir Rahim Bhatti for Petitioner.

Syed Jalil Hussain, D.A.G. and Rao Abdul Ghaffar, Standing Counsel.

Kashif Jamil, Assistant Director, M.O.F.A.(SSA).

Date of hearing: 3rd June, 2013.

JUDGMENT

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RIAZ AHMAD KHAN, J--- This judgment is directed to dispose of Writ Petition No.1021 of 2010.

2. Brief facts of the case are that husband of the petitioner, namely Habib-ur-Rehman was Director General in Ministry of Foreign Affairs. His case for promotion to BS-21 was placed before Central Selection Board on 22-6-2002, but he could not be promoted. Again, his case was placed before Central Selection Board on 30-12-2003, but again he could not be promoted. Third time, his case was placed on 19-6-2004, but again the Board did not find him fit for promotion; thus he was superseded. He then preferred departmental representation, which was rejected vide impugned order dated 20-10-2004. The petitioner's husband then filed Appeal No.174(R)/CS/2004 before the Federal Service Tribunal, Islamabad, but unfortunately on 4-6-2007, he died. therefore, his appeal pending before Federal Service Tribunal, Islamabad abated. The wife of said Habib-ur-Rehman then filed the present writ petition with the prayer that the decision of supersession be declared as illegal and without any lawful authority and that the respondents be directed to grant financial benefits of BS-21 to the petitioner.

3. Learned counsel for the petitioner submitted that two times the husband of the petitioner was entitled to promotion, but was denied due to non-availability of performance evaluation reports for the year 1983, 1994 and 1997. The promotion to late husband of petitioner could be deferred till completion of service record of petitioner's husband, but he could not be superseded. Third time, promotion was denied to the late husband of the petitioner on the ground of policy known as best of the best, which was struck down by the Hon'ble Supreme Court of Pakistan in Civil Petitions Nos.836 and 837 of 2006 and 2011 SCMR 295. Learned counsel further submitted that though after the death the late husband of the petitioner cannot be promoted, nevertheless the legal heirs could be granted benefits of BS-21. It was further submitted that since the said relief cannot be granted by the Federal Service Tribunal and after the death of the husband, the appeal before Tribunal abated, therefore, the only remedy available to the wife of the petitioner was to file writ petition. In support of his contention learned counsel referred to 2005 PLC (C.S.) 1424.

4. On the other hand, learned Deputy Attorney-General submitted that late husband of the petitioner could not be promoted in the year 2002 and 2003 for the reason that he failed to obtain the required threshold. In 2004, 2005 and 2006, he was not promoted for the reason that he did not meet the criteria of excellence and comparative merit, though all 3 times, he had attained the required threshold. Learned Deputy Attorney General submitted that the petition suffers from laches, as husband of the petitioner died in 2007 and the writ petition was filed in 2010.

5. I have heard learned counsel for the parties and have also perused the record.

6. Admitted position in the present case is that petitioner husband in the year 2004, 2005 and 2006 had attained required threshold, but could not be promoted due to the policy known as best of the best, the criteria of excellence and comparative merit. The said policy had no basis and the Hon'ble Supreme Court of Pakistan had struck down the same. In this respect, reference may be made to judgment of Hon'ble Supreme Court of Pakistan in Civil Petitions Nos. 836 and 837 of 2006 and 2011 SCMR 295. As far as the second contention regarding laches is concerned, the same is not correct for the reason that the loss being caused to the petitioner is on yearly basis and it is recurring loss. therefore, it cannot be said that the petition suffers from laches. *Attested*

7. Had the petitioner been alive, he would have been promoted, as the policy of best of the best and criteria of excellence and comparative merit had already been struck down by the Hon'ble Supreme Court of Pakistan. After his death, he could not be promoted and the appeal rightly abated. However, in judgment reported as 2005 PLC (C.S.) 1424, it was held by the Hon'ble Supreme Court of Pakistan that pensionary

benefits could be extended to the legal heirs of the deceased employee.

8. In the above said circumstances, the respondents are directed to consider the case of late Habib-ur-Rehman for promotion to BS-21 and if he is found entitled, the benefits of BS-21 be extended to the heirs of Habib-ur-Rehman. The petition is accordingly disposed of.

JJK/105/IsI,

Order accordingly.

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ADVOCATE
SUPREME CO...

2007 P L C (C.S.) 1267

[Punjab Service Tribunal]

Before K.B. Abid, Member-II

Mrs. NASREEN AKHTAR

Versus

SECRETARY, HEALTH GOVERNMENT OF THE PUNJAB, LAHORE and another

Appeal No.2055 of 2006, decided on 11th April, 2007.

Punjab Civil Servants Act (VIII of 1974)-

---S. 8---Punjab Service Tribunals Act (IX of 1974), S.4---Promotion---Appeal to Service Tribunal---Appellant who was appointed in BS-14 as Charge Nurse in 1981, due to her satisfactory performance was promoted as Head Nurse, but despite being senior she was not awarded BS-17, whereas her junior was granted said grade---Appellant not only was appointed earlier to respondent, but was also promoted in BS-16 prior to the respondent for her satisfactory performance---Appellant being senior to respondent, was entitled to pro forma promotion to BS-17 on the basis of seniority-cum-fitness---Claim of appellant to pro forma promotion in BS-17, could not be rejected on the ground that her request was time-barred, because in the matter of promotion and pay, question of limitation was not applied---Case of appellant for promotion in BS-17 was from date of promotion when her next junior was promoted---Directions were given to the Authority to consider case of appellant for promotion from the date her next junior was promoted in BS-17---Date of promotion of appellant in BS-16, would be the deciding factor along with well established, formula of seniority-cum-fitness at the relevant time.

2002 PLC (C.S.) 1388 ref.

Sh. Amar Maftoon and Nasir Hussain Shah for Appellant.

Ejaz Farrukh, Senior Litigation Officer on behalf of Respondent No.1.

Date of hearing: 11th April, 2007.

JUDGMENT

K.B. ABID (MEMBER-II)--- This appeal has been filed by Nasreen Akhtar Nursing Tutor, General Nursing School Joharabad with the plea that she may be granted pro forma promotion w.e.f. 2-10-1997, the date on which her junior/respondent No.2 Mrs. Saeeda Bano was promoted in BS-17 and seniority may be given accordingly.

2. Briefly stating, the appellant was appointed in BS-14 as Charge Nurse on 16-6-1981. Due to satisfactory performance, she was promoted as Head Nurse in BS-16 on 29-3-1993. The appellant being senior was not awarded BS-17 and the departmental representation was filed before the Appellate Authority for pro forma promotion. In this connection service appeal was also filed in Punjab Service Tribunal. After the judgment of the Punjab Service Tribunal in Appeal No.2288 of 2000 dated 14-11-2001 the Head Department has granted the pro forma promotion to the appellant w.e.f. 28-6-2000 vide order No.SO(NC)5-2/03 dated 28-6-2004. The claim of the appellant remained unattended because she was entitled for promotion w.e.f. 2-10-1997: In this connection another representation was filed before the departmental authorities which was not decided within the mandatory period of 90 days, hence this service appeal before

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SUPREME COURT

Punjab Service Tribunal.

3. The claim of the appellant is that she is senior to respondent No.2 because the date of appointment of the appellant is 16-6-1981 and the date of appointment of respondent No.2 is 6-6-1984. The appellant was promoted to BS-16 on 29-3-1993 whereas respondent No.2 was promoted in BS-16 on 16-10-1993. In view of these facts, the appellant is entitled for promotion in BS-17 from the date on which her next junior was promoted.

4. The appeal has strongly been opposed by the respondents and explained that in previous Appeal No.2288 of 2000, the directions were given by Punjab Service Tribunal to Secretary Health to consider the request of appellant on merit. Consequent to the decision of Punjab Service Tribunal, pro forma promotion was awarded to the appellant w.e.f. 28-6-2000. She was required to file representation against this pro forma promotion order within the period of 60 days before the Appellate Authority but she never had filed objection. The present appeal is not maintainable. In the previous appeal, the appellant had not claimed seniority/promotion from the date Mrs. Saeeda Bano was promoted. The copy of seniority list attached by the appellant with this service appeal is unreliable.

5. In Tribunal proceedings, the counsel for the appellant has furnished the seniority list of Deputy Nursing Superintendent/Nursing Instructors (BS-17) as stood on 22-11-2006. The seniority list has been notified by the department on 18-12-2006. As per this list, the name of respondent No.2 stands at Serial No.110 whereas the name of the appellant stands at Serial.No.162. In this list the date of appointment of appellant has been shown as 16-6-1981 whereas the date of appointment of respondent No.2 shown as 1-6-1984 as charge Nurse. From this seniority it is clearly mentioned that the appellant was senior as Charge Nurse as compared with respondent No.2. Similarly the date of promotion of the appellant in BS-16 is 29-3-1993 whereas the date of promotion of respondent No.2 is 16-10-1993. Counsel for the appellant in this connection has submitted another copy of seniority list circulated vide letter No.SO(C-1)2-1/95(6), dated 23-7-1996. This notification indicates that the appellant was promoted in BS-16 on 29-3-1993. The department in Notification No;S.O.(NC)1-786/05, dated 18-12-2006 has wrongly mentioned the date of promotion in BS-16 of appellant as 8-5-2001. It needs to be rectified. The direction of Punjab Service Tribunal in Appeal No.2288 of 2000 dated 14-11-2001 is very much clear. The respondent No.1/Secretary Health was directed to grant the pro forma promotion to the appellant on merit. This means that the pro forma promotion was to be given on the basis of seniority-cum-fitness. The claim of the respondents that request of appellant is time-barred, is not maintainable because in the matter of promotion and pay, the question of limitation is not applied. In this connection reference is given to Punjab Service Tribunal judgment reported in 2002 PLC (C.S.) 1388.

6. On the basis of record, the case of appellant for promotion in BS-17 from the date of promotion of next her junior is proved. Directions are given to respondent/Secretary Health to consider the case of the appellant for promotion to BS-17 from the date her next junior was promoted in BS-17. The date of promotion of the appellant in BS-16 (29-3-1993) would be the deciding factor along with the well-established formula of seniority-cum-fitness at that relevant time. With these orders, the appeal is disposed of.

H.B.T./30/PST

Order accordingly.

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SUPREME COURT

[Punjab Service Tribunal]

Justice (Retd.) Riaz Kayani, Chairman

MUHAMMAD HASNAIN SHAH

versus

INSPECTOR-GENERAL OF POLICE, MULTAN RANGE,
MULTAN and 27 others

Appeal No.3706 of 2000, decided on 4th December, 2001

(a) Civil Service----

----Promotion, confirmation and seniority---Civil servant was promoted to the rank of Officiating Sub-Inspector of Police, but was not confirmed on that post and was also placed below the co-civil servants in seniority list despite they were juniors to him ---Co-civil servants were confirmed and placed above civil servant in seniority list on ground that they had undergone upper class course earlier to the civil servant---Validity---Civil servant was punished for no fault of his own for not being nominated for upper class course alongwith co-civil servants---Civil servant had no adverse entry to his A.C.R. standing against him at relevant time---Representation and appeal filed by the civil servant against his grievance though were late, but in matters of promotion, pay and other emoluments, limitation would not foreclose his right accrued to him---Orders passed against the civil servant were set aside with direction to the Authority to confirm civil servant from the date when his juniors were so confirmed - and to grant ante-dated promotion to him.

(b) Limitation Act (IX of 1908)---

----Preamble---Limitation---Limitation Act, 1908 undoubtedly was penal in nature and rights accrued could not be taken away unless sufficient cause was shown---Technicalities of law, however, should not stand in the way of a person who had been singled out rather prosecuted without knowing as to crime or sin, he had committed.

Masud Ahmad Riaz for Appellant.

Khadim Hussain Sindhu, District Attorney for Respondents.

Date of hearing: 27th November, 2001.

JUDGMENT

Muhammad Hasnain Shah, Inspector, was appointed as A.S.-I. on 6-3-1982 and was confirmed in the said post on 12-8-1986 on which date he was also admitted to list 'E'. On 8-10-1986, Deputy Inspector-General of Police, Faisalabad Range, Faisalabad, terminated the probation of the appellant as A.S.-I. and also removed him from list 'E'. Inspector-General of Police, Punjab, took suo motu notice of the steps taken by Deputy Inspector-General of Police, Faisalabad, and directed maintaining status quo ante, with the result that appellant was confirmed as A.S.-I. w.e.f. 2-8-1986 as well as admitted to list 'E' and was also promoted the rank of officiating Sub-Inspector w.e.f. 8-8-1988. Simultaneously, appellant was transferred to Multan Range in the year 1988. A seniority list was issued in which appellant was shown at serial No. 143-A followed by another seniority list of Sub-Inspectors w.e.f. 1-1-1987 in which the name of the

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Masud Ahmad Riaz
27/11/2001

appellant did not figure, however, respondents Nos.4 to 9 were shown senior to the appellant having been admitted to list 'E' w.e.f. 9-9-1986, on a date after the admission of the appellant to the said list, as a result of which respondents Nos.4 to 9 were confirmed as Sub-Inspectors w.e.f. 7-2-1990 vide order dated 17-2-1990 passed by Deputy Inspector-General of Police, Multan Range, Multan. Appellant made representation to respondent No. 1 on 15-1-1998. In reply respondent No. 1 vide his letter dated 25-2-1998 informed the appellant that his case was examined for grant of ante-date confirmation as Sub-Inspector w.e.f. 7-2-1990 but the same could not be accorded as he was undergoing upper class course which was a pre-requisite qualification for confirmation as Sub-Inspector. Appellant mentioned in his appeal that respondents Nos.4 to 9 have been deputed for upper class course in March 1989 whereas appellant was sent to upper class course on 23-9-1989 and completed the course in March, 1990, while he was serving in Multan Range. Grievance of the appellant was that confirmation of respondents No.4 to 9 as Sub-Inspectors w.e.f. 7-2-1990, while he was left in lurch, the respondents were admitted to list 'F' and promoted as officiating Inspectors from various dates occurring in the years 1991 and 1995. Appellant admitted that he was transferred to Sargodha Range at his own request vide order dated 27-1-1991, he was placed at the bottom of officiating Sub-Inspectors on the list of Sargodha Range. Being junior to all officiating Sub-Inspectors in Sargodha Range, he was confirmed as Sub-Inspector w.e.f. 12-8-1992 and in the seniority list of confirmed Sub-Inspectors of Sargodha Range, his name figured at Serial No.60, though he was entitled to be placed below Serial No.24 and above Serial No.25 as these persons were confirmed from various dates ranging between 9-10-1990 to 12-8-1992. Appellant was admitted to list 'F' on 27-3-1999 and promoted as Inspector w.e.f. 19-4-1999 making him junior to respondents Nos.4 to 11 by 8 years. Appellant submitted his representation to respondent No.2 on 19-3-1998, which was rejected and communicated to him on 25-11-2000. Order of respondent No. 1 dated 25-2-1998 and that of respondent No.2 dated 25-11-2000 have been challenged in this appeal.

2. Learned counsel for the appellant contended that the injustice to the appellant commenced at the time when he was not considered alongwith his batchmates to undergo upper class course to which they were admitted in March, 1989 and this is the starting point of his miseries. Taking his arguments to their logical conclusion, learned counsel stated that the only ground for not sending the Police Officer for upper course is that when he has an adverse entry in his ACR, as mandated in the Police Rules, 1934. To the contrary, it was urged that appellant has in his whole career not earned even a single adverse entry, particularly, till March, 1989, when respondents Nos.4 to 11 were sent to undergo the upper class course and without any rhyme or reason, his entry in the institution to undergo upper class course was delayed till 23-8-1989, which he passed in March, 1990.

3. Learned counsel for the appellant referred to an unreported judgment of the Hon'ble Supreme Court in Civil Petitions Nos.766-L of 1995 and 790-L of 1995, which took into consideration identical question of law; Respondent and petitioner, in the referred to case, before the apex Court were Junior Instructors in Government College of Technology. Respondent being senior to the petitioner was not promoted to take the training course because the Principal was of the view that his class would be neglected without him. But on the other hand petitioner was allowed to proceed on training which made him qualified to be promoted in BS-17 on 18-6-1990. However, the case of the respondent was relegated on the ground that he did not complete the training which he did subsequently and obtained Diploma on 13-5-1991. Respondent claimed promotion and seniority asserting that if he had not been ignored earlier, without any fault of his, he would have also been promoted alongwith the petitioner. Punjab Service Tribunal who allowed the petition, observed as under:--

"There was no denying the fact that the appellant was senior to respondent No.3. He should have been deputed for the course by virtue of his seniority. It was not the respondent's case that his record was otherwise unsatisfactory rendering him unfit for getting the training. Conversely, when his record was clean and he was

senior as well, he should have been given preference to all others for getting the training. He was detained by the Principal as he had none also to look after the relevant duties but this could not be a reason to traverse seniority of the appellant. Someone should have been brought in by transfer or by initial recruitment to fill the post temporarily. The reason for rendering his seniority ineffective was not sound. Late, however, he got the training and came eligible to be promoted. By virtue of seniority which was a vested right he had a genuine claim to be preferred to respondent No.3.

Accordingly, the appeal is allowed. The appellant is held entitled to be promoted as Inspector (BS-17) in preference to respondent No.3 even though the latter might have to be demoted."

Hon'ble Judges of the Supreme Court held that the respondent was handicapped to undergo the course/training because of refusal of - the Principal to allow him to proceed on such training but since he was entitled to undergo the training alongwith others, the Principal should have exercised the discretion in his favour and alternate arrangement should have been made. The appeal of the petitioner was dismissed and judgment of the Tribunal was upheld.

4. Another hurdle which has been created in the way of the appellant is that he got himself transferred to Sargodha and according to the policy of the Government, transfer with consent brings his seniority in his rank to the bottom. However, the mischief to the appellant was done before he opted for transfer to Sargodha in January, 1991 and events culminating in ignoring him for promotion as confirmed Sub-Inspector from 7-2-1990 would not stand in his way for seeking relief by his voluntary transfer to Sargodha Range. Appellant also quoted the case of Muhammad Sarwar v. Director Administration, FIA reported in 1998 SCMR 2409 a case more or less on the similar grounds. Learned District Attorney, raised a single objection about limitation and submitted that wrong was done to the appellant on 7-2-1990 according to his own showing but the representation which he made was in January, 1998 and according to the dictum of Hon'ble Supreme Court reported in 1998 SCMR 882, question of limitation could be seen by the appellate Court at any stage of the proceedings. It was urged that although appellant may have a good case on merit but having kept mum for 7/8 years, he cannot be allowed condonation there being no sufficient ground in his favour.

5. I have attended to the arguments of the respective counsels and have also gone through the record.

Attended

6. Appellant admittedly was punished for no fault of his for not being nominated for upper class course in March, 1989 alongwith other respondents. He had no adverse entry in his ACR standing against him name at that period of time. Ruling of the Hon'ble apex Court upholding the judgment of this Tribunal in Appeal No. 634 of 1991 clinches the issue. Subsequent event of getting himself transferred to Sargodha and being placed at the bottom of officiating Sub-Inspectors list, would not stand in the way of the appellant as the mischief had completed itself in February, 1990 when juniors to the appellant were confirmed as Sub-Inspector.

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7. Coming to the question of limitation, canvassed by the appellant, I am more prone in the instant case to do substantial justice, as head of the appellant was placed on the chopping block for no fault of his. Undoubtedly, Limitation Act is penal in nature and rights accrued cannot be taken away unless sufficient cause is shown. However, technicalities of law should not stand in the way of a person who has been singled out rather persecuted without knowing as to what crime or sin he has committed. Equities in his favour, far out -weight, his tardiness, to make representation against the injustice done to him. I am also fortified in my view by the judgment of the apex Court reported in PLD 1992 SC 825 that in matters of promotion, pay and other emoluments cause of action is recurring, limitation does not forecloses the right. Resultantly I accept the

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appeal, set aside the impugned orders and direct the respondents to confirm the appellant as Sub-inspector' w.e.f. 7-2-1990 when respondents: 14 to 11 his juniors were given the benefit of confirmation as Sub-Inspector. Respondent No.2 may consider granting ante-dated promotion to the appellant as officiating Inspector from the same dates as were allowed to the respondents alongwith consequential benefits flowing from the order to promotion.

H.B.T./64/PST

Appeal accepted.

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