

BEFORE THE KHYBER PAKHTUNKHWA, SERVICE TRIBUNAL,
PESHAWAR

C.M No. _____/2024

In

Service Appeal No.502/2024

Safdar Ali Shah.....Appellant

VERSUS

Govt. of KPK & others.....Respondents

I N D E X


S#	Description of Documents	Annex	Pages
1.	Application for impleadment		1-2
2.	Affidavit		3
3.	Copy of judgment dated 31.05.2023		
4.	Copy of Office order dated 25.03.2024		
5.	Copy of corrigendum dated 19.03.2024		
6.	Wakalatnama		

Applicant

Jan Baz Khan

S/o Muhammad Nawaz Khan
SST Bio Chemistry BPS-16
GHS Toor Kakki Bannu
Cell No.0345-9806859

Through



TARIQ KAMAL

Advocate High Court

Dated 23.04.2024

BEFORE THE KHYBER PAKHTUNKHWA, SERVICE TRIBUNAL,
PESHAWAR

C.M No. _____/2024
In
Service Appeal No.502/2024

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 12357

Dated 23-04-2024

Safdar Ali Shah.....**Appellant**

VERSUS

Govt. of KPK & others.....**Respondents**

APPLICATION FOR IMPLEADMENT IN THE
PANEL OF RESPONDENTS

Respectfully Sheet:

1. That the above tilted service appeal is pending before this Hobbles Tribunal which is fixed for 24.04.2024.
2. That the order impugned in the instant service appeal has been made in compliance to the judgment dated 31.05.2023 rendered by the Humble Tribunal. **(Copy of judgment annexed).**
3. That the appellant has deliberately not impleaded the applicant in the instant appeal and on the strength of the appeal, the implementation process initiated by the department has been halted in the garb of status quo order.

4. That the applicant is a necessary party in the instant appeal.
5. That valuable rights of the applicant are involved in the instant matter.

It is, therefore humbly submitted that on acceptance of instant application, the applicant may please be impleaded in the panel of respondents accordingly.

Applicant


Jan Baz Khan

S/o Muhammad Nawaz Khan
SST Bio, Chemistry BPS-16
GHS Toor Kakki Bannu
Cell No.0345-9806859

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TARIQ KAMAL

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BEFORE THE KHYBER PAKHTUNKHWA, SERVICE TRIBUNAL,
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C.M.No. _____/2024

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Service Appeal No.502/2024

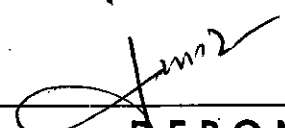
Safdar Ali Shah.....**Appellant**

VERSUS

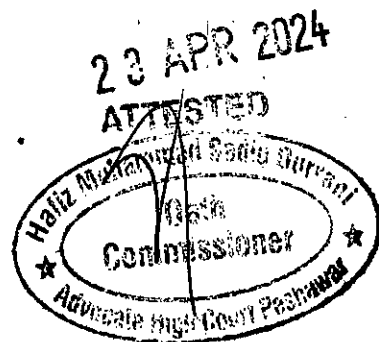
Govt. of KPK & others.....**Respondents**

AFFIDAVIT

I, Jan Baz Khan S/o Muhammad Nawaz Khan (SST Bio Chemistry BPS-16 GHS Toor Kakki Bannu (impleaded applicant), do hereby solemnly affirm and declare that the contents of the accompanying **Application** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.



DEPONENT
CNIC No.11101-5012372-1
Cell No.0345-9806859



BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

Service Appeal No.887/2020

Date of Institution ... 10.02.2020

Date of Decision... 31.05.2023



Jan Baz Khan S/O Muhammad Nawaz Khan, R/O Kaki Khas P/O Kaki Khas Tehsil & District Bannu, Arabic Teacher (BS-15) Government Middle School, (GMS) No. 1 Bannu. ... (Appellant)

VERSUS

Directorate of Elementary & Secondary Education, Khyber Pakhtunkhwa, Near GHSS No. 1 Firdos, Peshawar and 41 others.

... (Respondents)

MR. INAYAT ULLAH KHAN,
Advocate

--- For appellant.

MR. ASIF MASOOD ALI SHAH,
Deputy District Attorney

--- For official respondents.

MR. MIR ZAMAN SAFI,
Advocate

--- For private respondents No. 3 & 4.

MR. SALAH-UD-DIN
MR. MUHAMMAD AKBAR KHAN

--- MEMBER (JUDICIAL)
--- MEMBER (EXECUTIVE)

JUDGMENT:

SALAH-UD-DIN, MEMBER:- Precise facts as alleged by the appellant in his appeal are that he was appointed as Arabic Teacher (BPS-15) on contract basis on 22.05.2014 through National Testing Service (NTS) and was later on regularized vide Notification bearing Endorsement No. 1833-61/AE-1/Estab dated 21.03.2018; that initially a seniority list dated 15.10.2019 in respect of Middle School Arabic Teachers was circulated, wherein the name of the appellant was mentioned at serial No. 84, while the names of private respondents No. 3 & 4 were at serial No. 120 & 124 respectively; that the

ATTESTED

MEMBER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

afore-mentioned seniority list dated 15.10.2019 was prepared age-wise but subsequently another seniority list dated 26.10.2019 in respect of Middle School Arabic Teachers was circulated, wherein the appellant was shown junior to private respondents No. 3 & 4, constraining the appellant to file objection petition before the District Education Officer (Male) Bannu, however the same was not responded; that the appellant then filed departmental appeal before the Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar but the same was also not responded; that the appellant then submitted another application to the District Education Officer (Male) Bannu for disposal of objection petition earlier filed by him; that the District Education Officer (Male) Bannu passed hand written order on the application that the applicant being low in his merit position than the competing candidates; was not entitled for promotion and that he shall be promoted on his own turn subject to availability of the posts; that the impugned seniority list dated 26.10.2019 of Middle School Arabic Teachers has been prepared in violation of Clause-8 of terms and conditions prescribed in regularization Notification bearing endorsement No. No. 1833-61/AE-1/Estab dated 21.03.2018 as well as sub-section-2 of Section-4 of Khyber Pakhtunkhwa Employees of Elementary & Secondary Education Department (Appointment and Regularization of Services) Act, 2017, therefore, the same is liable to be corrected.

2. On admission of the appeal for regular hearing, notices were issued to the respondents. Official respondents No. 1 & 2 as well as private respondents No. 3 & 4 contested the appeal by way of filing of

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replies, wherein they refuted the assertion raised by the appellant in his appeal. Rest of private respondents were proceeded ex-parte vide order dated 12.01.2023.

3. Learned counsel for the appellant has addressed his arguments supporting the grounds agitated by the appellant in his service appeal. On the other hand, learned Deputy District Attorney for official respondents No. 1 & 2 as well as learned counsel for private respondents No. 3 & 4 have controverted the arguments of learned counsel for the appellant and have supported the comments submitted by them.

4. Arguments have already been heard and record perused.

5. A perusal of the record would show that the appellant as well as private respondents were appointed as Arabic Teachers (BPS-15) on contract basis vide appointment order bearing endorsement No.5390-6440/AE-II-Male/AT/Adhoc/Apptt dated 22.05.2014. During the course of their service, Khyber Pakhtunkhwa Employees of the Elementary and Secondary Education Department (Appointment and Regularization of Services) Act, 2017 was enacted and vide Notification bearing Endorsement No. 1833-61/AE-1/Estab: dated 21.03.2018 their services were regularized with effect from the date of their initial appointment. Clause-8 of Terms and Conditions as mentioned in regularization Notification dated 21.03.2018 is regarding determination of seniority, which is reproduced as below:-

"Their Seniority shall be determined on the basis of their continuous service in cadre, provided that if the date of continuous service

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Khyber Pakhtunkhwa
Service Tribunal
Peshawar

in the case of two or more employees is the same, the employees older in age shall rank senior to the younger one."(Emphasis provided)

6. Moreover, the criteria for determination of seniority inter-se of the employees regularized under Khyber Pakhtunkhwa Employees of the Elementary and Secondary Education Department (Appointment and Regularization of Services) Act, 2017 has been provided in Sub-Section 2 of Section-4 of the said Act, which is reproduced as below:-

"4. *Determination of seniority.*---

(1).....

(2) *The seniority inter-se of those employees, whose services are regularized under this Act within the Cadre, shall be determined on the basis of their continuous service in Cadre:*

Provided that if the date of continuous service in the case of two or more employees is the same, the employee older in age shall rank senior to the younger one." (Emphasis supplied.)

7. Furthermore, according to Section-5 of the Khyber Pakhtunkhwa Employees of the Elementary and Secondary Education Department (Appointment and Regularization of Services) Act, 2017, the provisions of the said act shall have an overriding effect and the provisions of any such law or rules to the extent of inconsistency with the said Act shall cease to have effect.

8. The appellant as well as private respondents were appointed on contract basis on the same date i.e 22.05.2014 and were regularized

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Khyber Pakhtunkhwa
Service Tribunal
Peshawar

through same Notification dated 21.03.2018, therefore, in view of Clause-8 of Notification bearing Endorsement No. 1833-61/AE-1/Estab: dated 21.03.2018 as well as proviso to Sub-Section-2 of Section-4 of Khyber Pakhtunkhwa Employees of the Elementary and Secondary Education Department (Appointment and Regularization of Services) Act, 2017, their seniority inter-se was to be determined age-wise. While going through the impugned seniority list dated 26.10.2019, it is evident that inter-se seniority of the appellant and private respondents has been determined on the basis of score obtained by them in written test conducted through NTS, which was not a correct criteria for determination of their inter-se seniority. The NTS score was relevant for their appointment and not for determining their seniority inter-se. The impugned seniority list dated 26.10.2019 to extent of appellant as well as private respondents was prepared wrongly and requires to be corrected in accordance with Clause-8 of terms and condition of Notification bearing Endorsement No. 1833-61/AE-1/Estab: dated 21.03.2018 as well as Sub-Section 2 of Section-4 of Khyber Pakhtunkhwa Employees of the Elementary and Secondary Education Department (Appointment and Regularization of Services) Act, 2017.


9. In view of the above discussion, the impugned seniority list dated 26.10.2019 stands set-aside to the extent of those Arabic Teachers, who were appointed on contract basis on 22.05.2014 and whose services were regularized vide Notification bearing Endorsement No. 1833-61/AE-1/Estab: dated 21.03.2018 and it is directed that their inter-se seniority shall be determined age-wise on the basis of ibid Notification


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Service Tribunal
Peshawar

dated 21.03.2018 as well as Sub-Section-2 of Section-4 of Khyber Pakhtunkhwa Employees of the Elementary and Secondary Education Department (Appointment and Regularization of Services) Act, 2017 by placing the name of the appellant at correct position in the seniority list of the concerned Arabic Teachers with all consequential benefits. The appeal in hand stands allowed in the said terms. Needless to mention that this judgment shall have no bearing upon those Arabic Teachers, whose appointments have been made through any order/judgment of court or Tribunal. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
31.05.2023


(Salah-Ud-Din)
Member (Judicial)


(Muhammad Akbar Khan)
Member (Executive)

Certified to be true copy
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application 23/4/23
Number of Words 67
Copying Fee 36/-
Urgent 35/-
Total 35/-
Name of Copy _____
Date of Completion 23/4/23
Date of Delivery of Copy 23/4/23



**OFFICE OF THE DISTRICT EDUCATION OFFICER
(MALE) BANNU**

Phone No: 0928-660005 Fax No: 0928-660346
Email Id: bannuedo@yahoo.com



OFFICE ORDER

In light of Service tribunal Khyber Pakhtunkhwa decision issued in service appeal No.887/2020 decided on 31-05-2023 and execution petition No.86/2024 and consequent upon the Notification issued by the Director E&SED Khyber Pakhtunkhwa vide No. 4172-76 dated; 23-2-2024 and subsequent corrigendum order issued under Endst: No. 1393-97 dated; 19-03-2024, therefore Mr. Jan Baz Khan AT GMS No.1 Bannu under promotion to SST(Bio:/Chem:) is hereby adjusted at against vacant SST (Bio:/Chem:) post at GHS Toor Kakki Bannu in the interest of public service please.

Note: Charge report should be submitted to all concerned.
No. TA/DA is allowed.

DISTRICT EDUCATION OFFICER
(MALE) BANNU

Endst: No. 2175-81 /SST promotion/adjustment Dated: 25.03 /2024.
Copy for information & N/A to the:-

- 1- Registrar Service Tribunal Khyber Pakhtunkhwa.
- 2- Director E&SED Khyber Pakhtunkhwa.
- 3- Deputy DEO (M) Bannu.
- 4- Principal/Head Master concerned schools.
- 5- District Monitoring Officer Bannu,
- 6- District Account Officer Bannu.
- 7- Petitioner concerned for strict compliance & report.

~~Attested & Accepted~~
/ DISTRICT EDUCATION OFFICER
(MALE) BANNU

District Education Officer
(M) Bannu

Attested
&
Accepted
Tariq



Directorate of Elementary and Secondary Education Khyber Pakhtunkhwa Peshawar

CORRIGENDUM

In compliance with the order sheet dated 07/03/2024 of the Honorable Khyber Pakhtunkhwa Service Tribunal, Peshawar, in partial modification of this office notification issued vide No 4172-76 dated 23/02/2024, the promotion order from AT to SST (D/C) BPS-18 in respect of Mr. Jan Baz Khan may be read as "w e ! 07/02/2020" instead of "with immediate effect".

Samina Ahsan
DIRECTOR

Elementary & Secondary Education
Khyber Pakhtunkhwa Peshawar

No 1393-97

F.No. (ADLR-II)SA.No.887/2020/Jan Baz/2023

Dated 19/3 2024

Copy forwarded for information & action to the:-

- 1 Learned Registrar Khyber Pakhtunkhwa Service Tribunal, Peshawar
- 2 Learned AAG Khyber Pakhtunkhwa Service Tribunal, Peshawar.
- 3 District Education Officer (Male) Bannu
- 4 District Accounts Officer District Bannu
- 5 Deputy Director (Legal) E&SE Khyber Pakhtunkhwa
- 6 Section Officer (L-I) E&SE Department Khyber Pakhtunkhwa
- 7 PA to Additional Secretary (General) E&SE Department Khyber Pakhtunkhwa
- 8 PA to Director E&SE Khyber Pakhtunkhwa
- 9 Official concerned
- 10 Master File

Jan 19/3/2024
Assistant Director (Estab-4-1)
Elementary & Secondary Education
Khyber Pakhtunkhwa Peshawar

*Attested
&
Accepted
Tariq*

-1-

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

SERVICE APPEAL NO 502 / 2024



Mr. Safdar Ali Shah, SST (Bio chemistry) (BPS 16),
GHS Ghorwala Bannu..... Appellant

VERSUS

- 1- Secretary Elementary & Secondary Department, Khyber Pakhtunkhwa, Peshawar.
 - 2- The Director Elementary & Secondary Department, Khyber Pakhtunkhwa, Peshawar.
 - 3- The District Education Officer (M), Bannu
- RESPONDENTS

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974, AGAINST THE IMPUGNED NOTIFICATION DATED 23/02/2024, WHEREBY THE APPELLANT HAS BEEN DEMOTED/REVERTED TO THE POST OF ARABIC TEACHER AND AGAINST THE APPELLATE ORDER DATED 01/04/2024, WHEREBY THE DEPARTMENTAL APPEAL OF THE APPELLANT HAS BEEN REGRETTEED.

Prayer:-

On acceptance of this Service Appeal, the impugned notification dated 23/02/2024 and appellate order dated 01/04/2024 may kindly be set aside and the appellant may kindly be restored on the post of SST Biochemistry (BPS-16) with all back benefits. Any other remedy which this august Service Tribunal deems fit that may also be awarded in favor of the appellant.

R/SHEWETH:

ON FACTS:

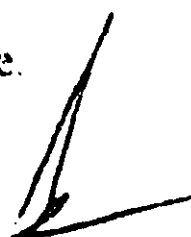
Brief facts giving rise to the present appeal are as under:-

1) That appellant was initially appointed as Arabic Teacher (RDC.

01. Learned counsel for the appellant present and submitted corrigendum dated 19.03.2024, which is placed on file. Preliminary arguments heard.

02. Points raised need consideration. The appeal is admitted for regular hearing subject to all just and legal objections by the other side. The appellant is directed to deposit security fees within three days. Respondents be summoned through TCS, the expenses of which be deposited by the appellant. Thereafter notices be issued to the respondents for submission of reply/comments. To come up for reply/comments on 24.04.2024 before S.B. P.P given to learned counsel for the appellant.

03. Along with the service appeal, there is an application for grant of interim relief by restraining the respondents to act upon the impugned notification dated 23.03.2024 or the respondents may kindly be restrained from making recovery till the final disposal of the main appeal. In the meanwhile, the operation of corrigendum dated 19.03.2024 is suspended till the next date.


(Muhammad Akbar Khan)
Member (E)

Certified to be true copy



5.04.2024 01. Learned counsel for the appellant present and submitted
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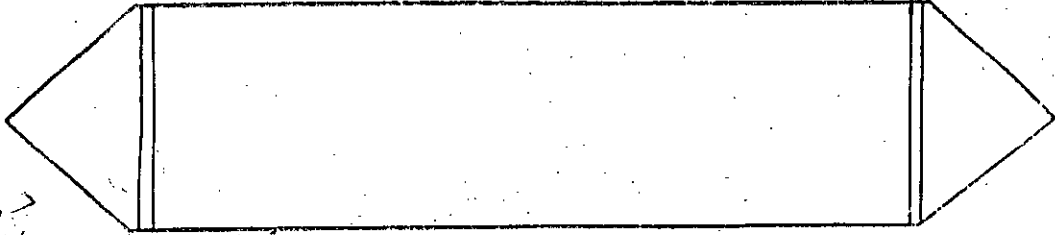
Certified to be true copy

(Muhammad Akbar Khan)
Member (E)

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application 23/4/24
Number of Words 27
Copying Fee 10/-
Urgent 5/-
Total 15/-
Name of Copyist ---
Date of Copy Issued 23/4/24
Date of Delivery of Copy 23/4/24

بعدالت فیہ شہوتو المریدین شریفونہ لہناہ



2024ء پنجاب سال

صدر علی شاہ بنام حکومت و عدلیہ

موزخ 23 اپریل

مقدمہ SA 502/024

دعویٰ

جرم

باعث تخریب آنکھ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ
آن مقام لہناہ کے لیے طرز عمل کے تحت

کو مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کہ مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز
وکیل صاحب کو راضی نامہ کرنے و تقرر ثالثہ فیصلہ برحلف دیئے جواب دہی اور اقبال دعویٰ اور
بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ عرضی دعویٰ اور درخواست ہر قسم کی تصدیق
زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی
نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور
کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار
ہوگا۔ از صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے اور اس کا ساختہ
پرواختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ ہر جانب التوائے مقدمہ کے سبب سے ہوگا۔
کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی
مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سند رہے۔

المرقوم 23 ماہ اپریل 2024

واہ العیہ
Attested
Accepted

Cell 03015932818
Be-10-6195

Yasir

23/4/024