


Form- A  
FORM OF ORDER SHEET

Court of \_\_\_\_\_

Implementation Petition No. 263/2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	27.03.2024	<p>The implementation petition of Mr. Najeeb Ullah submitted today by him. It is fixed for implementation report before touring Single Bench at D.I.Khan on 15.04.2024. Original file be requisitioned. AAG has noted the next date. Parcha Peshi given to the Petitioner.</p> <p>By the order of Chairman  REGISTRAR</p>

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE  
TRIBUNAL, PESHAWAR

Execution Petition No: 263/2024

In Appeal No: 106/2022(Decided on 18-10-2023)

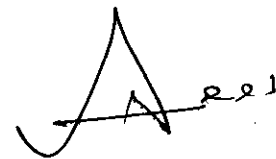
NAJEEB ULLAH SST (BPS-16) Versus Govt of Khyber-Pakhtunkhwa and Others.

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Yours Humber Petitioner

Dated: 26/03/2024



(NAJEEB ULLAH)

/

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

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**Execution Petition No:** 263/2024

In Appeal No: 106/2022(Decided on 18-10-2023)

**Khyber Pakhtunkhwa  
Service Tribunal**

Diary No. 11932

Dated 27-03-2024

**NAJEEB ULLAH SST (BPS-16) Govt; Higher Secondary School Kachi  
Paind Khan, District Dera Ismail Khan..... Petitioner**

**VERSUS**

1. **Government of Khyber Pakhtunkhwa, through Secretary Elementary & Secondary Education Department, Peshawar.**
2. **Director Elementary and Secondary Education Khyber Pakhtunkhwa, Peshawar.**
3. **District Education officer (M), D.I.Khan.**

**Respondents**

**APPLICATION FOR IMPLEMENTATION / EXECUTION OF  
JUDGMENT DATED: 18-10-2023 PASSED BY THE HONORABLE  
SERVICE TRIBUNAL IN SERVICE APPEAL NO: 106/2022 TITLED  
AS "NAJEEB ULLAH VERSUS GOVERNMENT OF KHYBER  
PAKHTUNKHWA & OTHERS"**

**Prayers:**

**On Acceptance of the instant Implementation / Execution Petition this Hon'ble Tribunal may please direct the respondents to fully and effectively comply with the judgment dated 18-10-2023 passed by the Honorable Tribunal in letter & spirit without any further delay. In consequence of noncompliance by dealing hands of the Department appropriate punitive action in the form of Initiation of contempt of court proceeding is Solicited.**

Respectfully Sheweth:-

The Petitioner very humbly submits as under.

1. That while disposing of subject noted service appeal of the appellant Honorable Tribunal directed the respondents that seniority inter- se of SSTs whose services have been regularized **be determined in accordance with sub section 2 of Section 4 of the Khyber Pakhtunkhwa Employees of Elementary and Secondary Education Department (Appointment & Regularization of Services) Act 2017, and Clause 8 of terms and conditions of regularization notification. It was also directed that further promotion ought to be made on the basis of fresh seniority list prepared in accordance with the terms and conditions of the**

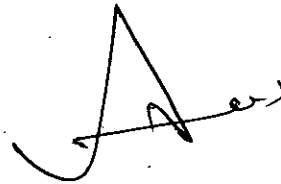
**judgment. Certified copy of the judgment / order dated: 18-10-2023 is attached (As Annexure-A).**

2. No appeal is preferred before the Supreme Court of Pakistan and therefore the Judgment of the Honorable Tribunal has attained finality. Thus, the Department is under Legal obligation to implement the said judgment in letter and spirit.
3. That the petitioner approached the concerned authorities of the respondent department for giving effect to the judgment passed by the Hon'ble Tribunal, and for said proposed had moved an application coupled with a copy of the judgment. Copy of application is placed at **(Annexure-B)**.
4. That the concerned authorities / respondents are apparently avoiding to implement of the judgment of the Hon'ble Tribunal for unknown reasons though the judgment of Hon'ble Tribunal has not be challenged before at any forum and it has attained finality.
5. That petitioner is left with no option other than to approach this Hon'ble Tribunal for seeking implementation of the judgment dated: 18-10-2023 passed by the Hon'ble Tribunal in favor of the petitioner.

**Prayer:**

On Acceptance of the instant Implementation / Execution Petition this Hon'ble Tribunal may please direct the respondents to fully and effectively comply with the judgment dated 18-10-2023 passed by the Honorable Tribunal in letter & spirit without any further delay. In consequence of noncompliance by dealing hands of the Department appropriate punitive action in the form of Initiation of contempt of court proceeding is Solicited.

Humble Petitioner



**Najeeb Ullah**

**SST Govt Higher Secondary School  
Kachi Paid Khan (D.I.Khan)**

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

**Execution Petition No:**

In Appeal No: 106/2022(Decided on 18-10-2023)

**NAJEEB ULLAH SST (BPS-16) Versus Govt of Khyber-Pakhtunkhwa  
and Others.**

**AFFIDAVIT**

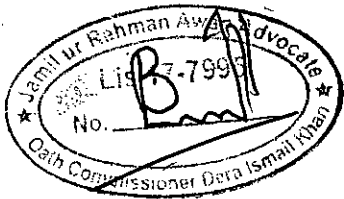
I, **Mr. Najeeb Ullah SST (BPS-16)** Govt: Higher Secondary School Kachi Paind Khan, District Dera Ismail Khan, the petitioner, do hereby solemnly affirm and declare on oath that all the Para-wise contents of this **Petition** are correct and true to the best of my knowledge & belief. I further solemnly affirm and declare that no part of above petition is false and nothing material has been deliberately concealed.

**Date:** 26-3-2024

**Deponent**

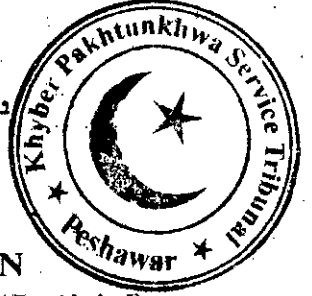
*Aesi*

12103-1501517-9



Service Appeal No.106/2022 titled "Najeeb Ullah versus Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education, Civil Secretariat, Peshawar and others", decided on 18.10.2023 by Division Bench comprising of Mr. Kalim Arshad Khan, Chairman, and Mr. Salah-Ud-Din, Member Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar, at Camp Court, D.I.Khan.

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,**  
**PESHAWAR**  
**AT CAMP COURT, D.I.KHAN**



BEFORE: **KALIM ARSHAD KHAN ... CHAIRMAN**  
**SALAH-UD-DIN ... MEMBER (Judicial)**

*Service Appeal No.106/2022*

Date of presentation of Appeal.....19.01.2022  
Date of Hearing.....18.10.2023  
Date of Decision.....18.10.2023

**Najeeb Ullah SST (BPS-16) Government Higher Secondary School,  
Kachi Paid Khan, District Dera Ismail Khan.....Appellant**

Versus

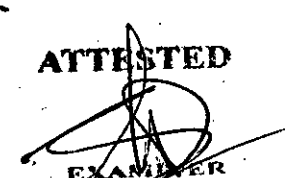
1. **The Government** of Khyber Pakhtunkhwa Peshawar through Secretary Elementary & Secondary Education, Peshawar
2. **Director**, Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
3. **District Education Officer, (Male) D.I.Khan.....(Respondents)**

Present:

Mr. Muhammad Ismail Alizai, Advocate.....For the appellant  
Mr. Farhaj Sikandar, District Attorney .....For respondents

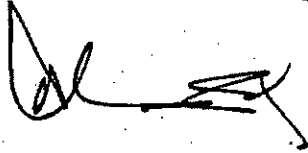
SERVICE APPEAL UNDER SECTION 4 OF THE  
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT,  
1974 AGAINST FINAL SENIORITY LIST OF SST  
GENERAL/BIO & CHEMISTRY/MATH &  
PHYSICS/TECHNICAL & COMMERCE AS NOTIFIED  
BY DIRECTORATE OF ELEMENTARY &  
SECONDARY EDUCATION, KHYBER  
PAKHTUNKHWA, VIDE ENDST: NO.F.NO.A-  
10/SST/FINAL SENIORITY/NAJEEBULLAH, DATED  
13.09.2021 BEING AGAINST THE SPIRIT OF KHYBER  
PAKHTUNKHWA EMPLOYEES OF ELEMENTARY &  
SECONDARY EDUCATION DEPARTMENT (APP: &  
REGULARIZATION OF SERVICES) ACT, 2017

ATTESTED


  
EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

### JUDGMENT

**KALIM ARSHAD KHAN CHAIRMAN:** Brief facts of the case are that appellants were appointed as SST (BIO & CHEMISTRY) in BPS 16 on contract basis vide Notification bearing endorsement No. 4472/File No.2/A-14/SST/Adhoc/Appt: Dated Peshawar the 26.04.2017. During course of his service, Khyber Pakhtunkhwa Employees of Elementary and Secondary Education Department (Appointment and Regularization of Services) Act, 2017 was promulgated and in light of the same, his services were regularized vide Notification bearing Endorsement No. 4588-95/File No.15/A-14/SST/Adhoc/Appt: Dated Peshawar the 22.03.2018 with effect from the date of initial appointment. The seniority list of the appellants was drawn on the basis of the score obtained by the candidates in the test conducted by National Testing Service (NTS). The appellants were of the view that their seniority inter-se was required to have been fixed age-wise in view of Clause-8 of terms and conditions of the regularization Notification dated 07.04.2018 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, he filed departmental appeal against the seniority list on 21.06.2021, however, the same was not responded, hence, he filed the instant service appeal.



**ATTESTED**



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**Service Tribunal**  
**PESHAWAR**

2. On admission of the appeal for regular hearing, notices were issued to the respondents. They contested the appeal by way of filing of reply, wherein they refuted the assertion raised by the appellant in his appeal.

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 District Attorney for respondents has controverted the arguments of learned counsel for the appellant and has supported the comments submitted by the respondents.

4. Arguments have already been heard and record perused.

5. This Tribunal in a recent consolidated judgment in Service Appeal No.2069/2019 titled "Abid Noor Vs. Directorate of Elementary & Secondary Education Khyber Pakhtunkhwa, Peshawar & 55 others", in a similar nature matter of seniority of the teachers, has held as under:

*"A perusal of the record would show that the appellants as well as private respondents in Service Appeals No. 2069/2019 to 2074/2019 as well as Service Appeals No. 2077/2019 and 2078/2019 were appointed as PSTs (BPS-12) on contract basis vide Notification bearing endorsement No. 8313-8514/PST/adhoc/ dated: Bannu the 23.07.2014 DEO/(M), while appellants as well as private respondents in Service Appeals No. 2075/2019 and 2076/2019 were appointed as PSTs on contract basis vide Notification bearing endorsement No. 1922-28/AE-1-Male/PST/Adhoc/ Apptt. Dated Bannu the 28.03.2016, whereas the*

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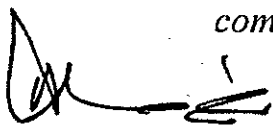


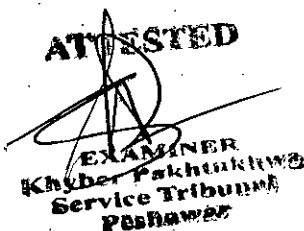
appellant and private respondents in Service Appeal No. 2079/2019 were appointed as PSTs on contract basis vide Notification bearing endorsement No. 4672-5990/AE-1-Male/PST/Adhoc/Apptt: - Dated Bannu the 06.05.2017. During the course of their service, Khyber Pakhtunkhwa Employees of the Elementary and Secondary Education Department (Appointment and Regularization of Services) Act, 2017 was enacted and vide Notification bearing Endorsement No. 2344-3253/AE/Estab dated 07.04.2018, their services were regularized with effect from the date of their initial appointments. Clause-8 of Terms and Conditions as mentioned in the afore-mentioned regularization Notification dated 07.04.2018 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 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)

9. 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)The employees whose services are regularized under this Act or in the process of attaining service at the commencement of this Act, shall rank junior to all



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other employees belonging to the same Cadre, who are in service on regular basis on the commencement of this Act, and shall also rank junior to such other persons, if any, who, in pursuance of the recommendation of the Commission made before the commencement of this Act, or to be appointed to the Cadre, irrespective of their actual date of appointment.

(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.)

10. It is also worth mentioning that 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.

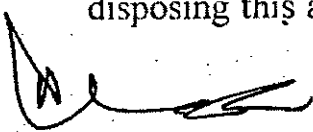
11. In view of Clause-8 of regularization Notification bearing Endorsement No. No. 2344-3253/AE/Estab dated 07.04.2018 as well as Sub-Section-2 of Section-4 of Khyber Pakhtunkhwa Employees of the Elementary and Secondary Education Department (Appointment and Regularization of Services) Act, 2017, the seniority inter-se of the regularized PSTs was to 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 was the same, the employee older in age shall rank senior to the younger one. While going the impugned seniority list attached by the appellants with their appeals, the inter-se


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seniority of the PSTs regularized through Notification dated 07.04.2018 has been determined on the basis of score obtained by them in written test conducted through NTS, which was not a correct criteria for determining their inter-se seniority. The NTS score was relevant for appointment and not for determining seniority inter-se of the regularized PSTs.

12. In view of the above discussion, it is directed that the inter-se seniority of those PSTs, who were regularized through Notification bearing Endorsement No. 2344-3253/AE-I/Estab dated 07.04.2018, shall be determined on the basis of Clause-8 of terms and conditions of regularization Notification dated 07.04.2018 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 names of the appellants at correct seniority positions with all consequential benefits. The appeals are allowed in the said terms. Parties are left to bear their own costs. File be consigned to the record room."


6. The case of the appellant is admitted by the respondents to be no different than the above. Therefore, in view of the above mentioned judgment, the department should have recast the seniority list in accordance with the terms of the judgment. The apprehension of the learned counsel for the appellant is that they should not make further promotions, thus, while disposing this appeal in terms of the said judgment, it is needless to say that




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further promotions ought to be made on the basis of fresh seniority list prepared in accordance with the terms of the above judgment. Disposed of accordingly. Consign.

7. *Pronounced in open Court at D.I.Khan and given under our hands and the seal of the Tribunal on this 18<sup>th</sup> day of October, 2023.*

  
KALIM ARSHAD KHAN  
Chairman

  
SALAH-UD-DIN  
Member (Judicial)

Certified to be true copy

EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar  
\*Mutazem Shah\*

Date of Presentation of Application 14-11-23  
Number of Words Page = 7  
Copying Fee 25/-  
Urgent 9/-  
Total 40/-  
Name of Copyist \_\_\_\_\_  
Date of Completion of Copy 14-11-23  
Date of Delivery of Copy 14-11-23

## ANNEXURE 'B'

To

The Director

Elementary and Secondary Education Department

Khyber Pakhtunkhwa Peshawar.

Subject: Request for implementation of Judgement dated 18-10-2023 of Honourable Khyber Pakhtunkhwa Service Tribunal in Service Appeal No. 106/2022 titled as Najeeb ullah versus Government of Khyber Pakhtunkhwa On the Subject of Seniority of SSTs ( BPS-16 ).

Respected Madam,

It is submitted that Director Elementary and Secondary Education Khyber Pakhtunkhwa notified the Final Seniority List of SSTs ( General, Math/physics, Bio& Chemistry, Tech and Commerce ) on 13-09-2021, wherein Seniority inter-se of the applicant and other SSTs whose Services were regularized under Khyber Pakhtunkhwa Employees of Elementary and Secondary Education Department (Appointment and Regularization of Services ) Act 2017 had not been determined under sub section -2 of Section 4 of the Act ibid and clause 8 of terms and Conditions of regularization of their services. It was framed in violation of the applicable law/Act. Aggrieved there of, the applicant challenged the said seniority list in Service Appeal No. 106/2022 before Honourable Service Tribunal. Appeal of the appellant is decided on 18-10-2023 in favour of the applicant. Copy of the judgement is attached (As Annexure A).

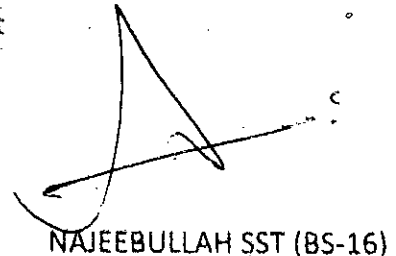
The Elementary and Secondary Education Department sent the above case to Law Department for filing of CPLA / Appeal before Supreme Court of Pakistan. Meeting of Scrutiny Committee was held on 08-11-2023 in the Conference Room of Law Department to determine the fitness of subject Case for filing of CPLA/ Appeal. The Scrutiny Committee after examining the subject case in depth, decided to return the subject case to the Administrative Department, being unfit for filing of CPLA/ Appeal. Minutes of Scrutiny Committee Meeting are attached (As Annexure B).

In view of the above, no appeal is filed against the aforesaid judgement of the Service Tribunal. It has attained finality. E&SE Department has furnished the Minutes of Scrutiny Committee Meeting to Directorate of E&SE. Copy of letter is attached (As Annexure C). Hence the Directorate is morally and legally bound to give effect to the cited judgement of the Honourable Service Tribunal.

It is therefore prayed that Seniority List SSTs (BS-16) may graciously be framed in terms of aforementioned judgement of the Honourable Service Tribunal please.

Dated 06-02-2024

Your Applicant

  
NAJEEBULLAH SST (BS-16)

GHSS KACHI PAIND KHAN DERA ISMAIL KHAN