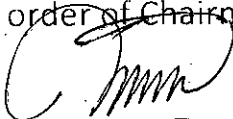


Form- A
FORM OF ORDER SHEET

Court of _____

Implementation Petition No. 365/2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	15.05.2024	<p>The implementation petition of Mr. Shah Fazil submitted today by Mr. Ali Gohar Durrani Advocate. It is fixed for implementation report before Single Bench at Peshawar on . Original file be requisitioned. AAG has noted the next date. Parcha Peshi given to the counsel for the petitioner.</p> <p>By the order of Chairman  REGISTRAR</p>

BEFORE THE
HONORABLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL

In Re:
Execution Petition No. 365 /2024

In Service Appeal No. 828/2023

Decided on: 13.11. 2023


Mr. Shah Fazil **Versus** The Government of Khyber Pakhtunkhwa
and others

I N D E X

S.NO.	Description	Annex	Page No.
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2.	Memo of address		5
3.	Copy of the Service Appeal No. 828/2023	A	6-20
4.	Copy of the judgment dated 13-11-2023	B	21-33
5.	Copy of Application	C	34
6.	Wakalatnama		35

Petitioner

Through


(ALI GOHAR DURRANI)
Advocate Supreme Court
0332-9297427

1

BEFORE THE
HONORABLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 12778

Dated 15-05-2024

In Re:

Execution Petition No. 365 /2024

In Service Appeal No. 828/2023

Decided on: 13.11. 2023

Mr. Shah Fazil, Director Development Directorate of Sports, Khyber
Pakhtunkhwa, Peshawar.

(PETITIONER)

Versus

1. The Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar.
2. The Government of KP through Secretary Establishment, Civil Secretariat Peshawar.
3. The Government of KP through Secretary Planning and Development Department, Civil Secretariat Peshawar.

(Respondents)

**EXECUTION PETITION TO GIVE EFFECT & IMPLEMENT
THE JUDGMENT OF THIS HONOURABLE TRIBUNAL
DATED 13-11-2023.**

Respectfully Sheweth.

That the petitioner earnestly craves the permission of the Honorable Service Tribunal to submit as under:

1. That an appeal was filed for directions to the Respondents to strike down the illegal and unlawfully issued final seniority list dated 06-12-2022, before the Honorable Service Tribunal and the same was heard on 13-11-2023. The said appeal was accepted and the illegal and unlawful final seniority list dated 06-12-2022 was strike down.

Copy of the Service Appeal No. 828/2023 is Annex-A

2. That the Honourable Tribunal rendered its judgment dated 13-11-2023, but the respondent did not implement the judgment dated 13-11-2023 of this Honourable Tribunal.

Copy of the judgment dated 13-11-2023 has been Annex-B

3. That the judgment dated 13-11-2023 rendered by the Honourable Service Tribunal, Reference can be given to the relevant portion of judgment, produced herein below:

"So publication of names of the regularized employees in the official gazette is condition pre-requisite for giving effect to their regularization. Until and unless names of the regularized employees were not published in official gazette, their services will not be considered regularized in accordance with above mentioned condition. This condition is embodied in the statute which will have to be given preference upon all others decision or policy if any on this subject. Respondent names were published in the official gazette on 29" June 2022 even after issue of final seniority list on 25.05.2022, therefore, they are juniors to the appellant because at the time of issuance of seniority list, services of the project and adhoc employees were not legally regularized, keeping in view condition No. 4 mentioned in general condition of section of the Khyber Pakhtunkhwa Regularization of Service Act 2018, therefore, in our humble view respondent are not senior to the appellant who came through passing competitive exam in year 2018, who in accordance with judgment of apex court reported in 2013 SCMR 1752, will rank senior to the regularized employees.

In view of the above discussion, instant appeal as well as connected service appeals are partially accepted to the extent that appellants are senior to private respondent No. 12 to 36 the project/adhoc/contract employees whose services were regularized at the strength of Khyber Pakhtunkhwa (Employees Regularization of Service Act), 2018.

Pronounced in open court in Peshawar and given under our hands and

Seal of the Tribunal on this 13h day of November, 2023"

4. That the petitioner also moved an application to the Respondents for the implementation of the judgment dated 13-11-2023 of this Hon'ble Tribunal but no action was taken on the said application and the judgment dated 13-11-2023 rendered by this Hon'ble tribunal is still not implemented by the Respondents.

Copy of Application is Attached as Annex-D


5. That due to the inaction of the respondents to comply with the directions of the Honourable Service Tribunal, the execution petitioner now approaches this Honorable Tribunal for directions to implement the judgment dated 13.11.2023 in the larger interest of justice and fair play.

Prayer:

It is therefore most humbly prayed that on the acceptance of this petition, may it please this honorable tribunal to so kindly direct the implementation of judgment dated 13.11.2023 in Service Appeal No. 828/2023, any other relief that this Honorable Tribunal may deem appropriate in the circumstances of the case may also be given.


Execution Petitioner

Through


(ALI GOHAR DURRANI)
Advocate Supreme Court
0332-9297427
khaneliegohar@yahoo.com
SHAH | DURRANI | KHATTAK

(4)

BEFORE THE
HONORABLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL

In Re:

Execution Petition No. _____/2024

In Service Appeal No. 828/2023

Decided on: 13.11. 2023

Mr. Shah Fazil, Director Development Directorate of Sports,
Khyber Pakhtunkhwa, Peshawar.

(PETITIONER)

Versus

The Government of Khyber Pakhtunkhwa and others

(Respondents)

AFFIDAVIT Of,

Mr. Shah Fazil, Director Development Directorate of Sports,
Khyber Pakhtunkhwa, Peshawar. do hereby solemnly declare and
affirm on oath:-

I am personally conversant with the facts and circumstances of the case
as contained therein and the facts and circumstances mentioned in the
enclosed writ petition are true and correct to the best of my knowledge
and belief.

Deponent

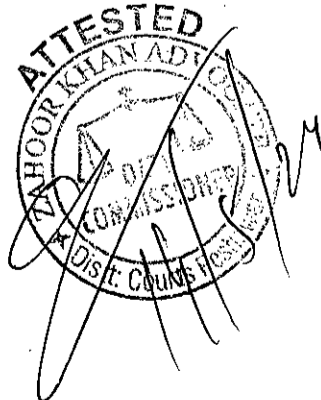
CNIC#

[Signature]
1601-1103384-3

Identified by:

[Signature]
ALI GOHAR DURRANI

Advocate Supreme Court



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BEFORE THE
HONORABLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL

In Re:

Execution Petition No. _____/2024

In Service Appeal No. 828/2023

Decided on: 13.11. 2023

MEMEO OF ADDRESSES

Mr. Shah Fazil, Director Development Directorate of Sports, Khyber
Pakhtunkhwa, Peshawar. (PETITIONER)

Versus

1. The Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar.
2. The Government of KP through Secretary Establishment, Civil Secretariat Peshawar.
3. The Government of KP through Secretary Planning and Development Department, Civil Secretariat Peshawar.

(Respondents)

Petitioner

Through



(ALI GOHAR DURRANI)

Advocate Supreme Court

0332-9297427

khaneliegohar@yahoo.com

SHAH | DURRANI | KHATTAK

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IN THE
HONOURABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Appeal No. 828 /2023

Mr. Shah Fazil S/o Sardar Hussain, Senior Manager (Operation) LSU,
SLDR, Khyber Pakhtunkhwa, Peshawar.

..... Appellant

Versus



1. The Government of Khyber Pakhtunkhwa,
Through Chief Secretary Government of Khyber Pakhtunkhwa,
Civil Secretariat Peshawar.
2. Establishment Department, Govt. of Khyber Pakhtunkhwa.
Through Secretary Establishment, Government of Khyber
Pakhtunkhwa
Civil Secretariat, Peshawar.
3. Planning & Development Department, Govt. of K.P.
Through Secretary P & D, Government of Khyber Pakhtunkhwa
Civil Secretariat, Peshawar.
4. The Finance Department, Government of Khyber Pakhtunkhwa.
Through Secretary Finance, Government of Khyber Pakhtunkhwa
Civil Secretariat, Peshawar.
5. Mr. Sher Afzal,
SPO, Social Welfare Department
6. Mr. Ahmad Nawaz,
Chief Planning officer, Agriculture Department.
7. Mr. Abid Noor,
Director (Tech) Irrigation Department.
8. Mr. Abdul Rehman,
Dy: Secretary-II P&D Department.
9. Mr. Syed Qamar Abbas,
Chief (Coordinator) P&D Department.
10. Engr. Nadir Iqbal,
Project Director Small Dams, Irrigation Department.
11. Mr. Abdul Basit,
Senior Planning Officer, ST & IT Department.
12. Mr. Engineer Saleem Shah,
Dy: Director (M&E), Peshawar Division.
13. Mr. Akhtar Shahzad Bangash,
Deputy Director (Eco), (M7E), P&D Department.

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Service Tribunal
Peshawar

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14. Mr. Asim Riaz Muhammad Ali,
Assistant Chief, PSDP, P&D Department.
 15. Mr. Hidayat Ullah Khan,
Dy. Director (M&E), Bannu Division.
 16. Muhammad Ayaz,
Assistant Chief (Water), P&D Department.
 17. Mr. Tehsil Zaman,
Assistant Chief (Industries) P&D Department.
 18. Mr. Engineer Asif Shahab,
On deputation to Upper SDA.
 19. Mr. Amin Khan Bangash,
Assistant Chief, (Rule of law) P&D Department
 20. Ms. Palwasha Rehman,
AC, PPP Cell, P&D Department.
 21. Mr. Rafiq Jan,
Deputy Director, PHC, Peshawar.
 22. Dr. Kashif Nazir,
SPO-II, Health Department.
 23. Mr. Abdul Aziz Abbasi,
Awaiting post in P&D Department.
 24. Mr. Muhammad Imran Khan,
Taxation Analyst/SPO, Excise & Taxation Department.
 25. Mr. Aftab Haider,
Dy Director (M&E), Kohat Division.
 26. Mr. Sikandar Khan,
Director (P&T) PERRA, ATD.
 27. Mr. Muhammad Shoaib,
Assistant Economic Advisor, Industries Department.
 28. Mr. Hamayun Khan,
Communication Specialist, (UPU), P&D Department.
 29. Ms. Hina Gul,
M&E Specialist, (UPU), P&D Department.
 30. Syed Nasir Jamil,
Senior GIS Specialist, (UPU), P&D.

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Khyber Pakhtunkhwa
Service Tribunal
Peshawar

- C/8
31. Mr. Shahzad Khan,
Deputy Director (M&E), Mardan Division.
32. Mr. Ashfaq Khan,
Deputy Director (M&E), Malakand Division.
33. Mr. Riaz Noor,
Urban Economist (UPU), P&D Department.
34. Mr. Adnan Salim Khan,
Project Director M.P.P, UPU, P&D Department.
35. Mr. Afrasiyab Khattak,
Dy. Director (M&E), (HQ) P&D Department.
36. Mr. Engineer Alam Zeb,
Economist Irrigation Department.

..... Respondents

APPEAL UNDER SECTION 4 OF THE KHYBER
PAKHTUNKHWA SERVICES TRIBUNAL ACT, 1974 READ
WITH ALL OTHER LAWS ENABLING JURISDICTION OF
THIS HONORABLE TRIBUNAL UNDER ARTICLE 212 OF
THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF
PAKISTAN, 1973. TO STRIKE DOWN THE ILLEGAL &
UNLAWFULLY ISSUED FINAL SENIORITY LIST DATED
06-12-2022.

RESPECTFULLY SUBMITTED:

The Appellant most earnestly request to submit as under:

That the Appellant is working against the designation mentioned in the heading of the petition in the Planning Cadre. The Appellant is a Civil Servant, and is before this Honorable tribunal for redress of his grievance in respect of seniority of the appellant, which being part and parcel of the terms and conditions of service, gives exclusive jurisdiction to this honorable tribunal for adjudication of the matter under the Constitution of Pakistan, 1973, the Khyber Pakhtunkhwa Civil Servants Act, 1973, the Khyber Pakhtunkhwa Service Tribunal Act, 1974 and the Rules made under the two Acts.

BRIEF FACTS:

1. That the Appellant was appointed through Khyber Pakhtunkhwa Public Service Commission as Research Officer on 25-02-2008 as

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regular civil servant. The appellant is part of the planning service cadre. The said appointment of the Appellant were made after proper advertisements, competitive examinations, interview process and subsequent appointment orders in accordance with the law and keeping in view all the codal formalities.

(Copy of the Appointment Orders are Annex-A.)

2. That the appellant was subsequently promoted to BPS-18 on 24-10-2019, and is currently serving as Senior Manager (Operation) LSU, SLDR, Khyber Pakhtunkhwa, Peshawar. It is imperative to note that the appellant was allowed regaining of seniority w.e.f. from 24-01-2020 vide notification dated 20-02-2020.

(Copy of the promotion orders are Annex-A/1.)

(Copy of notification dated 20-02-2020 is Annex-A/2)

3. That the Khyber Pakhtunkhwa Provincial Planning Service Rules 2018 (hereinafter Rules 2018), provides for the law regulating the planning service cadre and their entire service structure for the province of Khyber Pakhtunkhwa. The said rules provide for the induction of Officers through Initial appointment (through Khyber Pakhtunkhwa Public Service Commission) in BPS-17 and onwards through promotion and transfer. It is also stated that except these two modes the Rules doesn't recognizes or mention any other mode. These rules were published through Notification No. SO(E)P&D/6-1/SR/PPD/2018 dated 22-02-2018.

(Copy of the KP PPS Rules 2018 are Annex-B.)

4. That Rule 4(1) read with Schedule II to the said 2018 Rules provides for the appointment and promotion of the Planning Service Cadre. In accordance with the Rules 2018, no appointment or promotion can be brought save as is provided in the Rules.

5. That the Khyber Pakhtunkhwa Assembly passed the Khyber Pakhtunkhwa Employees (Regularization of Services) Act 2018, which received the assent of the Governor in March 2018. The said Act resulted in the regularization of services of employees working against project posts.

(Copy of the KP Employees Regularization Act, 2018 is Annex-C.)

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6. That the afore-mentioned Act in section 3 and 4 provided for the regularization of Ad-hoc and project employees and the said regularization was to take effect from the date of the commencement of the Act. The said sections are reproduced as under:

3. Regularization of services of adhoc employees.-- Notwithstanding anything contained in any law or rules, the employees at sub-clause (i) of clause (e) of subsection (1) of section 2 of this Act, appointed on adhoc basis against civil posts and holding such civil posts till the commencement of this Act, shall be deemed to have been validly appointed on regular basis, from the date of commencement of this Act, subject to verification of their qualifications and other credentials by the concerned Government Department.

4. Regularization of services of project employees.-- Notwithstanding anything contained in any law or rules, the employees at sub-clause (ii) of clause (e) of subsection (1) of section 2 of this Act, appointed on contract basis against project posts and holding such project posts till the commencement of this Act, shall be deemed to have been validly appointed on regular basis from the date of commencement of this Act, subject to verification of their qualifications and other credentials by the concerned Government Department: Provided that the terms and conditions of services of employees reflected at S.No.5 of the Schedule shall further be governed under the National Disaster Management Authority Act, 2010 (Act No. XXIV of 2010) and Regulations made thereunder; and the terms and conditions of services of employees reflected at S.No.6 & 7 of the Schedule shall be governed under the Khyber Pakhtunkhwa Emergency Rescue Services Act, 2012 (Khyber Pakhtunkhwa Act No. XV of 2012).

7. That to protect the service structure and seniority of the already in-service Civil Servants, general conditions for regularizations in Section 5 and seniority in Section 6 were provided for. The two sections read as under:

5. General conditions for regularization,--For the purpose of regularization of the employees under this Act, the following general conditions shall be observed: (i) the service promotion quota of all service cadres shall not be affected; (ii) the employees shall possess the same qualification and experience as required for a regular post; (iii) the employees have not resigned from their services or terminated from service on account of misconduct, inefficiency or any other grounds before the commencement of this Act; and (iv) the services of such employees shall be deemed to have been regularized only on the publication of their names in the Official Gazette.

6. Seniority,--(1) Except the employees mentioned in the proviso to section 4 of this Act, whose services are to be regulated by their respective laws and rules, all other 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 civil servants belonging to the same service or cadre,

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Service Tribunal

as the case may be, 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 or Departmental Selection Committee, as the case may be, made before the commencement of this Act, are to be appointed to the respective service or cadre, irrespective of their actual date of appointment. (2) The seniority inter-se of the employees, whose services are regularized under this Act within the same service or cadre, shall be determined on the basis of their continuous officiation in such service or cadre: Provided that if the date of continuous officiation in the case of two or more employees is the same, the employee older in age shall rank senior to the younger one.

8. That it was mandatory for the respondents to take into account the said 2018 Rules and follow them in letter and spirit. However, what has resulted following the commencement of the Act of 2018 is sheer chaos. The first step was to issue notification dated 09-01-2020, whereby newly regularized components/units of planning & Development Department and Planning Cells of Administrative Departments were all encadred in the Planning Cadre in BPS-17 and above through addition to the Schedule I of the said 2018 Rules. The regularizations of some people affected in pursuance of the Khyber Pakhtunkhwa Regularization Act 2018, reveal that they had the condition stipulated of "not affecting the promotion quota of all services cadres".

(Copy of the Notification dated 09-01-2020 is Annex-D.)

(Copy of the regularization orders dated 08-06-2018 is Annex-D/1.)

(Copy of the regularization orders dated 03-07-2018 is Annex-D/2.)

9. That respondents however have gone in complete negation of the law first by including the novel principle of "inclusion" as a mode of appointment, and more importantly to negate the principles settled by Honorable Supreme Court of Pakistan in judgment reported 2013 SCMR 1752, whereby the Honourable Supreme Court has depreciated regularizations, absorptions, and inductions, in any manner other than by initial appointment. There are guidelines given in the said Judgment, and the said judgment was endorsed by the Government of Khyber Pakhtunkhwa Establishment Regulation. This is very relevant also based on the fact that not only this judgment is still in field but also the

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Government of Khyber Pakhtunkhwa Establishment Department (Regulation Wing) endorsed this judgment and sent it to all the administrative Secretaries of the Province on 25-02-2014. This was in continuation of the Office Memorandum of the Cabinet Secretary, Establishment Division of the Government of Pakistan dated 31-01-2014. The following are the essential aspects of the judgment:

- i. A civil servant, who after passing the Competitive exam in terms of the recruitment rules, is appointed on merits, loses his right to be considered for promotion, when an employee from any other organization is absorbed without competition or undertaking competitive process with the back dated seniority and is conferred the status of a civil servant in complete disregard of recruitment rules.
- ii. Absorption of a non-civil servant conferring on him status of a Civil Servant and likewise absorption of Civil Servant from non Cadre post to a cadre post without undertaking the Competitive process under the recruitment rules.
- iii. Introduction of any validation law in the nature of multiple or parallel legislation on the subject of service law.
- iv. Benefit of 'absorption' extended since 1994, with or without back dated seniority, is declared ultravires of the Constitution.
- v. The re-employment / rehiring of the retired Civil Government Servants being violative of the constitution are declared nullity.

The apex court further held that:

- (a) No non Civil-servant can be transferred and appointed by way of deputation to any cadre, the procedure provided under Esta Code has been approved by this court in the case of Minhammad Arshad sultan.
- (b) No Civil servant of Non Cadre post can be transferred out of cadre to be absorbed to a cadre post which is meant for recruitment through competitive process.
- (c) The procedure provided under ESTA CODE requires that a person who is transferred and appointed on deputation must be a govt servant and such transfer should be made through the process of selection. The borrowing government has to establish the exigency in the first place and then the person who is being transferred/ placed on Deputation in Govt must have matching qualifications expertise in the field with required experience.
- (d) An employ holding a post under any authority or corporation, body or organization established by or under Provincial Government has controlling share or interest, could not conferred status of a civil servant.
- (e) It is a settle principle of law that if the right of promotion is not blocked by the re-employment then such powers can be exercised, then too in exceptional cases for a definite period, besides it violates the fundamental rights of the serving civil servant, an account of such rehiring on contract are deprived for their legitimate expectancy of promotion to a higher cadre, which is violative of the provision of Article 4, 19 and 25 of the constitution of Pakistan.
- (f) The absorption and out of turn promotion will also impinge on the self-respect and dignity of the civil servant, who will be forced to work under their rapidly and unduly promoted fellow officers, those who have been included from other service/ cadre regardless of their (inductees) merits and results in the competitive exams (if they have appeared for all exam at all), hence are violative of Art 14 of the constitution.
- (g) principle of locus poenitentiae is the power of receding till a decisive step

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Tribunal

(13)

is taken but it is not a principle of law that order once passed became irrevocable and past and closed transaction, if the order is illegal then perpetual rights cannot be gained on the basis of an illegal order.

(b) Any backdated seniority cannot be granted to any absorbee and his inter-se seniority, on absorption in the Cadre shall be maintained at the bottom as provided under the rules regulating the seniority.

(Copy of letter dated 25-02-2014 is Annex-E.)

(Copy of Office Memorandum dated 31-01-2014 is Annex-E/1.)

10. That the respondents issued final seniority list dated 31-12-2018, wherein the appellant is rightly reflected at Serial Number at Serial Number 28 in the category of BPS-17. It is pertinent to mention herein that subsequent to the aforementioned final list of seniority issuance, the appellant was promoted to BPS-18 on 22-10-2019.

(Copy of the final seniority list dated 31-12-2018 is Annex-F)

11. That the respondents then issued a tentative seniority list dated 20-02-2020, wherein the appellant has been shown at Serial No. 23 of the seniority list for employees in BPS-18 of the Provincial Planning Cadre. The appellant filed a representation against the said seniority list vide representation dated 04-03-2020. It is pertinent to mention herein that the appellant has till date not received any response on the said representation. The representation among other grounds had taken the plea of how the novelty of addition through "inclusion" has been affected in the cadre. As the said method of appointment is alien to the Civil Servants Act as well as the rules made thereunder. The representation also enunciated the principles as laid down in 2012 SCMR page 1752 and as to how the said judgment has been flouted through the actions of the respondents.

(Copy of the tentative seniority list dated 20-02-2020 is Annex-G)

(Copy of the representation dated 04-03-2020 is Annex-1/1)

12. That subsequently the respondents issued another seniority list dated 23-10-2020. The said tentative seniority list has gone on to negate every norm of the Civil Servants Service Structure. The appellant who was initially shown at Serial Number 23 of the tentative seniority list of 20-02-2020 for employees in BPS-18, was suddenly and for no reasons whatsoever was sent to serial number 55 of the seniority list. The travesty of justice that has ensued out of this action cannot be comprehended by any means and is obviously liable to be corrected.

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Bakhtukhwa
Munna

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(Copy of the tentative seniority list dated 23-10-2020 is Annex-H.)

13. That the appellant being aggrieved of the actions of the respondents preferred a representation "through proper channel" before the competent authority dated 17-11-2020. The said representation comprehensively dealt in the issue and highlighted most of the illegalities that had taken place in the promulgation of the seniority list dated 23-10-2020. The said representation hasn't been answered/replied to as of now.

(Copy of the representation dated 17-11-2020 is Annex-I.)

14. That the Respondents with ulterior motives also brought about another notification dated 22-03-2019, whereby outsiders were encadred in the garb of decision of this Honorable Court. It is pertinent to mention herein that the Honorable Court had nowhere mentioned the inclusion of any of the said employees in the PPS cadre.

(Copy of the notification dated 22-03-2019 is Annex-J.)

15. That subsequently rather than trying to mend ways and treat the Appellants at par with other departments, another injustice was brought in through notification dated 09-01-2020. This notification brought in more people and were included in the PPS cadre, all to the detriment of the Appellants and their cadre.

(Copy of the notification dated 09-01-2020 is Annex-K.)

16. That though no orders were ever made/communicated in respect of the representations/observations of the appellant in respect of the illegalities committed by the issuance of the tentative seniority list dated 20-02-2020 and 23-10-2020. The appellant duly moved an appeal before the Honorable Khyber Pakhtunkhwa Services Tribunal in Service Appeal No. 3521/2021 which was decided in favour of the appellant on 14-07-2021.

(Copy of the appeal and order dated 14-07-2021 is Annex-L and

L/1.)

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Khyber Pakhtunkhwa
Service Tribunal
Deshawar

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17. That due to the noncompliance of orders of the Honorable Services Tribunal, the Appellant filed an execution petition to give effect and implement the judgement dated 14-07-2021 of the Honourable Tribunal.

(Copy of execution petition is Annex-M.)

18. That during the pendency of the execution petition, on 25-02-2022 the final seniority list of PPS BS-18 Officers was issued where the appellant has been placed in negation of the law at serial no. 50. The appellant is aggrieved of having been placed junior to the private respondents who cannot be allowed to have seniority better than the appellant. The appellant preferred successive representations in respect of the said seniority list, but to no avail, and the prescribed 90 days have lapsed.

(Copy of the final seniority list dated 06-12-2022 is Annex-N.)


(Copy of the representations are Annex-N/1)

19. That the appellant being aggrieved in respect of seniority being denied, now approaches this honorable tribunal for indulgence of this tribunal amongst others on the following grounds:

GROUNDS:

- a. Because the Appellant is an aggrieved person within the meaning of Article 212 of the constitution of the Islamic Republic of Pakistan 1973.
- b. Because the Fundamental Rights of the Appellant have been violated in relation to Article 4, 8, 9, 18 & 25 of the Constitution of the Islamic Republic of Pakistan, 1973. The said rights flow out of the terms and conditions of service of the appellant and this Honorable Tribunal being the custodian of the Rights of Civil Servants as enshrined in the Civil Servants Act, the rules made thereunder as well as the protection afforded by the Constitution of Islamic Republic of Pakistan, 1973, is why the Appellant seeks the redress of their grievances and to bring to an end the ordeal the Appellant is going through due to the illegal, unlawful and unjust acts and inaction of the Respondents.
- c. Because the law doesn't recognize the concept of inclusion. This is a concept alien to the Civil Servants Act 1974, the rules made thereunder


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Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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as well as the Khyber Pakhtunkhwa Provincial Planning Service Rules, 2018.

- d. Because the appellant under the law, is required to be placed at Serial No. 18 of the Seniority List instead of Serial 50. Because the Officers mentioned at Serial No. 1, 2, 3, 5, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, & 35 have been wrongly placed senior to the appellant.
- e. Because the appellant has been robbed of his seniority in the garb of regularizations of Officers, who under the very law they are regularized cannot in any mode and manner in any way affect the effecting of seniority of the appellant being a regular officer coming through competitive process and not through a parachute.
- f. Because the seniority as laid not only are substantially against the Regularization of Employees Act, 2018, but also clearly vitiate the APT Rules, 1989 to the detriment of the appellant.
- g. Because the Fundamental Rights of the Appellant have been violated in relation to Article 4, 8, 9, 18 & 25 of the Constitution of the Islamic Republic of Pakistan, 1973. The said rights flow out of the terms and conditions of service of the appellant as a Civil Servant and are as enshrined in the Civil Servants Act, the rules made thereunder as well as the protection afforded by the Constitution of Islamic Republic of Pakistan, 1973. It is therefore the reason why the Appellant seeks the redress of his grievances and to bring to an end the ordeal the Appellant is going through due to the illegal, unlawful and unjust acts and inaction of placement at the wrong seniority point.
- h. Because the law doesn't recognize the concept of inclusion. This is a concept alien to the Civil Servants Act 1974, the rules made thereunder as well as the Khyber Pakhtunkhwa Provincial Planning Service Rules, 2018.
- i. Because the Appellant has been discriminated against by going in negation of the Khyber Pakhtunkhwa Provincial Planning Service Rules, 2018. The said deviation and negation is unwarranted and not recognized by the law.

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- j. Because the Appellant has not been treated in accordance with law, and his right secured and guaranteed under Law and Constitution have been violated.

- k. Because the Appellant has suffered for no fault of his own and the entire premise of the seniority list is based on the illegality of the department the complete detriment of the Appellants.

- l. Because the deviation from settled law and adopting the novel principles of "inclusion" which aren't recognized by the Constitutional law nor the services law of the country is clearly in disregard of the law and the dictums of the Honorable Superior Courts of Pakistan.


- m. Because the famous judgment of Supreme Court of Pakistan in Anita Turab case (PLD 2013 SC 195) clearly lays down that merit has to be followed and the merit in the instant case is clearly setting aside the discriminatory attitude towards the Appellant in bringing the decisions in violation of letter dated 25-02-2014 and office Memorandum dated 31-01-2014.

- n. Because the Appellant has served the department with utmost honesty and clarity and must not be deprived of their due rights.

- o. Because the decisions of placing people albeit officers other than those coming through proper competitive process senior to those who have come and joined after all codal requirements is illegal, unlawful and without lawful authority.

- p. Because the seniority of the appellant has been literally done away with. The fact that he has been pushed down from Serial Number 23 in the tentative list to 55 (now 50) in Final Seniority List is by no means condonable. The deviation is illegal and unlawful.

- q. Because the Advice of the Establishment Department referred to in the final seniority list dated 06-12-2022 has no legal standings and needs to be reviewed in light of Esta-code rulings

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- r. Because the Appellant has served the department with utmost honesty and clarity and must not be deprived of their due rights, which is to be placed on a higher rank in the final seniority list.
- s. Because the Respondents cannot be allowed under the law to pass any seniority list that is unlawful, as valuable Rights of the Appellants are involved, which are guaranteed under the Constitution of Islamic Republic of Pakistan 1973.
- t. Because the Appellant has been discriminated against by going in negation of the Khyber Pakhtunkhwa Provincial Planning Service Rules, 2018. The said deviation and negation is unwarranted and not recognized by the law.
- u. Because the Rights of the Appellant are secured under Article 8, and the entirety of Part II of the Constitution of the Islamic Republic of Pakistan, and its redress falls solely within the ambit of Article 212 of the Constitution of the Islamic Republic of Pakistan, 1973.
- v. Because the Appellants have not been treated in accordance with law, and their right secured and guaranteed under Law and Constitution have been violated.
- w. Because the Appellant has suffered for no fault of their own and the entire premise of the case is based on the illegality of the respondents to the complete detriment of the Appellants.
- x. Because the deviation from settled law and adopting the novel principles of "inclusion" which aren't recognized by the Constitutional law nor the services law of the country is clearly in disregard of the law and the dictums of the Honorable Superior Courts of Pakistan,
- y. Because the Judgment of the Honorable Supreme Court reported as 2013 SCMR 1752 has been specifically violated. The same warrants action from this Honorable Tribunal.
- z. Because the Appellant crave for leave to add further grounds at the time of his oral arguments before this Hon'ble Court highlighting further contraventions of the provisions of the Constitution & Laws.

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 Peshawar

14 (18)

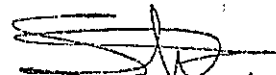
PRAYER:

In view of the above, it is humbly prayed that this honorable Court may graciously be pleased to:

- a. Declare the Final Seniority list No. SO(E)P&D/3-4/PPS/SLs/2020 dated 06-12-2022 to be arbitrary, illegal, unlawful and without any authority and that the Appellant be placed at seniority list above the private respondents, who rank junior to the appellant.
- b. Direct the respondents that the judgment of the Honorable Supreme Court reported in 2013 SCMR 1752 be implemented in letter and spirit in respect of the Khyber Pakhtunkhwa Provincial Planning Service Cadre and violation of the said judgment be strike down.
- c. Direct that the Appellant be placed at Serial No. 18 of the Seniority list of BPS-18 Planning Service Cadre and above the private respondents.
- d. Direct that the Appellant be treated in accordance with the law and that all actions in negation of the law are to be strike down.
- e. Any other relief deemed appropriate in the circumstance of the case may also be granted.

Interim Relief:

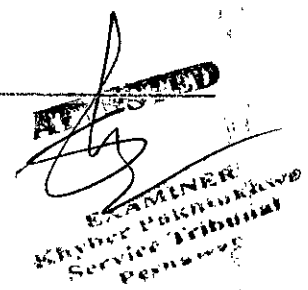
May it please this Honorable Court to direct the Respondents not to undertake any Mid-Career Management Course Training, promotion nor to call any PSB meeting pending disposal of the instant appeal.


Appellant

Through

(ALI GOHAR DURRANI)
Advocate High Court
0332-9297427
khanliegohar@yahoo.com
Shah | Durrani | Khartak
(a registered law firm)
House No. 231-A, New Shami Road,
Peshawar.

IN THE


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Peshawar

HONOURABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

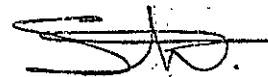
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Appeal No. _____/2023

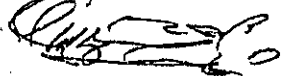
Mr. Shah Fazil Versus. Govt of KP and others.

AFFIDAVIT:

I, Shah Fazil S/o Sardar Hussain, R/o Mohallah Aman Abad, Bhalkheil, Mardan Khas, Mardan, Khyber Pakhtunkhwa, Peshawar (Appellant) do hereby affirm on oath that the contents of the enclosed appeal are true and correct to the best of my knowledge and belief and that nothing has been concealed from this honorable tribunal.

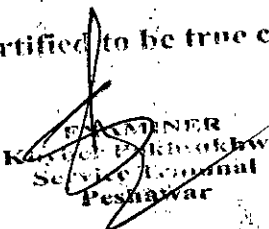

Deponent

Identified by:



Ali Gohar Durrani
Advocate High Court.

Certified to be true copy


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Date of Presentation of Appeal

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IN THE

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KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR



Service Appeal No. 828/2023

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

Mr. Shah Fazil S/o Sardar Hussain, Senior Manager (Operation) LSU,
SLDR, Khyber Pakhtunkhwa, Peshawar. (Appellant)

VERSUS

1. The Government of Khyber Pakhtunkhwa, through Chief Secretary, Civil Secretariat, Peshawar.
2. The Establishment Department, Government of Khyber Pakhtunkhwa, through Secretary Establishment, Civil Secretariat, Peshawar.
3. Planning & Development Department, Government of Khyber Pakhtunkhwa, through Secretary P & D, Civil Secretariat, Peshawar.
4. The Finance Department, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
5. Mr. Sher Afzal, SPO, Social Welfare Department, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
6. Mr. Ahmad Nawaz, Chief Planning Officer, Agriculture Department, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
7. Mr. Abid Noor, Director (Tech) Irrigation Department, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
8. Mr. Abdul Rehman, Dy: Secretary-II P&D Department, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
9. Mr. Syed Qamar Abbas, (Chief Coordinator) P&D Department, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
10. Engr. Nadir Iqbal, Project Director Small Dams, Irrigation Department, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
11. Mr. Abdul Basit, Senior Planning Officer, ST & IT Department, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
12. Mr. Engineer Saleem Shah, Dy: Director (M&E), Peshawar Division SDV Building Gate 05, Khyber Road, Peshawar.
13. Mr. Akhtar Shahzad Bangash, Deputy Director (Eco), (M7E), P&D Department, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
14. Mr. Asim Riaz Muhammad Ali, Assistant Chief, PSDP, P&D Department, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
15. Mr. Hidayat Ullah Khan, Dy: Director (M&E), Bannu Division, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
16. Muhammad Ayaz, Assistant Chief (water), P&D Department, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
17. Mr. Tehsil Zaman, Assistant Chief (industries) P&D Department, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
18. Mr. Engineer Asif Shahab, on deputation to Upper SDA, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
19. Mr. Amin Khan Bangash, Assistant Chief, (Rule of law) P&D Department, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.

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20. Ms. Palwasha Rehman, AC, PPP Cell, P&D Department, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
21. Mr. Rafiq Jan, Deputy Director, PHC, Peshawar High Court.
22. Dr. Kashif Nazir, SPO-II, Health Department, Khyber Road, Peshawar.
23. Mr. Abdul Aziz Abbasi, Awaiting post in P&D Department, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
24. Mr. Muhammad Imran Khan, Taxation Analyst/SPO, Excise & Taxation Department, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
25. Mr. Aftab Haider, Dy Director (M&E), Kohat Division, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
26. Mr. Sikandar Khan, Director (P&T) PERRA, ATD, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
27. Mr. Muhammad Shoaib, Assistant Economic Advisor, Industries Department, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
28. Mr. Hamayun Khan, Communication Specialist, (UPU), P&D Department, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
29. Ms. Hina Gul, M&E Specialist, (UPU), P&D Department, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
30. Syed Nasir Jamil, Senior GIS Specialist, (UPU), P&D Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
31. Mr. Shahzad Khan, Deputy Director (M&E), Mardan Division, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
32. Mr. Ashfaq Khan, Deputy Director (M&E), Malakand Division, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
33. Mr. Riaz Noor, Urban Economist (UPU), P&D Department, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
34. Mr. Adnan Salim Khan, Project Director M.P.P, UPU, P&D Department, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
35. Mr. Afrasiyab Khattak, Dy. Director (M&E), (HQ), P&D Department, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
36. Mr. Engineer Alam Zeb, Economist Irrigation Department, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.

....(Respondents)

Mr. Ali Gohar Durrani
Advocate

... For appellant

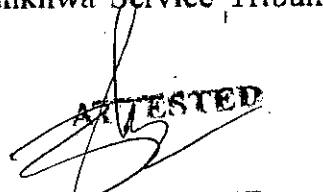
Mr. Asad Ali Khan
Assistant Advocate General

... For official respondents

Date of Institution.....07.04.2023
Date of Hearing.....13.11.2023
Date of Decision.....13.11.2023

JUDGMENT

RASHIDA BANO, MEMBER (J): The instant service appeal has been instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as below:


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"In view of the above, it is humbly prayed that this honorable Court may graciously be pleased to:

- a) Declare the final seniority list No.SO(E)P&D/3-4/PPS/SL/2020 dated 06-12-2022 to be arbitrary, illegal, unlawful and without any authority and that the Appellant be placed at seniority list above the private respondents, who rank junior to the appellant.
- b) Direct the respondents that the judgment of the Honorable Supreme Court reported in 2013 SCMR 1752 be implemented in letter and spirit in respect of the Khyber Pakhtunkhwa Provincial Planning Service Cadre and violation of the said judgment be strike down.
- c) Direct that the appellant be placed at Serial No.18 of the seniority list of BPS-18 Planning Service Cadre and above the private respondents.
- d) Direct that the appellant be treated in accordance with the law and that all actions in negation of the law are to be strike down.
- e) Any other relief deemed appropriate in the circumstance of the case may also be granted."

2. Through this single judgment we intend to dispose of instant service appeal as well as connected (i) Service Appeal No. 863/2023 titled "Muhammad Imran Kazim Vs. Government of Khyber Pakhtunkhwa through Chief Secretary and others" (ii) Service Appeal No. 895/2023 titled "Muhammad Hashim Vs. Government of Khyber Pakhtunkhwa through Chief Secretary and others"(iii) Service Appeal No. 896/2023 titled "Imdad Ullah Vs. Government of Khyber Pakhtunkhwa through Chief Secretary and others" (iv) Service Appeal No. 897/2023 titled "Naseer Ahmad Vs, Government of Khyber Pakhtunkhwa through Chief Secretary and others" (v) Service Appeal No. 1163/2023 titled "Sami Uddin Vs. Government of Khyber Pakhtunkhwa

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through Chief Secretary and others” and (vi) Service Appeal No. 1480/2023 titled “Muhammad Iqbal Vs. Government of Khyber Pakhtunkhwa through Chief Secretary and others” as in all these appeals common question of law and facts are involved.

3. Brief facts of the case, as given in the memoranda of appeals, are that appellants were part of the planning Service Cadre of the Government of Khyber Pakhtunkhwa who after getting the appointment in BPS-17 in the said cadre on 25.02.2008 was further promoted to BPS-18 on 22.07.2019 as Senior Planning Officer. In the meantime, the Government of Khyber Pakhtunkhwa Planning Service Rules 2018 were promulgated which regulate the Planning Service Cadre and the service structure of its employees. The ibid rules were published in through Notification No. SO(E)P&D/6-1/SR/PPD/2018 dated 22.02.2018. Subsequently, the Khyber Pakhtunkhwa (Regularization of Services) Act, 2018 was passed and after receiving assent of the Governor in the March, 2018 was promulgated. The said Act resulted in regularization of services of employees working against project post under the P&D Department of Government of Khyber Pakhtunkhwa. The department issued a tentative seniority list, wherein, the appellant already holding the post in regular service of the Planning Cadre and those other officers whose services were regularized on the strength of Khyber Pakhtunkhwa Employees (Regularization of Services) Act, 2018, were dealt with by the department in the common seniority list. In the tentative seniority list, so issued on 20.02.2020, the appellant was shown at Serial No.23 which according to him is not a proper place and he filed representation against the said seniority list on 04.03.2020. Subsequently, the respondents issued another seniority list on 23.10.2020 and the appellant who was initially shown at serial No. 23 of the tentative seniority list dated 20.02.2020 for employees in BPS-18, was suddenly sent to Serial

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No.50 of the subsequent seniority list. The appellant also filed representation against the subsequent seniority list on 17.11.2020 but no response was given from the department. He believes that his seniority was disturbed due to encadrement of the outsiders. The appellant concluded factual part of his appeal with the submission in respect of the illegality committed by issuance of the tentative seniority list dated 23.10.2020 and encadrement of employees notified vide notification dated 19.01.2020 by including them in the Provincial Planning Service Cadre. The appellant has approached this Tribunal for the solicited relief described under the prayer part of his memorandum of appeal at its end. By filling appeal bearing No. 3521/2021, which was partially accepted by this Tribunal and respondents were directed to decide the departmental appeal/objection upon seniority list vide order dated 14.07.2021. During pendency of execution petition, final seniority list was issued on 25.02.2022 wherein appellant was placed at serial No.50 which is against the law. Appellant filed departmental representation but of no avail.

4. Respondents were put on notice who submitted written replies/comments on the appeal. We have heard the learned counsel for the appellant as well as the learned Assistant Advocate General and perused the case file with connected documents in detail.

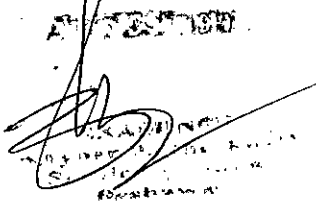
5. Learned counsel for the appellant argued that appellant has not been treated in accordance with law and respondents violated Article 4, 8, 9, 18 and 25 of the Constitution of the Islamic Republic of Pakistan, 1973. He further argued that appellant under the law is required to be placed at serial No. 23 of the seniority list instead of serial No. 50 and private respondents have wrongly placed senior to the appellant and the appellant has been discriminated against by going in negation of the Khyber Pakhtunkhwa Provincial Planning Service


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Rules, 2018 and the said deviation and negation is unwarranted and not recognized by the law. He submitted that seniority of the appellant issued by the respondents are substantially against the Regularization of Employees Act, 2018 but also in violation of the Appointment, Promotion and Transfer Rules, 1989.

6. Conversely, learned Assistant Advocate General contended that the appellant has been treated in accordance with law and rules and no fundamental rights of the appellant have been violated and no illegal and unjust acts have been done by the respondents. He further contended that respondents by taking into account the PPS Service Rules and in light of the Provincial Cabinet decision made in its meeting held on 09.05.2019, all planning oriented posts in BPS-17 and above of newly regularized components/units of P&D Department and Planning Cell of Administration Departments, Civil Secretariat alongwith incumbents as well as left over posts were included in the Schedule-I of the PPS Service Rules vide Notification dated 09.01.2020. Since the regularized employees were included in the Schedule-I of the PPS Service Rules alongwith posts, therefore, they did not affect promotion quota of the appellant rather inclusion of posts widen/enhanced the promotion prospects of the PPS Officers.

7. Perusal of record reveals that appellant was appointed in BPS-17 in planning service cadre of Government of Khyber Pakhtunkhwa vide order dated 25.02.2008 who was promoted to BPS-18 vide order dated 22.07.2019 as Senior Planning Officer w.e.f 24.01.2019. It is pertinent to mention here appellants in all the appeals mentioned though promoted on different dated but later on effect to their promotion in BPS-18 was given from 24.01.2019, which means that they were promoted on 24.01.2019. The Government promulgated



Khyber Pakhtunkhwa Provincial Planning Service Rules 2018 on 22.02.2018, which regulates the planning service cadre and their service structure. Government of Khyber Pakhtunkhwa also passed the Khyber Pakhtunkhwa Employees (Regulation of Services Act), 2018 on 7th March 2018, this act regularized services of employees working against project post under the P&D Department of Government of Khyber Pakhtunkhwa and planning service cadre. The Government after approval of Provincial Cabinet in cadre all the officer and their post in one cadre with the name of PPS vide notification dated 09.05.2019. All the posts related to the planning cadre working in various departments of the Government of Khyber Pakhtunkhwa were made part of PPS alongwith its incumbent irrespective of the fact that their services were regularized before or at the strength of Regularization of services Act 2018. Appellant and respondents were encadred in PPS cadre. It is pertinent to mention here that private respondent No. 5 whose services in BPS-18 was regularized vide notification 27.09.2011 in compliance of order of Peshawar High Court, Peshawar dated .08.09.2011 in COC No. 38/2011 filed in writ petition No. 917/2007. Services of private respondent No.6 was regularized in BPS-18 vide notification dated 05.04.2012 in compliance of Peshawar High Court, Peshawar order dated 23.02.2012 in review petition bearing No. 101/2011. Services of private respondent No.7 was regularized in BPS-18 vide notification dated 04.08.2020 w.e.f 18.05.2006. Services of private respondent No.8 was regularized in BPS-18 vide notification dated 31.10.2016. Services of private respondent No 9 & 10 were regularized vide notification dated 28.11.2017 on the basis of Khyber Pakhtunkhwa Planning and Monitoring Cell Irrigation Employees (Regularization of Service) Act 2017, which was promulgated on 13th March 2017. Private respondent No. 11 was regularly appointed in BPS-18 vide notification dated 01.04.2019. Respondent No 5 to

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11 were in regular BPS-18, while their posts alongwith incumbents were included in Schedule-1 of the Khyber Pakhtunkhwa Provincial Planning Service Rules 2018 with effect from 22.02.2018 from the date of promulgation of Rules. These rules provided transitional passage to officer seniority, who were brought on the strength of the Service. Rules 8 of the Rules provide transitional which read as;

"The seniority position of the various officers appointed in planning cadres of various department and brought on the strength of the service on coming into force of these rules shall be considered from the date of their regular appointment to the posts in their present basic scales of pay.

Provided that where two or more civil servants have been appointed to their present basic scale on the same day. The older in age shall be considered senior."

8. So Rule 8 give protection to the seniority of respondent No. 5 to 11 whose services were already regularized in BPS-18 before inclusion of their post alongwith its incumbents in PPS cadre and they were promoted in BPS-18 earlier to the appellant. Claim of the appellant that they are senior to respondents No. 5 to 11 is negated by above mentioned Rule 8 because appellant was selected by Public Service Commission in BPS-17, who were allowed to regain his seniority w.e.f 24.01.2019, and he was promoted in BPS-18 on 22.10.2019 while respondent No 5 to 11 service were regularized much before the promotion of the appellant to BPS-18 on the dates mentioned above. So it is held that respondent No. 5 to 11 were already regularized civil servants in BPS-18 before promulgation of Khyber Pakhtunkhwa Provincial Planning Service Rules, 2018 and whose post along its incumbents were included in planning service cadre, therefore, they are rightly placed senior to appellants as Rule 8 of PPS Rules 2018 provide transitional to them.

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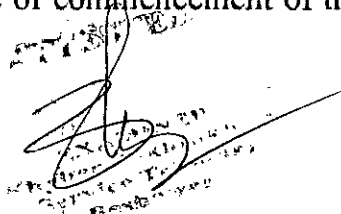
9. Now come towards private respondent No. 12 to 36 whose services were regularized after promulgation of PPS Rules 2018 on the basis of Khyber Pakhtunkhwa Employees (Regularization of Service) Act 2018. The Khyber Pakhtunkhwa Provincial Planning Service Rules, 2018 provide method of initial recruitment, promotion and training of planning service cadre and entire service structure for Khyber Pakhtunkhwa Province. Beside these two no other mode and method of recruitment to a post is available/mention in these rules. Khyber Pakhtunkhwa Assembly passed Khyber Pakhtunkhwa Employees (Regularization of Service Act 2018 which was assented by the Governor of Khyber Pakhtunkhwa on 7th March 2018. Section 3 and 4 of the act provides for regularization of the adhoc and project employees which will take effect from the date of commencement of the Act both section are reproduce here for ready reference;

“3. Regularization of Service of Adhoc Employees:---

Notwithstanding anything contained in any law or rules, the employees at sub-clause (i) of clause (e) of sub-section (1) of section 2 of this Act, appointed on Adhoc basis against civil posts and holding such civil posts till the commencement of this Act, shall be deemed to have been validly appointed on regular basis, from the date of commencement of this Act, subject to verification of their qualifications and other credentials by the concerned Government Department.

4. Regularization of Service of Project Employees:---Notwithstanding

anything contained in any law or rules, the employees at sub-clause (e) of sub-section (1) of section 2 of this Act, appointed on contract basis against project posts and holding such project posts till the commencement of this Act, shall be deemed to have been validly appointed on regular basis from the date of commencement of this Act,



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subject to verification of their qualifications and other credentials by the concerned Government Department:

Provided that the terms and conditions of services of employees reflected at S.No.5 of the Schedule shall further be governed under the National Disaster Management Authority Act, 2010 (Act No. XXIV of 2010) and Regulations made thereunder; and the terms and conditions of services of employees reflected at S.No.6 & 7 of the Schedule shall be governed under the Khyber Pakhtunkhwa Emergency Rescue Services Act, 2012 (Khyber Pakhtunkhwa Act No. XV of 2012).”

Protection is given to the service structure and seniority of in service civil servant in section 6 which deals which the seniority and read as;

Seniority.---(1) Except the employees mentioned in the proviso to section 4 of this Act, whose services are to be regulated by their respective laws and rules, all other 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 civil servants belonging to the same service or cadre, as the case may be, 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 or Departmental Selection Committee, as the case may be, made before the commencement of this Act, are to be appointed in the respective service or cadre, irrespective of their actual date of appointment.

(2) The seniority inter-se of the employees, whose services are regularized under this Act within the same service or cadre, shall be determined on the basis of their continuous officiation in such service or cadre.

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10. In accordance with section 6 civil servants whose services were regulated under this act shall rank junior to all civil servants belonging to same service or cadre. The matter of inter-se-seniority of the civil servants whose services were regularized as a result of the Khyber Pakhtunkhwa Regularization of Act, 2018 is also dealt with in section 6 and which will be determined on the basis of their continuous officiation in such service or cadre. The most important factor for regularization of services of project/contract and adhoc employees are the general conditions which are prerequisite for regularization and are given in Section 5 of the act which are:

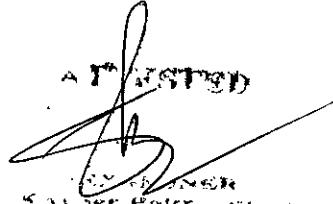
“5. General conditions for regularization:---For the purpose of regularization of the employees under this Act, the following general conditions shall be observed:

- i) The service promotion quota of all service cadres shall not be affected;
- ii) The employees shall possess the same qualification and experience as required for a regular post;
- iii) The employees have not resigned from their services or terminated from service on account of misconduct, inefficiency or any other grounds before the commencement of this Act; and
- iv) The services of such employees shall be deemed to have been regularized only on the publication of their names in the Official Gazette.

11. Respondent after promulgation of the Khyber Pakhtunkhwa Regularization Act of 2018 issued notification dated 09.01.2020 whereby newly regularized components/units of Planning & Development Department and Planning Cell of Administrative Department were encadred in planning cadre of BPS-17 and above through addition to schedule 1 of Provincial

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Khyber Pakhtunkhwa
Service Commission

Planning Service Rules of 2018. The Government of Khyber Pakhtunkhwa vide letter dated 17.05.2019 issued directions to all Administrative Secretary to Government for provision of planning related post/officers in BPS-17 and above for assessment/suitability for its inclusion in schedule data of PPS cadre. Respondent after absorption of all the cadres issued/seniority list dated 20.02.2020, wherein appellant was shown at serial No.23 of the seniority list upon which appellant filed his objection but instead of answering objection of the petitioner respondent again issued another seniority list on 23.10.2020 which is totally in negation of settled service rule and judgment of apex court reported in 2013 SCMR 1752 which was duly sent to administrative department by Government of Khyber Pakhtunkhwa vide letter dated 31.01.2014. Appellant was placed at serial 55 from Serial no.23 in the seniority list of BPS-18 issued on 23.10.2020 without any plausible reason. Appellant also filed objection upon this tentative seniority list which was rejected in violation of law and rules on 04.07.2022 and final seniority list of BPS-18 was issued on 25.02.2022. For determination of controversy in issue there are three provisions i.e. section 3, 4 and 5 in the Khyber Pakhtunkhwa Employees (Regularization of Service, Act) 2018. Section 3 and 4 of the act deals with considering appointment of all the adhoc and project employees as validly appointed on regular basis from the date of commencement of this Act which means post of project employee who hold under project will be deem to have been regular post and its incumbent will be consider validly appointed on a regular post after commencement of the Act. For regularization of services, there are general conditions which will have to be fulfilled before regularization of service of a project or adhoc employees out of which is; (iv) The service of such employees shall be deemed to have been regularized only on the publication of their names in the official gazette.

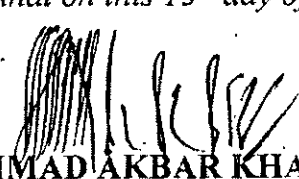
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 Khyber Pakhtunkhwa
 Service (Civilian)
 Peshawar

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12. So publication of names of the regularized employees in the official gazette is condition pre-requisite for giving effect to their regularization. Until and unless names of the regularized employees were not published in official gazette, their services will not be considered regularized in accordance with above mentioned condition. This condition is embodied in the statute which will have to be given preference upon all others decision or policy if any on the subject. Respondent names were published in the official gazette on 29th June 2022 even after issue of final seniority list on 25.05.2022, therefore, they are juniors to the appellant because at the time of issuance of seniority list, services of the project and adhoc employees were not legally regularized, keeping in view condition No. 4 mentioned in general condition of section 5 of the Khyber Pakhtunkhwa Regularization of Service Act 2018, therefore, in our humble view respondent are not senior to the appellant who came through passing competitive exam in year 2018, who in accordance with judgment of apex court reported in 2013 SCMR 1752, will rank senior to the regularized employees.

13. In view of the above discussion, instant appeal as well as connected service appeals are partially accepted to the extent that appellants are senior to private respondent No. 12 to 36 the project/adhoc/contract employees whose services were regularized at the strength of Khyber Pakhtunkhwa (Employees Regularization of Service Act), 2018.

14. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 13th day of November, 2023.*


(MUHAMMAD AKBAR KHAN)
Member (E)

*Kaleemullah


(RASHIDA BANO)
Member (J)
Certified to be true copy

ADMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Amir

(C)

(34)

Dated: 25-01-2024

Secret
P&D Department

Diary No. 534

Date 25/1/24

To

Handwritten signature/initials

The Secretary to Government of Khyber Pakhtunkhwa
Planning & Development Department.

Subject: **IMPLEMENTATION OF COURT DECISION.**

It is submitted that the Services Tribunal, Peshawar has decided our appeal regarding fixation of seniority of BPS-18 (PPS Officers). An attested copy of the decision is enclosed herewith.

It is worth-mentioning that some of our colleagues are at the verge of retirement and the Establishment Department has asked for submission of such cases on priority latest by 26th January, 2024.

In view of foregoing, it is requested that the court decision may be implemented.

With regards.

1. Muhammad Hashim (PPS BS-18)

Signature

2. Shah Fazil (PPS BS-18)

Signature

3. Naseer Ahmad (PPS BS-18)

Signature

4. Imran Kazim (PPS BS-18)

Signature

Signature

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POWER OF ATTORNEY

BEFORE THE

Service Tribunal Peshawar
No. _____ of 2024

Shah Fazil

VERSUS

Govt-08 KP

I/we _____ do hereby appoint & constitute The Law Firm Of

SHAH | DURRANI | KHATTAK

(a registered law firm) as counsel in the above mentioned case, to do all or any of the following acts, deeds and things:-

1. To appear, act and plead for me/us in the above mentioned case in this Court/Tribunal or any other court/tribunal in which the same may be tried or heard and any other proceedings arising out of or connected therewith.
2. To sign, verify and file Plaint/Written Statement or withdraw all proceedings, petitions, suit appeals, revision, review, affidavits and applications for compromise or withdrawal, or for submission to arbitration of the said case, or any other document, as may be deemed necessary or advisable by him for proper conduct, prosecution or defence of the said case at any stage.
3. To do and perform all other acts which may be deemed necessary or advisable during the course of the proceedings.

AND HEREBY AGREE:-

- a) To ratify whatever the said Advocates may do in the proceedings in my interest, Not to hold the Advocates responsible if the said case be proceeded ex-parte or dismissed in default in consequence of their absence from the Court/Tribunal when it is called for hearing or is decided against me/us.
- b) That the Advocates shall be entitled to withdraw from the prosecution of the said case if the whole OR any part of the agreed fee remains unpaid.

In witness whereof I/We have signed this Power of Attorney/Wakalat Nama hereunder the contents of which have been read/explained to me/us and fully understood by me / us this _____ day of _____ at _____

[Signature]

Signature of Executant(s)

Accepted subject to term regarding payment of fee for/on behalf of The Law Firm of Shah | Durrani | Khattak.

[Signature]

ALI GOHAR DURRANI

Advocate Supreme Court

BC-13-4247

17101-8851818-1

aligothar@sdklaw.org

+92-332-929-7427

[Signature]

Zarak Arif Shah

Advocate High Court

0333-8335886

[Signature]

Babar Khan Durrani

Advocate High Court

0301-8891818

[Signature]

Hannah Zahid Durrani

Advocate High Court

Shah | Durrani | Khattak

(A registered law firm)

www.sdklaw.org

info@sdklaw.org

231-A, Street No. 13, New Shami Road, Peshawar.