

BEFORE THE KP SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 951/2022

Wakil Khan .

VS


Govt of KP, etc

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Respondents

Through:


(SYED NOMAN ALI BUKHARI)
ADVOCATE, HIGH COURT

(1)

BEFORE THE KHYBER PAKHTUNKHWA,
SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 951/2022

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 12012

Dated 01-04-2024

Wakil Khan S/o Rustum Khan District Officer,
On farm Water Management, District Mohamand.

.....Appellant

VERSUS

1. Chief Secretary KP, Civil Secretariat Peshawar.
2. Secretary Establishment, KP, Civil Secretariat Peshawar.
3. Secretary Law, KP, Civil Secretariat Peshawar.
4. Secretary Agriculture, Livestock & Cooperative Department, Govt: of KP, Civil Secretariat Peshawar.
5. Director General, On farm Water Management, KP, Peshawar.
6. Zahid Khaliq, Water Management Officer OFWM & 40 Others.

.....RESPONDENTS

.....

REPLY ON BEHALF OF PRIVATE RESPONDENTS NO.06, 08,
09, 12, 13, 15, 17, 18, 19, 20, 21, 22, 32, 33, 34, 35, 36, 38, 37, 41, 42,
43, 44 & 45

PRELIMINARY OBJECTION:

1. The appeal is bad for non-joinder of necessary party.
2. The appeal is not maintainable in its present form.
3. The appeal of the appellant is not competent.
4. The appellant has no cause of action, so appeal is not maintainable.
5. The appellant has no locus standi.
6. The appellant concealed the material facts from this Honorable Tribunal.
7. That the appeal is time barred.
8. That the appellant has not come with clean hands.

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9. That the instant appeal also hit by the section 23 of the KP Service Tribunal Rules 1974, the issue of the seniority is already decided by this Hon'ble Tribunal, in appeal no 1326/2017 wherein the present appellant is also party.
10. That similar nature appeal of the appellant is already under trial in this Hon'ble Tribunal bearing Appeal No. 864/2022 titled "Wakil Khan vs Govt. of Khyber Pakhtunkhwa & others".
11. The appeal is badly barred by time as the appellant challenged seniority list dated 29-08-2018 and promotion order of (BPS-17) officers of On Farm Water Management department, now after the lapse of 04 years, filed the present appeal which is hit by the principle of laches; therefore, the same is not maintainable / entertainable in the eyes of law and the appellant has no cause of action.
12. That the appellant filed service appeal no: 864/2022 wherein he challenge seniority list of 2022 and thereafter filed instant service appeal no:951/2022 wherein he challenge the seniority list of 2018 after lapse of 4 years, just to waste the time of court in settle matter. Which is already settle by this Hona'ble Tribunal in service appeal no 1326/2017 wherein the present appellant was also party

RESPECTFULLY SHEWETH:

FACTS:

1. Correct with addition that the few post of water Management Officers Agriculture BPS-17 and water management officer (Engineering) (BPS-17) were advertised in the Agriculture, Live Stock and Coop: Department, Peshawar in the local Daily's. the appellant as well as respondents being eligible applied for the post of Management officers (Agriculture) (BPS-17), appeared in the test and interview and qualified the same. Thereafter in the recommendation of the DSC, the appellant as well as respondents were appointed as water Management Officer BPS-17 in the Agriculture, Live Stock and Coop: Department, Peshawar on contract basis vide office dated 24.11.2004, so the appellant and private respondents were on same footing there is no distinction between the both parties.

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2. Correct but with addition that the respondent performed his duty up to the entire satisfaction of his superiors on contract basis, meanwhile the provincial government promulgated Khyber Pakhtunkhwa Civil Servant Act, 2005 but official respondent reluctant to regularize the service of the respondent under said act, hence the respondent with other colleagues filed writ petition before the Hon'able Peshawar High Court Peshawar for regularization of their service under this act, which was allowed and official respondent were directed to regularize the services of the respondent along with others vide judgment dated 22.12.2008. it is pertinent to mention here that the aforesaid judgment was assailed in appeal before the Supreme Court of Pakistan, which was dismissed vide judgment dated 01.03.2011. Then the respondent's service was regularized vide order dated 07.06.2011 from the date of initial appointment i.e 24.11.2004.

Further it is added that That latter on another group of 28 project employees filed writ petition before the Hon'able Peshawar High Court Peshawar for regularization of their service which was allowed vide judgment dated 15.09.2011. it is pertinent to mention here that the aforesaid judgment was assailed in appeal before the Supreme Court of Pakistan, which was dismissed vide judgment dated 22.03.2012 and official respondent were directed to regularize the services of the respondent along with others in light of Amendment Act 2005 and Regularization Act 2009 but due to non-availability of post they were place in surplus pool vide order dated 10.01.2013 and their service was regularized vide order dated 03.07.2013 but still they were in surplus pool. Later on three officials were posted /adjusted from the Surplus pool in water OFWM Department vide order dated 18.11.2013. 11 number of employees from the group of 28WMOs which were placed in surplus pool, submitting 2nd writ in the Hon'able Peshawar High Court Peshawar and challenging the seniority position of the respondent and other 10 colleagues which were regularized vide order dated 07.06.2011. The Hon'able Peshawar High Court Peshawar delivered judgment on 22.09.2012 with the remarks that "the department should look into the matter in the light of judgment of the court and the rules on subject including the actual length of service and other factor permissible under

the law and if the department committed any error then, it shall be rectified.

It is important to note that against the judgment dated 22.09.2012 of High Court in writ petition No. 2170/2011, the department submitted Civil petition in the Supreme Court of Pakistan, this petition was decided on 13.06.2013 with the following remarks "*in the view of circumstances that now emerges, all the judgment delivered by the high court as well as Supreme court of Pakistan need to be re-examined or revisited*". Leave to appeal was granted and as the judgment in C.A 834 to 837/2010 and CP. Nos. 562-P to 571-P / 2012 were delivered by the three members' benches, let the matter be placed before the Hon'able Chief Justice of Pakistan for constitution of larger bench. The all officials including respondent involved in court cases were made parties and notice were issued to them and respondent (at S. No.179) on 11.07.2013 for the purpose of enter appearance and other legal requirement.

The larger bench of the Supreme Court of Pakistan in CP .Nos 134-PTO 138-P of re-opened all the court cases decided by the High Court as well as Supreme Court of Pakistan and delivered its own new judgment on 24-02-2016 with the following remarks.

- a. **The NWPP (now kpk) Employees (Regularization of services) Act, 2009** clearly provides for the regularization of the employees.
- b. The non-obstante clause in section 4A of 2009 Act expressly excludes the application of any other law and declares that the provisions of this Act will have overriding effect, being a special enactment.in this background, The causes of respondents squarely fall within the ambit of the Act and their services were mandated to be regularized by the provisions of the Act 2009.

The OFWM project was brought on the regular side in 2006 and the respondents were appointed on contract basis and were in employment /service for several years

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and the project on which they were appointed ,have also been taken on the regular budget of the government, therefore, their status as project employees has ended once their services were transferred to different attached government departments, in terms of section 3 of 2009 act. The government of KPK was also obliged to treat the respondents at par, as it cannot adopt a policy of cherry picking to regularize the employees of certain projects while terminating the services of other similarly placed employees. *Further it is added that according to judgment of Larger Bench of Supreme Court of Pakistan held that "section 4A of 2009 Act Overriding effect "of this Act expressly excludes the application of any other law and declares that the provisions of this Act will have overriding effect, being a special enactment.in this background, the causes of respondents squarely fall within the ambit of the Act and their services were mandated to be regularized by the provisions of the Act 2009.* It is pertinent to mentioned here that the story stated above already decided by the Honb'le Supreme Court of Pakistan in Larger Bench then Service tribunal in appeal no 1326/2017. So, the instant appeal also hit by the section 23 of the KP Service Tribunal Rules 1974, the issue of the seniority is already decided by this Hon'ble Tribunal, in appeal nō 1326/2017 wherein the present appellant is also party. **Copy of Service Tribunal Judgment is attached as annexure-A while Supreme Court Judgment dated 24.02.2016 is attached with appeal.**

3. Incorrect and misleading in the lights of the facts mentioned above in para of the reply. Hence denied. The seniority list prepared according to law and rules.
4. Incorrect and misleading in the lights of the facts mentioned above in para of the reply. Hence denied. The impugned seniority list prepared according to law and rules.
5. Incorrect and misleading in the lights of the facts mentioned above in para of the reply. Hence denied. The impugned seniority list prepared according to law and rules.
6. Incorrect and misleading in the lights of the facts mentioned above in para 2 of the reply. Hence denied. Moreover the

previous all seniority list issued were declared null & void in the light of Larger Bench Decision of Supreme Court of Pakistan and Hon"able Service Tribunal Decision.

- 7. The Incorrect and misleading in the lights of the facts mentioned above in para 2 of the reply. Hence denied. Moreover the previous all seniority list issued were declared null & void in the light of Larger Bench Decision of Supreme Court of Pakistan. Further it is added that the Seniority list issued in 2017 were challenged by the colleagues of the respondents and appellant in service Tribunal and Hon"able Service Tribunal accepted the same and declare the Seniority list of 2017 null & void and directed the respondent to prepare Seniority list in light of Section 4 of the Regularization Act 2009. So thereafter the impugned seniority list issued in the light of the said Act 2009 reproduced below:

"if the date of continuous officiation is the same in case of two or more employees, the employee older in age shall rank senior to the younger one".

The present appellant filed this appeal only to mislead the Hon'ble Court and waste the time Of the Hon'able Court. The same may be dismissed with cost.

- 8. The contention of the appellant is incorrect and misleading. Moreover as mentioned in above paras.
- 9. Correct with addition that all the appeals were accepted and issued the direction to prepare seniority list according to regularization Act 2009. Further it is added that The law Deptt Scrutiny Committee was held on 01/06/2018 wherein, the case was discussed "After discussion it was decided with consensus by the Scrutiny Committee that as the department was not adversely affected by the judgment, therefore, the subject case was returned to the department to decide it on their own level in accordance with law. Accordingly Seniority List dated 29-08-2018 was prepared and issued in light of the decision of Khyber Pakhtunkhwa, Service Tribunal and promotion of certain employees were made.

Then the appellant along with others challenged the decision dated 06-04-2018 before the august Supreme Court

of Pakistan through CA No.1168 to 1173 of 2019 which were decided by the august court on 01/07/2021 with the direction that "*Learned counsel for the appellants states that the impugned judgment is based upon the judgment of this Court dated 24/02/2016, passed in Civil Appeal No.135-P of 2013, in respect of which Review Petition No.302 of 2016 has been filed and is pending adjudication before this Court. He further, states that the appeals may be disposed of with the observation that in case the judgment of this Court is reviewed, the appellants will have chance to resurrect these appeals by making of an appropriate application Order accordingly*" (Copy of order is attached as annexure-B).

10. As explained in para-09 above.

11. Incorrect and misleading. That after decision dated 01/07/2021 of august Supreme Court of Pakistan the case was submitted to the Administrative Agriculture Department for opinion. The Administrative Agriculture Department forwarded the case to the Establishment & Administration Department for advice in the matter. The Govt. of Khyber Pakhtunkhwa Establishment Department, vide letter No. SOR-III(E&AD)/1-13/2021 dated 01/11/2021, stated that "as per judgment of Khyber Pakhtunkhwa Service Tribunal dated 06/04/2018, revised seniority list may be prepared in accordance with the judgment of Larger Bench of Supreme Court of Pakistan dated 24/02/2016 and in light of Section -4 of the Khyber Pakhtunkhwa Employees (Regularization of Services) Act, 2009" and accordingly Seniority List of BPS-17 Officers were issued on 14/02/2022 wherein the appellant i.e. Mr. Wakil Khan was placed at S.No.33 of the said Seniority List. Further it is added that The judgment of the Hon'ble Service Tribunal Kept intact by the Hon'ble Supreme Court of Pakistan. Further is added that the judgment of Service Tribunal is still in field and the official respondent is bound to implement the same in letter and spirit therefore issued the seniority list according to judgment.

12. The contention of the appellant is incorrect and misleading. Moreover as mentioned in above paras.

13. The contention of the appellant is incorrect and misleading. Moreover as mentioned in above paras. It is added here that all the stance taken by the appellant is contradictory with each other.
14. The contention of the appellant is incorrect and misleading. Moreover as mentioned in above paras. The seniority list dated 29-08-2018 was prepared in accordance with the judgment of the Larger bench of Supreme Court of Pakistan dated 24.02.2016 and in light of Section-4 of the Khyber Pakhtunkhwa Employees (Regularization of Services) Act, 2009 and in light of the decision dated 06-04-2018 of Khyber Pakhtunkhwa, Service Tribunal. Moreover, the present appeal of the appellant is badly barred by time as in 1st instant the appellant preferred to file CPLA in Supreme Court of Pakistan which was disposed of vide order dated 01-07-2021 and now after the lapse of 04 years filed the present appeal which is hit by the principle of laches, therefore, the same is not entertainable and the appellant has no cause of action.
15. The grievance of the appellant is not based on facts and material on record as explained in the ibid paras. The reply of the grounds is as under.

GROUND:

- A) Incorrect, hence denied. Moreover as explained in the above para. The respondents were promoted as per law and rules.
- B) Incorrect and misconceived. The appellant is treated according to law and rules. Moreover, para-2 and 7 of the reply is clearly show that the impugned seniority list is prepared as per larger bench judgment and Service Tribunal Judgment. Further it is added that the Para-29 of Larger Bench Judgment is clear which act was applied on all employees. It is added here that the appellant and private respondent is on same footing and regularize under the same Act. The seniority of the both were regulated as per-section 4 of the regularization Act-2009.

C) Incorrect and misconceived. Moreover as explained in above paras. It is added that the Subclause-2 of Section 4 of the Regularization Act 2009 is applicable because appellant and private respondent was on same footing, as reproduced below:

“if the date of continuous officiation is the same in case of two or more employees, the employee older in age shall rank senior to the younger one”.

D) Incorrect and misconceived. All the judgments were recalled by the Larger bench. Moreover, as explained in the above paras. Further it is added that the Para-29 of Larger Bench Judgment is clear that the cases of respondents squarely fall within the ambit of this Act and their services were mandated to be regularized by the provisions of the Act 2009. It is clear crystal which act was applied on all employees. It is added here that the appellant and private respondent is on same footing and regularize under the same Act. The seniority of the both were regulated as per-section 4 of the regularization Act-2009. So the impugned seniority list was issued according to law and rules. It is pertinent to mentioned here that these all aspects were discussed in the decided appeal no 1326/2017.

E) Incorrect and misconceived. Moreover, as explained in the above para.

F) Incorrect and misconceived. Moreover, as explained in the above paras.

G) Incorrect and misconceived. Moreover, as explained in the above paras.

H) Incorrect and misconceived. Moreover, as explained in the above para.

I) Incorrect and misconceived. Moreover, as explained in the above para, moreover the Seniority list was issued strictly in accordance with Sub-clause 2 of the Section 4 of the

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Regularization Act 2009 because appellant and private respondent was on same footing, as reproduced below:

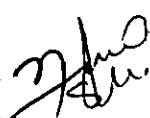
“if the date of continuous officiation is the same in case of two or more employees, the employee older in age shall rank senior to the younger one”.

- J) The respondents also seeks permission to raise any other grounds at time of arguments.

It is, therefore, most humbly prayed that the appeal of the appellant may kindly be dismissed with costs throughout.

Respondents

Through:



**(SYED NOMAN ALI BUKHARI)
ADVOCATE, HIGH COURT.**

AFFIDAVIT:

It is affirmed and declared that the contents of reply are true and correct to the best of my knowledge and belief and nothing has been concealed from Hon'able Tribunal.


DEPONENT



(11)

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

Service Appeal No. 951/2022

Wakil Khan S/o Rustum Khan District Officer,
On farm Water Management, District Mohamand.

.....Appellant

VERSUS

7. Chief Secretary KP, Civil Secretariat Peshawar.
8. Secretary Establishment, KP, Civil Secretariat Peshawar.
9. Secretary Law, KP, Civil Secretariat Peshawar.
10. Secretary Agriculture, Livestock & Cooperative Department, Govt:
of KP, Civil Secretariat Peshawar.
11. Director General, On farm Water Management, KP, Peshawar.
12. Zahid Khaliq, Water Management Officer OFWM & 40 Others.

.....RESPONDENTS

REPLY TO APPLICATION FOR CONDONATION OF DELAY

RESPECTFULLY SHEWETH:

1. Needs no comments
2. Incorrect and misconceived. The appellant is treated according to law and rules. Moreover, para-2 and 7 of the reply is clearly show that the impugned seniority list is prepared as per larger bench judgment and Service Tribunal Judgment. Further it is added that the Para-29 of Larger Bench Judgment is clear which act was applied on all employees. It is added here that the appellant and private respondent is on same footing and regularize under the same Act. The seniority of the both were regulated as per-section 4 of the regularization Act-2009. Moreover, the appeal is badly time bared.

3. Incorrect and misleading. The appeal of the appellant was hit by the section 23 of the Service Tribunal Act 1974.

It is, therefore, most humbly prayed that the application of the appellant may kindly be dismissed with costs throughout

Respondents

Through:

**(SYED NOMAN ALI BUKHARI)
ADVOCATE, HIGH COURT.**

AFFIDAVIT:

It is affirmed and declared that the contents of reply are true and correct to the best of my knowledge and belief and nothing has been concealed from Hon'able Tribunal.

DEPONENT



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1 Service was regularized in 2011
wherein already 2009 Act was in place.
The question decided Service were made by regularized Act 2009.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Appeal No. 1326/17

Date of Institution ... 28.11.2017
Date of Decision ... 06.04.2018



Mr. Qayum Khan, Water Management Officer,
Office of District Director On Farm Water Management, District Peshawar.
(Appellant)

VERSUS

1. The Govt: of Khyber Pakhtunkhwa through Chief Secretary Khyber
Pakhtunkhwa, Peshawar and 14 others. (Respondents)

MR. MUHAMMAD ASIF YOUSAFZAI, Advocate --- For appellant.
MR. MUHAMMAD RIAZ PAINDAKHEL, Assistant Advocate General --- For official respondents.
MR. BILAL AHMAD KAKAZAI, Advocate --- For private respondent no. 6 to 11 and 13 to 15.

Appeal No. 842/2017

Date of Institution ... 28.07.2017
Date of Decision ... 06.04.2018

Mr. Rafiq ur Rehman S/O Kashmir Khan, Water Management Officer,
Office of District Director On Farm Water Management, District Swat.
(Appellant)

VERSUS

2. The Chief Secretary to Govt: of Khyber Pakhtunkhwa Peshawar and 22
others. (Respondents)

MR. MUHAMMAD AYUB KHAN SHINWARI, Advocate --- For appellant.
MR. MUHAMMAD RIAZ PAINDAKHEL, Assistant Advocate General --- For official respondents.
MR. MUHAMMAD ASIF YOUSAFZAI, Advocate --- For private respondent no.10,12,14 and 18.
MR. BILAL AHMAD KAKAZIA,

~~ATTESTED~~

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal

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For private respondents
no.7,8,9 and 22

Advocate

MR. AHMAD HASSAN,
MR. MUHAMMAD HAMID MUGHAL

--- MEMBER(Executive)
--- MEMBER(Judicial)

JUDGMENT

AHMAD HASSAN, MEMBER.

This judgment shall dispose of the instant service appeals as well as connected service appeal no. 1327/2017 titled Mr. Abdullah Khan and no. 843/17 titled Mr. Faisal Younas as similar question of law and facts are involved therein.

2. Arguments of the learned counsel for the parties heard and record perused.

FACTS

3. The brief facts are that the appellant has impugned seniority list dated 02.03.2017, which allegedly was not circulated amongst the affected officials. They got knowledge of the list in August, 2017. The appellant has been shown junior to the respondents no. 6 to 15. Feeling aggrieved he filed departmental appeal on 24.08.2017, which was not responded within the stipulated period, hence, the instant service appeal.

ARGUMENTS

4. Learned counsel for the appellants (Qayum Khan and Abdullah Khan) argued that after fulfillment of cocal formalities he was appointed as Water Management Officer (BPS-17) on contract basis in the Agriculture Department on 24.11.2004. That in 2006 a summary was moved to the Chief Minister, Khyber Pakhtunkhwa for creation of 302 regular posts so as to regularize/adjust employees working in various projects which was approved by the competent authority. Through order dated 31.07.2007 and 03.09.2007 some project employees were regularized, while remaining posts were left vacant. Feeling aggrieved the appellant and others filed writ petition in Peshawar High Court for regularization of their services which was allowed vide judgment dated 22.12.2008. An appeal was filed against the said judgment in the Supreme Court of Pakistan, which was

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[Signature]
TREASURER

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dismissed on 1.03.2011. That services of the appellant were regularized vide order dated 07.06.2011 from the date of initial appointment i.e 24.11.2004. Subsequently, 28 project employees filed Writ Petition before Peshawar High Court for regularization of their services which was allowed vide judgment dated 15.9.2011. Again the aforementioned judgment assailed before the Supreme Court of Pakistan was dismissed on 22.03.2012. The official respondents were directed to regularize the services of the appellant and others in the light of Amendment Act 2005 and Khyber Pakhtunkhwa Employees (Regularization of Services) Act 2009. Due to non-availability of posts they were sent to the surplus pool vide order dated 10.01.2013, while their services were regularized vide order dated 03.07.2013 but they were kept in the surplus pool. Eleven employees belonging to the group of 28 Water Management Officers, who were placed in the surplus pool filed 2nd writ petition in the Peshawar High Court challenging the seniority of the appellant and 15 other colleagues, who were regularized vide order dated 07.06.2011. The Peshawar High Court vide judgment dated 22.09.2012 gave a roadmap to the respondents for finalizing the issue. The respondent-department through civil petition challenged the judgment of Peshawar High Court dated 22.09.2012 in the Supreme Court of Pakistan and vide judgment dated 13.06.2013 certain directions were given to the respondents. The larger bench of Supreme Court of Pakistan in civil petition no: 134-PTO-38-P/13 reopened all the court cases decided by the High Court as well as Supreme Court of Pakistan and rendered an all encompassing judgment on 24.02.2016. The August Supreme Court of Pakistan held that the Khyber Pakhtunkhwa Employees (Regularization of Services) Act, 2009 clearly provided for the regularization of employees. The non-obstante clause in Section 4-A of 2009 Act expressly excludes the application of any other law and declares that the provision of this Act will have overriding effect being a special enactment. The cases of the respondents squarely fall within the ambit of the act and their services were required to be regularized under the provisions of the Regularization Act 2009. The On Farm Water Management Project was brought on regular side in 2006 and the respondents were in service for several years and the project in which they were appointed had also been taken on regular budget of the provincial government. Therefore their status is regularized.

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[Signature]

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employees has ended once their services were regularized in terms of Section-3 of 2009, Act. That the government of Khyber Pakhtunkhwa was also obliged to treat the respondents at par as it cannot adopt a policy of cherry picking to regularize the employees of certain projects, while terminating the services of the similarly placed employees. The respondents issued impugned seniority list dated 02.03.2017 which was never circulated amongst the employees and they got knowledge of the same in August 2017. That they filed departmental appeal on 24.08.2017 which was not responded within stipulated period, hence, the instant service appeal. It was not prepared according to the spirit of the judgment of Supreme Court of Pakistan dated 24.02.2016. The Act of 2005 is basically an amendment in Section-19 of the civil servant Act 1973 which deals with pay and not regularization/seniority of employees. The question of seniority was decided in the Act of 2009. Section 4-A of the said Act gives overriding effect being special enactment so the respondents were required to resolve the issue of seniority in accordance with the provisions of this Act. Furthermore the aforementioned Act provides that if the date of continuous officiating appointment is the same in case of two or more employees, the employee older in age shall rank senior to the younger one. As the dates of appointment of the appellant and respondent no.6 to 15 are same i.e being older in age so they should be considered senior to those who are younger in age.

5. On the other hand learned counsel for private respondents no. 6 to 11 and 13 to 15 argued that the appellant and answering respondents were appointed in a project in 2004 in two different cadres i.e. Engineering cadre and Agriculture cadre. The appellant belongs to Engineering cadre, while respondents no. 7 to 11 belong to Agriculture cadre having different qualification. Judgment of the Supreme Court of Pakistan dated 24.02.2016 through which all pending appeals were dismissed but judgment of Peshawar High Court dated 22.09.211 was upheld. The impugned seniority list was issued in accordance with law and rules and judgment of Peshawar High Court and Supreme Court of Pakistan. Answering respondents were regularized under the Act of 2005 and as such the Act of

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2009 was not applicable to them. The relevant rules provide that seniority shall be assigned to a civil servant on the basis of merit and regular officiation in the service/ cadre.

6. Counsel for appellants, Mr. Rafiq-ur-Rehman and Mr. Faisal Younas argued that after qualifying test and interview and by securing 91.5 marks, he was appointed as WMO Agriculture on 24.11.2004. After promulgation of Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2005 through which the services of all contract employees were regularized but the same benefits were denied to the appellant, so he filed writ petition in Peshawar High Court for regularization of his services. The Peshawar High Court vide judgment dated 15.9.2011 directed the respondents to regularize his services along with others. This judgment was assailed in appeal before the Supreme Court of Pakistan, which was dismissed on 22.03.2011 and judgment of the Peshawar High Court was upheld. Later on further petitions were filed in the Supreme Court of Pakistan, which were dismissed on 24.02.2016. In pursuance of Section-19(2) of the Khyber Pakhtunkhwa Civil Servants (Amendment) Act 2005 his services were regularized on 03.07.2013. The department issued impugned seniority list dated 02.03.2017, wherein the appellant has been shown junior to respondents no. 5 to 23 in violation of Rule-17 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules 1989. The appellant stood 2nd in the merit list, whereas respondent no. 5 to 19 were below in the merit list as they had secured less marks. Moreover, respondents no. 20 to 23 were promoted after appointment of the appellant. He filed departmental appeal on 31.03.2017, which was not responded within the stipulated period, hence, the instant service appeal.

7. Learned Assistant Advocate General relied on para-4 of the para-wise comments submitted by the official respondents.

CONCLUSION

8. The present controversy for determination of seniority of Water Management Officers dates back to 2006, when upon approval of the Chief Minister, Khyber Pakhtunkhwa 302 regular vacancies were created in On Farm Water Management Department w.e.f 01.07.2007. It was also decided that eligible contract employees working

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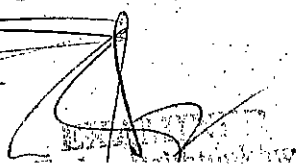
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Khyber Pakhtunkhwa
Service Tribunal

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against these posts would be regularized, according to invogue rules. Subsequently, services of certain project employees were regularized, while other posts were left vacant. That Services of sixteen Water Management Officers, who were initially appointed in NPIW project on contract basis on 24.11.2004 (at S.no. 7 to 22) of the impugned seniority list were regularized on 07.06.2011. It was done in pursuance of judgment dated 01.03.2011 of the Supreme Court of Pakistan rendered in Civil Appeal no. 834-837/10. Thereafter 28 WMOs, who were initially appointed in NPIW Project on contract basis on 24.11.2004 were also regularized through judgment of the Supreme Court of Pakistan dated 22.03.2012. As regular vacant posts were not available in the department so they were placed in the surplus pool of Secretary Agriculture. That their services were regularized vide notification dated 03.07.2013 under the Act of 2005 and 2009 but they continued to remain in surplus pool. That on 18.11.2013 three officers were posted/adjusted from the surplus pool to the On Farm Water Management Project. Eleven petitioners belonging to the batch of 28 Water Management Officers challenged the seniority position by filing 2nd Writ Petition no. 2170/2011 in Peshawar High Court. It was prayed that some of the WMOs regularized through order dated 07.06.2011 were junior to them on the merit list. The department informed the High Court that being project employees their names were not borne on any seniority list. The Peshawar High Court vide judgment dated 20.09.2012 directed the respondents to deal with the issue in accordance with law and rules. The department filed Civil Petition no. 572-P/11 in the Supreme Court of Pakistan against the aforementioned judgment of Peshawar High Court. The Supreme Court of Pakistan in its order dated 13.06.2013 referred the matter to the Chief Justice of Pakistan for constituting a larger bench. To fulfill legal requirement officers/officials involved in court cases were made party and notices were issued to them on 11.07.2013. The larger bench of Supreme Court of Pakistan decided the issue vide judgment dated 24.02.2016. This judgment have laid down certain parameters for resolving the issue of seniority. Section-3 of Khyber Pakhtunkhwa Employees (Regularization of Services) Act, 2009 provides that:

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"3. *Regularization of Services of certain employees.—All employees including recommendees of the High Court appointed on contract or adhoc basis and holding that post on 31.12.2008, or till the commencement of this Act shall be deemed to have been validly appointed on regular basis having the same qualification and experience.*"

It is established beyond doubt that the appellant/respondents were holding posts on contract basis on the cutoff date i.e 31.12.2008. Moreover, Section-4 contains a non-obstante clause:-

"4A. *Overriding effect—Notwithstanding anything to the contrary contained in any other law or rules for the time being in force, the provisions of this Act shall have an overriding effect and the provisions of any such law or rule to the extent of inconsistency to this Act shall cease to have effect.*

As rightly observed by the Supreme Court of Pakistan in para-29 of the judgment the cases of respondents squarely fall within the ambit of the Act 2009 and their services were mandated to be regulated by the provisions of the said Act. The posts against which they were working on contract post for several years were later on regularized and as such they were no more project employees. Similarly Section-4 lays down criteria for determination of seniority of employees which is reproduced below:-

(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 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 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 interse 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 on.*

The respondents have not firmed up the impugned seniority list dated 02.03.2017 in accordance with the judgment of the Supreme Court of Pakistan dated 24.02.2016

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WAZIR
Khyber Pakhtunkhwa
Government

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and provisions of Act 2009 Act, which is illegal and unlawful in the eyes of law.

The seniority list is not maintainable in its present forum.

9. As a sequel to the above discussion, the impugned seniority list is set aside. The respondent-department is directed to prepare revised seniority list in accordance with the judgment of Larger Bench of Supreme Court of Pakistan dated 24.02.2016 and in the light of Seciton-4 of the Khyber Pakhtunkhwa Employees (Regularization of Service) Act, 2009. The present appeals are disposed of in the above terms. Parties are left to bear their own costs. File be consigned to the record room.

Sd/- Ahmad Hassan, Member -
Sd/- M. Hamid Mughal, Member -
 (MUHAI)

ANNOUNCED

06.04.2018

Certified to be true copy

EXAMINER
 Khyber Pakhtunkhwa
 Service Tribunal,
 Peshawar

Date of Presentation of Application 30-4-18
 Number of Words 3200
 Copying Fee 100
 Urgent 2
 Total 20
 Name of Copy MAHA
 Date of Completion of Copy 30-4-18
 Date of Delivery of Copy 30-4-18

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(B) (91)

SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Guizar Ahmed, CJ
Mr. Justice Ijaz ul Ahsan
Mr. Justice Sayyed Mazahar Ali Akbar Naqvi

CIVIL APPEALS NO. 1168 TO 1173 OF 2019

[Against the judgment dated 06.04.2018, passed by the Khyber Pakhtunkhwa Service Tribunal, Peshawar in Appeals No.842, 843 and 1326-1327 of 2017]

CA.1168 of 2019 Rafiq ur Rehman Vs. Chief Secretary, Government of Khyber Pakhtunkhwa, Peshawar and others

CA.1169 of 2019 Faisal Yunas Khan Vs. Chief Secretary, Government of Khyber Pakhtunkhwa, Peshawar and others

CA.1170 of 2019 Wajid Ali and others Vs. Qayum Khan and others

CA.1171 of 2019 Farmanullah Khan and others Vs. Faisal Yunas Khan and others

CA.1172 of 2019 Wajid Ali and others Vs. Abdullah Khan and others

CA.1173 of 2019 Farmanullah Khan and others Vs. Rafiq-ur-Rehman and others

For the Appellant(s) : Mr. Mudassar Khalid Abbasi,
(in CAs No.1168-1169) ASC

For the Appellant (s) : Mr. Abdul Rahim Bhatti, ASC
(in CAs No.1170-1173) Syed Rifaqat Hussain Shah,
AOR

For Respondent No.8 : Mr. Zulfiqar Khalid Maluka,
(in CA No.1168) ASC

For Respondents : Mr. Muhammad
No.10,12,14,16 and 19 : Yousafzai, ASC
(in CA No.1168)

For Government of KP : Mr. Zahid Yousaf,
(in all cases) Additional Advocate General
KP

TESTED

WATER COURT ASSOCIATION
of the Court of Pakistan
Islamabad

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202 0705 2019

(11)

Other Respondent(s) : Nemo.
(in remaining CAs)

Date of Hearing : 01.07.2021

ORDER

GULZAR AHMED, CJ,- Learned counsel for the appellants states that the impugned judgment is based upon the judgment of this Court dated 24.02.2016, passed in Civil Appeal No.135-P of 2013, in respect of which Review Petition No.302 of 2016 has been filed and is pending adjudication before this Court. He further, states that the appeals may be disposed of with the observation that in case the judgment of this Court is reviewed, the appellants will have chance to resurrect these appeals by making of an appropriate application. Order accordingly.

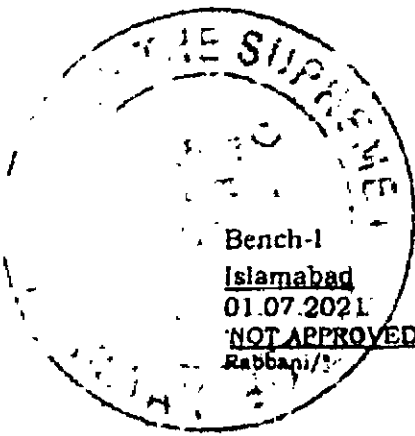
Sd/-HCJ

Sd/-J

Sd/- be True Copy

[Handwritten Signature]
Sd/- be True Copy

Associate
Supreme Court of Pakistan
Islamabad



ATTACHED

11306/19

Civil/Criminal: _____
 Date of Presentation: 1-7-21
 Date of Admission: 6-7-21
 Date of Trial: _____
 Date of Judgment: _____
 Date of Appeal: _____
 Date of Disposal: _____
 Date of Execution: _____

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بعدالت

KP Service Tribunal

Appeal No 957/2022

مقدمہ
بنام

walid khaw

vs

Govt of KP

باعث تحریر آنکہ

مورخہ
مقدمہ
دعوی
جرم

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے بیروی و جواب دہی وکل کاروائی متعلقہ

آن مقام میں اس کیلئے مسودہ لکھا گیا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا مکمل اختیار ہوگا۔ نیز مقرر کر کے اقرار کیا جاتا ہے۔ وکیل صاحب کو راضی نامہ کرنے و تقررات و فیصلہ پر حلف دیے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ عرضی دعویٰ اور درخواست ہر قسم کی تصدیق و ذرائع پر دستخط کرانے کا اختیار ہوگا۔ نیز بصورت عدم بیروی یا ڈگری یکطرفہ یا اپیل کی برادگی اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و بیروی 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۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے اور اس کا ساختہ پر داخہ منظور قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانبہ 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 بیروی مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ مندر ہے۔

Attested & signed by the undersigned

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ماہ

المرقوم

کے لئے منظور ہے۔

مقام

Respondent No 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44 & 45.

M 45
M 45
M 45