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

SERVICE APPEAL NO. 1843/2023

Shahnaz Mustafa.....Appellant

Versus

Government of Khyber Pakhtunkhwa & others Respondents

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27-06-24

Pesr

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA

SERVICE TRIBUNAL PESHAWAR

SERVICE APPEAL NO.1843 OF 2023

Shahnaz Mustafa.....Appellant

Versus

Govt. of Khyber Pakhtunkhwa and others.....Respondents

PARAWISE COMMENTS ON BEHALF OF RESPONDENT NO.01 TO 04

Respectfully Sheweth:

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 12246

Dated 17-04-2024

Preliminary Objections:-

1. That the appellant has got no cause of action or locus standi to file the instant appeal.
2. That the appellant has filed the instant appeal just to pressurize the respondents.
3. That the instant appeal is against the prevailing Law and Rules.
4. That the appeal is not maintainable in its present form and also in the present circumstances of the issue.
5. That the appellant has filed the instant appeal with mala-fide intention hence liable to be dismissed.
6. That the appellant has not come to this Honorable Tribunal with clean hands.
7. That the appeal is barred by law and limitation as the amendment in service rules were notified on 04/11/2020 and the impugned promotion/notification was issued on 06/01/2023 however the department appeal was filed on 23/05/2023 in utter violation of Section-04 of the Khyber Pakhtunkhwa Service Tribunal Act 1974.
8. That the instant appeal is bad for mis-joinder of unnecessary and non-joinder of necessary parties.
9. That framing of rules or amending the same comes within the domain of provincial govt. hence the instant appeal is not maintainable on this score alone.

ON FACTS:

1. Pertains to record.
2. Pertains to record.
3. Correct to the extent of promotion/notification 06/01/2023, however it is worth to mention that no junior to the appellant was promoted before the appellant. It is further to clarify that the provincial govt. vide notification dated: 10/05/2006 notified eight stage paramedics Service structure whereby 57 different categories of paramedics were merged/restructured into 14 cadres, wherein under para-06 of the notification dated: 10/05/2006, it was mentioned that promotion in the post in BPS-18, 19 and 20 shall be made on the basis of joint seniority list. The joint seniority list of all the 14 cadres shall be caused at BPS-17 level keeping in view the principles laid down in section 08 of the Khyber Pakhtunkhwa Civil Servant Act 1973 read with Rule-17 of the Khyber Pakhtunkhwa Civil Servants (Appointments, Promotion and Transfer) Rules 1989.(Annex/A). The appellant has not challenged para-06 of the notification dated: 10/05/2006 whereas the impugned amendment is in accordance with the notification dated: 10/05/2006 therefore the appellant could not question the impugned amendment dated: 04/11/2020 without questioning the notification dated: 10/05/2006. It is further to clarify that promotion order to the post of PHC technologist (BPS-17) of different cadres were made therefore the appellant cannot claim promotion to BPS-17 from the date of promotion of other cadres.
4. Correct to the extent of impugned notification dated; 04/11/2020 however detail reply has been given in para-05 above with further clarification that the appellant was required to file departmental appeal against the impugned notification within 30 days however he filed the departmental appeal as well as the instant appeal in violation of Section -04 of the Khyber Pakhtunkhwa Service Tribunal Act 1974.
5. Pertains to record however, the Promotion to the Senior PHC Technologist (MCH) BS-18 will be made as per approved Service Rules from the joint seniority list of clinical/PHC Technologist BS-17.
6. As explained in above paras.
7. Incorrect. No vested right of the appellant has been violated by the replying respondents therefore the appellant is not an aggrieved person however reply on the grounds is as under.

GROUND

- A. Incorrect, as explained in para-03 of the facts.
- B. Incorrect, the replying respondents acted in accordance law and rules.
- C. Incorrect, already replied in para-03 of the facts. There is no malafide or ill will on the part of replying respondents.
- D. Incorrect, as explained in above paras.
- E. Incorrect, as explained in above paras.
- F. Incorrect, as explained in above paras.
- G. The replying respondents also seek permission of this honorable court to adduce other ground during final hearing of the case.

PRAYER:

It is therefore humbly prayed that on acceptance of the comments, the instant appeal of the appellant may very graciously be dismissed with costs.


(Mahmood Aslam)

Secretary to Govt. of
Khyber Pakhtunkhwa Health Department
(Respondent No. 01 & 02)


for (Shahid Ullah)

Secretary to Govt. of
Khyber Pakhtunkhwa Establishment Department
(Respondent No. 03)



(Dr. Shoukat Ali)
Director General Health Services
Khyber Pakhtunkhwa
(Respondent No. 04)

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SERVICE APPEAL NO. 1843/2023

Shahnaz Mustafa **Appellant**


Versus

Government of Khyber Pakhtunkhwa & others **Respondents.**

Affidavit

I, Dr. Shaukat Ali, Director General Health Services, Khyber Pakhtunkhwa, Peshawar, under the directions of the Competent Authority, do hereby solemnly affirm that the contents of the parawise Comments on behalf of Respondents are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court. It is further stated on oath that in this appeal, the answering respondents have neither been placed ex-parte nor their defense has been struck off / costs.




Deponent

3 4 5 6 7 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 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100

ANNEX - A/4

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THE NWFP CIVIL SERVANTS ACT, 1973
(N.W.F.P. Act No. XVIII of 1973)

¹An Act to regulate the appointment of persons to, and the terms and conditions of service of persons in, the service of the North West Frontier Province.

Preamble- WHEREAS it is expedient to regulate by law, the appointment of persons to, and the terms and conditions of service of persons in, the service of the North West Frontier Province, and to provide for matters connected therewith or ancillary thereto;

It is hereby enacted as follows:-

1. Short title, application and commencement:- (1) This Act may be called the North West Frontier Province Civil Servants Act, 1973.

(2) This section and section 25, shall apply to persons employed on contract, or on work charged basis, or who are paid from contingencies, and the remaining provisions of this Act including this section, shall apply to all civil servants wherever they may be.

* 3) It shall come into force at once.

CHAPTER-I

PRELIMINARY

2. Definitions:- (1) In this Act, unless the context otherwise requires the following expressions shall have the meanings hereby respectively assigned to them, that is to say-

- (a) "ad hoc appointment" means appointment of a duly qualified person made otherwise than in accordance with the prescribed method of recruitment, pending recruitment in accordance with such method,
- (b) "civil servant" means a person who is a member of a civil service of the Province, or who holds a civil post in connection with the affairs of the Province, but does not include-
- (i) a person who is on deputation to the Province from the Federation or any other Province or other authority;
- (ii) a person who is employed on contract, or on work charged basis, or who is paid from contingencies; or
- (iii) a person who is a "worker" or "workman" as defined in the Factories Act, 1934 (Act XXV of 1934), or the Workman's Compensation Act, 1923 (Act VIII of 1923);
- (c) "Government" means the Government of the North-West Frontier Province.

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ANNEX A/5

4

before the expiry of the original or extended period of his probation, has failed to pass such examination or test or to successfully complete course or the training shall, except as may be prescribed otherwise-

- (a) if he was appointed to such service or post by initial recruitment, be discharged; or
- (b) if he was appointed to such service or post by promotion or transfer, be reverted to the service or post from which he was promoted or transferred and against which he holds a lien or, if there be no such service or post, be discharged:

Provided that in the case of initial appointment to a service or post, a civil servant shall not be deemed to have completed his period of probation satisfactorily until his character and antecedents have been verified as satisfactory in the opinion of the appointing authority.

7. **Confirmation :-** (1) A person appointed on probation shall, on satisfactory completion of his probation, be eligible for confirmation in a service or, as the case may be, a post as may be prescribed.

(2) A civil servant promoted to a post ²[] on regular basis shall be eligible for confirmation after rendering satisfactory service for the period prescribed for confirmation therein.

(3) There shall be no confirmation against any temporary post.

(4) A civil servant who, during the period of his service, was eligible to be confirmed in any service or against any post retires from service before being confirmed shall not, merely by reason of such retirement, be refused confirmation in such service or post or any benefits accruing there-from.

(5) Confirmation of a civil servant in a service or post shall take effect from the date of occurrence of permanent vacancy in that service or post or from the date of continuous officiation, in such service or post, whichever is later.

8. **Seniority:-** (1) For proper administration of a service, cadre or ³[post], the appointing authority shall cause a seniority list of the members for the time being of such service, cadre or ⁴[post] to be prepared, but nothing herein contained shall be construed to confer any vested right to a particular seniority in such service, cadre or ⁵[post] as the case may be.

(2) Subject to the provisions of sub-section (1), the seniority of a civil servant shall be reckoned in relation to other civil servants belonging to the same service or ⁶[cadre] whether serving the same department or office or not, as may be prescribed.

² The words "or grade" omitted by NWFP Ordinance No. IV of 1985.
³ The word "grade" substituted by NWFP Ordinance No. IV of 1985.
⁴ The word "grade" substituted by NWFP Ordinance No. IV of 1985.
Sub section (3) of Sec-8 added by NWFP Ordinance No. IV of 1985.

(3) Seniority on initial appointment to a service, ⁷[cadre] or post shall be determined as may be prescribed.

⁸(4) Seniority in a post, service or cadre to which a civil servant is promoted shall take effect from the date of regular appointment to that post;

Provided that civil servants who are selected for promotion to a higher post in one batch shall, on their promotion to the higher post, retain their inter-se-seniority as in the lower post.

⁹(5) The seniority lists prepared under sub-section(1), shall be revised and notified in the official Gazette at least once in a calendar year, preferably in the month of January.

9. **Promotion:-**(1) A civil servant possessing such minimum qualifications as may be prescribed, shall be eligible for promotion to a ¹⁰[higher] post for the time being reserved under the rule for departmental promotion in ¹¹[] the service or cadre to which he belongs.

(2) A post referred to in sub-section (1) may either be a selection post or a non-selection post to which promotion shall be made as may be prescribed-

- (a) in the case of a selection post, on the basis of selection on merit; and
- (b) in the case of non-selection post, on the basis of seniority-cum-fitness.

10. **Posting and Transfer:-** Every civil servant shall be liable to serve anywhere within or outside the province, in any post under the Federal Government, or any Provincial Government or Local authority, or a corporation or body set up or established by any such Government:

Provided that nothing contained in this section shall apply to a civil servant recruited specifically to serve in a particular area or region:

Provided further that, where a civil servant is required to serve in a post outside his service or cadre, his terms and conditions of service as to his pay shall not be less favourable than those to which he would have been entitled if he had not been so required to serve.

11. **Termination of service:-** (1) The service of a civil servant may be terminated without notice-

- (i) During the initial or extended period of his probation:

Provided that, where such civil servant is appointed by promotion on probation or, as the case may be, is transferred from one [service], cadre or post to another [service], cadre or post, his service shall not be so terminated so long as he

⁷ The word "grade" substituted by NWFP Ordinance No. IV of 1985.
⁸ Sub section (4) of Sec-8 substituted by NWFP Ordinance No. IV of 1985.
⁹ Sub section (5) of Sec-8 added by NWFP Act No. I of 1989



**DIRECTORATE GENERAL HEALTH SERVICES
KHYBER PAKHTUNKHWA PESHAWAR**

*All communications should be addressed to the Director General Health Services
Peshawar and not to any official by name
Office # 091-9210269 Fax # 091-9210230*

AUTHORITY LETTER

Muhammad Yousaf Jamal Focal Person Litigation Section Directorate General Health Services Khyber Pakhtunkhwa is hereby authorized to attend / defend the court cases and file Parawise Comments / Reply on behalf of the undersigned before the Honorable Khyber Pakhtunkhwa Service Tribunal and its Camp Courts.

**Director General Health Services
Khyber Pakhtunkhwa, Peshawar**