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REGISTERED
No. C.As. 775-781/2024 – SCJ
SUPREME COURT OF PAKISTAN.

Islamabad, dated 13-05, 2024.

From

The Registrar,
Supreme Court of Pakistan,
Islamabad.

To

The Registrar,
K.P.K., Service Tribunal,
Peshawar.

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 13530

Dated 14-06-2024

Subject: CIVIL APPEAL NOS. 775 to 781 OF 2023.
OUT OF
CIVIL PETITION NOS. 332-P to 338-P OF 2022.
AND
Civil Misc. Application Nos. 390-P to 396-P OF 2022.

Secretary Elementary & Secondary Education Department, Government of
Khyber Pakhtunkhwa, Peshawar & others.

(App. in all cases).

Versus

1. Abdullah Javed. (Res. in C.A.775/2024).
2. Qazi Javed Iqbal. (Res. in C.A.776/2024).
3. Nasir Ali. (Res. in C.A.777/2024).
4. Qazi Behram. (Res. in C.A.778/2024).
5. Qazi Shaheen Iqbal. (Res. in C.A.779/2024).
6. Mst. Azra Bibi. (Res. in C.A.780/2024).
7. Qazi Sikandar. (Res. in C.A.781/2024).

On appeal from the Judgment/Order of the KPK., Service Tribunal,
Peshawar dated 02.02.2022, in Appeal Nos.2756 to 2762 of 2021.

Dear Sir,

I am directed to forward herewith a certified copy of the Order/Judgment of this Court dated 13.05.2024, converting into appeal the above cited civil petitions and allowing as well as disposing of the civil misc. applications, in the terms stated therein, for information and necessary action.

I am also to invite your attention to the directions of the Court contained in the enclosed Order for immediate compliance.

Please acknowledge receipt of this letter along with its enclosure immediately.

Encl: Order:

Yours faithfully

ASSISTANT REGISTRAR (IMP)
FOR REGISTRAR

36/24

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Muhammad Ali Mazhar

Mrs. Justice Athar Minallah

Civil Petitions No.332-P to 338-P of 2022

Against the judgment dated 02.02.2022 passed by K.P.K. Service Tribunal, Peshawar in Appeals No.2756 to 2762/2021

and CMAs No.390-P to 396-P/2022

Stay applications

Secretary Elementary & Secondary Education
Department, Govt. of Khyber Pakhtunkhwa,
Peshawar and others

...Petitioners

Versus

Abdullah Javed
Qazi Javed Iqbal
Nasir Ali
Qazi Behram
Qazi Shaheen Iqbal
Mst. Azra Bibi
Qazi Sikandar

(in CP 332-P/22)
(in CP 333-P/22)
(in CP 334-P/22)
(in CP 335-P/22)
(in CP 336-P/22)
(in CP 337-P/22)
(in CP 338-P/22)
...Respondents

For the Petitioners:

Mr. Shah Faisal Ilyas, Addl.AG KPK

For the Respondents:

Mr. M. Arshad Tanoli, ASC

Date of Hearing:

13.05.2024

ORDER

Muhammad Ali Mazhar, J.— These Civil Petitions for leave to appeal are directed against the judgment dated 02.02.2022 passed by K.P.K. Service Tribunal, Peshawar ("**Tribunal**") in Service Appeals No.2756 to 2762/2021, whereby the appeals were allowed as prayed for.

2. Brief facts of the case are that the respondents prayed before the learned Tribunal that the Secretary and Director of the Elementary and Secondary Education Department, KPK, be directed to consider them for promotion to the post of Subject Specialist (BPS-17) w.e.f. 2009 i.e., the date when the adhoc/contract employees S.S (BPS-17) have been regularized with all back benefits including seniority. The respondents' case was that their contractual service was extended from time to time since 2008, therefore, they were claiming their

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Court Associate
Supreme Court of Pakistan
Islamabad

continuity in service and regularization, including the right of promotion. The Tribunal, in the concluding paragraph, has observed as under:

"08. We are of the considered opinion that the appellant has not been treated in accordance with law, as the appellant served against the contractual post of SS (BPS-17) alongwith his batch-mates for quite longer but just before its regularization, the appellant was refused leave without pay, which compelled him to return to his original position of SS(BPS-16), thus deprived him of the benefits, which were admissible to him after his regularization against SS (BPS-17) on the one hand and on the other hand the appellants promotion/seniority was also blocked by inducting huge number of BPS-17 through their regularization. The irregularity committed by the respondents was refusal of leave without pay, which however was admissible to him under notification dated 15-09-2005 and which created the whole mess, due to which the appellant suffered for the unlawful act of the respondents. Equity and fair play demands that the appellant must avail the benefits accrued to him against the contractual post of SS (BPS- 17), which was later on regularized and against which the appellant served for quite longer time, but was illegally detached from such post, which however was not warranted."

3. The learned Additional Advocate General argued that it is clearly manifesting from the impugned judgment as well as the memo of appeal preferred before the learned Tribunal that the promotion was claimed by the respondents to the post of Subject Specialist (BPS-17) with effect from 2009. It was further averred that the representation as well as the service appeal was based on the alleged cause of action which accrued in 2009, which was time-barred, but this crucial aspect was ignored by the learned Tribunal.

4. The learned counsel for the respondents responded that there was no issue of limitation but at the same time, he argued that some other crucial issues raised by the respondents before the Tribunal were not adverted to which require consideration for complete justice *vis-à-vis* the claim of the respondents.

5. If we examine the memo of appeals as well as the prayer clause made out by the respondents before the Tribunal, it transpires that they claimed an antedated promotion and they also claimed the continuity of their contractual service alike with their batch-mates

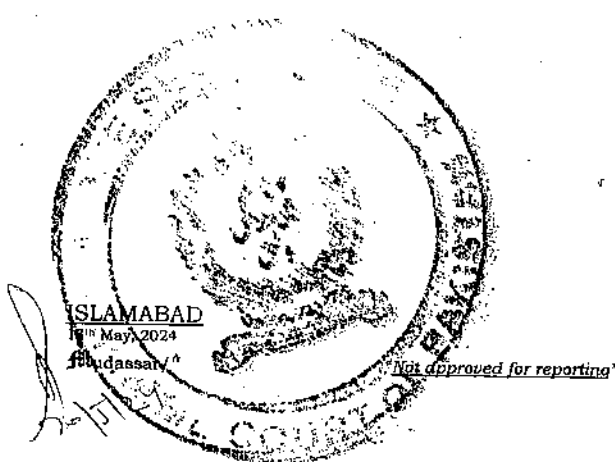
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before regularization. Some issues were also raised with regard to the refusal of leave without pay which compelled the respondents for their return to the original position of SS (BPS-16). Moreover, the learned Tribunal observed that due to the aforesaid reasons, the promotion and seniority of the respondents were also blocked by inducting huge number of BPS-17 employees through their regularization. Some crucial aspects required to be considered are missing in the impugned judgment with regard to the right of regularization, if any, and whether the same is supported by any policy or law; right to claim antedated promotion, if any, supported by law; and, whether any such right which allegedly accrued in 2009 can be pressed into service in 2021 when the appeals were filed before the learned Tribunal. However, after arguing at some length the learned Additional Advocate General and the learned counsel appearing for the respondents both agreed that the matter may be remanded back to the learned Tribunal to decide all the legal and factual questions on merits.

6. In view of the consensual statement, these petitions are converted into appeals and allowed. The impugned judgment of the learned Tribunal is set aside and the matter is remanded back to the learned Tribunal to decide all the legal and factual issues on merit in accordance with law after providing ample opportunity of hearing to the parties.

CMA's No.390-P to 396-P/2022

As the main Civil Petitions have been converted into appeals and allowed, these applications are accordingly disposed of.



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Islamabad