

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.1520/2019

BEFORE:MR. KALIM ARSHAD KHAN ... CHAIRMAN
MRS. RASHIDA BANO ... MEMBER (J)

Mehnaz W/O Attaullah, Subject Specialist (Math's) GGHSS Kabal District Swat. ... (Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary, Elementary & Secondary Education, Civil Secretariat, Peshawar.
 2. Director,Elementary & Secondary Education Department, Peshawar.
 3. Principal, Government Girls Higher Secondary School Kabal Swat.
- ... (Respondents)**

Fareed Ullah Khan
Advocate ... For appellant

Mr. Muhammad Jan
District Attorney ... For respondents

Date of Institution.....29.10.2019
Date of Hearing.....29.07.2024
Date of Decision.....29.07.2024

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:

“On acceptance of this appeal,the impugned seniority list may kindly be set aside to the extent of appellant and the appellant’s may kindly be placed on Serial No.87, instead of Serial No.505. Any other relief, which has not specifically



been prayed and to which the appellant is entitled as per circumstance of the case may also be granted to the appellant.”

2. Brief facts of the case, as per memorandum of appeal, are that the appellant was appointed as Lecturer Mathematics on adhoc basis in the respondent department vide order dated 26.12.2008. Then, services of the appellant was regularized under the Khyber Pakhtunkhwa Employees (Regularization of Service Act of 2009). On 31.12.2017, a tentative seniority list was issued by the respondents, wherein name of the appellant was missing, therefore, he preferred an appeal and consequently her name was included. A final seniority list was issued wherein name of the appellant was placed at serial No. 505 instead of 87. Feeling aggrieved, he preferred departmental appeal, which was not responded to, hence the present service appeal.
3. On receipt of the appeal and its admission to full hearing, the respondents were summoned. Respondents put appearance and contested the appeal by filing written reply raising therein numerous legal and factual objections. The defense setup was a total denial of the claim of the appellant.
4. We have heard learned counsel for the appellants and learned District Attorney for the respondents.
5. The learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned District Attorney controverted the same by supporting the impugned order(s).
6. Perusal of record reveals that appellant was appointed in respondent/department as Subject-Specialist (BPS-17) on contract basis vide



order dated 26.12.2008 whose service were regularized at the strength of Khyber Pakhtunkhwa Employees Regularization of Service Act of 2009 vide order dated 31.05.2010. Respondent issued seniority list for the year 2019, wherein name of the appellant was placed at serial No.505, which as per her contention be placed at serial No.87 being her proper place.

7. Perusal of Section 1 of the Employees Regularization of Service Act, 2009 reveals that it shall come into force at once and shall be deemed to have been taken effect upon promulgation of the Ordinance, which was promulgated on 24.09.2009. Section 3 of the ibid Act is about Employees Regularization of Service Act of contract/adhoc basis, which read as:

"4. 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 31st December, 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 for a regular post:

Provided that the service promotion quota of all service cadres shall not be affected".

8. So, regular date of appointment of the appellant within the meaning of Section 3 read with Section 1 of Employees Act is 24.09.2009 which has rightly been mentioned by the respondents in the column No. 6 of the impugned seniority list, which is about date of appointment.

9. Article 4 of the same relates with seniority of employees whose services were regularized at the strength of the Regularization Act, 2009

which read as;



“4. Determination of seniority---(1) The employees whose services are regularized under this Act or in the process of attaining service at the commencement of this Act shall rank junior to all 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.”

This Act says upon commencement of this Act, which means that services of the appellant were regularized w.e.f. 24.09.2009, in accordance with above referred Article 4 of the Act 2009, appellant will be junior to;

(1) who are already in regular service at the time of commencement of the Act.

(2) who in pursuance of the recommendation of the commission made before the commencement of this Act to be appointed to their respective cadre or service, irrespective of their actual date of appointment and;

(3) inter-se-seniority of employees whose service was regularized consequence of the Act shall be on the basis of continuous officiation in the service or cadre.

Appellant alleged that her proper and due place in the seniority is Serial No.87 and not serial No.505, upon which name of the appellant was placed by the respondents.



10. Perusal of seniority list for the year 2019 as stood on 31.01.2019 reveals that at serial No.85, one Iram Saidal is placed whose date of appointment is 08.10.2010, similarly Sabiha Naz at S.No.86 and Mst. Jamila Begum at Serial No.87's date of appointment is 03.10.2011 while respondent No.91, 97, 99, 109, 112, 113, 118, 121, 131, 138, 140, 146, 149, 152, 157, 158, 163, 168, 172, 174-178, 183, 184, 186-188, 193-195, 202, 203, 205-208, 212-216, 218, 219, 222, 228, 231, 234-239, 241, 242, 244, 246, 247, 249, 251, 252, 255, 258, 261-272, 275, 277-291, 295-300, 303-308, 310-312, 316, 319, 321, 323-337, 339, 341, 243-247, 349-360, 362. 368-371, 375, 376, 379-83, 386-394, 396, 397, 399-401, 404, 405, 407, 409, 410, date of appointment of these Subject Specialist are 09.12.2009 and Subject Specialist from Serial No.87 to 413 all are direct selectee upon recommendation of Public Service Commission. Similarly Subject Specialist from Serial No.414 to 448 were promoted as Subject Specialist the date of promotion of Subject Specialist at Serial No.414 is 13.10.2010 while at Serial No.415 and 417 is 20.01.2010, and at Serial No.416 is 27.03.2010 all these were promoted later than the appellant because date of regular appointment of the appellant is 24.09.2009.

11. It is pertinent to mention here that Subject Specialist at Serial No.449 to 517 were regularized at the strength of the Regularization of Employees Act, 2009. Appellant is also one of them as mentioned above in the column of date of appointment/regularization. Although respondents issued regularization order on 31.05.2010 but their services were regularized on the date when the Ordinance was promulgated i.e 24.09.2009 within the meaning of Section 3 read with Section 1 of Employees Regularization of

Service Act, 2009 and Rule 17 of the (Appointment, Promotion & Transfer) Rules, 1989. Their date of regular appointment was 24.09.2009 and not 31.05.2010 as is considered by the respondents.

12. Subject Specialist mentioned at Serial No.414 to 448 were promoted as Subject Specialist on 20.01.2016 and 13.10.2010 as is evident from Column No.7 of Revised and Final Seniority list annexed by the respondents with comments these Subject Specialist were shown Senior to appellant despite the fact that they were promoted after regularization of the appellant's service on 24.09.2009. Thus all Subject Specialists placed at Serial No.414 to 448 are juniors to the appellant and they were wrongly shown senior to the appellant, therefore respondents are directed to correct seniority list to this extent by placing appellant at proper place.

13. Now comes towards the issue of direct recruitees who were appointed upon recommendation of P.S.C placed at Serial No.87 to 413. Respondent were directed time and again to produce recommendation of Public Service Commission sent to department about selection of Subject Specialist but they failed to produce despite adopting all the coercive measures and in absence of the recommendation sent by the Public Service Commission as is mentioned in Section-4 of the Regularization Act of 2009. This Tribunal is unable to reach to just and conclusive conclusion.

14. Therefore, we partially accept the appeal to the extent that appellant be placed senior from the subject Specialists mentioned at Serial No. 414 to 448 of the seniority list of 2017 and remit the matter to the respondent

department to the extent of direct recruitees for deciding the issue keeping in



view Section-4 of Regularization Act, 2009, Section 17 of (Appointment, Promotion & Transfer) Rules, 1989 and Judgment of apex court in C.P No.290 to 297 of 2022 Badshah Zamin & others Vs. Siraj Khan & others with further direction to decide it within 90 days after receipt of copy of this order. Costs shall follow the events. Consign.

15. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 29th day of July, 2024.*



(KALIM ARSHAD KHAN)
CHAIRMAN



(RASHIDA BANO)
Member (J)

ORDER

29.07.2024

1. Learned counsel for the appellant present. Mr. Muhammad Jan learned District Attorney for the respondents present.

2. Vide our detailed judgement of today placed on file, we partially allow the appeal in hand with direction to respondents to place him at proper place alongwith his batch mates. Costs shall follow the event. Consign.

3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 29th day of July, 2024.*



**(KALIM ARSHAD KHAN)
CHAIRMAN**



**(RASHIDA BANO)
Member (J)**

*M.Khan