

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, AT CAMP COURT SWAT

Service Appeal No.3915/2021

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

Mr. Qadir Khan, Certified Teacher (BPS-15), GHSS Ouch, District Dir Lower.

.... (Appellant)

VERSUS

1. The Secretary Elementary & Secondary Education Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. The Director Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
3. The District Education Officer (M), District Dir Lower.
4. Mr. Ihtisham Ul Haq, C.T (BPS-15) (NTS)
5. Mr. Lal Zada, C.T (BPS-15) (NTS)
6. Latif Ur Rehman, C.T (BPS-15) (NTS)
7. Mr. Misbah Ur Rehman, C.T (BPS-15) (NTS)
8. Mr. Aziz Ullah Jan, C.T (BPS-15) (NTS)
9. Mr. Irfan Uddin, C.T (BPS-15) (NTS)
10. Mr. Bakht Munir, C.T (BPS-15) (NTS)
11. Mr. Inayat Ullah, C.T (BPS-15) (NTS)
12. Mr. Zakir Ullah, C.T (BPS-15) (NTS)
13. Mr. Waheed Zada, C.T (BPS-15) (NTS)
14. Mr. Muhammad Israr, C.T (BPS-15) (NTS)
15. Mr. Jadeedullah Khan, C.T (BPS-15) (NTS)
16. Mr. Mehmood Ur Rehman, C.T (BPS-15) (NTS)
17. Mr. Irshad Mehmood, C.T (BPS-15) (NTS)
18. Mr. Muhammad Shahid, C.T (BPS-15) (NTS)
19. Mr. Mumtaz Bakht, C.T (BPS-15) (NTS)

... (Respondents)

Umar Farooq Mohmand
Advocate ... For appellant

Mr. Umair Azam
Additional Advocate General ... For respondents

Date of Institution.....02.01.2020
Date of Hearing.....04.09.2024
Date of Decision.....04.09.2024

CONSOLIDATED JUDGMENT



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

“On acceptance of this service appeal, the impugned seniority list circulated on 26.10.2019 may kindly be modified/rectified to the extent of enlisting the name of the appellant at the right position and also to the extent of private respondents by allowing them seniority from the date of regularization on the post of certified teacher and not w.e.f the date of initial contractual/adhoc appointment i.e w.e.f 07.03.2018 instead of 30.04.2014. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.”

2. Through this single judgment we intend to dispose of instant service appeal as well as connected **Service Appeal No. 3916/2021** titled **“Fazal Akbar Vs. Education Department”** as in both the appeals common questions of law and facts are involved.

3. Brief facts of the case are that the appellants were appointed as PST (PST-7) now BPS-12 vide orders dated 09.01.1991 and 17.03.1993. During service, the appellants were promoted to the post of Certified Teacher (BPS-15) on the recommendation of Departmental Promotion Committee vide order dated 26.08.2017 on regular basis. The District Education Officer (M), Dir Lower circulated final seniority list of certified teachers of Dir Lower, whereby the name of the appellants have ignored, while those NTS teachers who were appointed as adhoc/contract C.T in BPS-15 in the year 2014 and were regularized vide order dated 07.03.2018, have been allowed seniority w.e.f 30.04.2014. Feeling aggrieved, they filed departmental appeal, which was not responded, hence the instant service appeals.

4. On receipt of the appeals and its admission to full hearing, the respondents

were summoned. Respondents put appearance and contested the appeals by filing written reply raising therein numerous legal and factual objections. We have heard learned counsels for the appellants and learned Additional Advocate General for the respondents.

5. The learned counsels for the appellants argued that appellants have not been treated in accordance with law and rules and as such respondents violated Article 4 & 25 of the Constitution of Islamic Republic of Pakistan 1973; that the impugned seniority list circulated on 26.10.2019 issued by the respondents is against the law, facts, norms of natural justice, hence not tenable and liable to be modified/rectified; that the treatment meted out to the appellants are discriminatory in nature.

6. Conversely, learned Additional Advocate General for the respondents contended that appellants have treated in accordance with law and rules. He further contended that seniority list issued by the respondents as per rules/policy. He further contended that all the teachers are placed in proper place in the seniority list including the appellants as per Government Policy. The appellants were promoted to the post of CT on 26.08.2017 and have been given seniority from that very date. He further contended that the teachers appointed through NTS on adhoc basis, have been regularized from the date of appointment i.e 30.04.2014, and they have all the rights, what a civil servant has.

7. Perusal of record reveals that appellants challenged seniority list of Certified Teachers BPS-15 issued on 26.10.2019, whereby they were shown junior to private respondents No. 4 to 19.

8. Record further reveals that appellants were promoted to the post of Certified Teacher vide notification dated 26.08.2019, while respondents No. 4 to

19 were appointed through NTS on contract basis on 30.04.2014, whose services were regularized at the strength of Khyber Pakhtunkhwa Employees of Elementary & Secondary Education Department (Appointment & Regularization of Services) Act 2017 vide notification dated 07.03.2018 from the date of their initial appointment. Section 3 of the Act deals with Regularization of the Services of the adhoc employees, which says:

3. Regularization of services of employees.--- (1) Notwithstanding anything contained in any other law or rules, the employees, who hold posts till the commencement of this Act, shall be deemed to have been validly appointed on regular basis from the day of the commencement of this Act;

Section 4 of the ibid Act deals with those employees whose services were regularized under this Act, which read as under;

4. Determination of seniority.---(1) The employees whose service are regularized under this Act or in the process of attaining service at the commencement of this Act, shall rank junior to all other employees belonging to the same Cadre, 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 Cadre, irrespective of their actual date of appointment.

9. So, in accordance with Section 3 of the Act, services of the contract/adhoc employees were regularized from the date of commencement of this Act. Although no date was mentioned in Act, from which factum of its commencement could be determined. But it is Act 1 of 2018 which means that it was enacted/promulgated and published in January or later than January 2018 but not before 26.08.2017. Thus the adhoc employees whose services were



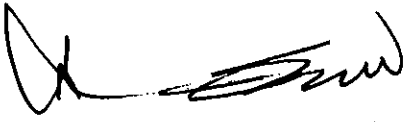
regularized at the strength of this Act were deemed to be regularized from January 2018 or later than that and not before.


10. Respondent vide order dated 07.03.2018 regularized services of the respondents from the date of their initial appointment which is not in accordance with the Act and thus have no legal effect.

11. Appellants were in service by promotion in CT cadre and in accordance with section 4 of the Act, 2017, they will have definitely to rank senior to all the employees whose services were regularized under this Act. Therefore, respondent was required to place them senior to all the regularized employees vide notification dated 07.03.2018 but they had been placed appellant junior to them, which is against the rules and Section 4 of the Act of 2017. So all the seniority lists from the impugned one of 2019 till date were wrongly prepared, therefore, respondents are directed to correct it.

12. For what has been discussed above, we are unison to accept the appeal with direction to the respondents to place appellants at their proper place in the seniority list above all the regularized employees vide notification dated 07.03.2018 and issue correct seniority list. Cost shall follow the event. Consign.

13. *Pronounced in camp court at Swat and given under our hands and seal of the Tribunal on this 4th day of September, 2024.*


(KALIM ARSHAD KHAN)
Chairman
Camp Court, Swat


(RASHIDA BANO)
Member (J)
Camp Court, Swat

ORDER

04.09.2024

1. Learned counsel for the appellant present. Mr. Umair Azam, Additional Advocate General alongwith Mr. Shahab, ASDEO for the respondents present.

2. Vide our detailed judgment of today placed on file, we are unison to accept the appeal with direction to the respondents to place appellant at his proper place in the seniority list above all the regularized employees vide notification dated 07.03.2018 and issue correct seniority list. Cost shall follow the event. Consign.

3. *Pronounced in camp court at Swat and given under our hands and seal of the Tribunal on this 4th day of September, 2024.*



(KALIM ARSHAD KHAN)
Chairman
Camp Court, Swat



(RASHIDA BANO)
Member (J)
Camp Court, Swat