BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

PESHAWAR

C. M. 12(2) CPC No 804/2024

In

Service Appeal No 7208/2021

Sami Ullah & Others.....**Petitioners**

V E R S U S

Govt. & Others.....**Respondents**

I N D E X

S. No	Description of documents	Annexure	Pages
1.	Reply with Affidavit		1-4

Dated:- 21-10-2024

Respondent No 4

Through

Fazal Shah Mohmand

Advocate,

Supreme Court of Pakistan

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Email:- fazalshahmohmand@gmail.com

(1)

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VERSUS

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Reply on behalf of respondent No 4

Respectfully Submitted:-

Preliminary Objections:

1. The petitioner has got no cause of action and locus standi to file instant petition.
2. Instant Petition is not maintainable.
3. The petitioner is estopped by his own conduct to bring instant petition.
4. That all the three ingredients of fraud, misrepresentation and jurisdiction are lacking, hence the petition is liable to be dismissed on this score alone.
5. That similar petition has already been dismissed by this honorable Tribunal vide Judgment dated 07-11-2023 and which Judgment has attained finality being not challenged further.
6. The petitioner has not come to this honorable Tribunal with clean hands.
7. The petitioner has concealed material facts from this honorable Tribunal.
8. That the petition is bad due to non-joinder and mis-joinder of necessary parties.
9. That appeal is barred in law and limitation.

PARAWISE REPLY ON FACTS

1. Para No 1 pertains to record, hence needs no reply.

2. Para No 2 pertains to record.

3. Para No 3 pertains to record.

4. Para under reply is correct to the extent of promotion of replying respondent however the replying respondent was not allowed promotion from due date.

5. Para under reply is correct to the extent of acceptance of Service Appeals by this honorable Tribunal and giving effect to the promotion from due date while rest of the para is incorrect.

6. Para 6 pertains to record.

7. In reply to para 7 it is submitted that as stated above the appellant also filed Service Appeal before this honorable Tribunal which was accepted which Judgment was challenged by the official respondents before the Apex Court and the CPLA filed by respondents was dismissed hence the replying respondent filed Execution Petition before this honorable Tribunal, as the replying respondent was not placed at due place in the Seniority List, hence after availing departmental remedy, he filed Service Appeal which was disposed of in terms to incorporate the date of promotion of the relying respondent as 13-11-2007 instead of 19-05-2009 in the seniority List vide Order dated 02-05-2024.

8. Para under reply is incorrect with further clarification that earlier in similar cases, petition under 12 (2) CPC was filed which was also dismissed by this honorable Tribunal vide Judgment dated 07-11-2023 and which attained finality as the same was not challenged, hence this petition being similar is liable to be dismissed on this score alone.

9. In reply to para 9 it is submitted that the replying respondent had filed Service Appeal for his due seniority which was disposed of in light of earlier order of this honorable Tribunal.

10. Para under reply is legal and the petitioner is not an aggrieved from the Order of this honorable Tribunal.

REPLY TO GROUNDS:

A. Para under reply incorrect as the replying respondent had filed Service Appeal for his due seniority as per law which was disposed of by this honorable Tribunal.

B. & C. incorrect, as the replying respondent has been ordered to be placed at due place in the Seniority List, which order is in accordance with law and rules on the subject.

D. Incorrect, the replying respondent had concealed nothing from this honorable Tribunal and the petitioner has badly failed to point out any concealment by the replying respondent.

E. Incorrect, the replying respondent has been ordered to be placed at due place in the Seniority List which is his due right as per law and rules.

F. Incorrect, the petitioner has been treated in accordance with law and Rules.

It is therefore prayed that petition of the petitioners may kindly be dismissed with heavy costs.

Dated:-21-10-2024

Respondent No 4

Through

Fazal Shah Mohmand

Advocate,

Supreme Court of Pakistan

(4)

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AFFIDAVIT

I, Muhammad Arif, Senior Director Physical Education, Govt. Higher Secondary School, Bamkhel, Swabi (Respondent No 4), do hereby solemnly affirm and declare on oath that the contents of accompanying **Reply** are true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable Tribunal.

DEPONENT

ATTESTED
Akbar Khan Advocate
Oath Commissioner
District & Sessions Court Peshawar