

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.**

BEFORE: **KALIM ARSHAD KHAN ... CHAIRMAN**
MUHAMMAD AKBAR KHAN ... MEMBER (Executive)

Service Appeal No.1790/2023

Date of presentation of appeal06.09.2023
Dates of Hearing.....22.10.2024
Date of Decision.....22.10.2024

**Waseem Ahmad S/O Muhammad Saleem Abbasi PSHT, GPs Khaira
Gali (Neargool) Circle Berote Abbottabad.....(Appellant)**

Versus

1. **The Director**, Directorate of Elementary and Secondary Education Department Peshawar.
2. **The District Education Officer**, Elementary and Secondary Education Department, Abbottabad.
3. **Sohail Mehmood**, PSHT GPS Baccha Sanal, Now PET, GMS Thathi Ahmad Khan, Abbottabad.
4. **Imtiaz Ur Rehman**, PSHT GPS Narwara, Now PET, GMS Malkot Abbottabad.....(**Respondents**)

Present:

Mr. Rashid Iqbal Khan Jadoon, Special Attorney.....For appellant.
Mr. Muhammad Jan, District Attorney.....For respondents.
Private respondents No. 3, 4 were placed ex-parte.

.....
**SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974, AGAINST
THE OFFICE ORDER DATED 11.05.2023, ISSUED BY THE
RESPONDENT NO. 2 (DEO (M) ABBOTTABAD) UNDER
ENDORSEMENT NO. 3165-74, TO THE EXTENT OF PSHT TO
PET (RESPONDENTS NO. 3 AND 4, THE JUNIORS OF
APPELLANT.**
.....

Service Appeal No.17912023

Date of presentation of appeal06.09.2023
Dates of Hearing.....22.10.2024
Date of Decision.....22.10.2024



Afraiz Ahmad S/O Karam Elahi PSHT, GPS Dhaka Malkot, Circle (Berote) Abbottabad.....(Appellant)

Versus

1. **The Director**, Directorate of Elementary and Secondary Education Department Peshawar.
2. **The District Education Officer**, Elementary and Secondary Education Department, Abbottabad.
3. **Sohail Mehmood**, PSHT GPS Baccha Sanal, Now PET, GMS Thathi Ahmad Khan, Abbottabad.
4. **Imtiaz Ur Rehman**, PSHT GPS Narwara, Now PET, GMS Malkot Abbottabad.....(**Respondents**)

Present:

Mr. Rashid Iqbal Khan Jadoon, Special Attorney.....For appellant.
Mr. Muhammad Jan, District Attorney.....For respondents.
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SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974, AGAINST THE OFFICE ORDER DATED 11.05.2023, ISSUED BY THE RESPONDENT NO.2 (DEO (M) ABBOTTABAD) UNDER ENDORSEMENT NO. 3165-74, TO THE EXTENT OF PSHT TO PET (RESPONDENT NO.3 AND 4, THE JUNIORS OF APPELLANT).
.....

CONSOLIDATED JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: Through this single judgment this appeal and the connected service appeal No.1791/2023 titled "Afraiz Ahmad versus The Director, Directorate of Elementary and Secondary Education Department, Peshawar and others" are decided as both are regarding the same subject matter and can conveniently be decided together.

2. Brief facts gathered from the memo and grounds of appeals are that the appellants were joined the Elementary & Secondary Education

Department as a PST's on 16/05/2005 and are currently serving as PSHT; that they were promoted from PST to SPST in BPS 14 on 18.05.2013 and 02/10/2017, and further promoted to SPHT in BPS 15 on 07/03/2020; that the appellants completed their MS.c in Health & Physical Education (HPE) on 07/03/2023, qualifying for the position of PET; that on 12/04/2023, they were informed by their circle officer (ADEO) to submit documents for promotion to PET, which they did. However, on 11/05/2023, the appellants discovered that two junior employees (respondents No. 3 & 4) had been promoted to PET, bypassing him; that they filed departmental appeals on 24/05/2023 and on 29.05.2023 respectively, but it has not been decided within the statutory 90-days period, prompting them to file this appeal within 120 days, hence the instant service appeal.

3. On receipt of the appeal and its admission to full hearing, the respondents were summoned. Official respondents put appearance and contested the appeal by filing written reply raising therein numerous legal and factual objections while private respondents No. 3 and 4 were placed ex-parte. The defence setup was a total denial of the claim of the appellant.

4. We have heard learned counsel for the appellants and learned Assistant Advocate General for the official respondents.

5. Perusal of record reveals that the appellants were promoted to the post of PET (BPS-15) vide order dated 26.03.2024 in pursuance of the judgment of Supreme Court of Pakistan passed in civil petition No. 225-P/2023 which order was later on withdrawn by the respondents vide order

dated 10.07.2024, wherein the respondents stated that the said promotions orders of the appellants were issued inadvertently in the light of the judgment of Supreme Court of Pakistan passed in civil petition No. 225-P/2023 whereas the said judgment is not applicable in the instant case. Learned counsel for the appellant relied on the judgment of the Supreme Court of Pakistan passed in civil petition No. 225-P/2023 on 11.12.2023 which is reproduced as under:

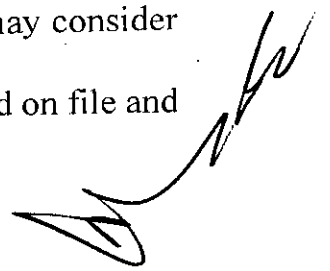
"This is yet another prime example of frivolous litigation being initiated by a provincial government. The petitioners had advertised in the year 2018 for the selection of two computer teachers in basic pay scale of 12 and had prescribed the minimum qualification as Intermediate with one year diploma in computer sciences. The respondent no.1 held a B.Sc and M.Sc degree in computer science and came on the top of the merit list but still was not appointed for the reason that he was over-qualified. It appears that those in charge of educating the children of the province were bereft of common sense by disqualifying a person who was more qualified and thus better placed to impart computer science education and favoured one less qualified. Not only the respondent No.1 was made to suffer but the children, who would have benefited from his knowledge, were condemned.

2. There is no reason to interfere with the impugned judgment. Leave to appeal is declined and this petition is dismissed with costs incurred by the respondent No.1, that is two hundred thousand rupees to be paid to the respondent No.1 on or before 31.12.2023. Needless to state the judgment regarding appointment of respondent No.1 will also be implemented by or before such date, and if it is not complied with, the Secretary, Elementary & Secondary Education, government of Khyber Pakhtunkhwa may be proceeded against for contempt of Court. A copy of this order be sent to the petitioners and the respondents, to the Advocate General, Chief Secretary and Secretary Law of Khyber Pakhtunkhwa who will undoubtedly ensure that the government does not generate such unnecessary litigation and then, for no valid legal reason, challenge

the decisions of the High Court which also drains the resources of the government, paid for by the taxpayers".

6. The relevant rules were produced by the Assistant Advocate General, wherein Serial No. 18 is relevant. According to column No. 5 of the said rules, twenty percent posts of the Physical Education (BPS-15) were to be filled by promotion on the basis of seniority-cum-fitness from amongst the Primary School Head Teachers with at least five years and having qualification prescribed for initial recruitment of Physical Education Teacher. Qualification has been prescribed in column No.3 for initial recruitment of Physical Education Teachers and that is Bachelors Degree from a recognized University with one-year junior Diploma in Physical Education course or any equivalency or other equivalent qualification. The appellants claim that they are possessing much higher qualification than prescribed for initial recruitment as both of them are MSc in Physical Education.

7. In light of the aforementioned reasons, we may not be able to make any assessment of equivalency or relevancy of the MSc degree of the appellants and would rather deem it appropriate to send the matter to the department for making assessment whether the qualification possessed by the appellants was in the relevant filed and was equal or higher than the qualification prescribed for initial recruitment. In case they are found possessing relevant and higher qualification, the department may consider them in accordance with the judgment of Supreme Court placed on file and



Service Appeal No. 1790/2023 titled "Waseem Ahmad versus The Director, Directorate of Elementary & Secondary Education Department Peshawar and others" and connected Appeal No.1791/2023 titled "Afraiz Ahmad Versus The Director, Directorate of Elementary & Secondary Education Department Peshawar and others" decided on 22.10.2024 by Division Bench comprising Kalim Arshad Khan, Chairman, and Muhammad Akbar Khan, Member, Executive Khyber Pakhtunkhwa Service Tribunal, Peshawar.

the relevant portion reproduced above. Costs shall follow the event.

Consign.

8. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 22nd day of October, 2024.*

KALIM ARSHAD KHAN

Chairman

Muhammad Akbar Khan

Member (Executive)

Adnan Shah, PA


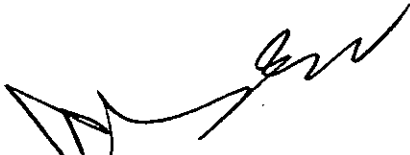
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Service Appeal No. 1790/2023

Waseem Ahmad

versus

Government of Khyber Pakhtunkhwa

S.No. of Order & Date of proceeding	Order or other proceedings with signature of Chairman/Member(s)/Registrar and that of parties or counsel where necessary
Order-07 22 nd October, 2024.	<p style="text-align: center;"><u>MR. KALIM ARSHAD KHAN, CHAIRMAN</u></p> <p>Present:</p> <ol style="list-style-type: none">1. Mr. Rashid Ali Khan Jadoon, Special Attorney on behalf of the appellant.2. Mr. Muhammad Jan, District Attorney for the respondents.3. Vide our detailed judgment of today placed on file, we may not be able to make any assessment of equivalency or relevancy of the MSc degree of the appellants and would rather deem it appropriate to send the matter to the department for making assessment whether the qualification possessed by the appellants was in the relevant filed and was equal or higher than the qualification prescribed for initial recruitment. In case they are found possessing relevant and higher qualification, the department may consider them in accordance with the judgment of Supreme Court placed on file and the relevant portion reproduced above. Costs shall follow the event. Consign.4. <i>Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 22nd day of October, 2024.</i> <div style="display: flex; justify-content: space-around; align-items: flex-end;"><div data-bbox="443 1996 845 2215" style="text-align: center;"><p>(Muhammad Akbar Khan) Member (E)</p></div><div data-bbox="1013 1957 1420 2202" style="text-align: center;"><p>(Kalim Arshad Khan) Chairman</p></div></div> <p>*Adnan Shah*</p>

MEMO OF COSTS
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No.1790/2023

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PRESENT


Mr. Rashid Iqbal Khan Jadoon, Special Attorney.....For appellant.
Mr. Muhammad Jan, District Attorney.....For respondents.
Private respondents No. 3, 4 were placed ex-parte.

Appellants	Amount	Respondent	Amount
1. Stamp for memorandum of appeal	Rs. Nil	1. Stamp for memorandum of appeal	Rs. Nil
2. Stamp for power	Rs. Nil	2. Stamp for power	Rs. Nil
3. Pleader's fee	Rs. Nil	4. Pleader's fee	Rs. Nil
4. Security Fee	Rs.100/-	4. Security Fee	Rs. Nil
5. Process Fee	Rs. Nil	5. Process Fee	Rs. Nil
6. Costs	Rs.	6. Costs	Rs. Nil
Total	Rs. 100/-	Total	Rs. Nil

Note: 1. Counsel Fee is not allowed as the required certificate has not been furnished.

Given under our hands and the seal of this Court, this 22nd day of October 2024.


Muhammad Akbar Khan
Member (Executive)


Kalim Arshad Khan
Chairman