


FORM OF ORDER SHEET

Court of _____

12(2) CPC Petition No. 1390 /2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	19/11/2024	<p>The Petition U/S 12(2) CPC in service appeal no. 7439/2021 submitted today Mr. Noor Muhammad Khattak Advocate. It is fixed for hearing before Division Bench at Peshawar on 25.11.2024. Original file be requisitioned. Parcha Peshi given to the counsel for the petitioner.</p> <p>By order of the Chairman  REGISTRAR</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,
PESHAWAR

CM. 12 (2) CPC PETITION No. 1390 /2024

IN

SERVICE APPEAL No:- 7439/2021

MR. MUHAMMAD JAVED VS THE GOVERNMENT

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THROUGH:

PETITIONER

NOOR MUHAMMAD KHATTAK
ADVOCATE SUPREME COURT

1-

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,
PESHAWAR

12 (2) CPC PETITION No. 1390 /2024

IN

SERVICE APPEAL No:- 7439/2021

Mr. Muhammad Javed, Lab Attendant (BPS-03)
GHS Police Colony, Nasir Bagh Road, Peshawar.

..... PETITIONER

VERSUS

- 1- The Government of Khyber Pakhtunkhwa, through Chief Secretary Civil Secretariat, Khyber Pakhtunkhwa, Peshawar.
- 2- The Secretary Establishment Department, Khyber Pakhtunkhwa, Peshawar.
- 3- The Secretary Finance Department Khyber Pakhtunkhwa, Peshawar.
- 4- The Secretary Elementary Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.
- 5- Director Elementary Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.

.....RESPONDENTS

PETITION UNDER SECTION 12 (2) OF CPC FOR SETTING ASIDE ORDER/JUDGMENT DATED 25/03/2022 PASSED BY THIS HONORABLE TRIBUNAL IN SERVICE APPEAL NO 7439/2021 ON THE BASIS OF FRAUD AND MISREPRESENTATION.

Prayer:-

That on acceptance of the petition under section 12(2) the impugned order/judgment dated 25/03/2022 passed by this Honorable Tribunal in Service Appeal No 7438/2021 may very kindly be set aside and the case may kindly be decided on real and factual facts/documents and other materials available on record to meet the ends of justice. Any other remedy which this august Tribunal deem fit may also be awarded in favour of the petitioner.

Respectfully Sheweth:

Brief facts giving rise to the present appeal are as under:

- 1) That the petitioner was appointed as Lab Attendant (BPS-03) in the respondent department and was posted at GHS Forest

College, Peshawar. Copy of appointment notification dated 16/12/2016 is attached as annexure.....**A**

2) That right from the date of appointment till date, the petitioner is serving the respondent department quite efficiently, whole heartedly and upto the entire satisfaction of his superiors.

3) That the respondents department vide impugned notification dated 28/ /2013 issued service rules/structures of different posts, wherein vide Serial No 09 Column No 05, that astonishingly the cadre/post of the petitioner has not been included for promotion to the post of Laboratory Assistant (BPS-07) as such and the petitioner was deprived from the promotion to the next pay scale. Copy of notification dated 28/ /2013 is attached as annexure.....**B**

4) That vide notification date 31/10/2018, the Laboratory Assistant has further been channelized to the post of Senior Laboratory Assistant, Lab Supervisor and Lab Superintendent, but again the petitioner's cadre/post has been ignored from channelizing to the post of Lab Assistant. Copy of notification dated 31/10/2018 is attached as annexure.....**C**

5) That it is pertinent to mention here that in the Federal Education & Professional Training Department of the Federation, the Laboratory Attendants have channel of promotion to the post of Laboratory Assistant. Copy of minutes of DPC meeting is attached as annexure.....**D**

6) That feeling aggrieved from the vires of the impugned notification/service rules dated 28/01/2013 & 31/10/2018, the petitioner filed departmental appeal/representation before the competent authority on which no response has so far been received. Copy of departmental appeal/representation is attached as annexure.....**E**

7) That the petitioner having no other adequate remedy, has filed service appeal before this Honourable Tribunal, however, the same fall prey to dismissal in limine with the plea that:-

"The petitioner also seek direction of this court to the respondent to place the unanimous recommendation of the Provincial Assembly before the Cabinet/Provincial Government for giving effect to it. Since there is no impugned order before us relating to enforcement of the terms and condition of the civil servants within the contemplation of section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 (The Act) and the relief claimed as stated above, is in the nature of command

to the departmental authority, which in essence, cannot be issued by the Service Tribunal, having limited jurisdiction. Indeed, the petitioner seeking issuance of writ of mandamus which a sole prerogative of the constitutional courts. In this regard, wisdom can be drawn from the law laid down by the august Supreme Court in "Executive District Officer School & Literacy District Dir Lower...Versus... Qamar Dost Khan (2006 SCMR 1630) and Pakistan International Airlines Corporation ...Versus... Samina Masood (PLD 2005 SC 831)". Hence the objection of the respondents/Government to the maintainability of writ petition is overruled, therefore, the appeal is dismissed in limine. Consig. Copy of order dated 25/03/2022 is attached as annexure.....F

- 8) That since this Honourable Court has not entertained the issue on the ground of lack of jurisdiction, hence the petitioner filed a Writ Petition No 2045-P/2022 before the Honourable Peshawar High Court, Peshawar, wherein the Honourable High Court held that:-

6. "Though the petitioner has earlier approached the Service Tribunal for the same relief pertaining to vires of the rules, however, his petition has been dismissed on the ground of jurisdiction. We feel that in view of the judgments of the superior courts rendering in "I.A Sharwani case 1991 SCMR 1041 & Mubin Ul Salam case 2006 SCMR 602, the rules pertaining to promotion, seniority etc being foremost terms and condition of service, as such can only be questioned before the Service Tribunal established under the Service Tribunal Act, 1974. Besides, in terms of Article 212 of the Constitution of Islamic Republic of Pakistan, 1973, the jurisdiction of this Court is barred.

7. For what has been discussed above, this writ petition is dismissed for want of jurisdiction. Copy of order dated 04/10/2023 is attached as annexure.....G

- 9) That the petitioner filed a Service Appeal before this Honourable Tribunal, which was came up for hearing on 16/04/2024 for preliminary hearing and this Honourable Tribunal converted the same into petition u/s 12(2) CPC. Copy of Service appeal & order dated 16/04/2024 is attached as annexure.....H

- 10) That the petitioner seeks permission from this Honourable Tribunal to move proper application u/s 12(2) CPC and vide order dated 21/10/2024, this Honourable Tribunal allowed the petitioner to move proper application u/s 12(2) CPC raising the grounds in the said section and also challenging the order/judgment dated 25/03/2022 passed by this Honorable

-4-

Tribunal in Service Appeal No 7439/2021. Copy of order dated 21/10/2024 of this Honourable Tribunal is attached as annexure.....I

- 11) That the petitioner is left with no other remedy but to file the instant petition u/s 12(2) CPC on the following grounds amongst the others.

GROUND:

- A- That the order/judgment dated 25/03/2022 passed by this Honorable Tribunal in Service Appeal No 7439/2021 is ultra vires, facts, law, norms of natural justice and materials on record, hence not tenable and liable to be set aside.
- B- That order/judgment dated 25/03/2022 passed by this Honorable Tribunal is based on misrepresentation and miscalculation of facts, hence, liable to be set aside.
- C- That impugned judgment is violative of article 4 & 10-A of the Constitution of Pakistan, 1973.
- D- That the petitioner of the instant application/petition seek permission to advance other grounds and proofs at the time of hearing.

It is therefore, most humbly prayed that on acceptance of the petition under section 12(2) the impugned order/judgment dated 25/03/2022 passed by this Honorable Tribunal in Service Appeal No 7438/2021 may very kindly be set aside and the case may kindly be decided on real and factual facts/documents and other materials available on record to meet the ends of justice.

Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.


PETITIONER

THROUGH:


NOOR MUHAMMAD KHATTAK
ADVOCATE SUPREME COURT


UMAR FAROOQ MEHMAND


WALEED ADNAN

& 
KHANZAD GUL

ADVOCATES HIGH COURT

CERTIFICATE:

No such like petition is pending or filed between the parties on the subject matter before this Honorable Tribunal.

Advocate 

AFFIDAVIT

I, Mr. Muhammad Javed, Lab Attendant (BPS-03) GHS Police Colony, Nasir Bagh Road, Peshawar, do hereby solemnly affirm on oath that the contents of the above petition are true and correct to the best of my knowledge and believe and nothing has been concealed from this Honorable Tribunal.



DEPONENT

ANNEXURE 4A²

OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) PESHAWAR

TO BE SUBSTITUTED WITH THIS OFFICE NOTIFICATION BEARING SAME NO. & DATE

NOTIFICATION:

Consequent upon the approval of the District Selection Committee, the competent authority has been pleased to appoint the following candidates as Class IVs against vacant posts on regular basis in BPS-03 of the basic pay scale @ Rs. 8040-325-17790 plus usual allowances as admissible under the rules in the school mentioned against each their names on the terms and conditions given below with effect from their date of taking over charge.

(Retired employees Sans quota)

Applicant is 6-
pay No
19

S.#	Name	Father's Name	Date of Retirement of Employee	Designation	Appointed / posted at School given below
1.	Muhammad Imran	Shad Muhammad	30/9/1992	Chowkidar	GHS Sarbad Peshawar
2.	Said Rahim	Muhammad Rahim	31/01/2000	Sweeper	GMS Mushtarzai Peshawar
3.	Ghulam Murtaza	Ghulam Sadiq	23/7/2000	Sweeper	GHS Dabgari Gate Peshawar / upper age relaxed by 3 months and 14 days
4.	Rabiullah	Saida Gul	31/08/2000	Chowkidar	GHS Shogahli Poyan Peshawar
5.	Zaman Gul	Rahman Gul	7/2/2002	Chowkidar	GPS Kas Korooni Peshawar / Upper age relaxed by 8 months and 28 days
6.	Kamil Shah	Fazal Shah	20/10/2003	Sweeper	GHSS Hayat Abul Peshawar
7.	Amwar Bezaad	Abdul Wahid	30/6/2004	Chowkidar	GPS Khadim Abad Peshawar
8.	Hussain Shah	Sultan Shah	31/12/2004	Work Shop Attendant	GHSS Gul Bahar Peshawar
9.	Qazi Zain-ul-Abideen	Qazi Dedar Gul	30/9/2005	N.Q	GHSS Turnub Ferni Peshawar
10.	Shahid	Waris Khan	20/10/2005	N.Q	GHSS Urmar Bala Peshawar
11.	Riaz Khan	Said Khan	19/12/2005	Chowkidar	GPS Mushtarzai No.2 Peshawar
12.	Zahid Gul	Hayat Gul	7/2/2006	Chowkidar	GPS Larami Peshawar
13.	Najeem Khan	Jan Khan	2/12/2006	Chowkidar	GHSS Daag Peshawar

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(Minority Quota)

S#	Name	Father's Name	Designation	Appointed /posted at School given below
1	Sunail Ishaq	Ishaq Maseeh	Sweeper	GHS Regi
2	Bobi Maseeh	Iqbal Maseeh	Sweeper	GHS Charpariza

(Disable Quota)

S#	Name	Father's Name	Designation	Appointed /posted at School given below
1	Gul Rehman	Sharif Khan	Chowkidar	GPS Umar Talab Urmar Miana

(Fresh /Land Donor)

S#	Name of Applicant	Father's Name	Designation	Appointed /posted at School given below
1.	Sardar Afridi	Laiq Khan	Naib Qasid	GMS Mohallah Hidayat Shah
2.	Farhan Tarveer Orazkai	Tarveer Ahmad Khan Orazkai	Chowkidar	GPS New Garhi Bakishi Pul
3.	Ifkhar Ahmad	Jamil Khan	Naib Qasid	GMS Yousaf Abad
4.	Ali Muhammad	Pir Muhammad	Sweeper	GMS Yousaf Abad
5.	Mir Alam	Adam Khan	Chowkidar	GPS No.3 Zaryub Colony
6.	Asad Ali	Masaud-ul-Hasan	Lab Attendant	GCMHSS No 2 Peshawar city
7.	Umar Gul	Juma Gul	Naib Qasid	GMS Gunj Mandi Peshawar
8.	Khan Wali	Rasool Khan	Naib Qasid	GMS Andur sher Peshawar
9.	Sikandar Khan	Gulab Khan	Naib Qasid	Office of the District Education Officer (Male) Peshawar
10.	Muhammad Sajid	Muhammad Ayaz	Chowkidar	GPS No.1 Jogiwara Peshawar
11.	Subhan ullah Khan	Abdul Majeed	Naib Qasid	GMS Satiar Shah Colony
12.	Aurangzeb	Ibrahim	Chowkidar	GHSS No.3 Peshawar City

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13.	Sajid Ali	Gul Shah	Naib Qasid	GHS Bela Mamundun Peshawar
14.	Muhammad Bilal Hassan	Muhammad Iqbal	Naib Qasid	GHS Manak Rao Peshawar
15.	Muhammad Javeed	Reza Muhammad	Chowkidar	GHSS No 1 Peshawar Cantt
16.	Zafar Iqbal	Shoukat Khalil	Sweeper	GHS Nodeh Payun Peshawar
17.	Muhammad Zubair	Rehman Wali	Chowkidar	GHS Nodeh Payun Peshawar
18.	Naik Muhammad	Khair Muhammad Khan	Chowkidar	GHS Forest College Peshawar
19.	Muhammad Javeed	Muhammad Aslam	Lab Attendant	GHS Forest College Peshawar
20.	Niaz Ali	Inzar Gul	Chowkidar	GPS No 1 Regi Lalama Peshawar
21.	Tehsinullah Khalil	Aminullah Khan	Chowkidar	GPS Palosi Maghdarzi Peshawar
22.	Khalid Khan	Irshad Ahmad	Chowkidar	GPS Tehkal Balu Peshawar
23.	Malik Khan Faraz	Mumtaz Khan	Lab Attendant	GHSS Hazar Khawani Peshawar
24.	Muhammad Imran	Bora Khan	Chowkidar	GHS Pishtakhara Balu Peshawar
25.	Fazl-e-Amin	Fazl-e-Rabbi	Sweeper	GMS Hazar Khawani Peshawar
26.	Wali Muhammad	Niaz Muhammad	Chowkidar	GPS Tala Ghar Sarband Peshawar
27.	Hashmat Khan	Sardar Khan	Chowkidar	GPS No 1 Hazarkhawan Peshawar
28.	Akhtar zaib	Saba Sher	Chowkidar	GPS Mera Sufaid Sung Peshawar
29.	Syed Jalal-ud-Din	Muhammad Saeed Shah	Chowkidar	GPS Kochian Peshawar
30.	Shahid Khan	Nemroz Khan	Chowkidar	GPS Ghari Chundan Peshawar
31.	Imdad Khan	Shamsher Khan	Chowkidar	GPS Bilal Abail Charpariza Peshawar /upper age relaxed by 4 months & 26 days

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32.	Iqbal Hussain	Khadim Hussain	Chowkidar	GPS Noor Gurh Peshawar
33.	Wasim Ullah	Farid Ullah	Chowkidar	GHS Ghari Chandan Daudzai Peshawar
34.	Nasir Khan	Yaqoob Khan	Sweeper	GMS Gul Abad Peshawar
35.	Hashim Khan	Jalat Khan	Naib Qasid	GMS Gul Abad Peshawar/upper age relaxed by 1 year, 10 months and 28 days
36.	Bacha Hayat	Dilaram Khan	Lab Attendant	GHS Shaghali Payan Peshawar
37.	Gul Raiz	Mumin Khan	Naib Qasid	GHS Shaghali Payan Peshawar
38.	Wasiullah	Shamsir Rahman	Lab Attendant	GHSS Haryana Bala Peshawar
39.	Khalid Zaman	Gul Zaman	Chowkidar	GHSS Haryana Bala Peshawar
40.	Fazal Zaman	Gul Zaman	Naib Qasid	GHSS Haryana Bala Peshawar
41.	Miskeen Jan	Khaista Khan	Chowkidar	GPS Shagai Bala Peshawar
42.	Sadam Hussain	Haider Khan	Chowkidar	GPS Takhi Koroona Peshawar
43.	Hamid Khan	Dil Shad Khan	Chowkidar	GPS Ghari Imran Peshawar
44.	Ayaz Khan	Waliyat Khan	Chowkidar	GPS Daang Lakhta Bala Peshawar
45.	Hasan Mahmood	Nisar Ahmad	Chowkidar	GPS Takhi Abail Peshawar
46.	Mazhar Ali Shah	Abdullah Shah	Chowkidar	GPS Pinci Puyan Peshawar
47.	Khan Zameen	Gul Zameen	Chowkidar	GPS Qilla Abdul Jalil Peshawar/upper age relaxed by 5 months & 16 days.
48.	Nasem-ul-Haq	Fazl-e-Haq	Sweeper	GHS Mian Gujar Peshawar
49.	Said Rasool	Miskeen Khan	Lab Attendant	GHSS Pakha Ghulam Peshawar
50.	Muhammad Asif	Bahadar Khan	Naib Qasid	GHSS Pakha Ghulam Peshawar

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73.	Hameedullah	Abdullah Jan	Chowkidar	GPS Mashgagar Muz. Peshawar
74.	Rahmat Ali	Yasin Khan	Chowkidar	GPS Sheikhan Mera Peshawar
75.	Muhammad Ayaz	Mukaram Khan	Chowkidar	GPS No.1 Musatai Peshawar
76.	Haji Gul	Raj Wali Khan	Chowkidar	GPS Urmar Misha Peshawar
77.	Mamraz Khan	Muhammad Islam	Lab Attendant	GHSS Urmar Bala Peshawar
78.	Sher Ali	Muhammad Islam	Chowkidar	GHSS Urmar Bala Peshawar

TERMS & CONDITIONS:

- 1 They will be governed by such rules and regulations as prescribed by the Govt. from time to time for the category of government servants to which they belong.
- 2 In case of resignation, one month prior notice should be given by the official concerned otherwise one month pay will be forfeited in lieu thereof.
- 3 Their services will be liable to termination at any stage if their testimonials, CNIC, Domicile etc were found fake. FIR will also be lodged against them.
- 4 They should take charge of their post within one month after the issuance of this notification.
- 5 Charge report should be submitted to all concerned.
- 6 They will produce health fitness and age certificate from the concerned civil surgeon.

Note:

Appointment order shall be verified by the concerned Drawing and Disbursing officers personally from the office of the undersigned before handing over charge to the official.

(ROZ WALI KHAN KHATTAK)
DISTRICT EDUCATION OFFICER
(MALE) PESHAWAR

Encls: No. 13712-816/ Appointment File/ DSC 29/11/2016. Dated 16-12-2016

- Copy for information and necessary action to:
- 1 Accountant General Khyber Pakhtunkhwa Peshawar.
 - 2 Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.
 - 3 Deputy Commissioner Peshawar.
 - 4 District Nazim Peshawar
 - 5 District Monitoring Officer Peshawar.
 - 6 Principals/Head Masters/SDEO (M) Peshawar concerned.
 - 7 P.A to District Education Officer (Male) Peshawar.
 - 8 Cashier Concerned
 - 9 Officials concerned.
 - 10 Master File.

BY: DISTRICT EDUCATION OFFICER
(MALE) PESHAWAR

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GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION DEPARTMENT
Peshawar, dated the 28th January, 2013

NOTIFICATION

No. SO(PE)/4-10/SSRC/Ministerial Staff/2013:- In pursuance of the provisions contained in sub rule (2) of rule 3 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1989, and in supersession of all rules issued in this behalf to the extent of the Elementary and Secondary Education Department (E&SE Department) in consultation with the Establishment Department and Finance Department hereby lays down the method of recruitment, qualifications and other conditions specified in Column 3 to 5 of the Appendix to this Notification which shall be applicable to the posts borne on the ministerial establishment in the Elementary and Secondary Education Department specified in Column No.2 of the said Appendix.

APPENDIX

S. NO	NOMENCLATURE	MINIMUM QUALIFICATION AND EXPERIENCE FOR INITIAL APPOINTMENT OR BY TRANSFER	AGE LIMIT	METHOD OF RECRUITMENT (EXISTING)
1	2	3	4	5
1.	Deputy Director (Finance and Accounts) / Deputy Director (Administration) (BPS-18)			By promotion on the basis of seniority cum fitness from amongst the Assistant Directors (Finance and Accounts) & Assistant Directors (Administration) with at least five years service as such.
2.	Assistant Director (Finance and Accounts) / Assistant Director (Administration) (BPS-17)			By promotion on the basis of seniority cum fitness from amongst the Budget and Accounts Officers with at least two years service as such.
3.	Budget and Accounts Officer. (BPS-16)			By promotion on the basis of seniority cum fitness from amongst the Superintendents with at least two years service as such.
4.	Superintendent (BPS-16)			By promotion on the basis of seniority cum fitness amongst the holders of the posts of Assistants and Senior Scale Stenographers with at least five years service as such.
5.	Senior Scale	(i) At least Second Class Bachelor's Degree or equivalent	20 to 30	By promotion on the basis of seniority cum

ANNEXURE "B" 11-

ATTACHED

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Handwritten notes: 'Describe the candidate for the candidate' and 'of level 2'.

	Stenographers (BPS-16)	qualification from a recognized University; (ii) Speed of Seventy words per minute in shorthand in English and Forty Five words per minute in typing; and (iii) Knowledge of Computer in using MS words and MS Excel.	Years	fitness from amongst the Junior Scale Stenographers (BPS-14) with at least five years service as such.
6.	Assistant (BPS-14)	At least Second Class Bachelor's Degree from a recognized University	20 to 30 Years	(a) Seventy five per cent by promotion, on the basis of seniority-cum-fitness from amongst the Senior Clerks with at least five years service as such; and (b) Twenty five per cent by initial recruitment
7.	Junior Scale Stenographers (BPS-14)	(i) Intermediate or equivalent qualifications from a recognized Board; (ii) Speed of Fifty words per minute in shorthand in English and Thirty Five words per minute in typing; and (iii) Knowledge of Computer in using MS words and MS Excel.	18 to 30 Years	By Initial recruitment.
8.	Senior Clerks (BPS-09)			By promotion on the basis of seniority-cum-fitness from amongst the Junior Clerks, Assistant Store Keepers and Laboratory Assistants with at least two years service as such.
9.	Junior Clerk/Assistant Store Keeper/Laboratory Assistant (BPS-07)	(i) For Junior Clerk / Assistant Store Keepers having at least Second Division in Secondary School Certificate or equivalent qualifications from a recognized Board and a speed of twenty five words per minute in typing ; (ii) For Laboratory Assistants having at least Second Division in Secondary School Certificate or equivalent qualifications from a recognized Board with Science.	18 to 30 Years	(a) Thirty Three per cent by promotion, on the basis of seniority-cum-fitness from amongst the Dastaries, G/Operators, Qasids and Naib Qasids including other equivalent posts in the attached department/offices/institutions with at least Two years service as such and having qualification mentioned in column No. 3. (b) Sixty Seven per cent by initial recruitment Note: - For the purpose of promotion, there shall be maintained a joint seniority list of Dastaries, Gestetner Operators, Qasids, Naib Qasids etc including other equivalent posts in the attached department/offices/institutions with reference to the dates of their regular appointment or acquiring Secondary School Certificate whichever is later.

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-13-

10.	Driver (BPS-04)	Having valid Driving License and preferably Literate.	18 to 32 Years	By Initial recruitment
11.	Naib Qasid /Chowkidar/ Behshi/Cook/Bearer/ Shop Attendant/ Laboratory Attendant etc	Preferably Literate	18 to 30 Years	By Initial recruitment

SECRETARY TO GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION DEPARTMENT

Endst : of even No & date:

1. The Secretary to Government of Khyber Pakhtunkhwa, Establishment and Administration Department Peshawar.
2. The Secretary to Government of Khyber Pakhtunkhwa, Finance Department Peshawar.
3. The Secretary to Government of Khyber Pakhtunkhwa, Law Department Peshawar.
4. The Secretary Khyber Pakhtunkhwa, Public Service Commission Peshawar.
5. The Accountant General Khyber Pakhtunkhwa Peshawar.
6. The Director, Elementary and Secondary Education Department Khyber Pakhtunkhwa Peshawar.
7. The Director of Education (FATA) Peshawar.
8. The Director, Curriculum and Teacher Education Khyber Pakhtunkhwa Abbottabad.
9. The Director, (PITE) Khyber Pakhtunkhwa Peshawar.
10. The Director, ESRU Elementary and Secondary Education Department Khyber Pakhtunkhwa Peshawar.
11. Manager Government Printing Press Khyber Pakhtunkhwa Peshawar.
12. The Deputy Director, EMIS (S&SE) Department Khyber Pakhtunkhwa Peshawar.
13. All District Education Officer (M&F) in Khyber Pakhtunkhwa.
14. All District Account Officer in Khyber Pakhtunkhwa.
15. All Agency Education Officer in FATA.
16. All Agency Account Officer in FATA.
17. PS to Governor Khyber Pakhtunkhwa, Peshawar.
18. PS to Chief Minister Khyber Pakhtunkhwa, Peshawar.
19. PS to Chief Secretary Khyber Pakhtunkhwa, Peshawar.

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20. PS to Minister E&SE Khyber Pakhtunkhwa. Peshawar.
21. PS to Secretary E&SE Khyber Pakhtunkhwa. Peshawar.
22. Master file


22-2-2013
SECTION OFFICER (Primary)

ATTACHED

ANNEXURE
"C"
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GOVERNMENT OF THE KHYBER PAKHTUNKHWA
ELEMENTARY AND SECONDARY EDUCATION DEPARTMENT.

NOTIFICATION

Peshawar, Dated the 31st October, 2018

No. SO(PE)E&SED/4-10/14/Ministerial Staff/2018:- In pursuance of the provision contained in sub-rule (2) of rule 3 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 and in supersession of all previous rules issued, to the extent of Laboratory Assistants, the Elementary and Secondary Education Department, in consultation with the Establishment Department and the Finance Department, hereby lays down the method of recruitment, qualification and other conditions specified in column No.3 to 5 of the Appendix to the Notification which shall be applicable to the posts in the Elementary and Secondary Education Department, as specified in column No.2 of the said Appendix:-

APPENDIX

S.No.	Nomenclature of the post.	Minimum qualification for appointment by initial recruitment or by transfer.	Age limit.	Method of recruitment.
1	2	3	4	5
01.	Lab: Superintendent.	---	---	By promotion, on the basis of seniority-cum-fitness, from amongst the Lab: Supervisor with at least ten (10) years service as Lab: Supervisors, Senior Lab: Assistants and Lab: Assistants.
02.	Lab: Supervisor..	At least Second Class Bachelor's Degree or equivalent qualification from a recognized University, in Natural Science with at least one of the subject (Physics, Chemistry, Botany or Zoology).	21-30 years.	(a) Sixty percent by promotion, on the basis of seniority-cum-fitness, from amongst Senior Lab Assistant with at least seven (7) years service as Senior Lab: Assistants and Lab: Assistants; and (b) forty percent by initial recruitment.
03.	Senior Lab: Assistant.	---	---	By promotion, on the basis of the seniority-cum-fitness, from amongst the Lab: Assistants with at least five years service as such.

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04	Lab: Assistant.	At least Second Division Intermediate Certificate or equivalent qualification from a recognized Board, with at least one of the subject (Physics, Chemistry or Biology).	18-30 years.	By initial recruitment. 75 and 25
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Lab Assistant - 7

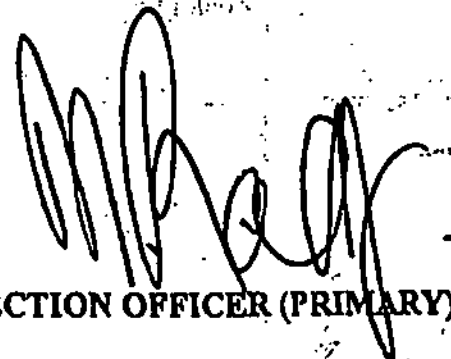
**SECRETARY TO
GOVERNMENT OF THE KHYBER PAKHTUNKHWA,
ELEMENTARY AND SECONDARY EDUCATION DEPARTMENT.**

Endst: No. & Date Even

Copy is forwarded to:-

1. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. The Secretary to Govt. of Khyber Pakhtunkhwa, Finance Department.
3. The Secretary to Govt. of Khyber Pakhtunkhwa, Establishment Department.
4. The Secretary to Govt. of Khyber Pakhtunkhwa, Law Department.
5. PSO to Chief Secretary to Govt. of Khyber Pakhtunkhwa.
6. PSO to Additional Chief Secretary Newly merged districts.
7. The Director (E&SE) Khyber Pakhtunkhwa Peshawar.
8. The Director ESRU, Khyber Pakhtunkhwa.
9. The Director Education (Newly Merged Districts), FATA Secretariat Warsak Road Peshawar.
10. The Director, Curriculum and Teacher Education, Khyber Pakhtunkhwa, Abbottabad.
11. The Director, (PITE) Khyber Pakhtunkhwa Peshawar.
12. Manager, Government Printing Press Khyber Pakhtunkhwa, Peshawar.
13. The Deputy Director EMIS, E&SE Department, with the request to upload this notification of E&SE Department website (www.kpese.gov.pk).
14. The Section Officers (Male/Female), E&SE Department, Peshawar.
15. All District Education Officers (Male/Female) in Khyber Pakhtunkhwa.
16. All Education Officers, newly merged districts of Khyber Pakhtunkhwa.
17. All District Accounts Officers in Khyber Pakhtunkhwa.
18. PS to Chief Minister, Khyber Pakhtunkhwa.
19. PS to Secretary, E&SE Department.
20. Master file.

RECEIVED
-9/-


SECTION OFFICER (PRIMARY)

1-2552712021 (01)
 Government of Pakistan
 Ministry of Federal Education &
 Professional Training

Islamabad, the 18th May, 2021

Subject: Meeting of DPC.

With reference to the subject the date and time of the meeting of the
 members of different categories of employees working in FDE has been fixed by the committee

agency as under:

Sr No	Name of post	Date of meeting	Time
01	One Step Promotion of Class-IV Employees of FDE and its Allied Educational Institutions (Former FG Colleges)	26-05-2021	11:00 hours
02	Promotion of Library Attendant (BS-02) to the post of Library Assistant (BS-09) working in Educational Institutions (Former FG Schools/Colleges)	26-05-2021	11:30 hours
03	Grant of Senior Scale BPS-05 06 and BPS-07 to Drivers of FDE, Islamabad	26-05-2021	12:00 hours
04	Promotion of Laboratory Attendant (BS-02) to the Post of Laboratory Assistant (BS-07) working in Educational Institutions (Former FG Schools/Colleges)	26-05-2021	12:30 hours

2. The representative of FDE is requested to make it convenient to attend above mentioned meeting accordingly.

Mr. Asif Iqbal Khan
 Director (A&S)
 FDE, Islamabad

(Wahed Akbar)
 Section Officer (A&S)
 FDE, Islamabad

ANNEXURE "D"



Government Of Pakistan
Ministry of Federal Education &
Professional Training

Islamabad the 18th MaySubject:- MEETING OF DPC

With reference to the subject the date and time of the meeting of the DPC promotions of different categories of employees working in FDE has been fixed by the concerned authority as under:-

Sr. No	Name of post	Date of meeting	Time
1)	One Step promotion of Class-IV Employees of FDE and its Allied Educational Institution (Former FG Colleges)	26/09/2021	11:00 hours
2)	Promotion of Library Attendant (BS-09) working in Educational Institutions (Former FG Schools/Colleges)	26/05/2021	11:30 hours
3)	Grant of Senior Scale BPS-05 06 & BPS-07 to Driver of FDE Islamabad	26/05/2021	12:00 hours
4)	Promotion of Laboratory Attendant (BS-02) to the post of Laboratory Assistant (BS-07) Working in Educational Institutions (Former FG schools/College	26/05/2021	12:30 hours

2. The representative of FDE is requested to make it convenient to attend above meeting accordingly.

(Waheed Akhtar)
Section Officer

Mr. Asif Iqbal Khan
Director (A&S)
FDE Islamabad

CC

1. APS to Deputy Secretary (FE) M/O FE&PT, Islamabad.

ANNEXURE "E"



-18-

To:

The Director (E&SE),
Department Khyber-Pakhtunkhwa.

Subject: DEPARTMENTAL APPEAL AGAINST THE NOTIFICATION/
ORDER DATED 28.01.2013 and 31.10.2018 WHEREBY THE
APPELLANT HAS NOT BEEN PROMOTED TO THE POST
OF LAB ATTENDANTS.

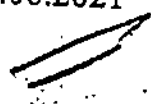
Respected Sir,

It is most humbly stated that I, Muhammad Javeed was appointed as Lab Attendant at GHS, FOREST COLLEGE PESHAWAR Vide Appointment order dated 16-12-2016 on consequences upon the approval of the department selection committee. After my appointment, the competent authority has been notification dated 28.01.2013 issued service rules/structure of different posts/wherein vide serial no, 9 column no, 5 cadre/post has not been included for promotion

That it is also pertinent to mention here that the concerned authority without fulfilling the codal formalities straight away issued notification dated 31.10.2018 the Lab Attendant has channelized to the Post of Senior Lab, Assistant Lab Supervisor, and Lab Superintendent but again the appellant ignored from the post of Lab Assistant. That no opportunity has been provided to me and as such I have been condemned unheard while issuing the notification / order dated 28.01.2013 and 31.10.2018.

It is, therefore, most humbly prayed that on acceptance of this Departmental appeal the notification/ order dated 28.01.2013 and 31.10.2018 may very kindly be modified /rectified for the purpose of promotion to the post of Laboratory Assistant.

Dated: 11.06.2021




APPELLANT

MUHAMMAD JAVEED
Lab Attendant
GHS, FOREST COLLEGE PESHAWAR



APPEAL NO. 7439 /2021

Diary No. 7625

Dated 22/9/2021

Mr. Muhammad Javeed, Lab Attendant (BPS-03),
GHS Police Colony, Nasir Bagh Road, Peshawar

APPELLANT

VERSUS

- 1- The Government of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
- 2- The Secretary Establishment Department, Civil Secretariat, Khyber Pakhtunkhwa, Peshawar.
- 3- The Secretary Finance Department, Civil Secretariat, Khyber Pakhtunkhwa, Peshawar.
- 4- The Secretary (E&SE) Department, Khyber Pakhtunkhwa, Peshawar.

RESPONDENTS

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED NOTIFICATION DATED 28.01.2013 WHEREBY VIDE SERIAL NO. 9 IN COLUMN NO. 5 LAB ATTENDANTS HAVE NOT BEEN INCLUDED FOR PROMOTION TO THE POST OF LAB ASSISTANT AND AGAINST NO ACTION TAKEN ON THE DEPARTMENTAL APPEAL OF APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS

Filed to-day

22/9/2021

PRAYER:

That on acceptance of this appeal the impugned Notification dated 28-01-2013 may very kindly be modified/ rectified to the extent of serial No. 9 column No. 5 by including the CADRE of lab attendant in the ibid column for the purpose of promotion to the post of Laboratory Assistant (BPS-07). Any other remedy which this august Tribunal deems fit that may also be awarded in favour of the appellant.

R/SHEWETH:
ON FACTS:

- 1- That appellant was appointed as Lab Attendant (BPS-03) in the respondent department and was posted at GHS Forest College, Peshawar vide Notification dated 16-12-2016. Copy of appointment Notification is attached as annexure A.

TESTED

 EXAMINER
 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar



S.No.	Date of order/ proceedings	Order or other proceedings with signature of Judge or Magistrate and that of parties where necessary.
1	2	3
	25.03.2022	<p style="text-align: center;">KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.</p> <p style="text-align: center;">Service Appeal No. 7439/2021</p> <p>Muhammad Javeed, Lab Attendant (BPS-03) GHS Police Colony, Nasir Bagh Road, Peshawar. ... (Appellant)</p> <p style="text-align: center;"><u>Versus</u></p> <p>The Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and others. ... (Respondents)</p> <p style="text-align: center;">ORDER</p> <p style="text-align: center;"><u>KALIM ARSHAD KHAN CHAIRMAN.</u>-Preliminary</p> <p>arguments of the learned Counsel for the appellant were heard yesterday.</p> <p>2. Through this appeal, the appellant (Muhammad Javeed) has challenged the notification dated 28.01.2013, whereby Vide Serial No. 9 in Column No. 5 Lab Attendants have not been included for promotion to the post of Lab Assistant.</p> <p>3. It is the case of the appellant that he was appointed as Lab Attendant (BPS-03) in the respondent department. He was posted at GHS Forest College Peshawar vide notification dated 16.12.2016 and till date is serving efficiently and to the entire satisfaction of his superiors. The respondent department vide impugned notification dated 28.01.2013 Issued service</p>

ATTESTED

EXAMINER
Khyber Pakhtunkhwa



rules/structure of different posts wherein at S.No.9 column No.5 the appellant's cadre/post had not been included for promotion to the post of Laboratory Assistant (BPS-07), thereby depriving him from promotion to the next higher scale. Vide notification dated 31.10.2018, the Lab Assistant has further been channelized to the post of Senior Lab Assistant, Lab Supervisor and Lab Superintendent but again the appellant's cadre/post had been ignored from channelizing to the post of Lab Assistant. Feeling aggrieved from the vires of the impugned notification/Service Rules dated 28.01.2013 and 31.10.2018, the appellant filed departmental appeal/representation before the competent authority on 11.06.2021 but no response has so far been received, hence, the present appeal.

4. Admittedly the appellant moved departmental appeal/representation on 11.06.2021 against the rules notified on 31.10.2018, which for the sake of arguments, even if considered to be a final order, not within 30 days rather years after notification of the rules rendering this appeal not maintainable with no application for condonation of delay.

5. Moreover, the prayer made in the appeal is:

"that on the acceptance of this appeal, the impugned Notification dated 28.01.2013 may very kindly be modified/rectified to the

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Cyber Punitulchwa
Service Tribunal
Mysuru



extent of serial No.9 column No.5 by including the CADRE of Laboratory Attendant in the ibid column for the purpose of promotion to the post of Laboratory Assistant (BPS-07). Any other remedy which this august Tribunal deems fit that may also be awarded in favour of the appellant"

6. The relief sought by the appellant in this appeal is a sort of direction to the respondents to amend the Notification No. SO(PE)4-10/SSRC/Ministerial Staff/2013 dated 28.01.2013 whereby method of recruitment, qualifications and other conditions specified in column 3 to 5 of the Appendix to the Notification, was laid down in pursuance of the provisions contained in sub rule (2) of rule 3 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 and in supersession of all rules issued in that behalf to the extent of Elementary and Secondary Education Department. Such a direction could not be given by this Tribunal in its limited powers/jurisdiction as that would amount to issuance of a writ of *mandamus*, which the Tribunal cannot.

Wisdom is derived from the judgment of the honourable Peshawar High Court reported as "2019 P.L.C (C.S.) 721 titled "*Zulfiqar Ahmed and another Versus Government Of Khyber Pakhtunkhwa, through Secretary Elementary and Secondary Education, Peshawar and 3 others*", wherein the honourable

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APPROVED
[Signature]
EXAMINER
Khyber Pakhtunkhwa

Peshawar High Court was pleased to hold as under:

7. Heard: In essence, the petitioners are seeking up-gradation of the post of Secondary School Teachers (SST) from BPS-16 to BPS-17 on two grounds. First, discrimination as in the sister provinces, the basic pay scale offered to SSTs is BPS-17 and secondly the unanimous resolution passed by the Provincial Assembly of Khyber Pakhtunkhwa on 05.01.2015, whereby it was unanimously agreed by the Provincial Assembly to allow up-gradation of post of SST Cadre in line with the service structure offered by Balochistan, Sindh, Gilgit Baltistan and Azad Jammu and Kashmir to the similarly placed SSTs. Since the matter relates to up-gradation of their posts (SST) from BPS 16 to BPS 17, which do not constitute the terms and condition of the civil servant, therefore, the said grievance is not amenable to the jurisdiction of the Service Tribunal. This issue has been finally laid to rest by the august Supreme Court of Pakistan in "Regional Commissioner Income Tax, Northern Region, Islamabad and another v. Syed Munawar All and others (2016 SCMR 859)" by holding that:-

"The aforesaid definition of the expression "upgradation" clearly manifests that it cannot be construed as promotion, but can be granted through a policy. In fact, this Court in the judgment titled as Ali Azhar Khan Baloch v. Province of Sindh (2015 SCMR 456) and an unreported judgment of this Court passed in the case of Chief Commissioner Inland Revenue and another v. Muhammad Afzal Khan (Civil Appeal No.992 of 2014) has held that the issue relating to upgradation of civil servants can be decided by a High Court in exercise of its constitutional jurisdiction and bar contained under Article 212(3) of the Constitution would not be attracted. The policy of upgradation, notified by the Government, in no way, amends the terms and conditions of service of the civil servant or the Civil Servants Act and or the Rules framed thereunder. The Service Tribunals have no jurisdiction to entertain any appeal involving the issue of upgradation, as it does not form part of the terms and conditions of service of the civil servants. The question in hand has already been answered by the aforesaid two judgments of this Court."

8. The petitioners also seek direction of this Court to the respondents to place the unanimous recommendation of the Provincial Assembly before the Cabinet/Provincial Government for giving effect to it. Since there is no order

ATTESTED

SECRETARY
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR

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25/3/22



impugned before us relating to enforcement of the terms and condition of the civil servants within the contemplation of section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 (The Act) and the relief claimed as stated above, is in the nature of a command to the departmental authority which in essence, cannot be issued by the Service Tribunal, having limited jurisdiction. Indeed, the petitioners are seeking issuance of writ of mandamus, which is a sole prerogative of the constitutional Courts. In this regard, wisdom can be drawn from the law laid down by the august Supreme Court in "Executive District Officer School and Literacy District Dir Lower v. Qamar Dost Khan (2006 SCMR 1630) and Pakistan International Airlines Corporation v. Samina Masood (PLD 2005 SC 831)". Hence, the objection of the respondents/government to the maintainability of the writ petition is overruled."

7. Therefore, this appeal is dismissed in *limine*. Consign.

(KALIM ARSHAD KHAN)
Chairman

ANNOUNCED
25.03.2022

Certified to be true copy

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application 28/03/2022

Number of Words 2400

Copying Fee 26/-

Urgent -

Total 26/-

Name of Copyist -

Date of Completion of Copy 07-04-2022

Date of Delivery of Copy 07-04-2022

-25- "9"

BEFORE THE HON'ABLE PEHAWAR HIGH COURT PESHAWAR

Writ Petition No. 2045-A/2022



Mr. Muhammad Javed, Lab Attendant (BPS-03),
GHS Police Colony, Nasir Bagh Road, Peshawar

..... **Petitioner:**

VERSUS

- 1- The Government of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
- 2- The Secretary Establishment Department, Khyber Pakhtunkhwa, Peshawar.
- 3- The Secretary Finance Department, Civil Secretariat, Khyber Pakhtunkhwa.
- 4- The Secretary (E&SE) Department, Khyber Pakhtunkhwa, Peshawar

..... **Respondents**

RE-FILED TODAY
Deputy Registrar
04 JUN 2022

**WRIT PETITION UNDER ARTICLE 199 OF THE
CONSTITUTION OF THE ISLAMIC REPUBLIC OF
PAKISTAN, 1973 AS AMENDED UP TO DATE**

RESHEWETH:
ON FACTS:

1. That the petitioner was appointed as Lab Attendant (BPS-03) in the respondent department and was posted at GHS Forest College, Peshawar.
Copy of appointment Notification dated 16-12-2016 is attached as **Annexure-A**

FILED TODAY
Deputy Registrar
01 JUN 2022

2. That right from the date of appointment till time, the petitioner is serving the respondent department quite efficiently, whole heartedly and up to the entire satisfaction of his superiors.

3. That the respondents Department vide impugned Notification dated 28-01-2013 issued service rules/structure of different posts wherein vide serial No. 9 column No. 5 it is astonishingly that the appellant cadre/post has not been included for promotion to the post of Laboratory Assistant (BPS-07) as such hence the petitioner was deprived from promotion to the next pay scale.

Copy of Notification dated 28-01-2013 is attached as **Annexure-B**

ATTESTED
EXAMINER
Peshawar High Court

Judgment Sheet
PESHAWAR HIGH COURT, PESHAWAR
JUDICIAL DEPARTMENT.

W.P.No.2045-P/2022

Muhammad Javed
Versus

The Govt: of KPK through Chief Secretary
Khyber Pakhtunkhwa and others.



Date of hearing 04.10.2023

Petitioner by: Mr. Noor Muhammad Khattak,
advocate.

Respondent (s).by: Mr. Junaid Zaman, AAG

JUDGEMENT

IJAZ ANWAR. J:- The instant writ petition has

been filed under Article 199 of the Constitution of

Islamic Republic of Pakistan, 1973 with the

following prayer:

“It is humbly prayed that on acceptance of the instant writ petition the impugned Notification dated 28.01.2023 may very kindly be modified/rectified to the extent of S.No.09 Column No. 5 by including the CADRE of Laboratory Attendant in the ibid column for the purpose of

ATTESTED
EXAMINER
Peshawar High Court

promotion to the post of Laboratory Assistant (BPS-07). Any other remedy which this august Court deems fit that may also be awarded in favour of the petitioner."

2. In essence, the grievance of the petitioner who is serving in the respondent Department as Lab Attendant (BPS-03) is that vide Notification dated 28.01.2013 service rules/structure for different posts has been laid down, however, no channel of promotion has been provided to the post of Lab Attendant BPS-03.

3. Comments were called from the respondents which were submitted accordingly wherein the issuance of the desired writ has been opposed.

4. Arguments of learned counsel for the parties heard and record perused.

5. Petitioner has challenged the vires of the service rules notified Vide Notification dated

ATTESTED
EXAMINER
Peshawar High Court

28.1.2013 on the ground that no structure has been provided therein for the post of Lab Attendant (BPS-3) for promotion to the post of Lab Assistant BPS-07.

6. Though the petitioner has earlier approached the Service Tribunal for the same relief pertaining to vires of the rules, however his petition has been dismissed on the ground of jurisdiction. We feel that in view of the judgements of the superior Courts rendered in "LA Sharwani case" "1991 SCMR 1041" and "Mubin ul Salam case" "2006 SCMR 602", the rules pertaining to promotion, seniority etc being foremost terms and condition of service, as such can only be questioned before the Service Tribunal established under the Service Tribunal Act, 1974. Besides, in terms of Article 212 of the Constitution of Islamic Republic of Pakistan, 1973, the jurisdiction of this court is barred.

ATTESTED
EXAMINER
Peshawar High Court

7. For what has been discussed above,
this writ petition is dismissed for want of
jurisdiction.

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JUDGE

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JUDGE

**Announced on;
Dated. 04.10.2023**

D.B. Hon'ble Mr. Justice Ijaz Anwar and Hon'ble Mr. Justice Syed Muhammad Attique Shah

CERTIFIED TO BE TRUE COPY

**EXAMINER
Peshawar High Court, Peshawar
Authorized Under Article 8.7 of
the Qanun-e-Shahadat Act 1984**

06 OCT 2023

12015

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Date of Presentation of Application.....

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**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.**

APPEAL NO. 128 /2024



Mr. Muhammad Javed, Lab Attendant (BPS-03)
GHS Police Colony, Nasir Bagh Road, Peshawar.

APPELLANT

VERSUS

- 1- The Government of Khyber Pakhtunkhwa, through Chief Secretary Civil Secretariat, Khyber Pakhtunkhwa, Peshawar.
- 2- The Secretary Establishment Department, Khyber Pakhtunkhwa, Peshawar.
- 3- The Secretary Finance Department Khyber Pakhtunkhwa, Peshawar.
- 4- The Secretary Elementary Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.
- 5- Director Elementary Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.

RESPONDENTS

SERVICE APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, 1974 AGAINST THE IMPUGNED NOTIFICATION DATED 28/01/2013, WHEREBY VIDE SERIAL NO 9 IN COLUMN NO 5, THE POST OF LAB ATTENDANT BPS-03 HAVE NOT BEEN INCLUDED FOR PROMOTION TO THE POST OF LAB ASSISTANT AND AGAINST NOT TAKING ACTION ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS.

Prayer:-

That on acceptance of the instant service appeal, the impugned notification dated 28/01/2023 may kindly be modified/rectified of serial no 9 column no 5 by including the cadre of lab attendant in the ibid column for the purpose of promotion to the post of Laboratory Assistant, furthermore that the appellant may kindly be considered for promotion to the post of Lab Assistant (BPS-07) with effect from, when the appellant completed his service for promotion to the post of Lab

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

12-11-24

Assistant, with all back benefits. Any other remedy which this august Tribunal deem fit may also be awarded in favour of the appellant.

R/SHEWETH:

ON FACTS:

Brief facts giving rise to the present appeal are as under:

- 1) That the appellant was appointed as Lab Attendant (BPS-03) in the respondent department and was posted at GHS Forest College, Peshawar. Copy of appointment notification dated 16/12/2016 is attached as annexure.....**A**
- 2) That right from the date of appointment till date, the appellant is serving the respondent department quite efficiently, whole heartedly and upto the entire satisfaction of his superiors.
- 3) That the respondents department vide impugned notification dated 28/10/2013 issued service rules/structures of different posts, wherein vide Serial No 09 Column No 05, that astonishingly the cadre/post of the appellant has not been included for promotion to the post of Laboratory Assistant (BPS-07) as such and the appellant was deprived from the promotion to the next pay scale. Copy of notification dated 28/10/2013 is attached as annexure.....**B**
- 4) That vide notification date 31/10/2018, the Laboratory Assistant has further been channelized to the post of Senior Laboratory Assistant, Lab Supervisor and Lab Superintendent, but again the appellant's cadre/post has been ignored from channelizing to the post of Lab Assistant. Copy of notification dated 31/10/2018 is attached as annexure.....**C**
- 5) That it is pertinent to mention here that in the Federal Education & Professional Training Department of the Federation, the Laboratory Attendants have channel of promotion to the post of Laboratory Assistant. Copy of minutes of DPC meeting is attached as annexure.....**D**
- 6) That feeling aggrieved from the vires of the impugned notification/service rules dated 28/01/2013 & 31/10/2018, the appellant filed departmental appeal/representation before the

competent authority on which no response has so far been received. Copy of departmental appeal/representation is attached as annexure.....E

- 7) That the appellant having no other adequate remedy, has filed service appeal before this Honourable Tribunal, however, the same fall prey to dismissal in limine with the plea that:-

"The appellant also seek direction of this court to the respondent to place the unanimous recommendation of the Provincial Assembly before the Cabinet/Provincial Government for giving effect to it. Since there is no Impugned order before us relating to enforcement of the terms and condition of the civil servants within the contemplation of section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 (The Act) and the relief claimed as stated above, is in the nature of command to the departmental authority, which in essence, cannot be issued by the Service Tribunal, having limited jurisdiction. Indeed, the appellant seeking issuance of writ of mandamus which a sole prerogative of the constitutional courts. In this regard, wisdom can be drawn from the law laid down by the august Supreme Court in "Executive District Officer School & Literacy District Dlr Lower...Versus... Qamar Dost Khan (2006 SCMR 1630) and Pakistan International Airlines Corporation ...Versus... Samina Masood (PLD 2005 SC 831)". Hence the objection of the respondents/Government to the maintainability of writ petition is overruled, therefore, the appeal is dismissed in limine. Consig. Copy of order dated 25/03/2022 is attached as annexure.....F

- 8) That since this Honourable Court has not entertained the issue on the ground of lack of jurisdiction, hence the appellant filed a Writ Petition No 2045-P/2022 before the Honourable Peshawar High Court, Peshawar, wherein the Honourable High Court held that:-

6. "Though the petitioner has earlier approached the Service Tribunal for the same relief pertaining to vires of the rules, however, his petition has been dismissed on the ground of jurisdiction. We feel that in view of the judgments of the superior courts rendering in "I.A Sharwani case 1991 SCMR 1041 & Mubin Ul Salam case 2006 SCMR 602, the rules pertaining to promotion, seniority etc being foremost terms and condition of service, as

such can only be questioned before the Service Tribunal established under the Service Tribunal Act, 1974. Besides, in terms of Article 212 of the Constitution of Islamic Republic of Pakistan, 1973, the jurisdiction of this Court is barred.

7. For what has been discussed above, this writ petition is dismissed for want of jurisdiction. Copy of order dated 04/10/2023 is attached as annexure.....G

9) That now the appellant having no other remedy, filed the instant service appeal on the following grounds amongst other:-

GROUND:

- A- That the impugned notification/service rule issued vide dated 28/01/2013 by not including the appellant's cadre/post for promotion to the post of Lab Assistant is ultra vires, facts, law, norms of natural justice and materials on record, hence not tenable and liable to be modified/amended.
- B- That the action and inaction of the respondents by ignoring the appellant, promoting to the next higher cadre/post without any reason and justification is against the law, facts, norms of natural justice and materials on the record hence not tenable and liable to be modified/rectified.
- C- That appellant has not been treated by the respondent Department in accordance with law and rules on the subject noted above and as such the respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973.
- D- That, the treatment meted out to the appellant is clearly based on discrimination and malafide and as such the respondents violated the principle of natural justice.
- E- That the appellant has been discriminated by the respondents department on the subject noted above and as such the respondents violated the principles of natural justice.
- F- That the impugned notification dated 28/10/2013 by not providing the projects of prospects of promotion to the appellant's cadre/post is also violation of section 9 of the KP Civil Servant Act, 1973.

- G- That according to Article 38 of the Constitution of Islamic Republic of Pakistan, 1973, the state is bound to reduce disparity in the income and earning of individuals including persons in the Service of the Federation. That in light of the mentioned article the appellant is on strong footing.
- H- That appellant seeks permission to advance other grounds and proofs at the time of hearing.

It is therefore, most humbly prayed that the appeal of the appellant may very graciously be accepted as prayed for, please.




APPELLANT

THROUGH:



**NOOR MUHAMMAD KHATAK
ADVOCATE SUPREME COURT**



UMAR FAROOQ MOHMAND



WALEED ADNAN

&



**MAHMOOD JAN
ADVOCATES HIGH COURT**

CERTIFICATE:

No such like appeal is pending or filed between the parties on the subject matter before this Honorable Tribunal.



Advocate

AFFIDAVIT

I, Mr. Muhammad Javed, Lab Attendant (BPS-03) GHS Police Colony, Nasir Bagh Road, Peshawar, do hereby solemnly affirm on oath that the contents of the above appeal are true and correct to the best of my knowledge and believe and nothing has been concealed from this Honorable Tribunal.



DEPONENT

35

11.03.2024

Learned counsel for the appellant present and sought adjournment on the ground that he has not made preparation for preliminary arguments. Adjourned. Last opportunity given. To come up for preliminary hearing on 16.04.2024 before the S.B. Parcha Peshi given to learned counsel for the appellant.

SCANNED
KPST
Peshawar

Naeem Amin

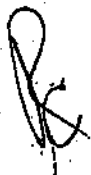

(Salah-ud-Din)
Member (J)

16.04.2024 Learned counsel for the appellant present and argued that earlier appellant filed service appeal bearing No. 7439/21 upon the same cause of action challenging the notification dated 28.01.2013 whereby Sr. No. 9 in column No. 5 the post of Lab Attendant have not been included for promotion to the post of Lab Assistant. Said service appeal was dismissed in limine on 25.03.2022 by the Worthy Chairman by holding that this Tribunal lacks the jurisdiction to issue writ of mandamus which is exclusive jurisdiction of Worthy Peshawar High Court, under Article 199 of Constitution of Islamic Republic of Pakistan 1973, by placing reliance on judgment reported as 2019 PLC (C.S) 721 titled "Zulfiqar Ahmad and another Vs. Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education". Appellant after decision of this Tribunal approached worthy Peshawar High Court by filing writ bearing No. 2045-P/2022 which was decided vide order dated 04.10.2022 by their lordship wherein reliance is placed on "I.A Shirwani Case "1991 SCMR 1041" and Mubin Ul Salam case

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

12-11-24



"2006 SCMR 602" and it is held that the rules pertaining to promotion, seniority etc. being foremost terms and condition of service, as such can only be questioned before service tribunal established under Service Tribunal Act, 1974 besides, in terms of Article 212 of the Constitution of Islamic Republic of Pakistan, 1973, the jurisdiction of this court is barred, therefore, writ petition was dismissed for want of jurisdiction. In view of verdicts of Peshawar High Court and verdict of Worthy Chairman to determined real controversy in issue and to reach just and fair conclusion, in my humble opinion it will be in the interest of justice that let this appeal be converted into application under section 12(2) petition. Office is directed to enter it into the relevant register and issue notices to the respondents for submission of written reply. To come up for written reply/arguments 14.05.2024 before D.B. P.P given to the parties.

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar
12-11-24

Kakemullah

R
(Rashida Bano)
Member (J)

Khyber Pakhtunkhwa Service Tribunal, Peshawar

Application No.	635	Date	12-11-24
Name of Applicant	Abdul Hayat		
Number of Words/Pages	3-1		
Copying Fee	15/-		
Urgent/Ordinary	-		
Total	15/-		
Name & Sign of Copyist	Zeeshan		
Date of Completion of Copy	12-11-24		
Date of Delivery of Copy	13-11-24		

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"I"

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ORDER

21.10.2024 Mr. Kalim Arshad Khan, Chairman:-

Learned counsel for the

petitioner present. Mr. Muhammad Jan, District Attorney for the respondents present.




2. The Tribunal vide order dated 16.04.2024 converted the appeal into an application under section 12(2) of the CPC. Learned counsel for the petitioner submitted that the issue involved in the matter was basically assumption of jurisdiction by the Tribunal in appeal No. 7439/2021 dated 25.03.2022, which, according to the learned counsel for the petitioner, was in contradiction of the judgment of Honorable Peshawar High Court, passed in Writ Petition No. 2045/2022 titled "Muhammad Javed versus Government of Khyber Pakhtunkhwa", decided on 04.10.2023 so he wants to move a proper application under Section 12(2) of CPC raising the grounds mentioned in the said section and also challenging the order passed in appeal No. 7439/2021 dated 25.03.2022. While disposing of this appeal we allow the petitioner to make proper application under Section 12(2) CPC subject to limitation. Consign.

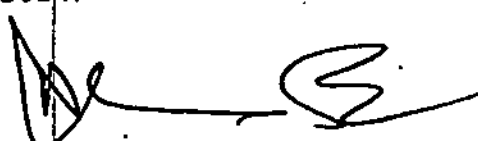
3. *Pronounced in open court and given under our hands and seal.*

of the Tribunal on this 21st day of October, 2024.

Certified to be true copy

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar
12-11-24


(Muhammad Akbar Khan)
Member (E)


(Kalim Arshad Khan)
Chairman

Khyber Pakhtunkhwa Service Tribunal, Peshawar

Application No. 653 Date 12-11-24

Name of Applicant Hidayat

Number of Words/Pages 1-

Copying Fee 3/-

Urgent/Ordinary 5/-

Total 8/-

Name & Sign of Copyist Sheehan

Date of Completion of Copy 12-11-24

Date of Delivery of Copy 13-11-24

Kawranullah

VAKALATNAMA
BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

12(2) NO: _____ OF 2024

M. Javed

(APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

Govt of KPK

(RESPONDENT)
(DEFENDANT)

I/We M. Javed

Do hereby appoint and constitute **Noor Mohammad Khattak Advocate Supreme Court** to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate Counsel on my/our cost. I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter.

Dated. ____/____/202

M. Javed
CLIENT

ACCEPTED

NOOR MOHAMMAD KHATTAK
ADVOCATE SUPREME COURT
(BC-10-0853)
(15401-0705985-5)

UMAR FAROOQ MOHMAND

WALEED ADNAN

KHANZAD GUL

&

MUJEEB UR REHMAN
ADVOCATES

OFFICE:

Flat No. (TF) 291-292 3rd Floor,
Deans Trade Centre, Peshawar Cantt.
(0311-9314232)