

8/1/22

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE SAJJAD ALI SHAH

MR. JUSTICE JAMAL KHAN MANDOKHAIL

(پ ۵)

Civil Appeals No. 290 to 297 of 2022

*(On appeal from the judgments of the Khyber
Pakhtunkhwa Service Tribunal dated
17.11.2020 in Service Appeal Nos. 126, 127,
129, 131 of 2019 and 805 of 2018)*

Badshah Zamin & others *(in all appeals)*

... Appellant(s)

VERSUS

Siraj Khan & others *(in CA 290)*

Inayat ur Rehman & others *(in CA 291)*

M. Rafi and others *(in CA 292)*

Guld Ayub & others *(in CA 293)*

Dost Muhammad & others *(in CA 294)*

Zarif Shad & others *(in CA 295)*

Jamal ud Din & others *(in CA 296)*

... Respondent(s)

For the Appellant(s) : Mr. Muhammad Shoaib Shaheen, ASC
(in all appeals)

For Private Respondents : Mr. Aftab Alam Yasir, ASC

For KPK : Mr. Zahid Yousaf Qureshi, Addl. AG
Shahid Iqbal, L.O. (KPPSC)

Date of Hearing : 02.06.2022

JUDGMENT

Jamal Khan Mandokhail, J. We intend to dispose of all these appeals through this judgment as the question of law in all the appeals is common and these are directed against a consolidated judgment dated 17.11.2020 passed by the Khyber Pakhtunkhwa Service Tribunal, Peshawar.

2. Facts in brief are that the respondent No.1 was appointed as Subject Specialist on contract basis in

the Education Department of Khyber Pakhtunkhwa (KP), in the year 2005. The KP government promulgated the Khyber Pakhtunkhwa Employees (Regularization of Services) Act, 2009 (the Act), on 24th October 2009. Pursuant to the Act, the services of employees of KP government appointed on contract or *ad hoc* basis, holding the posts on 31st December 2008 till the promulgation of the Act were regularized, consequently, services of the respondent No.1 were also regularised.

3. It is important to mention here that before promulgation of the Act, the education department KP invited applications from suitable candidates for appointing them against different posts of Subject Specialist. The process was started by the Khyber Pakhtunkhwa Public Service Commission (the KPPSC). In view of the fact that the candidates were large in number, therefore, it could not be possible to recommend all the candidates at one go. Consequently, the KPPSC on 15th September 2009 recommended the first batch for their appointment. The process of recommendation was continued and ultimately it was completed when the last batch was recommended on 11th June 2010. The official respondents issued a seniority list, whereby the appellants were placed senior to the respondent No.1 and others, vide seniority list dated 13.12.2017. The respondent No.1 feeling aggrieved, filed a departmental appeal, which remained un-responded, as such, he approached the learned Peshawar High Court because of the fact that by that time, the Khyber Pakhtunkhwa Service Tribunal (the Tribunal) was not functioning. When the Tribunal started functioning, the learned High Court referred the matter to it for adjudication and decision. The Tribunal asked the respondent No.1 to file proper memo of appeal, which he did and the appeal was registered

accordingly. After hearing the parties, the Tribunal allowed the appeal of the respondent No.1 in the following terms:

"10. In view of the situation, appeals are accepted, the impugned Seniority list dated 13.12.2017 stands set aside with directions to respondent department to correct/modify the impugned seniority list and the persons whose services were regularized vide notification dated 31.05.2010 w.e.f. 24.09.2009 under the Khyber Pakhtunkhwa Employees (Regularization of Services) Act, 2009 shall be placed senior to all those persons recommended by the Commission after the commencement of the Act *ibid* as per provisions contained in Section 4 of the Act *ibid*. No order as to costs. Filed be consigned to the record room."

4. The appellants filed civil petitions which were converted into appeals, by means of the order dated 10.03.2022, which is reproduced herein below:

"After hearing the learned counsel for the parties, and in the facts and circumstances of the case, we find it appropriate to grant leave to appeal in the instant petitions to examine the question as to what, in terms of section 4 of Khyber Pakhtunkhwa Employees (Regularization of Services) Act, 2008, and the other relevant law and regulation, would be the point of initiation of recommendations by the Khyber Pakhtunkhwa Public Service Commission ("KPPSC"), and as to when in fact such initiation commenced in respect of the petitioners.

2. At this point in time, Mr. Muhammad Shoaib Shaheen, the learned counsel for the petitioners requests to the Court to allow him to implead KPPSC in this case. The request is allowed. The amended memo of petition be accordingly filed within a week, so that notices be issued to KPPSC for a date after four weeks."

5. Heard the learned counsel for the parties and have perused the record. The controversy between the parties revolves around Sections 3 and 4 of the Act, which are reproduced herein below:

"3. Regularization of services of certain employees.---All employees including recommendees of the High Court appointed on contract or *ad hoc* 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.

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.

(2) The seniority interse of the employees, whose services are regularized under this Act within the same service or cadre, shall be determined on the basis of their continuous officiation in such service or cadre:

Provided that if the date of continuous officiation in the case of two or more employees is the same, the employee older in age shall rank senior to the younger one."

(Emphasis supplied)

6. Perusal of the above provisions of the Act would reveal that the contract and *ad hoc* employees, holding the post on 31st December 2008 till the commencement of the Act shall be deemed to have been appointed on regular basis w.e.f. 24th September 2009, i.e. the date of the promulgating of the Act. The issue between the private parties in the appeals is with regard to the determination of their seniority. According to section 4 of the Act, the employees whose services are regularized pursuant to the Act, "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." Through this section, the law-makers have given preference to those employees, who

were recommended by the KPPSC for their appointment, before the promulgation of the act, irrespective of their actual date of appointment.

7. The first batch of the employees was recommended by the KPPSC on 15th September 2010, before the commencement of the Act, whereas, because of bulk of the candidates, the recommendations of rest of the candidates were made on different dates, after the commencement of the Act. The question before us is that rest of the candidates, who were recommended by the KPPSC for their appointments, after the commencement of the Act, would get the benefit of section 4 of the Act or otherwise? The relevant provisions of the Act are required to be read alongwith Section 35(3)(a) and (b) of the Khyber Pakhtunkhwa Public Service Commission Regulations, 2003 (the Regulations), which are reproduced herein below:

"35. RECOMMENDATIONS.

(1) ---

(2) ---

(3) (a) Where a large number of subjects/specialties are included in an advertisement, recommendations may not be pended till the finalization of the entire batch but instead zonal allocation be worked out subject-wise and recommendation conveyed to the Department without indicating to them the zonal allocation and the inter-se-seniority. In recommendations to the Department it shall be made clear that the inter-se-seniority of the recommendee is linked with other subjects and the overall merit position and zonal adjustment will be intimated on the completion of interviews in all subjects.

(b) The combined merit list shall be against a particular advertisement where by the posts were advertised collectively but recommendations were staggered due to interview schedule or any other reason."

8. In clause (a) of sub-section (1) of section 35 of the Regulations, it has been clarified that where a large

number of candidates apply for a large number of posts, the recommendations may not be pended till the finalization of the entire batch. In case the recommendation of any batch is made, in the first instance, following by recommending other batches of the candidates for their appointment, the *inter se* seniority shall be on the basis of their merits, determined by the KPPSC, without taking into account the dates of recommendations. The intention of the law-makers is very much clear that in case of more than one candidate, if the recommendation of the commission is withheld or delayed in respect of one or more candidates, for want of completion of the process or for any other reason, beyond the control of the candidates, the recommendations of the commission made subsequently on different dates, are to be considered to have been made by the commission on the dates, when first recommendation was made. Under such circumstances, the date of the recommendations of the first batch, sent to the competent authority for the appointment shall be considered as the date of recommendation for all.

9. Admittedly, the recommendation of the first batch amongst the appellants were made by the KPPSC to the competent authority on 15.09.2009, whereas the Act was promulgated on 24.10.2009, therefore, the recommendations of all the appellants shall be deemed to have been made to the competent authority prior to the commencement of the Act, irrespective of the subsequent recommendations and dates of their appointments. Hence, the services of those employees, which were regularized pursuant to the Act, shall rank junior to those candidates, whose recommendations were made by the KPPSC, prior to the commencement of the Act. The department while constructing the seniority list was right

in placing the appellants senior to those who were regularized pursuant to the Act. The list has wrongly been reversed by the Tribunal, which amounts to mis-interpretation of the relevant provisions of law, which is an illegality, on the basis whereof, the judgment impugned is not sustainable.

These are the reasons for our short order dated 02.06.2022, which is reproduced herein below:

“For the reasons to be recorded separately, all these appeals are allowed and the orders of the Khyber Pakhtunkhwa Service Tribunal, Peshawar are set aside.”

B-V
Islamabad,
02.06.2022
~~NOT APPROVED FOR REPORTING~~
K.Anees/-