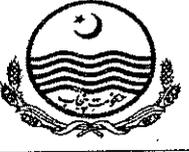


REGISTERED



GOVERNMENT OF THE PUNJAB
SPECIAL EDUCATION DEPARTMENT
31-Sher Shah Block New Garden Town, Lahore

ORDER

No. LO(Writ)1-42/2024. WHEREAS, Ms. Fouzia Khanum, Physical Education Teacher (BS-09), Govt. Institute for the Blinds, Girls, Rawalpindi ('petitioner') filed Writ Petition 848/2024 before Lahore High Court, Rawalpindi Bench, Rawalpindi with following prayer:

"In view of above submissions, it is respectfully prayed that an appropriate writ may kindly be issued and respondent No.2 may kindly be directed for award of promotion / pro-forma promotion as Lecturer Physical Education (BS-17) w.e.f. 16.08.2017 when her juniors/colleagues were so promoted in accordance with rule 9(2) of Promotion Policy-2010 as the vacancies are still vacant /available with all back benefits.

It is also prayed that authority may kindly be directed to hold the recruitment process as per advertisement published for fresh appointment dated 11.01.2024 in violation of in-service promotion quota "25% as per Rules-2009 and as per amended rules "40% in service promotion quota which is reserved for employees.

Any other relief which this honorable Court may deem fit and proper in the circumstances of the case may also be granted to the petitioner."

The instant Writ Petition was **disposed of** by the Honorable Lahore High Court, Rawalpindi Bench, Rawalpindi vide order dated 19.03.2024 with following directions:

"xxx. 2. Be that as it may, since under Rule 3(3) of the Punjab Government Rules of Business, 2011, business of the Government is distributed amongst several Departments in the manner indicated in the Second Schedule and under Rule 10 of these rules, the respondent No.2 / Secretary, Special Education Department, Government of the Punjab, Lahore being official head of the Department, can look into the matter as has been held by this Court in the case of PIA Officers Cooperative Housing Society Limited versus Province of Punjab etc. (2023 LHC 5208) (LHC Citation), a copy of this writ petition along with all the annexures is remitted to respondent No.2 who will consider it as a representation of the petitioner and decide the issue in hand after providing proper hearing to all concerned including the petitioner, strictly in accordance with law and keeping in view the rationale given by this Court in the judgement referred above, which is binding upon him under Article 201 of the Constitution of Islamic Republic of Pakistan, 1973. Respondent No.2 will pass a well-reasoned and speaking order in the matter within four weeks from the receipt of certified copy of this order.

Disposed of."

2. **AND WHEREAS**, in compliance with the directions of the Hon'ble Lahore High Court, Rawalpindi Bench, Rawalpindi the petitioner alongwith all concerned was afforded an opportunity of personal hearing on 05.04.2024. During

hearing, the petitioner while reiterating the stance already taken by her in Writ Petition, *inter alia*, contended that she has been working as Physical Education Teacher (BS-09) in Special Education Department since 17.04.2004; that she fulfills the criteria for promotion from the post of Physical Education Teacher (BS-09) to the post of Instructor Physical Education (BS-17) as envisaged at Sr. No. 143 of Notification No. SOR-III(S&GAD)1-17/2007 dated 25.08.2009; that meeting of Departmental Promotion Committee was held on 16.08.2017 but she was deferred due to imposition of major penalty of forfeiture of past service for a period of five years vide order dated 23.12.2013; that the penalty she was awarded cannot stand in the way of her promotion because she was fit for promotion under Service Rules; that she possesses the prescribed qualifications and, as per the Seniority list of Physical Education Teachers circulated by the Administrative Department on 13.12.2021, she holds the first position amongst PET/PTI; that in the meeting of Departmental Promotion Committee held on 16.08.2017, Ms. Maimoona Tufail, Ms. Naveera Kausar and Ms. Shagufta Jabeen were promoted as Instructor Physical Education (BS-17) but she was informed by the authority that her name would be considered in the meeting of Departmental Promotion Committee which will be held in 2018; that Mr. Tayyab was selected through Punjab Public Service Commission as Lecturer Physical Education and posted at Govt. Degree College of Special Education, Rawalpindi but as per Service Rules, she was to be promoted on said post; that out of 03 posts of lecturer, one post was reserved for promotion and she was also available but her case was not considered; that she earlier filed Writ Petition No. 1140/2018 in the Hon'ble Lahore High Court, Rawalpindi Bench, Rawalpindi. The said Writ Petition was disposed of with the direction to the department, but the authority rejected her representation vide order dated 19.07.2018 as she was awarded major penalty which was to expired on 22.12.2018 and hence her case of promotion was to be considered after 22.12.2018; that till now meeting of DPC has not been convened by the department but 04 post for fresh recruitment advertised in newspaper on 11.01.2024 which violate the rule / law; that she has filed applications but no action has been taken so far; that 03 seats of Lecturer Physical Education and 17 seats of Instructor Physical Education are laying vacant in all divisions from 2018 till now. Lastly, she requested that in the light of notification dated 25.08.2009, she may be promoted to the post of Instructor Physical Education (BS-17) w.e.f. 29.09.2017 i.e., the date of promotion of officer who is junior to her.

3. **AND WHEREAS**, Director (Admn), Directorate General of Special Education, Punjab, Lahore and District Education Officer (Special Education), Rawalpindi attended the hearing and apprised about the facts of the case. The stance taken by the Departmental Representatives can be summed in the manner that petitioner was appointed as Physical Education Teacher (BS-09) on 17.04.2004 on regular basis. The petitioner was awarded major penalties (i) forfeiture of past service for a period of five years vide order No. 16/595-admn:2010(p-II)/9301 dated 23.12.2023 and (ii) Compulsory retirement vide order No. 16/595-Admn:2010/5073 dated 17.06.2014; that the petitioner filed an appeal against the order before Appellant Authority which was rejected vide order No. 16/595-Admn:2010/7256 dated 28.08.2014. There-after, the petitioner again filed an appeal against the order of Appellant Authority to the Reviewing Authority / Secretary Special Education which was partially accepted and penalty order was modified by reducing the penalty

of Compulsory Retirement into minor penalty of Censure vide order No. LO(SE)Inq-Misc/2015 dated 17.06.2015; that as per the Special Education Department (Directorate of Special Education) Service Rules, 2006 amended vide Notification dated 25.08.2009 by the Regulations Wing, S&GAD, Govt. of the Punjab, the post of Physical Education Teacher (BS-09) had a promotion channel to the post of Lecturer Physical Education / Lecturer (DPE) / Instructor Physical Education (BS-17). Service Rules for the said post as notified in 2009 are reproduced as under:

"i) 50% by initial recruitment.

ii) 25% by promotion on seniority cum fitness basis from amongst the D.P.E. (BS-16).

iii) 25% by promotion from amongst PTI / PET / DPE having qualification prescribed for initial recruitment.

Note: Seniority of PTI/PET/DPE will be maintained from the date of acquiring requisite qualification or from the date of joining in case of a person who holds the requisite qualification prior to appointment as such.

If none is available for promotion then by initial recruitment."

It was further apprised that the case for promotion of the petitioner was considered in the meeting of Department Promotion Committee held on 16.08.2017 and she was superseded due to imposition of major penalty awarded to her vide order dated 23.12.2013; that Regulations Wing of S&GAD, Govt. of the Punjab while repealing the existing Service Rules of Directorate of Special Education, Punjab promulgated the Punjab Special Education Department (Directorate General of Special Education) Service Rules vide Notification dated 28.12.2021. As per the newly notified Service Rules, the post of Physical Education Teacher (BS-09) has a channel to the post of Instructor Physical Education (BS-17) in the following manner:

Sr. No.	Name of post	Method of recruitment
1.	P.T.I / P.E.T (BS-11)	<i>i) 75% by initial recruitment; and ii) 25% by promotion on the basis of seniority cum-fitness from amongst the P.T.Is / P.E.Ts (BS-09).</i>
2.	P.E.T(BS-14)	<i>By promotion on the basis of seniority cum-fitness from amongst the P.T.Is / P.E.Ts (BS-11) having five years' service in the functional unit.</i>
3.	Instructor Physical Education (BS-17)	<i>i) 50% by initial recruitment; and ii) 40% by promotion on the basis of seniority cum-fitness from amongst the P.T.Is / P.E.Ts (BS-11) having seven years' service as such in the functional unit; and iii. 10% by promotion on the basis of seniority cum-fitness from amongst the P.E.Ts (BS-14) possesses qualification prescribed for initial recruitment having five years' service as such in the functional unit.</i>

According to existing Service & Recruitment Rules, 2021, no provision of promotion of P.E.Ts / P.T.Is (BS-09) as Instructor Physical Education (Bs-17) is available. However, the petitioner will be considered for promotion against the post of P.E.T. (BS-11) as per existing Service Rules. Director (Admn), DGSE further stated that for preparation of working paper, the petitioner has already been requested to provide Performance Evaluation Report(s) vide letters No. DGSE-Admn:E-IV/2019/5149 dated 14.09.2023, No. DGSE-Admn:E-IV/2019/5758 dated 11.10.2023 & No. DGSE-

Admn:E-IV/2019/6804 dated 13.11.2023 but the petitioner has not submitted her PERs till date. The departmental representatives lastly requested that representation of the petitioner is devoid of merits and the prayer sought for through representation is not made out, hence same may be rejected.

4. **AND WHEREAS**, after considering/examining the record pertaining to the case it has been observed that as regards to request of the petitioner that she is entitled for promotion w.e.f. 29.09.2017 (*when officer junior to him was promoted*), perusal of record shows that subsections (1)&(6) of Section 8 of the Punjab Civil Servants Act, 1974 provides as under:

"(1) A civil servant shall be eligible to be considered for appointment by promotion to a post reserved for promotion in the service or cadre to which he belongs in a manner as may be prescribed; provided that he possesses the prescribed qualifications."

(6) A post referred to in sub-section (1) may either be a selection post or a non-selection post to which promotion shall be made as follows:

(a) in the case of a selection post, on the basis of selection on merit; and

(b) in the case of a non-selection post, on the basis of seniority-cum-fitness."

Whereas, Sections 8(2) & (3) of the Punjab Civil Servants Act, 1974 provide that:

"(2) Promotion including proforma promotion shall not be claimed by any civil servant as of right.

(3) Promotion shall be granted with immediate effect and be actualized from the date of assumption of charge of the higher post, and shall in no case be granted from the date of availability of post reserved for promotion."

Whereas, Rule 10 of Punjab Civil Servants (Appointment & Conditions of Service) Rules, 1974 provides that only such persons who possess the qualifications and meet the conditions laid down for the purpose of promotion or transfer to a post shall be considered by the Selection Authority. Above quoted provisions manifestly shows that the request of the petitioner for her promotion from back date is not tenable and she cannot be promoted from any previous date.

5. **AND WHEREAS**, the petitioner during the course of personal hearing put much emphasis on the ground that in the meeting of DPC held on 16.08.2017, she was not considered due to non-availability of vacant post of IPE (BS-17) in Rawalpindi. The petitioner was asked '*whether she is in possession of any document through which stance taken by her can be substantiated*'. In response, the petitioner replied that she is not in possession of any document in this regard but her stance is correct as per her knowledge and belief. While relying on the record, the Director (Admn), DGSE refuted the stance of the petitioner and stated that the petitioner was superseded during the meeting of DPC held on 16.08.2017 on account of imposition of major penalty in view of clause 10 (2)(iv) of the Promotion Policy, 2010. After the statement of Director (Admn), DGSE, the petitioner was again asked '*whether she is*

Laina Saheed

aware of the fact that she was superseded on account of imposition of major penalty'. In response, the petitioner replied in affirmative and stated that the major penalty awarded to her cannot be considered as a hurdle in her promotion case. The reply of the petitioner shows that during the hearing she mis-stated the facts of the case and later on admitted that she being aware of the actual facts of the case made intentional mis-statement. As far as stance of the petitioner that the major penalty awarded to her cannot be considered as a hurdle in her promotion case is concerned, it is observed in this regard that clause-10 sub clause (2) sub clause (iv) of the Promotion Policy, 2010 provides that **the Board / DPC may recommend a civil servant for supersession on the basis of one or more of the following reasons:-**

(iv) He has been awarded major penalty within five years of the date of consideration for promotion.

It is an admitted position that the petitioner was awarded major penalty of forfeiture of past service for a period of five years under the provisions of PEEDA Act, 2006 vide order dated 23.12.2013, therefore she was superseded in view of above stated provisions of Promotion Policy 2010 during the meeting of DPC held on 16.08.2017. If the stance taken by the petitioner is considered in light of above clause of Promotion Policy, 2010 it stands crystal clear that stance of the petitioner is devoid of merits, bereft of justification and contrary to the provisions of Promotion Policy, 2010.

6. **AND WHEREAS**, during the course of personal hearing, the petitioner was specifically asked '*whether the major penalty awarded to her vide order dated 23.12.2013 was set aside by appellate or judicial forum?*' The petitioner's response to this query was in negative. Another stance of the petitioner during the course of personal hearing was that she is entitled to be promoted to the post of Lecturer Physical Education / Lecturer (DPE) / Instructor Physical Education (BS-17) on the basis of Special Education Department (Directorate of Special Education) Service Rules, 2006 amended vide Notification dated 25.08.2009. The petitioner was asked that '*whether she is aware that while repealing the Service Rules of Directorate of Special Education, Punjab titled as Special Education Department (Directorate of Special Education) Service Rules, 2006 new Service Rules titled as Punjab Special Education Department (Directorate General of Special Education) Service Rules, 2021 have been notified vide Notification dated 28.12.2021 and they are in field, according to which, the post of Physical Education Teacher (BS-09) has promotion channel to the post of P.T.I / P.E.T (BS-11)*'. The petitioner in response stated that she is entitled for promotion on the basis of previous rules because newly notified Service Rules are not applicable to her case. The petitioner was asked to state the reason of non-applicability of new Service Rules on her case but she could not give any plausible justification to substantiate her stance. Suffice is to observe that the petitioner has tried to become judge of her own cause because all the grounds raised by the petitioner in the present matter indeed come across as misdirected and misaimed having no relevance. All the grounds taken by the petitioner are not sustainable and could not hold field as the same are merely a self-harboured hypothetical assumption on her part, bereft of legal backing.

7. **AND WHEREAS**, during the course of personal hearing the petitioner was asked '*whether she has submitted her PERs as required vide letters dated*

14.09.2023, 11.10.2023 and 13.11.2023?' In response, the petitioner stated that she never received letters whereby she was directed to submit PERs. As reported by Departmental Representatives, PERs of the petitioner for the years 2011 to 2023 are missing and her service record is incomplete. As per Clause 6(5) of the Promotion Policy, 2010 a civil servant shall be considered for promotion to posts reserved for promotion subject to his suitability and assessment of the following aspects:-

(5) *Service record comprising PERs.*

Whereas, as per Clause 9 (1)(i) and (ii) of the Promotion Policy-2010, after consideration of the names on the panel, the Board/Committee may recommend a civil servant for deferment on the basis of any one or more of the following reasons:

- (i) *The officer has failed to submit PER forms after completing Part-I to the Reporting Officer.*
- (ii) *PER dossier is incomplete, especially last full year's report is missing or any other document / information required by the Provincial Selection Board (PSB) or Departmental Promotion Committee (DPC) for determining his suitability for promotion is not available.*

If the request of the petitioner for grant of promotion is adjudged in view of above clauses of Promotion Policy, 2010, it stands clarified that claim / request of the petitioner for grant of promotion is premature because even if the case of the petitioner for promotion is considered, same will be deferred in view of clause 9(1)(i) and (ii) of the Promotion Policy, 2010 due to incomplete service record.

8. **NOW THEREFORE**, the light of above stated facts, I, **Saima Saeed**, Secretary Special Education / Respondent No.2, after having considered all the aspects, material related to the case, verbal submissions of the petitioner, conclude that since the Special Education Department (Directorate of Special Education) Service Rules, 2006 amended vide Notification dated 25.08.2009 have been repealed and the Punjab Special Education Department (Directorate General of Special Education) Service Rules, 2021 have been notified vide Notification dated 28.12.2021, therefore the petitioner cannot be promoted to the post of Instructor Physical Education (BS-17) as per the pervious Service Rules which stand repealed. However, the petitioner will be considered for promotion to higher scales as per the newly notified Service Rules, 2021 whenever a meeting of Departmental Promotion Committee is convened. The representation of the petitioner alongwith all pending applications seeking similar relief are hereby **disposed of** with following directions;

1. The petitioner is directed to submit her missing PERs for the period w.e.f. year 2011 to 2023 through proper channel within **30 days** from the date of receipt of this order; and
2. **Director General, Directorate General of Special Education** being Competent Authority for the post of P.T.I / P.E.T. (BS-11) is directed to process the case of petitioner, *as and when received*, by convening meeting of Departmental Promotion Committee expeditiously strictly in accordance with laws / rules / policies

applicable for the time being on the subject under intimation to this department.

The order dated 19.03.2024 passed by the Honourable Lahore High Court, Rawalpindi Bench, Rawalpindi in Writ Petition No.848/2024 is complied with in the above stated manner.

Saima Saheed

(SAIMA SAEED)
SECRETARY

GOVT. OF THE PUNJAB
SPECIAL EDUCATION DEPARTMENT /
RESPONDENT NO. 2

Dated Lahore, the
April 17th/2024

No. & Date Even:

A copy is forwarded for information and necessary action to:-

1. Assistant Registrar (Judicial) for Deputy Registrar (Judicial), Lahore High Court, Rawalpindi Bench, Rawalpindi in compliance with the order dated 19.03.2024 passed in Writ Petition No. 848/2024.
2. Director General, Special Education Punjab, Lahore.
3. District Education Officer (Special Education) Rawalpindi to ensure delivery of this order to the petitioner under intimation to this department.
4. Principal / Headmaster / Headmistress, Govt. Institute for the Blinds, Girls, Rawalpindi to ensure delivery of this order to the petitioner under intimation to this department.
5. Petitioner concerned / **Ms. Fouzia Khanum**, Physical Education Teacher (BS-09), Govt. Institute for the Blinds, Girls, Rawalpindi.
6. PS to Secretary Special Education Department, Punjab.

Saima Saheed
SECTION OFFICER (ESTT.)
SPECIAL EDUCATION DEPARTMENT