

REGISTERED



ORDER

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

No. LO(Writ)5-4/2023. WHEREAS, Hafiz Muhammad Idrees, Physical Education Teacher (BS-09), Govt. Secondary School of Special Education for Hearing Impaired, Sialkot (**'petitioner'**) filed Writ Petition No.29993/2023 in the Lahore High Court, Lahore for early decision of his pending representation / departmental appeal with following prayer;

"In view of above submissions, it is therefore, most humbly prayed that the present petition may kindly be accepted and the respondent No. 1 may very graciously be directed to decide the pending representation / departmental appeal (ANNEXURE-C) filed by the petitioner, in the supreme interest of justice and equity.

Any other relief which this Hon'ble Court deems fit and appropriate may also be awarded to the petitioner."

The instant Writ Petition was **disposed of** by the Honorable Lahore High Court, Lahore vide order dated **08.05.2023** with following directions:

*"xxx. 2. This petition is **disposed of** with a direction to respondent No.1, Secretary Special Education, Govt. of the Punjab, Civil Secretariat Punjab, Lahore to decide the appeal of the petitioner **if it is competent**. This shall be done within a period of two months from the receipt of a certified copy of this order."*

2. AND WHEREAS, in compliance with the directions of the Hon'ble Lahore High Court, Lahore, the petitioner alongwith all concerned were afforded an opportunity of personal hearing on 07.06.2023. During hearing, the petitioner while reiterating the stance already taken by him in Writ Petition and representation, *inter alia*, contended that he has been working as Physical Education Teacher (BS-09) in Special Education Department since 24.05.1993; that he has passed his M.Sc Health and Physical Education in first division in the year 2021; that he 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 Govt. of the Punjab, School Education Department issued notification dated 16.07.2009 whereby the posts of Elementary School Teacher (EST) including Physical Education were upgraded from BS-09 to BS-14 but the petitioner was again not granted benefit of the said notification. Lastly, he requested that while setting aside the order dated 21.12.2022 and in the light of above-mentioned Rule and notification dated 25.08.2009, he may be promoted to the post of Instructor Physical Education (BS-17) w.e.f. 07.04.2021 i.e., the date of acquiring higher qualification of M.Sc.

3. AND WHEREAS, Deputy Director (Admn), Directorate General of Special Education, Punjab, Lahore attended the hearing and apprised about the facts of the case. He while relying on the record, submitted that the petitioner was appointed as Physical Education Teacher (BS-09) vide order dated 18.04.1993 and

Saima Saeed

he joined his duties on 24.05.1993. He further averred 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 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."

He further added that the requisite qualification for initial recruitment against the above said post is as under:

"M.A. (Physical Education) in 1st Division or Grade B from any recognized university."

He further apprised that the petitioner completed his M.Sc Physical Education in 1st Division in the year 2021. Prior to that, a meeting of Departmental Promotion Committee was held on 07.03.2019 for consideration of cases of PTI / PET / DPE (BS-09/11) to the post of Lecturer Physical Education / Lecturer (DPE) / Instructor Physical Education (BS-17). During the meeting, Deputy Secretary (Regulations) S&GAD pointed out that the service rules for the said agenda item were defective and the following discrepancies were highlighted: -

SERVICES RULES FOR THE POST OF	DEFICIENCY
Lecturer Physical Education / Lecturer (DPE) / Instructor Physical Education (BS-17).	<p>It was pointed out that 25% of the posts were to be filled by promotion from amongst PTI/PET/DPE having qualification prescribed for initial recruitment which was M.A Physical Education (1st Div), hence, the persons having 2nd Division were not eligible.</p> <p>Moreover, The Note given at the end of the Service Rule provide that seniority of PTI/PET/DPE will be maintained from the date of acquiring requisite qualification or from the date of joining in case of person who holds qualification prior to appointment and in presence of this Note all PTI/PET/DPE will be excluded from the seniority list who have not gained such qualification and no one could be excluded from the seniority once he or she stood appointed.</p>

He further submitted that keeping in view of the observations raised by Deputy Secretary / Representative of Regulations Wing, S&GAD, the Departmental

Promotion Committee unanimously decided that the Service Rules of above-mentioned posts may be amended in first instance and meeting of the Departmental Promotion Committee for consideration of the above-mentioned agenda item may be held thereafter. He further stated that there-after, 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) 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).
2.	P.E.T(BS-14)	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.
3.	Instructor Physical Education (BS-17)	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.

He further submitted that the petitioner earlier filed Writ Petition No. 67685/2022 in the Honourable Lahore High Court, Lahore for decision of his pending representation before Director General Special Education, Punjab, Lahore regarding his promotion to the post of Instructor Physical Education (BS-17). The said Writ Petition was disposed of by the Honorable Court vide order dated 31.10.2022. Subsequently, after affording opportunity of personal hearing, Director General Special Education, Punjab, rejected the representation of the petitioner vide order dated 21.12.2022.

4. **AND WHEREAS**, after considering/examining the record pertaining to the case it has been observed that the petitioner feeling aggrieved by the order dated 21.12.2022 passed by Director General Special Education, Punjab, Lahore, whereby his request for promotion was rejected, filed departmental representation with following prayer;

"In view of the matter, it is respectfully prayed that the impugned order dated 21.12.2022 may kindly be set aside and I may kindly be granted promotion from Physical Education Teacher (BS-9) to Instructor Physical Education (BS-17) w.e.f. 07.04.2021 i.e., the date of acquiring higher qualification of MSC Health and Physical Education, in accordance with Notification dated 25.08.2009, with all consequential benefits, in the interest of justice."

5. **AND WHEREAS**, as regards to request of the petitioner that he may be promoted w.e.f. 07.04.2021, 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 his promotion from back date is not tenable and he cannot be promoted from any previous date.

Saima Saeed

6. **AND WHEREAS**, as far as stance of the petitioner that School Education Department, Govt. of the Punjab upgraded certain posts and he is also entitled for same relief is concerned, it is observed that Special Education Department is an independent Administrative Department and policies of other Administrative Departments of the Government of Punjab do not apply to Special Education Department *per se* unless adopted by the Special Education Department. Suffice is to observe that 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 his part, bereft of legal backing. As per record, neither any discrimination has been meted out with the petitioner nor has he been deprived of his right of promotion.

7. **NOW THEREFORE**, the light of above stated facts, I, **Saima Saeed**, Secretary Special Education / Respondent No.1, 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 promulgated by the Regulations Wing, S&GAD, Govt. of the Punjab vide Notification dated 28.12.2021, therefore the

petitioner cannot be promoted to the post of Instructor Physical Education (BS-17) as per the previous Service Rules which stand repealed. However, the petitioner will be considered for promotion to higher scales as per the newly notified Service Rules whenever a meeting of Departmental Promotion Committee is convened. The order of the Director General Special Education, Punjab, Lahore has been passed in accordance with the law and does not require interference. The representation of the petitioner is hereby **rejected** being not maintainable, contrary to the law/rules/policies and not covered under the law. The order dated 08.05.2023 passed by the Honourable Lahore High Court, Lahore in Writ Petitions No.29993 of 2023 is complied with in the above stated manner.

Saima Saheed

(SAIMA SAEED)
SECRETARY
GOVT. OF THE PUNJAB
SPECIAL EDUCATION DEPARTMENT /
RESPONDENT NO. 1

Dated Lahore, the
June 16th /2023

No. & Date Even:

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

1. Assistant Registrar (Writ) of Additional Registrar (Judicial), Lahore High Court, Lahore in compliance with the order dated 08.05.2023 passed in Writ Petition No.29993/2023.
2. Director General, Special Education Punjab, Lahore.
3. District Education Officer (Special Education) Gujranwala to ensure delivery of this order to the petitioner under intimation to this department.
4. The Principal Govt. Secondary School of Special Education for Hearing Impaired, Sialkot to ensure delivery of this order to the petitioner under intimation to this department.
5. The Petitioner concerned / Hafiz Muhammad Idrees, Physical Education Teacher (BS-09), Govt. Secondary School of Special Education for Hearing Impaired, Sialkot.
6. PS to Secretary Special Education Department, Punjab.

[Signature]
SECTION OFFICER (ESTT.)
SPECIAL EDUCATION DEPARTMENT