

THE FEDERAL CONSTITUTIONAL COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Justice Syed Hasan Azhar Rizvi
Justice Aamer Farooq

**C.A. Nos.537 & 538 OF 2021, C.M.A.108-P/2021 AND
C.P.L.A.6615/2021**

(Against judgment dated 04.12.2020, passed by the Peshawar High Court, Peshawar in W.P.No.7461-P/2019)

Chairman, Khyber Pakhtunkhwa Text Book Board, Peshawar and another *[in C.A. No.537/2021]*

Provincial Govt. of Khyber Pakhtunkhwa through Chief Secretary, Govt. of Khyber Pakhtunkhwa Peshawar and others *[in C.A. No.538/2021 & C.M.A.108-P/2021]*

Umar Farooq and others *[in C.P.L.A.6615/2021]*

...Petitioner(s)

Versus

Musadiq Ali Bangash and others *...Respondent(s)*
(in all cases)

For the Petitioner(s)	:	Mr. Abdul Hameed, ASC a/w Dr. Zainullah, Secretary, KPTBB <i>(in C.A. No.537/2021)</i> Mr. Shah Faisal Ilyas, Addl. A.G, KPK a/w Safir Ullah, A.D (Audit), Mukhtiar Alam, ADEO (Litigation) <i>(in C.A. No.538/2021)</i> Mr. Muhammad Abdul Ahad, ASC <i>(in CPLA No.6615/2021)</i>
For the Respondent(s)	:	Mr. Muhammad Asif Yousafzai, ASC <i>(For respondent No.1 in all cases)</i>
Date of Hearing	:	09.07.2026

J U D G M E N T

Syed Hasan Azhar Rizvi, J.- The Chairman and the Secretary, Khyber Pakhtunkhwa Textbook Board ('**appellants**'), have filed the Civil Appeal No.537 of 2021, with the leave of the Court, under Article 185(3) of the Constitution of the Islamic

Republic of Pakistan, 1973 ('**Constitution**'), challenging the legality of the judgment dated 04.12.2020 ('**impugned judgment**') passed by the Peshawar High Court, Peshawar ('**High Court**'). Through the impugned judgment, the High Court allowed Writ Petition No. 7461-P/2019, filed under Article 199 of the Constitution by the respondent No. 1, Musadiq Ali Bangash ('**private respondent**'), and set aside the orders dated 19.05.2015 and 09.06.2015 passed by the Khyber Pakhtunkhwa Textbook Board ('**Board**').

2. The present appeal originated before the Supreme Court under Article 185(3) of the Constitution. Following the establishment of this Court under the Constitution (Twenty-Seventh Amendment) Act, 2025, the present matters, arising from a judgment under Article 199 and falling within Article 175F(1)(c), stood transferred to this Court by virtue of Article 175F(2) of the Constitution. It was accordingly placed before this Bench for adjudication in accordance with law.

3. The background of the present controversy is that the private respondent entered the service of the Board pursuant to an advertisement dated 21.05.2006, published in the Daily *Aaj*, Peshawar. Through this advertisement, besides the post of Stenographer, the Board invited applications from the general public for the posts of the 'Assistant/Storekeeper' (BS-11). The private respondent applied pursuant thereto, was selected against one of the advertised posts and, vide order dated 07.09.2006, was appointed as an Assistant/Storekeeper (BS-11). Initially, his appointment was made on a contract basis for a period of three years; however, his service was subsequently regularised by the Board vide order dated 07.05.2009. Meanwhile, the Provincial Government, vide notification dated 28.07.2007, upgraded, *amongst others*, the post of the 'Assistant' from BS-11 to BS-14. Claiming entitlement to the benefit of this upgradation, the private respondent filed Writ Petition No. 2481-P of 2013 on 18.09.2013, primarily on

the ground that, while extending the benefit of the said notification to other Assistants, the Board had refused to extend the same benefit to him. The petition was disposed of by a Division Bench of the High Court through the judgment dated 19.02.2014 (**'earlier judgment'**), whereby the following relief was granted to him:

*'3. The record shows that the petitioner has been appointed as an 'Assistant/Storekeeper' and has been rendered with same designation throughout his career and, **thus, has to be given the benefits of Notification dated 28.7.2007, whereby his post of Assistant from BPS-11 has been upgraded to BPS-14.***

*4. **As far as, his exact position of seniority is concerned,** that is for the respondents to determine and that too in accordance with law. Accordingly, this petition is disposed of.'*

Emphasis added.

4. The Board did not further challenge the above judgment of the High Court. Rather, in compliance therewith, it upgraded the private respondent and initially inducted him into the *cadre* of the Assistants vide order dated 29.09.2014. Consequently, a provisional seniority list of the Assistants containing his name was issued and communicated to him vide letter dated 14.10.2014. Subsequently, a committee headed by the Special Secretary, Elementary & Secondary Education (E&SE) Department, was constituted to finalise the question of his seniority. In its meeting held on 28.01.2015, the Committee concluded that the earlier judgment of the High Court had already been complied with by extending the benefit of upgradation to the private respondent. As regards seniority, however, the Committee observed that the private respondent had not been appointed as an Assistant and, therefore, was not entitled to inclusion in the seniority list of the Assistants, particularly when no such direction had been issued by the High Court. It accordingly recommended exclusion of his name from the provisional seniority list of the Assistants and preparation of a separate seniority list of the Storekeepers, including the private

respondent. These recommendations were placed before the Board in its 453rd meeting held on 29.04.2015 and were approved for implementation. Consequently, vide order dated 19.05.2015, the Board directed that separate seniority lists of the Assistants and the Storekeepers be maintained. Pursuant thereto, the final seniority list of the Storekeepers, containing the name of the private respondent, was communicated to him vide order dated 09.06.2015.

5. Feeling aggrieved, the private respondent *firstly* filed Contempt Petition No. 120-P/2019 against the appellants, seeking initiation of contempt proceedings against them for the alleged non-compliance with the earlier judgment passed by the High Court. The contempt petition was dismissed by the Division Bench of the High Court through judgment dated 15.05.2019 with the following material observations:

*‘6. It appears from reply of the respondents that in Pursuance of judgment dated 19.02.2014 of this Court, the post of the petitioner has been upgraded from BPS.11 to BPS.14. So far as exact position of seniority of the petitioner is concerned, according to the judgment, it was left to the respondents to determine the same in accordance with law. **The respondents [now appellants] have examined the aforesaid issue in consultation with the Secretary E&SE Department and in the meeting convened under the Chairmanship of Special Secretary, E&SE Department, after thorough discussion and deliberation it was decided that since Storekeeper and Assistant are two separate cadres and the petitioner had been appointed as Assistant Storekeeper, therefore, it was decided that separate seniority lists of Assistants and Storekeepers shall be maintained by the Board, which were accordingly prepared.** The name of the petitioner has been included in the seniority list of storekeepers and will be considered for promotion at his own turn. The judgment of this Court has been implemented in its letter and spirit; therefore, the instant petition is hereby dismissed.’*

Emphasis added.

A departmental appeal filed by the private respondent against the above departmental orders was also dismissed by the Board, in its 532nd meeting held on 07.02.2020, being devoid of any cogent and convincing grounds. Thereafter, the private respondent

filed Writ Petition No. 7461-P/2019, which was allowed through the impugned judgment. Hence, this appeal, with the leave of the court, is filed by the Board.

6. The Learned Additional A.G, Khyber Pakhtunkhwa and the counsel for the appellants contended that the private respondent was appointed against the sanctioned and advertised post of the Storekeeper (BS-11), and that the word 'Assistant' appearing in his appointment order was merely inadvertent. The posts of the Assistant and the Storekeeper were distinct, notwithstanding that both initially carried the same pay scale. He further submitted that the earlier judgment of the High Court merely extended the benefit of upgradation to the private respondent while expressly leaving the question of his seniority to the departmental authorities. Accordingly, the Board, acting upon the advice of the E&SE Department, lawfully maintained separate seniority lists for the two posts. It was further argued that the claim of the private respondent was also hit by *laches*, as he had approached the High Court after a considerable delay without offering any plausible explanation therefor. They, therefore, prayed that the impugned judgment be set aside.

7. Conversely, the learned counsel for the private respondent supported the impugned judgment and contended that his appointment order described him as an 'Assistant Storekeeper' and that the benefit of upgradation had already been extended to him by the High Court through its earlier judgment, which had attained finality. The maintaining a separate seniority list deprived him of the consequential benefits of that judgment and that the departmental authorities were required only to determine his exact seniority amongst the Assistants. He, therefore, prayed for dismissal of the appeal.

8. We have heard the learned counsel for the parties and, with their able assistance, examined the record. The private

respondent's upgradation to BS-14 under the earlier judgment is not in dispute. The question is whether that the earlier judgment, the governing service structure or the subsequent administrative orders also entitled him to the inclusion and seniority in the *cadre* of Assistants. This requires the scope of the adjudicated relief to be distinguished from the service question expressly left for determination in accordance with law. A careful reading of the earlier judgment shows that the High Court, without examining the relevant service law governing the classification and *cadre* of posts in the Board, treated the designation 'Assistant/Storekeeper' as sufficient to extend to the private respondent the benefit of the notification dated 28.07.2007, whereby the post of the Assistant was upgraded from BS-11 to BS-14. The High Court, however, neither determined his *cadre* status nor declared him to be an Assistant for all service purposes. Significantly, as is evident from the contents of his earlier petition, the private respondent had not sought any relief regarding seniority. That question arose only on account of the apprehension expressed by the present appellants that the relief claimed by him might affect the seniority of the existing Assistants. The High Court, therefore, consciously refrained from determining his seniority and left the matter to the competent authorities to decide in accordance with law. The earlier judgment thus granted the private respondent the limited benefit of upgradation; it neither absorbed him into the *cadre* of the Assistants nor conferred upon him any right to seniority therein.

9. In addition to above, the High Court, through the judgment in the contempt petition, approved the determination made by the Board that the Assistants and Storekeepers constituted separate *cadres* and that, since the private respondent had been appointed as a Storekeeper, separate seniority lists of the Assistants and the Storekeepers were required to be maintained. Having found that the Board had determined the question of seniority in accordance with law, the High Court concluded that its earlier

judgment had been implemented in its *letter and spirit* and, consequently, dismissed the contempt petition. However, while passing the impugned judgment, the High Court took a materially different view of the earlier judgment. It held that the issue had already been laid to rest by the earlier judgment, whereby, according to it, the Board had been directed to upgrade the private respondent to BS-14 '*as an Assistant*'. It further relied upon the office order dated 29.09.2014, whereby the private respondent had initially been included in the provisional seniority list of the Assistants in purported compliance with the earlier judgment, and concluded that, once he had been so placed in the said provisional list of the Assistants, the Board had no authority to subsequently exclude him therefrom. This reasoning, however, overlooks not only the true scope of the earlier judgment, which had expressly left the question of seniority to the departmental authorities for determination in accordance with law, but also the High Court's own subsequent finding in the contempt proceedings that the Board's decision to maintain separate seniority lists amounted to due implementation of the earlier judgment.

10. We are unable to sustain the above reasoning of the High Court, as it proceeds on a premise which finds no support in the earlier judgment. Through the earlier judgment, the High Court merely extended the benefit of upgradation to the private respondent. It neither declared that the private respondent had been appointed as an Assistant nor directed his absorption or placement in the *cadre* of the Assistants. The High Court, therefore, fell into error in subsequently reading into its earlier judgment a declaration regarding change of *cadre* which it neither contained nor necessarily implied. The distinction between upgradation of a post and inclusion of an employee into a particular *cadre* against which he was not initially recruited is material and cannot be overlooked. The expression '*cadre*' has not been defined in the Khyber Pakhtunkhwa Text Book Board Employees Regulations, 1972 (**Regulations of**

1972'), framed by the Board in exercise of the powers conferred by Section 24 of the Khyber Pakhtunkhwa Text Book Board Ordinance, 1971 (**'Ordinance of 1971'**), which governs the service of the Board. By virtue of Regulation 12 thereof, the guidance may, however, be drawn from Rule 9(4) of the Fundamental Rules, which defines 'cadre' as 'the strength of a service or a part of a service sanctioned as a separate unit'. The concept of *cadre*, therefore, relates essentially to the sanctioned structure of a service or a distinct part thereof and cannot be determined merely by reference to the pay scale attached to a post. Reference may also be made to Naimat Ullah Butt and others v. the Government of the Punjab through the Secretary Education, Lahore (**1988 SCMR 1453**), wherein the Supreme Court made similar observations. In order to become a member of a particular *cadre*, the employee must hold a post in that *cadre*. Reference in this regard may be made to Muhammad Karim v. Director Health Services and others (**1987 SCMR 295**). In the present case, the post of Assistant has been expressly provided as a separate *cadre* in the Appendix to the Regulations. The post of Storekeeper, *on the other hand*, was subsequently created and separately sanctioned by the competent authority. Consequently, the mere fact that the posts of Assistant and Storekeeper initially carried the same basic pay scale did not, by itself, make them part of the same *cadre*.

11. As a general rule, an employee appointed to a particular *cadre* cannot claim, as a matter of right, induction into or transfer to another *cadre*. Any such change must have a lawful basis in the governing service rules or regulations and cannot be permitted merely because the two posts carry the same pay scale, particularly where it is likely to affect the seniority or promotional rights of employees already borne on the other *cadre*. Reference in this regard may be made to Bashir Ahmed Solangi v. Chief Secretary, Government of Sindh, Karachi and others (**2007 PLC (C.S.) 824**) and the Chief Secretary, Government of Balochistan, Quetta and others v. Hidayat Ullah Khan (**2022 SCMR 39**). In the present case, the

Regulations of 1972 do not provide any mechanism for the transfer or induction of an employee from one *cadre* to another. Rather, as already noticed, the post of Assistant is separately provided in the Appendix to the Regulations, whereas the private respondent was recruited and appointed against the separately sanctioned post of Storekeeper. There was, therefore, no statutory basis for treating the upgradation granted to the private respondent as altering the *cadre* to which he belonged. Consequently, the benefit extended to him under the earlier judgment was required to remain confined to the upgradation of his post and could not, by implication, be enlarged into a right of induction into, or placement in, the *cadre* of Assistants, to which he had never been appointed.

12. As regards the contention of the learned counsel for the private respondent that his appointment order expressly described him as 'Assistant/Storekeeper', the appellants maintained that the word 'Assistant' had been mentioned inadvertently. The Board cannot, however, avoid the effect of its own appointment order merely by characterising the expression as an inadvertent error. At the same time, the use of a composite designation cannot, in isolation, be treated as conclusive of the nature of the appointment or the *cadre* to which the private respondent belonged; its legal effect must be determined in the light of the recruitment record and the governing service structure. Regulation 3 provides that the service of the Board shall consist of the posts specified in the Appendix and such other posts as may, from time to time, be determined by the Board. Although the post of the Assistant finds mention in Part III of the original Appendix, the post of Storekeeper was subsequently created with the approval of the Controlling Authority, communicated vide letter dated 02.09.2005. Its absence from the original Appendix did not, therefore, make it part of the *cadre* of the Assistants, particularly when Regulation 3 itself contemplated the subsequent creation of additional posts. This distinction is further reflected in the amendment dated 25.05.2026, whereby the post of

Storekeeper (BS-14) was expressly incorporated into the service structure as a promotional post for the Assistant Storekeepers (BS-11). Although the subsequent amendment cannot retrospectively determine the *cadre* status of the private respondent at the time of his appointment, it is consistent with the service structure otherwise borne out from the record, indicating a distinct line of service for the Assistant Storekeepers and Storekeepers. The subsequent upgradation of the private respondent could, therefore, operate only upon the post held by him and could neither alter the character of his substantive appointment nor induct him into the separate *cadre* of the Assistants or confer seniority therein. The High Court, therefore, erred in inferring, merely from the absence of the post of Storekeeper from the original Appendix, that the private respondent had probably been appointed as an Assistant and merely posted as a Storekeeper, as such inference is supported neither by the statutory scheme nor by the recruitment record.

13. The High Court also attached undue legal significance to the order dated 29.09.2014, whereby, during the course of implementation of the earlier judgment, the Board initially included the private respondent in the provisional seniority list of the Assistants. Once it is established that the private respondent had been recruited against a separately created post of Storekeeper, his provisional inclusion in the seniority list of the Assistants could neither alter the character of his substantive appointment nor confer upon him a right to seniority in a *cadre* to which he had not been appointed. Nor could such a provisional administrative arrangement enlarge the scope of the earlier judgment or create a substantive service right contrary to the governing service structure. More importantly, the matter was subsequently examined by the competent departmental Committee, which concluded that the posts of the Assistant and Storekeeper constituted separate *cadres* and recommended the maintenance of separate seniority lists. The Board accepted the recommendation and, accordingly, issued the order

dated 19.05.2015 directing that separate seniority lists of the Assistants and Storekeepers be maintained. Pursuant thereto, the final seniority list of Storekeepers, containing the name of the private respondent, was communicated vide order dated 09.06.2015. This exercise was not inconsistent with the earlier judgment; rather, it constituted the departmental determination of the private respondent's seniority in accordance with the service structure and within the scope of the authority expressly left to the department by that judgment.

14. There is yet another material aspect which did not receive due consideration in the impugned judgment. When the private respondent filed contempt petition alleging that the above departmental determination was contrary to the earlier judgment, a Division Bench of the High Court examined the manner in which that judgment had been implemented and dismissed the contempt petition. The High Court specifically noted that the question of seniority had been left to the Board; that the matter had thereafter been examined by the competent authority; and that separate seniority lists had been prepared on the basis that the Storekeepers and the Assistants constituted separate *cadres*. The High Court accordingly recorded that its earlier judgment had been implemented in its '*letter and spirit*'. Undoubtedly, an order passed in contempt proceedings does not constitute a final adjudication of substantive service rights. It was, nevertheless, relevant for ascertaining the scope of the earlier judgment and the manner in which its directions had been understood and implemented. The High Court, while passing the impugned judgment, could not, therefore, construe the earlier judgment as having conclusively placed the private respondent in the *cadre* of the Assistants without considering its own subsequent order accepting the departmental action as due compliance with that judgment.

15. The High Court further fell into error in construing the earlier judgment as having directed the upgradation of the private respondent by using the terms ‘as an Assistant’. The operative portion reproduced above contains no such direction. It merely proceeded from the designation ‘Assistant/Storekeeper’ to extend the benefit of upgradation and then expressly left seniority to the respondents for determination in accordance with law. By converting that limited relief into a final adjudication of *cadre* status, the High Court attributed to the earlier judgment an effect wider than its express terms. A judgment must be understood in the context of the issue actually determined and the relief actually granted; an incidental or consequential administrative act taken in its implementation cannot enlarge its operative command. For these reasons, the Board's subsequent determination could not lawfully have been set aside merely on the ground that the earlier judgment had attained finality. Its finality undoubtedly protected the private respondent's entitlement to the upgradation granted thereunder, but it did not foreclose the question which that earlier judgment had expressly left open for determination by the competent authorities. Moreover, the finality of the earlier judgment operated both ways: while protecting the benefit actually granted, it equally precluded the private respondent from subsequently seeking a relief arising from the same cause which could and ought to have been claimed in the earlier proceedings. Such a claim would attract the principle of constructive *res judicata*. Reference may be made to SME Bank Limited through President Islamabad v. Izhar Ul Haq (2019 SCMR 939). The High Court, while passing the impugned judgment, thus conflated upgradation with *cadre* status and seniority, misconstrued the scope of its earlier judgment, and treated a provisional administrative act as creating a vested right. The impugned judgment is, therefore, liable to be set-aside.

16. The objection of laches also called for attention because the administrative orders were issued in May and June 2015,

whereas the fresh writ petition was instituted in 2019. Service arrangements involving *inter se* seniority should not be unsettled without examining the explanation for delay and its effect upon others. However, the intervening proceedings and the full explanation offered by the private respondent would have to be considered before delay alone could be made decisive. Since the impugned judgment cannot be sustained on the substantive and procedural grounds discussed above, we do not rest our decision exclusively upon laches.

17. The Provincial Government of Khyber Pakhtunkhwa, through its Chief Secretary, along with the concerned departmental functionaries, has separately challenged the impugned judgment by filing Civil Appeal No. 538 of 2021. Similarly, the nineteen employees of the Board have also challenged the impugned judgment through CPLA No. 6615 of 2021. In both matters, substantially similar legal and factual grounds have been raised against the impugned judgment. One of the principal grounds is that the private respondent challenged the aforesaid orders of the Board through a writ petition without impleading the affected employees as parties, nor were they subsequently afforded an opportunity of hearing by the High Court, despite the fact that the relief sought and ultimately granted had a direct bearing on their seniority, promotional prospects and other consequential service rights.

18. As regards the objection of non-impleadment of the other employees of the Board, the nature and effect of the relief sought by the private respondent are decisive. His claim was not confined to the grant of a higher pay scale but extended to his inclusion in the *cadre* of Assistants, with seniority and consequential service benefits. Such relief directly affected the interests of the existing Assistants whose relative seniority and prospects of promotion were liable to be prejudiced. They were, therefore, necessary parties and ought to have been impleaded and

afforded an opportunity of hearing before any relief affecting their service rights could be granted. The participation of the Board could not substitute for the representation of their individual and potentially competing interests. Although the defect of non-joinder could have been cured by impleading the affected employees, the High Court proceeded to determine the matter without affording them such opportunity, thereby offending the principle of *audi alteram partem*. It is well settled that an order adversely affecting the rights or interests of an employee, passed without notice or an opportunity of hearing, cannot be sustained in law. Reference may be made to Arshad Jamal v. N.-W.F.P. Forest Development Corporation and others (2004 SCMR 468) and Pakistan International Airlines Corporation, through MD, Karachi v. Nadeem Murtaza Khan (2007 PLC (C.S.) 334). The impugned judgment, having determined the *cadre* and seniority rights of the private respondent to the prejudice of the affected employees without hearing them, is vitiated on this ground as well.

19. Above are the reasons of our short order dated 09.07.2026, which is as follow:

‘For reasons to be recorded separately, Civil Appeal No.537/2021 is allowed and the impugned judgment dated 04.12.2020, passed by the Peshawar High Court in Writ Petition No.7461-P/2019 is set-aside.

2. Since Civil Appeal No.537/2021 has been allowed, Civil Appeal No.538/2021 and CPLA No.6615/2021 being infructuous are accordingly disposed of.’

Judge

Judge

Islamabad, the

9th July, 2026

APPROVED FOR REPORTING

*M Farhan/**