

**In the Federal Constitutional Court of Pakistan**  
(Appellate Jurisdiction)

**Bench:**

Justice Ali Baqar Najafi  
Justice Syed Arshad Hussain Shah

**C.P.L.A. No.491-P of 2022**

(On appeal from judgment of the Peshawar High Court,  
Peshawar dated 1.4.2022 passed in Writ Petition 325-P of 2021)

Khyber Pakhtunkhwa Police Service Commission through its Secretary &  
others

Petitioners

Versus

Gohar Rehman

Respondent

For the petitioners:

Mr. Shah Faisal Ilyas,  
Additional Advocate General, KP

Respondents:

N.R.

Date of hearing:

24.3.2026

**Judgment**

**Syed Arshad Hussain Shah, J:** Succinctly, facts of the case are that the Agency Education Officer of erstwhile Mohmand Agency at Ghalanai invited applications for the posts of Physical Education Teacher (PET) (BS-15) vide advertisement dated 22.1.2016. The respondent applied for the same, participated in the test/interview and had higher merit amongst the qualified candidates for Tehsil Safi. However, he was not appointed on the ground that he was holding duplicate domicile certificate. Being aggrieved, the respondent invoked the Constitutional jurisdiction of the Peshawar High Court, Peshawar through writ petition No.4880-P of 2017, taking the plea that due to lose of his original domicile certificate, he got duplicate domicile certificate, therefore, the same may be accepted. The writ was allowed and consequently the respondent was appointed as PET vide appointment letter dated 10.1.2020. However, he was placed junior to those who were appointed on 5.10.2017. The respondent approached the department seeking seniority on the basis of merit list prepared at the time of test/interview. Having failed to get remedy from the department, the respondent again approached the Peshawar High Court by way of filing writ

petition No.325-P of 2021. The High Court, relying upon the precedent law, allowed the writ petition in the following terms:-

“7. Since this point has already been settled by this Court in numerous judgment; as such, we allow this writ petition and direct that the appointment order of the petitioner be ante-date to 6.10.2017 only for the purpose of seniority and his name be placed in the seniority list in terms of the order of merit, however, he will not be entitled for any financial benefits.”.

2. We have heard the learned Law Officer who vehemently contended that the respondent is only entitled to the appointment from the date he actually assumed charge, as he has accepted appointment order from the date of taking of charge, hence no retrospective effect can be given to his appointment letter.

3. The controversy involved in the instant petition is whether an individual, wrongfully kept out of service due to departmental inaction, omission or error, is entitled to an ante-dated appointment. It is well settled that where a candidate is denied his legal right to a post, through no fault on his part, the Court must intervene to restore him, so far as the law permits, to the service position which he would have occupied had the wrongful exclusion not occurred. The established principle is that where the employee is otherwise entitled, and the denial, delay or deferment of the service benefit occurs not because of any fault on his part but because of departmental omission, inaction, error or illegality, the department cannot be allowed to gain a legal advantage upon its own wrong, nor can the employee be made to suffer the continuing prejudice of that wrong. In instances of such unlawful exclusion, directions have been issued ensuring the affected party “*shall be adjusted in PSP Cadre in 2001 Batch*”. See, Lt. Muquddus Haider v. Federal Public Service Commission, 2007 PLC (C.S.) 229. The significance of the direction is that, though relief of appointment was granted by the Court in 2004, the petitioner’s service position was restored with effect referable to the 2001 batch, namely, the point in service which he would have attained had he not been unlawfully excluded. This

aligns with the rationale that when *“the delay in making the promotions occurred entirely due to the reason that the officials of the Education Department could not carry out a fairly simple exercise within a reasonable period. In the circumstances it will not be appropriate for the Court to interfere”*. See, e.g., *Government of the Punjab v. Rana Ghulam Sarwar Khan*, 1997 SCMR 515. Likewise, where the post was available, the civil servant was qualified, and the regular process was delayed by the competent authority, the employee is considered *“entitled not only to the salary attaching to such post but also to all consequential benefits from that very date from which he had been put on the said post”*. See, e.g., *Luqman Zareen v. Secretary Education*, 2006 SCMR 1938. Furthermore, where the employee was eligible and the service benefit was denied *“for no fault on his part rather it was the fault of the Department/Government”*, the due consequence in service cannot lawfully be withheld. See, e.g., *Government of Khyber Pakhtunkhwa v. Fazli Ghufraan*, 2022 SCMR 1765.

4. The principle cannot be confined to promotion matters alone. It reflects a broader doctrine of service law that the administration neither benefit from its own wrong, nor shift the burden of its unlawful act onto the employee. Applying that principle here, once the respondent was found to have been wrongly excluded from initial appointment despite merit and was subsequently inducted only because that wrong was judicially corrected, the department could not insist that the adverse consequences of its own earlier illegality should nonetheless survive against him in the matter of seniority. To accept such a contention would be to permit the department to retain the benefit of its own wrong while the respondent continues to bear the prejudice thereof.

5. The learned High Court has, moreover, adopted a careful and restrained course by directing that the respondent's appointment be treated from 06.10.2017 only on a notional basis for purposes of seniority, while denying back benefits and other monetary consequences. In view of the

above, we find no reason to interfere with the said direction. The petition is without merit. Leave to appeal is refused and the petition stands dismissed.

Judge

Judge

**Islamabad**

24<sup>th</sup> March, 2026

Approved for reporting.

Riaz