

SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Justice Muhammad Ali Mazhar
Justice Musarrat Hilali

Civil Petitions No.5091 to 5093 of 2025 and
Civil Petitions No. 986-P to 988-P of 2025

Against the judgment dated 12.09.2025 passed by Khyber
Pakhtunkhwa Service Tribunal, Peshawar, in Service
Appeals No.1427-1429/2024

Sahibzada Hassan Ali and others	(CPs 5091 to 5093/25)
Government of Khyber Pakhtunkhwa, through Chief Secretary, Peshawar and others	(CPs 986-P to 988-P/25)
	...Petitioners

Versus

The Govt. of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and others	(CPs 5091 to 5093/25)
Khan Ghalib and others	(CP 986-P/25)
Sana Ullah and others	(CP 987-P/25)
Atta Ullah Khan and others	(CP 988-P/25)
	...Respondents

For the Petitioners:	
(CPs 5091 to 5093/25)	Mr. Khalid Rahman, ASC
(CPs 986-P to 988-P/25)	Mr. Zahid Yousaf Qureshi, AOR.

For Respondent-4:	
(CPs 5091 to 5093/25)	Mr. Ali Gohar Durrani, ASC.

For Respondent-1:
(CPs 986-P to 988-P/25)

Date of Hearing:	19.05.2026
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Judgment

Muhammad Ali Mazhar, J. The aforesaid Civil Petitions for leave to appeal are directed against the consolidated judgment dated 12.09.2025 passed by the Khyber Pakhtunkhwa Service Tribunal, Peshawar, **(Tribunal)** in Service Appeals No.1427-1429/2024.

2. According to the communal order of events, the petitioners (employees) were initially appointed against the project posts vide

Notification dated 30.06.2016 after complying with all codal formalities. After a while, the Government of Khyber Pakhtunkhwa promulgated the Khyber Pakhtunkhwa Employees Regularization of Service Act, 2018 (**Act of 2018**) on 07.03.2018 wherein at least 52 different Projects were regularized. As a direct consequence, the employees were regularized vide Notifications dated 28.08.2018 and 17.10.2018 with effect from the commencement of the Act i.e. 07.03.2018 but due to reckless attitude of the lower staff of the concerned Department, the Notifications were belatedly published in the Official Gazette on 21.08.2024 but with effect from 07.03.2018 (date of promulgation of Act of 2018). The Department determined the inter-se seniority in accordance with section 6 of the Act of 2018 and issued Final Seniority List vide Notification dated 13.02.2019 and thereafter, other seniority lists were also issued from time to time. When the Final Seniority List for the year 2024 was issued vide Notification dated on 14.03.2024, some of the employees (private respondents) preferred joint Departmental Representation on 30.07.2024 which was rejected on 13.08.2024 and consequently service appeals were filed before the Tribunal which were allowed vide impugned Judgment and Seniority List was set aside on the premise that in terms of section 5 of the Act of 2018, the regularization Notification of Petitioners (employees) dated 28.08.2018 was published in official gazette on 21.08.2024 and till such publication, the said petitioners/employees were not regular civil servants and hence not entitled to seniority.

3. The learned counsel for the petitioners (employees) argued that when the impugned Final Seniority List for the year 2024 was issued *vide* Notification dated 14.03.2024, the respondent No.4 and his 05 other colleagues preferred an incompetent joint and time-barred departmental representation which was rejected and consequently service appeals were filed before the Tribunal. It was further contended that the learned Tribunal *vide* impugned Judgment allowed the appeals on the wrong premise that in terms of section 5 of the Act of 2018, the regularization Notification of petitioners dated 28.08.2018 was published in official gazette on 21.08.2024 and till such publication petitioners were not regular

civil servants and hence not entitled to seniority. It was further averred that the Act of 2018 contains an inbuilt mechanism for determination of inter-se seniority amongst the regularized employees according to Section 6 of the Act of 2018 which was done by the department strictly in accordance with law after the regularization and issued the Final Seniority List. He further argued that earlier all seniority lists were provisionally issued before finalization and circulated amongst the employees but nobody ever filed any objection except the seniority list questioned in the instant matter. It was further contended that the issue of seniority has been distinctly dealt with and explicated by Section 6 of the Act of 2018 wherein the determining factor is the date of recommendation of the Commission or Department Selection Committee but the learned Tribunal travelled beyond the scope of the Act of 2018 but much prominence was given to the belated publication of the Notification in the official gazette which was the responsibility of officers/officials of the Department or Government Printing Press and cannot outweigh the effect of regularization conferred by the Act of 2018, which condition was otherwise generally regarded as directory and its timely non-compliance does not provide any consequences. He further argued that under Section 6 of the Act of 2018, employees of 52 Projects were regularized and thousands of employees were regularized and their seniority was fixed from the date of commencement of the Act but nobody objected to it.

4. The learned counsel representing Respondent No.4 in CPLAs 5091-5093/2025 and for Respondent No.1 in CPLAs 986-P to 988-P/2025 argued that the Notifications were issued very late, therefore, the regularization was deemed to have been from the date of Notifications. He further contended that though regularization was issued on 28.08.2018, made effective from the date of enactment of Act of 2018 but it was notified on 21.08.2024, therefore, their seniority will be effective from the date of publication of notification. The learned counsel relied on sub-section (iv) of Section 5 of the Act of 2018 and argued that the services of employees/petitioners shall be deemed to have been

regularized only on the publication of their names in the Official Gazette.

5. The learned counsel appearing for Government of KPK in CPs 986-P to 988-P/25 and as respondent in other civil petitions argued that the impugned judgment passed by the learned Tribunal suffers from material illegality. It was further contended that the services of respondents No.2 to 4 were regularized on 07.03.2018, while prior to the appellants before the Service Tribunal joined on 10.10.2018. He further contended that all were in the order of seniority correctly which crucial aspect was ignored by the learned Tribunal.

6. Heard the arguments. In Civil Petitions for Leave to Appeal No. 5091 to 5093/2025, the petitioners, who were respondents before the Tribunal who have challenged the consolidated impugned judgment, rendered in Service Appeals No.1427-1429/2024, whereby the respondents/appellants before the Tribunal were declared senior to the petitioners on the notion that that the Final Seniority List dated 01.03.2024 was not in accordance with the law. It is not disputed that the petitioners were initially appointed against project posts and subsequently their services were regularized under the Act of 2018 on 07.03.2018 *vide* Notifications dated 28.08.2018 and 17.10.2018 with effect from the commencement of the Act, i.e., 07.03.2018. Due to lackadaisical attitude of the lower staff of the Department and the Government Printing Press, the aforesaid Notifications were belatedly published in the Official Gazette on 21.08.2024, though with retrospective effect from 07.03.2018 wherein it was clearly mentioned that the *inter se* seniority of the employees shall be maintained as per the rules.

7. The claim of the petitioners (employees) before us is that they were regularized in service from the date of promulgation of the Act of 2018, while the respondents before us were appointed freshly on 13.08.2018, therefore they were juniors and at least in five seniority lists compiled for the years 2019, 2020, 2021, 2022

and 2023, the petitioners were senior to the respondents but in the year 2024, for the first time they filed representation for making correction in the seniority list.

8. If we look into the sagacity and genius of the Act of 2018 (Khyber Pakhtunkhwa Employees (Regularization of Services) Act, 2018), it is meant for the appointment and regularization of services of certain employees appointed on adhoc basis against civil posts and contract basis against project posts in the Province of the Khyber Pakhtunkhwa. Section 3 superintends and contends with the regularization of services of adhoc employees with a non-obstante clause that notwithstanding anything contained in any law or rules, the employees at sub-clause (i) of clause (e) of sub section (1) of section 2 of this Act, appointed on adhoc basis against civil posts and holding such civil posts till the commencement of this Act, shall be deemed to have been validly appointed on regular basis, from the date of commencement of this Act, subject to verification of their qualifications and other credentials by the concerned Government Department. While in the same breath, Section 4 germane to regularization of services of project employees which yet again, go on board with the non-obstante clause that notwithstanding anything contained in any law or rules, the employees at sub-clause (ii) of clause (e) of sub-section (1) of section 2 of this Act, appointed on contract basis against project posts and holding such project posts till the commencement of this Act, shall be deemed to have been validly appointed on regular basis from the date of commencement of this Act, subject to verification of their qualifications and other credentials by the concerned Government Department.

9. According to general conditions for regularization provided under Section 5 of the Act of 2018, it is unambiguously provided that for the purpose of regularization of the employees under this Act, the following general conditions shall be observed: i) the service promotion quota of all service cadres shall not be affected; (ii) the employees shall possess the same qualification and experience as required for a regular post; (iii) the employees have

not resigned from their services or terminated from service on account of misconduct, inefficiency or any other grounds before the commencement of this Act; and (iv) the services of such employees shall be deemed to have been regularized only on the publication of their names in the Official Gazette. [Emphasis applied]. Whereas Section 6 of the same Act is directly intertwined with and is coherent with the determination of Seniority which accentuates that except the employees mentioned in the proviso to section 4 of this Act, whose services are to be regulated by their respective laws and rules, all other 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 or Departmental Selection Committee, as the case may be, made before the commencement of this Act, are to be appointed to the respective service or cadre, irrespective of their actual date of appointment. However, sub-section (2) is quite relevant to the issue in hand which is unswervingly associated with the inter-se seniority of the employees, whose services were regularized. For the ease of reference, the exact provision encapsulated under sub-section 2 is reproduced as under: -

“(2) The inter-se seniority 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”.

10. Much emphasis was made by the learned counsel for the respondents that the regularization of the employees should be effected from the date of notification published in official Gazette and the notified declaration could take effect from date of publication in Gazette and not from any prior date. He also cited

Section 20A of the General Clauses Act, 1897, which reads as under: -

20A. Rules and Order, etc., to be published. All rules, orders, regulations and circulars having the effect of law made or issued under any enactment shall be published in the official Gazette.

11. In the judgment rendered by one of us in the case of Sohail Ahmed versus Province of Sindh & others (**2017 PLC (C.S.) 510**), the validity of notification vis-à-vis the date of publication in the official gazette was examined and after an exhaustive and all-embracing survey of judicial precedents held as under: -

- i. Notification which purports to impair an existing or vested right or imposes a new liability cannot operate retrospectively.
- ii. Notification which curtails or extends rights will take effect from the date of its publication in the Gazette and not from any prior date.
- iii. A notification which confers benefits cannot operate retrospectively does not seem to be the correct proposition of law.
- iv. The word notification shall mean a notification published under proper Authority in the official Gazette.
- v. Notified order would mean notification through publication in the official Gazette and not by passing an order and keeping the same in the office of the department concerned.
- vi. When a state of things is to take place by publication of a notification which means from the date of its publication in the Gazette and not from any prior date. If it is prior to the date of the publication in the Gazette, it will tantamount to giving a retrospective effect.
- vii. Issuance of a Notification is not of any significance or legal importance till it is published in an official Gazette.

12. No doubt, in the literal understanding or intellect, the laws, rules, and regulations cannot bind the citizens unless published and accessible which is meant to provide a just and fair opportunity to be acquainted with their rights and obligations embedded under the law of land. In unison, another important facet cannot be lost sight of which is also a well settled exposition of law that each case has to be decided on its own peculiar set of circumstances. What actually needs to be deciphered in this case is whether publication of notification was directory and its delay

due to departmental administrative delay was a procedural error rather than a fatal flaw, predominantly when no new sense of duty was imposed on the regularized employees but even in the delayed published notification the date of regularization was made effective from the date of promulgation of the Act of 2018 without any hesitancy or doubtfulness. The next point at issue for thoughtful contemplation is whether in the present case were there any adverse consequences of non-publishing a notification of regularization of services in the Official Gazette at appropriate time or without delay; furthermore, whether the requirement of publication was directory or mandatory? If the parent law commands the publication of notification but it does not unequivocally proclaim that non-publication of notification will render the action null and void or unenforceable, such clause by and large may be construed as directory.

13. This is not the case here that the other employees were not aware of the effective date of Act of 2018, rather they all possessed factual knowledge of the beneficial legislation. The employees regularized from the effective date of Act of 2018 were not new or fresh entrants but they were already officiating their duties prior to the promulgation of the aforesaid Act. Whether on account of administrative lapses or unexplained delay, the employees should become victims or sufferers notwithstanding that even in the delayed published notification, their date of regularization is scribbled down the same as the effective date of the Act of 2018. There is no such incidence put on view that since the regularization was notified in the official gazette lately, therefore, in the integrum, the petitioners were sitting work-shy, inactive or at leisure without performing any duties or receiving remuneration in violation of doctrine of “no work no pay”. What was the status of employees if they were continuously working and just because of delayed publication of notification whether they were being treated just the same as project employees and were being paid salary as a project employee; were they sitting idle or without performing job responsibilities and waiting for the publication of

notification to resume the job? There was no justification of how the respondents who were appointed much after the petitioners could claim seniority over and above the employees who were performing duties initially as project employees and were regularized subsequently by fiction of law. These crucial interrogatories remained uncontested and unanswered without any debate.

14. For all intents and purposes, the notification sheds light on an existing framework or alters internal governance in routine administrative affairs or actions compliant with the law without creating new legal encumbrances or taking away accrued benefits, the omission of a gazette publication or late publication will not automatically declare it illegal. The services were regularized by means of Act of 2018 from the date of Act, though the official notification was published with delay in the Official Gazette but the retroactive regularization will remain valid. The moment the statute was enacted, the legal right to be regularized accrued to the eligible employees. The ensuing notification was merely a formal ratification to fulfill statutory requirement, therefore, the formal date of publication cannot serve as the sole litmus test; rather, the overarching scheme, legislative intent, and foundational philosophy of the law must be kept in view.

15. The notification bestowed beneficial right rather than levying any adversative liability, penalty, or tax, therefore, the lag in publication can be treated as mere procedural delay and due to inter departmental slipups or administrative wrong or lapses under the doctrine of indoor management, the fundamental rights of the petitioners cannot be compromised who had neither any control over executive or administrative delays nor could directly approach the Government Printing Press for expediting the publication. The legal maxim '*Actus Curiae Neminem Gravabit*' (An act of the court shall prejudice no one), resonates a fundamental tenet that Courts are to dispense justice and any action which is found erroneous should not be allowed to prejudice the interest of

any party in the lis. In actual fact, this connotation plays a part as shield that the act of the Court shall prejudice nobody and also reminded a prudent guide for the safe administration of law coupled with a principle of restitution by relegating the parties to the position subsisting before the order or judgment causing the prejudice was passed. In our view, the same Latin maxim is equally applicable to the state which has also an onerous duty to act strictly in accordance with law and constitution to ensure that its acts shall prejudice no one and it shall not take advantage of its own wrong. An elementary canon of service law edicts that an act of the State or Court shall prejudice no man. Correspondingly, "no prejudice" rule is also applicable which is premeditated for the protection of citizens from the clutches of secret laws, sudden or hidden taxes, or penalties but here the act of regularization of adhoc or contract employees was a beneficial and favorable and remedial action, therefore, the delay in publication of notification created no adverse target or harm to the public at large. So far as the private respondents are concerned, they were also aware when the petitioners were engaged even though on contract but the procedure of determining inter-se seniority is itself provided under Sub-section 2 of Section 6 of the Act of 2018 that the inter-se seniority 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 and 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.

16. The watchword "Model Employer" in administrative and service laws insinuates that the State and public authorities should act fairly and justly without exploiting technicalities. No prejudice or harm should be caused to an employee on account of administrative delays or the administrative inefficiency or disorder without any rhyme or reason. On the contrary, sincere efforts should have been made within the auspicious administrative domain and patronage to ensure that all recruitments must be

made transparently and deserving persons are provided opportunity of jobs; the meetings of departmental promotional committees/selection boards are convened without inordinate delays; pension or retirement benefits are processed expeditiously without causing miseries and distresses to the retired employee; issues of seniority including inter-se seniority must be decided promptly and seniority lists are corrected accordingly; the adhoc or contractual employment should not continue for an unlimited period of time and if the employee is worthy of confirmation, then the departmental efforts ought to have been made for regularization of such service. Grounds upon which an administrative action is subject to control by judicial review includes illegality, which means the decision-maker must understand the law correctly that regulates his decision-making power and must give effect to it.

17. An employee cannot be made a victim or scapegoat due to delay in the publication. The well-known jurisprudence in the service laws commands that an employee cannot sit on the fence due to the administrative or bureaucratic delays, inefficiencies, systemic delays, or in-house oversights or inadvertences of the departments. On the contrary, the government at the back of the doctrine of good governance is under executive responsibility to process the paperwork timely and adhere to rules and regulations on the dot.

18. Turning to the question of the government's delay in issuing the notifications, the judicial precedents reinforcing this point of view as under:-

i. Chief Commissioner, Karachi vs. Jamil Ahmed and another (PLD 1961 SC 145). The Court held that the provision in section 280(1) of the City of Karachi Municipal Act, (1933) relating to general elections being notified in official Gazette was directory and not mandatory and a substantial compliance with that would be enough. In Regina vs. Sheer Metal craft Ltd. and another (1954 1 QB 586), Lord Streatfeild, J., took the view that "a statutory instrument, made by a Minister or other competent authority was valid and effective as soon as it was made, notwithstanding that the provisions of the Statutory Instruments Act, 1946, and the

regulations, made (hereunder relating to the printing and issuing of statutory instruments had not been complied with.

ii. Manzur-ul-Haq vs. Controlling Authority, Local Councils, Montgomery and others (PLD 1963 SC 652). It was held, by reference to the provisions of Article 26 of the Basic Democracies Order, 1959, and section 17 of the Municipal Administration Ordinance, 1960, that mere provision in a statute for notifying name of holder of office in Gazette was not a condition precedent to the holding of the office.

iii. Muhammad Suleman vs. Abdul Ghani (PLD 1978 SC 190),. This Court clarified that notifications which curtail or extend the liabilities of citizens cannot be applied retrospectively and only takes effect from the precise date of their publication in the Gazette.

iv. A somewhat similar view was taken in Muhammad Siddique vs. Market Committee, Tandlianwala (1983 SCMR 785). While this Court held in the case of Pakistan through Secretary, Ministry of Defence and others v Late Ch. Muhammad Ahsan (1991 SCMR 2180) that the factual acquisition of land had not been denied and the same had been acted upon for nearly 50 years and there was an airfield in the land for such a long time. The notice/notification although had been signed and issued to all concerned but had not been gazetted. In other words, the purpose of the publication in the ordinary sense was practically served almost contemporaneously when the acquisition took place and in fact it was a more substantial publication insofar as the owners were concerned than if it would have been in the official Gazette. It was further observed that mere fact that publication in the Gazette was delayed, would not invalidate the notification.

v. Multiline Associates vs. Ardeshir Cowasjee and others (PLD 1995 SC 423). This Court took the view that even if Karachi Building and Town Planning Regulations, 1979 were not published in the official Gazette under section 21-A(3) of the Sindh Buildings Control Ordinance, 1979, they could be construed and acted upon as regulations for the purpose of the said Ordinance.

vi. Saghir Ahmed versus Province of Punjab through Secretary Housing and Physical Planning Lahore (PLD 2004 SC 261). This Court held that the provisions of a statute for the publication or a notification in the official Gazette are generally regarded by the Courts as directory and where their strict non-compliance does not provide any consequences. The legal certainty also requires that ordinarily a statutory instrument should not be treated as invalid because of a failure on the part of public functionaries to publish it in the official Gazette.

vii. Government of Sindh v. M/s Khan Ginners (PLD 2011 SC 347). It was reaffirmed that the bar against retrospective application applies strictly to executive orders that ambush citizens with penalties or dynamic financial requirements. It does not bar the executive from honoring an employment status backdated by law.

viii. Bahadur Khan and others versus Federation of Pakistan (2017 SCMR 2066). It was held that the provisions of a statute for the publication or a notification in official Gazette are generally regarded by the Courts as directory where their strict non-compliance does not provide any consequences. The legal certainty also requires that ordinarily a statutory instrument

should not be treated as invalid because of a failure on the part of public functionaries to publish it in the official Gazette. There may be many things done on the basis of such an instrument. It would seem unfortunate were these things held to be invalid if it were at some stage discovered that there had been a failure by a public authority to go meticulously by the manner and mode of publication of an instrument or notification in the Official Gazette.

ix. Municipal Corporation of Greater Mumbai v. Anil Shantaram Khoje (**2014 INSC 155**). The Court evaluated service rules and administrative promotions that went into effect prior to formal Gazette publication. It ruled that while subsequent compliance must happen, actions already executed under internal administrative guidelines (like promotions and retirement benefit calculations) will not be retroactively undone to the detriment of employees if the core purpose of the statute was substantively met.

x. B.K. Srinivasan v. State of Karnataka (**AIR 1987 SC 1059**). It was held that when a framework is directory and a curative or beneficial intent is evident, minor operational timeline lapses in the Gazette publication routine are not fatal to the core scheme.

19. The upshot of the legal and factual matrix discussed above is that the petitioners (employees) have successfully made out a case for the interference. As a consequence thereof, we convert these civil petitions into appeals and allow them. Consequently, the impugned judgment of the learned Tribunal is set aside and the seniority of the petitioners is restored to its original condition.

Judge

Judge

ISLAMABAD
19th May, 2026
Mudassar
Approved for reporting