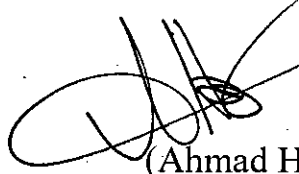


30.07.2019

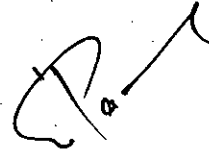
Appellant with counsel and Mr. Zia Ullah learned Deputy District Attorney present.

Learned counsel for the appellant provided a copy of Notification dated 22.05.2019 issued by the Government of Khyber Pakhtunkhwa Finance Department, whereby status of civil servant was granted to fixed pay Class-IV employees from the date of their first appointment instead of regularization w.e.f 01.07.2008. He further stated that after issuance of this Notification the grievance of the appellant stood redressed. He was under instructions from his client not to further pursue the case in hand.

In view of the above, the instant appeal is disposed of accordingly. File be consigned to the record room.



(Ahmad Hassan)
Member



(Muhammad Hamid Mughal)
Member

ANNOUNCED.
30.07.2019

15.04.2019

Appellant's person present. Inayat Ullah ADO representative of the respondent department present and seeks time to furnish written reply/comments. Granted. To come up for written reply/comments on 23.05.2019 before S.B. Member. Member to explain the facts of the case but written notice for reply/comments of the respondent is to be submitted for date written. Adjourned on 19.05.2019 before S.B.


Member

23.05.2019

Appellant with counsel and Mr. Kabir Ullah Khattak learned Additional Advocate General alongwith Inayat Ullah ADO present. Written reply submitted. To come up for rejoinder if any and arguments on 30.07.2019 before D.B.


Member

24.09.2018

Mr. Jawadur Rahman Advocate, counsel for the appellant present and requested for further time to deposit security and process fee. Granted. Security and process fee be deposited within further 10 days. Thereafter, notices be issued to the respondents. To come up for written reply/comments on 13.11.2018 before S.B.

13.11.2018

Due to retirement of Hon'ble Chairman, the Tribunal is defunct. Therefore, the case is adjourned. To come up on 01.01.2019. Written reply not received.



Chairman

READER

01.01.2019

Clerk of the counsel for appellant present and requested for further time to deposit security and process fee. Granted. Security and process fee be deposited within seven days. Thereafter, notice be issued to the respondents for written reply/comments. To come up for written reply/comments on 11.03.2019 before S.B.

Appellant Deposited
Security & Process Fee

Muhammad Amin Khan Kundi
Member


11.03.2019

Clerk of counsel for the appellant present. Mr. Kabirullah Khattak, Additional AG for the respondents present. Written reply on behalf of respondents not submitted. Learned Additional AG requested for further adjournment for filing of written reply. Adjourned. To come up for written reply/comments on 15.04.2019 before S.B.

(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

13.07.2018

None present on behalf of the appellant. Adjourned.
To come up for preliminary hearing on 16.08.2018 before
S.B.


(Muhammad Amin Kundi)
Member

16.08.2018

Mr. Jawad ur Rehman, Advocate counsel for the
appellant present and heard in limine.

Contends that the appellant was appointed on
24.02.1993 as Chowkidar against fixed pay and
subsequently his services were regularized on
30.06.2008. However, his previous services is not
counted towards his pensionary benefits.




Points raised need consideration. The appeal is
admitted to full hearing, subject to all legal objections.
The appellant is directed to deposit security and process
fee within 10 days. Thereafter, notices be issued to the
respondents. To come up for written reply/comments on
24.09.2018 before S.B.


Chairman

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 597/2018


S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	<p>30.04.2018</p> <p>15/05/18.</p> <p>23.05.2018</p>	<p>The present appeal was received on 22.12.2017 which was returned to the counsel for the appellant for completion and resubmission within 15 days. Today i.e. on 30.04.2018 he resubmitted the same late by 111 days. The same may be entered in the institution register and put up to the Worthy Chairman for appropriate order please.</p> <p style="text-align: right;">  REGISTRAR 30/4/18 </p> <p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>23/05/18.</u></p> <p style="text-align: center;">  CHAIRMAN </p> <p>Clerk of the counsel for appellant present and seeks adjournment. Adjourned. To come up for preliminary hearing on 13.07.2018 before S.B.</p> <p style="text-align: right;">  (Muhammad Amin Khan Kundi) Member </p>

The appeal of Mr. Mir Faraz Ex-Chowkidar GPS Iraq Abad Tehsil Jahangira Nowshera received today i.e. on 22.12.2017 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Memorandum of appeal is unsigned which may be got signed.
- 2-- Annexures of the appeal may be flagged.
- 3- Annexures of the appeal may be attested.
- 4- Annexures-A, B and C of the appeal are missing.
- 5- Five more copies/sets of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.

No. 2736 /S.T,

Dt. 26/12 /2017


REGISTRAR 26/12/17
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Yasir Saleem Adv. Pesh.

Respectu Sir,

due to some unavoidable
circumstances i could not re submit
This file in time, my cheat is an
aged person who was on bed.


26/12/17

**BEFORE THE KHYBER PAKHTUNKWA SERVICE
TRIBUNAL PESHAWAR**

Appeal no. 597/2018

Mir Faraz Ex-Chowkidar Government Primary School Iraq Abad
Tehsil Jahangira District Nowsherar.

(Appellant)

VERSUS

Govt of Khyber Pakhtunkhwa, through Secretary Elementary &
Secondary Education, Khyber Pakhtunkhwa, Peshawar and
others.


(Respondent)

INDEX

S.No	Description of Documents	Annexure	Page No
1	Memo of Appeal		1-3
2	Copy of the appointment	A	4
3	Copy of notification dated 17.02.2017	B	5
4	Copy of the order and judgment dated 22.06.2016	C	6-14
5	Copy of the departmental appeal dated 2308.2017	D	15-16
8	Vakalatnama		17

Appellant

Through


YASIR SALEEM
 Advocate High Court
 Peshawar

**BEFORE THE KHYBER PAKHTUNKWA SERVICE
TRIBUNAL PESHAWAR**

Appeal No. 597 /2017

Mir Faraz Ex-Chowkidar Government Primary School Iraq Abad
Tehsil Jahangira District Nowshera.

VERSUS

Appellant
Khyber Pakhtunkhwa
Service Tribunal

Diary No. 1448

Dated 22-12-17

1. Govt of Khyber Pakhtunkhwa, through Secretary Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
2. Director, Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
3. District Education Officer (Male), Nowshera.

Respondents

Appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, against inaction and refusal on the part of the department to count the initial service/ fixed pay of the Appellant till his regularization for the purpose of pension and other post-retirement benefits.

Prayer in appeal:

Filed to-day

[Signature]
Registrar

22/12/17

On acceptance of this appeal the initial service rendered by the undersigned on fixed may be counted towards the pension and the undersigned be allowed pensionary and other post-retirement benefits .

Respectfully Submitted:

The undersigned humbly submit as under

to-submitted to -day
no filed.

[Signature]
Registrar

30/4/18

1. That the appellant was initially appointed as Chowkidar in the Education Department on 24.02.1993 and was posted at Govt. Primary school Iraq Abad Akora Khattak on fixed pay basis. (Copy of the appointment letter is attached as Annexure A)

2. That ever since appointment the appellant had performed his duties as assigned to him with zeal and devotion and there was no complaint regarding his performance.
3. That later, under the Khyber Pakhtunkhwa regularization Act, services of all the fixed pay employees of the province were regularized. Resultantly my services was also regularized in the year 2008 vide notification dated 30.06.2008 under the said Act.
4. That after serving the department for almost 24 years, the appellant has been retired from service vide notification dated 17.02.2017. *(Copy of notification dated 17.02.2017 is attached as Annexure B)*
5. That after retirement the appellant came to know that his pension cannot be processed because of not having the requisite length of service for the purpose of pension.
6. That the appellant approached the department so many times to count his initial service for his pension and other pensionary benefits, however the department flatly refused.
7. That in the mean time, some similarly placed employees of education department also filed writ petition before the Honorable Peshawar High Court Peshawar. The Honorable Court disposed of all those writ petitions while rendering detail judgment in WP 2246-P/2016 on 22.06.2016. *(Copy of the order and judgment dated 22.06.2016 is attached as Annexure C)*
8. That as a last resort, the appellant filed his departmental appeal on 23.08.2017 however the same has not been responded within the statutory period of ninety days. *(Copy of the departmental appeal dated 23.08.2017 is attached as Annexure D)*
9. That the said inaction on the part of department/ respondent is illegal, unlawful, against the rules, and malafide inter alia on the following grounds:

GROUND OF DEPARTMENTAL APPEAL:

- A. That the appellant has not been treated in accordance with law, hence his rights secured and guaranteed under the Law are badly violated.
- B. That not counting the previous service of the appellant for the purpose of pay protection and pensionary benefits by


the respondent is against the norms of justice and principles of equity.

- C. That the petitioner has spent almost 24 years of his live for the school, therefore under the principle of fair play he is entitled for pay protection and pensionary benefits of past/initial service.
- D. That the petitioner was appointed with the benefits of pay scale and allowances admissible to civil servants, therefore he is also entitled to pay protection and pensionary benefits of past service like other civil servants.
- E. That according to the pension rules, if temporary and officiating service is followed by regularization/confirmation, then the previous service would be counted for the purpose of pension. Thus the undersigned is also entitled for pay protection and pensionary benefits of previous accordingly.
- F. That the appellant has been deprived from his due rights, duly protected and the rules, in an arbitrary manner which can not be sustained in the eyes of law, principles of fair play, equity and equality.
10. That the appellant seek leave of this Honorable Court to take additional grounds at the time of arguments.

It is, therefore, humbly prayed that on acceptance of this appeal the initial service rendered by the undersigned on fixed may be counted towards the pension and the undersigned be allowed pensionary and other post-retirement benefits.


Appellant

Through


YASIR SALEEM
Advocate High Court
Peshawar

OFFICE OF THE DISTRICT EDUCATION OFFICER, (MALE) PRIMARY NOWSHERA.

APPOINTMENT OF CLASS-IV
ON CONTRACT BASIS.

OFFICE ORDER.

Mr. Mir Farooq Khan S/O Mahammad Iqbal Khan
resident of village Iraq Abad (SAP) Akhra Khattak Nowshera
candidate is hereby appointed as Class IV (Chowkidar/Nawshera) on
Rs. 1200/P.M. Fixed under the rules with effect from the date of his taking
over charge at GPS Iraq Abad (SAP) Akhra Khattak
against Chowkidar Post according to the AGREEMENT BOND under the
following terms and conditions:-

CONDITIONS:-

1. Charge reports should be submitted to all concerned.
2. No TA/DA is allowed being in appointment.
3. No joining time is allowed that is absolutely necessary for the transit.
4. The appointment is purely temporary basis & subject to the termination at any time/notice.
5. In case he wishes to leave the Deptt. he should have to submit one month's prior notice.
6. He should be produced his health and age Certificate from the concerned Civil surgeon/M.O. within 10-days of reporting arrival duty has required under the rules (FE-10) Sr. 4.
7. In case the candidate fails to take over charge within 10 days from the date of issue of this order, his appointment will stand automatically CANCELLED.
8. The candidate should not be handed over charge if his age is not between 18-45 years.
9. The pay scale and service rules would be subject to the revision in accordance with the orders to be passed by the Govt. from time to time.
10. He will photo copies of the relevant documents i.e. National Identity card, Domicile etc to this office at the time of taking over charge.
11. He will be dealt with under the E&D rules if he violate Govt. rules and regulations.

(HABIB KHAN)
DISTRICT EDUCATION OFFICER,
(MALE) PRIMARY NOWSHERA.

Order No. 7763-68 / P. No. 10 Class IV-Dated Nowshera the, 24/2/19

Copy of the above is forwarded for information to the:-

1. Director of Primary Education RWP Sector B-1/25 Phase V Hayat Abad Peak
2. Sub Divisional Education Officer (Male) Nowshera, with the request that Documents etc of the above mentioned candidate may please be checked before taking over charge.
3. Head Teacher concerned.
4. ADEO(A/O) local office.
5. MPA concerned.
6. P/File.

"HAYAT"
"S. MOHAMMAD"

DISTRICT EDUCATION OFFICER,
(MALE) PRIMARY NOWSHERA.

24/2/19

393 to 219

= 144



5 ANNEX "B"

OFFICE OF THE
DISTRICT EDUCATION OFFICER (MALE)
NOWSHERA

(Office Phone#0923-9220228, Fax#0923-9220228)

OFFICE ORDER

Under the provision Government of Khyber Pakhtunkhwa Finance Department letter No.FD (SR-IV) Vol.II dated 24/08/1983 on his own request.

Mr. Mir Faraz Chowkidar GPS Iraq Abad NSR is hereby retired from Government service w.e.f 17/02/2017 on Superannuation. He is entitled for only lump sum gratuity of one month basic pay per complete year having regular service w.e.f 30/07/2008 less than 10 years.

S/#	Name of Official	Date of Retirement	Date of Birth	D/O 1 st Apptt: on fixed	Transfer to Regular Service.	Total.Length of service Y-M-D	Remarks
01	Mr. Mir Faraz Chowkidar Nowshera P.No.00341459	17-02-2017	18/02/1957	24-02-1993	30/07/2008	23-11-21 Fix Pay Service (15Y-05M-06D)	Retire from Govt. Service on Superannuation. He was regularized w.e.f 30/07/2008

District Education Officer (Male)
Nowshera

11520-23
Distt: No. /DEO (M) NSR/EA-S/ /Retirement of PST/ Dated Nowshera the 25/2/2017.

Copy of the above is forwarded for information and necessary action to the:-

- 1: Senior District Account Officer, Nowshera.
- 2: District Monitoring Officer Nowshera.
- 3: Sub Divisional Education Officer (Male), Nowshera.
- 4: Official concerned.
- 5: Office copy.

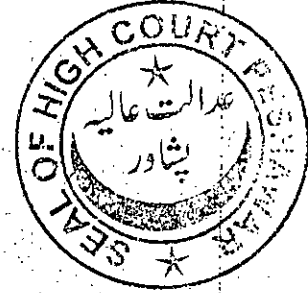
25/2/17
District Education Officer (Male)
Nowshera

(Handwritten signature)

ANNEX C

BEFORE THE PESHAWAR HIGH COURT, PESHAWAR

W.P.No. 176-P/2016



Shah Nawaz S/o Mehmood Khan

R/o Village Ali Shah District Nowshera *Petitioner*

VERSUS

- 1) Senior District Accounts officer Nowshera.
- 2) Executive District Officer Nowshera.
- 3) Sub Divisional Education Officer (Female) District Nowshera.
- 4) District Education Officer (Female) Primary District Nowshera.
- 5) Principal of Govt. Girls Primary School Ali Shah Distt: Nowshera.
- 6) Director of Education (Female) Dabgari Garden, Peshawar.
- 7) Govt. of KPK through Secretary Education, Civil Secretariat, Peshawar.
- 8) Govt. of KPK through Secretary Finance, Civil Secretariat, Peshawar.

FILED TODAY
Deputy Registrar
09 JAN 2016

[Handwritten signature]

ATTESTED
EXAMINER
Peshawar High Court
24 JUL 2017

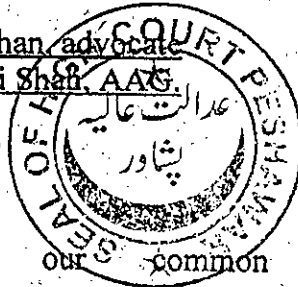
IN THE PESHAWAR HIGH COURT, PESHAWAR,
JUDICIAL DEPARTMENT.

Writ Petition No. 176-P/2016

Date of hearing.....22.06.2017

Petitioner(s) by... Mr. Zafar Ali Khan, advocate
Respondent(s) by... Syed Oaiser Ali Shah, AAG.

JUDGMENT



ROOH-UL-AMIN KHAN, J:- Vide

our common

judgement of even date, placed in connected Writ Petition No. 2246-P/2016, titled "Rizwan Ullah Vs Government of Khyber Pakhtunkhwa etc", this writ petition is transmitted to the concerned Secretary to Government of Khyber Pakhtunkhwa to treat the same as Departmental Appeal and decide it strictly in accordance with the Civil Servants Pension Rules, 1963 and in light of the guidelines provided by this court in judgement passed in Writ Petition No.3394-P/2016 titled "Amir Zeb VS District Accounts Officer, Nowshera etc".

Handwritten notes:
SM Abdul Qadir Amir Khan
SM Oaduber D. Khan
SM Syed Muhammad Atiqullah



Announced on;
22nd of June, 2017
"Amir Khan"

Handwritten signature: Amir Khan

CERTIFIED TO BE TRUE COPY
By: [Signature]
Peshawar High Court, Peshawar
Authenticated under Article 167 of
The Constitution of Pakistan Order 1984
24 JUL 2017

8

**IN THE PESHAWAR HIGH COURT,
PESHAWAR,
[Judicial Department].**

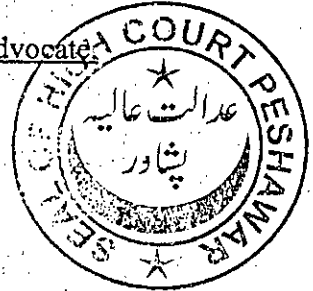
Writ Petition No.2246-P/2016

Date of hearing:- 22.06.2017

Petitioner(s):- Rizwanullah by Mr. Khalid Rehman, Advocate.

Respondent (s):-By Syed Qaisar Ali Shah AAG.

JUDGMENT



ROOH-UL-AMIN KHAN, J:- Through this common

judgment, we, propose to decide the following writ petitions

as identical questions of law and facts are involved therein:-

Writ Petition No.2246-P/2016

Rizwan Ullah Vs Govt

Writ Petition No.290/2016

Haq Nawaz Vs Govt

Writ Petition No.3061-P/2015

Mehrab Gul Vs Govt

Writ Petition No.1084-P/2017

Saadullah Khan Vs Govt

Writ Petition No.1281-P/2016

Naimatullah Vs Govt.

Writ Petition No.1626-P/2015

Shafiq ur Rehman Vs Govt

Writ Petition No.1861-P/2016

Siyal Khan Vs Govt

Writ Petition No.2177-P/2016

Hamidullah Khan Vs Govt.

Writ Petition No.3373-P/2016

Anderaf Gul Vs Govt

Writ Petition No.286-P/2016

Basir Azam Vs Govt

Writ Petition No.2868-P/2016

Gulistan Khan Vs Govt

Writ Petition No.3226-P/2016

Ashiq Ali Vs Govt

Writ Petition No.4623-P/2016

Said Mali Khan Vs Govt

Writ Petition No.4924-P/2016

Malik Wali ur Rehman Vs Govt

Writ Petition No.457-P/2016

Liaq Shah Vs Govt

ATTESTED

**EXAMINER
Peshawar High Court**

24 JUL 2017

looked in

Attest

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Writ Petition No.4923-P/2016
 Gul Zarin Vs Govt
Writ Petition No.4086-P/2016
 Hayat Hussain Vs Govt
Writ Petition No.3203-P/2016
 Muhammad Rehman Vs Govt
Writ Petition No.4179-P/2015
 Mian Asfandyar Vs Govt
Writ Petition No.181-D/2017
 Parveen Begum Vs Govt.
Writ Petition No.2876-P/2014
 Sher Ali Vs Govt
Writ Petition No.501-P/2016
 Fazal Khan Vs Govt
Writ Petition No.2064-P/2016
 Rahim Shah Vs Govt
Writ Petition No.4683-P/2016
 Abdul Qadeer Vs Govt
Writ Petition No.3451-P/2016
 Nisar Bacha Vs Govt
Writ Petition No.3071-D/2016
 Shah Jehan etc Vs Govt.
Writ Petition No.3368-P/2016
 Abdul Ghaffar Vs Govt
Writ Petition No.3639-P/2016
 Nadar Khan Vs Govt
Writ Petition No.3367-P/2016
 Syed Muzarab Shah Vs Govt
Writ Petition No.3369-P/2016
 Muhammad Faiq Vs Govt
Writ Petition No.3370-P/2016
 Syed Man Shah Vs Govt
Writ Petition No.590-P/2017
 Rab Nawaz Khan Vs Govt
Writ Petition No.204-P/2017
 Zahir Shah Vs Govt
Writ Petition No.1072-P/2017
 Noor Zada Vs Govt
Writ Petition No.337-D/2014
 Ali Man Shah Vs Govt
Writ Petition No.724-D/2016
 Ghulam Shabir Vs Govt
Writ Petition No.651-D/2016
 Syeda Allah Wasaye Vs Govt
Writ Petition No.515-D/2016
 Rab Nawaz Vs Govt
Writ Petition No.2-D/2015
 Muhammad Jaffar Vs Govt
Writ Petition No.278-D/2017
 Rashid Ahmad Vs Gomal University
Writ Petition No.31-D/2017
 Mehmood ul Hassan Vs Govt

1000/2017

2017

ATTESTED
 CLERK
 Peshawar High Court
 24 JUL 2017

10

Writ Petition No.880-D/2016

Abdul Rashid Vs Govt

Writ Petition No.94-D/2016

Rab Nawaz Vs Govt

Writ Petition No.399-D/2014

Bibi Amna Vs Govt

Writ Petition No.410-D/2016

Rehmatullah Vs Mst. Azra Bibi

Writ Petition No.1397-P/2014

Azam Khan Vs Govt

Writ Petition No.1396-P/2014

Roshan Din Vs Govt

Writ Petition No.620-P/2015

Saleem Khan Vs Govt

Writ Petition No.376-P/2015

Muhammad Ramzan Vs Govt

Writ Petition No.843-P/2015

Lachi Khan Vs Govt

Writ Petition No.4538-P/2015

Raham Khan Vs Govt

Writ Petition No.176-P/2016

Shah Nawaz Vs Govt

Writ Petition No.1167-P/2016

Muhammad Shoaib Vs Govt

Writ Petition No.599-P/2016

Abdur Rehman Vs Govt

Writ Petition No.2044-P/2016

Muhammad Aslam Khan Vs Govt

Writ Petition No.4798-P/2016

Dilfaraz Vs Govt

Writ Petition No.4799-P/2016

Muhammad Iqbal Vs Govt

Writ Petition No.3506-P/2016

Noor Muhammad Shah Vs Govt

Writ Petition No.588-P/2017

Mumtaz Khan Vs Govt

Writ Petition No.4800-P/2016

Sherullah Jan Shah Vs Govt

Writ Petition No.4801-P/2016

Muhammad Azam Khan Vs Govt

Writ Petition No.4802-P/2016

Zinda Khan Vs Govt

Writ Petition No.842-P/2015

Wakeel Khan Vs Govt

Writ Petition No.4131-P/2016

George Masih Vs Govt

hooked

Alleged

2. Facts in brief forming the background of the above writ petitions are that petitioners are Class-IV employees. They were initially recruited/appointed on

ATTESTED
EXAMINER
Punjab High Court
27 JUL 2017

(11)

contract/adhoc/temporary/ fixed pay basis in various departments of the Government of Khyber Pakhtunkhwa. By virtue of the Khyber Pakhtunkhwa Regulation Acts, their service was, later on, regularized. After their retirements, the petitioners have been refused pension by the respondents-departments on the ground of lack of prescribed length of their regular service. Grievance of the petitioner is that the respondents-departments by excluding the period of their temporary/adhoc/ contract/fixed pay service towards their regular service, have illegally deprived them from pension as under the law and rules their temporary service was to be calculated/counted with regular service, hence, these writ petitions.

3. On day before yesterday i.e. 20.06.2017, these writ petitions along with connected writ petitions in respect of family pension of deceased civil servants, were fixed for hearing. The moment, these writ petitions were taken up for hearing, learned A.A.G. raised a preliminary objection qua maintainability of the instant writ petitions on the ground that since the petitioners are retired civil servants and they claiming their right conferred upon them by section 19 of the Khyber Pakhtunkhwa Civil Servant Acts, 1973, which pertains to the terms and conditions of a civil servant, therefore, the jurisdiction of this Court is barred under Article 212 of the Constitution as the same exclusively falls in the domain of the Service Tribunal.

Procedural

[Handwritten signature]

ATTESTED
 EXAMINED
 JUDGE
 24 JUL 2017

4. When confronted with the preliminary objection, learned counsel for the petitioners sought time to assist the Court, hence, the cases were posted for today.

5. Today, learned counsel for petitioners tried their level best to wriggle out of the situation by submitting that petitioners are no more civil servants as they have already been retired from service, hence, under section 4 of Service Tribunals Act, 1973, their appeals before the Service Tribunal would be incompetent. The next limb of their arguments was that since the petitioners have been discriminated, therefore, under Article 25 of the Constitution, this Court is vested with the powers to quash the illegal action and inaction of the respondents. Some of learned counsel for the petitioners straightaway conceded the bar on the jurisdiction of this Court in the matter of pension under Article 212 of the Constitution and requested for treating the instant petitions as Departmental Appeals and sending the same to the competent authority for onward proceeding.

6. We are not in consonance with the first argument of learned counsel for the petitioners because under section 2 (a) of the Service Tribunal Act, 1973, "civil servant" means a person who is, or has been, a civil servant within the meaning of the Civil Servants Act, 1973. Petitioners are retired civil servants. Admittedly, dispute regarding pension of a civil servant squarely falls in terms and conditions of service of a civil servant, hence, Service Tribunal is vested

Looked into
Alleged

ATTESTED
EXAMINER
President High Court
24 JUL 2017

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with exclusive jurisdiction in such like matter. It has persistently been held by this Court as well as by the august Supreme Court of Pakistan that a civil servant, if aggrieved by a final order, whether original or appellate, passed by the departmental authority with regard of his/her terms and conditions of service, the only remedy available to him/her would be filing of appeal before the Service Tribunal even if the case involves vires of particular Rule or notification.

7. So far as the argument of learned counsel for petitioner with regard to discriminatory treatment and violation of Article 25 of the Constitution is concerned, we deem it necessary to clarify that a civil servant cannot bypass the jurisdiction of Service Tribunal by taking shelter under Article 25 of the Constitution in such like matter. The Service Tribunal shall have the exclusive jurisdiction in a case which is founded on the terms and conditions of service, even if it involves the question of violation of fundamental rights because the Service Tribunals constituted under Article 212 of the Constitution are the outcome of the constitutional provisions and vested with the powers to deal with the grievances of civil servants arising out from original or appellate order of the department.

8. As regards the submission of learned counsel for petitioners to treat the instant writ petitions and send the same to the concerned authority for consideration/decision, the same has weight. In this regard we are fortified by the

Look Sam
Atty

ATTESTED

EXAMINER
Peshawar High Court

24 JUL 2017

(14)

judgment of the august apex Court in case titled, "I.A. Sherwani and others v Government of Pakistan through Secretary, Finance Division, Islamabad and others (1991 SCMR 1041).

9. In view of the above, it is held that all these writ petitions are not maintainable, however, in the interest of justice, we instead of dismissing the same, transmit to the concerned Secretaries to the Government of Khyber Pakhtunkhwa to treat them as departmental appeals and decide strictly in accordance with Civil Servants Pension Rules, 1963.

10. Before parting with the judgment, we, deem it appropriate to mention here that the concerned Secretaries while deciding the departmental appeals, may take guidance from the judgment of this Court rendered in Writ Petition No.3394-P/2016, titled, "Amir Zeb Vs District Account Officer Nowshera etc" dated 22.06.2017, wherein guideline has been provided for eligibility of a civil servant for the pension who had served on adhoc/contract and fixed pay basis.

*Self Recd at Peshawar
for calculation of pension
for subject mentioned above all the*

Announced:
22.06.2017
Straj Afidi P.S.



Agreed

JUDGE

JUDGE

CERTIFIED TO BE TRUE COPY
Examination
Peshawar High Court Peshawar
and District Court Peshawar
and District Court Peshawar
24 JUL 2017

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ANNEX D

15

To,
The District Education officer (Male),
Nowshera

Subject:

Departmental Appeal against inaction and refusal on the part of the department to count the initial service/ fixed pay of the undersigned till his regularization for the purpose of pension and other post-retirement benefits.

Prayer in Appeal:

On acceptance of this appeal the initial service rendered by the undersigned on fixed may be counted towards the pension and the undersigned be allowed pensionary and other post-retirement benefits .

Respectfully Submitted:

The undersigned humbly submit as under

1. That the undersigned was initially appointed as Chowkidar in the Education Department on 24.02.1993 and was posted at Govt. Primary school Iraq Abad Akora Khattak on fixed pay basis.
2. That ever since my appointment I have performed my duties as assigned to me with zeal and devotion and there was no complaint regarding my performance.
3. That later, under the Khyber Pakhtunkhwa regularization Act, services of all the fixed pay employees of the province were regularized. Resultantly my services was also regularized in the year 2008 vide notification dated 30.06.2008 under the said Act.
4. That after serving the department for almost 24 years, the undersigned has been retired from service vide notification dated 17.02.2017.
5. That after retirement the undersigned came to know that his pension cannot be processed because of not having the requisite length of service for the purpose of pension.
6. That the undersigned approached the department so many times to count his initial service for his pension and other pensionary benefits, however the department flatly refused.

[Handwritten signature]

Received
[Signature]
23-8-2017

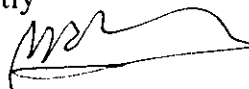
7. That the said refusal is illegal, unlawful, against the rules, and malafide inter alia on the following grounds:

GROUND OF DEPARTMENTAL APPEAL:

- A. That the undersigned has not been treated in accordance with law, hence my rights secured and guaranteed under the Law are badly violated.
- B. That not counting the previous service of the undersigned for the purpose of pay protection and pensionary benefits by the department is against the norms of justice and principles of equity.
- C. That the petitioner has spent almost 24 years of his live for the school, therefore under the principle of fair play he is entitled for pay protection and pensionary benefits of past/ initial service.
- D. That the petitioner was appointed with the benefits of pay scale and allowances admissible to civil servants, therefore he is also entitled to pay protection and pensionary benefits of past service like other civil servants.
- E. That according to the pension rules, if temporary and officiating service is followed by regularization/ confirmation, then the previous service would be counted for the purpose of pension. Thus the undersigned is also entitled for pay protection and pensionary benefits of previous accordingly.

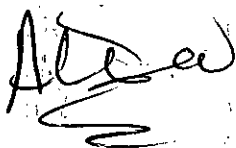
It is, therefore, humbly prayed that on acceptance of this appeal the initial service rendered by the undersigned on fixed may be counted towards the pension and the undersigned be allowed pensionary and other post-retirement benefits.

Yours Obediently



Mir Faraz
Ex- Chowkidar
GPS Iraq Abad,
Tehsil Jehangira District nowshera.

Dated: ___/08/2017



POWER OF ATTORNEY

In the Court of Hydrabad Patshahi Dewa Soudain Tehsil
Mir Fajaz _____ } For Reza
_____ } Plaintiff
_____ } Appellant
_____ } Petitioner
_____ } Complainant

VERSUS

Court of ICPC _____ } Defendant
_____ } Respondent
_____ } Accused

Appeal/Revision/Suit/Application/Petition/Case No. _____ of _____
Fixed for _____

I/We, the undersigned, do hereby nominate and appoint

**YASIR SALEEM ADVOCATE, HIGH COURT
JAWAD UR REHMAN ADVOCATE**

_____ my true and lawful attorney, for me
in my same and on my behalf to appear at Reza to appear, plead, act and
answer in the above Court or any Court to which the business is transferred in the above
matter and is agreed to sign and file petitions. An appeal, statements, accounts, exhibits.
Compromises or other documents whatsoever, in connection with the said matter or any
matter arising there from and also to apply for and receive all documents or copies of
documents, depositions etc, and to apply for and issue summons and other writs or sub-
poena and to apply for and get issued and arrest, attachment or other executions, warrants
or order and to conduct any proceeding that may arise there out; and to apply for and
receive payment of any or all sums or submit for the above matter to arbitration, and to
employ any other Legal Practitioner authorizing him to exercise the power and
authorizes hereby conferred on the Advocate wherever he may think fit to do so, any other
lawyer may be appointed by my said counsel to conduct the case who shall have the same
powers.

AND to all acts legally necessary to manage and conduct the said case in all
respects, whether herein specified or not, as may be proper and expedient.

AND I/we hereby agree to ratify and confirm all lawful acts done on my/our behalf
under or by virtue of this power or of the usual practice in such matter.

PROVIDED always, that I/we undertake at time of calling of the case by the
Court/my authorized agent shall inform the Advocate and make him appear in Court, if the
case may be dismissed in default, if it be proceeded ex-parte the said counsel shall not be
held responsible for the same. All costs awarded in favour shall be the right of the counsel
or his nominee, and if awarded against shall be payable by me/us

IN WITNESS whereof I/we have hereto signed at _____ Mir
the _____ day to _____ the year _____

Executant/Executants _____
Accepted subject to the terms regarding fee _____

Jawad
JAWAD-UR-REHMAN

Yasir
YASIR-SALEEM

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Mir Faraz Appellant

VERSUS

Govt KPK and others Respondents

Respectfully Sheweth

Written comments on behalf of respondents are as under.

Preliminary Objections

1. That the appellant has no cause of action to file the instant appeal.
2. That this Honorable Tribunal has got no jurisdiction to entertain the present appeal.
3. The present appeal is bad for mis-joinder and non-joinder of necessary parties.
4. That the appellant is estopped by his own conduct, by deed and by law to file the instant appeal.
5. That the instant appeal is barred by law.
6. That the appeal is time barred.
7. The appellant has no locus standi to file the instant appeal.

Factual Objections:-

1. Pertains to record.
2. Pertains to record.
3. Pertains to record.
4. Pertains to record.
5. Incorrect. Substituted / Revised retirement order has been issued by the respondent department and full pension's benefits were extended to the appellant. Moreover respondent No also issued notification dated 17-5-2018 according to that notification all class-iv employees who were appointed in contract, adhoc etc and were regularized later on shall be entitled for pensionary benefits.
6. Incorrect. In the substituted / revised retirement order of the appellant his initial service was counted for pension and gratuity.
7. Pertain to record.
8. Incorrect.
9. Incorrect.

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GROUND

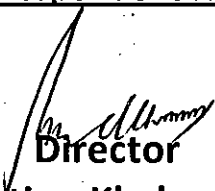
- A. Incorrect. The appellant was treated in accordance with law and rules.
- B. Incorrect. As explained in the above paras.
- C. Incorrect. The respondent / department is ready to pay the pensioner benefits to the appellant.
- D. Correct. As explained in the above paras.
- E. As replied in the above paras.
- F. As replied in the above paras.

It is, therefore, requested that appropriate order may please be passed in the instant Service Appeal.

Respondent No. 1

Secretary 
E & S Education Khyber Pakhtunkhwa
Peshawar

Respondent No. 2


Director
E & S Education Khyber Pakhtunkhwa
Peshawar

Respondent No. 3


District Education Officer
(Male) Nowshera

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

23

Service Appeal NO. 597/ 2018

Mir Faraz Appellant

VERSUS

Govt KPK and others Respondents

AFFIDAVIT

I Attaullah Mena Khel District Education Officer (Male) Nowshera do solemnly affirm and declared on oath that the contents of the para wise comments on behalf of respondents are true and correct to the best of my knowledge and that nothing has been concealed from this Honorable Court.


DEPONENT

GOVERNMENT OF KHYBER PAKHTUNKHWA

Elementary and Secondary Education Department

Block-"A" Opposite MPA's Hostel, Civil Secretariat Peshawar

NO.S.O (LIT-I)/E&SE/1-1/2012/

Dated Peshawar the 17-5 -2018

To

1. Director,
Elementary & Secondary Education,
Khyber Pakhtunkhwa Peshawar
2. All District Education officers(M/F)
Khyber Pakhtunkhwa.

SUBJECT: IMPLEMENTATION OF PESHAWAR HIGH COURT
JUDGEMENTS REGARDING GRANT PENSIONARY BENEFITS
TO CLASS IV EX FIXED PAY EMPLOYEES

I am directed to refer to the subject noted above and to state that all the subject cases may be disposed off in light of para 13 of the judgement of Peshawar High Court dated 22-6-2017(copy enclosed). It is further stated that all such cases may be examined in light of prevailing pension rules and the employees who have rendered minimum length of service, which is 25 years in normal cases and ten years in special /family pension cases. Service rendered by officials under contract, adhoc etc shall be counted towards pension provide such officials were regularized at later stage and pension was denied to them on the ground of not fulfilling criteria of minimum time as regular employee.

However, this Department may be kept informed of the day to day proceedings.


Section officer (Lit-I)

Endst.NO & date as above.

Copy to:-

1. Advocate General KPK
2. Addl Registrar Peshawar High Court.
3. P.A to Spl: Secretary (Legal).


Section officer (Lit-I)



GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGULATION WING)

Dated Peshawar the 22-05-2019

NOTIFICATION

No.FD(SOSR-II)4-36/2017. In pursuance of the judgement of Peshawar High Court Abbottabad Bench in Writ Petition No. 627-A/2018 dated: 18.12.2018 and Judgements of various Lower Courts as well as supersession of Finance Department policy letter No.BO-I/1-22/2007-08/FD dated: 29.01.2008, the Competent Authority has been pleased to accord sanction of regularization of Fixed Pay Class-IV employees appointed on the basis of policies issued vide Finance Department notifications No. B-I/2-1/92-93/I dated: 04.11.1992 and No.B-I/1-22/94-95/FD Vol-II dated: 24.07.1999 by extending them the status of civil servant as per Civil Servant Act 1973 from the date of their first appointments instead of the date of their regularization w.e.f 01.07.2008 in their respective entities in the best of public interest.

SECRETARY TO GOVERNMENT
OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT

Endst: No & date even

Copy for information and necessary action is forwarded to the.

1. The Additional Chief Secretary (P&D), Khyber Pakhtunkhwa.
2. The Provincial Police Officer, Khyber Pakhtunkhwa.
3. The Accountant General Khyber Pakhtunkhwa.
4. The Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
5. The Principal Secretary to Governor, Khyber Pakhtunkhwa.
6. All Administrative Secretaries Government of Khyber Pakhtunkhwa.
7. All Deputy Commissioners in Khyber Pakhtunkhwa.
8. All Heads of Attached Departments in Khyber Pakhtunkhwa.
9. The Director Treasuries & Accounts Khyber Pakhtunkhwa.
10. The Director, Local Fund Audit, Khyber Pakhtunkhwa.
11. Director, FMU, Finance Department.
12. Budget Officer-XI, Finance Department.
13. Budget Officer-I, Finance Department with reference to their letters quoted above.
14. All District Controller of Accounts Khyber Pakhtunkhwa.
15. All District Account Officers in Khyber Pakhtunkhwa.
16. PS to Chief Secretary, Khyber Pakhtunkhwa.
17. PS to Secretary Finance, Khyber Pakhtunkhwa.
18. PS to Special Secretary Finance Department, Khyber Pakhtunkhwa.
19. PA to Additional Secretary (Regulation), Finance Department.


(MOAZZAM KHAN)
Section Officer (SR-II)