29.08.2019

Counsel for the appellant present. Addl: AG alongwith Mr. Roheen Naz, ADO, Mr. Zakaullah, Senior Auditor and Mr. Sajid, Supdt for respondents present. Written reply on behalf of respondents 5 and 6 not submitted. Requested for adjournment. Last opportunity granted. To come up for written reply/comments on behalf of respondents no. 5 and 6 on 26.09.2019 before S.B.

('Aĥmad Hassan) Member

26.09.2019 Counsel for the appellant present. Addl: AG alongwith Mr. Roheen Naz, ADO, Mr. Sajid, Supdt and Mr. Zakiullah, Senior Auditor for respondents present.

Learned counsel for the appellant submitted an application that the appeal in question may be disposed of in the light of decision of this Tribunal dated 07.08.2019 passed in service appeal no. 113/2019 and the same is placed an file. The grievance agitated through the instant appeal has already been redressed through notification dated 22.05.2019, whereby services of fixed pay employees were regularized w.e.f 01.07.2008.

As the grievances of the appellant have been redressed, therefore, the appeal in hand is disposed of. File be consigned to the record room.

Announced: 26.9.2019

(Ahmad Hassan) Member 15.04.2019

Clerk to counsel for the appellant present. Written reply not submitted. Miss Roheen Naz ADO Legal 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

23.05.2019

Junior to counsel for the appellant present. Written reply not submitted. Sajjad Superintendent (for respondent No.1)Roheen Naz ADO (for respondent No.4) present and seek time to furnish written reply/comments. Hayat AD (for respondent No.3) and Zaki Ullah representative of respondent No.5 absent. Respondents No.2, 3, 5 & 6 as well as absent representatives be put to notice for submission of written reply. Adjourn. To come up for written reply/comments on 03.07.2019 before S.B

Member

O3.07.2019 Learned counsel for the appellant and Mr. Muhammad

Jan learned Deputy District Attorney alongwith Roheen Naz

ADO for the respondents No. 1 to 4 and. Zaki Ullah Senior

Auditor on behalf of respondent No. 5 & 6 present and seek

time to furnish written reply/comments. Adjourned. To come

up for written reply/comments on 29.08.2019 before S.B.

Member

25.1.2019

Mr. Muhammad Asif Advocate for appellant present.

Pre-admission notice be issued to the respondents to resolve the controversy in terms that whether the appellant would be entitled for consideration of his service from the date of appointment and not from the date of regularization for the pension benefits.

To come up on 27.02.2019 before S.B.

81/11/14

Chairman

27.02.2019

Counsel for the appellant present. Nemo for the respondents.

Pre-admission notice was required to be issued to the respondents on 25.01.2019. The same has been sent on 30.1.2019, however, no one is in attendance to represent the respondents. Instant appeal is, therefore, admitted for regular hearing subject to all just exceptions.

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 15.04.2019 before \$.B.

Chairman

Form- A

FORM OF ORDER SHEET

Court of		
Case No	1516	/2018

	Case No	<u> </u>
S.No.	Date of order ^{1,} proceedings	Order or other proceedings with signature of judge
1	. 2	3
1-	24/12/2018	The appeal of Mr. Daftari Shah presented today by Mr. Muhammad Asif Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.
		REGISTRAR 2-4/12-11
2-	27/12/18.	This case is entrusted to S. Bench for preliminary hearing to be
	•	put up there on <u>25/01/2019</u> .
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		CHAIRMAN
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<u>BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,</u> <u>PESHAWAR</u>

S.A.No. 1576 /2018	
Daftari Shah	Appellant
VERS	<u>sus</u>
Government of Khyber Pakhtunkhwa, through Secretary Finance Civil Secreta	riat, Peshawar & others
·	Respondents

INDEX

S.No.	Description of documents.	Annexure	Pages.
1	Memo of appeal.	<u> </u>	1-4
2	Affidavit.		-
3	Addresses of the parties.		6
4	Copy of appointment letter	A -	7
5	Copy of service book	В	12-15
5	Copy of appeal	С	16
6.	Copy of your Filters of del	D	17
7	Copy of Charge report	Е	18
8.	Wakalatnama		,

Appellant

Through

Muhammad Asif

Advocate Supreme Court

Off: 214 Syed Ahmad Ali Building Near Taj Autos, Sunehri Masjid

Road, Peshawar Cantt.

Office No.091-5279292 Cell: 0302-8885187

0311-1934339

Dated: 22.12.2018

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL. PESHAWAR

Khyber Pakhtukhwa Service Tribunal

Dia - No. 1799

Dates 24-12-2018

S.A.No. /2018

Daftari Shah s/o Amir Dad

R/o Aza Khail Bala, Tehsil and District Nowshera...... Appellant

VERSUS

- 1) Government of Khyber Pakhtunkhwa, through Secretary Finance Civil Secretariat, Peshawar.
- 2) Government of Khyber Pakhtunkhwa, through Secretary Education, Civil Secretariat, Peshawar.
- 3) Director Elementary and Secondary Education, near Govt: Higher Secondary School No.1 G.T. Road, Peshawar City.
- 4) District Education Officer (Male), District Nowshera.
- 5) Accountant General, Accountant General Office, Fort Road, Peshawar Cantt, Peshawar.
- 6) Senior District Account Officer, District Account Officer, Nowshera.

.....Respondents

Filedto-day
Registrar

APPEAL UNDER SECTION 4 OF THE SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORAL ORDER OF RESPONDENTS OF REFUSAL TO ISSUE PENSION TO THE APPELLANT FROM THE DATE OF RETIREMENT 03.04.2015 i.e. **WHILE** APPEAL FILED ON 11.09.2018 HAS NOT SINCE BEEN REPLIED/ DECIDED AND THE STATUTORY PERIOD OF 3 MONTHS HAVE EXPIRED.

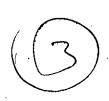
Prayer:

On acceptance of this appeal, the respondents may kindly be directed to issue pension and pensionary benefits to the appellant from the date of retirement i.e. 03.04.2015 by setting aside the oral refusal of the respondents regarding issuing pension to the appellant.

Respectfully Sheweth;

Appellant humbly submits as under:

- 1) That appellant was appointed as Class-IV Chowkidar/ Naib Qasid on 02.11.1996 in Govt. Girls Primary School Mera Aza Khail Bala, Tehsil and District Nowshera and took charge against a vacant post of Chowkidar on fixed pay after producing medical fitness certificate. (Copy of appointment letter is Annexure "A").
- 2) That later on the services of the appellant was confirmed and the appellant was granted BPS-1 and in the year 2011 was granted BPS-2 and retired on 03.04.2015 in BPS-04. (Copy of service book is Annexure "B").
- 3) That after retirement appellant was confident that as appellant has served the department for more than 21 years therefore, appellant was confident that after due process pension would be granted to the appellant after due process.
- 4) That later on appellant inquired from the respondents regarding pension and pensionary benefits on which appellant was informed that hon'ble Peshawar High Court Peshawar has decided the writ petition regarding the pension and pensionary benefits therefore, after proper approval from competent authority the cases of pension would be decided/ processed.
- 5) That appellant was further informed that decision regarding pension would take some time because a lot of cases has to be considered individually and thus appellant should wait.



- 6) That finally when appellant did not get any response from, appellant again contacted the respondents. However, from the office of respondents, appellant came to know that pension and pensionary benefits have been granted only to those whom have challenged the same.
- 7) That appellant filed appeal to the respondents No.2 and 3 but 3 months have been passed and uptil now the pension and pension benefits have not been granted to the appellant. Moreover appeal of the appellant has not been decided. (Copy of appeal is Annexure "C")
- 8) That aggrieved with, appellant has came before this Hon'ble Tribunal in this appeal on the following grounds amongst the others for pension and pensionary benefits.

GROUNDS:

- a. That the oral order refusal of respondents of not granting pension and pensionary benefits to the appellants is against law and facts hence untenable in the eyes of law.
- b. That by not deciding the appeal of appellant regarding pension and pensionary benefits to the appellant. Moreover not granting pension and pensionary benefits to the appellant, respondents are exercising powers not vested to them under the law.
- That respondents failed to appreciate the fact that appellant after joining the service and was retired on superannuation i.e. on 60 years of age and thus has served the department for more than 22 years and is entitled for pension and pensionary benefits.
- d. That respondents failed to appreciate the fact that a person who servers for 10 years is entitled for the pension and pensionary benefits.
- e. That under the law for granting pension and pensionary benefits the period of service i.e. regular and temporary are counted.

- f. That respondents under the law were bound to decide the case of each employee to whom pension and pensionary benefits were refused in the light of decision of Peshawar High Court, Peshawar.
- g. That respondents failed to appreciate the real point involved in the case of appellant and thus has acted illegally.
- h. That the oral decision of respondents of not granting pension and pensionary benefits to the appellant is perversant and against the settled principle of law and justice and as such is liable to be set aside.

It is, therefore, requested that on acceptance of this appeal, respondents may kindly be directed to release pension and pensionary benefits to the appellant from the date of retirement along with any other remedy which deems fit and necessary and not specifically asked for may also be awarded with costs.

Appellant

Through M. H.

Muhammad Asif

Advocate,

Supreme Court of Pakistan

Off: 214 Syed Ahmad Ali Building near Taj Autos, Sunehri Masjid

Road, Peshawar Cantt. Cell: 0302-8885187 Off: 091-5279292

CERTIFICATE:

Certified as per information furnished by my client that no such like appeal has earlier been filed before this Hon'ble Tribunal.

Mansage

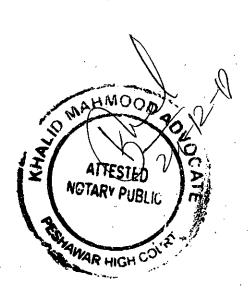
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<u>BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,</u> <u>PESHAWAR</u>

S.A.No	/2018	+ 1
Daftari Shah	· · · · · · · · · · · · · · · · · · · ·	Appellant
· _	<u>VERS</u>	US
	Khyber Pakhtunkhwa, ary Finance Civil Secretar	riat, Peshawar & others
		Respondent.

AFFIDAVIT

I, Daftari Shah s/o Amir Dad R/o Aza Khail Bala, Tehsil and District Nowshera do hereby affirm and declare on oath that the contents of the accompanying **Appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed from this hon'ble court.



Deponent



BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR

S.A.	No/2018	
Daft	ari Shah	
	<u>VERSUS</u>	
	ernment of Khyber Pakhtunkhwa, igh Secretary Finance Civil Secretariat, Peshawar & others	
		S
APP.	ELLANT:	
Daft	ari Shah s/o Amir Dad	
R/o.	Aza Khail Bala, Tehsil and District Nowshera	
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1)	Government of Khyber Pakhtunkhwa, through Secretary Finance Civil Secretariat, Peshawar.	e
2)	Government of Khyber Pakhtunkhwa, through Secretary Education Civil Secretariat, Peshawar.	ı,
3)	Director Elementary and Secondary Education, near Govt. Highe Secondary School No.1 G.T. Road, Peshawar City.	r
4)	District Education Officer (Male), District Nowshera.	
5)	Accountant General, Accountant General Office, Fort Road Peshawar Cantt, Peshawar.	l,
6)	Senior District Account Officer, District Account Officer Nowshera. Appellant	
	Appellant Through	
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Muhammad Asif
Advocate Supreme Court

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OFFICE OF THE SB DIVISIONAL EDUCATION OFFICER, (F) NOWSHERA



Appointment Order of Class IV

Mr. Daftari Shah S/o Mir Khan resident of village Azekhel Bala candidate is hereby appointed as class IV Chowkidar/ N/Qasid on Rs: 1200/-PM fixed under the rules with effect from the date of his taking over charge at Govt Girls Primary School Aza khel Bala of Chowkidar According 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.
- 3. No joining time is allowed what is absolutely necessary for the transit.
- 4. The appointment is purely on temporary basis & subject to the termination at any time and without any notice.
- 5. The case he wishes to leave the Deptt: the should have submit on month prior notice.
- 6. He/ Should be produced his health & age certificate from the concerned civil Surgeon with in 7 days of reporting arrival a duty as required under the rules FR 10 Sr.4.
- 7. In case the candidate failed 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 handover charge if his are is set between 18-45 years.
- 9. He will produced photo copies of the relevant documents in national Identity card Domicile etc to this office at the time of taking over charge.
- 10. He will be dealt with under the E & D rules 1973 if he violated Govt: Rules and regulation.

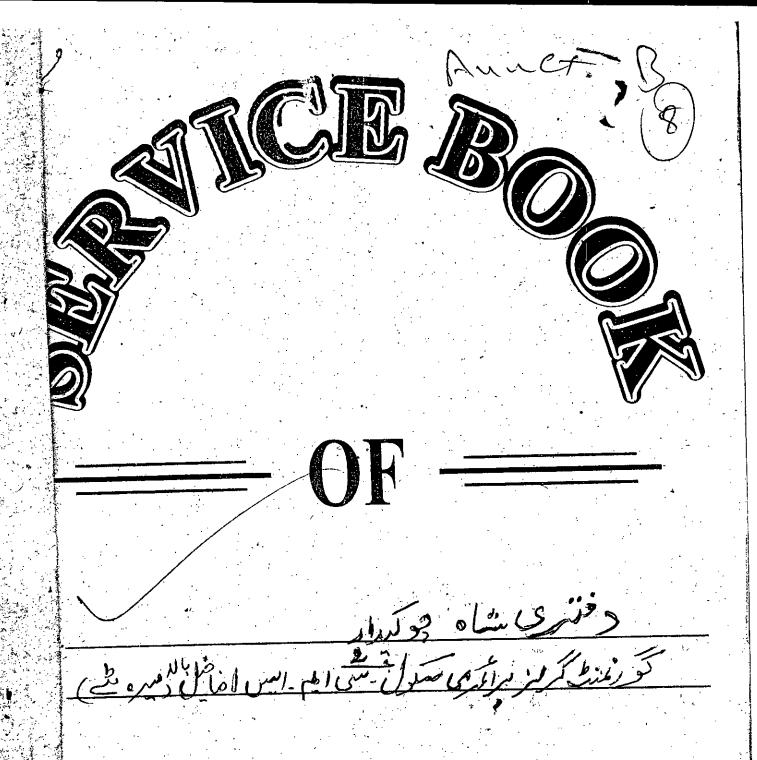
Sub Divisional Education Officer (F) Nowshera

Endst No. 55-30/F.No/ Estab/ Asstt: SDEO/ /Dated the 02.11.1999. Copy of the above is forwarded to the:

- 1. District Education Officer (Female) Primary Nowshera
- 2. District Accounts Officer Nowshera
- 3. Head mistress GGP School Baba Jee Killi
- 4. Candidate concerned.
- 5. Personal File

ATTESTED

Sub Divisional Education Officer (F) Nowshera



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ed by: Stationary & Printing Department, N.W.F.P., Peshawar

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To Female vie of July 20 Lis Con is Anne+9(16) اریل برائے جاری بستن و عرب . - a brue of moisse in 120 2 2.11.1996, mig suis 6, 75 اور مررف کاه 2 · 11 · 3 کوه کا سال کی گھر سی سی رمان سے 1 m 2 2 m 1 مقدار ہے۔ سان کا مال سائل کو دیستی وہوج میں ری بیری کی ا ا شیعایی کر سال کو بیشره صدازجار ماری در کامی مادر فرمال مای AIRSTED ر نشری در کاری در



OFFICE OF THE DISTRICT EDUCATION OFFICER (FEMALE) NOWSHERA

Junet

OFFICE ORDER

The competent authority is pleased to grant of sanction to the retirement of the following.

Official as mentioned against her name.

More over in pursuance of section 20 of civil servant revised leave rules 1981. Sanction is hereby accorded to the grant of Encashment on fall pay in lieu of LPR as admissible to her under the rules.

S#	Name of Official	Date of Birth	Date of I" Appointment		LPR for Leave Encashment.	Remarks.
1.	Mr.Daftari Shah S/O Mir Dad Chowkidar, GGPS Mera Aza Khel Bala (NSR)	04-04-1955	02-11-1996	03-04-2015 (A.N)	365-days	On Superannuation (60 years)

1. Necessary entry to this effect should be made in her service book accordingly.

(MUHAMMAD INAM TORU)
DISTRICT EDUCATION OFFICER
(FEMALE) NOWSHERA

Endst No. 92-97/Class-IV Retirement, Dated Nowshera the 26 13 /2015.

Copy forwarded for information & necessary action to the:-

- 1. Senior District Accounts Officer, Nowshera.
- 2. Sub Divisional Education Officer (Female) Nowshera w/r her letter No.753/F.No., dated 13-03-2015
- 3. Superintendent Establishment (Local Office).
- 4. ASDEO Circle Pabbi (NSR).

5. Head Teacher GGPS, Mera Aza Khel Bala (NSR)

(6.) Official Concerned.

ATTESTED

100

DISTRICT-EDUCATION OFFICER

(FEMALE) FOWSHERA

س ڈونزل آسر برائری اکولتن برقوباؤنور ا -winis (18) : Ste io مود نا بنه کدار کی می که ندری رفتتری ساه ولر میردا ر کائیں وڈالی نم انتاجی اللہ نے مورف 1996 ا ۱۱ ۔ 2 قبل زیر در ا گورنمنط گریز برالم ی سرل می وی مین میشت - Wolley 2, 16, 18 1.8, 1, 1, 1, 1, 1, 1, ent الما الما المار د فارس ساه دار د درسردا د درسال کردنمنا کردر باری ساوی دفيرى تياه كيا در M. Miel om

July, / Jes. J. Pleas دعوئ د مُرَى ناه الله المالك ماعث تحريرا نكه من من المراد مراد مراد مراد مراد المراد الم وكيل صاحب كوراضى نامه كرنے وتقرر ثالت و فيصله برحلف ديئے جواب دہى اورا قبال دعوى اور لبسورت ذگری کرنے اجراءاورصولی چیک وروپیدارعرضی دعوی اور درخواست ہرتئم کی تقیدیق زرای بردستخداکرانے کا اختیار موگا۔ نیز صورت عدم بیروی یا ڈگری میکطرف یا اپیل کی برا مرگی اور کیانسونی نیز دائر کرنے اپیل مکرانی ونظر ثانی دبیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ ندکور کے کل یا جزوی کاروائی کے واسطے اوروکیل یا مختار قانونی کواسیے ہمراہ یا اسے بجائے تقرر کا اختیار موگا۔اورصاحب مقررشدہ کومی وہی جملہ ندکورہ بااختیارات حاصل موں محراوراس کاساختہ برواخته منظور قبول موكار دوران مقدمه ميس جوخرجيد هرجانه التوائح مقدمه سرسببكر يسودهم کوئی تاریخ بیش مقام دوره پر بهویا حدے باہر موتو دکیل صاحب پابند موں مے۔ کہ بیروک مذكوركريس لبذا وكالت نام كهديا كرسندر ب. کے لئے منظور ہے۔

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