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.

(Ahmad 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 in 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.

The Armston States against the

Salas in the Salas and the

The Markey British Co

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.

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 S.B.

Chairman

Form- A

FORM OF ORDER SHEET

Court of		
Case No	1517 /2018	

	Case No	<u> </u>
S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	24/12/2018	The appeal of Mr. Muhammad Israr 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.
2-	27/12/18.	This case is entrusted to S. Bench for preliminary hearing to be put up there on $\frac{25/c1/2c19}{}$.
		CHAIRMAN
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,		CARAMA (MACAMATA)

<u>PESHAWAR</u>

S.A.No. 1517 /2018	
Muhammad Israr	Appellant
<u>VERSUS</u>	<u>S</u>
Government of Khyber Pakhtunkhwa, hrough Secretariat,	Peshawar & others
·	Respondents

INDEX

S.No.	Description of documents.	Annexure	Pages.
1	Memo of appeal.		1-4
2	Affidavit.		5
3	Addresses of the parties.		6
4	Copy of appointment letter	A	7
5	Copy of service book	В	8-14
5	Copy of appeal	C	15
6.	Copy of Hetilowicent of Lex	D	16
7	Copy of Charge report	Е	, , , ,
8.	Wakalatnama		18

Appellant

Through

Muhammad Asif
Advocate Supreme Court

214 Syed Ahmad Ali Building Off: 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

Diary No. 1798

Dated 24-12-2018

S.A.No. 1577 /2018

Muhammad Israr s/o Fazal-ur-Rehman

R/o Baba Ji, P.O. Khoeshgi Payan, 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

Registraf.
24/12/18

APPEAL UNDER SECTION 4 OF THE SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORAL ORDER OF RESPONDENTS OF REFUSAL TO ISSUE PENSION TO THE FROM THE DATE APPELLANT RETIREMENT i.e. 30.06.2017 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. 30.06.2017 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 05.08.1997 in Govt. Girls Primary School Ghundai Koroona, 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 30.06.2017 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.
- c. 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.

4

- 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.

Appellan

Through

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.

MRIANTE

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR

S.A.No/2018		
Muhammad Israr		 Appellant
	<u>VERSUS</u>	
Government of Khyber Pakhtu through Secretary Finance Civ	<u>•</u>	
		 Respondents

AFFIDAVIT

I, Muhammad Israr s/o Fazal-ur-Rehman R/o Baba Ji, P.O. Khoeshgi Payan, 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.



عمراسرار Deponent



BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR

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(6)	/

5.A.No	_/2018	
Muhammad Israr	·	. Appellant
	<u>VERSUS</u>	
Government of Khybe	er Pakhtunkhwa,	
through Secretary Fina	ance Civil Secretariat, Peshawar & others	-
		Respondents

ADDRESSES OF THE PARTIES

APPELLANT:

Muhammad Israr s/o Fazal-ur-Rehman R/o Baba Ji, P.O. Khoeshgi Payan, District Nowshera

RESPONDENTS:

- 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.

Appellant

Through

Muhammad Asif

Advocate Supreme Court

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



Appointment Order of Class IV

Mr. Mohd Israr S/o Razli Rahman resident of village Khishgai 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 (sic) 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 dealth with under the E & D rules 1973 if he violated Govt: Rules and regulation.

SD/-Sub Divisional Education Officer (F) Nowshera

Endst No. 34-32/F.No/ Estab/ Asstt: SDEO/ /Dated the 04.08.1997. Copy of the above is forwarded to the:

- 1. District Education Officer (Female) Primary Nowshera
- 2. District Accounts Officer Nowshera
- 3. Head mistress GGP Ghimderi (khishgi)
- 4. Candidate concerned.
- 5. ASDEO Accounts & Inspection Local Office.
- 6. Official Concerned.

Sub Divisional Education Officer (F) Nowshera

B Mr. ATTESTED

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OFFICE ORDER

OFFICE OF THE DISTRICT EDUCATION OFFICER (FEMALE) NOWSHERA

The competent authority is pleased to grant of sanction to the retirement of the following official as mentioned against his name.

After over in pursuance of section 20 of civil servant revised leave fules 1984. Sanction is hereby accorded to the grant of Encashment on full pay in lieu of LPR as admissible.

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100	7	Birth .	Appointment	Retirement -	Encashment.	• • • • • • • • • • • • • • • • • • • •
; 1.	Muhammad Israr	1957	5/8/1997(Fixed)	30/6/2017(A/N)	365 Days	
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Necessary entry to this effect smear! So made in his Service Book accordingly.

(FAYAZ HUSSAIN) DISTRICT EDUCATION OFFICER (FEMALE) NOWSHERA

Endst No. 4369-74 (FEMALE) NOWSHE Dated Nowsher the 29 6 2017

Copy forwarded for information & necessary action to the:-

- 1. Senior District Accounts Officer, Nowshera.
- Sub Divisional Education Officer (Female) Nowshera w/r to his letter No.1642 dated 12/6/2017
- 3. Superintendent Establishment (Local Office).
- 4. ADEO (F) Primary: Est: (Local Office).
- 5. Accountant (Local Office)
- o. Official Concerned.

DISTRICY EDUCATION OFFICER (FEMALE) NOW SHERA

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ATTESTED

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OFFICE OF THE DISTRICT EDUCATION OFFICER, (FEMALE) NOWSHERA

OWSHERA

OFFICE ORDER

The competent authority is pleased to grant of sanction to the retirement of the following official as mentioned against his name.

More over in pursuance of section 20 of civil servant revised leave rules 1982, Sanction is hereby accorded to the grant of Encashment on full pay in lieu of LPR as admissible to him under the rules.

S	Name of official	Date of birth	Date of 1 st Appointment	Date Retirement	LPR for leave Encashment	Remarks
1	Muhammad Israr Chowkidar GGPS Ghundai Koroona P.No 367224	1957	5.8.1997 Fixed 1.7.2008	30.06.201 7 A/N	365 days	On Superannuat ion 60 years

ii. Necessary entry to this effect should be made in his service Book accordingly.

SD/-(Fayaz Hussain) District Education Officer (Female) Nowshera

Endst No. 4369-74/ Class Retirement, Dated Nowshera the 29.06.2017

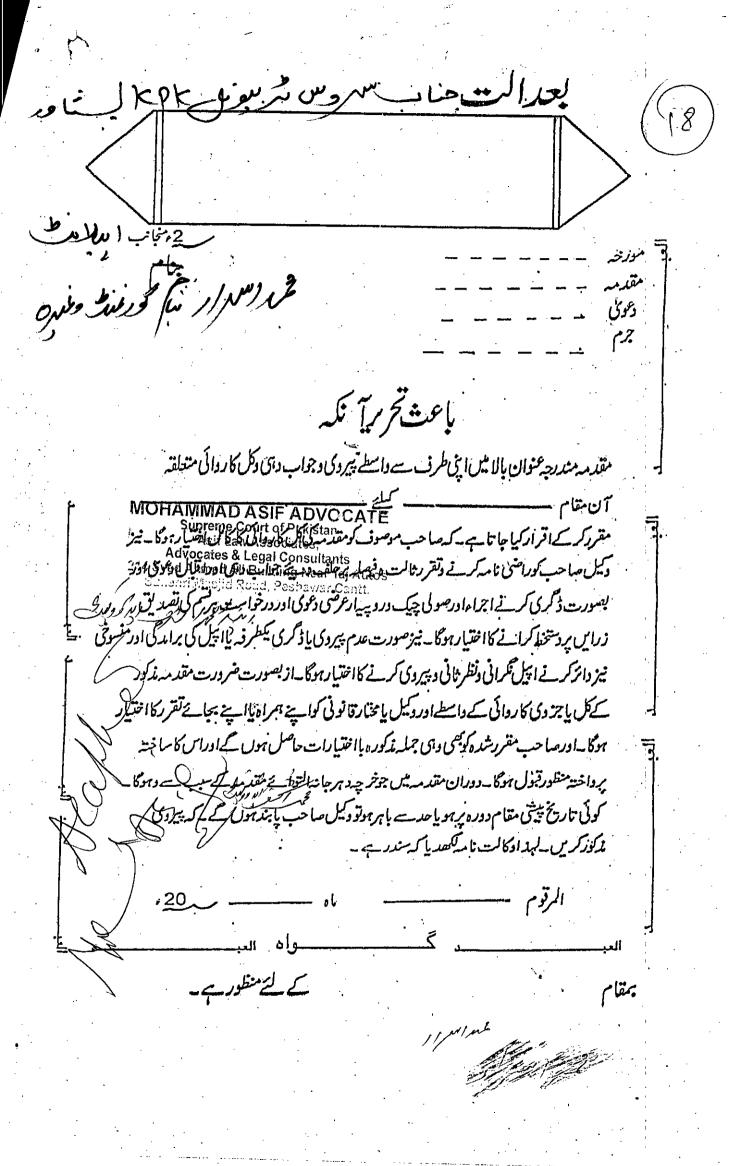
Copy forwarded for information & necessary action to the:-

- 1. Senior District Accounts Officer, Nowshera
- 2. Sub Divisional Education Officer (Female) Nowshera w/r her letter No. 1469. dated 05.08.2015.
- 3. Superintendent Establishment (Local Office).
- 4. ADEO (F) Primary (Local Office)
- 5. Head teacher GGPS Baba Jee Killi (NSR)
- 6. Official Concerned

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SD/-District Education Officer (Female) Nowshera 2 Sind with 2 16 green o wind it is sold of some in the 2 16 the section of the s

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MOHAMMAD ASIF ADV
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