07.06.2022

Appellant in person present. Mr. Kabirullah Khattak, learned Additional Advocate General for the respondents present.

Counsel are on strike. Adjourned. To come up for arguments on 05.07.2022 before D.B at camp court Swat.

(Miari Muhammad) Member (E) Camp Court Swat (Kalim Arshad Khan) Chairman Camp Court Swat

05.07.2022

Nemo for appellant.

Noor Zaman Khan Khattak, learned District Attorney alongwith Nasim Khan Section Officer for respondents present.

Case was called time and again but neither the appellant nor his counsel turned up till rising of the Bench. Consequently, instant service appeal is hereby dismissed in default for non-prosecution. Parties are left to bear their own costs. File be consigned to the record room.

Announced. 05.07.2022

(Fareelia Paul) Member(E) Camp Court, Swat (Rozina Rehman) Member(J)

Camp Court, Swat

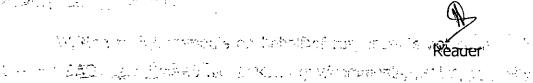
Junior to counsel for appellant present.

Muhammad Adeel Butt, learned Additional Advocate General for respondents present.

The learned Member (Judicial) is on leave, therefore, case is adjourned. To come up for arguments on 03.02.2022 before D.B. Respondents be put on notice to submit reply within 10 days in office.

Chairman

03.02.2022 The Tribunal is non-functional, therefore, the case is adjourned to 15.04.2022 before S.B for the same



15.04.2022 Counsel for the appellant present. Mr. Kabirullah Khattak Addl. AG for respondents present.

Written reply/comments on behalf of respondents not submitted. Learned AAG seeks time to file written reply/comments. Last opportunity is granted to respondents for submission of written reply/comments. To come up for written reply/comments on 11.05.2022 before S.B at Camp Court Swat.

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:Chairman

11.01.2021

Mr. Noor Muhammad Khattak, Advocate, for appellant is present. Mr. Kabirullah Khattak, Additional Advocate General alongwith representative of respondent No. 2 Mr. Naseeb Khan, Section Officer (Litigation), is also present.

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Written reply on behalf of respondents not submitted despite last chance given in the preceding order sheet dated 19.11.2020, therefore, the appeal is adjourned to 08.04.2021 on which date file to come up for arguments before D.B.

08.04.2021

(MUHAMMAD JAMAL KHAN) MEMBER (JUDICIAL)

Due to doinise of Howable Chairman The Tribunal is defined. Therefore. The case is adjourned to 26.07.2021 for the same as before.

Reader

26.07.2021

Mr. Noor Muhammad Khattak, Advocate, for the appellant present. Mr. Kabirullah Khattak, Additional Advocate General for the respondents present.

for the appellant Learned counsel requested adjournment on the ground that he has not met preparation for arguments. Adjourned. To come up for arguments before the D.B. on 01.11.2021.

(ATIO-UR-REHMAN WAZIR) MEMBER (EXECUTIVE)

(SALAH-UD-DIN) MEMBER (JUDICIAL) 05.08.2020

Mr. Noor Muhammad Khattak, Advocate for appellant is present. Mr. Kabirullah Khattak, Additional AG alongwith representative of the department Mr. Mohibullah, Assistant are also present.

Representative of the department requested for time to furnish written reply/comments. Time is granted. File to come up for written reply/comments on 29.09.2020 before S.B.

(MUHAMMAD JAMAL KHAN) MEMBER

29.09;2020

Junior to counsel for the appellant and Addl. AG alongwith Sajid Superintendent and Ahmad Hassan, Litigation Officer for the respondents present.

Representative of the respondents seeks further time for furnish reply/comments. Adjourned to 19.11.2020 on which date the requisite reply/comments shall be submitted without fail.

Chairman

19.11.2020

Junior to counsel for the appellant and Addl; AG present. No representative of respondents is available.

Learned AAG is required to contact the respondents and submit written reply/comments on 11.01.2021, as last chance.

Chairman

30.03.2020

Due to public holidays on account of Covid-19, the case is adjourned. To come up for the same on 19.06.2020 before S.B.

Reader

19:06.2020

Counsel for the appellant present.

Contends that appellant was initially appointed as PTC now PST as stop gap arrangement but his services were dispensed with in 1997. He then submitted an application for his reinstatement on promulgation of KP Sacked Employees Act, 2012 which was not considered. He, therefore, filed Writ Petition which was allowed and the appellant was appointed. His departmental appeal for fixation of pay was not responded. It was further submitted that in the light of Rule2.3 of the West Pakistan Pension Rules, 1963, the appellant is entitled for the grant of pay fixation from the date of initial appointment.

Points raised need consideration. Instant appeal is admitted for regular hearing subject to all legal objections. The appellant is directed to deposit security and process fee within 10 days. Notice be issued to the respondents. To come up for written reply/comments on 05.08.2020 before S.B.

Appellant Deposited
Section 8 Process Fee

(Rozina Rehman) Member (J)

FORM OF ORDER SHEET

| Court of | · · · · · · · · · · · · · · · · · · · |
|----------|---------------------------------------|
| | • |
| Case No | 282/ 2020 |

| S.No. | Date of order | Order or other proceedings with signature of judge |
|-------|---------------|----------------------------------------------------------------------------------------------------------------------------------|
| | proceedings | |
| 1 | 2 | 3 |
| | | The appeal of Mr. Found of Die presented today by Min. |
| 1- | 09/01/2020 | The appeal of Mr. Fayaz-ud-Din presented today by Mr. Noo Muhammad Khattak Advocate may be entered in the Institution Registe |
| 1 | , . | and put up to the Worthy Chairman for proper order please. |
| | | REGISTRAR PG 01 2 |
| - | | This case is entrusted to S. Bench for preliminary hearing to be put up there on 10 04200 |
| | | CHAIRMAN |
| • | , | CHAIRMAN |
| : | | |
| | | |
| | 10.02.2020 | Learned counsel for the appellant present. Heard. |
| | | Learned counsel for the appellant could not |
| | | demonstrate that the appellant can claim service back |
| • | | benefits under the Khyber Pakhtunkhwa Sacked |
| | | Employees (Appointment) Act, 2012. Learned counsel |
| | | for the appellant seeks adjournment for proper assistance. |
| | , | Adjourn. To come up for preliminary hearing on |
| i | | 30.03.2020. Learned counsel for the appellant may also |
| , | - | |
| | , | submit copy of the judgment in Writ Petition bearing |
| | | No.3-M of 2014 dated 28.03.2014 on the next date fixed. |
| | | |
| 4 | | Member |
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BEFORE THE KHYBER PAKTHUNKHWA SERVICE TRIBUNAL, PESHAWAR

APPEAL NO. 282 /2019

M. FAYAZ UD DIN

VS

EDUCATION DEPTT:

INDEX

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| 2 | Appointment order | Α | 4. |
| 3 | Second appointment order | В | 5. |
| 4 | Appointment order dated 29.11.2017 | С | 6- 7. |
| 5 | Medical certificate | D | 8- 9. |
| 6 | Departmental appeal | E | 10. |
| 7 | Vakalat nama | | 11. |

APPELLANT

THROUGH:

NOOR MOHAMMAD KHATTAK, ADVOCATE

Flat No. 3, Upper Floor, Islamia Club Building, Khyber Bazar, Peshawar 0345-9383141

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 282 /2019

Khyber Pakhtukhwa Sorvice Tribunal

Mr. Muhammad Fayaz Ud Din, PST BPS-12, GPS Tarpatar No.1, District Dir Upper.....

Dates ----

..APPELLANT

VERSUS

- 1- The Secretary, E&SE Department, Khyber Pakhtunkhwa, Peshawar.
- 2- The Secretary Finance Department, Khyber Pakhtunkhwa, Peshawar.
- 3- The Director, E&SE Department, Khyber Pakhtunkhwa, Peshawar.
- 4- The District Education Officer, District Dir Upper.

....RESPONDENTS

APPEAL UNDER SECTION- 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 FOR FIXATION OF PAY IN BPS-12 w.e.f. 30-11-1995 I.E. FROM THE DATE OF INITIAL APPOINTMENT TO THE POST OF PST AND AGAINST NOT TAKING ACTION ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS.

PRAYER:

16 -

That on acceptance of this appeal the appellant may kindly be allowed/granted pay fixation w.e.f. 30-11-1995 with all back benefits. Any other remedy which this august Service Fledto-dayTribunal deems fit that may also be awarded in favor of the appellant.

R/SHEWETH: ON FACTS:

Brief facts giving rise to the present appeal are as under:

- 1- That the appellant was initially appointed in the respondent Department as PTC now PST vide order dated 30-11-1995 as stop gap arrangement. (Copy of the appointment order is attached as annexure.
- 3- That it is worth mentioning here, that in 1997 the services of the appellant along with others were dispensed with on the ground that their services were no more required to the Department.

That it is also worth mentioning, that on promulgation of KP Sacked Employee Act, 2012 appellant submitted an application for his reinstatement being covered under the said law but the same was not considered, hence the appellant filed writ petition no.714/2015 before Peshawar High Court Mingora Bench, which was allowed vide judgment dated 20/06/2017.

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- **7-** That feeling aggrieve and having no other remedy the appellant filed the instant appeal on following grounds inter alia.

GROUNDS:

- A- That the inaction of respondents by not allowing pay fixation to the appellant w.e.f. 30-11-1995 is against the law, facts, norms of natural justice and materials on the record.
- B- That appellant has not been treated in accordance with law and rules by the respondent Department on the subject noted above and as such the respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973.
- C- That the respondents acted in arbitrary and mala fide manner by not allowing pay fixation to the appellant w.e.f. 30-11-1995 and as such the inaction of the respondents is violative of law and rules.
- D- That the inaction of the respondents is discriminatory and against the norms of natural justice, therefore not tenable in the eye of law.
- E- That under Article 38 (e) of the Constitution of Pakistan, 1973 state is bound to reduce disparity in the income and earning of the individuals including persons in the various services of Pakistan, therefore in light of the above mentioned Article the appellant is fully entitle for the grant of pay fixation w.e.f. the date of initial appointment.

F- That promulgation of Sacked Employee Act, 2012 established that dismissal of appellant along with others from services was against the law, hence the appellant is entitled to pay fixation from date of his first appointment.

and the second of the second o

- G-That in light of Rule 2.3 of the West Pakistan, Pension Rules, 1963 the appellant is fully entitle for the grant of pay fixation from the date of initial appointment.
- H- That appellant seeks permission to advance other grounds and proofs at the time of hearing.

It is therefore, most humbly prayed that the appeal of the appellant may be accepted as prayed for.

Dated: 20.12.2019

APPELLANT

MUHAMMAD FAYAZ UD DIN

THORUGH:

NOOR MQHAMMAD KHATTAK

SHAHZULLAH YOUŞAFZAI

&

MIR ZAMAN SAFI ADVOCATES

BETTER COPY PAGE NO.4

OFFICE ORDER:-

Consequent upon the non availability of trained PTC, in the constituency, Mr. Mohammad Fayaz Din,S/O Hasham Gul khan Village Almas DISTRICT Dir is hereby appointed as PTC, Tr: on stop gap arrangements at GPS/MPS, janar, with effect from 2.12.1995 to 31.3.1996 at the pay scale of Rs. 1480/81/2695 subject to the following terms and conditions:-

- 1. Charge report should be submitted to all concerned.
- 2. Health & age certificate should be produced from the civil surgeon DIR at Timergara.
- 3. He may not be handed over the charge if his age exceeds 30 years or below 18 years.
- 4. Before handing over charge to him their original documents should be checked.

(FAZLE NAEEM KHAN)
DISTT: EDUCATION OFFICER(M)
PRY: DIR AT TIMARGARA.

OFFICE TO THE DISTT: EDUCATION OFFICER (M) PRY: DIR AT TIMERGARA.

Endst: No. 5688-90/PED/ESTAB:/ Dated Timergara the 30.11.1995

Copy forwarded to:-

Consequent upon the non evailability of trained PTC, in the constituency, Mr. Mchammadprayaz Dimat: S/O Hasham Gul, village, Almas, Digit: Dir is hereby appointed as PTC, Tr: on stop gap arrangements at GPS/**xxx, Janar, with effect from 2.12.95 to 31.3.96 at the pay scale of Es, 1480-81/2693 subject to the ballowing terms and conditions:-

- 1. Charge report should be submitted to all concerned.
- 2. Health & Age certificate should be produced from the Civil Surgron, Pir at Timergara.
- 3. Hermay morning varied over the charge if his ago exceeds 30 years or below 18 years.
- 4. Before handing over charge to him his original, documents should be checked.

(FAZLI NATEM KHAN)
DISTT:EDUCATION OFFICER (M)
PRY: DIR AT TIMERGARA.

OFFICE OF THE DISTT: EDUCATION OFFICER (M) PRY: DIR AT TIMERGARA.

Endst: NO. 568 - 90 / PED/Estab: Dated Timergara the 30 / 11/95

Copy forwarded to:-

- 1. The SDEC(M) Mary Dir for information.
- 2. The DAO, Dir at Timergura for information.
- 3. The candidate concerned for information

DISTT: EDUCATION OFFICER (M)

M.Anwar/

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OFFICE ORDER: -

Consequent upon the nen availability of duely verified trained PTCs in the merit list, continious appointment of the following teachers as untrained PTCs in BPS, %0.7 Rs. 1480-81-2695 purely on temporary basis are hereby continued till further orders with effect from the date of their Tot appointment subject to the following terms and conditions:-

| 5.80. | Mame of Teacher . P | ather s Nam | ie: | Mane | of Schoo | 1 |
|-------|-----------------------|-------------|-----|-------|----------|---|
| | Radshah-yd-Din PTC A | ufandyar Kh | an | GPS 4 | Jahaar | |
| | Huhammad Payaz-ud-Din | | | GPS. | Gurkohay | |
| | ·PTC | ٠., | . : | ; | | |

TERRS AND CONDITIONS:-

The appointments continued purely as stop-gap arrangement, and can be terminated any time without any notice and showing any reason.

2. Others conditions are the same as already given in their let appointment orders.

(FAZLI MASUB CHAN). DISTT: EDUCATION CTFICER(M) PRIMARY DIR AT TIMERGERA.

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42 SDAG (N) Dir for information?

2.3) The Teachers concerned for information

DISTT: EDICATION OFFICER(N)
PRIMARY DAR MAT REXERGIAGA.

M. Fnvar/

District Education Officer Male District Dir Upper



PH No. 0944-881400-Fax-880411

E-mail demisdirupper@gmail.com



APPOINTMENT.

As per the judgement of the Honorable Peshawar High Court Mingora Bench/Dar-ul-Qaza Swat W-P 113-M/2014, Announced on 28/03/2014 & W/P No. 714-P/2015 titled Entizar Ali and other V/S Govt; of Khyber Pakhtunkhwa dated 20/06/2017, in the light of sacked employees (appointment) Act,2012(Khyber Pakhtunkhwa Act NO.XVII-2012 and @ of 30% share from the available vacant Posts, the following sacked employees whose continuos services were declared as regular vide judgiment in W.P No. 327-M/2016 are s hereby appointed as Primary School Teachers (PSTs) in the schools noted against their names (Rs.13320-960-42120) @ 13320/- plus allowances as admissible under the rules and the existing policy of the provincial Government in the teaching cadre on the terms and conditions given below with effect from the date of taking over charge.

| S.No | Name | Father Name | Place of Posting | CNIC No. | Union Council |
|------|--------------------------|--------------------|-------------------|-----------------|------------------|
| 01. | Muhammad Israr | Muhammad Idrees | GPS Shamogar | 15701-8908670-7 | Bibyawar |
| 02. | Muhammad Fayaz ud Din | Hashim Gul | GPS Tarpatar No.1 | 15701-1617902-7 | Tarpatar |
| 03. | Sakhi Jan | Dost Muhammad Khan | GPS Haji Abad | 15701-1173076-1 | Doag Dara |

TERMS AND CONDITIONS.

- 01. Appointment of Sacked employees shall be made through only regular basis to a civil post who possessed the prescribed qualification and experience required for the said post during the period from 1st day of November, 1993 to the 30th day of November 1996(both days inclusive) and were dismissed/removed, or terminated from service during the period from 1st day of November, 1996 to 31st day of December, 1998 on various grounds.
- 02. They will be on probation for a period of one year.
- 03. Appointment of Sacked employees subject to section 7 may be appointed in their respective cadre of their concerned Department, in which they occupied civil posts before their dismissal, removal and termination from service.
- 04. The Sacked employees shall be appointed against thirty percent of the available vacancies in the Department.
- 05. As per court decision if the appointees fail to acquire the training PTC and the required qualification (FA/FSC) within the weight appointments will be considered as cancelled after the expiry of that period.
- 06. The appointees will provide undertaking that they will be completed the requisite training during a period of Three years.
- 07. They should obtain Medical Fitness certificate from Medical Superintendent Concerned.
- 08. The Sacked employees shall not be entitled to claim seniority and other back benefits. A sacked employee appointed under section 3 shall not be entitled to any claim of seniority, promotion or other back benefits and his appointment shall be considered as fresh appointment.
- 09. The appointees will be governed by such rules and regulations/policies as prescribed by the Government from time to time.
- 10. If the appointees fail to take over charge with in fifteen days after issuance of this order, his appointment will be deemed as automatically cancelled.
- 11. Charge report should be submitted to all concerned.
- 12. All the drawing & Disbursing Officer are directed to verify their Academic and Professional Certificate/degree etc from the quarter concerned before starting their salaries otherwise the will be held responsible for the consequences if occurred in this regard.
- 13. The errors and omissions etc if found at any stage shall be rectified. In case of termination of said candidate, he will have no right to claim the order already issued in any court.
- 14. The period during which the sacked employee remain dismissed, removed are terminated from service till the date of appointment shall deemed to have been relaxed automatically.
- 15. No. TA/DA is allowed.



District Education Officer, Male dir Upper

Endst: No. 80 87-94

/ File No.123/Apptt:/DEO(M)/ADO(P)Dated Dir (U) the 29 /68/2017.

Copy forwarded for information and necessary action to the: -

- 1. Director of Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.
- Assistant Registrar Peshawar High Court Mingaora bench, Dar-ul-Qaza Swat
- District Accounts Officer Dir Upper
- Dy: District Education Officer Male Dir Upper.
- Sub: Divisional Education Officer Male Dir.
- A.P EMIS Local Office.
- Official Concerned.
- M/File

District Education Officer,

Male dir Upper

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Name of Official Molel Fayal wellCast or race

Father's Name Form GalResidence Mage Shunds felsew and

Date of Birth 20-12-1968

Exact height by measurement

Personal mark of identification

Signature of the official

Signature of head of office

I do hereby certify that I have examined Mr. Mole Fayar wellcandidate for employment in the office of the Solvation Deform and
cannot discover that he had nay disease communicable of other constitutional affection or bodily infirmity except.

I do no consider this as disqualification for employment in the office of the Education Depth. His age according to own statement 48 years and by appearance about 48

ATTESTED

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Medical Superintendent

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I Muhammad Fayaz thain Sto Hashim Gell R/o Almas upper dix assumed the Charge of psi at 30/11/2017 Today on Before Noon.

Copy Jonworded ID! -

D'istrict Education Officer upper div.

DISTRICT Account officer upper dir.

3 Dy District Education Officer Male Upper dir

(4) Head Marter Concern.

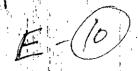
6) Offical Concorn.

Muhammad Fayaz ceddin



Head Teacher

S.S(Maths)C.D.S 17 G.H.S.S Ushiri Dir (U) The Director, E&SE Department, Khyber Pakhtunkhwa, Peshawar.



DEPARTMENTAL APPEAL FOR FIXATION OF PAY IN BPS-12 w.e.f. 30-11-1995 i.e. FROM THE DATE OF INITIAL APPOINTMENT

Respected Sir,

It is most humbly stated that was appointed before your good self Department as PTC vide order dated 30-11-1995 as stop gap arrangement later on I was regularly appointed against the said post vide order dated 09.04.1996 w.e.f. the date of my first appointment i.e. 30.11.1995. That in year 1997 the services were dispensed with on the ground that his services was no more required to the Department. That on promulgation of KP Sacked Employee Act, 2012 I was submitted an application for reinstatement being covered under the said law but the same was not considered. Feeling aggrieved I was filed writ petition before the Peshawar High Court Mingora Bench, which was allowed. Dear Sir, I was appointed as PST w.e.f. taking over charge in light of Peshawar High Court Darul Qaza Bench judgment. That in response I have submitted my charge report and started duty quite efficiently and up to the entire satisfaction of my superiors. That I am entitle for fixation of pay from the date of my initial appointment i.e. 30.11.1995 but the concerned authority has been appointed me with immediate effect i.e. from the date of taking over charge. Sir, I am feeling aggrieved preferred this Departmental appeal before your good self.

It is therefore, most humbly prayed that on acceptance of this Departmental appeal I may kindly be allowed for pay fixation w.e.f. 30.11.1995 with all consequential benefits. Any other remedy which your good self deems fit that may also be awarded in my favor

Dated: 18.09.2019

Your's Sincerely

MUHAMMAD FAYAZ UD DIN, PST GPS Tarpatar No.1, Dir Upper

VAKALATNAMA

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| |

SHAHZULLAH YOUŞAFZAI

MIR ZAMAN SAFI ADVOCATES

OFFICE:

Flat No.3, Upper Floor, Islamia Club Building, Khyber Bazar, Peshawar City. Mobile No.0345-9383141