

مذمت صدر ہے کہ اس کے لئے ضروری طور پر...

کمزور اور ہیڈنگ میں حکومت کی (ٹی بی ایم)

سوال :- درخواست برائے درستی اندراج تاریخ ضمنیہ

Khyber Pakhtunkhwa Service Tribunal

Diary No. 1557

Dated 11-10-2022

put up to the B.B with relevant appmt.

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مذمت میں خرابی ہے

Reader

11/10/22

1) یہ کہ ایس میں مذمت والا 1-10-2022 کو مذمت کر بیویں کے ساتھ نہیں کر سکتے تھے۔ جس میں ضمنیہ بتاریخ 13-7-2022 کو مذمت کر بیویں نے صادر فرمایا۔

2) یہ کہ ڈی بی آر میں حکم کالان سے رائے برائے ڈی بی آر کے ایس کے لئے ممبر کورٹ میں طلب کی اور حکم کالان ایس کے لئے مناسب جانے ہوئے۔ یہ حکم کو ایس میں ضمنیہ دیا گیا۔

3) یہ کہ جب AOR دفتر میں صرفہ ضمنیہ لکھی داخل ہوئی تو اس میں غلطی ہوئی۔ یہ ضمنیہ صرفہ بتاریخ 13-7-2022 کو صادر فرمایا گیا۔

لکھا گیا ہے کہ یہ ضمنیہ بتاریخ ضمنیہ کی درخواست طور پر اندراج کی جائے۔

ایس

ایس کے لئے
کمزور اور ہیڈنگ
کمزور اور ہیڈنگ
11-10-2022



BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR.

Service Appeal No. 11471/2020

Date of Institution ... 01.10.2020

Date of Decision ... 13.07.2021

Mrs. Noor Ul Huda, Ex-Lady Health Worker, R/O House No. 760, Mohalia Qalander Abad, Wazir Bagh Road, Tehsil and District Peshawar.

... (Appellant)

VERSUS

The Secretary Health, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and five others.

... (Respondents)

SYED NOMAN ALI BUKHARI,
Advocate

--- For appellant.

MR. NASEER-UD-DIN SHAH,
Assistant Advocate General

--- For respondents.

MR. SALAH-UD-DIN
MS. ROZINA REHMAN

--- MEMBER (JUDICIAL)
--- MEMBER (JUDICIAL)

JUDGMENT

SALAH-UD-DIN, MEMBER:- Through the instant service appeal, the appellant has invoked jurisdiction of this Tribunal with the prayer copied as below:-

"That on acceptance of this appeal, the order dated 08.09.2020 may be set-aside and the respondents may be directed to count the contractual/temporary period of service of the appellant towards her retirement/pensionary benefits under Rule 2.3 of the West Pakistan Civil Services Pension Rules, 1963 and in light of the august Peshawar High Court Larger Bench judgments dated 22.06.2017 passed in W.P No. 3394-P/2016 and W.P No. 2246-9/2016 and any other remedy, which this august Tribunal deems fit and appropriate may also be awarded in favour of the appellant.

2. Precise facts forming the background of the instant service appeal are that, the appellant was appointed as Lady Health

Worker (LHW) on contract basis vide order dated 31.10.1997 with effect from 01.11.1997. On promulgation of Khyber Pakhtunkhwa Regulation of Lady Health Workers Programme and employees (Regularization and Standardization) Act 2014, the services of the appellant alongwith other were regularized vide office order dated 19.09.2014 with effect from 1st July 2012, however on attaining the age of superannuation on 19.02.2021, the appellant was retired from service vide Notification bearing No. 3372-79/DHO.DPIU dated 15.04.2019 without granting her gratuity/pensionary benefits. The appellant approached august Peshawar High Court through Writ Petition No. 4546-P/2019 for considering her contractual period towards her pensionary benefits. Vide judgment dated 02.10.2019, the said Writ Petition of the appellant was transmitted to the concerned Secretary to Government of Khyber Pakhtunkhwa to treat it as departmental appeal and to decide the same strictly in accordance with Civil Servants Pension Rules, 1963. The departmental appeal of the appellant was rejected by Provincial Coordinator Lady Health Worker Programme Khyber Pakhtunkhwa vide order dated 08.09.2020, hence the instant service appeal.

3. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions made by the appellant in her appeal.

4. Learned counsel for the appellant has argued that the appellant was though initially appointed as Lady Health Worker on contract basis vide order dated 31.10.1997 with effect from 01.11.1997, however her services were later on regularized vide office order dated 19.09.2014 with effect from 1st July 2012, therefore, in view of rule 2.3 of West Pakistan Civil Services Pension Rules, 1963, the period of contract service shall be counted for the purpose of pensionary benefits; that the appellant has rendered about 21 years service, therefore, depriving her of pensionary benefits is not only against the fundamental rights of the appellant guaranteed under the Constitution but is also violation of rule 2.3 of the West Pakistan Civil Services Pension Rules, 1963; that same nature issue was raised before the Larger Bench of august

Peshawar High Court in Writ petitions No. 3394-P/2016 and 2246-P/2016, in which the august Peshawar High Court vide judgments dated 22.06.2017 laid down the dictum that the service rendered on fixed pay/contract basis is countable towards pension fixation and retirement benefits; that the appeal of the appellant was sent by august Peshawar High Court to concerned Secretary for decision but the same was decided by Provincial Coordinator Lady Health Worker Programme Khyber Pakhtunkhwa, who was not competent to decide the departmental appeal of the appellant, therefore, the impugned order is *corum-non-judice* and is liable to be set-aside on this score alone; that in view of Notification dated 22.05.2019 issued by the Government of Khyber Pakhtunkhwa Finance Department (Regulation Wing), the fixed pay/contract period of service of the appellant was required to have been counted towards pensionary benefits.

5. On the other hand, learned Assistant Advocate General for the respondents, has contended that the appellant was initially appointed as Lady Health Worker in the year 1997 on fixed pay/contract basis and her services were regularized vide office order dated 19.09.2014 with effect from 01.07.2012; that the appellant stood retired from service on 19.02.20219 and as such, she had performed duties as regular Lady Health Worker only for a period of about 07 years, 01 month and 18 days, while pensionary benefits could be granted to a civil servant, in case of completion of ten years or more regular service; that the appellant was having less than ten years regular service, therefore, she is not entitled to grant of any pensionary benefits; that the contractual period of service of an employee could not be legally counted in his regular service, therefore, the appeal filed by the appellant is liable to be dismissed.

6. We have heard the arguments of learned counsel for the parties and have perused the record.

7. Keeping in view the respective arguments of both the sides, a perusal of the record would show that the appellant was initially appointed as Lady Health Worker on contract basis vide appointment order dated 31.10.1997 with effect from

01.11.1997, however after promulgation of Khyber Pakhtunkhwa Regulation of Lady Health Workers Programme and employees (Regularization and Standardization) Act 2014, the services of the appellant were regularized with effect from 1st July 2012. Vide Notification dated 15.04.2019 issued by District Health Officer Peshawar, the appellant stood retired from service with effect from 19.02.2019 without granting her any pensionary benefits. Now the question, requiring determination is as to whether the contract period of service of the appellant could be counted for granting her pensionary benefits or not? Rules 2.2 and 2.3 of the West Pakistan Civil Services Pension Rules, 1963, deal with the issue in question, which are reproduced as below:-

" 2.2 Beginning of Service- Subject to any special rules the service of Government servant begins to qualify for pension when he takes over charge of the post of which he is first appointed.

Rule 2.3 Temporary and officiating service — Temporary and officiating service shall count for pension as indicated below:-

- (i) *Government servants borne on temporary establishment who have rendered more than five years continuous temporary service for the purpose of pension or gratuity; and*
- (ii) *Temporary and officiating service followed by confirmation shall also count for pension or gratuity".*


8. A bare perusal of the above mentioned rules make it clear that when a government servant is regularized, his total length of service is to be computed from the date he joined the service, whether temporary or otherwise. In this view of the matter, the length of service of the appellant shall be counted from the date of her initial appointment i.e 01.11.1997 for the purpose of pension and gratuity. Wisdom in this respect also derived from the judgment dated 22.06.2017 passed by august Peshawar High Court, Peshawar in Writ Petition No. 3394-P/2016 titled "Amir Zeb Versus District Account Officer Nowshera etc."


9. August Supreme Court of Pakistan in its judgment reported as 2015 PLC (C.S) 296 titled "Secretary to Government of Punjab, Finance Department Versus M. Ismail Tayer and 269 others, has graciously held that the pensionary benefits is not a bounty or ex-gratia payment but a right acquired in

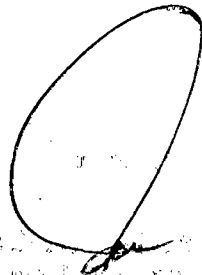
consideration of past service. Such right to pension is conferred by law and cannot be arbitrarily abridged or reduced except in accordance with such law as it is the vested right and legitimate expectation of retired civil servant.


10. Consequent upon the above discussion, the appeal in hand is allowed and the respondents are directed to grant pensionary benefits to the appellant by processing and finalizing her pension case within a period of three months of receipt of copy of this judgment. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
13.07.2021


(SALAH-UD-DIN)
MEMBER (JUDICIAL)


(ROZINA REHMAN)
MEMBER (JUDICIAL)



13-7-2022
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