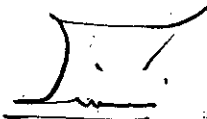



**ORDER**  
23.06.2022

Learned counsel for the appellant present: Mr. Naseer-ud-Din Shah,  
Assistant Advocate General for the respondents present. Arguments heard  
and record perused.

02. Vide our detailed judgment of today, placed on file of service  
appeal bearing No. 4312/2020 titled "Zakir Hussain versus Director  
Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar  
and others", the instant service appeal is dismissed. Parties are left to  
bear their own costs. File be consigned to the record room.

03. Pronounced in open court at Peshawar and given under our hands  
and seal of the Tribunal this 23<sup>rd</sup> of June, 2022.

  
(SALAH-UD-DIN)  
MEMBER (J)

  
(MIAN MUHAMMAD)  
MEMBER (E)


21.06.2022

Learned counsel for the appellant present. Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present.

The instant appeal was partially heard by D.B in which one of the Member was Mr. Mian Muhammad Learned Member (Executive), therefore, the appeal in hand may be fixed before the concerned D.B on 23.06.2022.



(Fareeha Paul)  
Member (E)



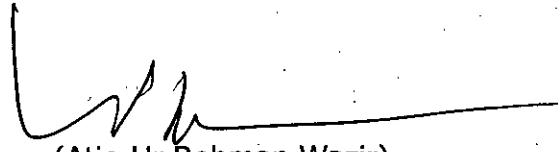
(Salah-ud-Din)  
Member (J)

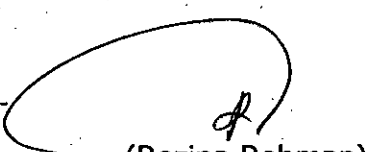
23.11.2021

Mr. Adnan Aman, Advocate, junior of learned counsel for the appellant present.

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

Former made a request for adjournment as senior counsel for the appellant is indisposed. Adjourned. To come up for arguments on 15.03.2022 before D.B

  
(Atiq Ur Rehman Wazir)  
Member (E)

  
(Rozina Rehman)  
Member (J)

15.03.2022

Due to retirement of the Worthy Chairman, the Tribunal is defunct, therefore, case is adjourned to 20.6.2022 for the same as before.

  
Reader:

20.06.2022

Appellant alongwith his counsel Mr. Adnan Aman Advocate, present. Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present.

Partial arguments heard. To come up for remaining arguments on 21.06.2022 before D.B.

(MIAN MUHAMMAD)  
MEMBER (EXECUTIVE)

(SALAH-UD-DIN)  
MEMBER (JUDICIAL)

19.01.2021

Due to COVID-19, the case is adjourned to 05.04.2021 for the same.


  
Reader

05.04.2021

Junior to counsel for appellant present.

Kabir Ullah Khattak learned Additional Advocate General for respondents present.

File to come up alongwith connected service appeal No.4309/2020 on 7/7/2021 before D.B.

  
(Atiq ur Rehman Wazir)  
Member (E)

  
(Rozina Rehman)  
Member (J)

07.07.2021

Appellant present through counsel.

Muhammad Adeel Butt learned Additional A.G for respondents present.

File to come up alongwith connected Service Appeal No.4309/2020 titled Bakht Shahzada Vs. Education Department, on 23.11.2021 for arguments before D.B.

  
(Rozina Rehman)  
Member(J)

  
Chairman

23.07.2020

Mr. Adnan Aman, Advocate for appellant is present. Mr. Kabirullah Khattak, Additional AG alongwith representatives of the department M/S Shahid Ameer, ADEO and Jameel Shah, Senior Auditor are also present.

Representatives of the department request for further time to submit the requisite reply/comments. May do so on next date of hearing. Adjourned to 21.09.2020 for submission of written reply/comments before S.B. The restraint order already granted vide order sheet dated 07.05.2020 shall continue till the next date.

  
(MUHAMMAD JAMAL KHAN)  
MEMBER

21.09.2020

Counsel for the appellant and Addl. AG alongwith Ali Haider, SDEO and Jameel Shah, Senior Auditor for the respondents present.

Representatives of the respondents have furnished parawise comments on behalf of the respondents which are placed on record. The matter is assigned to D.B for arguments on 14.12.2020. The appellant may furnish rejoinder, within one month, if so advised.

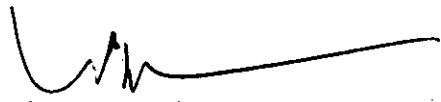
Chairman 


14.12.2020

Junior counsel for appellant present.

Riaz Khan Paindakheil learned Assistant Advocate General alongwith Ali Haider SDO for respondents present.

Former made a request for adjournment as senior counsel is busy before Apex Court. Adjourned. To come up for arguments on 19.01.2021 before D.B.

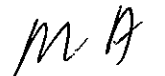
  
(Atiq ur Rehman Wazir)  
Member (E)

  
(Rozina Rehman)  
Member (J)

back benefits. It was further contended that in similar situation, other colleagues were also removed but they were reinstated with back benefits as revealed from the copy of judgment of Service Appeal No.1307/2000 decided on 02.05.2002, therefore the appellants are discriminated and the respondent department have illegally treated the intervening period as leave without pay.

Points raised by the learned counsel, need consideration. Office objection removed. Muharrir is directed to enter the appeal in the relevant register. The appeal is admitted to regular hearing subject to all just legal objections. The appellant is directed to deposit security and process fee within 10 days, thereafter notices be issued to the respondents for reply/comments. To come up for written reply/comments on 15.06.2020 before S.B

Learned counsel for the appellant also submitted application for suspension of the impugned order. Notice of the same be issued to the respondents. In the meanwhile, respondents be restrained from recovery of back benefits already granted to him by the respondents till the date fixed.

  
(M. AMIN KHN KUNDI)  
(MEMBER-J)

15.06.2020

Junior counsel for the appellant and Mr. Kabirullah Khattak, Additional AG for the respondents present. Written reply on behalf of respondents not submitted. Learned Additional AG seeks time to furnish written reply. Adjourned to 23.07.2020 for written reply/comments before S.B. The restraint order already granted vide order sheet dated 07.05.2020 shall continue till next date.

  
(MUHAMMAD AMIN KHAN KUNDI)  
MEMBER

Appeal No: 4314 / 2020.

30.04.2020

None is present on behalf of the appellant. Notices be issued to appellant and his counsel for arguments on office objections on 07.05.2020.

*MA*  
(M. AMIN KHN KUNDI)  
(MEMBER-J)

07.05.2020

Learned counsel for the appellant present. Preliminary arguments heard.

Learned counsel for the appellant contended that the appellant was appointed as PTC Teacher for specific period mentioned in the appointment order as staff gap arrangement vide order dated 23.10.1995. It was further contended that the appellant was removed from service vide order dated 13.02.1997 by the department as revealed from the first para of tribunal judgment dated 11.08.2003. It was further contended that after availing departmental appeal, the appellant filed service appeal before this tribunal which was partially accepted, the impugned order was set aside and the appeal was remanded back to the respondent department for thorough scrutiny and reconsideration in accordance with law and in the meanwhile the appellant was reinstated into service with back benefits vide detailed judgment dated 11.08.2003. It was further contended that the respondent department challenged the judgment of this tribunal dated 11.08.2003 before august Supreme Court and the august Supreme Court not granted leave however it was observed that the question of grant or otherwise of back benefits to the respondents for intervening period would depend upon afresh decision of the departmental authority vide detailed judgment dated 18.11.2004. It was further contended that the appellant was already granted back benefits by the respondent department, on the basis of judgment of this tribunal dated 11.08.2003 but the respondent department after a long period, treated the intervening period w.e.f 24.02.1999 to 09.12.2004 as leave without pay instead of back benefits vide order dated 08.11.2019. It was further contended that the appellant filed departmental appeal against the impugned order dated 08.11.2019 on 28.11.2019 but the same was not responded hence the present service appeal. It was further contended that since the appellant has been reinstated by the respondent department on the basis of judgment of this tribunal as there was no fault of the appellant, therefore, the appellant was entitled for

*MA*

Appellant Deposited  
Security & Process Fee

Respected Sir,

The objections raised by your good office have accordingly been addressed by removing them, however, the objection raised by your good office at Sr.No.6, cannot be addressed as the departmental appeal of the appellant has not been decided by the departmental appellate authority within the statutory period of ninety (90) days, therefore, the appellant, as per the Rules, after the lapse of statutory period, preferred this service appeal before this Hon'ble Tribunal therefore, the instant appeal be placed before the Single Bench of this Hon'ble Tribunal for its preliminary hearing.

*93*

**Muhammad Ijaz Khan Sabi**  
Advocate Supreme Court

*Sw*

*objection no-6 still stand.  
The objection of this office and reply of  
counsel for the appellant is submitted for  
order please -*

*Hon'ble  
Member*

*20/4/2020*




The appeal of Mr. Habib Rasool PST GPS Toorqilla received today i.e. on 16.03.2020 is incomplete on the following score which is returned to the counsel for the appellants 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- Address of appellants is incomplete which may be completed according to the Khyber Pakhtunkhwa Service Tribunal rules 1974.
- 5- Affidavit may be got attested by the Oath Commissioner.
- 6- Copy of order of departmental appellate authority mentioned in the heading of the appeal is not attached with the appeal which may be placed on it.
- 7- Annexure-A of the appeal is illegible which may be replaced by legible/better one.
- 8- Six more copies/sets of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.

No. 949 /S.T,

Dt. 17-03 /2020.

  
REGISTRAR  
SERVICE TRIBUNAL  
KHYBER PAKHTUNKHWA  
PESHAWAR.

Mr. Muhammad Ijaz Sabi Adv. Pesh.

Note  
15/3/2020

Resubmitted after doing  
need full

17/3

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR**

**CHECK LIST**

1.	Case Title	Habib Rasool Vs The Director Education & others	
2.	Case is duly signed.	Yes	No
3.	The law under which the case is preferred has been mentioned.	Yes	No
4.	Approved file cover is used.	Yes	No
5.	Affidavit is duly attested and appended.	Yes	No
6.	Case and annexures are properly paged and numbered according to index.	Yes	No
7.	Copies of annexures are legible and attested. If not, then better copies duly attested have annexed.	Yes	No
8.	Certified copies of all requisite documents have been filed.	Yes	No
9.	Certificate specifying that no case on similar grounds was earlier submitted in this court, filed.	Yes	No
10.	Case is within time.	Yes	No
11.	The value for the purpose of court fee and jurisdiction has been mentioned in the relevant column.	Yes	No
12.	Court fee in shape of stamp paper is affixed. [For writ Rs. 500, for other as required]	Yes	No
13.	Power of attorney is in proper form.	Yes	No
14.	Memo of addressed filed.	Yes	No
15.	List of books mentioned in the petition.	Yes	No
16.	The requisite number of spare copies attached [Writ petition-3, civil appeal (SB-2) Civil Revision (SB-1, DB-2)]	Yes	No
17.	Case (Revision/ Appeal/petition etc) is filed on a prescribed form.	Yes	No
18.	Power of attorney is attested by jail authority (for jail prisoner only)	Yes	No

It is certified that formalities/documentations as required in column 2 to 18 above, have been fulfilled.

Name:- **Muhammad Ijaz Khan Sabi**

Signature:- 

Dated:- **04.03.2020**

**FOR OFFICE USE ONLY**

Case:- \_\_\_\_\_

Case received on \_\_\_\_\_

Complete in all respect: Yes/ No, (if No, the grounds) \_\_\_\_\_

Date in court:- \_\_\_\_\_

Signature \_\_\_\_\_  
(Reader)

Date:- \_\_\_\_\_

Countersigned:- \_\_\_\_\_  
(Deputy Registrar)

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,**  
**PESHAWAR**

Service Appeal No. 4314 /2020

Habib Rasool.....Appellant

**V E R S U S**

The Director Education & others.....Respondents

**I N D E X**

S#	Description of Documents	Annex	Pages
1.	Service Appeal with affidavit		1-8
2.	Application for suspension alongwith Affidavit		9-11
3.	Addresses of parties		12
4.	Copy of Appointment order	"A"	13
5.	Copy of the Judgment	"B"	14-19
6.	Copy of judgment dated 26.11.2004	"C"	20-23
7.	Copy of the impugned Order dated 08.11.2019	"D"	24-
8.	Copy of Departmental Appeal	"E"	25-27
9.	Copy of the judgment	"F"	28-31
10.	Wakalatnama		32

*H Rasool*  
Appellant

Through

*Muhammad Ijaz Khan Sabi*  
Advocate  
Supreme Court of Pakistan

&

*Adnan Aman*  
Advocate High Court  
15-B, Haroon Mansion,  
Khyber Bazar, Peshawar  
Cell No.0333-2902529

Dated 03.03.2020

1

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,**  
**PESHAWAR**

Service Appeal No. 4314 /2020

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 2033

Habib Rasool Son of Muhammad Dost Khan  
Primary School Teacher at GPS Toorqilla

Dated 16/3/2020

Timergasa Dir Lower

.....Appellant

**V E R S U S**

1. The Director Education, Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar
2. The District Education Officer (Male) Dir Lower
3. The Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education, Civil Secretariat, Peshawar
4. The District Accounts Officer, Lower Dir

.....Respondents

**SERVICE APPEAL U/S 4 OF THE KHYBER  
PAKHTUNKHWA SERVICES TRIBUNAL ACT,  
1974, AGAINST THE IMPUGNED ORDER OF  
RESPONDENT NO.2 DATED 08.11.2019  
AND ORDER OF DEPARTMENTAL  
APPELLATE AUTHORITY (RESPONDENT  
NO.1) DATED NIL, WHEREBY HE DID NOT  
PASS ANY APPROPRIATE ORDER OVER  
THE DEPARTMENTAL APPEAL OF THE  
APPELLANT.**

Filed to-day

Registrar.

16/3/2020

Prayer

By accepting this appeal, the impugned order of respondent No.2 dated 08.11.2019 and respondent No.1 dated nil, whereby he did not pass any order over the departmental appeal of the appellant, may please be set aside and consequently the intervening period i.e. 01.01.1997 till 09.12.2004 may please be treated as leave with pay and the respondent No.2 and 4 may be directed not to withdraw the benefits already granted to the appellant.

Any other relief deems fit and appropriate in the circumstances of the instant appeal may also be passed.

---

**Respectfully Sheweth:**

1. That the appellant was initially appointed as Primary School Teacher (PST) way back in the year <sup>12-11-1995</sup> ~~24.10.1995~~. (Copy of Appointment order is attached as annexure "A").

2. That later on the services of the appellant were dispensed with and the aforesaid order was challenged by the appellant, before this Hon'ble Tribunal through service appeal No.563/2002 which was allowed by this Hon'ble Tribunal vide judgment dated 11.08.2003 and the appellant was reinstated in service with all back benefits however the case of appellant was remanded back to the department for a through scrutiny and consideration. (Copy of the Judgment is attached as annexure "B").
3. That later on the judgment of this Hon'ble Tribunal was challenged before the Apex Court through C.P No.657/2003 wherein the appeal preferred by the then respondents was dismissed vide judgment dated 18.11.2004, however the issue of grant of back benefits for the intervening period i.e. 01.01.1997 till 09.12.2004 was also entrusted to the respondents department. (Copy of judgment dated 26.11.2004 are attached as annexure "C").

4. That the issue of decision regarding the grant of back benefits was almost kept pending for fifteen (15) long years and now vide impugned order dated 08.11.2019, the intervening period i.e. 01.01.1997 to 09.12.2004, was ordered to be treated as leave without pay. (Copy of the impugned Order dated 08.11.2019 is attached as annexure "D").
5. That due to the aforesaid impugned order dated 08.11.2019, the office of the respondent No.4 has started re-fixation of pay of the appellant.
6. That the appellant preferred his Departmental Appeal to the respondent No.1 against the impugned order passed by respondent No.2 dated 08.11.2019 however till date, the same has not been decided so far. (Copy of Departmental Appeal is attached as annexure "E").
7. That after lapse of the statutory period i.e (90 days) the appellant now prefers this service Appeal before this Hon'ble Tribunal for the following amongst other grounds:

**G R O U N D S :**

- A. That the impugned order dated 08.11.2019 whereby the intervening period i.e. 08.11.2019 till 09.12.2004 was treated as leave without pay and withdrawal of consequential benefits, is illegal, unlawful against the rules governing the subject and thus ineffective upon the rights of the appellant.
- B. That the appellant has been made a classical example of discrimination as his other colleagues namely Muhammad Rashid alongwith eleven (11) others have been blessed with reinstatement alongwith all back benefits, however the same was denied to the appellant. (Copy of the judgment is attached as annexure "F").
- C. That the appellant has been treated unequally being his fundamental right as guaranteed under Article 4 and 25 of the Constitution of Islamic Republic of Pakistan, 1973 and thus on this score alone the impugned order passed by respondent No.2 is liable to be struck down



- D. That the impugned order has been passed after lapse of fifteen long years and by now much water has flown beneath the bridge but the respondents while passing the impugned order has totally ignored this aspect of the case.
- E. That the impugned order passed by the respondent No.2 is illogical and no plausible reason was put forward while passing the impugned order dated 08.11.2019.
- F. That the appellant has been treated against the law and he has also been deprived of equal protection of law.
- G. That any other ground, not specifically mentioned, may be raised at the time of arguments, with the prior permission of this Hon'ble Tribunal.

**It is, therefore, most humbly prayed that By accepting this appeal, the impugned order of respondent No.2 dated 08.11.2019 and respondent No.1 dated nil, whereby he did not pass any order over the departmental appeal of the appellant, may please be set aside and**

consequently the intervening period i.e. 01.01.1997 till 09.12.2004 may please be treated as leave with pay and the respondent No.2 and 4 may be directed not to withdraw the benefits already granted to the appellant.

Any other relief deems fit and appropriate in the circumstances of the instant appeal may also be passed.

  
Appellant

Through

  
**Muhammad Ijaz Khan Sabi**  
Advocate  
Supreme Court of Pakistan

&

  
**Adnan Aman**  
Advocate High Court(s)

Dated 04.03.2020

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,**  
**PESHAWAR**

Service Appeal No. \_\_\_\_\_/2020

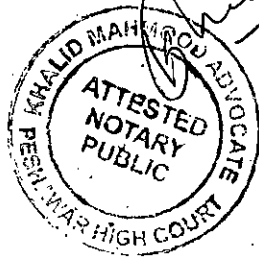
Habib Rasool.....Appellant

**V E R S U S**

The Director Education & others.....Respondents

**A F F I D A V I T**

I, Habib Rasool Son of Muhammad Dost Khan, Primary School Teacher at GPS Toorqilla, do hereby solemnly affirm and declare on oath that the contents of the accompanying **Service Appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.



*HR Rasool*  
DEPONENT

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,**  
**PESHAWAR**

C.M No. \_\_\_\_\_/2020

In

Service Appeal No. \_\_\_\_\_/2020

Habib Rasool.....**Appellant**

**V E R S U S**

The Director Education & others.....**Respondents**

**APPLICATION FOR SUSPENSION THE  
 OPERATION OF THE IMPUGNED DATED  
 08.11.2019, TILL THE FINAL DISPOSAL OF  
 THE MAIN SERVICE APPEAL.**

**Respectfully Sheweth:**


1. That the titled Service Appeal is being filed before this Hon'ble Tribunal in which no date of hearing is fixed.
2. That the grounds of main appeal may be considered as integral part of this application.
3. That the balance of convenience also lies in favour of the appellant.

4. That the appellant has a good prima facie case and all the three ingredients are in favour of the appellant.
5. That if the operation of the impugned order dated 08.11.2019 is not suspended then the appellant would suffer irreparable loss.

If is, therefore, most humbly prayed that by accepting this application, the operation of the impugned transfer order dated 08.11.2019 may please be suspended to the extent of the appellant, till the final disposal of the main appeal.

  
Appellant

Through

  
**Muhammad Ijaz Khan Sabi**  
Advocate  
Supreme Court of Pakistan

&

  
**Adnan Aman**  
Advocate High Court(s)

Dated 03.03.2020

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,**  
**PESHAWAR**

C.M No. \_\_\_\_\_/2020

In

Service Appeal No. \_\_\_\_\_/2020

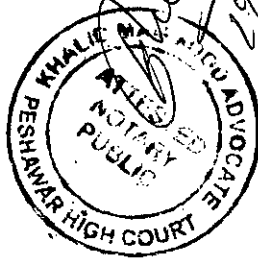
Habib Rasool.....**Appellant**

**VERSUS**

The Director Education & others.....**Respondents**

**AFFIDAVIT**

I, Habib Rasool Son of Muhammad Dost Khan Primary School Teacher at GPS Toorqilla, do hereby solemnly affirm and declare on oath that the contents of the accompanying **Application** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.



*H Rasool*  
DEPONENT

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,**  
**PESHAWAR**

Service Appeal No. \_\_\_\_\_/2020

Habib Rasool.....Appellant

**V E R S U S**

The Director Education & others.....Respondents

**ADDRESSES OF PARTIES**

**A P P E L L A N T:**

Habib Rasool Son of Muhammad Dost Khan  
Primary School Teacher at GPS Toorqilla

**R E S P O N D E N T S**

1. The Director Education, Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar
2. The District Education Officer (Male) Dir Lower
3. The Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education, Civil Secretariat, Peshawar.
4. The District Accounts Officer, Lower Dir

*H Rasool*  
Appellant

Through

*Muhammad Ijaz Khan Sabi*  
Advocate  
Supreme Court of Pakistan

OFFICE ORDER:-

13

Annex "A"

Mr. Habib Rasool Mat; S/O Mohammad Dost Khan,  
Village, Mayar Tehsil Samarbagh. Distt: Dir is hereby  
appointed as PTC, teacher on stop gap arrangements at GPS, ~~HPK~~ Toran,  
with effect from 12<sup>11</sup>/<sub>55</sub> to 31<sup>12</sup>/<sub>55</sub> at the pay  
scale of Rs. 1480/81/2695 subject to the following terms and conditon

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.

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

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

Enast: NO. 5187-99 /PED/Estab: /A-1 Dated Timergara the 12/11/95

Copy forwarded to:-

~~THRX~~ ~~DE~~ ~~EX~~

1. The SDEO(M) Samarbagh for information.
2. The DAO, Dir at Timergara for ~~in~~ information.
3. The candidate concerned for information & compliance.

*[Handwritten Signature]*  
*[Handwritten Signature]*  
 Mohammad Ibrahim  
 Subject Specialist in Islamiyat  
 G.E.S. Samar Bagh Distt: Dir.

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

12/11/95

*[Handwritten Signature]*  
**ATTESTED**



Annex B

14

BEFORE THE NWFP SERVICE TRIBUNAL, PESHAWAR

SERVICE APPEAL NO. 563 /2002

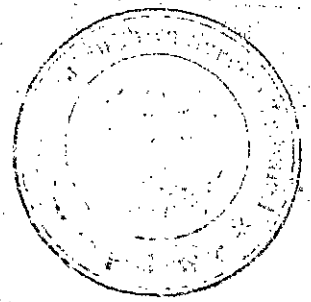
N.W.F.P. Province  
Date of Tribunal  
Dialy No. 713  
Cated 8-6-2002

Habib Rasool son of Muhammad Dost Khan,  
Ex-PTC, GPS, Toran, R/o Village Mayar,  
District Dir Lower.....

Appellant

VERSUS

- 1- Executive District Officer,  
(Education) Dir Lower.
- 2- Director Education Primary,  
NWFP, Peshawar.
- 3- Government of NWFP through,  
Secretary Primary & Literacy  
Peshawar.....



Respondents.

Filed to-day  
M. A. J. A.  
Resident  
8/6/02

SERVICE APPEAL UNDER SECTION 4 OF THE NWFP SERVICE TRIBUNALS ACT, 1974 FOR SETTING ASIDE THE IMPUGNED ORDER DATED 13/2/97 BY WHICH APPELLANT'S APPOINTMENT ORDER WAS DISPENSED WITH AND HIS REINSTATEMENT INTO SERVICE IN THE LINE OF JUDGEMENTS OF THIS AUGUST TRIBUNAL IN VIEW OF PRINCIPLE OF LAW ENUNCIATED IN THE JUDGEMENT OF HON'BLE SUPREME COURT OF PAKISTAN REPORTED IN 1996 SCMR 1185 TITLED "HAMEED AKHTAR NIAZI VS THE SECRETARY, ESTABLISHMENT DIVISION, GOVERNMENT OF PAKISTAN AND OTHERS"

RESPECTFULLY SHEWETH

Facts giving rise to the present appeal are as under:-

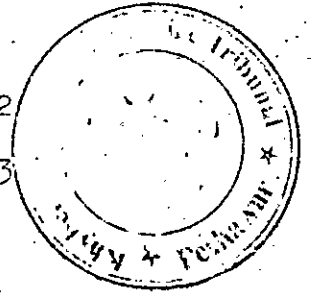
ATTESTED

Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

SERVICE APPEAL NO. 561/2002

Date of in-stitution ... 08.6.2002

Date of decision ... 11.8.2003



Zakir Hussain S/o Hussain Ahmad,  
Ex-PTC, GPS, Gatkai (Samargagh),  
R/O, Village Tangai (Payeen),  
District Dir Lower.

.. Appellant

VERSUS

1. Executive District Officer,  
(Education) Dir Lower.
2. Director Education Primary,  
NWFP, Peshawar.
3. Government of NWFP through,  
Secretary Primary & Literacy,  
Peshawar.

.. Respondents

Mr. Khushdil Khan,  
Advocate.

.. For appellant

Mr. Sultan Mahmood,  
Govt. Pleader/P.P.

For respondents

Mr. Abdul Sattar Khan,  
Mr. Azmat Hanif Crakzai.

.. Chairman  
Member

JUDGMENT

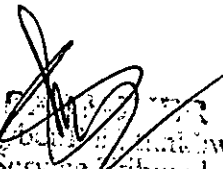
ABDUL SATTAR KHAN, CHAIRMAN: This appeal, u/s 4 of the NWFP Service Tribunals Act, 1974, has been filed by Zakir-Hussain appellant against the order dated 13.2.97, whereby the services of the appellant were dispensed with and for his reinstatement into service in the line of judgments of this Tribunal in view of principle of law enunciated in the judgment of Hon'ble Supreme Court of Pakistan reported in 1996 SCMR 1185 titled "Hameed Akhtar Niazi-Vs Secretary, Estab. Divn: Government of Pakistan and others."

APPROVED  
  
K. S. Niazi  
Service Tribunal,  
Peshawar

2. It is to be noted that there are five other connected appeals bearing No. 562, 563, 564, 565 and 566 of 2002 filed by M/S Abdur Rauf, Habib Rasool, Ibadullah, Ali Akbar Shah and Bakh Shahzada appellants respectively and fixed for today. As the respondent department, points of law and facts involved are common in all the appeals, therefore, our this single judgment shall dispose of the instant appeal as well as the connected 5 appeals, referred to above.

3. The facts, in brief, are that the appellant was appointed as PTC teacher by the competent authority vide order dated 23.10.95. He assumed the charge of his duty after completing the requisite formalities. Vide order dated 13.2.1997, the services of the appellant were dispensed with, w.e.f 1.1.1997. Most of the aggrieved and affected employees of the respondent department had challenged the impugned order before this August Tribunal and consequently their appeals were accepted and the individuals were reinstated into service with back benefits. The Hon'ble Supreme Court of Pakistan has laid down a dictum in a judgment reported in 1996 SCMR 1185 titled "Hameed Akhtar-Niazi-Vs-the Secretary, Establishment Division, Govt. of Pakistan and others" which is reproduced below:

ATTESTED


  
Khatun Gulistan  
Service Tribunal,  
Peshawar

"If the Service Tribunal or Supreme Court decides a point of law relating to the terms of service of a civil servant which covers not only the case of civil servant who litigated, but also of other civil servants who may have not taken any legal proceedings, in such a case, the dictates and rule of good governance demand that the benefit of such judgment by Service Tribunal/Supreme Court be extended to other civil servants who may not be parties to the litigation instead of compelling them to approach the Service Tribunal or any other forum of law".

Since the appellant has identical case like other cases which have already been decided by this Tribunal having similar fact and law, therefore, he filed a departmental appeal before

respondent No.2 for considering his case in view of the dictum laid down by the August Supreme Court of Pakistan in the above referred judgment, but the appeal was not disposed of within the statutory period of 90 days, hence this appeal.

4. The grounds of appeal are that the principle of law enunciated in the aforesaid judgment of the August Supreme Court of Pakistan is applicable to appellant's case because the matter is identical and contains similar facts and law; that the decision of the Supreme Court of Pakistan is binding on all subordinate Courts under Article 189 of the Constitution of Islamic Republic of Pakistan, 1973, therefore, the respondent department was legally bound to consider the case of the appellant in the line of decided cases, but they did not do so with malafide intention and acted <sup>in</sup> an arbitrary manner; that the impugned order is illegal, without lawful authority and against the principle of natural justice as no notice was given to the appellant before passing the impugned order and as such he was not given a fair opportunity to defend himself; that the respondent department has also not followed the instructions of the Provincial Government contained in letter dated 20.2.1997, therefore, their action is illegal, without lawful authority and of no legal effect and that the appellant has been treated discriminately by the respondent department which is glaring violation of Article 25 of the Constitution, 1973. The appellant's prayer is that on acceptance of this appeal, the impugned order may be set aside and he may be reinstated into service with all back benefits in the line of decided cases.

ATTESTED  
  
Secretary  
G.M.

5. Respondents have filed their written reply and denied the claim of the appellants on the grounds that the appeals are badly time barred and that the appointments of the appellants were made purely on temporary basis and as stop gap arrangement without observing the codal formalities, as such being untrained they were terminated from service. In rebuttal, the appellants

have also filed their replications.

6. Arguments heard and record perused.

7. The claim of the appellants is that they were appointed as PTC teachers by the competent authority on different dates, but their services were terminated vide the impugned orders, without any notice etc.

8. The claim of the respondent department is that the appellants were appointed as untrained PTC teachers on temporary basis/stop gap arrangement without observing the codal formalities; therefore, their services were terminated.

9. Learned counsel for the appellants argued that the appellants could not be penalized for the lapses of the department. Reliance was placed on 1996 SCMR 413. It was agitated that meanwhile some of the teachers namely Muhammad Sajid and Muhammad Rashid etc. were reinstated into service and that the cases of the appellants are not different from those who have been reinstated into service by this Tribunal. Regarding limitation, reliance was placed on the case of Mushtaq-Ahmed-Vs-Education Department decided by this Tribunal on 5.4.2002.

10. Learned P.P for the respondents argued that the appeals are time barred, and that the appellants have got no cause of action.

11. The Tribunal observes that the appellants have based their claim mainly on the judgment of the August Supreme Court of Pakistan reported in 1996 SCMR 1185, titled "Hameed Akhtar-Niazi-Vs-Secretary, Establishment Division, Government of Pakistan and others". Citation (c) of the said judgment is reproduced below for ready reference:

ATTESTED

"...S.4...Constitution of Pakistan(1973),Art.212---  
Appeal to Service Tribunal or supreme court---

*[Handwritten signature]*  
Secretary  
Service Tribunal

Effect--If the Service Tribunal or Supreme Court decides a point of law relating to the terms of service of a civil servant which covers not only the case of civil servant who litigated, but also of other civil servants, who may have not taken any legal proceedings, in such a case, the dictates and rule of good governance demand that the benefit of such judgment by Service Tribunal/Supreme Court be extended to other civil servants, who may not be parties to the litigation instead of compelling them to approach the Service Tribunal or any other forum."

In the light of the cited judgments of the Tribunal as well as the authority of the August Supreme Court of Pakistan, referred to above, the appellants have valid claim. Muhammad Sajid and Muhammad Rashid etc. who were also PTC teachers, were reinstated into service by this Tribunal. The cases of the appellants are at par with those cases already decided by this Tribunal. Therefore, the appellants have made out cases for indulgence of the Tribunal. Delay in filing the appeals is condoned in the interest of justice in the light of the judgment passed in case of Mushtaq Ahmed, referred to above.

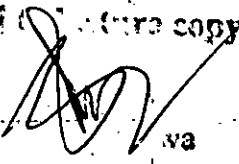
12. Resultantly, the instant appeal as well as the connected appeals are partially accepted. The impugned orders are hereby set aside only to the extent of the present appellants and the cases are remanded back to the respondent department for a thorough scrutiny and re-consideration in accordance with law. In the meanwhile, all the appellants are reinstated into service with back benefits. No order as to costs. File be consigned to the record.

ANNOUNCED  
11.8.2003

(ABDUL SATTAAR KHAN)  
CHAIRMAN

(AZMAT HANIF ORAKZAI)  
MEMBER

Certified true copy



11-8-03

Date of ... 06-3-2020  
... 2000  
... 2200  
...  
... 2200  
...  
Date of ... 13-3-2020  
Date of ... 13-3-2020

IN THE SUPREME COURT OF PAKISTAN  
(Appellate Jurisdiction)

121

L:113/03

Annex C

Present:

Mr Justice Muhammad Nawaz Abbasi  
Mr Justice Faqir Muhammad Khokhar

Civil Petition No. 655-P to 660-P of 2003.

(On appeal from judgment dated  
11.8.2003, passed by the NWFP  
Service Tribunal, Peshawar, in  
Appeal No.561 to 566 of 2002).

Executive District Officer,  
School & Literacy (Education), Dir Lower  
and others.

...Petitioners.

Versus

1. Zakir Hussain (in C.P.655-P/03)
2. Abdur Rauf (in C.P.656-P/03)
3. Habib Rasool (in C.P.657-P/03)
4. Abadullah (in C.P.658-P/03)
5. Ali Akbar Badshah (in C.P.659-P/03)
6. Bakhat Shahzada (in C.P.660-P/03)

...Respondents.

For the petitioners: Hafiz Aman, ASC.

For the respondents: Mr Khushdil Khan, ASC.

Date of hearing: 18.11.2004.

JUDGMENT

FAQIR MUHAMMAD KHOKHAR, J.-The

petitioners seek leave to appeal from judgment dated 11.8.2003,  
passed by the NWFP Service Tribunal, Peshawar (hereinafter referred  
to as the Tribunal) in Appeals No.561 to 566 of 2002.

ATTESTED

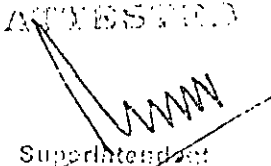
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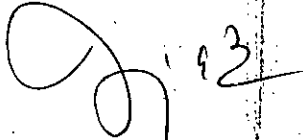
Supintendent  
Supreme Court  
ISLAMABAD



22  
—

2. The respondents were appointed as P.T.C teachers in the year 1995. Their services were dispensed with on 1.1.1997 along with some other teachers who were similarly appointed. The other P.T.C teachers moved the Tribunal whose appeals were accepted. The respondents filed service Appeals which were allowed by the Tribunal, by the impugned judgment dated 11.8.2003. Hence these petitions for leave to appeal.
3. The learned counsel for the petitioners argued that the respondents were not properly appointed as the essential codal requirements were not satisfied. Their appointments were made on temporary basis as a stop gap arrangement. It was further contended that the respondents did not possess the requisite qualifications for the P.T.C post at the time of their appointment and of termination of their services.
4. On the other hand, the learned counsel for the caveat argued that the cases of the respondents were identical with other teachers who had already been reinstated in service by the Tribunal.
5. We have heard the learned counsel for the parties at some length and have also gone through the record. We find that the Tribunal has already remanded the cases of the respondents for thorough scrutiny and re-consideration by the departmental authorities in accordance with law. In our view, the impugned judgment does not suffer from any legal infirmity so as to warrant interference by this

ATTESTED  
  
Superintendent  
Supreme Court of Pakistan,  
ISLAMABAD

  
**ATTESTED**

23  
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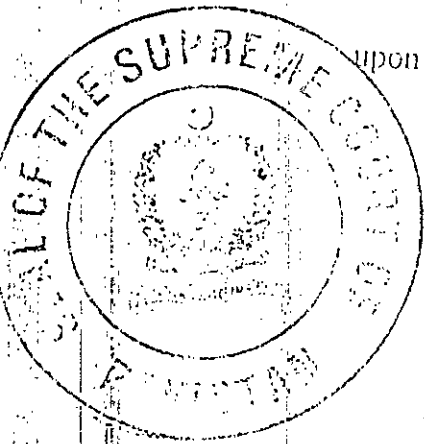
Court. No substantial question of law of public importance as envisaged by Article 212(3) of the Islamic Republic of Pakistan is involved in these petitions.

6. For the foregoing reasons, we do not find any merit in these petitions which are dismissed and leave to appeal is refused accordingly. However, the question of grant or otherwise of back benefits to the respondents for the intervening period would depend upon the fresh decision of the departmental authorities.

Sd, *Muhammad Nurg Khan, J.*  
Sd, *Fazir Muhammad Khattak, J.*

Certified to be true copy

*[Signature]*  
Supreme Court of Pakistan  
ISLAMABAD



Islamabad the  
18<sup>th</sup> November, 2004.  
Not approved for reporting.

Subst.

*23/11/04*

786/04

CR No: \_\_\_\_\_ CIVIL ORIGINAL

Date of filing: 22-11-04

Re: 900

By: 9

Filed in: 5-DB

Case No: 5A-8

Case of: 10-5F

Date of hearing: 26-11-04

Copy: \_\_\_\_\_

Date of delivery: 7/12/04

Copy: \_\_\_\_\_

Compared by: [Signature]

Received by: [Signature]

*[Signature]*  
**ATTESTED**

261  
Mr. Bahadar Zeb  
Do the needful as per rule  
Lower Dir  
27/11/19  
Annex D

OFFICE OF THE  
DISTRICT EDUCATION OFFICER (MALE)  
DIR LOWER AT TIMERGARA.

E- Mail: deomaledirlower@gmail.com Tell: 0945-9250081-82

No. \_\_\_\_\_ /Dated Timergara the \_\_\_/10/2019

**OFFICE ORDER**

Consequent the recommendation of the committee, made in the light of the orders of the August court vide CP No. 655-660/of 2003 dated 26.11.2004 and letter of the Finance Department NO. SO (PE)5-19/Reinstatement/10/vol.v dated 7.6.2012.

“ your joint appeal with regard to grant of back benefits for the intervening period has been examined and decided to be regretted ,because your initial appointment was made as stop-gape arrangement. Moreover, you were holding the post of PST on temporary basis and at the time of appointment, you also did not possess the requisite qualification, prescribed in the policy”.

Hence the intervening period w.e.f 24.02.1999 to 09.12.2004 in respect of the following teachers is hereby treated as leave without pay.

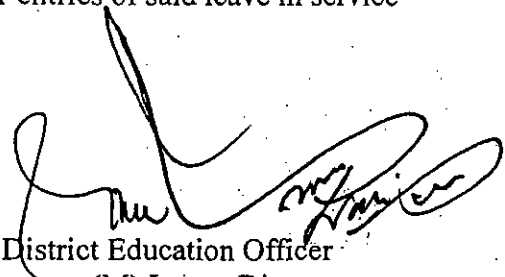
1. Abdur Raufkhan SPST GPS Kotky Shahi Khel.
2. Ibadullah SPST GPS Damtal.
3. Habib Rasool SPST GPS Toor Qila.
4. Ali Akber Badshah SPST GPS Kandaro Arif.
5. Zakir Husain SPST GPS Charmango.
6. Bakht Shahzada CT GHS Kambat.

(GHULAM NABI KHAN)  
District Education Officer  
(M) Lower Dir.

Endst; No. 11740-43 Dated Timergara the 08/11/2019

Copy of the above forwarded to the.

1. District Accounts Officer Dir Lower.
2. SDEO (M) Samar Bagh with the direction to make proper entries of said leave in service book of the teacher concerned.
3. Head Master GHS Kambat.
4. Official concerned.

  
District Education Officer  
(M) Lower Dir.

  
**ATTESTED**

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Annex "E" (3)

The Director,  
Elementary & Secondary Education,  
Khyber Pakhtunkhwa, Peshawar.

Subject: DEPARTMENTAL APPEAL/ REPRESENTATION U/S  
22 OF THE CIVIL SERVANTS ACT, 1973 AGAINST  
THE IMPUGNED ORDER DATED 08.11.2019  
PASSED BY THE DISTRICT EDUCATION OFFICER  
(MALE) LOWER DIR, WHEREBY HE DID NOT GRANT  
THE BACK BENEFITS TO THE APPELLANT FOR THE  
INTERVENING PERIOD I.E. 01.01.1997 TO  
09.12.2004.

Respected Sir,

1. That the appellant was appointed as PST Teacher way back in the year 1995. **(COPY OF APPOINTMENT ORDER IS ATTACHED).**
2. That later on, vide order dated 13.02.1997, the services of the appellant were dispensed with, the aforesaid order was challenged by the appellant before the Khyber Pakhtunkhwa Services Tribunal at Peshawar, vide Appeal No.563/2002, which was allowed by the Hon'ble Tribunal, vide order dated 11.08.2003, whereby the appellant was re-instated with all back benefits, however, his case was remanded back to the Department for a thorough scrutiny and re-consideration. **(COPY OF JUDGMENT IS ATTACHED).**

**ATTESTED**

28-11-19

26  
—

②

That later on the judgment/ order of the Khyber Pakhtunkhwa Services Tribunal was challenged before the Apex Court, through C.P.No.657/2003, where the appeal was dismissed, however, the issue of deciding grant of back benefits for the intervening period was also entrusted to the departmental authority. **(COPY OF JUDGMENT IS ATTACHED).**

4. That the aforesaid matter was pending for almost fifteen long years and now vide impugned order dated 08.11.2019, the intervening period i.e. 01.01.1997 to 09.12.2004 has ordered to be treated as leave without pay. **(COPY OF IMPUGNED ORDER IS ATTACHED).**
5. That due to the aforesaid impugned order dated 08.11.2019, the office of Accountant General, Khyber Pakhtunkhwa has started re-fixation of his pay in which the increment already granted to the appellant for the intervening period is likely to be withdrawn.
6. That the impugned order dated 08.11.2019, whereby the intervening period was treated as leave without pay and withdrawal of consequential benefits is illegal, unlawful, against the Rules governing the subject and thus ineffective upon the rights of the appellant.
7. That appellant has been treated with discrimination as his other colleagues, namely Muhammad Rashid and eleven (11) others have been awarded all the back benefits and the same has been denied to the appellant.

  
**ATTESTED**

27

It is, therefore, prayed that by accepting this departmental appeal/ representation, the impugned order dated 08.11.2019 passed by the District Education Officer (Male), Lower Dir may be set aside and consequently, the intervening period i.e. 01.01.1997 till 09.12.2004 may be treated as leave with pay and the authority be directed not to withdraw the benefits already granted to the appellant.

Dated: 28.11.2019

Appellant

**Habib Rasool** *CP's*  
S/o Dost Muhammad *Tooravilla*  
PST Teacher

*H Rasool*

*[Signature]*  
**ATTESTED**

BEFORE THE N.W.F.P. SERVICE TRIBUNAL, PESHAWAR

SERVICE APPEAL NO. 1307/2000

Annex F

Date of institution ... 16.5.2000

Date of decision ... 02.5.2002

28

Mohammad Rashid S/o Mohammad Faqir,  
PTC, R/O Village Samarbagh,  
District Dir.

.. Appellant

VERSUS

1. Government of NWFP through  
Secretary Education, Peshawar.

2. Director Education Primary,  
NWFP, Peshawar.

3. District Education Officer,  
(Male) Primary, Dir at Timergara.

.. Respondents

Mr. Khushdil Khan,  
Advocate.

.. For appellant

Mr. Sultan Mehmood,  
Addl: Govt. Pleader.

For respondents

Mr. Khan Akbar Khan,  
Mr. Muhammad Shaukat.

.. Chairman  
Member

JUDGMENT

KHAN AKBAR KHAN, CHAIRMAN: This appeal has been filed by Mohammad Rashid appellant, u/s 4 of the NWFP Service Tribunals Act, 1974, for his reinstatement into service in view of the judgment of the Hon'ble Supreme Court of Pakistan reported in 1996 SCMR 1185, titled "Hameed Akhtar Niazi-Vs- the Secretary Establishment Division, Govt. of Pakistan & others".

2. It is to be noted that there are other 15 connected

NWFP SERVICE TRIBUNAL  
PESHAWAR  
EXAMINER

ATTESTED

ATTESTED

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appeals fixed for today. As the respondent department, points of law and facts are common in all the appeals, so our this single judgment shall dispose of the instant appeal as well as the connected appeals, detail of which is as under:

1. Appeal No. 1296/2000, Kamal Khan-Vs-Govt. of NWFP Education Department, Peshawar & others."
2. Appeal No. 1297/2000, ShamsharAli-Vs- - do -
3. Appeal No. 1298/2000, Daulat Jan -Vs- - do -
4. Appeal No. 1299/2000, Momin Khan -Vs- - do -
5. Appeal No. 1300/2000, Rana tullah -Vs- - do -
6. Appeal No. 1301/2000, Fazal Raziq-Vs- - do -
7. Appeal No. 1302/2000, Khuda Yar -Vs- - do -
8. Appeal No. 1303/2000, Hidayatullah-Vs- - do -
9. Appeal No. 1304/2000, Riazul Haq -Vs- - do -
10. Appeal No. 1305/2000, Khan Mohammad-Vs- - do -
11. Appeal No. 1306/2000, Said Umar -Vs- - do -
12. Appeal No. 1308/2000, Sultan Mohammad-Vs- - do -
13. Appeal No. 1356/2000, Kamran -Vs- - do -
14. Appeal No. 1357/2000, Mohammad Yaqoob-Vs- do -
15. Appeal No. 1373/2000, Mohammad Afzal-Vs- - do -

3. The facts of the case as averred in the memo. of appeal are that the appellant possesses the prescribed requisite qualification for the post of PTC (Annexures A1-A3) and was appointed as such on stop gap arrangement and posted at GPS, Lahar Samarbagh vide order dated 27.8.95. The competent authority then passed an order dated 31.12.95 thereby the services of the appellant were retained & continued/as such he served the department for more than two years continuously without any break. Relevant copies are Annexures B & C respectively on the file. The appellant joined service and assumed duty after fulfilling the requisite formalities and as such <sup>his</sup> service book was also maintained by the respondent department (Annexure-D). The respondent department has later on passed an order dated

NWFP  
SERVICES TRIBUNAL  
Peshawar

EXAMINER

ATTESTED

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ATTESTED



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22.2.97, whereby the services of the appellant alongwith others were terminated w.e.f 31.12.96 (Annexure-E). That recently this Hon'ble Tribunal has delivered a chain of judgments in which identical question of law and facts have been decided. The appellant has also a similar case of identical point of law, so he has got the right to invoke the jurisdiction of this Hon'ble Tribunal in light of the judgment of the Hon'ble Supreme Court of Pakistan reported in 1996 SCMR page 1185, the relevant head note thereof is reproduced below:

"If the Service Tribunal or Supreme Court decides a point of law relating to the terms of service of a civil servant which covers not only the case of civil servant who litigated, but also of other civil servants, who may have not taken any legal ~~proceedings~~ of good governance demand that the benefit of such judgment by Service Tribunal/Supreme Court be extended to other civil servants who may not be parties to the litigation instead of compelling them to approach the Service Tribunal or any other forum of law". (Annexures F, G & H).

The appellant, therefore, filed a departmental appeal dated 9.2.2000 before respondent No.2 for consideration the same in view of the cited judgment, but it was not disposed of within the statutory period of 90 days (Annexure-I), hence this appeal.

4. The grounds of appeal are that the appellant has identical case to be considered in the line of decided cases by this Hon'ble Service Tribunal for reinstatement in view of the cited judgment of the Hon'ble Supreme Court of Pakistan for which the respondent department is bound to do so; that the appellant was appointed by the competent authority after observing codal formalities; that the impugned order dated 22.2.97 is invalid as the same has been passed in glaring violation of law and rules on the subject, hence not tenable; that the appellant was condemned unheard as the impugned order has been passed at his back without providing any chance of

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**ATTESTED**

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defence. The appellant's prayer is that on acceptance of the appeal, the respondent department may be directed to consider his case in view of the aforesaid judgments and he may be reinstated in service with all back benefits.

5. Respondents were served and filed their reply in which it has been stated that since the appointment of the appellant was made without observing the codal formalities, hence his services were dispensed with/terminated. In rebuttal, the appellant has also submitted his replication.

6. Arguments heard and record perused.

7. The Tribunal observes that since the point at issue has been decided once in detail in similar nature of case bearing No. 1824/2000, titled "Mushtaq Ahmed-Vs-Education Department", on 5.4.2000 and that case was remanded by this Tribunal to the department concerned for reconsideration in accordance with law by accepting the appeal partially, therefore, in the interest of justice, without going into further detail of the merits of the case, the instant appeal as well as the connected appeals are also decided in the same manner. We, therefore, remand the present appeals of the appellants to the respondent department to re-consider the same in the light of the previous judgment of this Tribunal as well as cited judgment of the Hon'ble Supreme Court of Pakistan and instructions of S&GAD dated 20.2.97 in accordance with law. In the meanwhile all the appellants are reinstated in service with service benefits and the appeals are partially accepted. Learned P.F for the State has also got no objection on the remand of the aforesaid appeals for reconsideration by the respondent department. Parties are, however, left to bear their own costs. File be consigned to the record.

**ATTESTED**

ANNOUNCED  
2.5.2002

*Muhammad Shaukat*  
(MUHAMMAD SHAUKAT)  
MEMBER

*K. Akbar Khan*  
(KHAN AKBAR KHAN)  
CHAIRMAN

6:00  
6:00  
7/5/2002  
8/1/02  
C. S. Khan

**WAKALATNAMA**  
(Power Of Attorney)

32  
—

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**

Habib Rasool

(Petitioner)  
(Plaintiff)  
(Applicant)  
(Appellant)  
(Complainant)  
(Decree Holder)

**VERSUS**

The Director Education KP & others

(Respondent)  
(Defendant)  
(Accused)  
(Judgment Debtor)

I/ We, \_\_\_\_\_ The undersigned appeallant in the above noted Service appeal, do hereby appoint **Mr. Muhammad Ijaz Khan Sabi, & Adnan Aman**, Advocates to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my /our counsel in the above noted matter, without any liability for their default and with the authority to engage/ appoint any other Advocate/Counsel at my/our matter.

Attested & Accepted By.

H Rasool  
Signature of Executants

Muhammad Ijaz Khan Sabi (bc-10-7578)

Adnan Aman (bc-13-4253)

Advocates High Court, Peshawar  
B-15, Haroon Mansion, Khyber Bazar,  
Peshawar. Office: 091-2551553

**VERSUS**

1. Director (Elementary & Secondary Education), Khyber Pakhtunkhwa Peshawar.
2. District Education Officer (Male) Dir lower at Timergara.
3. The Government Khyber Pakhtunkhwa through Secretary Elementary and secondary Education at Peshawar.
4. District Accounts Officer Lower Dir.

**(RESPONDENTS)****PARA WISE COMMENTS ON BEHALF OF RESPONDENTS, 1,2.and 3.****RESPECTFULLY SHEWETH:****PRELIMINARY OBJECTIONS:**

1. The appellant is not the aggrieved person with the meaning of Article 212 of the constitution of the Islamic republic of Pakistan.
2. The appellant has concealed the material fact from this Hon! Able Tribunal, hence liable to be dismissed.
3. The appellant has not approached this Honorable Tribunal with clean hands.
4. The appellant has filed the instant appeal on malafide motives.
5. The instant appeal is against the prevailing laws & rules.
6. That the instant service appeal suffers from laches, hence not maintainable in the form.

**ON FACTS.**

1. Correct up to the extent of the appellant appointment, hence need no comments.
2. Correct and needs no comments.
3. Correct and needs no comments.
4. Incorrect hence denied and further stated that the case of the appellant was forwarded in time to the worthy Secretary Finance to examine it in the light of C.P No. 655 to 660 of 2003 dated 7-6-2012. The Finance Department had rejected their appeal with the remarks, " **your joint appeal to the grant of back benefits for intervening period has been examined and decided to be regretted, because your initial appointment was made as stop-gap arrangement. Moreover you were holding the post of PST on temporary bases and at the time of appointment, you also did not possessed the requisite qualification, prescribed in the policy.**" The appellant malafidely got the benefits for which he was not entitled. During pay and fixation party visit in 2019 to Dir Lower, pointed out

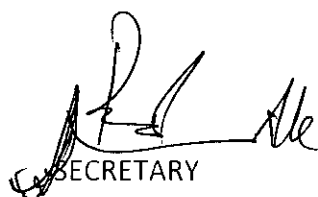
that the appellant had availed back benefits without the approval of the competent authority hence needs clarification. In the response of Fixation party observation, DEO (M) issued order vide. No. 788 dated 08/11/2019 regarding clarification of the intervening period w.e.f 24-02-1997 to 09-12-2004 and the period was declared as leave without pay. --(Annex-A and B)

5. Correct and needs no comments.
6. Needs no comments.
7. Needs no comments.

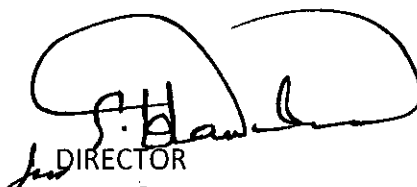
### **GROUNDS:-**

- A. In correct, the office order dated 08-11-2019 was made in the light of the observations of the Fixations party and in good faith of the appellant as his service w.e.f 24-02-1997 to 09-12-2004 was made connected and leave without pay for the period was granted.
- B. Pertains to record hence needs no comments.
- C. Incorrect hence denied.
- D. In correct hence denied. It is further stated that in the light of C.P No. 655 -660 of 2003 the case was forwarded to Secretary Finance for clarification of the claim of back benefits for the intervening period which was rejected vide SO. Finance NO.7-6-2012. His appeal was address well in time by the Finance Department.
- E. Above para D may consider as reply to this para.
- F. Incorrect, hence denied.
- G. The respondent department will, if allowed argue more at the time of hearing.

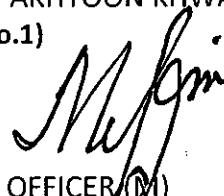
**It is therefore, humbly prayed that on acceptance of the above submission, the instant Service appeal may very graciously be dismissed in favor of the answering respondents with cost.**



SECRETARY  
GOVT. KHYBER PUKHTOON KHWA  
ELEMENTARY AND SECONDARY DEPARTMENT  
(Respondent No.3)



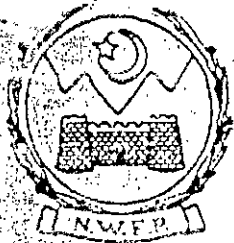
DIRECTOR  
ELEMENTARY & SECODARY  
EDUCATION KHYBER PAKHTOON KHWA  
(Respondent No.1)



DISTRICT EDUCATION OFFICER (M)  
DIR LOWER AT TIMERGARA  
(Respondent No.2)

3)

(Anex)



GOVERNMENT OF NWFP  
ELEMENTARY & SECONDARY EDUCATION  
DEPARTMENT

No. SO(PE)5-19/Reinstatement/09/Vol.II  
Dated Peshawar the 07-01-2010.

To,

The Director  
Elementary & Secondary Education  
NWFP, Peshawar.

Subject:- GRANT OF BACK BENEFITS TO ZAKIR HUSSAIN PST & OTHERS.

I am directed to refer to your letter No.3362/F.No.47/2003/ST/AD (Litigation) dated Nil on the subject noted above and to state that the case was referred to the Finance Department which has returned the case with the observation mentioned in their letter No. SOSR-III/FD/8-16/09 dated 31-12-09 (copy enclosed).

2. It is therefore requested that the points raised by the Finance Department in their above letter may be clarified immediately for further processing the case.

(ARIF JAMIL)  
SECTION OFFICER (PRIMARY)

Encl. as above.

*Adl/D.R.*

*DE/AD (Lit.)*  
*13/11*

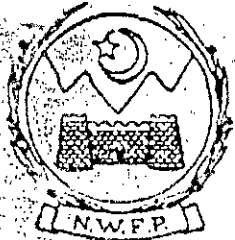
*Mh*  
*12/11*

*153*  
*13/11/10*

PA to	259
Date	13/11

D. No ..... *149* .....  
Dated ..... *13/11* .....

PA to Deputy Director  
(Estab.) Schools and  
Literacy NWFP, Peshawar



GOVERNMENT OF NWFP  
ELEMENTARY & SECONDARY EDUCATION  
DEPARTMENT

No. SO(PE)5-19/Reinstatement/09/Vol.II  
Dated Peshawar the 07-01-2010.

(Amended) 3)

To,

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NWFP, Peshawar.

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(ARIF JAMIL)  
SECTION OFFICER (PRIMARY)

Encl. as above.

ADDOR

DE/AD (Lit)  
13/11

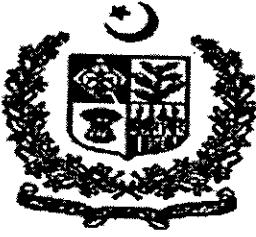
Mh  
12/11

153  
13/11/10

PLA TO DE (PE)
NO. 254
DATE 13/11

D. No. 149  
Dated 13/11

PA to Deputy Director  
(Estab.) Schools and  
Literacy NWFP, Peshawar



Office of the  
**District Accounts Officer**  
Dir Lower at Timergara.  
Phone No. 09459250143

**BEFORE THE KHYBER PAKHTUNKHWA, SERVICE TRIBUNAL PESHAWAR**

Appeal No.4314/2020

Mr. Habi Rasool.....Appellant

**Versus**

Secretary to Government of Khyber Pakhtunkhwa Elementary & Secondary Education  
Department & others.....Respondents

Parawise Comments on behalf of District Accounts Officer Dir Lower at Timergara Respondent  
No.4

Respectfully Sheweth,

The comments already offered by respondent No.1 to 3 may also be  
considered comments by the of District Accounts Officer Dir Lower at Timergara respondent  
No.4

  
**District Accounts Officer**  
Dir Lower at Timergara



(6)

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR  
SERVICE APPEAL NO. 4314/2020.  
MR. Habib Rasool.

.....Appellant

VERSUS

1. Director (Elementary & Secondary Education), Khyber Pakhtunkhwa Peshawar.
2. District Education Officer (Male) Dir lower at Timergara.
3. The Government Khyber Pakhtunkhwa through Secretary Elementary and secondary Education at Peshawar.
4. District Accounts Officer Lower Dir.

(RESPONDENTS)

PARA WISE COMMENTS ON BEHALF OF RESPONDENTS, 1,2.and 3.

RESPECTFULLY SHEWETH:

PRELIMINARY OBJECTIONS:

1. The appellant is not the aggrieved person with the meaning of Article 212 of the constitution of the Islamic republic of Pakistan.
2. The appellant has concealed the material fact from this Honl Able Tribunal, hence liable to be dismissed.
3. The appellant has not approached this Honorable Tribunal with clean hands.
4. The appellant has filed the instant appeal on mala fide motives.
5. The instant appeal is against the prevailing laws & rules.
6. That the instant service appeal suffers from laches, hence not maintainable in the form.

ON FACTS.

1. Correct up to the extent of the appellant appointment, hence need no comments.
2. Correct and needs no comments.
3. Correct and needs no comments.
4. Incorrect hence denied and further stated that the case of the appellant was forwarded in time to the worthy Secretary Finance to examine it in the light of C.P No. 655 to 660 of 2003 dated 7-6-2012. The Finance Department had rejected their appeal with the remarks, " your joint appeal to the grant of back benefits for intervening period has been examined and decided to be regretted, because your initial appointment was made as stop-gap arrangement. Moreover you were holding the post of PST on temporary bases and at the time of appointment, you also did not possessed the requisite qualification, prescribed in the policy." The appellant mala fide got the benefits for which he was not entitled. During pay and fixation party visit in 2019 to Dir Lower, pointed out

that the appellant had availed back benefits without the approval of the competent authority hence needs clarification. In the response of fixation party observation, DEO (M) issued order vide. No. 788 dated 08/11/2019 regarding clarification of the intervening period w.e.f 24-02-1997 to 09-12-2004 and the period was declared as leave without pay. --(Annex-A and B)

5. Correct and needs no comments.
6. Needs no comments.
7. Needs no comments.

#### GROUNDS:-

- A. In correct, the office order dated 08-11-2019 was made in the light of the observations of the Fixations party and in good faith of the appellant as hi service w.e.f 24-02-1997 to 09-12-2004 was made connected and leave without pay for the period was granted.
- B. Pertains to record hence needs no comments.
- C. Incorrect hence denied.
- D. In correct hence denied. It is further stated that in the light of C.P No. 655 -660 of 2003 the case was forwarded to Secretary Finance for clarification of the claim of back benefits for the intervening period which was rejected vide SO. Finance NO.7-6-2012. His appeal was address well in time by the Finance Department.
- E. Above para D may consider as reply to this para.
- F. Incorrect, hence denied.
- G. The respondent department will, if allowed argue more at the time of hearing.

It is therefore, humbly prayed that on acceptance of the above submission the instant Service appeal may very graciously be dismissed in favor of the answering respondents with cost.

SECRETARY  
GOVT: KHYBER PAKHTOON KHWA  
ELEMENTRY AND SECONDARY DEPARMENT  
(Respondent No.3)

DIRECTOR  
ELEMENTRY & SECODARY  
EDUCATION KHYBER PAKHTOON KHWA  
(Respondent No.1)

DISTRICT EDUCATION OFFICER (M)  
DIR LOWER AT TIMERGARA  
(Respondent No.2)

**BEFORE THE KHYBER PAKHTUNKHWA, SERVICE TRIBUNAL PESHAWAR**

Appeal No. 4314/2020

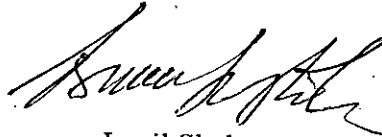
Mr. Habib Rasool.....Appellant

Versus

Secretary to Government of Khyber Pakhtunkhwa Elementary & Secondary Education  
Department & others.....Respondents

**AFFIDAVIT**

I Jamil Shah Senior Auditor Office of the District Accounts officer Dir lower at Timergara do hereby affirm and declare that the contents of the accompanying Parawise comments are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Court.



Jamil Shah,  
Senior Auditor,  
Office of the District Accounts officer,  
Dir lower at Timergara.

E.P. No. 68/2012  
Habib Rasool vs Govt

22.06.2016



Counsel for the appellant and Mr. Muhammad Riaz, DDEO

alongwith Mr. Muhammad Jan, GP for respondents present.

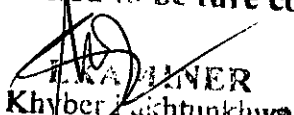
2. This Execution Petition is for implementation of judgment of this Tribunal dated 11.08.2003 for the purpose of the back benefits.

3. Arguments heard and record perused.

4. It revealed that service of the petitioner, a PTC teacher, was dispensed with against which order his service appeal was allowed by this Tribunal vide its judgment dated 11.08.2013. The petitioner was reinstated with back benefits. The respondents went before the august Supreme Court of Pakistan who vide its judgment dated 18.11.2004 modified judgment of this Tribunal to the extent of back benefits that the matter of back benefits be decided by the department. It was stated by learned GP that the question of back benefits has also been settled by the administrative department who has refused back benefits to the petitioner.

5. It is thus evident that the relief in the said judgment to the extent of back benefits was modified by the august Supreme Court of Pakistan in its judgment dated 18.11.2004. Since the petitioner has been reinstated into service and the question of settling of back benefits was left to the discretion of the administrative department, therefore in the stated position the judgment seems to have been satisfied and no further relief can be given to the petitioner. This being so this may also be observed that since final judgment now left in the field is that of the august Supreme Court of Pakistan dated 18.11.2004, there-after the instant Execution Petition filed on 08.03.2012 is also clearly time barred. For the fore-stated reasons

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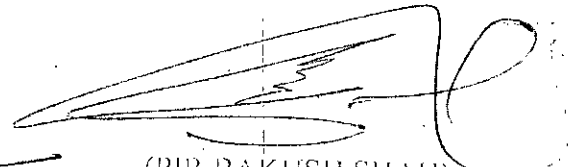
  
EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

this Execution Petition is dismissed. No order as to cost. File be  
consigned to the record room.


ANNOUNCED  
22.06.2016



(AHMAD HASSAN)  
MEMBER



(PIR BAKHSH SHAH)  
MEMBER

**Certified to be true copy**  
  
ESAD HINDI  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar