

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Service Appeal No. 4312/2020

BEFORE: SALAH-UD-DIN --- MEMBER(J)
MIAN MUHAMMAD --- MEMBER(E)

Zakir Hussain son of Hussain Ahmad, Senior Primary School Teacher at G.P.S Charmango Timergara Dir lower..... (Appellant)

VERSUS

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)

Present:

MUHAMMAD ADNAN AMAN,
Advocate, --- For Appellant.

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

Date of Institution ... 16.03.2020
Date of hearing ... 23.06.2022
Date of Decision ... 23.06.2022

CONSOLIDATED JUDGEMENT

MIAN MUHAMMAD, MEMBER(E):- The instant service appeal has been instituted with the prayer that the impugned order of respondent No. 2 dated 08.11.2019 may 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.

02. There are five (05) connected service appeals fixed for hearing today wherein point of law, facts and circumstances are common, therefore,

our this single judgement shall dispose of the instant service appeal as well as connected service appeals as per details below;

Service appeal bearing No. 4309/2020 titled "Bakht Shahzada versus Director Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar and others", Service appeal bearing No. 4310/2020 titled "Abdur Rauf Khan versus Director Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar and others", Service appeal bearing No.4311/2020 titled "Ibad Ullah versus Director Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar and others", Service appeal bearing No. 4313/2020 titled "Ali Akbar Badshah versus Director Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar and others" and Service appeal bearing No. 4314/2020 titled "Habib Rasool versus Director Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar and others".

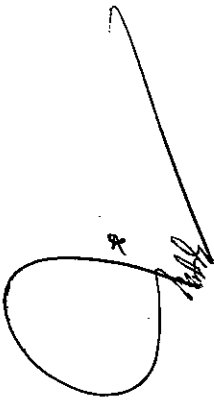
03. Brief facts, as gathered from memorandum of appeal, are that the appellant was initially appointed as PST in the year 1995 and later on his services were dispensed with. His service appeal No. 561/2002 was partially allowed by the Service Tribunal vide judgement dated 11.08.2003 and he was reinstated in service with back benefits. The judgement of Service Tribunal was challenged in the august Supreme Court of Pakistan through Civil Petition No. 655/2003 which was dismissed vide judgement dated 18.11.2004. However, the issue of back benefits for the intervening period (01.01.1997 to 09.12.2004) was left to the departmental authorities. The intervening period of the appellant has been treated as leave without pay vide impugned order dated 08.11.2019 against which the departmental

appeal dated 28.11.2019 was not responded within the statutory period. Hence the instant service appeal was filed on 16.03.2020.

04. On admission of the appeal, the respondents were issued notices to submit reply/Parawise comments. They submitted reply/Parawise comment denying and rebutting assertions made in the service appeal. We have heard arguments of the learned counsel for the appellant as well as learned AAG and gone through the record with their assistance.

05. Learned counsel for the appellant while highlighting background of the first round of litigation, contended that the appellant having been appointed as PST on 24.10.1995 and subsequently his services were dispensed with. The appellant making the judgement of Supreme Court of Pakistan reported as 1996 SCMR 1185 titled, "Hameed Akhtar Niazi versus Secretary Establishment Division Government of Pakistan and others", as base of his plea, approached the Khyber Pakhtunkhwa Service Tribunal in service appeal No. 561/2002. The Service Tribunal partially accepted the appeal vide its judgement dated 11.08.2003 and remanded back the case of appellant with connected cases to the respondent department for a thorough scrutiny and reconsideration. The Service Tribunal however, reinstated the appellants into service with back benefits. The respondents challenged the judgement of Service Tribunal before august Supreme Court of Pakistan through Civil Petition No. 655-660 P of 2003. The august Supreme Court of Pakistan vide its judgement dated 18.11.2004, dismissed the petitions and leave to appeal was refused. However, the question of grant of back benefits for the intervening period was left for fresh decision of the departmental authorities. The appellant therefore submitted departmental appeal on 28.11.2019 against the impugned order 08.11.2019 whereby the intervening

period w.e.f. 04.02.1999 to 09.12.2004 has been treated as leave without pay. It was further contended that the grant of back benefits was kept pending for almost 15 long years and now decided vide impugned order to the detriment of appellants. The appellants have not been treated equally but discriminated as other colleagues namely Muhammad Rashid alongwith eleven (11) others have been reinstated in service alongwith back benefits. To strengthen his arguments, he relied on 2013 SCMR 752, 2020 PLC (C.S) 352 and 2020 SCMR 188.



06. Learned AAG quite contrary to the arguments of learned counsel for appellant, argued with the plea that the joint appeals for back benefits of intervening period were examined and regretted on the ground that their initial appointment was made as stopgap arrangement. They were holding the post of PST on temporary basis and they did not possess the requisite qualification prescribed in the policy. Moreover, the appellants malafidely got the benefits for which they were not entitled. The pay fixation party pointed out in 2019 that the back benefits had been availed without approval of the competent authority. Based on the observation of pay fixation party, the intervening period was treated as leave without pay as earlier rejected under Finance department letter dated 07.06.2012. He, therefore, requested that the appeals may graciously be dismissed with costs.

07. On minute perusal of the record, it came to limelight that the appellant in the instant service appeal as well as appellants in the connected appeals as mentioned in Para 2 above, had earlier availed the opportunity of legal remedy when they approached the Service Tribunal in execution petition No. 66/2012 titled "Ali Akbar Badshah versus The Secretary Government of Khyber Pakhtunkhwa, Elementary & Secondary Education

Civil Secretariat, Peshawar and others”, execution petition No. 67/2012 titled “Zakir Hussain versus The Secretary Government of Khyber Pakhtunkhwa, Elementary & Secondary Education Civil Secretariat, Peshawar and others”, execution petition No. 68/2012 titled “Habib Rasool versus The Secretary Government of Khyber Pakhtunkhwa, Elementary & Secondary Education Civil Secretariat, Peshawar and others”, execution petition No. 69/2012 titled “Abdul Rauf versus The Secretary Government of Khyber Pakhtunkhwa, Elementary & Secondary Education Civil Secretariat, Peshawar and others”, execution petition No. 70/2012 titled “Ibad Ullah versus The Secretary Government of Khyber Pakhtunkhwa, Elementary & Secondary Education Civil Secretariat, Peshawar and others” and execution petition No. 71/2012 titled “Bakht Shahzada versus The Secretary Government of Khyber Pakhtunkhwa, Elementary & Secondary Education Civil Secretariat, Peshawar and others.”

The Service Tribunal dismissed execution petitions. Operating Para 5 of the Service Tribunal in their above execution petitions is worth perusal as follows;

It is thus evident that the relief in the said judgement to the extent of back benefits was modified by the august Supreme Court of Pakistan in its judgement 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 judgement 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 judgement 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 this Execution Petition is dismissed.

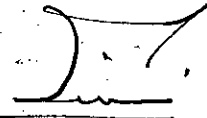
08. As a sequel to the above, we are left with no option to discuss merit of the case as it has already been discussed and decided up to the august Supreme Court of Pakistan and the judgement has also gained finality. We would refer to and rely on Rule 23 of the Khyber Pakhtunkhwa Service Tribunal Rules, 1974, which is reproduced as below:-

23-No entertainment of appeal in certain cases.--- No Tribunal shall entertain any appeal in which the matter directly and substantially in issue has already been finally decided by a Court or a Tribunal of competent jurisdiction.

09. In the given circumstances, the instant service appeal as well as the above mentioned five (05) connected service appeal bearing No. 4309/2020 titled "Bakht Shahzada versus Director Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar and others", service appeal bearing No. 4310/2020 titled "Abdur Rauf Khan versus Director Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar and others", service appeal bearing No.4311/2020 titled "Ibad Ullah versus Director Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar and others", Service appeal bearing No. 4313/2020 titled "Ali Akbar Badshah versus Director Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar and others" and service appeal bearing No. 4314/2020 titled

“Habib Rasool versus Director Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar and others”, are therefore dismissed. Parties are left to bear their own costs. File be consigned to the record room.

10. Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal this 23rd of June, 2022.



(SALAH-UD-DIN)
MEMBER (J)



(MIAN MUHAMMAD)
MEMBER (E)

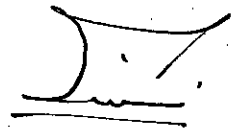
ORDER

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, separately placed on file
containing of (07) pages, the instant service appeal as well as connected
service appeal bearing No. 4309/2020 titled "Bakht Shahzada versus
Director Elementary & Secondary Education, Khyber Pakhtunkhwa,
Peshawar and others", service appeal bearing No. 4310/2020 titled
"Abdur Rauf Khan versus Director Elementary & Secondary Education,
Khyber Pakhtunkhwa, Peshawar and others", service appeal bearing
No.4311/2020 titled "Ibad Ullah versus Director Elementary &
Secondary Education, Khyber Pakhtunkhwa, Peshawar and others",
Service appeal bearing No. 4313/2020 titled "Ali Akbar Badshah versus
Director Elementary & Secondary Education, Khyber Pakhtunkhwa,
Peshawar and others" and service appeal bearing No. 4314/2020 titled
"Habib Rasool versus Director Elementary & Secondary Education,
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(SALAH-UD-DIN)
MEMBER (J)



(MIAN MUHAMMAD)
MEMBER (E)

س: 17: فرد مقبولگی سے صاف واضح ہے کہ آپ موقع پر موجود

اور تلامذہ ایک موجودگی میں لڑتے تھے۔ جس پر AsP صاف
اور AsP مکان دستخط کرتے۔ کیا پوری ہی پوری کارروائی غلط تھی؟

جواب: فرد مقبولگی میں میرا کوئی دستخط موجود نہیں ہے۔ نہ ہی میں

موقع پر موجود تھا۔ اور نہ ہی میری موجودگی میں کارروائی ہوئی ہے

کیونکہ امتحان نے دفتری اوقات کا ذکر کیا ہے۔ جبکہ دفتری

اوقات میں موضوع تلامذہ میں تھا۔ تھانہ کا پورے عشرت روزنامہ

ریکارڈ پر موجود ہے اور یہ تھانہ کے ڈپٹی افسر ریڈیو ریکارڈ تھانہ پر

11/3/19

س: 18: د آئی گئی تھے افراد پر مشتمل ہے؟

ج: میرا گھر میں رہا ہوا۔ تین مہینے۔ سات سال۔ کل میں ساڑھے

بارہ افراد پر مشتمل ہیں۔

BEFORE THE KKP, SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 1227/2019

Abdul Qadir

VS

The PPO KPK & etc

.....

REJOINDER ON BEHALF OF APPELLANT

.....

RESPECTFULLY SHEWETH:

PRELIMINARY OBJECTIONS:

(1-6) All objections raised by the respondents are incorrect and baseless. Rather the respondents are estopped to raise any objection due to their own conduct.

FACTS:

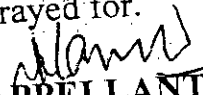
1. The service records of the appellant hence no comments.
2. Incorrect the appellant clearly mention in the charge sheet reply that P.S badber was blown by suicide bomber due to which available record and building of P.S badber was damaged and this respect the FIR was lodged against unknown person and due to the above mention reason in the record of concerned Police Station were shifted to private house and illegal confinement of 12 persons the appellant clearly mentioned in the reply to charge sheet that there is no release record of that 12 persons of confinement in the concerned Police Station. Moreover the muharir of concerned Police station gave written statement that all the case property are present in the police station according to relevant register. (Copy of statement is attached as Annexure-R-1)
3. Incorrect the appellant gave the real situation about the facts in the reply to Charge Sheet in which he denied all the allegations.
4. Incorrect while Para-4 of the appeal is incorrect.

7. Incorrect while Para-7 of the appeal is correct.
8. Incorrect while Para-8 of the appeal is correct.
9. Incorrect the appellant has good cause of action to file the impugned appeal which is liable to be accepted on the following grounds.

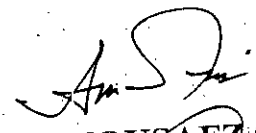
GROUND:

- A. Incorrect the punishment order passed by authority is against the law, fact and material on record therefore liable to be set aside.
- B. Incorrect no proper opportunity was defense to the appellant
- C. Incorrect While Para-C of the appeal is correct.
- D. Incorrect While Para-D of the appeal is correct.
- E. Incorrect While Para-E of the appeal is correct
- F. Incorrect While Para-F of the appeal is correct.
- G. Incorrect the SSP Operation (Respondent No. 4) was the competent authority while the impugned order is passed by the SSP Coordination (Respondent No. 3) which is not permissible under the law & Rules.
- H. Incorrect While Para-H of the appeal is correct.
- I. Not replied according to Para-I of the appeal moreover Para-I of the appeal is correct.
- J. Incorrect While Para-J of the appeal is correct.
- K. Incorrect the allegation on which the appellant was dismissed from service was not proved during trial by the competent court of law therefore the remaining no ground to penalize the appellant on those allegations.
- L. Not replied according to Para-L of the appeal moreover Para-L of the appeal is correct.

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


APPELLANT

Through:


(M. ASIF YOUSAFZAD)
ADVOCATE SUPREME COURT.


(TAIMUR ALI KHA)
ADVOCATE HIGH COURT

&
(S. NOMAN ALI BUKHARI)
ADVOCATE HIGH COURT

AFFIDAVIT

It is affirmed and declared that the contents of rejoinder and appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from the honorable Tribunal.


DEPONENT



E.P. No. 67/2012
Rakia Hussain vs Govt

Counsel for the appellant and Mr. Muhammad Riaz, DDEO

along with 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 P.T.C 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



22.06.2016

Certified to be true copy
JALAL ABBAS
Khayber 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

(PIR BAKHSH SHAH)
MEMBER


(AHMAD HASSAN)
MEMBER


Certified to be true copy
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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)

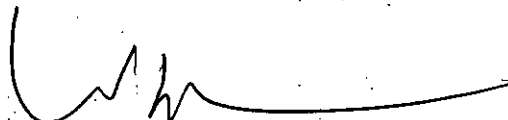

(Salah-ud-Din)
Member (J)

23.11.2021

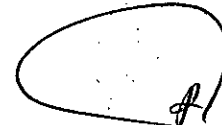
Mr. Adnan Aman, Advocate, junior of learned counsel for the appellant present.

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.

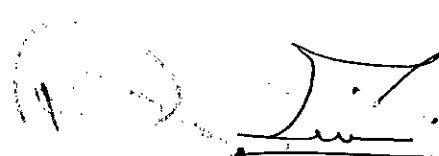
20.06.2022

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)

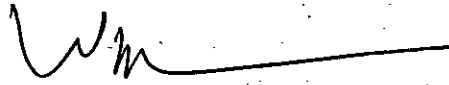

Chairman

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)



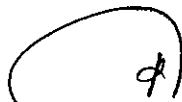
(Rozina Rehman)
Member (J)

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

11.11.2020

Appellant is present in person. Mr. Kabirullah Khattak, Additional Advocate General alongwith representatives of the department Mr. Shahid Ameer, ADEO and Mr. Jameel Shah, Senior Auditor, are also present.

Written reply on behalf of respondents submitted, which is made part of record.

Appellant requested that the same matter cases have been fixed on 14.12.2020 therefore, the instant case may also be fixed for the said date. Request is accepted. File to come up for rejoinder and arguments on 14.12.2020 before D.B.

(MUHAMMAD JAMAL KHAN)
MEMBER (JUDICIAL)

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)

19.01.2021

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

Reader

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. Representative of the respondents seeks further time to submit the reply/comments. Adjourned to 11.11.2020 on which date the requisite reply/comments shall be submitted without fail.

Chairman 

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

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.


(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



Appellant's Security & Process Fee

Respected Sir,

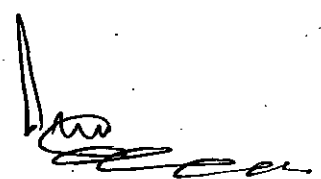
The objections raised by your good office have accordingly been addressed by removing them, however, the objection raised by your good office at Sr.No.6, cannot be addressed as the departmental appeal of the appellant has not been decided by the departmental appellate authority within the statutory period 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.


Muhammad Ijaz Khan Sabi
Advocate Supreme Court

Sir

20/4/2020
The objection of this office
no-6 and reply of counsel for the
appellant is sub-itted for order
Please.

Humble
Member.


21/4/2020

The appeal of Mr. Zakir Hussain SPST at GPS Charmango received today i.e. on 16.03.2020 is incomplete on the following score which is returned to the counsel for the appellant 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 appellant 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- Annexures of the appeal are not in sequence which may be annexed serial wise as mentioned in the memo of appeal.
- ✓ 8- Annexure-A of the appeal is illegible which may be replaced by legible/better one.
- 9- Six more copies/sets of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.

No. 947 /S.T,

Dt. 17-03 /2020.


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Muhammad Ijaz Sabi Adv. Pesh.

Note
19/3/2020

Resubmitted after doing
need full
07/03

ATTESTED

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

CHECK LIST

1.	Case Title	Zakir Hussain 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. 4312/2020

Zakir Hussain.....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		911
3.	Addresses of parties		12
4.	Copy of Appointment order	"A"	13
5.	Copy of the Judgment	"B"	14-23
6.	Copy of judgment dated 26.11.2004	"C"	24-26
7.	Copy of the impugned Order dated 08.11.2019	"D"	27-
8.	Copy of Departmental Appeal	"E"	28-30
9.	Copy of the judgment	"F"	31-34
10.	Wakalatnama		35

Through

Appellant


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 04.03.2020

1

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No. 4312/2020

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 2633

Dated 16/3/2020

Zakir Hussain Son of Hussain Ahmad,
Senior Primary School Teacher at G.P.S Charmango
Timmergara **Appellant**
Dir Lower

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 APPRECIATE 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 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.561/2002 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.655/2003 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:

5

B

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:

GRUNDS:-

- 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

 93
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

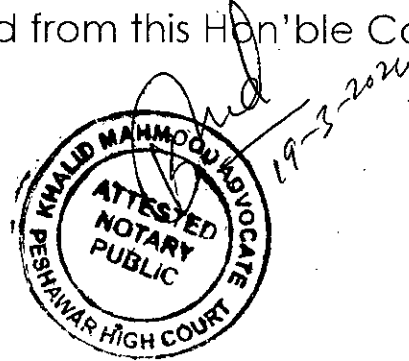
Zakir Hussain.....**Appellant**

V E R S U S

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

A F F I D A V I T

I, Zakir Hussain Son of Hussain Ahmad, Senior Primary School Teacher at G.P.S Charmango R/o Village Tangai Payan, District Dir Lower, 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.




DEPONENT

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

C.M No. _____/2020

In

Service Appeal No. _____/2020

Zakir Hussain.....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.

It 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

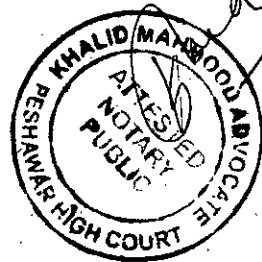
Zakir Hussain.....**Appellant**

V E R S U S

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

A F F I D A V I T

I, Zakir Hussain Son of Hussain Ahmad, Senior Primary School Teacher at G.P.S Charmango R/o Village Tangai Payan, District Dir Lower, 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.



[Signature]
DEPONENT

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No. _____/2020

Zakir Hussain.....Appellant

V E R S U S

The Director Education & others.....Respondents

ADDRESSES OF PARTIES

APPELLANT:

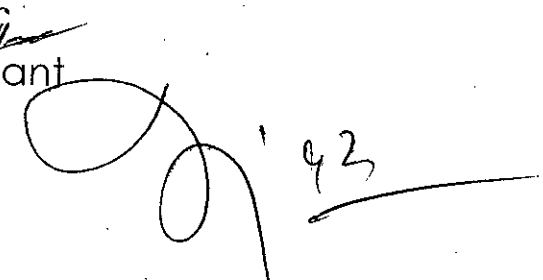
Zakir Hussain Son of Hussain Ahmad,
Senior Primary School Teacher at G.P.S Charmango
R/o Village Tangai Payan, District Dir Lower

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

Through

Appellant


Muhammad Ijaz Khan Sabi
Advocate
Supreme Court of Pakistan

OFFICE ORDER.

13

Annex "A"

Mr. Zakir Hussain S/O Hussain Ahmad Village Tangai (Peyeen) Tehsil Samarbagh (Jandool) is hereby appointed as PTC Teacher in BPS No. 7 against leave vacancy at MPS Gatkai (Samarbagh) with effect from 24.10.95 to 20.2.96 subject to the following terms and conditions:-

1. Charge report should be submitted to all concerned.
2. He will have to produce Health & Age Certificate from Civil Surgeon Dir at Timargara.
3. He may not be handed over the charge if his age exceeds 30 years or below 18 years.
4. Before handing over the charge his original Certificates should be checked.
5. His Services will be terminated on the arrival of the teacher who proceeded on leave.

(FAZLI NAJEM KHAN)
DISTRICT EDUCATION OFFICER,
(M) PRIMARY DIR AT TIMARGARA.

OFFICE OF THE DISTRICT EDUCATION OFFICER (M) PRIMARY DIR AT TIMARGARA

Order No. 4024-78

Dated Timargara the

23/11/95

Copy forwarded to the:-

1. The SDO (M) Samarbagh for information.
2. The DAO Dir at Timargara for information.
5. The Candidate concerned for information.

DISTRICT EDUCATION OFFICER,
(M) PRIMARY DIR AT TIMARGARA.

Attested
[Signature]

23/11/95

Dikwar Khas
A. D. O.
Samarbagh

[Signature] 93
ATTESTED

14

An B

BEFORE THE NWFP SERVICE TRIBUNAL, PESHAWAR

SERVICE APPEAL NO. 581 /2002

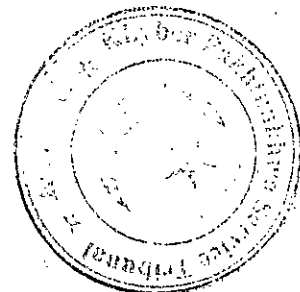
N.W.F. Service Tribunal
709
8-6-2002

Zakir Hussain son of Hussain Ahmad,
Ex-PTC, GPS, Gatkai (Samarbagh),
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.

Filed to-day

[Signature]
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:-

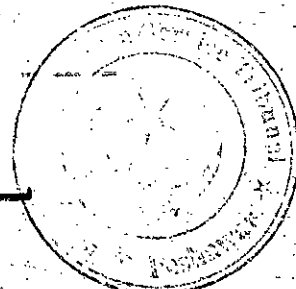
ATTESTED

[Signature]
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 Mehmood,
Govt. Pleader/P.P.

For respondents

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

.. Chairman
Member

JUDGMENT

AEDUL 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."

ATTESTED

Chairman
N.W.F.P. 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:

"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 facts and law, therefore, he filed a departmental appeal before

Am

ATTESTED


Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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 ⁱⁿ 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.

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

[Handwritten signature]
17/11/97
17/11/97

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.

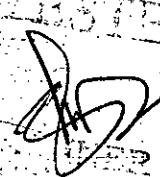
9. Learned counsel for the appellants argued that the appellants could not be penalized for the lapses of the department. Reliance was placed on 1996 SCMR 413. It was agitated that meanwhile some of the teachers namely Muhammad Sajid and Muhammad Rashid etc. were reinstated into service and that the 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:

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

ATTESTED



By _____
Secretary to the 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 SATTAR KHAN)
CHAIRMAN

(AZMAT HANIF ORAKZAI)
MEMBER

Certified to be true copy

[Handwritten signature]

[Handwritten note: Khan 11-8-03]

Date of Presentation of Application 06-3-2020
Number of Wards 2000
Copying Fee 2200
Urgent C
Total 2200
Name of Applicant [Signature]
Date of Completion of Work 13-3-2020
Date of Delivery of Copy 13-3-2020

20
1

-2-

- 1) That minimum prescribed qualification for the post of PTC is Matric with pre service training. The appellant acquired the requisite qualification for the post of PTC and as such his appointment was made by the competent authority vide order dated 23/10/95 after observing codal formalities.

Copies of Educational Testimonials and appointment order dated 23/10/1995 are attached as Annex; A & B.

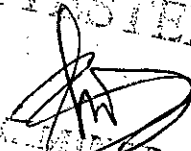
- 2) That in pursuance of his appointment order, appellant assumed the charge of his duty after completing the requisite formalities. He has performed his duty efficiently and honestly to the entire satisfaction of his superiors.

Copy of charge report dated 24/10/1995 and medical examination certificate is Annex; C & D.

- 3) That the then District Education Officer (Male) Primary Dir at Timergara issued an order dated 13/2/97 thereby appellant's service was dispensed with w.e. from 01/01/1997.

Copy of impugned order dated 13/2/1997 is Annexure-E.

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

- 4) That most of the aggrieved and affected employees of the respondent department have challenged the impugned order in this August Tribunal which was consequently accepted and the individuals were reinstated into service with back benefits.

Copies of Judgement in Service Appeal Nos. 402/97
1824/2000 and 1307/2000 Annexure-F, G & H.

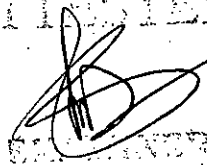
- 5) That the Hon'ble Supreme Court of Pakistan has laid down a dictum in a judgement reported in 1996 SCMR 1185 titled "HAMEED AKHTAR NIAZI VS THE SECRETARY,

ESTABLISHMENT DIVISION, GOVT: OF PAKISTAN AND OTHERS"

the relevant part thereof is reproduced as under:-
"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 judgement 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".

Copy of judgement of Supreme Court of Pakistan is attached as Annexure-1.

ATTESTED


SEAL
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

6) That since appellant has identical case like other cases which have already been decided by this Hon'ble Tribunal having similar facts and law. Therefore he filed departmental appeal before the Respondent No.2 for considering his case in view of dictum laid down by the Supreme Court of Pakistan in the above referred judgement but the appeal was not disposed off within statutory period of 90 days.


Copy of departmental appeal dated 13/02/2002 is attached as Annexure-J.

Hence the present appeal is submitted on the following grounds:-

G R O U N D S

A) That the principle of law enunciated in the afore-said judgement of the Hon'ble Supreme Court of Pakistan is applicable to appellant's case because the matter is identical and contains of similar facts and law at par with the decided cases. The decision of the Supreme Court of Pakistan is binding on all subordinates courts under Article 189 of the Constitution of Islamic Republic of Pakistan, 1973. Therefore the respondent department was legally bound to consider appellant's case in the line of decided cases as referred above but they did not do so with malafide intention and acted an arbitrary manner.

ATTESTED


K. ...
Secretary,
Peshawar

- B) That the impugned order is illegal, without lawful authority and against the principle of natural justice as no notice was given to appellant before passing the impugned order and as such he was not given a fair opportunity to defend himself.
- C) That respondent department has also not followed the instructions of the Provincial Government containing in letter dated 20/02/1997 therefore, their action is illegal, without lawful authority and of no legal effect.
- D) That appellant has been discriminated by the respondent department which is glaring violation of the Article 25 of the Constitution, 1973.

It is therefore humbly prayed that on acceptance of this service appeal, the impugned order of termination may kindly be set aside and appellant may graciously be reinstated into service with all back benefits in the line of decided cases as referred above.

[Signature]
APPELLANT

THROUGH

[Signature]
(KHUSHDIL KHAN MOMAND)
ADVOCATE, PESHAWAR

DATED 28/5 /2002
PTC-APEA

Date of _____

Certified true copy
[Signature]
 Peshawar

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

L: 113/03
Annex C

Present:

Mr Justice Muhammad Nawaz Abbasi
Mr Justice Faqir Muhammad Khokhar

24
—

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

Supervisor
Supreme Court
ISLAMABAD

ATTESTED

125

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

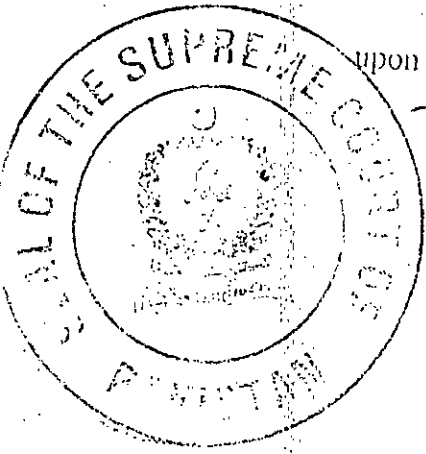
ATTESTED

Superintendent
Supreme Court of Pakistan,
ISLAMABAD

26

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 Nawaz Abbasi, J
Sd, Faqir Muhammad Anwar, J

Certified to be true copy

[Signature]
Chief Intendant
Supreme Court of Pakistan
ISLAMABAD

Islamabad the
18th November, 2004.
Not approved for reporting.

Solaiti*

[Signature]
23/11/04

786/04

Case No:	786/04	Civil/Criminal
Date of filing:	22-11-04	
Page No:	900	
No. of parties:	9	
Estimated cost:	5-000	
Case No.:	5-000	
Court Fee:	10-50	
Date of completion of:	26-11-04	
Copy:	7/12/04	
Date of delivery of:		
Copy:		
Compared by:	<i>[Signature]</i>	
Received by:	<i>[Signature]</i>	

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

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

77. Shadar Zeb
Do the grateful as per rule
27/11/2019

Annex D

No. _____ /Dated Timergara the ___/10/2019

27

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/Reinstat./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.

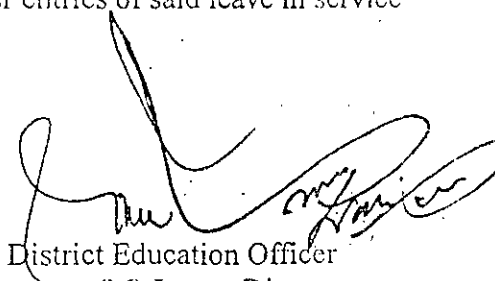
1. Abdur Rauf khan SPST GPS Kotky Shahi Khel.
2. Ibadullah SPST GPS Damtal.
3. Habib Rasool SPST GPS Toor Qila.
4. Ali Akber Badshah SPST GPS Kandaro Arif.
5. Zakir Husain SPST GPS Charmango.
6. Bakht Shahzada CT GHS Kambat.

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

Endst; No. 11740-53 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.

11743
ATTESTED

1

Annex 'E'

28
—

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 24/10/1995 (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.561/2002, 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).

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ATTESTED
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That later on the judgment/ order of the Khyber Pakhtunkhwa Services Tribunal was challenged before the Apex Court, through C.P No 655/2003 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

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

Zakir Hussain *Zakir Hussain*
S/o Hussain Ahmad *Chernary*
PST Teacher *Chernary*

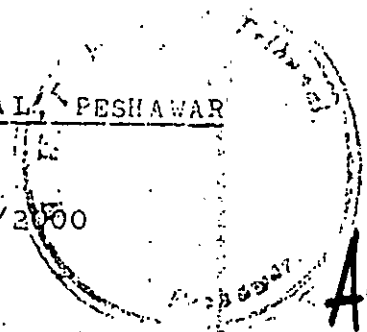
43
ATTESTED

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

SERVICE APPEAL NO. 1307/2000

Date of institution ... 16.5.2000

Date of decision ... 02.5.2002



Annexure

'F'

31

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

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, ShamsherAli-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 FTC (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 ^{his} service book was also maintained by the respondent department (Annexure-D). The respondent department has later on passed an order dated

NWFP
 EXAMINER
 SERVICES TRIBUNAL
 Peshawar
 ATTESTED

197
ATTESTED

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 to challenge the impugned order, the principle 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

34

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 SSGAD 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.P 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.

6-00
7/5/2002
8/1/02

ANNOUNCED
2.5.2002

Muhammad Shaukat
ATTESTED
(MUHAMMAD SHAUKAT)
MEMBER

Khan Akbar Khan
ATTESTED
(KHAN AKBAR KHAN)
CHAIRMAN

WAKALATNAMA
(Power Of Attorney)

35

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Zakir Hussain

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

VERSUS

The Director Education & 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

[Signature]

[Signature]
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

.....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 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.

GROUND:-

- 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.

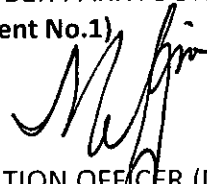
It is therefore, humbly prayed that on acceptance of the above submission, the instant Service appeal may very graciously be dismissed in favor of the answering respondents with cost.



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



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



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

24 Bahadar Zeb
Do the needful as per rule
27/11/19

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

Annex D

E-Mail: deomale@dirlower@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/Reinstate./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.

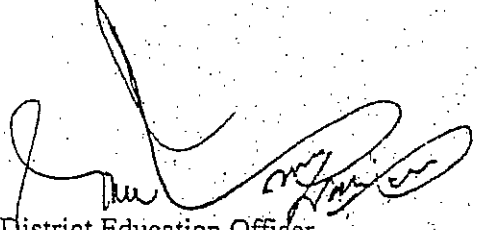
1. Abdur Rauf Khan SPST GPS Kotky Shahi Khel.
2. Ibadullah SPST GPS Damtal.
3. Habib Rasool SPST GPS Toor Qila.
4. Ali Akber Badshah SPST GPS Kandaro Arif.
5. Zakir Husain SPST GPS Charmango.
6. Bakht Shahzada CT GHS Kambat.

(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.



Anex - B 125

GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION DEPARTMENT
No. SO(PE)5-19/Reinst/10/Vol.V
Dated Peshawar the 7-6-2012.

To.

1. Mr. Zakir Hussain PST
Govt. Primary School Gojaro Kalay District Dir Lower.
2. Mr. Ibadullah PST Damtal
District Dir Lower.
3. Mr. Habib Rasool PST
Mulla Banda Dir Lower.
4. Mr. Ali Akbar PST
Govt. Primary School Tofah Shah
Distt. Dir Lower.
5. Mr. Bkht Shahzada PST
Govt. Primary School Balodha Dir Lower.
6. Mr. Abdur Rauf PST
Govt. Primary School Kaka.

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

Please refer to the above noted subject.

2. 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 gap 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 rules.

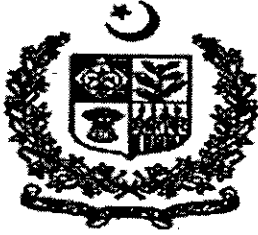
(MOHAMMAD AYUB KHAN)
SECTION OFFICER (PRIMARY)

Copy forwarded to:-

- 1-District Coordination Officer Dir Lower w/r to his letter No. 3107/EA dated 20-2-2012.
- 2-Executive District Officer Dir Lower w/r to the above quoted letter.

SECTION OFFICER (PRIMARY)

8/6/12



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

BEFORE THE KHYBER PAKHTUNKHWA, SERVICE TRIBUNAL PESHAWAR

Appeal No.4312/2020

Zakir Hussain

Mr. Zakir Hussain.....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

M. Abdullah
District Accounts Officer
Dir Lower at Timergara

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 MALFAIDENCE OF RESPONDENTS, 1,2.and 3.
RESPECTFULLY SHEWETH:

PRELIMINARY OBJECTIONS

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

IN 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 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 DEPARTMENT
(Respondent No.3)

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

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