

FBEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

Service Appeal No. 10406/2020

Date of Institution ... 20.07.2020

Date of Decision ... 29.11.2022

Abdul Khaliq Ex-PST, GPS Shakoor Tangi Tehsil & District Charsadda.

... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education, Peshawar and 02 others.

... (Respondents)

MR. YASIR SALEEM,
Advocate

--- For appellant.

MR. MUHAMMAD JAN,
District Attorney


--- For respondents.

SALAH-UD-DIN
MIAN MUHAMMAD

MEMBER (JUDICIAL)
MEMBER (EXECUTIVE)


JUDGMENT:

SALAH-UD-DIN, MEMBER:- Precise facts forming background of the instant appeal are that the appellant was appointed as PTC Teacher vide appointment order dated 30.09.1989. The appellant was retired from service with full pensionary benefits with effect from 05.10.2015 vide order dated 03.10.2015 passed by the then District Education Officer (Male) Charsadda. It was after retirement of the appellant that a complaint was filed against him on the allegations that his Matriculation certificate was fake and bogus, which resulted in



registration of case FIR No. 02/2016 under Sections 419/420/468/471 PPC read with Section 5 (2) of Prevention of Corruption Act against the appellant in Police Station ACE Charsadda. The appellant was though acquitted in the said criminal case vide judgment dated 25.11.2017 but his pension case was regretted and vide letter dated 31.03.2018, the Sub-Divisional Education Officer (Male) Tangi was asked that the appellant may be intimated that the department was having the right to recover the salaries received by the appellant during his service period as his Matriculation certificate was fake. The appellant filed departmental appeal, however the same was not responded, therefore, he has now approached this Tribunal through instant service appeal for redressal of his grievance.

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



3. Learned counsel for the appellant has argued that the appellant was appointed as PTC Teacher on 30.09.1989 after fulfillment of all legal and codal formalities. He next contended that after serving the department for about 26 years, he applied for premature retirement from service, which was sanctioned in favour of the appellant vide order dated 03.10.2015, therefore, the appellant was legally entitled for pensionary benefits. He further submitted that the appellant was appointed in the year 1989 and served the department for almost 26 years but even a show-cause notice was not issued to him during the course of his service that his Secondary School Certificate was fake. He

next argued that the alleged verification of his Secondary School Certificate was made after his retirement without even associating the appellant with the process of verification and as the appellant has been acquitted in the criminal case, therefore, the respondents are not justified in not granting the pensionary benefits to the appellant.

4. On the other hand, learned District Attorney for the respondents has argued that the appointment of the appellant was made on fake Secondary School Certificate, which fact has been affirmed by Board of Intermediate and Secondary Education Peshawar, therefore, the appellant is not entitled for any pensionary benefits. He next argued that the appellant had deceived the appointment Authority by committing fraud and his appointment as PTC Teacher was void ab-initio, disentitling him to any pensionary benefits. He further submitted that acquittal of the appellant in the criminal case was on technical grounds, therefore, the same is of no avail to the appellant.

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

6. A perusal of the record would show that the appellant was appointed as PTC Teacher vide appointment order dated 30.09.1989 and after serving the department for about 26 years, he applied for pre-mature retirement and vide order dated 03.10.2015 he was retired from service with effect from 05.10.2015. During long service tenure of the appellant, the respondents did not bother to get verified Secondary School Certificate of the appellant from the concerned Board. It is an admitted position that no inquiry proceedings were initiated against the

appellant during tenure of his service. It was after retirement of the appellant that his Secondary School Certificate was allegedly sent to the Board of Intermediate and Secondary Education Peshawar for verification and as per report of Assistant Secretary (Certificates) the same was found fake/bogus. The same allegations of having fake and bogus Secondary School Certificate resulted in registration of case FIR No. 02/2016 under Sections 419/420/468/471 PPC read with Section 5 (2) of Prevention of Corruption Act against the appellant in Police Station ACE Charsadda. The prosecution, however failed to prove the allegations against the appellant and he has been acquitted vide judgment dated 25.11.2017 passed by the then Special Judge, Anti-Corruption, (Provincial), Khyber Pakhtunkhwa Peshawar. The appellant was retired from service vide order dated 03.10.2015, which remained in field and was withdrawn after considerable delay vide order dated 16.11.2020. The appellant has admittedly served the department for almost 26 year and without any order being passed regarding forfeiture of his service, the respondents were not justified in denying him pensionary benefits.

7. It is by now well settled that pension is not a bounty or an ex-gratia payment but a right acquired by an employee in consideration of his past service and the same cannot be withheld arbitrarily. August Supreme Court of Pakistan in its judgment reported as PLD 1973 S.C 514 has held as below:-

"It must now be taken as well-settled that a person who enters Government service has also something to look forward after his retirement, to what are called

retirement benefits, grant of pension being the most valuable of such benefits. It is equally well-settled that pension like salary of a civil servant is no longer a bounty but is a right acquired after putting in satisfactory service for the prescribed minimum period. A fortiori, it cannot be reduced or refused arbitrarily except to the extent and in the manner provided in the relevant rules."

08. Similarly, in the case of I.A. Sharwani v. Government of Pakistan (1991 SCMR 1041), it was held as follows:-

"A pension is intended to assist a retired civil servant in providing for his daily wants so long he is alive in consideration of his past services, though recently the above benefit has been extended inter alia in Pakistan to the widows and the dependent children of the deceased civil servants. The raison d'etre for pension seems to be inability to provide for oneself due to old age. The right and extant to claim pension depends upon the terms of the relevant statute under which it has been granted."

09. In view of the above discussion, the appeal in hand is allowed by setting-aside the impugned orders and office order dated 03.10.2015 passed by the District Education Officer (Male) Charsadda regarding pre-mature retirement of the appellant from service stands restored. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED

29.11.2022



(MIAN MUHAMMAD)
MEMBER (EXECUTIVE)



(SALAH-UD-DIN)
MEMBER (JUDICIAL)

ORDER
29.11.2022

Appellant alongwith his counsel present. Mr. Muhammad Jan,
District Attorney for the respondents present. Arguments heard and
record perused.

Vide our detailed judgment of today, separately placed on file,
the appeal in hand is allowed by setting-aside the impugned orders and
office order dated 03.10.2015 passed by the District Education Officer
(Male) Charsadda regarding pre-mature retirement of the appellant
from service stands restored. Parties are left to bear their own costs.
File be consigned to the record room.

ANNOUNCED
29.11.2022



(Mian Muhammad)
Member (Executive)



(Salah-Ud-Din)
Member (Judicial)

16.11.2022

Appellant along with counsel present:

Naseer Uddin Shah, learned Assistant Advocate General
for respondents present.

Learned counsel for appellant requested for adjournment
as he has not prepared the brief. Adjourned. To come up for
arguments on 23.11.2022 before D.B



(Fareeha Paul)
Member (E)



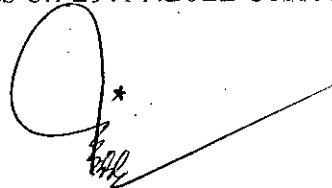
(Rozina Rehman)
Member (J)

23.11.2022

Mr. Yasir Saleem, Advocate for the appellant present. Mr.
Muhammad Jan, District Attorney for the respondents present.

Partial arguments heard. To come up for remaining
arguments on 29.11.2022 before D.B.

SCANNED



(Mian Muhammad)
Member (E)




(Salah-Ud-Din)
Member (J)

13.04.2022

No one present on behalf of the appellant. Mr. Kabirullah Khattak, Additional Advocate General alongwith Umar Zaman, DEO for the respondents present.

Noted 22-6-22



Reply/comments on behalf of respondents submitted which is placed on file. To come up for arguments before the D.B on 08.07.2022. Notice also be issued to the appellant and his counsel for the date fixed.



(Rozina Rehman)
Member (J)



Chairman

8-7-2022

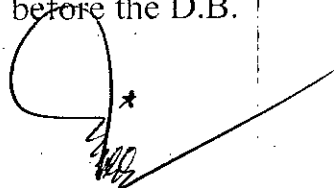
Due to holidays of Eid-ul-Azha
the case is adjourned to 25-10-2022



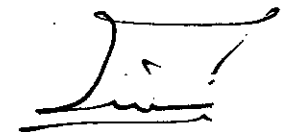
25.10.2022

Appellant in person present. Mr. Muhammad Riaz Khan Paindakhel, Assistant Advocate General for the respondents present.

Appellant requested for adjournment on the ground that his counsel is busy in the honourable Peshawar High Court, Peshawar. Adjourned. To come up for arguments on 16.11.2022 before the D.B.



(Mian Muhammad)
Member (E)




(Salah-Ud-Din)
Member (J)

03.01.2022

Junior to counsel for the appellant present. Mr. Kabirullah Khattak, AAG for respondents present.

Reply/comments on behalf of respondents are still awaited. Learned AAG sought time for submission of reply/comments. Last opportunity is granted to respondents to furnish reply/comments on or before next date, failing which their right to submit reply/comments shall be deemed as struck off by virtue of this order. To come up for arguments before the D.B on 13.04.2022.


(Atiq-Ur-Rehman Wazir)
Member (E)

~~13.04.2022~~

~~Notice for the appellant ~~Mr. Kabirullah Khattak, AAG~~
AG for the respondents present and submitted written reply
on behalf of the respondents to come up for arguments
on 13.04.2022 before this.~~

~~Atiq-Ur-Rehman Wazir~~

10406/20

07.07.2021

Counsel for the appellant present. Preliminary arguments heard.

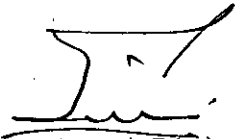
Keeping all just and legal objections intact for determination at the time of regular hearing, let the respondents come with their reply/comments. The appeal is admitted to regular hearing. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for submission of written reply/comments in office within 10 days after receipt of notices, positively. If the written reply/comments are not submitted within the stipulated time, the office shall submit the file with a report of non-compliance. File to come up for arguments on 18.11.2021 before the D.B.

Appellate Deposited
Security Process Fee
10/11/21


Chairman

18.11.2021

Clerk of learned counsel for the appellant present. Mr. Kabirullah Khattak, Additional Advocate General for the respondents present and sought time for submission of reply/comments. Adjourned. To come up for submission of reply/comments before the S.B on 03.01.2022.


(Salah-Ud-Din)
Member (J)