

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No. 11007/2020

SCANNED
KPST
Peshawar

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

Waheed Ullah S/o Gul Shan PST at Govt. Primary School Babra
No.2, Tehsil & District Charsadda..... (*Appellant*)

VERSUS

1. Government of Khyber Pakhtunkhwa through its Secretary Education, Civil Secretariat, Peshawar.
2. Director (E&SE) Education Khyber Pakhtunkhwa, Peshawar.
3. District Education Officer (Male) Charsadda..... (*Respondents*)

Present:

ARBAB SAIFUL KAMAL,
Advocate --- For Appellant.

ASIF MASOOD ALI SHAH,
Deputy District Attorney --- For respondents.

Date of Institution.....16.09.2020
Date of Hearing.....08.12.2022
Date of Decision.....08.12.2022

JUDGEMENT

MIAN MUHAMMAD, MEMBER(E):- The instant service appeal has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 with the prayer that “on acceptance of this appeal, the respondent department may kindly be directed to release the due salaries of the appellant forthwith”.

02. Brief facts, as per averments in the memorandum of service appeal, are that the appellant was appointed as PTC on 28.04.1998 and he was posted at Government Primary School

Babra No. 2 Charsadda. The appellant was granted leave for the purpose of performing Umra in the year 2012 and after expiry of said leave, the appellant reported back for his duty and took over the charge on 20.04.2012 but since then his due salaries have been withheld by the respondents without any reason. Feeling aggrieved, the appellant filed departmental appeal on 20.05.2020, however the same was not responded within the statutory period hence the appellant filed the instant service appeal on 16.09.2020 for redressal of his grievances.

03. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions raised by the appellant in his appeal. We have heard arguments of learned counsel for the appellant as well as learned Deputy District Attorney for the respondents and have gone through the record with their valuable assistance.

04. Learned counsel for the appellant contended that the appellant was granted leave for performing Umra and after expiry of the leave, the appellant duly reported back for his duty on 20.04.2012 and since then he is performing his duty. The respondents without conducting any inquiry and legal justification, have wrongly and illegally withheld salaries of the appellant. Moreover, stoppage of due salaries of the appellant is not only against the spirit but blatant violation of Article-9 of the Constitution. He further argued that the august Supreme Court of Pakistan has graciously held as reported in 2001 SCMR 1320 that

withholding/stoppage of salaries of an employee illegally and without any enquiry, tantamounts to deprive him of livelihood, therefore, respondents may be directed to release the due salaries of the appellant with effect from 20.04.2012, he concluded.

05. Learned Deputy District Attorney controverted the assertions raised in the service appeal as well as arguments of learned counsel for the appellant and contended that the appellant remained absent from duty since 2010 and reappeared in the year 2020 through an application for release of his salaries. He next argued that the appellant has not performed any duty since 2010 and he had never been granted any kind of leave by the competent authority. When the appellant did not perform any duty the department cannot pay him salary under the cardinal principle of "where there is no duty, there is no pay". His salary has therefore, been stopped w.e.f 01.04.2010 by the District Accounts Officer, Charsadda. The service appeal is unjustifiable, baseless, false, frivolous and vexatious, may be dismissed with costs, he concluded.

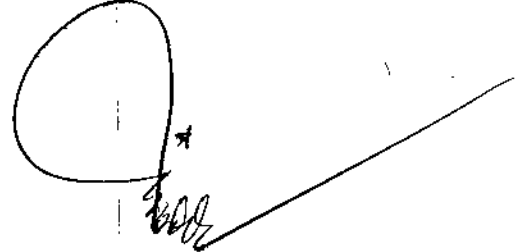
06. Without touching the merits of the case, we are of the considered view that departmental appeal of the appellant has remained un-responded and no appellate order has been passed thereon by the appellate authority. It is, therefore, imperative to remit the instant service appeal to the respondent department with the direction that departmental appeal of the appellant be decided through a speaking order under the relevant law and rules within

a period of 30 days of the receipt of copy of this judgement.
Parties are left to bear their own costs. File be consigned to the
record room.

07. *Pronounced in open court at Peshawar and given under
our hands and seal of the Tribunal this 08th day of December,
2022.*



(SALAH UD DIN)
MEMBER (J)



(MIAN MUHAMMAD)
MEMBER (E)

ORDER

08.12.2022

Mr. Arbab Saiful Kamal, Advocate for the appellant present.

Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present.

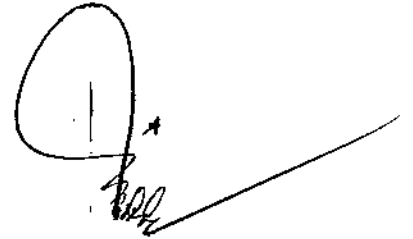
02. Vide our detailed judgement of today separately placed on file consisting (04) pages, we are of the considered view that departmental appeal of the appellant has remained un-responded and no appellate order has been passed thereon by the appellate authority. It is, therefore, imperative to remit the instant service appeal to the respondent department with the direction that departmental appeal of the appellant be decided through a speaking order under the relevant law and rules within a period of 30 days of the receipt of copy of this judgement. Parties are left to bear their own costs. File be consigned to the record room. .

03. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal this 8th day of December, 2022.*

SCANNED
KPST
Peshawar



(SALAH UD DIN)
MEMBER (J)



(MIAN MUHAMMAD)
MEMBER (E)