

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR
AT CAMP COURT SWAT.

Service Appeal No. 13574/2020

Date of Institution ... 21.10.2020

Date of Decision ... 10.11.2022

Muhammad Ilyas S/O Sherin, R/O Adenzai Chakdara, District Dir Lower.

... (Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary Labour Department, Provincial Secretariat Peshawar.
2. Director Labour Government of Khyber Pakhtunkhwa, Directorate of Labour, FC Trust Plaza Third floor, Near Sunehry Masjid Peshawar.

... (Respondents)

MR. ASSAD-UR-REHMAN,
Barrister

--- For appellant.

MR. MUHAMMAD RIAZ KHAN PAINDAKHEL,
Assistant Advocate General

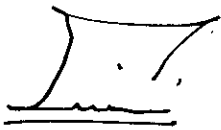
--- For respondents.

MR. KALIM ARSHAD KHAN
MR. SALAH-UD-DIN

--- CHAIRMAN
--- MEMBER (JUDICIAL)

JUDGMENT:

SALAH-UD-DIN, MEMBER:- Precisely stated the facts surrounding the instant service appeal are that the appellant was appointed as Chowkidar (BPS-01) vide appointment order dated 07.11.2013. The appellant was then transferred from the office of Inspector (W&M) Malakand to the office of Inspector (W&M) Dir and he accordingly assumed the charge of his post



at District Dir on 19.12.2013. It was on 20.12.2013 that the services of the appellant were dispensed with, which was challenged by the appellant through filing of departmental appeal, however the same was not responded. The appellant then filed Service Appeal No. 490/2014 before this Tribunal, which was allowed vide judgment dated 03.06.2015 with the observations that the appellant is reinstated in service and the respondents were directed to afford opportunity of hearing to the appellant before passing any final order regarding the terms and conditions of his service. In pursuance of judgment of this Tribunal dated 03.06.2015, the appellant was reinstated in service with immediate effect vide office order dated 30.06.2015, however when tentative seniority list of Class-IV employees was circulated vide office order bearing No. DL/Admn/11/235/9412-59 was issued on 31.12.2019, the name of the appellant was not included in the same. The appellant filed departmental appeal seeking inclusion of his name in the seniority list of Class-IV employees with effect from the date of his initial appointment i.e 07.11.2013 as well as payment of salaries of the intervening period and treating him at par with his other colleagues. The appellant received copy of minutes of the meeting of Departmental Selection Committee held on 08.07.2020, whereby the services of the appellant were regularized with immediate effect. The appellant had filed writ petition before Hon'ble Peshawar High Court, Mingora Bench



(Dar-ul-Qaza), Swat, which was then withdrawn and the instant service appeal was filed.

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

3. Learned counsel for the appellant has addressed his arguments supporting the grounds agitated by the appellant in his service appeal. On the other hand, learned Assistant Advocate General for the respondents has controverted the arguments of learned counsel for the appellant and has supported the comments submitted by the respondents.

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

5. A perusal of the record would show that the appointment of the appellant was made by the competent Authority vide order dated 07.11.2013 and after assuming the charge of his post, the appellant started performing of his duty. The service of the appellant was, however, dispensed with by the competent Authority vide order dated 20.12.2013 on the ground that his appointment was void ab-initio. The afore-mentioned order was challenged by the appellant through filing of Service Appeal No. 490/2014 before this Tribunal, which was allowed vide judgment dated 03.06.2015 and the appellant was reinstated in service with the direction to the respondents that before passing

any order regarding the terms and conditions of the appellant, he shall be provided an opportunity of hearing in the prescribed manner. In pursuance of judgment dated 03.06.2015 of this Tribunal, the appellant was reinstated in service vide order dated 30.06.2015 and he is still performing his duty. The judgment dated 03.06.2015 passed by this Tribunal has attained finality being not challenged before the august Supreme Court of Pakistan. It is quite strange that on one hand, the respondents reinstated the appellant in service and on the other hand they have alleged in their comments that the appointment of the appellant was illegal, so if the appointment of the appellant was illegal then why he was retained in service is a question not answered by the respondents.

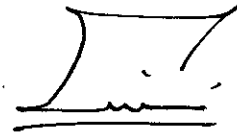


6. According to Section-4 of Service Tribunal Act, 1974, only civil servant aggrieved by any final order, whether original or appellate, made by departmental Authority in respect of any of the terms and conditions of his service, could prefer an appeal before the Service Tribunal. The previous service appeal of the appellant was entertained by this Tribunal, which would mean that he was considered as civil servant, thereby entitling him to inclusion of his name in the seniority list of Class-IV employees. The appellant was reinstated in service vide order dated 30.06.2015 with immediate effect and not from the date of dispensing with his service i.e 20.12.2013. The order of reinstatement of the appellant with immediate effect has not

been impugned by him through filing of any departmental appeal. In these circumstances, the appellant is not entitled for recovery of his salaries with effect from 20.12.2013 till 29.05.2015.

7. In view of the above discussion, the appeal in hand is partially allowed and it is directed that the name of the appellant may be placed at due place in the seniority list of Class-IV employees of Directorate of Labour Khyber Pakhtunkhwa with effect from the date of his reinstatement i.e 30.06.2015. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
10.11.2022



(SALAH-UD-DIN)
MEMBER (JUDICIAL)
CAMP COURT SWAT



(KALIM ARSHAD KHAN)
CHAIRMAN
CAMP COURT SWAT

ORDER
10.11.2022

Appellant alongwith his counsel present. Mr. Jamil Ahmad Qureshi, Assistant Director alongwith Mr. Muhammad Riaz Khan Paindakhel, Assistant Advocate General for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today, separately placed on file, the appeal in hand is partially allowed and it is directed that the name of the appellant may be placed at due place in the seniority list of Class-IV employees of Directorate of Labour Khyber Pakhtunkhwa with effect from the date of his reinstatement i.e 30.06.2015. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
10.11.2022



(Kalim Arshad Khan)
Chairman
Camp Court Swat



(Salah-Ud-Din)
Member (Judicial)
Camp Court Swat