

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

Service Appeal No. 352/2019

Date of Institution ... 27.02.2019

Date of Decision... 02.02.2023

Ishitiaq Ahmad, Monitoring Coordinator, EPI Section, Directorate General Health Services, Khyber Pakhtunkhwa, Peshawar.

... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and 04 others.

... (Respondents)

MR. MUHAMMAD AYUB KHAN SHINWARI,
Advocate

--- For appellant.

MR. UMAIR AZAM KHAN,
Additional Advocate General

--- For respondents.

SALAH-UD-DIN
FAREEHA PAUL

--- MEMBER (JUDICIAL)
--- MEMBER (EXECUTIVE)

JUDGMENT:

SALAH-UD-DIN, MEMBER:- Precise averments as raised by the appellant in his appeal are that he was appointed as Monitoring Coordinator in GAVI Project on contract basis vide appointment order dated 05.12.2008. During the course of his service, some of his colleagues filed Writ Petition including Writ Petition No. 1670/2010 before Honourable Peshawar High Court, Peshawar, which were allowed and consequently, vide order dated 12.02.2015 passed by Director General Health Services Khyber Pakhtunkhwa, the service

of the appellant was regularized with immediate effect. The appellant then submitted departmental appeal requesting therein that the period of his contract service with effect from 05.12.2008 to 11.02.2015 may be counted for service benefits, however the same was dismissed vide order dated 29.01.2019, hence the instant service appeal.

2. Notices were issued to the respondents, who submitted their comments, wherein they refuted 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 Additional Advocate General has controverted the arguments of learned counsel for the appellant and has supported the comments submitted by the respondents.

4. Arguments of learned counsel for the parties have already been heard and record perused.

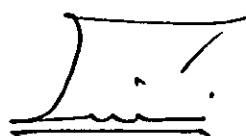
5. A perusal of the record would show that the appellant was initially appointed as Monitoring Coordinator on contract basis vide appointment order dated 05.12.2008 and subsequently, his service was regularized with immediate effect vide order dated 12.02.2015 in pursuance of order/judgment dated 05.07.2012 passed by Honourable Peshawar High Court, Peshawar in Writ Petition No. 1670/2010. While going through the prayer of the appellant as made in the appeal, it can be observed that in essence the appellant is

seeking regularization of his services with effect from the date of his initial appointment i.e 05.12.2008. In support of his stance, appellant has placed reliance mainly on Khyber Pakhtunkhwa Appointment of GAVI, JICA, Adhoc and Contract Employees Act, 2016, which is misconceived for the reason that according to para-d of Section-2 of the ibid Act, the same was applicable to those employees of GAVI Project, who were appointed by the Government on contract basis during the period from the year 2012 to 30th June 2015. The appellant was appointed on contract basis in the year 2008 and his services were already regularized vide office order dated 12.02.2015, which was issued prior to enactment of the Appointment of GAVI, JICA, Adhoc and Contract Employees Act, 2016. The appellant thus could not claim any benefit on the basis of ibid Act. Even otherwise too, the period of contract service of the appellant could not be counted as regular service.

6. Consequently, the appeal in hand being devoid of any merit stands dismissed. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
02.02.2023


(FAREEHA PAUL)
MEMBER (EXECUTIVE)



(SALAH-UD-DIN)
MEMBER (JUDICIAL)


ORDER
02.02.2023

Learned counsel for the appellant present. Mr. Umair Azam Khan, Additional Advocate General for the respondents present. Arguments have already been heard and record perused.

Vide our detailed judgment of today, separately placed on file, the appeal in hand being devoid of any merit stands dismissed. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
02.02.2023


(Fareeha Paul)
Member (Executive)


(Salah-Ud-Din)
Member (Judicial)

IN THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No 352 /2019

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 287

Dated 27-2-2019

Ishitiah Ahmad,
Monitoring Coordinator, EPI Section,
Directorate General Health Services,
Khyber Pakhtunkhwa, Peshawar

.....Appellant

Versus

1. Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar.
2. Secretary to Government of Khyber Pakhtunkhwa, Department of Health, Peshawar.
3. Secretary to Government of Khyber Pakhtunkhwa, Establishment Department, Peshawar.
4. Secretary to Government of Khyber Pakhtunkhwa, Finance Department, Peshawar.
5. Director General Health Services, Khyber Pakhtunkhwa, Peshawar.

.....Respondents

Service Appeal Under Section 4 of Khyber
Pakhtunkhwa Service Tribunal Act, 1974 against
Order dated 29-01-2019

Respectfully Sheweth,

Brief but relevant facts of the case are as follows:

1. That the appellant was appointed as Monitoring Coordinator (BPS-16) in the GAVI Project under the respondent Department on contract basis by the competent authority in the prescribed manner after fulfilling all the codal formalities vide appointment order dated 05-12-2008. (Copy of the appointment order is filed herewith and attached as **Annex-A**)
2. That the appellant was performing his duties against the aforesaid post to the entire satisfaction of his seniors. Meanwhile some of the colleagues of the appellant filed various Writ Petitions including Writ Petition No 1670/2010 before the Honorable Peshawar High Court, Peshawar, which was allowed.
3. That consequently, the respondents regularized the service of the appellant but with immediate effect vide Office Order dated 12-02-2015. (Copy of the office order is filed herewith and annexed as **Annex-B**)
4. That the Appellant approached the respondents by filing of Departmental Appeal for redress of his grievance i.e., considering his contract service from

Filed to-day

Registrar

27/2/19
Re-submitted to-day
and filed.

Registrar 11/3/19