

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
CAMP COURT DERA ISMAIL KHAN.**

BEFORE: **KALIM ARSHAD KHAN ... CHAIRMAN**  
**SALAH UD DIN ... MEMBER (Judicial)**

*Service Appeal No.275/2018*

Date of presentation of appeal.....28.02.2018  
Dates of Hearing.....21.03.2023  
Date of Decision.....21.03.2023

**Muhammad Hussain** son of Gulam Rasool caste Waruki resident of village Nawab, Tehsil & District Dera Ismail Khan.

.....*Appellant*

Versus

1. **The Secretary to the Government** of Khyber Pakhtunkhwa Health Department, Peshawar.
2. **Director General, Health Department,** Khyber Pakhtunkhwa, Peshawar.
3. **Medical Superintendent,** Mufti Mehmood Memorial Teaching Hospital, Dera Ismail Khan.
4. **District Accounts Officer,** Dera Ismail Khan.
5. **In-Charge Service Book,** Mufti Mehmood Memorial Teaching Hospital, Dera Ismail Khan.

.....(*Respondents*)

Present:

Mr. Muhammad Anwar Awan,  
Advocate.....For the appellant.

Mr. Muhammad Jan,  
District Attorney .....For the respondents

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**APPEAL AGAINST THE TERMINATION ORDER  
NO.5524-28/09/16 DATED 19.09.2016.**

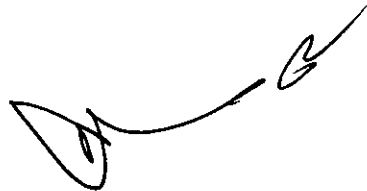
**JUDGMENT**

**KALIM ARSHAD KHAN CHAIRMAN:** At the first instance the appellant filed writ Petition No.821-D of 2016, which, vide order dated

30.10.2017, was treated as service appeal and sent to this Tribunal for decision in accordance with law.

2. The facts surrounding the writ petition now appeal are that the appellant was appointed as Mali against the vacant post in the Mufti Mehmood Memorial Hospital, Dera Ismail Khan; that he received monthly salary till the month of March, 2013 from the department but the respondents stopped the salaries without cogent reasons; that the correct and actual date of birth of the appellant was 1962 while the NADRA wrongly entered the same as 1952; that the appellant filed a declaratory suit in the court of learned Senior Civil Judge, Dera Ismail Khan and on 04.07.2016, learned Civil Judge-II, Dera Ismail Khan decreed the suit in favour of the appellant (the suit was for declaration that the date of birth of the appellant was 1962); that the appellant performed his duties to the entire satisfaction of his superiors but on 19.09.2016, the respondents terminated the petitioner on the grounds that the age of the petitioner was over 60 years; that the appellant was terminated without prior notice; that the appellant submitted several requests to the competent authorities for the cancellation of unlawful termination order and consider the date of birth of the appellant as 1962 according to the court order but all in vain, hence, the writ petition, which was treated as appeal.

3. On receipt of the appeal and its admission to full hearing, the respondents were summoned. Respondents put appearance and contested the appeal by filing written reply raising therein numerous legal and factual



objections. The defence setup was a total denial of the claim of the appellant. It was mainly contended that the appellant concealed the factum of his previous service with the Gomal University D.I.Khan; that the appellant reached the age of superannuation, therefore, question did not arise to pay him salary beyond the age of 60 years; that in the suit for declaration regarding correction of age, the authorities/respondents were not party, therefore, any judgment/decreed in that suit would not be binding upon them; that the date of birth of civil servant could only be rectified within initial two years of service; that vide the impugned order dated 19.09.2016, the services of the appellant had been ceased because of attaining the age of superannuation and recovery had been ordered against the appellant for illegal withdrawal of the salary.

4. We have heard learned counsel for the appellant and learned District Attorney for the respondents.

5. The Learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned District Attorney controverted the same by supporting the impugned order.

6. The prayer of the appellant in this appeal is that the termination order should be withdrawn and he should be reinstated with all back benefits. The appointment order of the appellant shows that he was appointed as Mali on 01.11.2005 on fixed pay basis @Rs.3100/- per month. Besides, the appellant seeks withdrawal of the order dated 19.09.2016, vide which he ceased to be a government servant since 2012, but with no good reason. He claims that he



ought to have been retired on the basis of his date of birth declared by the Civil Court to be 1962 instead of 1952 recorded in the service record. This contention is not tenable firstly because the appellant had not got rectified his date of birth in the service record within first two years of his joining the service and secondly the decree in the civil suit was passed in the year 2014 wherein the authorities/respondents were not arrayed as party and there was no prayer that the service record of the appellant should also be accordingly corrected. Therefore, this appeal, having no merits in it, fails and is dismissed. We direct that the costs of the appeal shall follow the result. Consign.

*7. Pronounced in open Court at Dera Ismail Khan and given under our hands and the seal of the Tribunal on this 21<sup>st</sup> day of March, 2023.*



**KALIM ARSHAD KHAN**  
Chairman  
Camp Court D.I.Khan



**SALAH UD DIN**  
Member (Judicial)  
Camp Court D.I.Khan