

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

Service Appeal No. 936/2019

Date of Institution ... 17.07.2019

Date of Decision... 17.04.2023

Hamid Shah S/O Arman Shah. R/o Village Esak Chountra Tehsil & District Karak.

... (Appellant)

VERSUS

Secretary Health, Khyber Pakhtunkhwa Civil Secretariat, Peshawar and 08 others.

... (Respondents)

SYED NOMAN ALI BUKHARI,
Advocate

--- For appellant.

MR. MUHAMMAD JAN,
Deputy District Attorney


--- For respondents.

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

--- CHAIRMAN
--- MEMBER (JUDICIAL)

JUDGMENT:

SALAH-UD-DIN, MEMBER:- Precise facts giving rise to filing of the instant appeal are that the appellant was initially appointed as Ward Orderly (BPS-02) vide office order bearing Endorsement No. 19308-11/LRH dated 14.10.1999 issued by the Administrator Govt. Lady Reading Hospital Peshawar; that later on the appellant was appointed as Dispenser (BPS-06) vide office order bearing No. 17712-16 LRH dated 07.09.1991 issued by the Administrator Govt. Lady Reading Hospital Peshawar; that the services of the appellant were placed at the disposal of Hospital Director Hayatabad Medical Complex Peshawar in the year




1998; that while performing his duty in Hayatabad Medical Complex Peshawar, the appellant submitted an application to the Medical Superintendent Hayatabad Medical Complex Peshawar that he was reaching the age of superannuation on 22.03.2015, therefore, necessary steps may be taken for preparation of his pension papers; that as the date of birth of the appellant was recorded as 23.05.1966 in the service book, while in the SSC certificate as well as in his CNIC, his date of birth was recorded as 23.03.1955 due to which correspondence between Medical Superintendent Hayatabad Medical Complex Peshawar and Medical Superintendent Lady Reading Hospital Peshawar started and the appellant allegedly continued his duty; that the appellant filed civil suit for correction of his date of birth, however the same was later on dismissed in default vide order dated 27.03.2019; that vide letter dated 24.12.2018 addressed by Hospital Director Hayatabad Medical Complex Peshawar to the Director General, Health Services, Khyber Pakhtunkhwa Peshawar, it was communicated that the appellant may be considered for retirement with effect from 22.03.2015 and an amount of Rs. 1953033-80 being over payment was to be recovered from his pensionary benefits; that the aforementioned letter dated 24.12.2018 was challenged by the appellant through filing of Writ Petition No. 2120-P/2019 before the august Peshawar High Court, Peshawar, however the same was later on withdrawn; that the appellant there-after filed departmental



appeal, which was not decided within the statutory period, hence the instant service appeal.

2. Notices were issued to the respondents for submission of reply/comments but they failed to submit the same within the stipulated period.

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 District Attorney for the respondents has controverted the arguments of learned counsel for the appellant and has supported the comments submitted by the respondents.

 4. Arguments have already been heard and record perused.

5. A perusal of the record would show that the date of birth of the appellant as recorded in his service book is 23.05.1966, however according to SSC and CNIC of the appellant, his date of birth is 23.03.1955. The appellant while considering his date of birth as 23.05.1966 as recorded in his service book, applied for his retirement with effect from 22.03.2015, however the retirement case of the appellant was kept pending by the respondents. In the meanwhile, vide letter dated 24.12.2018 addressed by Hospital Director Hayatabad Medical Complex Peshawar to the Director General Health Services Khyber Pakhtunkhwa Peshawar, it was requested that the retirement of the appellant may be considered to be with effect from 22.03.2015 and that an amount of Rs. 1953033-80 being

over payment shall be recovered from the pensionary benefits of the appellant. Available on the record is copy of office order dated 12.03.2021 issued from the office of Director General Health Services Khyber Pakhtunkhwa Peshawar, whereby the appellant stood retired with effect from 22.03.2015 by according him grant of 365 days encashment in leave of LPR. However, vide office order bearing Endorsement NO. 7928-36/MTI/HMC dated 21.04.2021, Manager HR Hayatabad Medical Complex Peshawar requested the Director General Health Services Khyber Pakhtunkhwa Peshawar to keep hold the above mentioned office order dated 12.03.2021 till the decision of the court in the civil suit filed by the appellant for correction of his date of birth. Today, learned counsel for the appellant produced copy of order dated 27.03.2019 whereby the civil suit of the appellant has already been dismissed way back on 27.03.2019. In this scenario, the learned counsel for the appellant requested that the appellant would be satisfied if direction is issued to competent Authority for deciding the departmental appeal of the appellant. The request of learned counsel for the appellant appears genuine, therefore, the competent Authority shall decide the departmental appeal of the appellant within a period of 30 days of receipt of copy of this judgment and to communicate the outcome of the departmental appeal to the Registrar of this Tribunal within a period of one week of its decision. Needless to mention that if the appellant felt aggrieved of the outcome of the departmental appeal, he would be at liberty to avail the remedy as available to him under

the law. The appeal in hand is disposed of accordingly. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
17.04.2023



(SALAH-UD-DIN)
MEMBER (JUDICIAL)



(KALIM ARSHAD KHAN)
CHAIRMAN