

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

Service Appeal No.7075/2021

Date of Institution ... 06.07.2021  
Date of Decision ... 09.05.2023

Sar Mir Khan S/O Rasool Jan R/O Aka Khel Miran Talab Samar Ghari, District Khyber, Posted at Government Middle School Yara Jan Kali, Ekka Khel Bhara, District Khyber.

... (Appellant)

**VERSUS**

The Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Civil Secretariat Peshawar and three others.

... (Respondents)

Mr. Amin Ayub,  
Advocate

... For appellant

Mr. Fazal Shah Mohmand,  
Additional Advocate General

... For respondents

Mr. Kalim Arshad Khan  
Mrs. Rozina Rehman

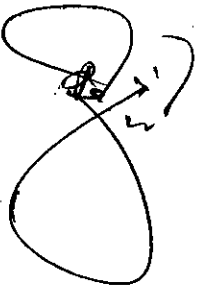
... Chairman  
... Member (J)

**JUDGMENT**

Rozina Rehman, Member(J): This judgment is intended to dispose of four connected service appeals which are:

1. Service Appeal No.7074/2021
2. Service Appeal No. 7075/2021
3. Service Appeal No.7076/2021
4. Service Appeal No.7077/2021

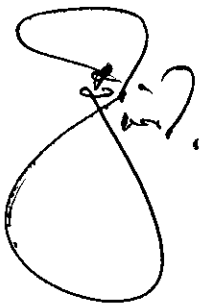
In view of common questions of law and facts, the above captioned appeals are being disposed of by this order. The appellants have



invoked the jurisdiction of this Tribunal through above titled appeal with the prayer as copied below:

**“On acceptance of these appeals, the respondents may kindly be directed to release the outstanding salaries of the appellants with effect from January, 2011 to July, 2019.”**

2. Brief facts leading to filing of the instant appeals are that the appellants were appointed as Class-IV employees. During the era of Talibanization from 2009 to 2015 all the educational institutions were either demolished or non functional which caused damage to the learners and teachers in different aspects. District Khyber was the most volatile area where all kinds of activities including Government schools were closed however appellants continued performing their duties but salaries could not be paid. All the appellants visited the concerned office for payment of their outstanding salaries but fiasco. They then invoked the jurisdiction of the Hon'ble Peshawar High Court in writ petition which was adjudicated with direction to the Department to pay the monthly salary to the petitioners. The respondents were asked to implement the orders but to no avail which led to filing of C.O.C which was decided whereby the salary of the appellant was released however unpaid salaries were not paid to them. Later on, an inquiry was conducted which decided the matter in favor of appellants however they were refused payment later on. Eventually, all the appellants filed C.O.C No.212 for implementation of judgment and resultantly C.O.C was disposed of, wherein the appellants were directed to approach

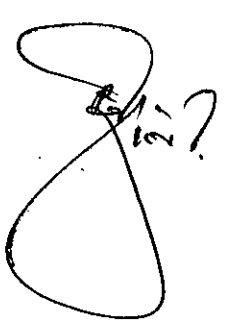


Service Tribunal. They preferred departmental appeal for grant of arrears of salaries but the same was not disposed of within the statutory period, hence, the present service appeals.

3. We have heard Amin Ayub Advocate learned counsel for the appellants and Fazal Shah Mohmand, learned Additional Advocate General for the respondents and have gone through the record and the proceedings of the case in minute particulars.

4. Amin Ayub Advocate, learned counsel for appellants, inter-alia, contended that the appellants were not treated fairly as the respondent No.3 unlawfully refused their request for outstanding salary without any cogent reason which order is not sustainable in the eyes of law and against the natural justice. Learned counsel argued that the salary of an employee cannot be stopped even during the course of suspension of service and that the appellants were deprived despite the fact that they performed their duties with utmost devotion and the respondent No.3 acted in violation of Article-11 of the Constitution of Islamic Republic of Pakistan, 1973. Lastly, it was contended that writ petition was allowed on the commitment of respondent Department, wherein they stated at the bar that the appellants were regular employees of the Department and had been discharging their duties since long which did not leave any room to pay the due salaries of the appellants. He, therefore, requested for acceptance of the instant appeals.

5. Conversely, learned AAG submitted that the schools were closed during the era of Talibanization so they had not performed their duties and are not entitled to get the back benefits on the basis of no work no



wages. He submitted that monthly salaries of the appellants had already been released and that all the appellants were treated as per law because they were not entitled to get the back benefits.

6. After hearing the learned counsel for the parties and going through the record of the case with their assistance and after perusing the precedent cases cited before us, we are of the opinion that the relief prayed in these appeals regarding salary was also the subject matter in writ petition No. 6655-P/2018 admittedly filed by the appellants in the Hon'ble Peshawar High Court, Peshawar which was decided vide order dated 15.05.2019 in the following manner.

*“Waheed Ullah, ADEO Bara present in court candidly stated that petitioners are serving as regular employees of the respondents and they will be paid their salary. As such, this petition is allowed and respondents are directed to pay the monthly salary to the petitioners.”*

7. It is alleged that when the order of the Hon'ble Peshawar High Court was not being complied with, the petitioners filed C.O.C No. 601-P in Writ Petition No.6655-P/2018 during the pendency of which the respondents have produced an order dated 05.07.2019, whereby salaries of the petitioners were released and consequently the C.O.Cs were decided. The appellant preferred another C.O.C No. 212-P/2020 in C.O.C No.601-P/2019 before the Hon'ble Peshawar High Court, Peshawar which was decided on 16.06.2020 wherein the Hon'ble Peshawar High Court, Peshawar was pleased to have found that in the order allowing writ petition, the Hon'ble Peshawar High Court, Peshawar had not passed any order regarding payment of arrears. The present appellants then filed another C.O.C No. 476-P/2020 which was



decided by the Hon'ble Peshawar High Court, Peshawar on 12.01.2021

in the following manner:-

*"3. It is evident from record that this is a 3<sup>rd</sup> petition filed by the present petitioners for initiating Contempt of Court proceedings against the respondent. Their previous similar applications were disposed of by this Court vide order dated 16.06.2020 in the following terms;*

*"Since this court has not given any direction for the arrears of salaries, as such, the order of this court stood complied with and there is no question of any violation of order of this Court. The petitioners have, if any grievance regarding arrears of salaries, they may approach the Service Tribunal in accordance with law. However, so far as this petition is concerned, the same is misconceived which stands dismissed"*

*4. Thus, when their earlier applications were disposed of in the above terms, the filing of the present applications are beyond comprehension albeit prima facie appears to be frivolous, hence merits outright dismissal. Accordingly, the instant petition and connected petition is dismissed."*

8. The learned counsel for the appellants was confronted with the provision of Rule-23 of the Khyber Pakhtunkhwa Service Tribunal Rules 1974 which is reproduced as under:

*"23. No entertainment of appeal in certain cases.---No Tribunal shall entertain any appeal in which the mater directly and substantially in issue has already been finally decided by a Court or Tribunal of competent jurisdiction".*


9. In view of the provision of the above rules when we see the subject matter of the writ petition as well as these appeals we come across the fact that the subject matter already decided by the Hon'ble Peshawar High Court, Peshawar in writ petitions was directly and

substantially in issue in these appeals as the appellants had made a prayer in the writ petition to direct the respondents to release the salaries alongwith arrears of the same period which has been prayed in these appeals, therefore, these appeals are hit by Rule-23 of the Khyber Pakhtunkhwa Service Tribunal Rules, 1974. Accordingly all these appeals stand dismissed. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED

09.05.2023

  
(Kalim Arshad Khan)  
Chairman

  
(Rozina Rehman)  
Member (J)

\*Mutazem Shah\*