

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

Service Appeal No. 7039/2021

Date of Institution ... 13.07.2021

Date of Decision... 19.05.2023

Wahid Ullah, SPST (BPS-14), GPS, Shiringal, District Dir Upper.

... (Appellant)

VERSUS

The Secretary (E&SE) Department, Khyber Pakhtunkhwa, Peshawar and 02 others.

... (Respondents)

MR. KAMRAN KHAN,
Advocate

For appellant.

MR. ASAD ALI KHAN,
Assistant Advocate General

For respondents.

MR. SALAH-UD-DIN
MR. MUHAMMAD AKBAR KHAN

MEMBER (JUDICIAL)
MEMBER (EXECUTIVE)

JUDGMENT:

SALAH-UD-DIN, MEMBER:- Briefly stated the relevant facts of the case are that the appellant was appointed as PST in Education Department vide appointment order dated 20.07.2011, who assumed the charge of his post and started performing of his duty. The appellant was terminated from service vide order dated 07.10.2011 on the allegations of having two domiciles. The appellant filed departmental appeal, which was rejected. The appellant then filed Service Appeal No. 1760/2011 before this Tribunal, which was allowed vide judgment dated 05.06.2014 and the matter was remitted to the competent



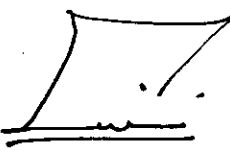
Authority for passing order afresh in accordance with law. It was also observed therein that the issue of back benefits, if any, will be subject to the decision/order of the competent Authority. The judgment dated 05.06.2014 passed by this Tribunal was challenged by the respondents through filing of Civil Petition No. 448-P of 2014 before the august Supreme Court of Pakistan, which was dismissed vide order dated 20.04.2016. The appellant was then reinstated in service vide order dated 10.06.2016 passed by the competent Authority, wherein it was mentioned that the seniority of the appellant will be intact from the date of his first appointment. The appellant partially challenged the order dated 10.06.2016 through filing of departmental appeal, seeking back benefits, however the same was not responded within the stipulated period. The appellant then filed an Execution Petition for implementation of the judgment dated 05.06.2014 passed in his previous Service Appeal No. 1760/2011. It was during the proceedings in the Execution Petition that the learned Additional Advocate General produced copy of order dated 10.03.2021 of the competent Authority, whereby the appellant was reinstated in service by keeping his seniority intact from the date of his first appointment, however he was not held entitled to grant of back benefits/financial benefits with effect from 20.07.2011 to 10.06.2016.

2. On admission of the appeal for regular hearing, notices were issued to the respondents, who contested the appeal by way of

filing of reply, wherein they refuted the assertion 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. Arguments have already been heard and record perused.



5. A perusal of the record would show that after his appointment as Primary School Teacher in BPS-07, the appellant took over the charge of his post and was performing his duty, however in the meanwhile, the competent Authority issued office order dated 07.10.2011, whereby services of the appellant were terminated from the date of his appointment i.e 20.07.2011. The appellant had challenged the order of his termination from service through filing of Service Appeal No. 1760/2011 before this Tribunal, which was allowed vide judgment dated 05.06.2014 by reinstating the appellant into service and issuing directions to the competent Authority to proceed against him afresh in accordance with law. The judgment of this Tribunal was challenged by the respondents through filing of Civil Petition No. 448-P of 2014 before the august Supreme Court of Pakistan, however the same was also dismissed vide order dated 20.04.2016. The previous

service appeal of the appellant was disposed of by this Tribunal in the terms reproduced as below”-

“In the light of foregoing discussion, the appeal is accepted and both the impugned orders dated 07.10.2011 of the competent Authority and that of appellate authority dated nil/10/2011 are set-aside. Resultantly, the appellant is reinstated in service, and the case is remanded/sent back to the competent authority for an order afresh, in accordance with law, of course, after serving the appellant with a show-cause notice, if need be, within reasonable time, but not beyond the period of one month after receipt of this judgment/order. The issue of back benefits, if any, will be subject to the decision/order of the competent authority. In case the appellant is still aggrieved of the order of the competent authority, he may have recourse to the remedy available to him under the law. There shall, however, be no order as to costs.




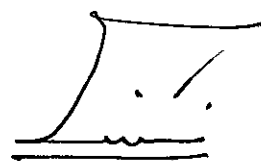
6. The competent Authority, however did not conducted any fresh proceedings in the matter and reinstated the appellant into service vide order dated 10.06.2016 by mentioning therein that he was reinstated into service in light of judgment dated 05.06.2014 passed by this Tribunal as well as judgment dated 20.04.2016 passed by the august Supreme Court of Pakistan. The appellant was though granted seniority from the date of his first appointment, however nothing was mentioned in the said order as to how the intervening period with effect from 20.07.2011 to 10.06.2016 was treated. During the proceedings in the Execution

Petition for implementation of the judgment dated 05.06.2014 of this Tribunal, another office order dated 10.03.2021 was produced by the respondents, wherein it was clarified that the appellant was not entitled to grant of back/financial benefits with effect from 20.07.2011 to 10.06.2016. While passing the reinstatement order dated 10.06.2016 as well as 10.03.2021, the competent Authority has not mentioned therein that there existed any fault on the part of the appellant for not performing his duty during the intervening period. In such a situation, the appellant could not be deprived of the back benefits particularly when nothing is available on the record which could show that he had remained gainfully employed in any service during the period during which he remained out of service on account of his termination vide order dated 07.10.2011. Otherwise too, the impugned order dated 10.03.2021 is technically incorrect to the extent that it does not mention as to how the intervening period with effect from 20.07.2011 till 10.06.2016 was treated by the competent Authority.

7. In view of the above discussion, the appeal in hand is allowed as prayed for. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
19.05.2023


(MUHAMMAD AKBAR KHAN)
MEMBER (EXECUTIVE)


(SALAH-UD-DIN)
MEMBER (JUDICIAL)