

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**  
**PESHAWAR**

Service Appeal No. 316/2017

BEFORE: MR. KALIM ARSHAD KHAN ... CHAIRMAN  
MISS FAREEHA PAUL ... MEMBER(E)

Mst. Anjum Akhtar, Senior Arabic Teacher, Government Girls  
Higher Secondary School Bakhshali, District Mardan.  
..... (Appellant)

Versus

1. District Education Officer (Female) Mardan.
2. Director Elementary & Secondary Education, Government of Khyber Pakhtunkhwa, Peshawar.
3. Secretary, Elementary & Secondary Education, Government of Khyber Pakhtunkhwa, Peshawar. .... (Respondents)

Mr. Mir Zaman Safi,  
Advocate ... For appellant

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

Date of Institution.....30.03.2017  
Date of Hearing.....26.05.2023  
Date of Decision..... 26.05.2023

**JUDGEMENT**

**FAREEHA PAUL, MEMBER (E):** The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, with the prayer that on acceptance of this appeal, respondents might be directed to pay/release 43 monthly salaries to the appellant declaring the non-payment of the same to her as illegal, unlawful without lawful authority and of no legal effect.



2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant joined the respondent department as Drawing Master on 05.10.1995 and was posted at Government Girls Middle School Alo, District Mardan. She was appointed as Arabic Teacher on 23.06.1997 and since then performing her duties to the entire satisfaction of her superiors. In the year 1997 and onwards, the appellant was transferred time and again due to which salaries of 43 months were not paid to her, despite the fact she duly performed her duties. She was told that her service book had been lost and after the preparation of new one, salaries would be paid to her. The appellant, time and again, approached the respondents for payment of the above mentioned salaries to her but of no use, where after she filed civil suit and then filed Writ Petition before the Honourable Peshawar High Court, which were dismissed for want of maintainability. The appellant filed departmental appeal on 30.11.2016 which was not responded within the statutory period of ninety days; hence the present appeal.

3. Respondents were put on notice who submitted written replies/comments on the appeal. We have heard the learned counsel for the appellant as well as the learned District Attorney for the respondents and perused the case file with connected documents in detail.

4. Learned counsel for the appellant after presenting the case in detail argued that action of the respondents amounted to forced labour because salaries of the appellant had been denied to her without any omission or commission on her part. He requested that the appeal might be accepted as prayed for.



5. Learned District Attorney, while rebutting arguments of the learned counsel for the appellant, argued that the appellant was freshly appointed as Arabic Teacher (BPS-09) at GGMS Mian Khan, Mardan on 01.07.1997, hence her claim for the salaries before her appointment was wrong. So far as the period mentioned for non-payment of salaries from October 1999 to February 2002 (29 months) was concerned, the learned District Attorney informed that it was stopped due to a tussle and litigation between the appellant and another female teacher holding the same post, belonging to the same locality, therefore their proper attendance could not be maintained. However, according to him, she had been paid arrears of her salary for a certain period. He requested that the appeal might be accepted as prayed for.

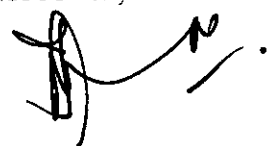
6. Through the instant appeal, the appellant has asked for release of salary for 43 months not paid to her for certain months from August 1996 to February, 2002. Detail of the months, as given in her appeal is as follows:-

<i>August, 1996.</i>	<i>1 month.</i>
<i>Feb. 1997 to Sept. 1997</i>	<i>8 months</i>
<i>Feb. 1998</i>	<i>1 Month</i>
<i>April, 1998 to July, 1998</i>	<i>4 months</i>
<i>Oct. 1999 to Feb. 2002</i>	<i>17 months.</i>

The above detail indicates that it is the salary for 31 months, instead of 43 which is under dispute here. Record presented before us indicates that she received the arrears of salary for the period from April 1998 to July 1998, which excludes this period from the above mentioned detail, thus leaving 27 months, the salary of which is not paid, based on the claim of the appellant.

7. There is no dispute that the appellant was appointed as Arabic Teacher (BPS-9) on 01.07.1997. Prior to that she was appointed as a Drawing Master in 1995 which was a temporary appointment. No record of that period is available to ascertain the duration of her service and the salaries drawn by her. As far as her appointment on 01.07.1997 is concerned, copy of her service book annexed with the reply indicates that salaries were paid to her regularly and she has signed the book also. Arrears of salary for four months of 1998 have also been received by her. The departmental representative informed that there was some dispute of the appellant with one of her colleagues over transfer/posting, which has been admitted by the appellant also, and in that tug of war, their service books were not updated properly and now the department as well as the appellant were at a loss on the status of entries.


8. As far as the extent to which the case has been presented before us, it appears that the appellant, on 17.01.2004, requested the District Officer (Female) Mardan for release of salary not paid to her. After that she went into a writ petition before the Honourable Peshawar High Court in 2014, which was dismissed on 10.04.2015 for want of maintainability. After that she submitted an appeal to the District Education Officer (Female) Mardan for release of salaries on 30.11.2016. It is felt that after submitting the application dated 17.01.2004, the appellant should have approached this Tribunal, but instead, she opted for a writ petition before the Honourable Peshawar High Court. Upon dismissal of her petition, again instead of coming to this Tribunal, she preferred another appeal before the DEO (F). There is no concept of subsequent departmental representation. Moreover, it



was a matter of the period from 1997 to 2002, based on the claim of the appellant and agitating the matter at such a belated stage is not maintainable.

9. In view of the foregoing, the appeal in hand is dismissed. Costs shall follow the event. Consign.

10. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 26<sup>th</sup> day of May, 2023.*

  
(FAREEHA PAUL)  
Member (E)

  
(KALIM ARSHAD KHAN)  
Chairman

*\*Fazle Subhan PS\**