

admittedly been dismissed and Civil Petition for leave to appeal against the judgment in Service Appeal No.371/2015 passed by this Tribunal, was dismissed as withdrawn from the Supreme Court of Pakistan, therefore, in view of the provisions of Rule-23 of Khyber Pakhtunkhwa Service Tribunal Rules, 1974, instant appeal is not entertainable. Rule-23 is reproduced as below:

23. No entertainment of appeal in certain cases.---

No Tribunal shall entertain any appeal in which the matter directly and substantially in issue has already been finally decided by a Court or a Tribunal of competent jurisdiction.

This second appeal, for the same relief, which was earlier finally decided upto the Supreme Court level, seems to have been knowingly filed, which has wasted the time of the Tribunal and also unnecessarily dragged the respondents. Therefore, this appeal being not entertainable/maintainable and frivolous as well as vexatious, is dismissed with compensatory cost of Rs.20,000/-. Consign.

8. *Pronounced in open Court at Abbottabad and given under our hands and the seal of the Tribunal on this 19th day of June, 2023.*



KALIM ARSHAD KHAN
Chairman
Camp Court, Abbottabad



RASHIDA BANO
Member (Judicial)

21.02.2014 as the order was effective after its issuance. Lastly, he submitted that the instant service appeal was not maintainable as the appellant had earlier filed Service Appeal No.371/2015 which was dismissed by the Tribunal on 23.08.2017, hence, this appeal was hit by the Principle of *Res Judicata*.

6. Reply submitted by the respondents mentions that the appellant had earlier filed Service Appeal No.371 of 2015 titled "Rashid Iqbal Khan & others Vs. District Comptroller of Accounts" for the same relief, which appeal was dismissed on 23.08.2017. the appellant has admitted this fact and has produced copy of order of the Supreme Court of Pakistan dated 09.10.2018, passed in Civil Petition No.4303 of 2017, filed against the judgment of this Tribunal dated 23.08.2017 in Service Appeal No.371 of 2015, whereby, even the petition was withdrawn by the appellant from the Supreme Court. The claim and prayer in the earlier appeal No.371/2015 is as under:

"On acceptance of instant service appeal, respondents may please be directed for grant of (two increments), one premature & one special increments alongwith all back benefits w.e.f 01.09.2007 under the law and may please be imposed heavy cost against the responsible respondents"

Whereas, claim of the appellant in this appeal is as under:

"On acceptance of instant service appeal, respondents may please be directed for grant of two increments (premature etc.) alongwith all back benefits w.e.f 01.09.2007 under the law and may please be imposed heavy cost against the responsible respondents."

7. Perusal of two claims and prayers in both the appeals, clearly reveal that the matter in issue in this appeal was directly and substantially in issue in Service Appeal No.371/2015, which had

4. Appellant while arguing his case, submitted that denial of the respondents to grant two increments, was illegal and malafide; that there was no issue in the matter that selection grade from BPS-14 to BPS-15 had been granted to the appellant w.e.f 02.12.1998. He submitted that CT post had been upgraded to BPS-15 w.e.f 01.10.2007 and the appellant had been working in BPS-15 being selection grade holder, got no benefits and under the law, incumbency between the employees should not be disturbed while juniors of the appellant had got both benefits i.e. upgradation and one premature increment but the appellant was illegally being deprived despite the fact that notifications were also issued by the competent authority. Further submitted that it was proved that denial of any benefit by the respondents was against the Article-25 of the Constitution and these increments were to be granted to the appellant by the competent authority to eliminate discrimination. Lastly, he submitted that issue involved in the instant matter was relating to pay and no limitation could run in such matters. Therefore, he requested for acceptance of the instant service appeal.

5. As against that learned Deputy District Attorney argued that the appellant had already been awarded selection grade of BPS-15 from BPS-9 and he had also been granted next stage and had also been promoted from BPS-15 to BPS-16. Further submitted that the appellant was seeking fringe benefits of two increments through the instant appeal, whereas, it was conspicuous that he was not falling within the true spirit of the letter No.FD(SOSR-I) 2-123/2014 dated

Selection Grade in BPS-15 w.e.f 02.12.1998, while his juniors remained in below position. That respondent No.3 issued two Notifications dated 01.10.2007 and 26.01.2008, wherein, all the CTs were upgraded in BPS-15 but selection grade holders were not upgraded in the notifications. That in the matter of up-gradation of posts, the Government of Khyber Pakhtunkhwa Finance Department, issued some notifications and clarifications regarding premature increments. That two notifications were issued on the same day i.e. on 30.05.2014 relating to the subject of up-gradation benefits, similarly notification dated 21.02.2014 relating to benefits of same scale promotion and for clarifications on 07.02.2014 and 31.03.2014 were also issued but the respondents later on withdrew the same despite of clear law and denied grant two increments to the appellant being selection grade holder. Feeling aggrieved, the appellant filed departmental appeal, which was not responded to, hence, the instant service appeal

2. 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 defense setup was a total denial of the claim of the appellant.

3. We have heard appellant and learned Assistant Advocate General for the respondents.

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,PESHAWAR
AT CAMP COURT, ABBOTTABAD

BEFORE: **KALIM ARSHAD KHAN ... CHAIRMAN**
RASHIDA BANO ... MEMBER (Judicial)

Service Appeal No.6137/2020

Date of presentation of Appeal.....28.05.2020
Date of Hearing.....19.06.2023
Date of Decision.....19.06.2023

Mr. Rashid Iqbal Khan S/O Shamarez Khan Jadoon, (Ex CT Teacher) SST Government Middle School (Boys) Salhad Abbottabad. Resident of House No.127, Link Road Narian, Cantt, Abbottabad.....Appellant

Versus

1. **The District Comptroller of Accounts, Abbottabad.**
2. **The Accountant General, Khyber Pakhtunkhwa, Peshawar.**
3. **The Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Department, Peshawar.....(Respondents)**

Present:

Rashid Iqbal, Appellant.....In Person

Mr. Asad Ali Khan, Assistant Advocate General.....For respondents.

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 FOR GRANT OF TWO INCREMENTS (PREMATURE etc) ALONGWITH ALL BACK BENEFITS W.E.F 01.10.2007 TO THE APPELLANT ON THE BASIS OF TWO NOTIFICATIONS ISSUED ON THE SAME DATE 30.05.2014 AND UNDER THE SUCH LAW, WHICH IS EXERCISED IN OTHER CASES OF SELECTION GRADE HOLDERS ON THE PRINCIPLE OF NATURAL JUSTICE AND FOR ACCEPTANCE OF DEPARTMENTAL REPRESENTATION WHICH HIS STILL PENDING WITHOUT RESPONSE.

JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: Brief facts of the case are that appellant, while serving as Certified Teacher, was awarded