

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

Appeal No 379/ 2023

Saeed Ullah Jan

..... Petitioner

VERSUS


Government of Khyber Pakhtukhwa through Secretary Higher
Education department

..... Respondents

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*Spare copies were submitted
in camp court Swat on 2/05/23
and were directed for submission
of original copy in the principal seat Psh.*


Respondents

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

S.A # 379/2023

Saeed Ullah JanAppellant

Versus

Govt. of Khyber Pakhtunkhwa
Through Chief Secretary, Higher Education Peshawar
& Others..... Respondents

SUBJECT: PARAWISE COMMENTS ON BEHALF OF RESPONDENTS NO. 1 & 4

Respectfully Sheweth: - That the respondents submit as under;

Preliminary Objections: -

1. That the appellant has got no cause of action/locus standi to file the instant Service appeal.
2. That the appellant has not come to this Honourable Tribunal with clean hands and is trying to conceal material facts.
3. That the appellant is estopped by his own conduct to file the instant service appeal.
4. That the instant service appeal is time barred.
5. That the instant Service appeal is hit by doctrine of laches as the same if filed after 20 years of his appointment at Higher Education Department.
6. That this Hon'ble Tribunal has got no jurisdiction to entertain the present appeal.

Facts: -

- 1) Not relevant with answering respondents and pertains to record.
- 2) Correct to the extent that the appellant was appointed as Lecturer on contract basis vide notification dated: 03-03-2003.
- 3) Correct to the extent that services of the appellant were regularized vide notification dated: 10-11-2015.
- 4) Correct.
- 5) Incorrect. Finance Department's circular letter dated 04.06.2011 provides as under: **(Copy of Notification is annexed)**

"Henceforth the benefit of protection of pay to the employees of autonomous bodies on their subsequent appointment in Government Service is not admissible as the employees of autonomous bodies are not civil servants within the meaning of Civil Servant Act 1973. However, the benefit of pay protection will be admissible to employees of such autonomous organization who have adopted scheme of basic pay scales in to-to on their appointment in government offices, provided they have applied for the post through proper channel"

The word henceforth implicitly shows that the above policy is effective w.e.f 04.06.2011 and not applicable on cases prior to 04.06.2011

- 6) That the appellant directly approached to the district accounts office vide application dated: 30-09-2022, forwarded through Principal, Govt. Degree College, Timergara, Dir. That Accountant General Office vide letter dated

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30.01.2023 has correctly observed that the case of the appellant is not covered under Finance Department's letter dated 04.06.2011 which is applicable with immediate effect and having no retrospective effect and the appellant joined government service on 31.03.2003. It is pertinent to mention here that application of the appellant dated : 25-01-2022 was forwarded by the Principal, Govt. Degree College, Timergara, Lower Dir to the office of respondent no. 04 which was sent to the office of respondent no. 02 vide letter dated: 21-02-2022 (**Annex-A**) and request of the appellant was regretted by the Finance Department being not covered under the existing policy (**Annex-B**) which was communicated to the appellant vide letter dated: 12-08-2022 (**Annex-C**).


7) Pertains to the reply of respondent no.5 as the same was not processed through parent department.


Grounds: -


- a) Incorrect. As already explained in preceding paras.
- b) Incorrect. As already explained in preceding paras.
- c) Incorrect. As earlier stated in para-05 of the facts, the appellant joined government service prior to the issuance of Finance Department's policy regarding pay protection to employees from autonomous organization. Hence, he is not entitled to pay protection and his request being not covered under Finance Department's policy dated 04.06.2011 was regretted by the office of Accountant General Khyber Pakhtunkhwa.
- d) Incorrect. The appellant is not entitled to pay protection on the grounds mentioned in preceding paras.
- e) Incorrect. The Judgments of the court in the case of Main Farooq Iqbal and Muhammad Ismail were judgments in personum. On the other hand, every case has its own merits and demerits.
- f) Incorrect. As explained above.
- g) Incorrect. As explained above.
- h) Incorrect. That the orders are in accordance with law /rule


Prayer: -

It is, therefore, humbly prayed that the instant case is based on misconception/misstatement, hence may graciously be dismissed with appropriate cost.


Chief Secretary,
Govt. of Khyber Pakhtunkhwa,
Respondent No. 1


Secretary,
Higher Education Department,
Respondent No. 2


Secretary,
Finance Department,
Respondent No. 3


Director,
Higher Education Department,
Respondent No. 4

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR.

S.A # 379/23

Mr. Saeed Ullah Jan Appellant

Versus

Govt of Khyber Pakhtunkhwa,
Through Secretary, Higher Education,
Khyber Pakhtunkhwa, Peshawar
& others..... Respondents

AFFIDAVIT

I, Ihtisham, Superintendent (Litigation), Higher Education Department do hereby declare and affirm on oath that the contents of parawise comments are correct to the best of my knowledge and belief and that nothing has been concealed from this Honourable Court. It is further stated on oath that in this appeal the answering respondents have neither been placed ex-parte nor their defense has been struck off.

Identified by:


Deponent

21505-2684026-1
03339326783

ATTESTED


5-7-2023



DIRECTORATE OF HIGHER EDUCATION
KHYBER PAKHTUNKHWA
RANO GHARI, CHAMKANI STOP, PESHAWAR

Tel # 091-2650024 / Fax # 091-2260181

E-mail:- dhekpkesh@gmail.com Facebook.com/dhekpkeshwar Twitter.com/dhekpkeshwar1

AUTHORITY LETTER

Mr. Ihtisham, Superintendent (lit), Directorate of Higher Education is hereby authorised to submit the para wise comments in case SA# 379/2023 titled Saeed Ullah Jan versus Govt: Khyber Pakhtunkhwa on behalf of respondents.


Director,

Directorate of Higher Education,
Khyber Pakhtunkhwa Peshawar



TO BE SUBSTITUTED FOR THE SAME NUMBER AND DATE



GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGULATION WING)

NO. FD (SR-1) 12-1/2011
Dated Peshawar the: 4th June, 2011

TO:

1. All Administrative Secretaries to Govt. of Khyber Pakhtunkhwa.
2. The Senior Member, Board of Revenue, Khyber Pakhtunkhwa.
3. The Secretary to Governor, Khyber Pakhtunkhwa.
4. The Secretary to Chief Minister, Khyber Pakhtunkhwa.
5. The Secretary, Provincial Assembly, Khyber Pakhtunkhwa.
6. The Secretary Finance FATA, FATA Secretariat, Peshawar.
7. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
8. All Heads of Attached Departments in Khyber Pakhtunkhwa.
9. All District Coordination Officers in Khyber Pakhtunkhwa.
10. All Political Agents / District & Sessions Judges in Khyber Pakhtunkhwa.
11. The Registrar, Peshawar High Court, Peshawar.
12. The Chairman, Public Service Commission, Khyber Pakhtunkhwa.
13. The Chairman, Services Tribunal, Khyber Pakhtunkhwa.

Subject: FIXATION / PROTECTION OF PAY ON APPOINTMENT FROM ONE POST TO ANOTHER.

Dear Sir,

I am directed to refer to the Government of Pakistan, Finance Division, Islamabad letter No.FNo.4(2)R-II/1898-235/2010, dated 08-08-2010 and Judgment dated 01-08-2009 of Federal Service Tribunal, Islamabad in appeal No.1921(R) CS/2005 in respect of Mr. Sajjad Rashid and others on the subject noted above and to state that in pursuance of the above quoted letter, the Government of Khyber Pakhtunkhwa has decided that henceforth the benefit of protection of pay to the employees of autonomous bodies on their subsequent appointment in government service is not admissible as the employees of autonomous bodies are not civil servants within the meaning of Civil Servant Act 1973. However, the benefit of pay protection will be admissible to employees of such autonomous organizations who have adopted scheme of basic pay scales in to-to on their appointment in government offices, provided they have applied for the post through proper channel.

Yours Faithfully,

(MASOOD KHAN)
Deputy Secretary (Reg-II)

Endst: of even No. & date.

Copy forwarded for information to:

1. All the Heads of Autonomous / Semi Autonomous Bodies of Khyber Pakhtunkhwa.
2. Director, Local Fund Audit, Khyber Pakhtunkhwa, Peshawar.
3. Director, Treasuries and Accounts, Khyber Pakhtunkhwa, Peshawar.
4. All District Comptrollers of Accounts, Senior District Accounts Officers and District/Agency Accounts Officer in Khyber Pakhtunkhwa / FATA.
5. Director, FMIU, Finance Department
6. PS to Minister Finance, Khyber Pakhtunkhwa.
7. P.S to Secretary Finance.
8. PA to Spl: Secretary Finance.

(SHAUKAT ULLAH)
Section Officer (SR-I)

attested
(Signature)



DIRECTORATE OF HIGHER EDUCATION

KHYBER PAKHTUNKHWA

Rano Garhi, Peshawar

Tel # 091-2650025 / 93

E-mail:- dhekpkesha@gmail.com Facebook.com/dhekpkesha

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Peshawar

No. 876 / CA-I/ Estt: Branch/A-12/Saeedullah Jan/Chem:

Dated Peshawar the 21/2 /2022

To

The Secretary
Govt; of Khyber Pakhtunkhwa
Higher Education Department, Peshawar.

SUBJECT

APPLICATION FOR RE-FIXATION OF PAY (PROTECTION OF PAY).

Respected Sir,

السلام عليكم

I am directed to enclose herewith a self-explanatory application in respect of Mr. Saeedullah Jan, Assistant Professor of Chemistry, Govt; Post Graduate College, Timergara, Dir (Lower) regarding pay protection/ re-fixation of pay for appropriate action with the remarks that prior to joining this Department as Lecturer in Chemistry on 31.03.2003, he served as lecturer (B-17) on regular basis at Cadet College Razmak, North Waziristan, Tribal District w.e.f 27.06.1998 to 31.03.2003. He applied for the post of Lecturer (B-17) in Higher Education Department through proper channel (Copy enclosed).

2. Now he has requested for pay protection/ re-fixation of pay for the services rendered by him in Cadet College Razmak, North Waziristan, Tribal District which may be considered as per rules, please.

Yours Faithfully,

Endst; No. 876

Do **DY: DIRECTOR (ESTABLISHMENT)**

Copy of the above is forwarded to the Principal, Govt; Post Graduate College, Timergara, Dir (Lower) with reference to his Endst: No. 473 dated 25.01.2022.

*attached
Saeedullah Jan*

Do **DY: DIRECTOR (ESTABLISHMENT)**

Maya
Feb. 21, 2022

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**GOVT. OF KHYBER PAKHTUNKHWA
HIGHER EDUCATION, ARCHIVES &
LIBRARIES DEPARTMENT**

No.SO(C-II)/HED/11-4/2022/Pay Protection/2136
Dated Peshawar the 03rd August, 2022

To

The Director,
Higher Education Khyber Pakhtunkhwa,
Peshawar.

SUBJECT: **APPLICATION FOR RE-FIXATION OF PAY (PROTECTION OF PAY).**

I am directed to refer to your letter No.825/CA-I/Estt: Branch/A-12/Saeedullah/Chem: dated 21-02-2022 on the subject noted above and to enclose herewith a copy of Finance Department letter No.FD(SOSR-I)/12-4/2022/Saeedullah Khan dated 27.05.2022 and to inform that Finance Department regrets its inability to accede to the request, being not covered under the existing policy.

Encl: as Above.

A. F. Khan 3/8/22
SECTION OFFICER (COLLEGES-II)

Attested
[Signature]

DD/CA

8752 221

[Signature]
12/8



DIRECTORATE OF HIGHER EDUCATION
KHYBER PAKHTUNKHWA
Rano Garhi, Peshawar

Tel # 091-2650025 / 2650024

E-mail:- dhekpkes@ gmail.com Facebook.com/dhekpkes Peshawar Twitter.com/dhekpkes Peshawar1

Endst: No. 14750-51 /CA-I/ Estt: Branch/ A-12/Saeedullah Jan/ Chem:

Dated Peshawar the 12/08 /2023.

Copy of the overleaf is forwarded to the:-

1. Principal, Govt; Post Graduate College, Timergara, Dir (Lower) with reference to his letter No. 473 dated 25.01.2022 with the request to inform Mr. Saeedullah Jan, Assistant Professor of Chemistry of your College accordingly.
2. Section Officer (Colleges-II), Govt; of Khyber Pakhtunkhwa, Higher Education Department, Peshawar with reference to his letter No. referred above.

Mc **DY: DIRECTOR (ESTABLISHMENT)**

attented.

[Signature]