

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 6274/2020

BEFORE: **MRS RASHIDA BANO** ... **MEMBER (J)**
MISS FAREEHA PAUL ... **MEMBER (E)**

Mr. Taufiq, Lecturer in Statistics (BPS-17) GDC Barkhlozai, District Bajaur.
..... (*Appellant*)

Versus

1. The Secretary, Higher Education, Archives & Libraries Department, Khyber Pakhtunkhwa, Peshawar.
2. The Secretary Finance Department, Khyber Pakhtunkhwa, Peshawar.
3. The Director, Higher Education Department, Khyber Pakhtunkhwa, Peshawar. (*Respondents*)

Mr. Kamran Khan
Advocate

... For appellant

Mr. Muhammad Jan
District Attorney

... For respondents

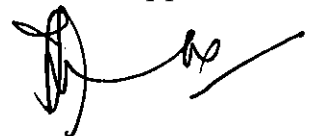
Date of Institution..... 25.06.2020

Date of Hearing..... 18.07.2023

Date of Decision..... 18.07.2023

JUDGEMENT

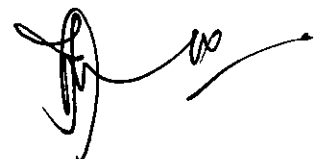
FAREEHA PAUL, MEMBER (E): Through this single judgment, we intend to dispose of instant appeal as well as connected Service Appeal No. 6275/2020 titled “Jawad Akhtar Versus the Secretary, Higher Education, Archives & Libraries Department Khyber Pakhtunkhwa, Peshawar and others”, (ii) Service Appeal No. 6276/2020 titled “Bakht Zamin Versus the Secretary, Higher Education, Archives & Libraries Department, Khyber Pakhtunkhwa Peshawar and others”, (iii) Service Appeal No. 6277/2020 titled “Adnan Khan Versus the Secretary, Higher Education, Archives & Libraries Department Khyber Pakhtunkhwa, Peshawar and others”, and (iv) Service Appeal No.



6278/2020 titled "Sabir Ullah Versus the Secretary, Higher Education, Archives & Libraries Department Khyber Pakhtunkhwa, Peshawar and others", as in all the appeals common questions of law and facts are involved.

2. The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 for protection of seniority of the appellant in the light of Section 8 of the Civil Servants Act, 1973 read with Rule 17 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 and against inaction of the respondents by not counting previous contractual service of the appellant w.e.f. 04.11.2010 till 06.12.2012. It has been prayed that on acceptance of the appeal, the respondents might be directed to count/fix the seniority of the appellant in the cadre of Lecturers from the date of regular appointment i.e. 06.12.2012 and the respondents might further be directed to count previous contractual service of the appellant towards regular service w.e.f. 04.11.2010 till 02.7.2012 with all back benefits alongwith any other remedy which this Tribunal deemed fit and appropriate.

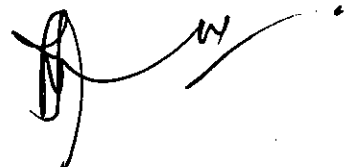
3. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was initially appointed in the respondent department as Lecturer in Computer Science, GDC Mathra vide order dated 04.11.2010 on ad hoc basis as stop gap arrangement. His services were further extended for one year and he was re-appointed vide order dated 07.02.2012 on ad hoc basis. On the recommendation of Khyber Pakhtunkhwa Public Service Commission, the respondents appointed the appellant as Lecturer in Statistics against the regular



post in GDC Barkhalozai, District Bajaur vide order dated 02.07.2012. Vide judgment dated 24.05.2017, other colleagues, including juniors of the appellant who were appointed on ad hoc basis in the year 2010, were regularized from the date of initial/ad hoc appointment in the light of the Regularization Act, 2014. The appellant filed departmental appeal before the respondents for protection of his seniority and counting of previous service w.c.f. the date of his first appointment i.e 04.11.2010 but the same was not responded within the stipulated period of ninety days; hence the present appeal.

4. Respondents were put on notice who submitted written replies/comments on the appeal. We 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.

5. Learned counsel for the appellant, after presenting the case in detail, argued that under Section 8 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 read with Rule 17 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, the appellant was entitled for counting of his previous contractual service w.c.f 04.11.2010 which was denied to him without any reason. He further argued that under Article 38(e) of the Constitution of Islamic Republic of Pakistan, 1973, State is bound to reduce disparity in the income and earning of the individuals, including persons in the various services of Pakistan. He further argued that there was no break in the service of the appellant from the date of his initial appointment on ad hoc basis and his regular appointment upon recommendation of Khyber



Pakhtunkhwa Public Service Commission. He further argued that in the light of Rule 2.3 of the West Pakistan, Pension Rules, 1963, the appellant was fully entitled for the grant of pay fixation from the date of initial appointment. He requested that the appeal might be accepted as prayed for.

6. Learned District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that the appellant was appointed as Lecturer in Statistics on ad hoc basis as a stop gap arrangement for a period of one year up to 04.11.2011. Thereafter, he was re-appointed on ad hoc basis vide order dated 07.02.2012 for one year. He further argued that the appellant was appointed on regular basis in 2012 through Public Service Commission and his inter-se seniority was prepared according to his merit position. So far as the decision dated 24.05.2017 was concerned, the department had filed an appeal in the august Supreme Court of Pakistan, where leave to appeal had been granted. He further argued that the appellant had not filed any department appeal and under Section 4 (a) of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, the appeal was not maintainable and requested that it might be dismissed.

7. Arguments and record presented before us transpire that the appellant was appointed as Lecturer in Statistics (BS-17), on the recommendation of Khyber Pakhtunkhwa Public Service Commission, on 02.07.2012. Prior to that, he was appointed as Lecturer (BS-17) on 04.11.2010 on ad hoc basis, as a stop gap arrangement for a period of one year, or till the availability of selectee of Khyber Pakhtunkhwa Public Service Commission. That ad hoc arrangement




was extended by another order dated 07.02.2012 for one year. The notification dated 04.11.2010 and 07.02.2012 clearly mention the terms and conditions of the appointees that they would be on ad hoc basis for a period of one year or till the arrival of selectees of the Khyber Pakhtunkhwa Public Service Commission and that they would not claim any right of regularization. From those notifications, it is evident that the post of Lecturer in BS-17 is to be filled through KP PSC and that the arrangement by the departmental authorities till the completion of process of KP PSC was purely on ad hoc and a stop gap arrangement so that the studies of the students in colleges did not suffer.

8. As far as prayer of the appellant is concerned, it has two parts; first, he has asked to count/fix the seniority in the case of Lecturers from the date of regular appointment i.e. 2012. On that, the respondent department has annexed a merit order of the KP PSC and stated that their seniority would be determined on that merit order according to which the appellant is at serial No. 22. Second part of prayer of the appellant states that his previous contractual service be counted towards regular service with all back benefits from 04.11.2010 to 02.07.2012. On the second part, the terms and conditions as mentioned in the appointment notifications dated 04.11.2010 and 07.02.2012 are very clear. The appellant cannot claim any benefit of the previous service which was purely an ad hoc and stop gap arrangement till the arrival of regular selectees of KP PSC. He had agreed to those terms and conditions upon joining his position as Lecturer at that time.



9. In view of the above discussion, the service appeal in hand as well as the connected appeals are dismissed with cost. Consign,

10. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 18th day of July, 2023.*


(FAREEHA PAUL)
Member (E)

Fazle Subhan, P.S


(RASHIDA BANO)
Member (J)