



1<sup>st</sup> June, 2023

1. Learned counsel for appellant present. Mr. Muhammad Jan,  
District Attorney for respondents present.
2. Learned counsel for appellant requested for adjournment as  
he has not prepared the brief. Adjourned. To come up for arguments  
on 11.09.2023 before D.B. P.P given to the parties.

SCANNED  
KPST  
Peshawar

  
(Salah-Ud-Din)  
Member (J)

  
(Kalim Arshad Khan)  
Chairman

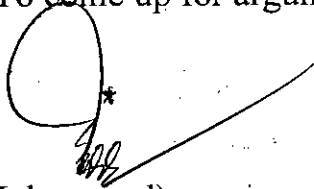
\*Mutazem Shah\*

20.12.2022

Learned counsel for the appellant present. Mr. Naseer-ud-Din Shah, Assistant Advocate General alongwith Mr. Tufail, Assistant for the respondents present.

Learned counsel for the appellant requested for adjournment on the ground that he has not made preparation for arguments. Adjourned. To come up for arguments on 16.03.2023 before D.B.

SCANNED  
KAGBT  
Peshawar



(Mian Muhammad)  
Member (E)



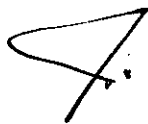
(Salah-ud-Din)  
Member (J)

16<sup>th</sup> Mar, 2023

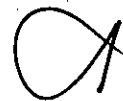
Junior to counsel for the appellant present. Mr. Asad Khan, Assistant Advocate General for respondents present.

Former requested for adjournment as senior counsel for appellant is not available being busy before the Hon'ble Peshawar High Court, Peshawar. Adjourned. To come up for arguments on 01.06.2023 before D.B. PP given to the parties.

SCANNED  
KAGBT  
Peshawar



(Salah-Ud-Din)  
Member (J)



(Kalim Arshad Khan)  
Chairman

22.08.2022

Junior of learned counsel for the appellant present. Mr. Muhammad Usman ADEO alongwith Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present.

Junior of learned counsel for the appellant made a request for adjournment on the ground that learned counsel for the appellant is busy before the Hon'ble Peshawar High Court, Peshawar. Adjourned. To come up for arguments on 01.11.2022 before the D.B.



(Rozina Rehman)  
Member(J)

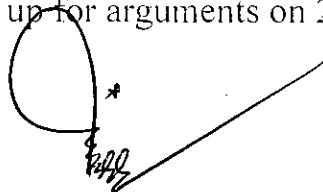


(Salah-Ud-Din)  
Member(J)

01.11.2022

Mr. Umer Farooq, Advocate, junior of learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney for the respondents present.

Junior of learned counsel for the appellant requested for adjournment on the ground that learned counsel for the appellant is busy in the august Peshawar High Court, Bannu Bench. Adjourned. To come up for arguments on 20.12.2022 before the D.B.



(Mian Muhammad)  
Member (E)



(Salah-Ud-Din)  
Member (J)

Stipulated period passed reply not submitted.

29.07.2021

Learned Addl, A.G be reminded about the omission and for submission of reply/comments within extended time of 10 days.


  
Chairman

08.11.2021

Clerk of learned counsel for the appellant present. Mr. Kabirullah Khattak, Addl: AG alongwith Mr. Touseef, ADEO for respondents present.


Representative of the respondents submitted written reply/comments which is placed on file. Arguments could not be heard due to general strike of the Bar. Adjourned. To come up for arguments on 01.03.2022 before D.B.

  
(Mian Muhammad)  
Member(E)

  
(Rozina Rehman)  
Member(J)


01.03.2022

Due to retirement of the Worthy Chairman, the Tribunal is defunct, therefore, case is adjourned to 03.06.2022 for the same as before.

  
Reader.

03.06.2022

Bench is incomplete, therefore, case is adjourned to 22.08.2022 for the same as before.

  
Reader.

21.06.2021

Counsel for the appellant present. Preliminary arguments heard.

*2021*

Points raised need consideration. The appeal is admitted to regular hearing, subject to just and legal objections. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for submission of written reply/comments in office within 10 days of the receipt of notices positively. If the written reply/comments are not submitted within the stipulated time, the office is directed to submit the file with a report of non-compliance. File to come up for arguments on 08.11.2021 before the D.B.

*ms*

Appellant Deposited  
Security & Process Fee

*24/6/21*

*[Signature]*


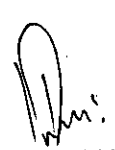

*[Signature]*  
Chairman

Form- A

FORM OF ORDER SHEET

Court of \_\_\_\_\_

Case No.- 1236 /2021

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	20/01/2021	<p>The appeal of Mst. Bibi Fahmeeda presented today by Mr. Noor Muhammad Khattak Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-	22.03.2021	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>22/03/21</u></p> <p style="text-align: right;"> CHAIRMAN</p> <p>Mr. Afrasiyab Khan Wazir, Advocate, junior of learned counsel for the appellant present and requested for adjournment on the ground that learned counsel for the appellant is unable to appear before the Tribunal due to illness. Adjourned. To come up for preliminary hearing before S.B on 21.06.2021.</p> <p style="text-align: right;"> (SALAH-UD-DIN) MEMBER (JUDICIAL)</p>

SCANNED  
KPBT  
Peshawar

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

APPEAL NO. 1236 /2021

**BIBI FAHMEEDA**

**VS**

**EDUCATION DEPTT:**

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**APPELLANT**

**THROUGH:**

  
**NOOR MOHAMMAD KHATTAK**  
**ADVOCATE**

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

**APPEAL NO. \_\_\_\_\_/2021**

Miss. Bibi Fahmeeda, PST (BPS-12),  
GGPS Garwal Phulra, District Mansehra.....Appellant

**VERSUS**

- 1- The Secretary, E&SE Department, Khyber Pakhtunkhwa, Peshawar.
- 2- The Secretary Finance Department, Khyber Pakhtunkhwa, Peshawar.
- 3- The Director, E&SE Department, Khyber Pakhtunkhwa, Peshawar.
- 4- The District Education Officer, District Mansehra.

.....**RESPONDENTS**

**APPEAL UNDER SECTION- 4 OF THE KHYBER PAKHTUNKHWA**  
**SERVICE TRIBUNAL ACT, 1974 FOR FIXATION OF PAY IN**  
**BPS-15 w.e.f. 19-05-1996 i.e. FROM THE DATE OF INITIAL**  
**APPOINTMENT TO THE POST OF CT AND AGAINST NO**  
**ACTION TAKEN ON THE DEPARTMENTAL APPEAL OF**  
**APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY**  
**DAYS.**

**PRAYER:**

That on acceptance of this appeal the appellant may kindly be allowed/granted pay fixation w.e.f. 19-05-1996 with all back benefits. Any other remedy which this august Service Tribunal deems fit that may also be awarded in favor of the appellant.

**R/SHEWETH:**

**ON FACTS:**

**Brief facts giving rise to the present appeal are as**  
**under:**

- 1- That the appellant was initially appointed in the respondent Department as CT vide order dated 19-05-1996 as stop gap arrangement. (Copy of the appointment order is attached as annexure.....A)
- 2- That later on the services of the appellant along with others were dispensed with on the ground that their services were no more required to the Department.
- 3- That it is also worth mentioning that on promulgation of Khyber Pakhtunkhwa Sacked Employee Act, 2012 the appellant approach the concerned authority for his re-instatement being covered under the said act but the same was not considered. That



appellant feeling aggrieved filed writ petition before the Honorable Peshawar High Court, Abbottabad Bench, which was allowed in favor of the appellant. Copy of the Act is attached as annexure.....**B).**

- 4- That in light of the judgment of the Honorable Peshawar High Court Abbottabad Bench the appellant was appointed as CT (BPS-15) vide Notification dated 09.08.2018. That in response the appellant submitted charge report and started performing his duty quite efficiently and up to the entire satisfaction of his superiors. Copies of the appointment order, medical certificate and charge report are attached as annexure .....**C, D & E).**
- 5- That the appellant filed Departmental appeal before respondents for fixation of his pay w.e.f the date of his first appointment i.e. 19-05-1996 but no reply has been received from the quarter concerned so far. Copy of Departmental appeal is attached as annexure..... **F).**
- 6- That feeling aggrieved and having no other remedy the appellant filed the instant appeal on following grounds amongst the others.

**GROUND:**

- A- That the inaction of respondents by not allowing pay fixation to the appellant w.e.f 19-05-1996 is against the law, facts, norms of natural justice and materials on the record.
- B- That appellant has not been treated in accordance with law and rules by the respondent Department on the subject noted above and as such the respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973.
- C- That the respondents acted in arbitrary and mala fide manner by not allowing pay fixation to the appellant w.e.f 19-05-1996 and as such the inaction of the respondents is violation of law and rules.
- D- That the inaction of the respondents is discriminatory and against the norms of natural justice, therefore not tenable in the eye of law.
- E- That under Article 38 (e) of the Constitution 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, therefore in light of the above mentioned Article the appellant is fully entitled for the grant of pay fixation w.e.f the date of initial appointment.
- F- That promulgation of Sacked Employee Act, 2012 established that dismissal of appellant along with others from services was against the

law, hence the appellant is entitled to pay fixation from date of his first appointment.

G- That in light of Rule 2.3 of the West Pakistan, Pension Rules, 1963 the appellant is fully entitle for the grant of pay fixation from the date of initial appointment.

H- That appellant seeks permission to advance other grounds and proofs at the time of hearing.

It is therefore, most humbly prayed that the appeal of the appellant may be accepted as prayed for.

**APPELLANT**

**BIBI FAHMEEDA**

**THOROUGH:**

**NOOR MOHAMMAD KHATTA**

**MIR ZAMAN SAFI**

**&**

**AFRASIAB KHAN WAZIR  
ADVOCATES**

OFFICE OF THE DISTRICT EDUCATION OFFICER(FEMALE) PRIMARY,MANSEHRA.

OFFICE ORDER NO.

DATED

19/5/1996

APPOINTMENT ORDER:

On the recommendation of the Hon'ble Minister for Primary Education, NWFP and desired by the Minister for Local Govt: & Rural Development, NWFP, Peshawar Miss Bibi Fahmeeda D/O Mohammad Saeed R/O Phulra. is hereby appointed as PTC/PT against the newly created post at GGPS Khalqu Maira. in BPS-7 @ Rs. 1480-84-2695 1480/- P.M(fixed) plus usual allowances as admissible under the rules w.e.f. their taking over charge in the interest of public service with immediate effect, in PF-46.

TERMS & CONDITIONS:

1. Her appointment is purely on temporary basis and liable for termination at any stage without any notice or assigning any reason.
2. Her appointment is subject to the verification of her original Academic and Professional Certificates/documents. If her original Certificates/documents are not found correct she should not be handed over charge.
3. She should not be handed over charge if her age is below 18 years and above 35 years.
4. Her pay will not be drawn until she produce age and health Certificate from the Medical Superintendent, DHQ, Hospital, Mansehra.
5. The appointment shall stand automatically cancelled if she failed to join the post within 15 days after issuance of the office order.
6. In case she wish to resign from service/post she will have to give one month prior notice or forfeit one month pay in lieu of short notice.
7. She is required to get verify her Academic Certificates from the Board/University.
8. She should submit her charge report to all concerned.
9. She is required to get checke her Documents/Professional Certificate before handed over charge from the D.E.O(Female), Primary, Mansehra.

(SALIMA ALAM MALIK)  
DISTRICT EDUCATION OFFICER(FEMALE)  
PRIMARY MANSEHRA.

Endst:No. 1436-40

Copy to:-

1. The District Accounts Officer, Mansehra.
2. The P.S to Hon'ble Minister for Primary Education, NWFP, Peshawar.
3. The P.S to Hon'ble Minister for Local Govt: & Rural Devt, NWFP, Peshawar.
4. The SDEO(Female), Mansehra.
5. The candidate concerned.
6. Office Order File.

*Salima*  
DISTRICT EDUCATION OFFICER(FEMALE)  
PRIMARY MANSEHRA.

B<sup>n</sup>      (5)

(1)

THE KHYBER PAKHTUNKHWA  
SACKED EMPLOYEES (APPOINTMENT) ACT, 2012.

(KHYBER PAKHTUNKHWA ACT NO. XVII OF 2012)

*[first published after having received the assent of the Governor of  
the Khyber Pakhtunkhwa in the Gazette of Khyber Pakhtunkhwa  
(Extraordinary), dated the 20<sup>th</sup> September, 2012].*

AN  
ACT

*to provide relief to those sacked employees in  
the Government service, who were dismissed,  
removed or terminated from service, by  
appointing them into the Government service.*

WHEREAS it is expedient to provide relief to those sacked employees who were appointed on regular basis to a civil post in the Province of the Khyber Pakhtunkhwa and who possessed the prescribed qualification and experience required for the said post, during the period from 1<sup>st</sup> day of November 1993 to the 30<sup>th</sup> day of November, 1996 (both days inclusive) and were dismissed, removed, or terminated from service during the period from 1<sup>st</sup> day of November 1996 to 31<sup>st</sup> day of December 1998 on various grounds;

WHEREAS the Federal Government has also given relief to the sacked employees by enactment;

AND WHEREAS the Government of the Khyber Pakhtunkhwa has also decided to appoint these sacked employees on regular basis in the public interest;

It is hereby enacted as follows:

1. Short title, extent and commencement.---(1) This Act may be called the Khyber Pakhtunkhwa Sacked Employees (Appointment) Act, 2012.

(2) It shall apply to all those sacked employees, who were holding various civil posts during the period from 1<sup>st</sup> day of November, 1993 to 30<sup>th</sup> day of November, 1996 (both days inclusive).

(3) It shall come into force at once.

2. Definitions.--- In this Act, unless the context otherwise requires, the following expressions shall have the meanings hereby respectively assigned to them that is to say,-

a b

- 6
- (a) "civil post" means a post created by the Finance Department of Government for the members of civil service of the Province;
  - (b) "Department" means the Department and the Attached Department as defined in the Khyber Pakhtunkhwa Government Rules of Business, 1985, including the Divisional and District Offices working thereunder;
  - (c) "Government" means the Government of the Khyber Pakhtunkhwa;
  - (d) "Prescribed" means prescribed by rules;
  - (e) "Province" means the Province of the Khyber Pakhtunkhwa;
  - (f) "rules" means the rules made under this Act; and
  - (g) "Sacked employee" means a person who was appointed on regular basis to a civil post in the Province of the Khyber Pakhtunkhwa and who possessed the prescribed qualification and experience for the said post at that time, during the period from 1<sup>st</sup> day of November 1993 to the 30<sup>th</sup> day of November, 1996 (both days inclusive) and was dismissed, removed, or terminated from service during the period from 1<sup>st</sup> day of November 1996 to 31<sup>st</sup> day of December 1998 on the ground of irregular appointments;

3. Appointment of sacked employees.--- Notwithstanding anything contained in any law or rule for the time being in force, on the commencement of this Act, all sacked employees subject to section 7, may be appointed in their respective cadre of their concerned Department, in which they occupied civil posts before their dismissal, removal and termination from service:

Provided that the sacked employees shall be appointed against thirty percent of the available vacancies in the said Department:

Provided further that the appointment of sacked employees shall be subject to the medical fitness and verification of their character antecedents to the satisfaction of the concerned competent authority.

4. Age relaxation.--- The period during which a sacked employee remained dismissed, removed or terminated from service, till the date of their appointment shall be deemed to have been automatically relaxed and there shall be no further relaxation under any rules for the time being in force.

ac - J

5. Sacked employees shall not be entitled to claim seniority and other back benefits.--- A sacked employee appointed under section 3, shall not be entitled to any claim of seniority, promotion or other back benefits and his appointment shall be considered as fresh appointment.

6. Preference on the basis of age.--- On the occurrence of a vacancy in the respective cadre of the concerned Department of the sacked employee against the thirty percent available share, preference shall be given to the sacked employee who is older in age.

7. Procedure for appointment.---(1) A sacked employee, may file an application, to the concerned Department within a period of six months from the date of commencement of this Act, for his appointment in the said Department:

Provided that no application for appointment received after the due date shall be entertained.

(2) The concerned Department shall maintain a list of all such sacked employees whose applications are received under sub-section (1) in the respective cadres in chronological order.

(3) If any vacancy occurs against the thirty percent available share of the sacked employee in any Department, the senior in age from such sacked employee shall be considered by the concerned Departmental Selection Committee or the District Selection Committee, as the case may be, to be constituted in the prescribed manner, for appointment:

Provided that no willingness or response is received within a period of thirty days, the next senior sacked employee shall be considered for appointment.

(4) The Concerned Departmental Selection Committee or District Selection Committee, as the case may be, will determine the suitability or eligibility of the sacked employee.

(5) If no sacked employee is available against thirty percent vacancy reserved in respective cadre in a Department, then the post shall be filled through initial recruitment.

8. Removal of difficulties.--- If any difficulty arises in giving effect to any of the provisions of this Act, the Chief Minister Khyber Pakhtunkhwa may issue such order not inconsistent with the provision of this Act as may appear to him to be necessary for the purpose of removing the difficulty:

Provided that no such power shall be exercised after the expiry of one year from coming into force of this Act.

Handwritten signature or initials.

9. Act to override other laws.---Notwithstanding anything to the contrary contained in any other law or rules for the time being in force, the provisions of this Act shall have overriding effect and the provisions of any other law or rules to the extent of inconsistency to this Act, shall cease to have effect.

10. Power to make rules.--- Government may make rules for carrying out the purposes of this Act.

ad

(9)

## OFFICE OF THE DISTRICT EDUCATION OFFICER (FEMALE) MANSEHRA

### NOTIFICATION

In pursuance of Khyber Pakhtunkhwa School Employees (Appointment) Act 2012 and order by Honorable Peshawar High Court Abbottabad Bench, on the recommendation of departmental selection committee, the competent authority in the E&SE District Mansehra is pleased to order the appointment of the following sacked employee in BPS No. 12 (Rs: 13320-960-42120) plus usual allowances as admissible under the rules against the post of Pst as mentioned against their names with immediate effect on the terms and conditions given below:-

S#	Name	Father's Name	D.O.B	Posted AT	Remarks
1	Bibi Fehmida	Muhammad Saeed	06/04/75	GGPS Garwal Phulra	Against Pst vacant post
2	Nazia Rashid	Abdur Rashid	25/06/76	GGPS Chanaki	.do.
3	Naila Jabeen	Malik Rustam	15/09/77	GGPS Oghi	.do.

### TERMS & CONDITIONS:

1. No TA/DA etc is allowed.
2. Charge reports should be submitted to all concerned.
3. Their appointment are subjected to the condition that their "Certificates/others documents be verified from the concerned institutions before release of their salary.
4. They will be governed by such rules and regulations enforced and as may be prescribed by the government from time to time for the category of the government servants to which they belong.
5. Their appointment have been made in pursuance of Khyber Pakhtunkhwa, sacked employees (Appointment Act 2012. Hence under Section 4 of the said act the period during which they remain dismissed, removed or terminated from service, till the dated of their appointment should have been deemed automatically relaxed.
6. They should obtain Medical Fitness certificate from the Medical Superintendent from King Abdullah Hospital Mansehra.
7. In case they failed to assume the charge of their post within 15 days of their appointment, the candidature-ship will be stand automatically cancelled.
8. They will be on probation for a period of one year extendable to another one year keeping in view the performance.
9. They have not served in any other department/corporation/agency etc.
10. The Principal/Head mistress/DDQ should not release pay of the teacher till the verification of their documents.
11. The Principal/Head Mistress/DDOs concerned is directed to submit their degrees/ certificates etc for verification from the concerned University/Board.
12. In case their documents are found fake/bogus on verification from the issuing authority, their service shall be terminated and an FIR be lodged against the concerned teacher under the relevant law.
13. Their services are liable to termination on one month prior notice from either side in case of resignation without prior notice her one month pay/allowance shall be forfeited to government treasury.
14. In case of un-satisfactory performance, they will be proceeded under Govt: of Khyber Pakhtunkhwa E&D rules 2011.
15. Their appointment is made on school based. They will have to serve at the place of posting and their service is not transferable to any other station.
16. The competent authority has the right to rectify the errors/omission & if any noted/observed at any stage in instant order issued erroneously.
17. As per judgment of Honorable High Court Peshawar Bench Abbottabad, In case of having less academic/professional qualification as required for the post, the candidates must qualify that within three years after issue of this appointment order, failing which their appointment order shall stand cancelled automatically, without any further notice.
18. Their appointment have been made in pursuance of Khyber Pakhtunkhwa, sacked employees (Appointment) Act 2012. Hence under section: 5 of the said act they shall not be entitled to claim any of seniority, promotion and other back benefits.
19. They will be bound to compliance the current policy of appointment.

SD  
DISTRICT EDUCATION OFFICER  
(FEMALE) MANSEHRA

Dated 09/08 /2018.

6499-504  
Endstt: No. \_\_\_\_\_/Estt; Branch/AE-II/Sacked Employees

Copy of the above is forwarded to:-

1. Registrar Honourable High Court Peshawar Bench Abbottabad.
2. Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.
3. District Account Officer Mansehra.
4. District Monitoring Officer Mansehra.
5. Principal/Head Mistress/SDEOs with the direction to made necessary entries in all their record.
6. Concerned Teachers.
7. Office Copy.

DISTRICT EDUCATION OFFICER  
(FEMALE) MANSEHRA



OFFICE OF THE MEDICAL SUPERINTENDENT  
KING ABDULLAH TEACHING HOSPITAL MANSEHRA.  
HEALTH & AGE CERTIFICATE

(D)  
(10)

Name of Official Bibi Fahmeeda  
Father Name Muhammad Saeed  
Date of Birth 03-04-1975  
Caste of Race Tanoli  
Address Phulra Mansehra  
Tehsil Mansehra District Mansehra  
Exact height by measurement 5'  
Personal mark of Identification NIL  
National Identity Card No. 13503-0482987-2  
Signature of Official Bibi Fahmeeda  
Signature of head of Office \_\_\_\_\_

Seal of Office

I do hereby certify that I have examined Mr. \_\_\_\_\_  
Employment in the office of the \_\_\_\_\_

Bibi Fahmeeda  
Education department

And can not discover that he had any disease communicable of other constitutional affection or  
bodily infirmity except NIL

I do not consider this as disqualification of employment in the office of  
the as above. His age according to his own statement is 43 years and by appearance  
about 43 Years.

Left hand thumb and finger impression

~~OFFICE OF THE MEDICAL SUPERINTENDENT~~  
~~KING ABDULLAH TEACHING~~  
~~HOSPITAL MANSEHRA~~  
Medical Superintendent  
King Abdullah Teaching  
Hospital Mansehra

12-08-18



حائری رپورٹ

"E"

(11)

تصدیق کی جاتی ہے کہ حسابہ کی بی قلمبندیہ دفتر محمد سعید  
نے ڈسٹرکٹ ایجوکیشن آفیسر (زنانہ) مانسہرہ کے آرڈر نمبر 504-6499-  
تاریخ 09/08/2018 اور 2018-8-18 قبل از درجہ

لیٹور PSI حکم "گورنمنٹ ٹریننگ کالج" سکول گورنمنٹ  
سکول پبلک میں حائری کر دی ہے اور اسے علیحدہ  
کا پازہ منبھال کیا ہے۔

کاپی برائے اطلاع

- 1 - DEO (زنانہ) مدارس مانسہرہ
- 2 - SDEO (زنانہ) مدارس مانسہرہ
- 3 - ADD سکول پبلک

Raghu  
THE HEAD MISTRESS  
G.G.P.S Garwal  
Manshra

گورنمنٹ ٹریننگ کالج  
تذکرہ سکول مانسہرہ (سکول پبلک)

Fahmeedie

صارف کنندہ

To,

The Director, E&SE Department,  
Khyber Pakhtunkhwa, Peshawar

(12)  
F<sup>a</sup>

**DEPARTMENTAL APPEAL FOR FIXATION OF PAY IN  
BPS-12 W.E.F 19.05.1996 i.e. FROM THE DATE OF  
INITIAL APPOINTMENT**

Respected Sir,

It is most humbly stated that I was appointed before your good self-Department as PST vide order dated 19.05.1996. That later on the services of the applicant were dispensed with on the ground that his services were no more required to the Department. That on promulgation of KP sacked Employees Act, 2012 I was submitted an application for re-instatement being covered under the said law and the same was considered by the authorities and re-instated/appointed the applicant as PST (BPS-12) vide order dated 09.08.2018. That in response I have submitted my charge report and started my duty quite efficiently and upto the entire satisfaction of my superiors. That after appointment I was time and again requested the concerned authorities for fixation of pay w.e.f 19.05.1996 but in vain. That I am fully entitle for fixation of pay from the date of my initial appointment i.e. 19.05.1995 but the concerned authority has been appointed me with immediate effect. Sir, I am feeling aggrieved preferred this Departmental appeal before your good self.

It is therefore, most humbly prayed that on acceptance of this Departmental appeal I may kindly be allowed for pay fixation w.e.f 19.05.1996 with all other consequential benefits back benefits. Any other remedy which your good self deems fit that may also be awarded in my favor.

Dated: 28.09.2020

YOUR OBEIENTLY

BIBI RAHMEEDA, PST  
GGPS Garwal Phulra, District Mansehra

**VAKALATNAMA**

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

\_\_\_\_\_ OF 2021

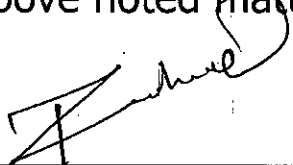
Bibi Fahmeeda (APPELLANT)  
(PLAINTIFF)  
(PETITIONER)

**VERSUS**

Edu. Dept. (RESPONDENT)  
(DEFENDANT)

I/We Bibi Fahmeeda  
Do hereby appoint and constitute **NOOR MOHAMMAD KHATTAK, Advocate, Peshawar** to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate Counsel on my/our cost. I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter.

Dated. \_\_\_\_/\_\_\_\_/2021

  
\_\_\_\_\_

**CLIENT**

  
**ACCEPTED**  
**NOOR MOHAMMAD KHATTAK**

**KAMRAN KHAN**

  
**AFRASIAB KHAN WAZIR**  
&

**HAIDER ALI**  
**ADVOCATES**

OFFICE:  
Flat No.4, 2<sup>nd</sup> Floor, Juma Khan  
Plaza, near FATA Secretariat,  
Warsak Road, Peshawar.  
Mobile No.0345-9383141

**BEFORE THE HONOURABLE SERVICE TRIBUNAL KPK PESHAWAR**  
**CAMP COURT ABBOTTABAD.**

Service Appeal 1236 /2021

Bibi FAHMEEDA .....APPELLANT.

**VERSUS**

1. Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education KPK Peshawar.
2. Secretary Finance department KPK Peshawar.
3. Director Elementary & Secondary Education Department KPK Peshawar.
4. District Education Officer (Female)

Mansehra.....RESPONDENTS.

**PARA WISE COMMENTS/WRITTEN REPLY ON BEHALF OF RESPONDENTS**

**No.1, 2, 3 & 4 AS UNDER:-**

**PRELIMINARY OBJECTIONS.**

1. That the appellant has got no cause of action locus standi.
2. That the appellant has concealed material facts from his Honorable Tribunal in the instant service appeal. Hence not entitled for any relief and appeal is liable to be dismissed without any further proceeding.
3. That the instant service appeal is based on malafide intentions.
4. That the appellant has not come to this Honorable Tribunal with clean hands.
5. That the appellant is not entitled for the relief he has sought from this Honorable Tribunal.
6. That the instant service appeal is against the prevailing law and rules.
7. That the appeal is based on malafide intentions just to put extra pressure on the Respondents for gaining illegal service benefits.
8. That the instant service appeal is not maintainable in its present form.
9. That the instant service appeal is time barred hence not maintainable.
10. That the service appeal of the Appellant is not maintainable as per Khyber Pakhtun Khawa Sacked Employee appointment Act, 2012. **Under section 5, wherein sacked Employee shall not be entitled to claim seniority and other back benefits. A sacked Employee appointment under section 3, shall not be entitles any claim seniority, promotion or other back benefits and his appointment shall be considered as fresh appointment.** Hence bound by Law.

**FACTUAL OBJECTIONS.**

1. Para No.1 is correct to the extent that the appellant was appointed as PST at GGPS khulqo Maira on 19-05-1996. And later on after the promulgation of Sacked Employee

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2012 act the petitioner was reappointed at GPS Gurwal Phulra Mansehra vide Endst: No. 6499-504 dated 19/08/2018. *(copy of initial appointment order and fresh appointment order are attached as annexure A (Page No. 4) and annexure C (Page No. 9) of the appeal)*

2. Para No. 2 is correct to the extent that their service was terminated which was contrary to law and policy, then such irregularly appointees were later on declared illegal and were terminated.
3. Para No.3 is incorrect whereas, after the promulgation of sacked employee act 2012 the appellant has failed to provide the complete service record at that time, therefore he was not considered for reappointment as a sacked employee, whereas the appellant has filed the writ petition before the Peshawar High Bench Abbottabad, which was allowed and after the scrutiny of the record and the approval of the DSC, the appellant was appointed as PST at GPS Gurwal Phulra Mansehra..
4. Para No.4 is correct hence no comments.
5. Para No.5 is incorrect and based on malafide intention that the appellant has not submitted any departmental appeal to the appellant authority
6. Para No.6 of the appeal is incorrect; the appellant is not aggrieved person in the meaning sacked Employee Act, 2012, inter-alia, on the following grounds.

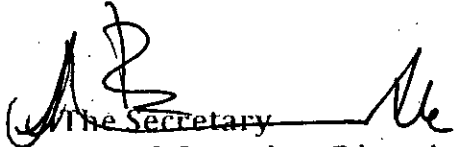
**GROUNDS:-**

- a. Para a is incorrect whereas *as per sacked Employee appointment Act, 2012, under section 5, sacked Employee shall not be entitled to claim seniority and other back benefits: A sacked Employee appointment under section 3, shall not be entitled to claim seniority, promotion or other back benefits and his appointment shall be considered as fresh appointment, wherein the appellant is not entitled to any claim of the back benefits. The similar nature case has already been dismissed by this Honourable Service Tribunal in his Judgment dated 20/2/2019 in service appeal No. 1377/2015 titled " Syed Naveed Hussain shah vs Govt of Kpk and others. ( Copy of Sacked Employee Act,2012 is attached as Annexure B of Appeal and Copy of the Judgment 20/02/2019 are annexed as annexure A )*
- b. Incorrect and denied, the appellant was appointed in the light of sacked Employee Act 2012, as per rules and policy and also direction of Honourable Peshawar High Court Abbottabad Bench. That the appointment order of the appellant was issued in accordance with the rules, Act and policy of the Government.
- c. Para No. b is incorrect hence denied.

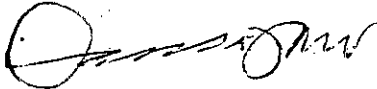
- d. Para No. c is incorrect whereas the appellant has been treated as per law and rules & act, wherein no question of violation of law, rules & policy.
- e. Para No. D is incorrect hence denied.
- f. Para E is Incorrect whereas according to the sacked employee act 2012 he was not entitled for any kind of back benefit.
- g. Para F is Incorrect and denied. As replied above.
- h. Para G is incorrect whereas the rules 2.3 of West Pakistan 1963 is not applicable on the case of appellant.
- i. However the Respondents seek leave of this Honorable Tribunal to submit addition grounds & record at the time arguments before this Honorable Tribunal.

**PRAYER:**

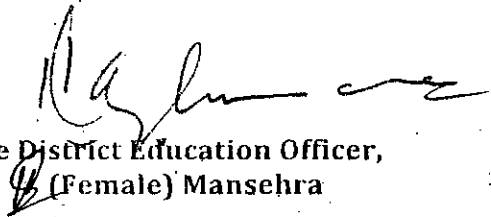
*In the view of above made submissions, it is requested that this Honorable Tribunal may very graciously be pleased to dismiss the instant service appeal with cost in favor of the Respondent Department in the interest of justice.*



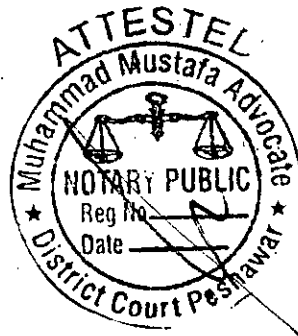
The Secretary  
Elementary & Secondary Education  
Khyber Pakhtunkhwa Peshawar.



The Director,  
Elementary & Secondary Education  
Khyber Pakhtunkhwa Peshawar



The District Education Officer,  
(Female) Mansehra



Mr. M.

**BEFORE THE HONOURABLE SERVICE TRIBUNAL KPK PESHAWAR**

**CAMP COURT ABBOTABAD.**

Service appeal no. 1236/2021

Fahmeeda Bibi..... Appellant.


Versus

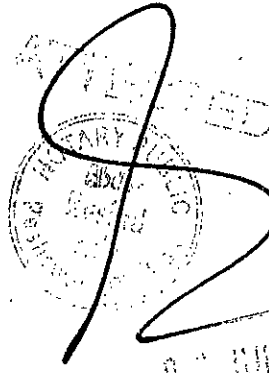
1. Government of Khyber Pakhtunkhwa through secretary elementary & secondary education kpk Peshawar.
3. Director elementary & secondary education department kpk Peshawar.
4. District education officer (Female) Mansehra ..... Respondents

**AFFIDAVIT**

---

I, Muhammad Usman, litigation officer DEO(female) mansehra do, hereby solemnly affirm and declare that the para wise comments of the service appeal no.1236/2021 tilted fahmeeda versus govt, is true to the best of my conviction and belief and nothing has been concealed from this Honourable court.

Deponent   
District Education Officer  
(Female) Mansehra.



01 JUN 2022



B<sup>n</sup> (5)

PUBLISHED BY THE GOVERNMENT OF KHYBER PAKHTUNKHWA

THE KHYBER PAKHTUNKHWA  
SACKED EMPLOYEES (APPOINTMENT) ACT, 2012.

(KHYBER PAKHTUNKHWA ACT NO. XVII OF 2012)

*[first published after having received the assent of the Governor of  
the Khyber Pakhtunkhwa in the Gazette of Khyber Pakhtunkhwa  
(Extraordinary), dated the 20<sup>th</sup> September, 2012].*

AN  
ACT

*to provide relief to those sacked employees in  
the Government service, who were dismissed,  
removed or terminated from service, by  
appointing them into the Government service.*

WHEREAS it is expedient to provide relief to those sacked employees who were appointed on regular basis to a civil post in the Province of the Khyber Pakhtunkhwa and who possessed the prescribed qualification and experience required for the said post, during the period from 1<sup>st</sup> day of November 1993 to the 30<sup>th</sup> day of November, 1996 (both days inclusive) and were dismissed, removed, or terminated from service during the period from 1<sup>st</sup> day of November 1996 to 31<sup>st</sup> day of December 1998 on various grounds;

WHEREAS the Federal Government has also given relief to the sacked employees by enactment;

AND WHEREAS the Government of the Khyber Pakhtunkhwa has also decided to appoint these sacked employees on regular basis in the public interest;

It is hereby enacted as follows:

1. Short title, extent and commencement.—(1) This Act may be called the Khyber Pakhtunkhwa Sacked Employees (Appointment) Act, 2012.
  - (2) It shall apply to all those sacked employees, who were holding various civil posts during the period from 1<sup>st</sup> day of November, 1993 to 30<sup>th</sup> day of November, 1996 (both days inclusive).
  - (3) It shall come into force at once.
2. Definitions.— In this Act, unless the context otherwise requires, the following expressions shall have the meanings hereby respectively assigned to them that is to say,-

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- (a) "civil post" means a post created by the Finance Department of Government for the members of civil service of the Province;
- (b) "Department" means the Department and the Attached Department as defined in the Khyber Pakhtunkhwa Government Rules of Business, 1985, including the Divisional and District Offices working thereunder;
- (c) "Government" means the Government of the Khyber Pakhtunkhwa;
- (d) "Prescribed" means prescribed by rules;
- (e) "Province" means the Province of the Khyber Pakhtunkhwa;
- (f) "rules" means the rules made under this Act; and
- (g) "Sacked employee" means a person who was appointed on regular basis to a civil post in the Province of the Khyber Pakhtunkhwa and who possessed the prescribed qualification and experience for the said post at that time, during the period from 1<sup>st</sup> day of November 1993 to the 30<sup>th</sup> day of November, 1996 (both days inclusive) and was dismissed, removed, or terminated from service during the period from 1<sup>st</sup> day of November 1996 to 31<sup>st</sup> day of December 1998 on the ground of irregular appointments;

3. Appointment of sacked employees.--- Notwithstanding anything contained in any law or rule for the time being in force, on the commencement of this Act, all sacked employees subject to section 7, may be appointed in their respective cadre of their concerned Department, in which they occupied civil posts before their dismissal, removal and termination from service:

Provided that the sacked employees shall be appointed against thirty percent of the available vacancies in the said Department:

Provided further that the appointment of sacked employees shall be subject to the medical fitness and verification of their character antecedents to the satisfaction of the concerned competent authority.

4. Age relaxation.--- The period during which a sacked employee remained dismissed, removed or terminated from service, till the date of their appointment shall be deemed to have been automatically relaxed and there shall be no further relaxation under any rules for the time being in force.

*Handwritten signature or mark*

(7)

5. Sacked employees shall not be entitled to claim seniority and other back benefits.— A sacked employee appointed under section 3, shall not be entitled to any claim of seniority, promotion or other back benefits and his appointment shall be considered as fresh appointment.

6. Preference on the basis of age.— On the occurrence of a vacancy in the respective cadre of the concerned Department of the sacked employee against the thirty percent available share, preference shall be given to the sacked employee who is older in age.

7. Procedure for appointment.—(1) A sacked employee, may file an application, to the concerned Department within a period of six months from the date of commencement of this Act, for his appointment in the said Department:

Provided that no application for appointment received after the due date shall be entertained.

(2) The concerned Department shall maintain a list of all such sacked employees whose applications are received under sub-section (1) in the respective cadres in chronological order.

(3) If any vacancy occurs against the thirty percent available share of the sacked employee in any Department, the senior in age from such sacked employee shall be considered by the concerned Departmental Selection Committee or the District Selection Committee, as the case may be, to be constituted in the prescribed manner, for appointment:

Provided that no willingness or response is received within a period of thirty days, the next senior sacked employee shall be considered for appointment.

(4) The Concerned Departmental Selection Committee or District Selection Committee, as the case may be, will determine the suitability or eligibility of the sacked employee.

(5) If no sacked employee is available against thirty percent vacancy reserved in respective cadre in a Department, then the post shall be filled through initial recruitment.

8. Removal of difficulties.— If any difficulty arises in giving effect to any of the provisions of this Act, the Chief Minister Khyber Pakhtunkhwa may issue such order not inconsistent with the provision of this Act as may appear to him to be necessary for the purpose of removing the difficulty:

Provided that no such power shall be exercised after the expiry of one year from coming into force of this Act.

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9. Act to override other laws.—Notwithstanding anything to the contrary contained in any other law or rules for the time being in force, the provisions of this Act shall have overriding effect and the provisions of any other law or rules to the extent of inconsistency to this Act, shall cease to have effect.

10. Power to make rules.— Government may make rules for carrying out the purposes of this Act.

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR  
AT CAMP COURT ABBOTTABAD.

Service Appeal No. 1377/2015

Date of Institution ... 10.12.2015

Date of Decision ... 20.02.2019



Syed Naveed Shah son of Muazzam Shah, PST, Govt: Primary School Maira  
Hajjam, District Munsheerwa. ... (Appellant)

VERSUS

Govt: of Khyber Pakhtunkhwa, through Secretary Elementary and Secondary  
Education, Peshawar and two others. ... (Respondents)

MR. MUHAMMAD ARSHAD KHAN TANOLI,  
Advocate

For appellant.

MR. MUHAMMAD BILAL,  
Deputy District Attorney

For respondents

MR. AHMAD HASSAN,

MEMBER (Executive)

MR. MUHAMMAD AMIN KHAN KUNDI

MEMBER (Judicial)

JUDGMENT

AHMAD HASSAN, MEMBER:- Arguments of the learned counsel for the  
parties heard and record perused.

ATTESTED

ARGUMENTS

2. Learned counsel for the appellant argued that he joined the Education Department  
as PST on 22.11.1994. That his services were terminated vide order dated 13.02.1997.  
After promulgation of Khyber Pakhtunkhwa Sacked Employees Appointment Act 2012,  
all the employees who were appointed in the year 1993-96 and terminated in 1997-98  
were reinstated. As the appellant was not reinstated so he filed writ petition no. 401-  
A/2012 before the Peshawar High Court, Abbottabad bench. Judgment of the Peshawar  
High Court Abbottabad bench dated 22.05.2013 was not implemented by the respondents  
so C.O.C no. 70-A/2013 was filed. Resultantly, vide impugned order dated 01.07.2015,  
the appellant was reinstated in service with immediate effect. Feeling aggrieved, he filed

departmental appeal on 29.07.2015 which was not responded within the stipulated period, hence, the present service appeal. The appellant is required to give all service benefits w.e.f 03.02.1997 to 01.07.2015.

3. Learned Deputy District Attorney argued that as the appellant was appointed in violation of invogue rules, hence, his services were terminated vide order dated 13.02.1997. Under the Khyber Pakhtunkhwa Sacked Employees Appointment Act 2012, he was reappointed as PST vide order dated 01.07.2015. According Section-5 of the said Act sacked employees shall not be entitled to claim seniority and other back benefits. Appellant was treated according to law and rules.

### CONCLUSION.

4. It is not disputed that initially the appellant was appointed as PST at GPS D m Nalla on 22.02.1994. Later on when it came to the notice of the respondents that his appointment was made in violation of rules, hence, his services were terminated vide order dated 13.02.1997. In the meanwhile the provincial government promulgated Khyber Pakhtunkhwa Sacked Employees Appointment Act 2012. When grievances of the appellant were not redressed at departmental level he resorted to litigation by filing writ petition in Peshawar High Court, Abbottabad Bench. Finally in pursuance of the directions of the Peshawar high Court, Abbottabad Bench he was appointed as PSt at GPS Mira Hajam with immediate effect vide order dated 01.07.2015. The appellant is asking for reappointment from the date of his termination from service dated 03.02.1997. Attention is drawn to Section-5 of the aforementioned Act, wherein it is clearly laid down that the sacked employee shall not be entitled to claim seniority and other back benefits. The relevant provision is reproduced below:-

"A sacked employee appointed under Section-3, shall not be entitled to any claim of seniority, promotion or other back benefits and his appointment shall be considered as fresh appointment"

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As a sequel to above, the appeal is dismissed. Parties are left to bear their own costs. File be consigned to the record room.

(AHMAD HASSAN)  
Member  
Camp Court Abbottabad.

*Muhammad Amin*  
(MUHAMMAD AMIN KHAN KUNDI)  
Member

ANNOUNCED  
20.02.2019

Date of Presentation of Application 03-05-19  
 Number of Vols. 1650  
 Copying Fee 10  
 Deposit —  
 Total 10  
 Name of Copyist [Signature]  
 Date of Completion of Copy 15-5-19  
 Date of Delivery of Copy 15-5-19

CONFIDENTIAL  
 [Signature]  
 [Stamp]