

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1402/2022

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

1. Khan Afzal S/O Fazl-e-Haq, Husband, 2. Mst. Dardana Manahil
3. Mst. Dardana Ghazal daughters and 4. Muhammad Abu Huraira,
son are legal heirs of Mst. Shehnaz Begum LHW, R/O of Patwar
Bala Ghari Fazl-e-Haq Peshawar.

.... (Appellants)

VERSUS

1. Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar.
2. Government of Khyber Pakhtunkhwa through Secretary Health, Civil Secretariat, Peshawar.
3. Director General Health Services, Peshawar.
4. District Health Officer, Peshawar.
5. District Accounts Officer, AG Office Peshawar.

.... (Respondents)

Mr. Hamid Ullah
Advocate

... For legal heirs

Mr. Asif Masood Ali Shah
Deputy District Attorney

... For respondents

Date of Institution.....26.09.2022
Date of Hearing.....02.08.2022
Date of Decision.....02.08.2022

JUDGMENT

RASHIDA BANO, MEMBER (J): The instant service appeal has been instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as below:



“On acceptance of instant appeal the pensionary benefits, family pension and gratuity may kindly be granted in favour of appellants.”

2. Brief facts of the case, as given in the memorandum of appeal, are that predecessor of appellant was appointed as Lady Health Worker (LHW) on contract basis vide order dated 01.11.1997. Upon promulgation of Khyber Pakhtunkhwa Regulation of Lady Health Workers Programme and employees (Regularization and Standardization) Act 2014, the services of the appellant alongwith others were regularized vide office order dated 19.09.2014 with effect from 1st July 2012. During service Mst. Shahnaz Begum died on 24.11.2021. Despite several requests the respondent department has not issued family pension/pensionary benefit and gratuity to the predecessor of appellant. They filed departmental appeal on 12.06.2022 which was not responded within statutory period, hence the instant service 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 Deputy District Attorney and perused the case file with connected documents in detail.

4. Learned counsel for the appellant has argued that the predecessor of appellant was initially appointed as Lady Health Worker on contract basis vide order dated 01.11.1997, later on her services were on regularized vide office order dated 19.09.2014 with effect from 1st July 2012, therefore, in view of Rule 2.3 of West Pakistan Civil Services Pension Rules, 1963, the period of contract service shall be counted for the purpose of pensionary

benefits; that predecessor of appellant has rendered about 24 years service, therefore, depriving her of pensionary benefits is not only against the fundamental rights of the appellant guaranteed under the Constitution but is also violation of Rule 2.3 of the West Pakistan Civil Services Pension Rules, 1963, that same nature issue was raised before the larger bench of august Peshawar High Court in Writ petitions No. 3394-P/2016 and 2246-P/2016, in which the august Peshawar High Court vide judgments dated 22.06.2017 laid down the dictum that the service rendered on fixed pay/contract basis is countable towards pension fixation and retirement benefits; that in view of Notification dated 22.05.2019 issued by the Government of Khyber Pakhtunkhwa Finance Department (Regulation Wing), the fixed pay/contract period of service of the appellant was required to have been counted towards pensionary benefits.

5. Conversely, learned Deputy District Attorney for the respondents, has contended that the appellant was initially appointed as Lady Health Worker in the year 1997 on fixed pay/contract basis and her services were regularized vide office order dated 19.09.2014 with effect from 01.07.2012; that the appellant died on 24.11.2021 and as such, she had performed duties as regular Lady Health Worker for a period of about 10 years, that the contractual period of service of an employee could not be legally counted in his regular service.

6. Perusal of record reveals that appellants are legal heirs of deceased Mst. Shahnaz Begum who was appointed as Lady Health Worker on 01.11.1997 on contract basis in Health Department, whose services were later on regularized in pursuance of the Government of Khyber

Pakhtunkhwa Finance Department notification No. 10158-9 dated 19.09.2014 w.e.f 1st July, 2012. Mst. Shehnaz Begum died on 24.11.2021 during service. Despite several requests and filing of departmental appeal, respondents had not issued family pension/pensionary benefits and gratuity to the predecessors of deceased appellant. Now the question, requiring determination is as to whether the contract period of service of the deceased appellant could be counted for granting her pensionary benefits or not? Rules 2.2 and 2.3 of the West Pakistan Civil Services Pension Rules, 1963, deal with the issue in question, which are reproduced as below:-

"Rule 2.2 Beginning of Service- Subject to any special rules the service of Government servant begins to qualify for pension when he takes over charge of the post of which he is first appointed.

Rule 2.3 Temporary and officiating service
Temporary and officiating service shall count for pension as indicated below:-

(i) Government servants borne on temporary establishment who have rendered more than five years continuous temporary service for the purpose of pension or gratuity; and

(ii) Temporary and officiating service followed by confirmation shall also count for pension or gratuity".

7. Perusal of the above mentioned rules make it clear that when a government servant is regularized, his total length of service is to be computed from the date he joined the service, whether temporary or otherwise. In this view of the matter, the length of service of the appellant shall be counted from the date of her initial appointment i.e 01.11.1997 for the purpose of pension and gratuity. Wisdom in this respect is also derived from the judgment dated 22.06.20 17 passed by august Peshawar High Court, Peshawar in Writ Petition No. 3394-P/20 16

titled "Amir Zeb Versus District Account Officer Nowshera etc."

8. August Supreme Court of Pakistan in its judgment reported as 2015 PLC (C.S) 296 titled "Secretary to Government of Punjab, Finance Department Versus M. Ismail Tayer and 269 others, has graciously held that the pensionary benefits is not a bounty or ex-gratia payment but a right acquired in consideration of past service. Such right to pension is conferred by law and cannot be arbitrarily abridged or reduced except in accordance with such law as it is the vested right and legitimate expectation of retired civil servant or her legal heirs.

9. Consequent upon the above discussion, the appeal in hand is allowed and the respondents are directed to grant pensionary benefits to the predecessors of appellant by processing and finalizing pension case within 90 days after receipt of copy of this judgment. Costs shall follow the event. Consign.

10. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 2nd day of August, 2023.*


(FAREEHA PAUL)
Member (E)


(RASHIDA BANO)
Member (J)

*Kaleemullah