

BEFORE KHYBER PAKHTUNKHAWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.1082/2023

Gul Nabi PTC GPS Zanawar Cheena District Mohmand

Versus

Secretary Elementary and secondary Education Khyber Pakhtunkhwa & others.

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Deponent

①

BEFORE KHYBER PAKHTUNKHAWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.1082/2023

. Gul Nabi PTC GPS Zanawar Cheena District Mohmand

Secretary Elementary and Secondary Education Khyber Pakhtunkhwa & others

Diary No. 8328

Dated 16-10-23

Versus

Secretary Elementary and Secondary Education Khyber Pakhtunkhwa & others.

Para-wise comments on behalf of respondents No.1 and 3.

Respectfully Sheweth.

Preliminary objections.

- I. That the Appellant has no cause of action, locus standi to file the instant Appeal.
- II. That the matter in the instant appeal is a close transaction has already decided by the Honorable Peshawar High Court in W.P 4597-P/2018 decided on 30.10.2019.(Copy of the judgment attached as **annexure-A.**)
- III. That the Appellant has not come to this court with clean hands.
- IV. That the Appellant has concealed material facts from the Honorable Tribunal.
- V. That the Appeal is barred by law and limitation.

ON FACT.

1. Pertains to record.
2. Incorrect, hence denied. That the community school teacher project was closed down on dated 31-12-2010, consequently the services of all the community teachers of the project were dispensed with vide notification dated 31.12.20210 (Copy of the notification is attached as **annexure B**).However after a break of about one year four months, Consequent upon the Notification of Governor Khyber Pakhtunkhwa, these teachers were re-appointed vide order 14047-52 dated 30.8.2013 on the given term and condition as reflected on the re-appointment order.(Copy of the Notification is attached annexure -C Governor notification is attached as **annexed- D**)
3. Incorrect, hence denied. It was the policy of the Government at that time to close down the community school project and as such the community schools were closed down while the services of the teachers were dispensed with vide notification dated 31.12.2010 (**see annexure B**) .However the eligible teachers were re-appointed after a break of one year four months vide this office order 30-8-2012 (**see annexure - C**).
4. Correct to the extent that the appellant alongwith others similar teachers filed writ petition No.4340/2020 COC .NO.69/2023 in the Honorable Peshawar High court Peshawar. The Honorable Peshawar High Court converted to appeal/representation and sent to respondent.2 for consideration of grievance of the petitioner in light of the judgment of this court mentioned here in above. So the appellate committee constituted for the said purpose heard the appellants in the light of Peshawar High court judgment on its meeting dated 6.4.2023 and the appellate committee decided that the petitioners are not entitled to back benefit of pay protection for the period served in the community school project. (Copy of the order is attached **annexure- E**)
5. As elaborated at Para 4 of the fact.

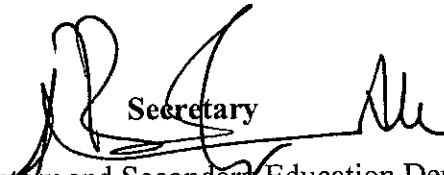
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6. GROUND.

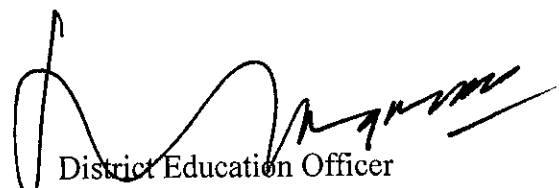
- A. Denied, the appellant was dealt as per law /rules and policy.
- B. Denied, the appellant was dealt as per law /rules and policy.
- C. Denied, the appellant was dealt as per law /rules and policy.
- D. Denied, the appellant was dealt as per law /rules and policy.
- E. As mentioned in above Paras in the facts that the respondents re-appointed the appellant vide order dated 30.8.2013 and then the pursuance of the Notification dated 11.5.2012 issued by the Governor Khyber Pakhtunkhwa and the appellate committee decided the petitioners are not entitled to back benefit of pay protection for the period served in the community school project. (Copy of the order is attached **annexed- E**).
- F. Denied. The appellant was dealt as per rules.
- G. The nature of the writ petition No.1188-p/2014 and 361-p/2023 is totally different from this instant appeal.
- H. The nature of the writ petition 3221 -p/2013 is totally different from this instant appeal,
- I. That the nature of the writ petition 5585-p/2018 is totally different from this instant appeal.
- J. Incorrect, hence denied. The nature of the appeal of the appellant is different from the referred writ petition.
- K. That the appellant is treated in accordance law and rules under the principle of equity and equality.
- L. Incorrect, hence denied.
- M. That the appellant is not entitled for pay protection and as per Government of Khyber Pakhtunkhwa Department (Regulation Wing) Notification No. FD(SOSR-1)12-7/2014 dated Peshawar, 6th February, 2014 as pay protection cannot be granted to them as per Para IV and Para V of the said notification reproduced as "(iv) that there is no break/interruption between contract service & regular service.(v) that the service rendered on contract basis shall not qualify for pension/gratuity." (Copy of the Notification is attached **annexure -E**).
- N. Incorrect, hence denied.
- O. That the appellant was treated according to the law and rules.
- P. That the appellant seeks permission to advance other ground proof at the time of hearing.

It is therefore most humbly prayed that the appeal of the appellant may kindly be dismissed with cost.

Respondent No.1


 Secretary
 Elementary and Secondary Education Department,
 Government of Khyber Pakhtunkhwa

Respondent No.4


 District Education Officer
 District Mohmand

BEFORE KHYBER PAKHTUNKHAWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.1082/2023

Gul Nabi PTC GPS Zanawar Cheena District Mohmand


Versus

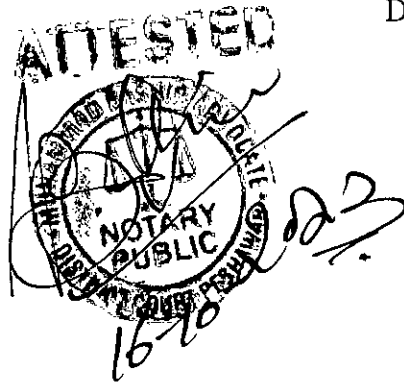
Secretary Elementary and secondary Education Khyber Pakhtunkhwa & others.

AFFIDAVIT

I am Mr. Noor bad shah ADEO litigation District Education office Mohmand do hereby declare and affirm on oath that above comments are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon, rabble Tribunal.

It is further stated on oath that in this appeal, the answering respondents have neither been placed ex-parte nor their defense is struck off.


Deponent



JUDGMENT'S TEXT

PESHAWAR HIGH COURT, PESHAWAR
(Judicial Department)

W.P No. 4597-P/2018 : longviti
Civil No. 2293-P/019

JUDGMENT

Date of hearing: 30.10.2019

Petitioner: (Anzar Gul & others) by
Mr. Saadullah Marwat, Advocate.

Respondents (Director Education FATA &
others) by: Mr. Rab Pawa Khatt, AAG.

MOHAMMAD IBRAHIM KHAN, J.- The

Department of Education FATA, in order to
raise literacy level, launched a project of
Community Schools under FATA Annual
Development Program in the year 1991 till
20.10.2010 wherein, 956 schools were opened
and total 1912 (2 per school) were appointed
as PST since 2003 including the petitioners
after fulfilment of all conditions. Due to
law and order situation in FATA, many
schools were destroyed and being non-

functional schools, it was decided to close the same as the teachers were getting salaries without performing their duties. In meeting of Standing Committee of SAFRAN held on 21.12.2011, it was decided that the FATA Secretariat should regularize the services of Community School teachers from their initial recruitment vide letters dated 16.01.2012 and 26.04.2012. After approval of Summary by the Government of Khyber Pakhtunkhwa, the Community School teachers were adjusted against regular posts of PST BPS-07 and in this respect, the Secretary Social Sectors Department FATA issued notification on 11.05.2012 and they were subsequently regularized however, the services rendered by the petitioners on contract basis for more than 10 years were not extended to them for pensionary benefits, against which the

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petitioners filed representation but the same was regretted on 29.08.2018, hence, this writ petition preferred by them under Article 199 of the Constitution of the Islamic Republic of Pakistan with the following perspective prayers:-

"It is, therefore, most humbly prayed that on acceptance of this Writ Petition, in exercise of the extraordinary constitutional jurisdiction, this Hon'ble Court may graciously be pleased to:

- a. Declare notification dated 29.8.2018 of the R No. 01 to be illegal, improper, unjust, discriminatory, mala fide, without lawful authority and of no legal effect.*
- b. Direct the authority to regularize the initial service of the petitioners rendered in the Community Schools to the regular service for pensionary and other benefits.*
- c. Any other writ/order/ direction deemed proper and just in the circumstances of the case be also issued/ordered/ given."*

the

2. Having heard arguments of learned counsel for the petitioners and learned AAG on behalf of the official respondents,

order

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record with their valuable assistance gone through.

3. The respondents were on high alert to submit their comments accordingly, the respondents No. 1, 2 and 5 jointly submitted their para-wise comments. True, that the petitioners were initially appointed in the project of Community Schools under the FATA Annual Development Program in the year 1998 when in, 1912 teachers (02 per school) were appointed including the petitioners on PS C Posts in the year 2003 but due to the law and order situation in FATA, some schools were non-functional but even then the petitioners were regularized after fulfilling all the codal formalities by the respondents. Now there arises factual controversy that the community schools were functional or non-functional in FATA; thus, it

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leads to factual controversy to utter declare that the schools were functional or non-functional. The writ petition in view of factual controversy is not at all maintainable. The constitutional jurisdiction of this court would seriously be barred as such like controversy can be agitated before the Civil Court. In support of the matter being of factual controversy wisdom is derived from 2005 PLD 347 Supreme Court titled *Mst. Arshad Begum and 2 others vs Muhammad Arshad*, 2005 PLC 366 Supreme Court titled *Pervez Alam vs Pakistan Dairy Products (Pvt) Ltd, Karachi*, 2005 SCMR 1650 Supreme Court titled *Muhamma Ayub vs Ghulam Muhammad*, 2005 SCMR 1542 Supreme Court titled *Muhammad Ramzan vs Additional District Judge, Multan*, 2004 PLC 2013 Supreme Court titled *Riaz*

All well
All well

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Ahmed Malik vs Administrator, Municipal Corporation Bahawalpur, 2004 SCMR 1602
Supreme Court titled *Muhammad Saifur Abbasi vs Amir Yar Malik, 2004 SCMR 1521*
Supreme Court titled *Mst. Hanifa Bibi vs Munawar Ahmad, 2004 SCMR 979*
Supreme Court titled *Mirza Abdul Rehman vs Deputy Commissioner/ Returning Officer, Attock and 2003 SCMR 225*
Supreme Court titled *Commanding Officer, Frontier Works Organization, Karachi vs Haji Abdul Waheed.*

4. In view of the above, this petition has no force, which is hereby dismissed.

Announced.
 Dt: 30.10.2019

[Signature]
 JUDGE

[Signature]
 JUDGE

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(B)

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(2)

OFFICE OF THE AGENCY EDUCATION OFFICER
MOHMAND AGENCY AT GHALLANAI
P.NO.0924290180 FAX:0924290180

NO. _____ DATED Ghallanai _____ / _____ /2010

To

The Teachers and Class IVs,
of all community schools in Mohmand Agency.

Subject: CLOSING OF SCHOOLS/TERMINATION.

Memo:

Reference Directorate of Education (FATA) vide No.8878-87 dated 13-12-2010, competent authority has decided to close all the community M/F schools in FATA.

Therefore all the teachers/class IVs working in community schools in Mohmand Agency are hereby informed, that their services will be dispensed with on 31-12-2010.

However service marks will be given to them when they apply for regular posts as per policy.

All the community schools teachers and class IVs are directed to hand over complete record of students/furniture etc to the concerned cluster incharges, AAEO,s complete in all respect. Otherwise no payment for the period of service will be made to the defaulters.

Agency Education Officer,
Mohmand Agency at Ghallanai.

Endst: No. 13/38-45 /Dated/ 14/12/2010.

Cc:

1. Director of Education (FATA) K.P.K. Peshawar.
2. Political Agent Mohmand Agency at Ghallanai.
3. Agency accounts Officer Mohmands at Ghallanai.
4. All AAEO,s Male & Female to inform all teachers of Community schools.

Agency Education Officer,
Mohmand Agency at Ghallanai.

Aziz ur Rehman/@

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all B*

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A. M. C. E

(17)

Social Sectors Department
Warsak Road Peshawar

Notification

No. SO(E)/SSD/CSTR/99-108/ The Governor, Khyber Pakhtunkhwa in his capacity as the Competent Authority has been pleased to approve the re-appointment of Community School Teachers who qualify to be posted against the regular posts of PST (BS-7) in phased manner at the respective Agencies & FRs, purely on merit basis in accordance with the existing recruitment criteria but in relaxation of upper age limit with immediate effect as specified below.

1. The available regular vacant PST (BS-7) posts in the Primary/Middle Schools in FATA will be filled up from amongst the Community School Teachers and no fresh candidate considered for recruitment till all the eligible Community School Teachers are absorbed against regular posts in their respective Agencies/FRs.
2. The non-local eligible Community School Teachers shall be considered for re-appointment against the regular vacant posts of PST (BS-7) after adjustment of local qualified teachers.
3. The services of the un-qualified teachers shall be dispensed with.
4. The Community Schools whose teachers are appointed and shifted to other schools against regular posts, would be closed down.
5. The respective Community Schools students would be shifted to nearby regular schools and no further recruitment of Community School teachers will be made.

Secretary
Social Sectors Department,
FATA Secretariat, Peshawar

Encls No. Even Dated Peshawar the 11/05/2012.

Copy forwarded to the:-

1. Secretary to Governor, Khyber Pakhtunkhwa Peshawar.
2. Addl. Accountant General (PF) Sub Office Peshawar.
3. Director Education FATA, Peshawar.
4. All Political Agents in FATA.
5. DCO Peshawar, Kohat, Bannu, Lakki, D.I. Khan & Tank.
6. Agency/ District Accounts Officers concerned
7. All the Agency Education Officer in FATA
8. PS to Additional Chief Secretary FATA Peshawar.
9. PS to Secretary Social Sectors Department, FATA Secretariat, Peshawar.
10. PS to Secretary P&D, FATA Secretariat, Peshawar.

STED

7/5/12

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Section Officer (Edu) SSD
FATA Secretariat, Peshawar

Dated Peshawar the April 6th, 2023

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ORDER

No. SO(Lit-IV)E.&SED/COCH#69-P/2023/WP#4340-P/2020/Mustafa Khan & others:

WHEREAS, Mustafa Khan and 19 other appellants (petitioners) were initially appointed as PST Teacher in the Project Community School Teachers for a project period at various community schools of District Mohmand in the year 2000 to 2007.

2. AND WHEREAS, the Community School Teachers project was closed down on 31-12-2010.

3. AND WHEREAS, the Community School Teachers were re-appointed consequent upon the direction of Competent Authority vide order No. 6048-61, dated 09-12-2011.

4. AND WHEREAS, in pursuance of the notification No. SO(E)SSD/SCTR/99-10, dated 11-05-2012 duly approved by the then Governor Khyber Pakhtunkhwa the services of the appellants were regularized w.e.f. 01/09/2013.

5. AND WHEREAS, Mustafa Khan and 19 others filed Writ Petition No. 4340-P/2020 before the Honorable Peshawar High Court with the prayer of counting their previous services towards pay protection and back benefits.

6. AND WHEREAS, the Honorable Peshawar High Court Peshawar vide its judgment dated 10-12-2020 treated the writ petition as departmental appeal and transmitted the same to the respondent department for consideration and decision in light of the judgment in writ petition No. 2802-P/2020 as well as decision strictly in accordance with Civil Servant Pension Rules, 1963 and the guidelines laid down by the larger bench in Writ Petition No. 3394-P/2016 titled Amir Zeb etc Vs Account Officer, Nowshera & others.

7. AND WHEREAS, the respondent department in the light of judgment of Peshawar High Court in Writ Petition No. 4340-P/2020 conducted a Departmental Appellate/ Consideration Committee meeting on 21/03/2023.

8. AND WHEREAS, the respondent department in the light of judgment dated 01-03-2022 conducted a Departmental Appellate Committee meeting and provided opportunity of hearing to the petitioners.

9. NOW, THEREFORE, in pursuance of order dated 10-12-2020 the Honorable Peshawar High Court Peshawar, consulting with relevant law, rules, policy and recommendations of the Appellate Committee meeting, discussed hereinabove, the undersigned, in the capacity of Appellate Authority is of the considered view that the petitioners namely Mustafa Khan and 19 others are not entitled to back benefits and pay protection for the period served in Community Schools Project, hence, the claim of the petitioners hereby stands rejected in the interest of public service.

SECRETARY
E&SE DEPARTMENT

Endst: of even No. & date:

Copy of the above is forwarded to the:

1. Additional Registrar (Judicial), Peshawar High Court, Peshawar.
2. Additional Advocate General, Peshawar High Court, Peshawar.
3. Director, Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
4. District Education Officer (Male), Mohmand.
5. Section Officer (Lit-II), Elementary & Secondary Education Department.
6. Teachers concerned.

(ARSALAN AHMAD)
SECTION OFFICER
(PRIMARY-MALE)

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GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGULATION WING)

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NO. FD (SOSR-1) 12-7/2014
Dated Peshawar the 6th February, 2014

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 Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
5. The Secretary, Provincial Assembly, Khyber Pakhtunkhwa.
6. The Secretary Finance FATA, FATA Secretariat, Peshawar.
7. All Heads of Attached Departments in Khyber Pakhtunkhwa.
8. All Divisional Commissioners in Khyber Pakhtunkhwa.
9. All Political Agents / District & Sessions Judges in Khyber Pakhtunkhwa.
10. The Registrar, Peshawar High Court, Peshawar.
11. The Chairman, Public Service Commission, Khyber Pakhtunkhwa.
12. The Chairman, Services Tribunal, Khyber Pakhtunkhwa.
13. The Accountant General, Khyber Pakhtunkhwa, Peshawar.

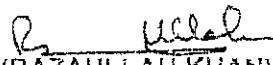
Subject: PROTECTION OF PAY OF CONTRACT EMPLOYEES ON
REGULARIZATION / APPOINTMENT ON REGULAR BASIS.

Dear Sir,

In pursuance to the Finance Division's Office Memorandum No.7(9)R-I/2012 dated 31st May, 2013, the competent authority is pleased to allow the pay protection to non-Gazetted contract employees on their regularization / appointment on regular basis with immediate effect subject to the following conditions:-

- i) That the contract appointment has been made on standard terms and conditions, circulated by this Provincial Government as amended from time to time.
- ii) That the contract employee has applied through proper channel and has been properly relieved by the appointing authority. This condition shall not apply in case of regularization on the same post.
- iii) That regularization / regular appointment has been made with the approval of competent authority.
- iv) That there is no break / interruption between contract service and regular service.
- v) That the service rendered on contract basis shall not qualify for pension / gratuity.
- vi) That in case of regular appointment in lower grade, pay shall not be protected.

Yours faithfully,


(RAZAULLAH KHAN)
Addl: Secretary (Regulation)

P.T.O



Endst: No .FD (SOSR-1) 12-7 /2014

Dated 6th Feb, 2014

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Copy for information & necessary action to the:-

1. The Director, Treasuries & Accounts, Khyber Pakhtunkhwa.
2. All the District Comptroller of Accounts in Khyber Pakhtunkhwa.
3. The Director, Local Fund Audit, Khyber Pakhtunkhwa, Peshawar.
4. The Director, FMIU, Finance Department.
5. The Treasury Officer, Peshawar.
6. The Secretary, Board of Revenue, Khyber Pakhtunkhwa.
7. All the District & Agency Accounts Officers in Khyber Pakhtunkhwa / FATA.

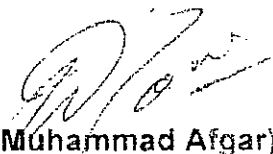

(MASOOD KHAN)

Deputy Secretary (Reg-II)

Endst: No. & Date Even

Copy for information is forwarded to:-

1. All the Section Officers / Budget Officers in Finance Department, Khyber Pakhtunkhwa, Peshawar.
2. The Private Secretary to Senior Minister for Finance, Khyber Pakhtunkhwa.
3. The Private Secretary to Secretary / P.As to Special Secretary / Additional Secretaries / Deputy Secretaries in Finance Deptt.


(Wazir Muhammad Afsar)
Section Officer (SR-1)

*All cases
referred*