

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR
AT CAMP COURT SWAT

Service Appeal No. 5197/2021

BEFORE: MR. SALAH UD DIN ... MEMBER (Judicial)
MRS. RASHIDA BANO ... MEMBER (Judicial)

Bahadar Khan S/O Maazullah Khan (late) R/O Village Gul Moqam
P.O Dargai, District Malakand.

.... (Appellant)

VERSUS

1. The Government of Khyber Pakhtunkhwa through Chief Secretary Civil Secretariat, Peshawar.
2. Secretary Elementary & Secondary Education Department Khyber Pakhtunkhwa Peshawar.
3. Director Elementary & Secondary Education Department Khyber Pakhtunkhwa Peshawar.
4. Accountant General Khyber Pakhtunkhwa, Peshawar.
5. District Account Officer Malakand Top.
6. District Education Officer (Male) Malakand Batkhela.

.... (Respondents)

Mr. Muhammad Wisal
Advocate


... For appellant

Mr. Inayat Ullah Khan
Assistant Advocate General

... For respondents

Date of Institution.....12.04.2021
Date of Hearing.....03.10.2023
Date of Decision.....03.10.2023

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 respondents may kindly be directed to grant pension and all others relevant benefits for which the appellant is deserved. Any other relief which this august court deems appropriate may kindly be awarded to meet the ends of justice.”

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was appointed as Sweeper at Government High School Gul Muqam Dargai, District Malakand. The appellant served the department up to the entire satisfaction of his superiors. On 18.06.2012 respondents No. 6 passed order of resignation of appellant without any application. The appellant came to know about the said order, he approached the respondents for cancellation of the said order and to reinstate him in service. The respondent paid no heed on the request of the appellant. Later on his resignation was converted into compulsory retirement from service. The appellant requested the respondents for pension and all other benefits which was denied.

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 Assistant Advocate General and perused the case file with connected documents in detail.


4. Learned counsel for the appellant argued that the appellant has not been treated in accordance with law and respondents violated the fundamental rights guaranteed to him under constitution of Islamic Republic of Pakistan, 1973. He further contended that appellant is under west pakistan civil servants

pension rules, he was eligible for pensionary benefits which was not granted by the respondents so far.

5. Conversely, learned Assistant Advocate contended that the appellant has been treated in accordance with law and rules. He further contended that appellant submitted his resignation application with his willful consent and after acceptance he moved abroad for better future. Appellant neither submitted any application up to 2021 against resignation order nor for gratuity/pension. He submitted that after willful resignation the appellant is not entitled for any pensionary benefits under west Pakistan Civil Services pension rules. Lastly, he submitted that instant appeal barred by time, therefore, he requested for dismissal of instant appeal.


6. Perusal of record reveals that appellant was appointed as Sweeper in respondent department at GHS Gul Maqam Dargai Malakand and has rendered his services for thirteen years without any complaint from any quarter but all of a sudden respondent No.6 on 18.06.2012 issued order about acceptance of appellant resignation but appellant had not tender his resignation to the respondent which was surprise for the appellant. When appellant came to know about this illegal, baseless order of alleged resignation acceptance he approached the respondent No.6 who firstly used delaying tactics and finally informed appellant that this resignation has been converted into compulsory retirement upon which appellant requested respondent for issuance of his pension and pensionary benefits which too was denied by the respondents hence instant service appeal filed by the appellant for seeking direction to the respondents to grant pension and other pensionary benefits to him.

7. Record further reveals that contention of the appellant that he had not tender his resignation to respondent No.6 is not correct because respondent annexed with their reply application in shape of () wherein appellant had written that due to his proceeding to Saudi Arabia he wants to resign from his post of Sweeper. He submitted this application on 15.12.2012 which was forwarded to EDO (E&SE) Malakand at Batkhela for further necessary action and AAO Malakand to stop the pay of the official on 15.03.2012. As a result of which impugned order dated 18.06.2012 was passed by the EDO and accepted resignation of the appellant with effect from 15.03.2012. Factum of proceeding to Saudi Arabia in 2012 was confirmed by appellant upon query of Tribunal during course of arguments. So it is established on record that appellant tender resignation himself which was accepted vide order dated 18.06.2012 and his pay as a consequence was stopped.


8. So far as a contention of the appellant about converting of acceptance of resignation order into compulsory retirement is concerned same is without any proof and not logical because when applicant himself tender resignation then how his resignation could be converted into compulsory retirement by the respondents, otherwise in accordance with rule 2.11 a Government Servant forfeit his past service in case of resignation from a post. When appellant resigned from his post after rendering 13 years service, he forfeited his past service and is not entitled for pension because for pension and pensionary benefits civil servants will have to be retired at least after rendering 25 years qualifying service in accordance with Rule 2.3 of pension Rules 1963. 

9. As a sequel to the above discussion, we are of the view that appeal in hand is devoid of merits, which is hereby dismissed. Costs shall follow the event. Consign.

10. *Pronounced in open court at Swat and given under our hands and seal of the Tribunal on this 3rd day of October, 2023.*


(SALAH UD DIN)
Member (J)
Camp Court, Swat

*Kaieemullah


(RASHIDA BANO)
Member (J)
Camp Court, Swat

ORDER

3rd Oct, 2023

1. Learned counsel for the appellant present. Mr. Inayat Ullah Khan learned Assistant Advocate General alongwith Muhammad Riaz, SCT for the respondents present.
2. Vide our detailed judgement of today placed on file that appeal in hand is devoid of merits, which is hereby dismissed. Costs shall follow the event. Consign.
3. *Pronounced in open court at Swat and given under our hands and seal of the Tribunal on this 3rd day of October, 2023.*



(SALAH UD DIN)
Member (J)
Camp Court, Swat



(RASHIDA BANO)
Member (J)
Camp Court, Swat