

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

Service Appeal No. 4753/2021

Date of Institution ... 05.04.2021
Date of Decision ... 04.01.2023

Ghulam Rehmani, Medical Superintendent Nawaz Sharif Kidney
Hospital, Manglawar, District Swat.

... (Appellant)

VERSUS

The Secretary Health Government of Khyber Pakhtunkhwa Peshawar
and two others.

... (Respondents)

Imdad Ullah
Advocate

... For appellant.

Muhammad Riaz Khan Paindakhel
Assistant Advocate General

... For respondents.

Mrs. Rozina Rehman
Miss Fareeha Paul

... Member (J)
... Member (E)

JUDGMENT

ROZINA REHMAN, MEMBER (J): The appellant has invoked the
jurisdiction of this Tribunal through above titled appeal with the
prayer as copied below:

**“That on acceptance of this appeal, the service of the
appellant may very kindly be considered from
18.12.1995 instead of 11.12.1998 for the purpose of
pensionary benefits”.**

2. Brief facts of the case are that appellant was appointed in
Health department as Medical Officer vide order dated 18.12.1995.



He then applied for regular post through Khyber Pakhtunkhwa Public Service Commission through proper channel and got selected vide order dated 11.12.1998. The appellant was performing his duties to the satisfaction of the authorities and in the meanwhile he got promoted to BPS-19. His retirement was due in the month of April 2021, when in the meanwhile, he came to know that his initial service of about 3 years was not counted for the purpose of pensionary benefits. That as per numerous judgments of Supreme Court of Pakistan it has become a settled principle that the initial service, even it be contract, will be counted for the purpose of calculating pension of the employee but the same was not done in the case of appellant. Feeling aggrieved he submitted departmental appeal but the same was not responded to; hence the present service appeal.

3. We have heard Imdad Ullah, Advocate learned counsel for the appellant and Muhammad Riaz Khan Paindakhel, learned Assistant Advocate General for respondents and have gone through the record and the proceedings of the case in minute particulars.

4. Learned counsel for the appellant submitted that the appellant had been regularly performing his duties since his first entry into service i.e 18.12.1995 till date without any break but the period from 18.12.1995 till 11.12.1998 was not counted in utter violation and negation of the law and rules on the subject to the detriment of the appellant. He contended that the appellant was discriminated as similarly placed persons were given benefits of contract period and their contract period was counted for pensionary benefits. It was



further argued that the appellant was entitled to the relief claimed as that was a classic case of misuse and abuse of the authority by the respondents.

5. Conversely, learned Assistant Advocate General submitted that the appellant was regularly appointed as medical officer on the recommendation of Khyber Pakhtunkhwa Public Service Commission and that being recommended by the commission, appellant was entitled for seniority in accordance with merit assigned by the Khyber Pakhtunkhwa Public Service Commission as per rule 17 (I)(a) of the Khyber Pakhtunkhwa Civil Servant (Appointment, Transfer & Promotion) Rules 1989. However, appellant was not entitled for seniority or other benefits of the service rendered as contract employee. Lastly, it was contended that contract service could not be counted towards pension benefits according to rules.

6. After hearing the learned counsel for the parties and going through the record of the case with their assistance and after perusing the precedent cases cited before us, we are of the opinion that appellant was appointed as medical officer on contract basis in (BPS-17) for a period of 1 year or till the availability of Khyber Pakhtunkhwa Public Service Commission selectee on 18.12.1995. He was recommended by the Khyber Pakhtunkhwa Public Service Commission Peshawar for appointment as medical officer in Health Department on regular basis vide order dated 11.12.1998. He got retired on 05.04.2021. Now only question before this bench is as to whether he is entitled to the pensionary benefits right from date of his first appointment i.e 18.12.1995. Pension roll, data sheet and pension





slip were also produced before this bench which further support the claim of the appellant. In view of Rule 2.3 of West Pakistan Civil Services Pension Rules, 1963, the appellant is to be paid pensionary benefits from the date of his first appointment. It is a well settled law that when any employee on contract is absorbed into regular employment, and there is no break in his service, then period on contract employment has to be considered for counting length of service of pensionary benefits etc. Reliance is placed on 2010 P.L.C 354, wherein, it is held:

"When an employee was regularized, his total length of service, was to be computed from the day he joined the service that could be temporary or otherwise. Even period of an employee of daily wages would be counted for the purpose of computing pensionary benefits".

7. While considering the above, we are not inclined to hold a different view, therefore, while accepting this appeal, we direct the respondents to pay all the pensionary benefits to the appellant by counting his service from the date of his initial appointment i.e 18.12.1995. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED.
04.01.2023


(Fareeha Paul)
Member (E)
Camp Court, Swat


(Rozina Rehman)
Member (J)
Camp Court, Swat

ORDER

04.01.2023


Appellant present through counsel.


Muhammad Riaz Khan Painsdakhel learned Assistant Advocate General for respondents present. Arguments heard. Record perused.

Vide our detailed judgment of today of this Tribunal placed on file, instant service appeal is accepted as prayed for. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED.

04.01.2023


(Fareeha Paul)
Member (E)
Camp Court, Swat


(Rozina Rehman)
Member (J)
Camp Court, Swat

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA

SERVICE TRIBUNAL PESHAWAR

SERVICE APPEAL NO. 4753 OF 2021

Ghulam Rehmani.....Appellant

Versus

Govt. of Khyber Pakhtunkhwa and others.....Respondents

PARAWISE COMMENTS ON BEHALF OF RESPONDENT NO. 01 TO 03

Respectfully Sheweth:

Preliminary Objections:-

1. That the appellant has got neither cause of action nor locus standi to file the instant appeal.
2. That the appellant has filed the instant appeal just to pressurize the respondents.
3. That the instant appeal is against the prevailing Law and Rules.
4. That the appeal is not maintainable in its present form and also in the present circumstances of the issue.
5. That the appellant has filed the instant appeal with mala-fide intention hence liable to be dismissed.
6. That the appellant has not come to this Honorable Tribunal with clean hands.
7. That the appeal is barred by law and limitation.
8. That the Honorable Tribunal has no Jurisdiction to adjudicate upon the matter.
9. That the instant appeal is bad for mis-joinder of unnecessary and non-joinder of necessary parties.
10. That the Honorable Tribunal has already adjudicated the matter vide its judgment dated 12/11/2019 (*Annex-A*) titled Dr. Alif Jan and others versus Secretary Health Khyber Pakhtunkhwa whereby the Honorable Tribunal dismissed all the appeals filed by similarly placed doctors, hence the instant appeal is hit by rule 23 of Khyber Pakhtunkhwa Service Tribunal Rules, 1974.

ON FACTS:

1. Pertains to record.
2. Correct to the extent that the appellant has been regularly appointed as Medical officer on the recommendation of Erstwhile NWFP Public Service Commission. Rest of the para pertains to record.
3. Pertains to record.
4. Correct to the extent that the appellant being recommended by the commission is entitled for seniority in accordance with the merit signed by Khyber Pakhtunkhwa Public Service Commission as per rule-17 (I)(a) of the Khyber Pakhtunkhwa Civil Servant (Appointment, Transfer & Transfer) Rules, 1989, the appellant is not entitled for the seniority or other benefits of the service rendered as contract employee.

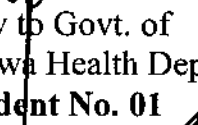
5. Pertains to record, however, as per judgment dated 12/11/2019 of the Khyber Pakhtunkhwa Service Tribunal, the appellant is not entitled for the said benefits.
6. Incorrect as in preceding para.
7. Pertains to record, however, the contract service cannot be counted toward pension benefits according to rules and in the light of Judgment dated 12/11/2019 of this Honorable Tribunal.

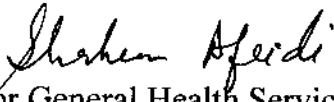
ON GROUNDS:


- a. Incorrect. The contract service of the appellant cannot be counted toward pension & other benefits according to rules and in the light of Judgment dated 12/11/2019 of this Honorable Tribunal.
- b. Incorrect. There is no discrimination in the case of the appellant as the Khyber Pakhtunkhwa Service Tribunal has already dismissed the same nature case vide its Judgment dated 12/11/2019.
- c. Incorrect, as in preceding para.
- d. Incorrect as already explained in above paras.

PRAYER:

It is therefore humbly prayed that on acceptance of the parawise comments, the instant appeal of the appellant may very graciously be dismissed with costs.


Secretary to Govt. of
Khyber Pakhtunkhwa Health Department
Respondent No. 01


Director General Health Services
Khyber Pakhtunkhwa
Respondent No. 02


District Health Officer
Swat
Respondent No. 03

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

SERVICE APPEAL NO. 4753/2021

Ghulam Rehmani.....Appellant

Versus

Government of Khyber Pakhtunkhwa & othersRespondents.

Affidavit

I, Muhammad Naem Assistant Director (Litigation) office of the Director General Health Services, Khyber Pakhtunkhwa, Peshawar, under the directions of the Competent Authority, do hereby solemnly affirm that the contents of the parawise Comments on behalf of Respondent are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'able Court.




Deponent

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 4753 of 2021

*Ghulam Rehmani Medical Superintendent Nawaz Sharif
Kidney Hospital, Manglawar, District Swat.*

...Appellant

VERSUS

*The Secretary Health Government of Khyber
Pakhtunkhwa, Peshawar and Others.*

...Respondents

REJOINDER BY THE APPELLANT

Respectfully Sheweth:

Preliminary Objections:

That all the preliminary objections are incorrect, baseless, against the law and rules on the subject, thus the same are specifically denied. Moreover the Appellant has got a prima facie case in his favour and has approached this Honourable Tribunal with clean hands and will within time and this Honourable Tribunal has got the jurisdiction to adjudicate upon the same.

On Facts:

- 1. Para 1 of the comments amounts to admission, hence needs no reply.*

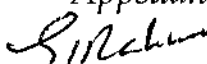

2. *Para 2 of the comments also amounts to admission hence needs no reply as well.*
3. *Para 3 of the comments also being admission, hence no reply needed.*
4. *'Para 4 of the comments is misconstrued, the Appellant never prayed for seniority rather has prayed for pensionary benefits in line with law and rules on the subject, thus the para to the extent is denied.*
5. *Para 5 of the comments to the extent of the judgment of this Honourable Tribunal is concerned so the same is very distinguishable and has got no relevancy with the case of the Appellant, thus the same is denied to the extent.*
6. *Para 6 of the comments as drafted is vague and evasive and amounts to admission, hence needs no reply.*
7. *Para 7 of the comments as denied to the extent of the judgment delivered by this Honourable Tribunal as the same is distinguishable.*

On Grounds:

- a. *Ground A of the comments as drafted is denied for the reason that the judgment referred to is distinguishable from the case of the Appellant as the case of the Appellant is supported by the law and rules on the subject.*

- b. Ground B of the comments as drafted also is denied in light of the reply in the foregoing para.
- c. Ground C of the comments as drafted is vague, evasive and is devoid of merits, thus the same needs no reply being amounting to admission.
- d. Ground D of the comments drafted also is vague, evasive and devoid of merits, hence amounts to admission and needs no reply as well.

It is, therefore, very respectfully prayed that on acceptance of this rejoinder the case of the Appellant may very kindly be decided as prayed for originally.

Appellant

Ghulam Rehmani
Through Counsel,

Imdad Ullah
Advocate Swat

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 4753 of 2021

Ghulam Rehmani Medical Superintendent Nawaz Sharif
Kidney Hospital, Manglawar, District Swat.

...Appellant

VERSUS

The Secretary Health Government of Khyber
Pakhtunkhwa, Peshawar and Others.

...Respondents

AFFIDAVIT

It is solemnly stated on Oath that all the contents of
this rejoinder are true and correct to the best of my
knowledge and belief and nothing has either been
misstated or kept concealed before this Honourable
Tribunal.

ATTESTED



Deponent

Ghulam Rehmani
Ghulam Rehmani

Identified By:

Imdad Ullah
Imdad Ullah
Advocate Swat