

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

Service Appeal No. 369/2017

**BEFORE:** RASHIDA BANO --- MEMBER (J)  
MUHAMMAD AKBAR KHAN --- MEMBER (E)

Syed Zahid Hussain son of Syed Zulfiqar Hussain Lecturer,  
Government College of Management Sciences, Parachinar, Kurram  
Agency .....(Appellant)

**VERSUS**

The Government of Khyber Pakhtunkhwa through Chief Secretary KP  
Peshawar and others .....(Respondents)

**Present:-**

MUHAMMAD MAAZ MADANI,  
Advocate --- For Appellant

MUHAMMAD JAN,  
District Attorney --- For respondents.

Date of Institution.....18.04.2017  
Date of Hearing.....26.09.2023  
Date of Decision..... 26.09.2023

**JUDGMENT.**

**MUHAMMAD AKBAR KHAN, MEMBER(E):-** The instant service appeal has  
been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act  
1974 with the prayer copied as under;

*“That on acceptance of the service appeal, the Hon’ble  
Tribunal may be pleased to direct the respondents to treat the  
appellant at par with colleagues as a regular employee with  
effect from 31.12.2012 with all back benefits.”*

02. Brief facts of the case are that appellant was appointed as Instructor  
(BPS-17) on fixed pay in GCMS, Parachinar (Kurram Agency) vide order dated

12.12.2009 with effect from his taking over charge uptill 30.06.2010 or till the arrival of selectee of the Khyber Pakhtunkhwa Public Service Commission whichever is earlier; that colleagues of the appellant filed Writ Petition No. 1289/2010 in the Peshawar High Court for their regularization which were allowed vide common judgment dated 08.03.2012 in pursuance of which the services of the colleagues of the appellant were regularized while the appellant was not given the same treatment; that some of other colleagues of the appellant who were appointed the same date filed Writ Petition No. 865-P/2014 for the purpose of regularization of their services in pursuance to judgment dated 08.03.2012 which was also allowed vide judgment dated 31.03.2015. Thereafter, the appellant filed Writ Petition No. 1601-P/2015 for his regularization which was allowed in light of judgment dated 08.03.2012 in Writ Petition No. 1289/2010 and judgment dated 31.03.2015 in Writ Petition No. 865-P/2014; that against the judgment dated 31.03.2015 the respondents department filed CPLA No. 251-P/2015 which was dismissed vide judgment dated 08.03.2016; that in pursuance of the judgment dated 31.03.2015 the respondent department issued Notification dated 04.04.2016 whereby the service of the appellant has been regularized with immediate effect while the services of the colleagues of the appellant were regularized vide Notification dated 31.12.2012. Feeling aggrieved from the Notification dated 04.04.2016 the appellant filed departmental appeal on 29.04.2016 which was not decided within the statutory period, hence preferred the instant service appeal on 18.04.2017.

03. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions raised by the appellant in his appeal. We have heard arguments of learned counsel for the appellant and learned District Attorney and have gone through the record with their valuable assistance.

04. Learned counsel for the appellant contended that the act of the respondents is absolutely illegal, void and ineffective upon the rights of the appellant; that in pursuance of the judgment dated 08.03.2012 in Writ Petition No. 1289/2010, the services of the colleagues of the appellant were regularized while the appellant was not given the same treatment; that when the colleagues of the appellant enjoy the benefits to which the appellant is also entitled in the list of judgment of Hon'ble High Court, Peshawar then restraining him from enjoyment of the same is in absolute disregard to fundamental rights enshrined in the Constitution of Islamic Republic of Pakistan; that the performance of the appellant has been satisfactory and up-to the mark but even then the respondents are adopting delaying tactics not to let the appellant be on equal footings with his colleagues who have been regularized vide Notification dated 31.12.2012

05. Learned District Attorney on the other hand contended that the Peshawar High Court, Peshawar decided the Writ Petition No. 865/2014 on the ground/point of discrimination and not on Regularization Act, 2009 because the appellant did not come within the purview of the said Act as his appointment was made after promulgation of Regularization Act, 2009 hence the said Act is not applicable to the appellant; that the appellant never performed any duty after 30.06.2010 till the assumption of charge on 04.04.2016; that no discrimination was made by the respondents because the case of appellant and his colleagues were not at par with each other. It was further contended that the service of the appellant was regularized with immediate effect in the light of court direction; that the act of respondents are lawful, legal and no rights of appellant were ever infringed; that no basic/fundamental rights of the appellant has been violated.

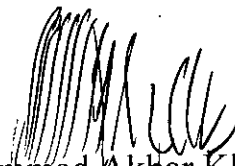
06. It is admitted fact that the appellant was appointed on fixed pay of Rs. 8000/ per month for a specified period i.e. 30.06.2010 vide order dated 12.12.2010. Upon completion of the specified period he remained out of duty till his appointment on 04.04.2016 in light of judgment of Peshawar High Court. As such being not a civil servant with the standard terms and conditions as enshrined in Civil Servants Act, 1973 and the (Appointment, Promotion & Transfer) Rules, 1989 made there under, the Tribunal cannot indulge in the matters/affairs before the period 04.04.2016 which is the date of appointment of the appellant as a civil servant. The Notification dated 04.04.2016 has been issued in pursuance of judgment of Peshawar High Court in Writ Petition No. 1601-P/2015. If the appellant had any grievance with regard to implementation of judgment of honourable Peshawar High Court he could have approached the proper forum. As such we are of the considered view that the appeal is barred to be entertained under Rule 23 of the Khyber Pakhtunkhwa Service Tribunal Rules, 1974. Reliance is placed on this Tribunal judgment dated 25.04.2019 in similar service appeal No. 964/2016.

07. In view of the above discussion the appeal in hand is dismissed. Costs shall follow the event. Consign.

08. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 26<sup>th</sup> day of September, 2023.*



(Rashida Bano)  
Member (J)



(Muhammad Akbar Khan)  
Member (E)