

Appeal No.448/2022 titled "Mst. Naheem Akhtar Vs. Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Khyber Pakhtunkhwa, Peshawar & others".

ORDER

24th Oct. 2023

Kalim Arshad Khan, Chairman: Learned counsel for the appellant present.

Mr. Asif Masood Ali Shah learned Deputy District Attorney alongwith Syed Hajjaj Shah, Litigation Officer for the respondents present. Heard.

2. According to the facts of the appeal, the appellant applied for premature retirement w.e.f 30.11.2020 which, application was processed and was sent to respondent No.2 i.e. the Director Elementary & Secondary Education who also sent the same to the respondent No.1 i.e. the Secretary Elementary & Secondary Education, wherein it was shown that in pursuance of Khyber Pakhtunkhwa, Civil Servants (Amendment) Ordinance, 2021, premature retirement compulsory age is 55 years. In this process, period of six months had passed and appellant was again posted against her previous post; that the appellant submitted application for release of pay of intervening period w.e.f 01.12.2020 to 07.06.2022; that in response to the said application, the respondents, vide impugned order dated 16.03.2022, converted the said period as leave on full pay. Therefore, she filed the instant service appeal.

3. A pre-admission notice was issued to the respondents, whose reply is also received.

4. It appears that on the application of the appellant, the competent authority vide Notification dated 16.03.2022 regularized the intervening period as leave on full pay w.e.f 01.12.2020 to 07.06.2021 in respect of the appellant. What the appellant now claims, is that she had not sought any leave but retirement and for none of her fault, she was replaced by some other teacher and her salary was stopped. This contention of the appellant is



misconceived because, as the record reflects, without waiting for any approval of pension, she left the assignment but even then, the department had taken very lenient view by filling the gap of her service in the shape of grant of leave on full pay to the appellant. The other request of the appellant, during the arguments, was that the retirement case of the appellant was returned on the pretext that on promulgation of the Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2021, she could not be prematurely retired, as according to Section-13(2), "A civil servant may opt to retire early from service, after completion of twenty five (25) years of qualifying service or attaining the age of fifty five (55) years, whichever is later", but the appellant had made request for retirement before coming into force of the above Act, therefore, her case would not adversely affected. This request of the appellant is also not tenable because the appellant had admittedly submitted application for premature retirement w.e.f 30.11.2020 but Section-1 (2) of the Act has given effect to the provisions of the Act w.e.f 31.07.2019 i.e. a date much prior to the making of application for premature retirement by the appellant. Therefore, subsection-2 of Section-13 would not allow the appellant to premature retirement.

5. This appeal so, being devoid of any merits, is dismissed in limine. Consign.

6. *Pronounced in open Court at Abbottabad and given under my hand and seal of the Tribunal on this 24th day of October, 2023.*



(Kalim Arshad Khan)
Chairman
Camp Court, Abbottabad