

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR
AT CAMP COURT, ABBOTTABAD

BEFORE: **KALIM ARSHAD KHAN** ... CHAIRMAN
FAREEHA PAUL ... MEMBER(Executive)

Service Appeal No.3492/2021

Date of presentation of Appeal.....18.02.2021
Date of Hearing.....23.10.2023
Date of Decision.....23.10.2023

Mr. Bahadur Khan, Son of Gohar Khan, Resident of Nasir Bagh Dharian, P.O Bandi Go, presently serving as SPST Tehsil & District Battagram.....(Appellant)

Versus

1. ***Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education, Peshawar.***
2. ***Director, Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.***
3. ***District Education Officer, Elementary & Secondary Education (Male) Battagram***
4. ***District Accounts Officer, Battagram.....(Respondents)***

Service Appeal No.3493/2021

Date of presentation of Appeal.....18.02.2021
Date of Hearing.....23.10.2023
Date of Decision.....23.10.2023

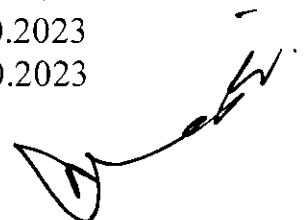
Nowsherawan son of Noor Ul Hassan, presently serving as SPST GPS Tehsil & District Battagram.....(Appellant)

Versus

1. ***Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education, Peshawar.***
2. ***Director, Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.***
3. ***District Education Officer, Elementary & Secondary Education (Male) Battagram.***
4. ***District Accounts Officer, Battagram.....(Respondents)***

Service Appeal No.3494/2021

Date of presentation of Appeal.....18.02.2021
Date of Hearing.....23.10.2023
Date of Decision.....23.10.2023



Muhammad Shafiq son of Atiqullah, Resident of Paimal Sharif Ddabri, presently serving as SPST, Tehsil & District Battagram.....(Appellant)

Versus

1. **Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education, Peshawar.**
2. **Director, Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.**
3. **District Education Officer, Elementary & Secondary Education (Male) Battagram.**
4. **District Accounts Officer, Battagram.....(Respondents)**

Service Appeal No.3495/2021

Date of presentation of Appeal.....18.02.2021
Date of Hearing.....23.10.2023
Date of Decision.....23.10.2023

Islam Shah son of Mian Gul Shah Resident of Kakai, Bandi Go P.O Bandi Go, Presently serving as SPST, Tehsil & District Battagram.....(Appellant)

Versus

1. **Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education, Peshawar.**
2. **Director, Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.**
3. **District Education Officer, Elementary & Secondary Education (Male) Battagram.**
4. **District Accounts Officer, Battagram.....(Respondents)**

Service Appeal No.3496/2021

Date of presentation of Appeal.....18.02.2021
Date of Hearing.....23.10.2023
Date of Decision.....23.10.2023

Masoom Khan son of Muhammad Naqab, Resident of Banda Akhunzadgan, presently serving as DM (BPS-15) Tehsil & District Battagram.....(Appellant)

Versus

1. **Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education, Peshawar.**



2. **Director, Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.**
3. **District Education Officer, Elementary & Secondary Education (Male) Battagram.**
4. **District Accounts Officer, Battagram.....(Respondents)**

Present:

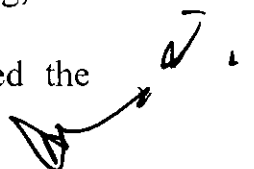
Mr. Abdul Aziz Tanoli, Advocate.....For the appellants
Mr. Asif Masood Ali Shah Deputy District Attorney.....For respondents

CONSOLIDATED JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: Through this single judgment all the above appeals are going to be decided as all the five are similar in nature and almost with the same contentions, therefore, all can conveniently be decided together.

2. Facts of the cases of the appellants, gathered from memorandums and grounds of appeals are that appellants were appointed in the years 1994-95 & 1996; that they were terminated from service vide orders dated 28.07.1997; that after announcement of Khyber Pakhtunkhwa Sacked Employees (Appointment) Act, 2012, they were required to be reinstated in service but the appellants were not appointed accordingly, therefore, they filed Writ Petition before the Peshawar High Court for their appointment under the said Act; that as per judgment of the Peshawar High Court, they were appointed in the year 2013 but their previous service benefits were denied by the respondents; that feeling aggrieved, they filed departmental appeals, but fiasco, hence the instant service appeals.

3. On receipt of the appeals and their admission to full hearing, the respondents were summoned, who put appearance and contested the



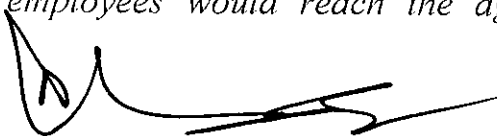
appeal by filing written reply raising therein numerous legal and factual objections. The defense setup was a total denial of the claim of the appellants.

4. We have heard learned counsel for the appellants and learned Deputy District Attorney for the respondents.

5. The learned counsel for the appellants reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned Deputy District Attorney controverted the same by supporting the impugned order(s).

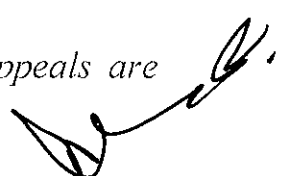
6. This Tribunal vide its consolidated judgment passed in Service Appeal No.572/2019 titled "Muhammad Haroon VS. Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Peshawar & others" decided on 18th March, 2021, while dealing with almost similar case, has found as under:

"6. From the record it is evident that appellants and others who were appointed back in 1994-95 were terminated in 1996-97. Sacked Employees (Appointment) Act, 2012 was specifically promulgated to extend relief to such sacked employees. Appellants were not considered for the reason best known to the respondents. The respondents, however, considered other similar cases just after promulgation of the Act ibid which was discriminatory on the part of respondents. It was upon the intervention of the Hon'ble Peshawar High Court that appellants were reinstated at a belated stage in 2017 but with immediate effect. The main concern of the appellants is that such employees would reach the age of superannuation before earning



qualifying service for pensionary benefits. We have observed that appellants had possessed all the qualifications as prescribed in the Act like others. It is also on record that co-employees tried their level best for back benefits and their cases were dismissed by this Tribunal as their earlier stance was to get all service benefits. Feeling aggrieved from the judgment of this Tribunal CPLAs were filed in the Apex Court and relief of back benefits to co-employees was refused by the Apex Court too. However, Apex Court allowed counting of their service for the protected period for payment of pensionary benefits. The present appellants have a strong case as they had every right to be reinstated just after promulgation of the Act as they were having requisite qualification as prescribed in the Act. Their claim was accepted by the august High Court and reinstatement was ordered.

- 7. The present appellants have also prayed for all service back benefits with a request for counting of their service for the protected period in the light of judgment of the Apex Court which was passed in the case of co-employees. So, from the record, it is crystal clear that after promulgation of an Act in the year 2012, appointment order of the appellants were issued in the year 2017 and that too, on the directions of the august High Court. No doubt, similar appeals of the sacked employees were dismissed regarding the back benefits but the Apex Court allowed the co-employees counting of their service for the protected period for payment of pensionary benefits only. Case of the present appellants is at par with those sacked employees who were granted this benefit by the Apex Court, therefore, these appeals are*



accepted to the extent that the appellants are allowed counting of their services from the date of promulgation of the Khyber Pakhtunkhwa Sacked Employees (Appointment) Act, 2012 only for payment of pensionary benefits. No order as to costs. File be consigned to the record room."

7. As the prayer of the appellants in the present service appeals is also the same as was in the above mentioned service appeals, which had been granted to those appellants vide the above mentioned judgment. Therefore, appellants in the instant service appeals are also entitled for counting of service for protected period and for payment of pensionary benefits only. Case of the present appellants is at par with those sacked employees who were granted this benefit by the Apex Court, therefore, these appeals are accepted to the extent that the appellants are allowed counting of their services from the date of promulgation of the Khyber Pakhtunkhwa Sacked Employees (Appointment) Act, 2012 only for payment of pensionary benefits. (Copy of this judgment be placed on file in the connected service appeals). Consign.

8. *Pronounced in open Court at Camp Court, Abbottabad and given under our hands and the seal of the Tribunal on this 23rd day of October, 2023.*



KALIM ARSHAD KHAN
Chairman



FAREEHA PAUL
Member (Executive)