

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 1600/2019

BEFORE: MR. SALAH-UD-DIN ... MEMBER (J)
MISS FAREEHA PAUL ... MEMBER (E)

Muhammad Javed S/O Shamsul Qamar, Drawing Master at GHS
Lahor Sharqi, District Swabi..... (Appellant)

Versus

1. District Education Officer (Male) District Swabi.
2. Deputy Director Estab: (M) E&SE Khyber Pakhtunkhwa, Peshawar.
3. Director Education (E&S) Khyber Pakhtunkhwa, Peshawar.
4. District Accounts Officer, Swabi.
5. Government of Khyber Pakhtunkhwa through Secretary Education
Peshawar.
6. Accountant General Khyber Pakhtunkhwa, Peshawar. (Respondents)

Mr. Khairul Wahab Yousafzai, ... For appellant

Mr. Muhammad Jan, ... For respondents
District Attorney

Date of Institution..... 22.11.2019
Date of Hearing..... 13.11.2023
Date of Decision..... 13.11.2023


JUDGEMENT

FAREEHA PAUL, MEMBER (E): The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the order dated 25.10.2019 whereby the departmental appeal of the appellant for counting his previous service towards pensionary benefits was rejected. It has been prayed that on acceptance of the appeal, the impugned order dated 25.10.2019 might be set aside and the appellant's previous service rendered in IESCO (WAPDA) might be counted in the service record of the appellant for the purpose of pension benefits, alongwith any other remedy which the Tribunal deemed fit and appropriate.



2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant joined the IESCO (WAPDA) as Tracer on contract basis on 03.06.2006. He was regularized on 21.11.2008 and served without break in the department upto the satisfaction of his superiors till 02.09.2013. In the year 2011, respondent No.1 advertised some posts of Drawing Masters. The appellant, having requisite eligibility for the said post, applied through proper channel. He was appointed as Drawing Master in the Khyber Pakhtunkhwa Elementary & Secondary Education Department vide order dated 13.07.2013 in BPS-15. He submitted an application to the Executive Engineer IESCO (WAPDA) Attock for the grant of NOC, which was accordingly granted on 02.09.2013. He was relieved from WAPDA services and was issued Last Pay Certificate and he, accordingly, submitted his departure report on 02.09.2013 and took charge as Drawing Master at GHS Jehangira on the said date. On 19.10.2017, the appellant submitted an application to DAO Swabi, through DEO (M) Swabi, for correction in Government service entry and for counting his previous service rendered in WAPDA, for the purpose of pensionary benefits, which was rejected by the respondent No. 1 on 26.10.2017. Feeling aggrieved, the appellant approached the Service Tribunal and on 22.11.2018, the Tribunal passed an order whereby his service appeal was sent to respondents to treat it as departmental appeal. On 20.10.2019, the Deputy Director Establishment (Male) E&SE KPK Peshawar rejected the departmental appeal of the appellant; hence the instant service appeal.

3. Respondents were put on notice who submitted their reply/comments on the appeal. We heard the learned counsel for the appellant as well as the



learned District Attorney for the respondents and perused the case file with connected documents in detailed.

4. Learned counsel for the appellant, after presenting the case in detail, argued that the rejection order of the respondents was arbitrary, unlawful and against the fundamental rights of the appellant and contrary to the rules laid down by the Superior Courts of Pakistan. He requested that the appeal might be accepted as prayed for.

5. Learned District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that the appellant himself admitted that his previous service in IESCO (WAPDA) as Tracer was on contract basis and that it was a settled law that the service rendered under contract did not qualify for pension or gratuity. He further argued that the entry of regularization of his service did not exist anywhere in his service book. He contended that IESOC was a company established under a specific law. He further contended that services under Federal Government or any other provincial government could not be tagged with service under the Provincial Government of Khyber Pakhtunkhwa. He referred to 1992 SCMR 1140 by stating that decision of one province could not be made applicable to other province. He further referred to 2013 SCMR 304, 211 SCMR 363 and 2003 PLC (CS) 1057. According to him, the appellant was appointed in the light of judgment of the Honorable Peshawar High Court in a Writ Petition No. 385-P/2012 as a fresh candidate and that the issuance of no objection certificate (NOC) did not make the contract service of the appellant regular. He requested that the appeal might be dismissed.



6. From the arguments and record, presented before us, it transpires that the appellant was appointed as Drawing Master, BS-15, in the Elementary and Secondary Education Department w.e.f 01.09.2013, vide an order dated 04.07.2013. He joined the department on 02.09.2013. Prior to that he was serving in the Islamabad Electric Supply Company (IESCO) as Tracer since 2006 on contract basis and later on regularized in 2008. Through the instant service appeal the appellant has prayed that his service in IESCO may be counted in his record for the purpose of pensionary benefits. As contended by the appellant in his service appeal, he is an employee of IESCO (WAPDA), but it is to be noted that WAPDA is an authority governed and regulated by the Pakistan Water and Power Development Authority Act, 1958 whereas IESCO is a body corporate that has been incorporated under the Companies Ordinance of 1984. One point becomes clear that IESCO and WAPDA are two different entities. Appointment order of the appellant clearly shows that he was an employee of IESCO, and not of WAPDA, and that he was not a government servant.

7. Now, while coming to the question of counting of his service in IESCO for pensionary benefits, rules of provincial government are extremely clear when they give the conditions of qualifying for pension by stating that the service of a Government Servant does not qualify for pension when it conforms to the three conditions; first, the service must be under government; second, the service must not be non-pensionable; and third, the service must be paid by the government from the Provincial Consolidated Fund. In case of the appellant, his previous service in IESCO was neither a government service, nor he was paid out of Provincial




Consolidated Fund, therefore, he does not qualify for payment of pension for that period.

8. In view of the above discussion, the appeal in hand is dismissed.

Costs shall follow the event. Consign.

9. Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 13th day of November, 2023.


(FAREEHA PAUL)
Member (E)


(SALAH-UD-DIN)
Member (J)

Fazle Subhan, P.S