BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No: 2022/2022

Lal Rahim Ex-PST S/O Khan Baz R/O Faqeer Korona District Mardan.

(Appellant)

Versus

District Education Officer (Male) Mardan & others.

(Respondents)

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4.	Copy of attendance register	"E"	14	32
5 !	Copy of Pension Rules & Judgment	"F &G	3 2	3 €
6.	(Copy of F.R 18	H"		3 %

Respondent

ZAHID MUHAMMAD

District Education Officer (Male) Mardan

(2)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No: 2022/2022

Lal Rahim Ex-PST S/O Khan Baz R/O Faqeer Korona District Mardan.

(Appellant)

Versus

Rayber Pakhtukhwa Service Tubumat

Diary No/0/62

Date 2-1-2024

(Respondents)

Para Wise Comments on Behalf of Respondents No 1 to 3

District Education Officer (Male) Mardan & others.

Respectfully Sheweth,

PRELIMINARY OBJECTIONS:

- 1. That the appellant has got no cause of action as well as locus standi to file the instant appeal.
- 2. That the instant appeal is badly time barred.
- 3. That the appellant has not come to this Honorable Tribunal with clean hands, hence the appeal is liable to be dismissed.
- 4. That the appellant is estopped by his own conduct.
- 5. That the appellant has concealed the material facts from this Honorable Tribunal, hence the appeal is liable to be dismissed.
- 6. That the appellant had been transferred vide order No 21121-540 since 18/11/1981 at GPS Jamal Abad Mardan and he had been again transferred vide order No 3251-54 since 20/10/1984 at GPS Sardara Mardan

(Copies of order & Charge Reports are as Annexure "A, B, C.D)

3

7. That the appellant had been performed his duty since 30/09/1986 and after that the appellant had been absent from duty since 01/10/1986.

(Copy of attendance register is as Annexure E)

8. That the appellant had been appointed since 02/10/1980 and he had been absent from duty since 01/10/1986. The appellant completes only Four years' and ten months service which is less than ten years and the appellant is not entitled for pension.

(Copies of attendance register is as E)

9. That as per NWFP Civil Servants Pension Rules and Orders 2006, section 2.11, Forfeiture of Past Service. A Government servant forfeits his past service in the following cases sub section (C) Absence from duty without leave. Hence the appeal is liable to be dismissed.

(Copies of Civil Servants Pension Rules & Judgment are as Annexure F & G)

10. That as per F.R.18. Unless the president in view of the special circumstances of the case, shall otherwise determine, after Five years continue absence from duty elsewhere than on foreign service in Pakistan whether with or without leave a Government servant ceases to be in Government employee. Hence the appeal is liable to be dismissed.

(Copy of F.R 18 is as Annexure H)

FACTS:

- 1. Para No 1 is related to his appointment which is correct,
- 2. Para No 2 is Incorrect, & Not admitted, as each & every Civil Servants is legally bound to do his duty honestly but the appellant is absence from duty without leave and he has acted negligence and careless on his duty.
- 3. Para No 3 is Incorrect, & Not admitted, as the appellant has not performed his duty till 1991 and he has not produced any documents regarding his duty. The appellant had been appointed since 02/10/1980 and he has performed his duty till 1986. There after he had been absent from duty without leave since 01/10/1986. The appellant completes only

(4)

Four years' and ten months service which is less than ten years and the appellant is not entitled for pension. Furthermore the appellant is absence from duty without leave and as per NWFP Civil Servants Pension Rules and Orders 2006, section 2.11, Forfeiture of Past Service. A Government servant forfeits his past service in the following cases sub section (C) Absence from duty without leave.

(Copies of Attendance Register & Pension rules & judgment Are as E, F&G)

- 4. Para No 4 is Incorrect, & Not admitted as the appellant has not mentioned date and time regarding his visited to the respondent Department. The appellant has not submitted an application for resume his duty and the appellant continuously absent from duty without leave.
- 5. Para No 5 is Incorrect, & Not admitted as the appellant has not submitted an application because there is no diary No, and the application is not available in the Service Appeal of the appellant.
- 6. Para No 6 is Incorrect, & Not admitted as the appellant had been absent from duty without leave since 01/10/1986 and the Departmental Appeal has submitted 25/09/2022 to the respondent Department without cogent reason which is badly Time barred as per Limitation Act.
- 7. Para No 7 needs no comments.

GROUNDS:

Λ. Incorrect & not admitted, as the appellant has not performed his duty till 1991 and he has not produced any documents regarding his duty. The appellant had been appointed since 02/10/1980 and he had been absent from duty without leave since 01/10/1986. The appellant completes only Four years' and ten months service which is less than ten years and the appellant is not entitled for pension.

(Copies of attendance register is as E)

B. Incorrect & not admitted, as the appellant has not given any justification regarding his absence from duty without leave and as per NWFP Civil Servants Pension Rules and Orders 2006, section 2.11,

(3)

Forfeiture of Past Service. A Government servant forfeits his past service in the following cases sub section (C) Absence from duty without leave. (Copies of Pension Rules 7 judgment are as Annexure F &G)

- C. Incorrect & not admitted, as the appellant is not legal and title for the relief as per F.R.18. Unless the president in view of the special circumstances of the case, shall otherwise determine, after Five years continue absence from duty elsewhere than on foreign service in Pakistan whether with or without leave a Government servant ceases to be in Government employee. (Copy of F.R 18 is as Annexure H)
- D. Para E, the service is badly time barred as Limitation Act. The respondent seeks permission to raise additional grounds at the time of arguments.

Therefore, in view of the above made submissions, it is most humbly prayed that on the acceptance of this reply, the appeal in hand may kindly be dismissed in favor of the Respondent Department in the interest of justice.

MOTASIM BILLAH SHAH

SECRETARY

E&SE Department Khyber Pakhtunkhwa, Peshawar.

(Respondents No. 3)

DIRECTOR
E&SE Department Khyber
Pakhtunkhwa, Peshawar.

(Respondent No: 2)

ZAHID MIGHAMMAD District Education officer

(Male) Mardan (Respondent No: 1)



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No: 2022/2022

Lal Rahim Ex-PST S/O Khan Baz R/O Faqeer Korona District Mardan.

(Appellant)

Versus

District Education Officer (Male) Mardan & others. (Respondents)

Reply to Application for condonation of delay. Respectfully Sheweth,

- 1. Para No 1 is related his appointment, needs no comments.
- 2. Para No 2 is Incorrect, & Not admitted, as each & every Civil Servants is legally bound to do his duty honestly but the appellant is absence from duty without leave.
- 3. Para No 3 is Incorrect, & Not admitted, as the appellant has not performed his duty till 1991 and he has not produced any documents regarding his duty. The appellant had been appointed since 02/10/1980 and he has performed his duty till 1986. There after he had been absent from duty without leave since 01/10/1986, and the appellant is not explain each and every day as per the relevant law.
- 4. Para No 4 is Incorrect, & Not admitted as the appellant has not mentioned date and time regarding his visited to the respondent Department. The appellant has not submitted an application for resume his duty and the appellant continuously absent from duty without leave, and the appellant is careless due to which the service appeal was delay.

Therefore it is humbly prayed that keeping in the above facts, the application may kindly be dismissed with cost.

District Education Officer

Male) Mardan

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No: 2022/2022

Lal Rahim Ex-PST S/O Khan Baz R/O Faqeer Korona District Mardan.

(Appellant)

Versus

District Education Officer (Male) Mardan & others.

(Respondents

AFFIDAVIT

I. Zahid Muhammad Education Department Mardan do hereby solemnly affirm and declare that the contents of Para. Wise Comments submitted on behalf of respondents are true to the best of my knowledge and belief and nothing has been concealed from this Honorable Court. It is further stated on oath that in this appeal, the answering respondents have neither been placed ex-parte nor their defense has been struck off.

Deponent

Zahid Muhammad DEQMAS Marda

1231 27112/2013 53





DISTRICT EDUCATION OFFICER (Male) MARDAN

EndstNo 8628/4 Dated 16 /12 /2023

AUTHORITY LETTER

I, Zahid Muhammad District Education Officer (Male) Mardan do hereby authorized Mr. Sajid Khan, Legal Representative on behalf of District Education Office (Male) Mardan, to deal with the issues regarding litigation, represent, submit comments/ Reply of the Service Appeals and attend the KPK Honorable Service Tribunal, Peshawar.

ZAHID MOHAMMAD

District Education Officer

(Male) Mardan

Better Copy

58.	Mira Gul S/O	candidate	GMS Hoti ANC Post
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59.	Nawar khan F.A S/0	candidate	GPS Mehmood (Hoti) vice No 45
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60.	Masroor Khan F.A S/O	candidate	GPS Khanjar Vice Noor Rahim
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61.	Lal Rahim , P.T.C	GPS No 3 Kohta	GPS Jamal Abad. A.V Post.
62.	Munsanif khan F.A	candidate	GPS Jaan Kote A.V Post.
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63.	Abdul wahab F.A S/O	candidate	GPS Khao. Vice Farman Ali
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65.	Ajmal Khan F.A S/0	candidate	GPS No 2 Sokhta A.V Post
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66.	Samin Jan F.A S/0	candidate	GPS No 1 Sokhta do
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67 .	Mohammad Javed F.A S/0	candidate	GMS Mohbat Abad Vice Said
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68.	Mohammad Bashir F.A S/O	candidate	GPS Panj pir A.V Post.
69.	Lal Sher S/0	candidate	GPS Chamtar do
	Akbar Khan of Main Banda (Gad	ldar)	
70.	Zor Mohammad S/0	candidate	GPS Wali Baz Khan do
	Abdu wazir of Shamansoor		Koroona

Endst No 21121-540 Mardan the: 18-11-1981

Copy of the above is forwarded for information & necessary action the:

- 1. Sub Divisional Education officer (Male) Mardan/Sawabi.
- 2. All the above mentioned Schools.
- 3. All Candidates concerned.

DISTRCT EDUCATION OFFICER MALE MARDAN

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71. Rafiq Ahmad s/o Candidate. Mocrul Han of Shallbaz Garbi.

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OFFICE OF THE SUB DIVISIONAL EDUCATION OFFICE (MALE) MARDAN TRANSFER.

Mr. Lal Rahim P.T.C, G.P.S Baizo Kharkai is hereby transferred to G.P.S Sardara against vacant post with immediate effect in the interest of public service.

Note

- 1. No TA/DA & TG is allowed.
- 2. Charge report should be submitted in duplicate.

AURANG ZEB KHAN SUB DIVISIONAL EDUCATION OFFICE (MALE) MARDAN

Endst: No. 3251-54 / Dated Mardan the 20/10/1984.

Copy forwarded to the:

- 1. District Education Officer (M) Mardan for information Please.
- 2. Head Teachers concerned.
- 3. A.S.D.E.O, Concerned.
- 4. Account local office.

SUB DIVISIONAL EDUCATION
OFFICE (MALE) MARDAN

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Note: 1. No. TA/DA & NO is allowed. 2. Charge report should be submitted in implicate.

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District Education On

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District Edizion Officer

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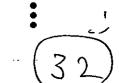
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GOVERNMENT OF NORTH-WEST FRONTIER PROVINCE FINANCE DEPARTMENT



NORTH-WEST FRONTIER PROVINCE

CIVIL SERVANTS PENSION

RULES AND ORDERS

(Corrected and amended up to 15th July 2006)

District Education Officer
(Male) Mardan

www.nwfpfinance.gov.pk

3/2



SERVICE QUALIFYING FOR PENSION

2.1 Conditions of Qualifications – The service of a Government Servant does not qualify for pension unless it conforms to the following three conditions: -

First - The Service must be under Government.

Second – the service must not be Non-pensionable.

Third - the service must be paid by Government from the Provincial Consolidated Fund.

- * Note (1) For the previous service of displaced Government servants which qualifies for pension see Chapter VII.
- * Note (2) Service rendered after retirement on superannuation pension/retiring pension shall not count for pension or gratuity.
- 2.2 Beginning of service Subject to any special rules the service of Government servant begins to qualify for pension when he takes over charge of the post to which he is first appointed.
- 2.3 Temporary and officiating service Temporary and officiating service shall count for pension as indicated below:
 - (i) Government servants borne on temporary establishment who have rendered more than five years continuous temporary service shall count such service for the purpose of pension or gratuity; and
 - (ii) Temporary and officiating service followed by confirmation shall also count for pension or gratuity.
- 2.4 Service in a temporary post on abolition of a permanent post If a permanent post, on which a Government servant holds a lien, is abolished under circumstances entitling him to get a compensation pension or gratuity, his service themselves temporary post under Government qualifies for pension.

Note (1) and (2) Substituted vide notification No. SO(SR) V-915/65 Dated 6th May, 1965

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(34)

allowances for the period of suspension. In other words, the mere act of reinstatement should be deemed to have rendered the period of suspension as qualifying for pension.

Para-1 (j) of F.D. N.-W.F.P. Letter No. SO (SR-III FD-4-36/76 Dated 4th June, 1977 (Appendix-III)

2.11 Forfeiture of Past Service - A Government servant forfeits his past service in the following cases: -

(a) Resignation of a post unless it is to take up another post service in which counts for pension.

(b) Removal or dismissal form service.

Absence from duty without leave.

Note – The authority which sanctions the pension may commute retrospectively periods of absence without leave into extraordinary leave.

*Note – In case of a civil servant, who, with the proper concurrence of the competent authority leaves service under the Government of NWFP and seeks absorption/employment under an autonomous, semi-autonomous/local body, where service is pensionable, the Government, if it is so requested, will be liable to share pensionary liability for the period of service rendered by such civil servant under the Government in accordance with the Government rules.

GOVERNMENT INSTRUCTIONS.

PService in an Autonomous or Semi-Autonomous Body. For the purpose of grant of pension under these orders, the pay drawn and the effective service rendered by a Government servant in an autonomous or semi-autonomous body, the authorized capital of which is wholly subscribed by the Central and/or a Provincial Government, in a post, appointment to which is, by law, required to be made and the salary of which is required to be fixed by the Central or a Provincial Government shall be treated as pay drawn and effective service rendered in a post in Government service.

- 2.12 . Condonation of interruptions and deficiencies. (1) The Administrative Department may for purposes of pension condone all gaps between [@][Periods of qualifying service] of a Government Servant.
- (2) The Administrative Department may condone deficiency in qualifying service for pension upto six months provided the service is meritorious and the condonation, if allowed will bring the service upto 25 completed years of qualifying service.

⁶⁸ [] Substituted by Finance Department Notification No. SO(SR) V-174/68, dated 24th May, 1968.

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^{*}Inserted vide notification No.F.D.SR.-III/4-112/80, dated 22-11-1980.

^{an} Para-9 of the Government of West Pakistan Finance Department letter No. SO (SR)-V-257/67 dated 27th April 1967 (Appendix-I)

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE QAZI FAEZ ISA, CJ MR. JUSTICE AMIN-UD-DIN KHAN MR. JUSTICE ATHAR MINALLAH

CIVIL PETITION No.5652 OF 2021

Kazim Ali Bangash

....Petitioner

Versus

Government of Khyber Pakhtunkhwa through its Secretary Elementary & Secondary Education, Peshawar and others

....Respondents

For the petitioner:

Mr. Shah Faisal, ASC.

For the respondents:

Mr. Sultan Mazhar Sher Khan, Addl. A.G.

KPK.

Mr. Sajid Khan, Legal Representative DEOM

Mr. Waheed Gul, Legal Representative,

DEOM, Kohat.

Date of Hearing:

19.10.2023

ORDER

Qazi Faez Isa, CJ. Learned counsel for the petitioner states that petitioner was working as a teacher for over eleven years and stopped working on 12 January 1978 yet he was entitled to pensionary benefits for which he agitated but unsuccessfully. Learned Additional Advocate-General, Khyber Pakhtunkhwa, states that the petitioner for the first time agitated the matter on 16 January 2020, when he filed a departmental appeal which was time barred, and so too the appeal before the Khyber Pakhtunkhwa Service Tribunal. He further states that since the petitioner had abandoned his place of work without obtaining leave rule 2.11 of the West Pakistan Civil Servants Pension Rules was attracted which provides that an employee's past service is forfeited. Learned counsel for the petitioner has not been able to bring this case within the ambit of Article 212(3) of the Constitution of Islamic Republic of Pakistan nor has pointed out any illegality in the impugned judgment to justify the grant of leave, which is accordingly declined and consequently this petition is dismissed.

HE SUD Islamabad, $\langle \cdot \rangle$ 19 October 20

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owing to either illness or private affairs, they should be granted leave require.

The phrase 'without avoidable delay' occurring in orders issued under F. R. 17 (2) c. f. Appendix 3 to F. Rs. and S. Rs. Vol. II refers only to delay on the part of the officer in reporting himself for duty (either at the case may be) and not a delay in actually taking up his duties thereafter, the stipulation underlying the phrase should be regarded as fulfilled if rules with only one day (instead of 6 days) for preparation at the port of treated as 'leave not due'.

The minimum of the officer's time-scale of pay (including overseas pay) may be treated as his average pay for the purpose of calculating half average pay for the period of 'leave not due' as well as for the purpose of allowing the minima of half average pay not exceeding the average pay under F. R. 90.

[Para. 31, Sec. II of Manual of Audit Instructions (Reprint).)

F. R. 18. Unless the President in view of the special circumstances of the case, shall otherwise determine, after five

1 Now substituted for "Governor-General".

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[44] The F.R. S.R. Volume I (Section I Produce and Reics) [F.R. 18]
Years' continuous absence from duty, elsewhere than on foreign
service in Pakistan whether with or without leave, a Government
servant ceases to be in Government employ.

Government decision. A question has been raised as to whether the provisions of F. R. 18 are attracted in the case of a Government servini who remains under suspension for more than S years on account of departmental or court proceedings pending against him. It has been decided that the above rile does not apply in such cases as a Government servent, who is under suspension, has no independent volition to resume duty and cannot be said to be absent from duty with leave or without leave within the manning of F. R. 18.

[G. P., M. F. O. M. No. F. 16(6)-R2(RWP)/6), doted the 8th May, 1951.]

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District Education Officer

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[B. 12-13] The F.R & S.R. Volume-I (Section-I Fundamental Rules) .. (37)

p. R. 12

- (a) Two or more Government servants cannot be appointed substantively to the same permanent post at the same time.
- (b) A Government servant cannot be appointed substantively except as a temporary measure, to two or more permanent posts at the same time.

substantively to a fast on which another Government servant notice a lien.

F. R. 12-A. Unless in any case it be otherwise provided in

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