

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No. 1023/2017

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

Dr. Dawood Iqbal, Homeo Doctor (BPS-16) Naseer Ullah Khan Babar Memorial Hospital, Peshawar.....(*Appellant*)

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary Health Department, Khyber Pakhtunkhwa, Peshawar.
2. The Secretary, Finance Department, Khyber Pakhtunkhwa, Peshawar.
3. The Director General Health Services, Khyber Pakhtunkhwa Peshawar
.....(*Respondents*)

Present:-

NOOR MUHAMMAD KHATTAK,
Advocate --- For Appellant

MUHAMMAD JAN,
District Attorney --- For respondents.

Date of Institution.....13.09.2017
Date of Hearing..... 27.11.2023
Date of Decision..... 27.11.2023

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 this appeal the respondents may be directed to count the previous service of the appellant towards regular service i.e. pay fixation may be allowed to appellant w.e.f. 17.05.2007 instead of 27.05.2014 in light of the judgment of this august Tribunal dated 02.07.2010 and subsequent order

dated 16.07.2012. Any other remedy which this august Tribunal deems fit that may also be awarded in favour of the appellant.”

02. Brief facts of the case are that the appellant was appointed as Homeo Doctor on contract basis in City Hospital Peshawar vide order dated 17.05.2007; that his services with effect from the date of initial appointment were regularized after promulgation of Khyber Pakhtunkhwa Tibb and Homeopathic Employees (Regularization of Services) Act, 2014 vide notification dated 26.03.2014; that several meetings were held for fixation of pay and payment of arrears to those employees who were regularized after promulgation of the Khyber Pakhtunkhwa Tibb and Homeopathic Employees (Regularization of Services) Act, 2014; that the pay fixation of other employees was resolved with effect from their initial appointment but the pay of the appellant was fixed with immediate effect i.e. 27.05.2014. Feeling aggrieved, the appellant filed departmental appeal on 18.05.2017 to respondent No. 1 which was not decided within the statutory period, hence preferred the instant service appeal on 13.09.2017.

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 not counting the project service served by the appellant in the respondent department is against the law, facts and norms of natural justice; that the appellant has not been treated in accordance with law, rules and as such the respondent violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973; that

it is clear from the regularization order dated 27.05.2014, the appellant is entitled for pay fixation but inspite of that the respondents are not willing; that under Article 38 (e) of the Constitution of Islamic Republic of Pakistan 1973, State is bound to reduce disparity in the income and earning of the individuals including persons in the various services of Pakistan. Moreover, similar nature case titled Main Siraj Vs. Government of Khyber Pakhtunkhwa has been decided by this Tribunal vide judgment dated 02.07.2010, therefore, under the principle of consistency reported in 2009 SCMR page 1 the appellant is also entitled for the grant of similar relief; that the action and inaction of the respondents is discriminatory and based on malafide;


05. On the other hand, learned District Attorney contended that the appellant was not entitled for counting/including the project service as he did perform the duty under Tibb/Homeopathic Employment (Regularization Service) Act, 2014 and the appellant was regularized w.e.f. 26.03.2014; that the case titled "Main Siraj Vs. Government of Khyber Pakhtunkhwa has no nexuses with the instant appeal and there was no gap period and pertains to Class-IV employees; that there is no discrimination and fraud with the Government exchequer and Article 38(e) of the Constitution of Islamic Republic of Pakistan 1973 is not applicable in the instant case.


06. Scrutiny of record shows that the appellant alongwith 23 others were appointed as Homeo Doctor BS-16 in the respondent Department vide order dated 17.05.2007 on contract basis for period of three years. The project stood completed on 30.06.2010. It is also admitted fact that regular posts of Homeo Doctors were created with effect from 01.07.2010. However, the appellant was neither adjusted against the sanctioned post nor his contract service was

dispensed with after completion of the project as per available record. The Provincial Assembly passed Tibb and Homeopathic Employees (Regularization of Services) Act 2014 and consequently the appellant's services were regularized vide notification dated 27.05.2014 w.e.f 17.05.2007 which is the initial date of appointment of the appellant. Pay record of the Accountant General Office Khyber Pakhtunkhwa reveals that the entry of the appellant into Government service is shown as 26.05.2007 but the benefit of seven years service is not being given to him. Counsel for the appellant placed record of another similarly placed employee of the respondent Department namely Mr. Abdur Rehman, Tabeeb who has been allowed the benefit of service with effect from his initial appointment. Both the employees stand regularized under the same law and same regularization order and serving in the same hospital. Moreover this Tribunal has remitted similarly placed Service Appeal 269/2016 title "Syed Nizam Ali Shah versus Government" to the respondent Department for deciding departmental appeal of the appellant vide judgment dated 10.10.2018.

07. In view of foregoing discussion the instant appeal is remitted back to the respondent to decide the departmental appeal of the appellant through a speaking order in accordance with the law treating him at par with ~~his~~ other similarly placed employees within a period of 90 days after receipt of copy of this judgment. 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 27th day of November, 2023.*


(Rashida Bano)
Member (J)


(Muhammad Akbar Khan)
Member (E)

ORDER


27.11.2023 01. Learned counsel for the appellant present. Mr. Muhammad Jan,

District Attorney for the respondents present. Arguments heard and record perused.

02. Vide our detailed judgment of today separately placed on file, consisting of (04) pages, the instant appeal is remitted back to the respondent to decide the departmental appeal of the appellant through a speaking order in accordance with the law treating him at par with other similarly placed employees within a period of 90 days after receipt of copy of this judgment. Costs shall follow the event. Consign.

03. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 27th day of November, 2023.*


(Rashida Bano)
Member (J)


(Muhammad Akbar Khan)
Member (E)