

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1389/2019

BEFORE: MRS. RASHIDA BANO ... MEMBER (J)
MR. MUHAMMAD AKBAR KHAN ... MEMBER (E)

Mr. Shah Hussain, PST (BPS-12), GPS Mothray Dada, Tirah, District
Khyber. (Appellant)

VERSUS

1. The Director Elementary & Secondary Education Department, Peshawar.
2. The Director Education Merged Area Districts, Merged Area Secretariat,
Warsak Road, Peshawar.
3. The District Education Officer (M), Khyber.
4. The District Account Officer, District Khyber.

.... (Respondents)

Mr. Muhammad Kamran Khan
Advocate ... For appellant

Mr. Muhammad Jan
District Attorney ... For respondents

Date of Institution.....22.10.2019
Date of Hearing.....17.11.2023
Date of Decision.....17.11.2023

JUDGMENT

RASHIDA BANO, MEMBER (J): The instant service appeal has been
instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal,
Act 1974 with the prayer copied as below:

**“On acceptance of this appeal, the appellant may kindly
be allowed/granted pay fixation w.e.f 02.06.2004 i.e from
the date on which the appellant was appointed as
Primary School Teacher by counting the previous
contractual service of the appellant towards regular
service.”**

2. Through this judgment we intend to dispose of instant service appeal as
well as connected service appeals which are:

1. Service Appeal No.1390/2019
2. Service Appeal No.1391/2019
3. Service Appeal No.1392/2019
4. Service Appeal No.1393/2019
5. Service Appeal No.1394/2019

In view of common questions of law and facts, the above captioned appeals are being disposed of by this order.

3. Brief facts of the case, as given in the memorandum of appeal, are that the Department of Education FATA, in order to raise literacy level, launched a project of Community Schools under FATA Annual Development Program in the year 1998 till 20.10.2010, wherein 956 schools were opened and 1912 PSTs were appointed since 2003 including the appellants after fulfillment of all codal formalities. Due to law and order situation in FATA, many schools were destroyed and being nonfunctional schools, it was decided to close the same as the teachers were getting salaries without performing their duties. In meeting of Standing Committee of SAFRAN held on 21.12.2011, it was decided that FATA Secretariat should regularize the services of Community School Teachers from their initial recruitment and communicated it to FATA Secretariat vide letters dated 16.01.2012 and 26.04.2012. After approval of summary by the Government of Khyber Pakhtunkhwa, the community school teachers were adjusted against regular post of PST BPS-07 and in this respect, the Secretary Social Sectors Department FATA issued notification on 11.05.2012 and they were subsequently regularized. Appellants filed departmental appeal for fixation of his pay w.e.f the date of initial appointment i.e 13.03.2005, which was not responded to, hence the instant service appeal.

3. Respondents were put on notice who submitted written replies/comments on the appeal. We have heard the learned counsel for the appellant as well as the learned District Attorney and perused the case file with connected documents in detail.

4. Learned counsel for the appellant argued that appellant has not been treated in accordance with law and rules and respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan, 1973. He further argued that by not fixing the pay of the appellants w.e.f 02.06.2004 by the respondents is against the law, facts and norms of natural justice as well as violation of Rule 2.3 of the West Pakistan Pension Rules, 1963. He submitted that respondents acted in arbitrary and malafide manner by not granting/allowing pay fixation to the appellant.

5. Learned District Attorney contended that the appellant has been treated in accordance with law and rules while doing so no provision of law has been violated. He further contended that initially the appellants were appointed as PST Community School Teacher on temporary basis under a project namely Community School Teacher project for three years only. Later on, on the recommendation of Departmental Selection Committee the appellants were regularly appointed on the post of PST but that was to be considered as fresh appointment as mentioned in their appointment order, therefore, they were not entitled for pay fixation. He submitted that the matter in the instant appeal is a closed transaction which has already been dismissed by the Hon'ble Peshawar High Court, Peshawar in W.P No. 4597-P/2018 on 30.10.2019, so appellants are not entitled for the pay fixation. He, therefore, requested that instant appeal might be dismissed.



6. Perusal of record reveals that initially the appellants were appointed as Primary School Teacher (BPS-07) on contract basis in boy community schools vide order dated 02.06.2004, who were later on appointed against the regular PST post at Government Primary School Benay Arbab Kili, Bara vide order dated 11.07.2009. Appellants seek regularization of their contractual service by way of their pay fixation. Perusal of order dated 11.07.2009 reveals that it is a fresh appointment and not a regularization or adjustment of the appellant. Appellants were appointed on the basis of notification dated 11.05.2012 issued by Secretary Social Sector Department FATA Secretariat Peshawar which read as:

The Governor of Khyber Pakhtunkhwa in his capacity of the competent authority has been pleased to approve the reappointment of Community School Teachers who qualify to be posted against the regular post of PST (BPS-07) in phased manner at the respective Agencies & FRs, purely on regular basis in accordance with the existing recruitment criteria but in relaxation upper age limit with immediate effect as specified below;


1. *The available regular vacant PST (BPS-7) posts in the primary/middle schools in FATA will be filled up from amongst the Community School Teacher and no fresh candidate considered for recruitment till all the eligible community School Teachers are absorbed against regular posts in their respective Agencies/FRs.*
2. *The non-local eligible Community School Teachers shall be consider re-appointment against the regular vacant posts of PST (BPS-7) adjustment of local qualified teacher.*

7. Pay protection and fixation came into field when a civil servant who inducted in a civil service was already working in an autonomous body or project was getting/drawing more salary in the previous service then the present one, in such a situation he will be entitled for his pay fixation and


protection under F.R 22. In the instant case appellant was getting pay of Rs. 3530/- on contract while his pay on his regular appointment in BPS-7 was also Rs.3530/- so pay in both the jobs/services were same. Therefore, provision of F.R 22 is not applicable to the case of appellant.

8. For what has been discussed above, instant appeal as well as connected service appeals are dismissed being devoid of merits. Costs shall follow the events. Consign.

9. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 17th day of November, 2023.*

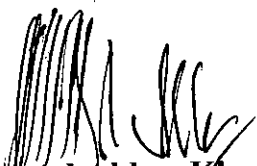

(MUHAMMAD AKBAR KHAN)
Member (E)


Kaleemullah


(RASHIDA BANO)
Member (J)

ORDER
17.11.2023

1. Learned counsel for the appellant present. Mr. Muhammad Jan learned District Attorney alongwith Mr. Munawar Khan, ADEO for the respondents present.
2. Vide our detailed judgement of today placed on file, we dismiss the appeal in hand being devoid of merits. Costs shall follow the events. Consign.
3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 17th day of November, 2023.*


(Muhammad Akbar Khan)
Member (E)


(Rashida Bano)
Member (J)