

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.558/2023

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

Mr. Muhammad Usman, PST (BPS-12) Government Primary School
Shagai District Torghar. (*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 (Male) District Torghar at Mansehra.
4. The Secretary Finance Department, Khyber Pakhtunkhwa, Peshawar.
5. The District Account Officer, District Torghar at Mansehra.
.... (*Respondents*)

Mr. Taimur Ali Khan
Advocate ... For appellant

Mr. Muhammad Jan
District Attorney ... For respondents

Date of Institution.....27.02.2023
Date of Hearing.....15.12.2023
Date of Decision.....15.12.2023

JUDGMENT

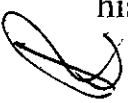
Rashida Bano, Member (J): The instant appeal instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as below:

“That on acceptance of the instant appeal, the respondents may kindly be directed to grant back benefits/arrears to the appellant in shape of salaries for the period w.e.f 07.09.2016 to 09.05.2019 alongwith annual increments of the year 2016, 2017 and 2018 as on domicile on which his



appointment order was withdrawn has been verified and has been declared correct by the civil court in civil suit No. 93/1 of 2017. Any other remedy which this honorable Tribunal deems fit and proper that may also be awarded in favour of appellant.

2. Brief facts of the case are that appellants were initially appointed as PST (BPS-12) on 09.04.2016. That on 07.09.2016, his appointment order was withdrawn, therefore, he filed service appeal bearing No. 1243/2016 before this Tribunal and at the same time he file civil suit No.93/1 of 2017 in the Hon'ble Civil Court Torghar at Oghi for restoration his domicile certificate which was decreed by the Hon'ble court in the favour of the appellant on 23.01.2019. Service appeal of the appellant was partially allowed by setting aside the impugned order with direction to the respondents to issue show cause notice to the appellant that why his appointment order be not withdrawn on such and such allegation and after replying the show cause notice and personal hearing the competent authority may pass proper order deemed appropriate. However, the reinstatement order of the appellant will be the subject to the outcome of the show cause notice. The appellant was reinstated vide notification dated 10.05.2019, however, the issue of arrears of his pay and allowances was ordered to be decided on the outcome of denovo inquiry. During the inquiry, the domicile certificate of the appellants were found genuine and notification dated 28.07.2020 was also issued regarding regularization of his service w.e.f the date of his appointment but arrears of pay and allowances were not granted.




Appellant then filed departmental appeal, 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 learned counsel for the appellant as well as learned District Attorney and have gone through the record and the proceedings of the case in minute particulars.

4. Learned counsel for the appellant argued that it was categorically mentioned in the reinstatement order dated 10.05.2019 that the issue of arrears of pay and allowances will be decided upon the outcome of de-novo inquiry, however the arrears were not granted to the appellant despite the fact that his domicile certificate was found genuine during the denovo inquiry. He further argued that appellant remained out of service w.e.f 07.09.2016 to 09.05.2019 for no fault on his part, therefore, he is entitled for the pay, allowances as well as annual increments.

5. Conversely, learned District Attorney contended that the appellant has been treated in accordance with law and rules. He further contended that the appellant was reinstated in the light of Judgment of Peshawar High Court, Abbottabad Bench subject to the outcome of denovo enquiry regarding verification of his domicile certificate and after conducting the denovo enquiry by Deputy Commissioner Tor Ghar, his pay was released. He further contended that in view of the principle of no work no pay, the appellant cannot claim salaries for the period during which he remained out of service. He further contended that this Tribunal has



got no jurisdiction to entertain the appeal in hand as the period for which the appellant seeks arrears he was not a regular employees/civil servants.

6. Perusal of record reveals that appellant was appointed as PST (BPS-12) vide notification dated 09.04.2016 and performed his duties regularly till 06.09.2016. When vide notification dated 07.09.2016, the appointment order of the appellant was withdrawn for the reason that his domicile certificate was withdrawn for the reason that his domicile certificate was not verified as valid from the concerned quarter. Appellant filed civil suit in the civil court wherein impugned order was set aside vide judgment and decree dated 23.01.2019. Appeal against the said decree was also dismissed by the District Judge Torghar vide order dated 25.03.2019. Appellant also file service appeal against the withdrawal of his appointment order which was partially accepted vide order dated 18.02.2019 with direction to conduct denovo inquiry. Appellant was reinstated into service in consequence of order of this Tribunal vide order dated 10.05.2019 wherein it is categorically mentioned that the issue of arrears of pay, allowances and increments would be decided upon the outcome of de-novo inquiry. Domicile certificate of the appellant was found valid in devono inquiry and service of the appellant was regularized vide notification dated 28.07.2020. It is admitted fact that the domicile certificate of the appellant was found valid during the de-novo inquiry, therefore, the period during the appellant remained out of service w.e.f 07.09.2016 to 10.05.2019 could not be considered as a fault on the part of the appellant. August Supreme

Court of Pakistan in its judgment reported as 2013 SCMR 752 has graciously observed as below:

“Once an employee is reinstated in service after his exoneration of the charges leveled against him, the period during which he remained either suspended or dismissed cannot be attributed as a fault on his part. His absence during this period was not voluntary on his part but it was due to order of the appellant that he was restrained not to attend his job/duty because on the basis of charge sheet, he was suspended and later on dismissed. At the moment, his exoneration from the charges would meant that he shall stand restored in service, as if he was never out of service of the appellant. If the absence of the respondent or non-attending the work was not volunteer act on the part of the appellant, in no manner the service record of the respondent can be adversely affected nor he can be denied any benefit to which he was entitled, if he had not been suspended or dismissed”.

7. While deriving the deriving wisdom from the above mentioned judgment of august Supreme Court of Pakistan, we are of the view that the appellant was entitled to pay and allowances for the period during which he remained out of service, particularly when he has submitted an affidavit alongwith his appeal that he did not remain gainfully employed in any service during the period of his absence. The affidavit so submitted by the appellant has not been denied by the respondents though filing of any counter affidavit. So far as the question of limitation is concerned, the issue being one of financial benefits, therefore, the appeal is not hit by the law of limitation.

8. Now come towards the contention of learned District Attorney regarding lack of jurisdiction of this Tribunal on the ground that period



for which appellant seek arrears, he was on contract basis and was not a regular employee, therefore, instant appeal could not be entertain by this Tribunal. Record reveals that service of the appellant was regularized vide notification dated 28.07.2020 with effect from the date of their appointment i.e 09.04.2016. So appellant was a regular civil servant from the date of his appointment, therefore, this Tribunal had jurisdiction to entertain the appeal in hand.

9. For what has been discussed above, the appeal in hand is allowed as prayed for. Costs shall follow the event. Consign. Consign.

10. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 15th day of December, 2023.*



(MUHAMMAD AKBAR KHAN)
Member (E)



(RASHIDA BANO)
Member (J)

- 28th Aug, 2023
1. Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney alongwith Mr. Sher Shah, Supdt for the respondents present.
 2. Written reply/comments has been submitted which is found placed on file. To come up for arguments on 15.012.2023 before D.B. P.P given to the parties.

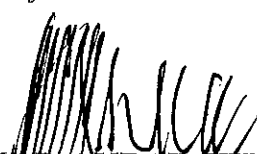



(Kalim Arshad Khan)
Chairman

Adnan Shah

ORDER

- 15.12.2023
1. Learned counsel for the appellant present. Mr. Mohammad Jan learned District Attorney alongwith Sher Shah, Superintendent for the respondents present.
 2. Vide our detailed judgement of today placed on file, the appeal in hand is allowed as prayed for. Costs shall follow the event. Consign.
 3. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 15th day of December, 2023.*


(MUHAMMAD AKBAR KHAN)
Member (E)


(RASHIDA BANO)
Member (J)