

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1376/2020

BEFORE: MRS. RASHIDA BANO ... MEMBER (J)
MISS FAREEHA PAUL ... MEMBER(E)

Khalid Muhammad, Arabic Teacher GMS Anbar, Swabi.
.... (Appellant)

VERSUS

1. The Secretary to Government of Khyber Pakhtunkhwa, Elementary and Secondary Education, Peshawar.
2. The Decorator, Elementary and Secondary Education, Peshawar.
3. The District Education Officer, Male Swabi.
4. The Secretary Finance Department, Khyber Pakhtunkhwa, Peshawar.

.... (Respondents)

Mr. Hilal Zubair
Advocate ... For appellant

Mr. Habib Anwar
Additional Advocate General ... For respondents

Date of Institution..... 09.03.2020
Date of Hearing.....05.01.2024
Date of Decision.....05.01.2024

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 respondents may be directed to fix the appellant’s pay in BPS-14 as at the relevant time as per notification dated 07.08.1991 with all back and consequential benefits. Any other remedy which



**this august tribunal deems fit that may be also be awarded
in favour of appellant.”**

2. Brief facts leading to filing of the instant appeal are that the appellant was appointed as Arabic Teacher (BPS-9) in Education Department vide order dated 24.09.1985. That appellant has passed BA in the year 1987 and MA in 1991. That the government of Khyber Pakhtunkhwa had issued notification dated 07.08.1991, whereby various grades had been given to different categories of the teachers. The cadre of the appellant was placed in BPS-14 who had five year of service but appellant was ignored. Feeling aggrieved, appellant filed departmental appeal which was not responded, hence, the instant the service appeal.

3. We have heard learned counsel for the appellant and learned District Attorney for the respondents and have gone through the record and the proceedings of the case in minute particulars.

4. Learned counsel for the appellant argued that the appellant has not been treated in accordance with notification dated 07.08.1991. He further argued that inaction of the respondent and not following the notification dated 07.08.1991 in respect of appellant's pay fixation is an arbitrary act on the part of respondents. He further argued that the appellant was entitled to BPS-14 as but his pay was not fixed accordingly which is deprivation of appellant from his legal right.

5. Conversely, learned District Attorney contended that the appellant was treated in accordance with law and rules. He further contended that the appellant was promoted to the post of SST and adjusted at GHS Kunda vide order dated 30.10.2014 and was retired from service on attaining the age of superannuation on 04.02.2019. He further contended that appellant was not

trained Fazil, hence he is not entitled for award of BPS-14. He further contended that appellant had earlier filed the same appeal with the same prayer, facts and grounds, under Service Appeal No. 232/2017, which was dismissed as withdrawn by this tribunal on 14.12.2018, thus the instant service appeal is barred by the principal of resjudicata and is liable to be dismissed.

6. Perusal of record reveals that appellant filed instant appeal for fixation of his pay in BPS-14 in accordance with notification dated 07.08.1991 with request to grant him all back and consequential benefits. Appellant was appointed as Arabic Teacher in BPS-09 vide order dated 24.09.1995, passed his BA in 1987 while MA Islamyat in the year 1991 on 07.08.1991. Government of Khyber Pakhtunkhwa issued a notification in accordance with which various grades had been given to different categories of teachers. Those Arabic teachers had been placed in BPS-14 who had 5 years service and passed B.A in 2nd division or MA Arabic. Appellant fulfilled this criteria but he was astonished to check that his pay was not fixed in BPS-14 at the relevant time as per notification dated 07.08.1991. Appellant alleged discrimination because pay of all others teachers of appellant's cadre were fixed in BPS-14 by ignoring the appellant.

7. Learned Deputy District Attorney at the very outset raised objection upon maintainability of instant appeal by arguing that earlier, the appellant filed service appeal bearing No.232/2017 with the same prayer as is claimed there in the instant appeal, and the said appeal was withdrawn by the appellant, therefore, instant appeal is hit by Rule, 24 of the Khyber




Pakhtunkhwa Service Tribunal Act, 1974. i.e. resjudicata and requested for rejection of appeal.

8. Perusal of service appeal No.232/2017 reveals that said appeal was also for fixation of the pay of the appellant in BPS-14 at the relevant time as per notification dated 07.08.1991 which means that said appeal was filed for the same relief which appellant seeks in the instant appeal also. Appellant withdrew that appeal on 14.12.2018. Rule 24 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 is reproduced for ready reference:

“24. Appellant precluded from bringing another appeal in certain cases. Where an appeal has been withdrawn by the appellant and is in consequence dismissed by a Tribunal, the appellant shall, unless otherwise directed by a Tribunal, be precluded from bringing another appeal in respect of the same cause of action.”

9. In view of the above discussion, the appeal in hand is dismiss having no force in it. Cost shall follow the event. Consign.

10. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 5th day of January, 2024.*



(FAREEHA PAUL)
Member (E)


(RASHIDA BANO)
Member (J)

ORDER

05.01.2024

1. Learned counsel for the appellant present. Mr. Habib Anwar learned Additional Advocate General for the respondents present.
2. Vide our detailed judgment of today placed on file, the appeal in hand is dismissed having no force in it. Cost shall follow the event. Consign.
3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 5th day of January, 2024.*


(FARDEHA PAUL)
Member (E)


(RASHIDA BANO)
Member (J)