

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR**

Service Appeal No. 207/2019

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

Gul Zaman S/O Noor Shah Resident of Village & p.O Khojaki Killa
Tehsil Takhat-e-Nasrati, District Karak..... (*Appellant*)

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary Elementary &
Secondary Education, Civil Secretariat, Peshawar and
others..... (*Respondents*)

Present:-

ASHRAF ALI KHATTAK,
Advocate --- For Appellant

ASIF MASOOD ALI SHAH,
Deputy District Attorney --- For respondents.

Date of Institution.....14.02.2019

Date of Hearing..... 31.01.2024

Date of Decision..... 31.01.2024

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;

*“On acceptance the instant appeal, this Hon’ble Tribunal may
very graciously be pleased to:*

- i. Declare the act and omissions of the respondents for not
granting/providing pensionary benefit as against the*

fundamental rights of the appellant and also against law, rules and policy governing the subject.

ii. Declare the acts of the respondents is unlawful, without lawful authority.

iii. That the respondents to grant the appellant has due and legal pensionary benefits forthwith.”

02. Brief facts of the case are that appellant was initially appointed as Junior Vernacular Teacher on 04.04.1966. During his service, he was transferred to different schools and when he asked the department for provision of his service record, the said record was denied to him. That later on, his services were terminated and he was accordingly dismissed from service in the year 1978. That for the pensionary benefits/emoluments, he filed Writ Petition No.658-B/2017 which was disposed of with direction to the respondents to treat the petition as departmental representation. That his departmental appeal was rejected, therefore, he again approached the Peshawar High Court, whereby, he was directed to approach proper forum. Therefore, he filed the instant service appeal.

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 Deputy District Attorney and have gone through the record with their valuable assistance.

04. Learned counsel for the appellant contended that the appellant had served for twelve years and was discharged from service in the year 1978, therefore, he was legally entitled for pensionary benefits for his services either on contract or on Adhoc basis. Learned counsel for the appellant further contended that the respondents had misconceived the statutory law and rules; that denial of pensionary benefits was against the natural justice and violation of Article-25 of the Constitution of Islamic Republic of Pakistan, 1973. Lastly, he submitted that the impugned act of the respondents was against law, arbitrary and without lawful authority, therefore, he requested for acceptance of the instant service appeal.

05. As against that, learned Deputy District Attorney argued that the appellant had left his services without any permission and after lapse of 39 years, his claim for pensionary benefits was against law and rules. He further submitted that the appellant was not entitled for pensionary benefits. Lastly, he submitted that his claim for pension was incorrect, therefore, he was rightly denied for his pensionary benefits.

06. Perusal of record reveals that the appellant joined the Education Department back in 1966 as Junior Vernacular Teacher. He left services in the year 1978 and approached the Worthy Peshawar High Court, Bannu Bench in Writ Petition No. 658-B of 2017 claiming pensionary benefits. His petition was converted into departmental appeal and he was directed to approach the proper forum vide order dated 23.10.2017. The departmental appeal of the appellant has been rejected by the competent authority hence he approached the Service Tribunal with the instant

service appeal. There is nothing on record and neither the appellant produced any documentary proof as to why he left the service in the year 1978. The only document on which the appellant relies is a photocopy of an undated form relating to payment of GP-Fund of the appellant. As per FR.18 in vague at that time his services stood automatically ceased. The respondents have relied on the Provision of FR.18 which was in the field at that period in time which is reproduced below;

“Unless the Governor-General in view of the special circumstances of the case shall otherwise determine, after five years’ continuous absence from duty, elsewhere than one foreign service in Pakistan whether with or without leave, a Government servant ceases to be a Government employee”

07. In view of the above discussion, the instant appeal stands dismissed being devoid of any merits. Costs shall follow the event. Consign.

08. *Pronounced in open Court at Peshawar under our hands and seal of the Tribunal on this 31st of January, 2024.*



(Rashida Bano)
Member (J)



(Muhammad Akbar Khan)
Member (E)

Kamranullah

ORDER
31.01.2024

1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present.

2. Vide our detailed judgment of today separately placed on file, consisting of (04), the instant appeal stands dismissed being devoid of any merits. 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 31st of January, 2024.*



(Rashida Bano)
Member (J)



(Muhammad Akbar Khan)
Member (E)

Kamranullah