

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 831/2023

BEFORE: KALIM ARSHAD KHAN ... CHAIRMAN
MISS FAREEHA PAUL ... MEMBER(E)

Khalil Muhammad Khan, Social Organizer (BPS-17) O/O District Health Officer, Malakand. (Appellant)

Versus

1. The Secretary Health Department, Khyber Pakhtunkhwa, Peshawar.
2. The Secretary Finance Department, Khyber Pakhtunkhwa, Peshawar.
3. The Provincial Coordinator MNCH Program, Khyber Pakhtunkhwa, Peshawar.
4. The Director General Health Services, Khyber Pakhtunkhwa, Peshawar.
..... (Respondents)

Mr. Noor Muhammad Khattak,
Advocate ... For appellant

Mr. Asif Masood Ali Shah,
Deputy District Attorney ... For respondents

Date of Institution.....	23.02.2023
Date of Hearing.....	20.02.2024
Date of Decision.....	20.02.2024

JUDGEMENT

FAREEHA PAUL, MEMBER (E): Through this single judgment, we intend to dispose of instant service appeal as well as connected service appeal No. 832/23 titled "Iqbal Hussain Versus Secretary, Health Department, Khyber Pakhtunkhwa Peshawar etc.", service appeal No. 833/23, titled "Ikram Khan Versus Secretary, Health Department, Khyber Pakhtunkhwa Peshawar etc.", service appeal No. 834/23, titled "Mst. Kaursar Versus Secretary, Health Department, Khyber Pakhtunkhwa Peshawar etc.", service appeal No. 835/23, titled "Shahid Amin Versus Secretary, Health Department, Khyber Pakhtunkhwa Peshawar etc.", service



appeal No. 836/23, titled "Dr. Palwasha Versus Secretary, Health Department, Khyber Pakhtunkhwa Peshawar etc.", service appeal No. 837/23, titled "Fazal Din Versus Secretary, Health Department, Khyber Pakhtunkhwa Peshawar etc.", service appeal No. 838/23, titled "Raza Shah Versus Secretary, Health Department, Khyber Pakhtunkhwa Peshawar etc.", service appeal No. 839/23, titled "Mr. Hidayat Ur Rehman Versus Secretary, Health Department, Khyber Pakhtunkhwa Peshawar etc.", service appeal No. 840/23, titled "Syed Osama Zahid Versus Secretary, Health Department, Khyber Pakhtunkhwa Peshawar etc.", service appeal No. 841/23, titled "Mr. Muhammad Saleem Versus Secretary, Health Department, Khyber Pakhtunkhwa Peshawar etc.", service appeal No. 842/23, titled "Mst. Azra Gul Versus Secretary, Health Department, Khyber Pakhtunkhwa Peshawar etc.", service appeal No. 843/23, titled "Mst Faiza Bibi Versus Secretary, Health Department, Khyber Pakhtunkhwa Peshawar etc.", service appeal No. 844/23, titled "Mr. Muhammad Khaliq Versus Secretary, Health Department, Khyber Pakhtunkhwa Peshawar etc.", service appeal No. 845/23, titled "Shaukat Ali Khan Versus Secretary, Health Department, Khyber Pakhtunkhwa Peshawar etc.", service appeal No. 846/23, titled "Mst. Gul-e-Rana Versus Secretary, Health Department, Khyber Pakhtunkhwa Peshawar etc.", service appeal No. 847/23, titled "Mst. Gul Naz Begum Versus Secretary Health Department, Khyber Pakhtunkhwa Peshawar etc.", service appeal No. 848/23, titled "Mst. Husan Bano Versus Secretary, Health Department, Khyber Pakhtunkhwa Peshawar etc.", service appeal No. 849/23, titled "Umar Rehman Versus Secretary,



Health Department, Khyber Pakhtunkhwa Peshawar etc.”, service appeal No. 850/23, titled “Mst. Saima Nawab Versus Secretary, Health Department, Khyber Pakhtunkhwa Peshawar etc.”, service appeal No. 851/23, titled “Noor Wahid Versus Secretary, Health Department, Khyber Pakhtunkhwa Peshawar etc.”, service appeal No. 852/23, titled “Shah Usman Jehangir Versus Secretary, Health Department, Khyber Pakhtunkhwa Peshawar etc.”, service appeal No. 853/23, titled “Mst. Ishrat Versus Secretary, Health Department, Khyber Pakhtunkhwa Peshawar etc.”, service appeal No. 854/23, titled “Mst. Tasleem Versus Secretary, Health Department, Khyber Pakhtunkhwa Peshawar etc.”, service appeal No. 855/23, titled “Mr. Wakeel Taj Versus Secretary, Health Department, Khyber Pakhtunkhwa Peshawar etc.”, service appeal No. 856/23, titled “Mst. Seema Gul Versus Secretary, Health Department, Khyber Pakhtunkhwa Peshawar etc.”, service appeal No. 857/23, titled “Mr. Kaleem Ullah Versus Secretary, Health Department, Khyber Pakhtunkhwa Peshawar etc.”, service appeal No. 858/23, titled “Mr. Irfan Jamal Versus Secretary, Health Department, Khyber Pakhtunkhwa Peshawar etc.”, service appeal No. 859/23, titled “Mst. Nazia Begum Versus Secretary, Health Department, Khyber Pakhtunkhwa Peshawar etc.”, service appeal No. 860/23, titled “Sajjad Versus Secretary, Health Department, Khyber Pakhtunkhwa Peshawar etc.”, and service appeal No. 861/23, titled “Mst. Bushra Versus Secretary, Health Department, Khyber Pakhtunkhwa Peshawar etc.”, as in all the appeals, common question of law and facts are involved.



2. The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, against the appellate order dated 18.01.2023 communicated to the appellant on 24.01.2023, whereby the departmental appeal of the appellant for fixation of pay w.e.f. 07.08.2009 i.e. from the date of initial appointment had been rejected. It has been prayed that on acceptance of the appeal, the impugned order dated 18.01.2023 might be set aside and the appellant might be allowed/granted pay fixation w.e.f. 07.08.2009 i.e. from the date of initial appointment, with all back benefits, alongwith any other remedy which the Tribunal deemed appropriate.

3. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was initially appointed in the respondent Department as Social Organizer (BS-17) vide order dated 07.08.2009. While performing his duty, service of the appellant was regularized vide notification dated 15.08.2018 in pursuance of Khyber Pakhtunkhwa (Employees Regularization of Services) Act, 2018. Service of the appellant was regularized and his pay was fixed from the date of notification. Feeling aggrieved, the appellant preferred a representation, followed by writ petition No. 4573-P/2019 which was remitted to the respondents to redress the grievance of the appellant. The representation of the appellant was disposed of vide order dated 18.01.2023 which was communicated to him on 24.1.2023, hence the instant appeal.

4. Respondents were put on notice but they did not submit their written reply and were placed ex-parte vide order sheet dated 02.11.2023.



However, the learned Deputy District Attorney was granted full opportunity to present and defend the case.

5. Learned counsel for the appellant, after presenting the case in detail, argued that the inaction of respondents, by not allowing pay fixation to the appellant w.e.f. 07.08.2009, was against the law, facts and norms of natural justice. He further argued that in cases of similar nature, pay protection was granted to the regularized civil servants by the Finance Department vide notification dated 22.05.2019. Similarly, vide letter dated 06.02.2014, the Finance Department circulated a guide line, wherein it had been clarified that on regularization of contract employees, their previous service should be counted for pay protection. He contended that as per rule 2.3 of the West Pakistan Pension Rules, 1963 and P.R 22, the appellant was fully entitled for the grant of pay fixation w.e.f. 07.08.2009 with all back benefits. He requested that the appeal might be accepted as prayed for.

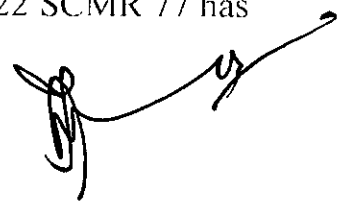
6. As the learned Deputy District Attorney neither had any record of the case with him, nor any departmental representative attended the Tribunal at the time of hearing, he relied on the record presented by the learned counsel for the appellant. He, however, supported the impugned order.

7. From the arguments and record presented before us, it transpires that the appellant was appointed as Social Organizer in 2009 in BS- 17 on fixed pay of Rs. 45000/- per month on contract for a period of one year, which was extendable, by the Government of Pakistan, National Maternal, Newborn and Child Health (MNCH) Programme, NWFP (now Khyber



Pakhtunkhwa). In pursuance of Section 4 of the Khyber Pakhtunkhwa Employees (Regularization of Services) Act 2018, his services were regularized from the date of commencement of the Act. Through the instant service appeal, the appellant has sought pay fixation from the date of his initial appointment a Social Mibilizer in 2009.

8. Learned counsel for the appellant has relied on various judgments of the apex court. In Civil Appeal No 1496 of 2019, reported as 2021 SCMR 1546, wherein the matter was regarding the payment of pensionary benefit of the service rendered on contract basis before regularization. We cannot draw any strength from the above case as that was regarding the pensionary benefits while the instant appeal is about pay fixation. In another case referred by learned counsel reported as 2008 SCMR 14, an employee of the Pakistan Broadcasting Corporation, drawing graded pay of BS-18, was appointed as Assistant Professor of History through Punjab Public Service Commission and his pay was fixed at the initial stage of BS-18, which was set aside by the august Supreme Court of Pakistan and he was allowed fixation of pay in BS-18 with effect from joining the Education Department by giving him protection of pay that he had last drawn in Pakistan Broadcasting Corporation. This case is about an employee of a corporation, which has been established under an act, and hence, no parallel can be drawn between this case and the service appeal preferred before us. Learned Counsel has referred to a third case reported as 2014 SCMR 1289, which is about the inter se seniority of judges of the High Court and hence, it has no correlation with the service appeal in hand. Reference to 2022 SCMR 77 has



also been made by the learned counsel for the appellant in which Teachers/Lecturers employed on daily wages before being regularized have been allowed pay protection, by counting the service they had rendered on daily wage basis for pensionary benefits and pay, by the Federal Service Tribunal, Islamabad and the same has been upheld by the august Supreme Court of Pakistan. In this case also, we cannot draw any parallel with those employees as they were appointed on daily wages against regular positions, who were later on regularized through the Federal Public Service Commission. Learned counsel referred to Notification of Government of Khyber Pakhtunkhwa, Finance Department dated 22.05.2019 also through which certain Class-IV employees, appointed on contract and fixed pay, were regularized, with effect from the date of their appointment and they were granted the status of Civil Servant also from that date, instead of their date of regularization. We cannot compare the case of the appellant with those Class-IV employees, who were appointed on fixed pay as a result of some policies issued by Finance Department. There is no mention that they were some project employees, who were regularized as a result of any Act, as is the case of the appellant before us. F.R 22 has also been referred by the learned counsel, but that is not applicable in case of the appellant.


9. After going through the details of all the cases presented by the learned counsel for the appellant, we have noted that the appointment order of the appellant shows that he was not regularly appointed against any regular post, shown in the budget book of the government. His appointment was on contract and fixed pay in a programme (MNCII), funded by the



Government of Pakistan out of its PSDP, as informed by the learned counsel for the appellant himself. His services were regularized through an Act of 2018 of the Government of Khyber Pakhtunkhwa, after the project, as reflected in schedule attached with the Act at serial No. 14, was converted to the regular budget. Section 4 of the Act clearly mentions the regularization of employees of the project as follows:

“Regularization of service of project employees:-
...Notwithstanding anything contained in any law or rules, the employees at sub-clause (ii) of clause (c) of sub-section (1) of section 2 of this Act, appointed on contract basis against project posts and holding such project posts till the commencement of this Act, shall be deemed to have been validly appointed on regular basis from the date of commencement of this Act, subject to verification of their qualifications and other credentials by the concerned Government Department.”


10. As the appointment of the employee was not against any regular post and he was not getting the graded pay, rather it was a project post and his pay was fixed at Rs. 45000/, according to pay drawn by a BS-17 officer, including basic pay and allowances, with a 5% increase per year, therefore, his pay was fixed in BS-17 at the time of regularization of his services. Before his regularization, he was getting his pay from the budget of the programme/project and not out of the regular budget of the government. One must keep a fact in view that pay of a government servant is fixed at the time of his regular appointment against a regular post. In case of the appellant, the post and his appointment was regularized through an Act of



2018, under its section 4, in which there is no ambiguity that it was “with immediate effect” and not from any retrospective effect.

11. In view of the above discussion, the appeal in hand, alongwith the connected service appeals, is dismissed, being groundless. Cost shall follow the events. Consign.

12. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 20th day of February, 2024.*


(FAREEHA PAUL)
Member (E)


(KALIM ARSHAD KHAN)
Chairman

FazleSubhan, P.S

SA 831/2023


Order

20th Feb. 2024

01. Mr. Noor Muhammad Khattak, Advocate for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present. Arguments heard and record perused.

02. Vide our detailed judgment consisting of 09 pages, the service appeal in hand is dismissed. Cost shall follow the event. Consign.

03. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 20th day of February, 2024.*


(FAREEHA PAUL)
Member (E)


(KALIM ARSHAD KHAN)
Chairman

Fazal Subhan PS