

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.1626/2021

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

Muhib Ullah S/O Naqeb Ullah Khan R/O Bannu, Presently Working as
PTC BPS-15 at GHS, Awal Khan Sub-Division Wazir
Bannu.....*Appellant*

Versus

1. Secretary Elementary & Secondary Education Department Khyber Pakhtunkhwa, Peshawar.
2. Secretary of Khyber Pakhtunkhwa Finance Department, Peshawar.
3. District Education Officer SDW-Bannu at Bannu.

.... (*Respondents*)

Farhan Ullah
Advocate

---- For appellant

Muhammad Jan
District Attorney

---- For respondents

Date of Institution.....08.01.2021
Date of Hearing.....29.02.2024
Date of Decision.....29.02.2024

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 as copied below:

“On acceptance of this appeal, the respondents may kindly be directed to allow two advance increments on the basis of attaining higher educational qualification under notification dated 11.08.1991 to the appellant alongwith arrears and all back benefits etc.”



2. Through this single judgment we intend to decide instant service appeal as well as connected service appeal No. 1627/2021 titled "Najib Ullah Vs. Education Department" as in both the appeals common question of law and facts are involved.

3. Brief facts of the case, as given in the memorandum of appeal, are that the appellants were appointed as PTC (BPS-09) in the Education Department and were performing their duty upto the entire satisfaction of their superiors. The appellants during service acquired higher qualification MA (English & Pushto) in the year 1999 and 2001 on the basis of which they are entitled for two advance increments in accordance with notification dated 11.08.1991, because similarly placed teachers had been allowed the said increments which was further affirmed by the Hon'ble Peshawar High Court, Peshawar vide judgment dated 08.06.2017. Appellants filed departmental appeal seeking said relief, which was not responded, hence the instant service appeal.

4. 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 District Attorney for the respondents and have gone through the record with their valuable assistance.

5. Learned counsel for the appellant argued that the appellants have not been treated in accordance with law and rules. He further argued that act of the respondents by not allowing two advance increments on the basis of attaining higher qualification as per notification dated 11.08.1991 and withholding the said benefits is against the law, facts and violation of the



procedure. He further argued that not extending the benefits under the said notification to the appellants without any legal justification and against the due course of law is discrimination with the appellants.

6. Conversely, learned District Attorney contended that the appellants have been treated in accordance with law and rules. He further contended that appellants could not claim benefits of Finance Department letter dated 11.08.1991 at this belated stage as policy of advance increment on the basis of higher qualification under *ibid* letter was already discontinued *vide* pay revision 2001. Even after its discontinuation in 2001, Finance Department through a circular letter dated 25.06.2010 clarified to all departments that those Government employees who had acquired higher qualification prior to 01.12.2001, but their cases have not yet been decided are eligible for advance increment, in light of the policy prevailing prior to 01.012.2001 and the appellant did not get the benefit at that time. He further contended that after promulgation of the Khyber Pakhtunkhwa Cessation of Payment of Arrears on Advance Increments on Higher Educational Qualification Ordinance, 2012 all kind of advance increments on the basis of higher qualification have been ceased. He therefore, requested for dismissal of the instant service appeal.

7. Perusal of record reveals that appellants through instant appeal seek two advance increments on acquiring higher qualification of MA in the year 1999 and 2001 during their service period on the basis of letter of Finance Department dated 11.08.1991 which was discontinued by the Provincial Government on 27.10.2001 by introducing pay reversion 2001. Finance Department, despite the discontinuation in year 2001, *vide* letter



dated 25.01.2001 clarified to employees of the all the departments that those government employees who had acquired higher qualification prior to 01.12.2001 and applied for it but their cases have not yet been decided are eligible for advance increments in the light of the policy prevailing prior to 01.12.2001. Appellants acquired their higher qualification of MA in the year 1999 and had not submitted any application for grant of advance increments prior to 01.12.2001. Moreover, the Government of Khyber Pakhtunkhwa promulgated the Khyber Pakhtunkhwa Cession of Payment of Arrears on Advance Increments on Higher Qualification Act 2012, on 27th March, 2012 in accordance to with it, after its promulgation i.e w.e.f 01.05.2012, no government employees can claim arrears on account of advance increments for higher educational qualification and advance increments and arrears already paid shall not be recoverable from the recipient government employees.


8. Now, appellants through instant appeal claim outstanding arrears of advance increments on the basis of notification of Finance Department dated 11.08.1991 but in light of the Section-2 of the Act of 2012 their claim cannot be entertained at this belated stage. Although appellant place reliance upon judgment of Peshawar High Court, in W.P No. 913-P/2014 delivered on 08.06.2017 wherein retrospective effect of cession of Payment of Arrears on Advance Increments on Higher Educational Qualification Act, 2012 was declared null and void but said judgment was set aside by the apex court of the country and returned the matter back to Peshawar High Court which was decided on 14.06.2023 wherein respondents were directed to consider only cases of the petitioners in writ petition mentioned




above for allowing benefits of advance increments who litigated for it but at the same time it was clarified that only the case of the present petitioner shall be considered and others cannot claim such benefits, having not agitated the matter at the relevant time.

9. For what has been discussed above, we are unison to dismiss the instant appeal as well as connected service appeal being devoid of merits. Cost shall follow the event. Consign.

10. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 29th day of February, 2024.*



(Fareeha Paul)
Member (J)



(Rashida Bano)
Member (E)

14.12.2023 1. Clerk to counsel for the appellant present. Mr. Muhammad Jan learned District Attorney for the respondent present.

2. Lawyers are on strike, therefore, the case is adjourned. To come up for arguments on 29.02.2024 before D.B. P.P given to the parties.

SCANNED
BY
FARAZ


Muhammad Akbar Khan
Member (E)



Rashida Bano
Member (J)

ORDER

29.02.2024 1. Learned counsel for the appellant present. Mr. Muhammad Jan learned District Attorney for the respondents present.

2. Vide our detailed judgment of today placed on file, we dismiss the appeal being devoid of merits. 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 March, 2024.*


(Fareeha Paul)
Member (E)


(Rashida Bano)
Member (J)