

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

BEFORE: **KALIM ARSHAD KHAN ... CHAIRMAN**
MUHAMMAD AKBAR KHAN... MEMBER (Executive)

Service Appeal No, 1471/2022

Date of presentation of Appeal.....12.10.2022
Date of Hearing.....18.04.2024
Date of Decision.....18.04.2024

Mst. Mumtaz Bibi (Ex-Lady Health Worker), wife of James Masih,
R/o Mohallah Saray Chatar Singh Thall District
Hangu.....**Appellant**

Versus

1. PS to Secretary Health, Government of Khyber Pakhtunkhwa Peshawar.
2. Director General Health Services Khyber Pakhtunkhwa.
3. District Health Officer Hangu.
4. District Accounts Officer, Hangu.(**Respondents**)

Present:

Mr. Muhammad Salah-ud-Din, Advocate.....For the appellant
Mr. Umair Azam, Additional Advocate General,.....For respondents

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**SERVICE APPEAL UNDER SECTION 4 OF SERVICE
TRIBUNAL ACT 1974.**

JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: Appellant was appointed as Lady Health Worker in the National Program vide order dated 29.07.2006 on contract basis. Her services were regularized vide order bearing No. 274-310 dated 19.04.2014 with effect from 01.07.2012. On attaining the age of superannuation, the appellant was retired from service vide order dated 10.07.2020 but without any pensionary benefits, therefore, the appellant approached the Peshawar High Court, Peshawar through Writ Petition, which

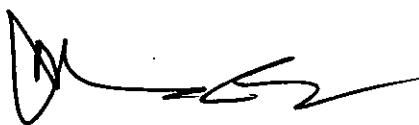


was converted into departmental appeal, hence this appeal on the grounds that as per Rule-2.3 of West Pakistan Pension Rules, 1963, temporary and officiating services are to be counted for the purposes of calculating the length of service to get pensionary benefits as well as in light of the judgment passed by Peshawar High Court, Peshawar in Writ Petition No. 5551-P of 2019 dated 01st October 2020, the appellant is entitled to get pensionary benefits.

2. On admission of the appeal for regular hearing, notices were issued to the respondents. Respondent No. 4 contested the appeal by way of filing para-wise comments, while rest of respondents have failed to submit their reply/comments, therefore, their right for submission of reply/comments was struck off vide order dated 29.05.2023 passed by this Tribunal. Respondent No. 4 had taken the main ground in his para-wise reply that the services of the appellant were regularized with effect from 01.07.2012 and she had retired from service vide order dated 10.07.2020 on attaining the age of superannuation, therefore, her regular services were less than ten years, hence, she was not entitled for any pensionary benefits under the Pension Rules.

3. We have heard learned counsel for the appellant and learned Additional Advocate General for the respondents.

4. The learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned Additional Advocate General controverted the same by supporting the impugned order (s). The learned Additional Advocate



General relied on the judgment of Supreme Court of Pakistan reported as 2021 SCMR 767 titled "*Province of Punjab Vs Dr. Javid Iqbal*". But that pertains to the retrospective regularization whereas the instant case is to count contractual service of the appellant to grant her pension benefits under Rule 2.3 (ii) of the West Pakistan Civil Services Pension Rules, 1963.

5. This Tribunal had on 17.06.2022 already decided a similar nature Appeal No. 6573/2021 titled "*Mst. Naheed Begum Vs The Secretary Health Department Khyber Pakhtunkhwa, Peshawar and others*" in the following manner:-

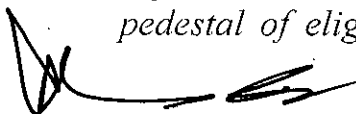
05. As a matter of the record, it is not disputed that the appellant was initially appointed as LHW on contract basis vide order dated 07.02.1996 and there is no service break in her service till regularization w.e.f. 01.07.2012 under the Khyber Pakhtunkhwa Regulation of Lady Health Workers Programme and Employees (Regularization and Standardization) Act, 2014. Since then she has rendered 08 years, 10 months and 02 days regular service which is less than 10 years of required service for pensionary benefits. It is, however, of importance to make reference to Rule 2.3 (ii) of the West Pakistan Civil Services Pension Rules, 1963 which stipulates;

2.3 Temporary and officiating service----
Temporary and officiating service shall count for pension as indicated below:-

(i) Government servants borne on temporary establishment who have rendered more than five years continuous temporary service shall count such service for the purpose of pension or gratuity; and

(ii) Temporary and officiating service followed by confirmation shall also count for pension or gratuity.

In the above scenario, the 16 years admitted contractual service of appellant was followed by regularization through enactment of provisional legislation which allows her to stand on the pedestal of eligibility and entitlement for the said



benefits. The august Supreme Court of Pakistan in its judgment reported as 2010 PLC 354, has laid down the cordinal principle as follows:

"When an employee was regularized his total length of service, was to be computed from the day he joined the service that could be temporary or otherwise-Even period of an employee of daily wages would be counted for the purpose of computing pensionary benefits"


06. In view of the provision of Rule 2.3 (ii) of the West Pakistan Civil Services Pension Rules, 1963 as well as 2010 PLC 354, the contractual period of service of the appellant has been followed by regularization under special law but w.e.f. 01.07.2012. The contractual period of the appellant is therefore countable towards pension and she is entitled for pensionary benefits. The appeal in hand is, therefore, allowed and the respondents are directed to release pension to the appellant as per her due rights and entitlement w.e.f. 04.05.2021. Parties are left to bear their own costs. File be consigned to the record room."

6. The case of the appellant is no different than the above, therefore, it is decided accordingly by allowing the same in the terms, the above appeal was allowed. Costs shall follow the event.

Consign.

7. Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 18th day of April, 2024.

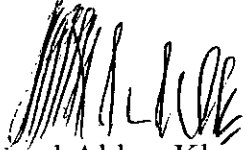

KALIM ARSHAD KHAN
Chairman


MUHAMMAD AKBAR KHAN
Member (Executive)


ORDER

18th April, 2024

1. Learned counsel for the appellant present. Mr. Umair Azam, Additional Advocate General for the respondents present. Arguments heard and record perused.
2. Vide our judgment of today placed on file, the case of the appellant is no different than the Appeal No. 6573/2021 titled "*Mst. Naheed Begum Vs The Secretary Health Department Khyber Pakhtunkhwa, Peshawar and others*" decided on 17.06.2022, therefore, it is decided accordingly by allowing the same in the terms, the above appeal was allowed. Costs shall follow the event. Consign.
3. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 18th day of April, 2024.*



(Muhammad Akbar Khan)
Member (Executive)



(Kalim Arshad Khan)
Chairman