

S.A #.423/2019

ORDER

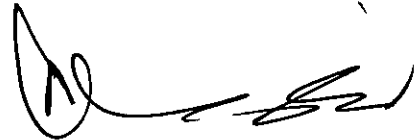
24th Apr. 2024 1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present.

2. Vide our detailed judgment of today placed on file, instant service appeal is dismissed. Costs shall follow the event. Consign.

3. *Pronounced in open Court at Abbottabad and given under our hands and the seal of the Tribunal on this 24th day of April, 2024.*



(Muhammad Akbar Khan)
Member (E)



(Kalim Arshad Khan)
Chairman
Camp Court, Abbottabad

Service Appeal No.423/2019 titled "Rustam Khan versus Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education, Peshawar & others", decided on 24.04.2024 by Division Bench comprising of Mr. Kalim Arshad Khan, Chairman, and Mr. Muhammad Akbar Khan, Member Executive, Khyber Pakhtunkhwa Service Tribunal, Peshawar at Camp Court, Abbottabad.

8. Therefore, this appeal is misconceived and is dismissed. Costs shall follow the event. Consign.

9. *Pronounced in open Court at Abbottabad and given under our hands and the seal of the Tribunal on this 24th day of April, 2024.*



KALIM ARSHAD KHAN
Chairman
Camp Court Abbottabad



MUHAMMAD AKBAR KHAN
Member (Executive)
Camp Court Abbottabad

Mutazem Shah

with immediate effect i.e. from the date of issuance of the circular letter, having no retrospective effect. Learned counsel for the appellant in order to support his contention, relied on the judgment of the Supreme Court of Pakistan in 2021 PLC (C.S) 1085 titled "Controller General of Accounts Vs. Fazil Ahmad, DAO EC (C&W Division Hangu) and others" and referred to Paragraph-11 of the judgment which is as under:

"11. It is a settled principle of law that a notification, which is duly published in the official gazette takes effect from the date on which it is published except otherwise provided in the notification itself. In view of the fact that neither the notification had validly been issued on the basis of powers available to the controller General of Accounts and previous approval of the federal government nor does it appears to have been published in the official gazette. As such, the validity of the notification and its impact on the rights of the Respondents was correctly assessed and determined by the learned High Court through the impugned judgment".

The above paragraph is regarding a notification, which is duly published in the official gazette and according to the judgment, it had to take effect from the date on which that was published except otherwise provided in the notification itself. We are afraid that the appellant cannot take benefit from the judgment of the Supreme Court of Pakistan, firstly, because it was regarding publication of a notification in the official gazette, whereas, in the case in hand, there is a circular letter and not a notification of the Government and secondly, because the circular letter has been issued "with immediate effect" i.e. it was to benefit the civil servants who were in the service at the time of issuance of circular and not those who had retired prior thereto. The appellant had retired much before the issuance of circular letter, which was given immediate effect, that is why, the urge of the appellant is not worth consideration

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

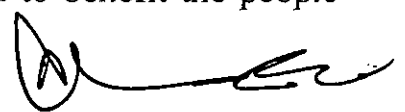
5. It appears from the record annexed with the appeal that vide applications dated 23.06.2018, 21.07.2018 and 23.12.2018, the appellant had requested for extension of the benefit of a Circular letter No. FD(SOSR-1)-2-123/2017 dated 10.11.2017 of the Government of Khyber Pakhtunkhwa Finance Department (Regulation Wing), which reads as under:

"I am directed to refer to the subject noted above and to state that the competent authority is pleased to allow usual increment with immediate effect to all the Provincial Government employees who were not allowed annual increment due on 01.12.2001 due to the reason that they were at the maximum of 1994 pay scales."

6. The Finance Department vide letter No.FD(SOSR-1) 2-123/2017-18 dated 15.02.2019 dealt with the application of the appellant dated 23.06.2018 in the following manner:

"I am directed to refer to your application No.nil dated 23.06.2018 on the subject noted above and to state that there is no such policy of Provincial Government under which usual increment has been granted in shape of Personal Pay w.e.f 01.12.2002 to the Provincial Government's employees".

7. The urge of the learned counsel for the appellant is that when a specific date i.e. 01.12.2001 was mentioned in the circular letter of the Finance Department, then the benefit of the circular letter had to be extended to the appellant. As against that, the contention of the respondents was that the circular letter was issued to benefit the people

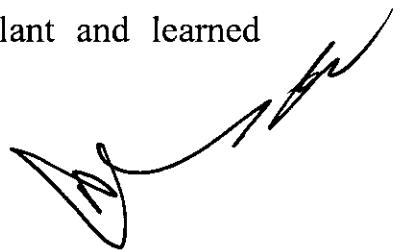


JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: Appellant's case in brief as per the averments of the Appeal is that he was serving in the Education Department since 1975 and was retired as Head Master on 19.03.2006 at the age of superannuation; that the appellant had drawn the salary under the pay scales of 1994 as ceiling of scale since 01.12.1998; that respondent No.2 (Secretary Finance Khyber Pakhtunkhwa) issued Notification dated 10.11.2017 to allow the usual increments with immediate effect to all the Provincial Government employees who were not allowed increment due on 01.12.2001 due to the reason that they were at the maximum of 1994 pay scales; that the appellant submitted an application on 23.06.2018 to issue a revised LPC (Last Pay Certificate) in the light of the said notification, w.e.f 01.12.1999, followed by a Writ Petition No.1300/2018 before the Peshawar High Court, Abbottabad Bench and the Hon'ble Peshawar High Court vide order dated 06.12.2018 directed the respondents to decide the departmental appeal; that vide order dated 15.02.2019 the departmental appeal of the appellant was rejected, hence, the instant service appeal.

2. On receipt of the appeal and its admission to full hearing, the respondents were summoned. Respondents put appearance and contested the appeal by filing written reply raising therein numerous legal and factual objections. The defense setup was a total denial of the claim of the appellant.

3. We have heard learned counsel for the appellant and learned Deputy District Attorney for respondents.



KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR
AT CAMP COURT, ABBOTTABAD

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

Service Appeal No.423/2019

Date of presentation of Appeal.....18.03.2019
Date of Hearing.....24.04.2024
Date of Decision.....24.04.2024

Rustam Khan, S/O Said Alam Ex-Head Master Resident of Mohallah Hayat Nagar Manglor Tehsil & District Mansehra.
.....(*Appellant*)

Versus

1. **Government of Khyber Pakhtunkhwa**, through Secretary Elementary Education, Peshawar.
2. **Secretary Finance**, Government of Khyber Pakhtunkhwa, Peshawar.
3. **District Comptroller**, Account Office, Mansehra...(*Respondents*)

Present:

Mr. Muhammad Riaz Swati, Advocate.....For the appellant
Mr. Asif Masood Ali Shah, Deputy District Attorney ...For respondents

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APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE OFFICE ORDER NO.(SOSR-I)2-123/2017 DATED 15.02.2019 WHEREBY RESPONDENT NO.2 REJECTED THE DEPARTMENTAL APPEAL/REPRESENTATION OF THE APPELLANT IS ILLEGAL AGAINST THE LAW AND FACTS AND POLICY APPELLANT BEING AN EMPLOYEE OF THE DEPARTMENT HAVING RETIRED ON 19.03.2006 AND AS SUCH BEING ENTITLED TO ALL USUAL INCREMENTS/PERSONNEL PAY IN HIS SALARIES W.E.F 1999 TILL THE DATE OF RETIREMENT, BE GIVEN ALL THE AFOREMENTIONED DUES/ARREARS OF USUAL INCREMENTS AS NOTIFIED VIDE NOTIFICATION NO. (SOSR-1)2-123/2017-18-2018 DATED 10.11.2017.

