

ORDER

28.02.2024

1. Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney for the respondents present. Arguments heard and record perused.

2. Vide our detailed judgment of today separately placed on file, consisting of (06) pages, the instant service appeal as well as connected service appeals are dismissed. 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 28th day of February, 2024.*



(RASHIDA BANO)
Member (J)




(MUHAMMAD AKBAR HAN)
Member (E)


whereas the appellants are admittedly the provincial employees since their inception into service. What we have arrived at is that the devolved employees were extended the benefits on the analogy that they were also covered in the definition of 2(b) of the Career Structure for Health Personnel Scheme Ordinance, 2011, whereas there is no such Ordinance or law of the Government of Khyber Pakhtunkhwa, whereby the appellants could be treated alike. The contention of the appellants that they were being treated with discrimination is thus also misconceived. In this respect, wisdom derived from the judgment of Peshawar High Court reported as 2003 PLC (C.S.) 1057 titled "Fazli Haq Khan, Registrar and 26 others-versus- Government of N.W.F.P. through Secretary Finance, Peshawar and 3 others",

10. As a sequel to the above discussion, the instant appeal as well as clubbed appeals mentioned in appendix-A are dismissed. Attested copy of this judgment be placed on files of all the clubbed appeals mentioned in appendix-A. Parties are left to bear their own costs. File be consigned to the record room.

07. In view of the above consolidated judgment rendered by this Tribunal dated 12.02.2024 in *Service Appeal No. 1620/2022 titled "Gul Zarif Khan versus Government of Khyber Pakhtunkhwa through Chief Secretary Civil Secretariat, Peshawar and 04 others"*, the instant service appeal as well as connected service appeals are dismissed. Costs shall follow the event. Consign.

08. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 28th day of February, 2024.*


RASHIDA BANO
Member (J)


MUHAMMAD AKBAR KHAN
Member (E)

Constitution of Islamic Republic of Pakistan. Moreover, as per Notification of the Finance Department the appellant is not eligible for the said relief, therefore, the appeal may kindly be dismissed with cost.

06. During scrutiny of record it came to surface that Mr. Gul Zarif Khan and 285 others who were similarly placed employees had filed service appeal No. 1620/2020 titled "Gul Zarif Khan versus Government of Khyber Pakhtunkhwa through Chief Secretary Civil Secretariat, Peshawar and 04 others", which were dismissed by this Tribunal vide consolidated judgment dated 12.02.2024. Operative paras of the said judgment are reproduced below:-

6. *The claim of the appellants in these appeals is that benefit of notification dated 25.11.2019, issued by the Government of Khyber Pakhtunkhwa Finance Department should also be extended to them being employees of the same department having same posts, designations and qualification etc. The contents of said notification are reproduced below:*

"In pursuance of the Supreme Court of Pakistan Civil Appeal No. 811/2016 titled "Muhammad Atique-Ur-Rehman & Others v/s Federal Government of Pakistan through Secretary Capital Administration etc," the Government of Khyber Pakhtunkhwa (Provincial Cabinet) has been pleased to approve Health Allowance at the rate of one running basic pay to the devolved employees working in the Special Education Institutions from the date of their devolution to Provincial Government of Khyber Pakhtunkhwa.

2. The above said allowance will be admissible only to the employees of Special Education Institutions of Khyber Pakhtunkhwa devolved under 18th Constitutional Amendment. (Emphasis supplied).

7. *The above notification was shown to have been issued in pursuance of the judgment of Supreme Court of Pakistan reported as*

appellant by respondent No. 2 in pursuance of judgment of august Supreme Court of Pakistan but the respondent No. 6 without any legal justification/reasons stopped the Health Allowance of the appellant and this act of the respondent No. 6 is totally unwarranted under the law, because until the granted allowance/order has not been cancelled/withdrawn by the competent authority, which should be the higher then the respondent No. 6. He further argued that the impugned order of respondent No. 6 is also violation of fundamental rights guaranteed under the Articles, 4, 8 & 25 of the Constitution. Article 38 of the Constitution of Islamic Republic of Pakistan, 1973 ensures reduction of disparity, income and earning of individual in various cadres of the service of Pakistan. He further argued that the respondents No. 5 & 6 have not exercised their power, authority and jurisdiction fairly and justly, therefore, the same is liable to be declared null and void and without lawful authority.

05. On the other hand, learned District Attorney contended that the respondent No. 2 granted Health Allowances to the devolved employees of Special Education institutions however, the appellant is not the initial appointee of Special Education Institution but he was initially appointed in a project namely "Shaheed Benazir Bhutto Women Center Kohat" under supervision of Federal Government of Pakistan & he was not serving in Special Education. According to Notification dated 25.11.2019 the Health allowance will be admissible only to the employees of Special Education of Khyber Pakhtunkhwa devolved under 18th Constitutional amendment. That the respondents are law abiding civil servants and respect the Constitution of Islamic Republic of Pakistan 1973 and did not violate any article of the

02. Brief facts of the case are that the appellant was initially serving as project Employee and vide order dated 08.06.2016, passed by the Peshawar High Court in Writ Petition No. 1854/2012, he was adjusted/reinstated in service vide order dated 23.02.2018. That on 25.11.2019 Health Allowance was granted to the appellant which was stopped vide impugned order dated 01.07.2020 on the ground that the said allowance was for the devolved employees while the appellant was not a devolved employees. Feeling aggrieved, the appellant filed Writ Petition No. 3207-P/2020 before the Hon'ble Peshawar High Court, Peshawar and the Hon'ble Peshawar High Court, Peshawar vide order dated 08.06.2021 dismissed the petition being not maintainable with the observation to approach the Service Tribunal, hence preferred the instant service appeal on 09.08.2021.

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

04. Learned counsel for the appellant contended that the impugned order of respondent No. 6 for the stoppage of Health Allowance and recovery of drawn amount of the appellant is illegal, void abinitio, discriminatory and without lawful authority, hence liable to be set aside. He further argued that the impugned order of respondent No. 6 of depriving the appellant from getting Health Allowance has been passed without any legal justification and reasons. He further argued that the Health Allowance has been granted to

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

BEFORE: RASHIDA BANO ... CHAIRMAN
MUHAMMAD AKBAR KHAN... MEMBER (E)

Service Appeal No. 7264/2021

Date of presentation of Appeal.....09.08.2021

Date of Hearing.....28.02.2024

Date of Decision.....28.02.2024

Mr. Masood ur Rehman, Senior Teacher, Nastar Special Education
KDA Kohat.....(*Appellant*)

Versus

1. Government of Khyber Pakhtunkhwa, through Secretary Social
Welfare, Special Education & Women Empowerment Department
Peshawar & others.....(*Respondents*)

Present:

ASIF MEHMOOD QURESHI,
Advocate

...

For appellant

MUHAMMAD JAN,
District Attorney

...

For respondents

JUDGMENT

MUHAMMAD AKBAR KHAN MEMBER (E):- Our this judgment single
judgment shall dispose of the instant service appeal as well as connected
service appeals bearing No. 7265/2021 titled "Muhammad Ishaq versus
Government of Khyber Pakhtunkhwa, through Secretary Social Welfare,
Special Education & Women Empowerment Department Peshawar & others"
& service appeal bearing No. 7266/2021 titled "Anila Rehman versus
Government of Khyber Pakhtunkhwa, through Secretary Social Welfare,
Special Education & Women Empowerment Department Peshawar & others"
as common question of law and facts are involved therein.