

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,PESHAWAR

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

Service Appeal No.424/2017

Date of presentation of Appeal.....03.05.2017
Date of Hearing.....07.05.2024
Date of Decision.....07.05.2024

Mr. Qayyum Khan, Water Management Officer, District On-Farm Water Management, District Peshawar.....(***Appellant***)

Versus

1. **The Government of Khyber Pakhtunkhwa** through Chief Secretary, Civil Secretariat, Peshawar.
2. **The Chief Secretary**, Civil Secretariat, Peshawar.
3. **The Secretary Agriculture, Livestock & Cooperative Department**, Civil Secretariat, Peshawar.
4. **The Director General** Form of Water Management Government of Khyber Pakhtunkhwa, Peshawar.
5. **The Secretary, Finance Department**, Khyber Pakhtunkhwa, Peshawar.
6. **The Secretary Establishment Department** Khyber Pakhtunkhwa, Peshawar.....(***Respondents***)

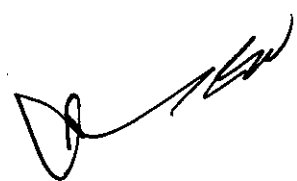
Service Appeal No.1259/2017

Date of presentation of Appeal.....13.11.2017
Date of Hearing.....07.05.2024
Date of Decision.....07.05.2024

Mr. Abdullah, Water Management Officer, District Director, On-Farm Water Management, District Mardan.....(***Appellant***)

Versus

1. **The Government of Khyber Pakhtunkhwa** through Chief Secretary, Civil Secretariat, Peshawar.
2. **The Chief Secretary**, Civil Secretariat, Peshawar.
3. **The Secretary Agriculture, Livestock & Cooperative Department**, Civil Secretariat, Peshawar.
4. **The Director General** Form of Water Management Government of Khyber Pakhtunkhwa, Peshawar.
5. **The Secretary, Finance Department**, Khyber Pakhtunkhwa, Peshawar.
6. **The Secretary Establishment Department** Khyber Pakhtunkhwa, Peshawar.....(***Respondents***)



Present:

Mr. Muhammad Asif Yousafzai, Advocate.....For the appellants
Mr. Asif Masood Ali Shah, Deputy District Attorney.....For respondents

APPEALS UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 FOR DIRECTING THE RESPONDENTS TO CONSIDER THE RESPONDENTS TO CONDONE THE INTERACTION BETWEEN THE TWO PERIODS OF QUALIFYING SERVICES OF PENSION PURPOSE UNDER RULES 2.12(1) AND RULES 2.3 CIVIL SERVICES PENSION RULES AND AGAINST NOT TAKING ANY ACTION ON DEPARTMENTAL APPEALS OF THE APPELLANTS WITHIN THE STATUTORY PERIOD OF 90 DAYS.

CONSOLIDATED JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: Through this single judgment, both the appeals, are jointly taken up as both are similar in nature and almost with the same contentions, therefore, can be conveniently decided together.

2. The appellants' cases are that they were appointed as Water Management Officers (BPS-17) in the Agriculture Department on contract basis vide Notification dated 20.12.1993; that from time to time, their contract appointment was extended by the Provincial Government. Vide Notification dated 07.06.2011, services of the appellants were regularized after promulgation of Khyber Pakhtunkhwa Employees Regularization Act 2005 w.e.f 24.11.2004; that there is a break of seven years and six months in the stint of service w.e.f 20.12.1993 to 24.11.2004.

3. They filed departmental appeals on 17.07.2017 which were not responded, hence, the instant service appeals.

4. On receipt of the appeals and their admission to full hearing, the respondents were summoned, who put appearance and contested the



appeals by filing written replies raising therein numerous legal and factual objections. The defense setup was a total denial of the claim of the appellants.

5. We have heard learned counsel for the appellants and learned Deputy District Attorney for the respondents.

6. The learned counsel for the appellants reiterated the facts and grounds detailed in the memo and grounds of the appeals while the learned District Attorney controverted the same by supporting the impugned order(s).

7. Learned counsel for the appellants relied on the letter dated 04.06.1977 of the then Government of NWFP which is reproduced as under:

"(2) Some confusion seems to exist in some quarters as to how condonation of interruptions between two spells of temporary/officiating service may be regulated under rule 2.12 (1) of the West Pakistan Civil Services Pension Rules. According to Rule 2.3 ibid temporary and officiating service followed by confirmation or temporary/officiating service of more than five years counts for pension/gratuity. The provisions of Rule 2.12 (1) take cognizance of only those cases where the Government servant had prior to the interruption rendered periods of qualifying service and it is considered fit to permit him to count certain past qualifying service towards pension/gratuity. The condonation of interruptions in service with a view to allowing past non-qualifying temporary/officiating service to qualify for pension/gratuity under Rule 2.3 is not permissible. In other words, condonation of interruptions for pension/gratuity in temporary/officiating service is permissible only where the broken period of temporary/officiating service is qualifying i.e. it exceeds five years, or is followed by confirmation. Where neither condition is fulfilled condonation of interruption is not permissible. To make it more clear the following illustrations are given.

***First Illustration---**A Government servant has the following broken spells of temporary/officiating service:-*

- i. five years and one month followed by break;*
- ii. three years followed by break; and*
- iii. 6 years.*



First and third spells are qualifying under Rule 2.3 and, therefore, can be counted (as 11 years and one month qualifying service). The second spell of service being not qualifying will not count and will be treated as a part of the gap in between the first and third spell of service.

Second Illustration.--- *A Government servant has the following broken spells of temporary/officiating service:-*

- i. 5 year and one month followed by break;*
- ii. 3 years followed by break; and*
- iii. 4 years and 5 months.*

Only the first spell is qualifying. The second and the third spells are not qualifying. Therefore, neither of the two gaps can be condoned.

Third Illustration.---*A Government servant has the following broken spells of temporary/officiating service:-*

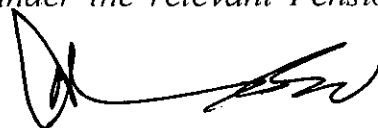
- i. 5 years and one month followed by break;*
- ii. 3 years followed by break; and*
- iii. One year followed by confirmation.*

The second spell is not qualifying. First and the third spells are qualifying, and the gap between them can be condoned as in the case of the first illustration."

8. As against that the Department/respondents have produced copy of minutes of the meeting, wherein, the request of the appellants for condonation of interruption between two spells of service. Request of one Abdul Qayyum between two spells of service was considered and decided in the following manner:

"The chair briefed the participants about the detail of the case. Mr. Masood Ul Hassan, Law Department was of the view that Rule 2.3 of Civil Servants Pension Rules & Government Instructions 2006, is only for Civil Servants and not for Project or contract employees. Therefore, application of Rules 2.12 of Pension Rules in the instant case is out of question. The Director On Form Water Management, Khyber Pakhtunkhwa was also of the view that there is no documentary proof of GP fund deduction from the pay of the officer being Civil Servant.

Mr. Nasir Aman Deputy Secretary (Reg.) Establishment Department was of the view that under the relevant Pension Rules, the Administrative Department has to fill the gap between two spells of services, whereas in the instant case, the period between 1993 to 2001 is a non-qualifying service and between 2001 to 2004 is a non-service period, therefore, the request for regularization of contract period is not covered under the relevant Pension Rules and Govt. Instructions.



After threadbare discussion, the forum unanimously agreed that the request of the officer for regularization of contract period of service is not covered under the relevant Civil Servant Pension Rules & Government Instruction"

9. In reply, the respondents raised the following contentions:

"1. Correct to the extent that the appellant Mr. Abdullah Khan along with others were appointed as Water Management Officers on contract basis in different developmental projects like OFWM Phase-III (World Bank Assisted), SIAP Mardan, CRBC Stage-III D.I.Khan and OECF Japan on contract basis for a period of one year vide Govt. of Khyber Pakhtunkhwa, Agriculture, Livestock & Coop: Department Peshawar notification No.SOE(AD)II(2)70/MTG/K.C dated 20.12.1993. The contractual project service of the appellant was extendable on need basis subject to satisfactory performance. His contract was extended from time to time i.e. vide notifications dated 11.01.1995, 12.07.1995, 18.03.1997, 07.10.1998, 02.06.1999 and lastly, extended vide notification dated 20.03.2000 till 30.06.2001 and further extension beyond 30.06.2001 was not granted due to completion of Swabi Scarp Project Mardan.

2. In the year 2004, the Agriculture Department advertised certain posts of Water Management Officers (BS-17) for recruitment against the project posts in Project titled "National Program for Improvement/Lining of Watercourses (Khyber Pakhtunkhwa Component)" and on recommendation of Departmental Selection Committee the appellant along with others were appointed as Water Management Officer (BS-17) vide govt. of Khyber Pakhtunkhwa, Agriculture, Livestock & Coop: Department notification dated 24.11.2004 as fresh candidate as per terms and conditions specified for recruitments against the project posts for a period of one year extendable on need basis subject to satisfactory performance.

3. In the first spell of service the appellant was appointed on 20.12.1993 on contract basis as explained in Para-1 above against the project post for a period of one year and his contract was extended from time to time and last extension was granted up to 30.06.2001 i.e. completion date of Swabi Scarp Project Mardan.

It is further submitted that the appellant Mr. Abdullah Khan in 2nd spell of service i.e. from 24.11.2004 while serving in the project titled "National Program for Improvement/Lining of Watercourses (Khyber Pakhtunkhwa Component) filed writ petition for regularization of his service which was decided in favour of the appellant and in compliance to the decision dated 01.03.2011 of the august Supreme Court of Pakistan the service of the appellant was regularized vide notification dated 07.06.2011.

4. *Correct to the extent that the appellant filed representation on 18.07.2017 which was sent to the Administrative Department vide Director General OFWM letter dated 01.08.2017 which is yet under consideration of the competent authority, but it is pertinent to mention here that similar nature appeal submitted by another colleague of the appellant i.e. Mr. Qayyum Khan (appellant in Service Appeal No.424/2017) was considered by the competent authority in a meeting held on 08.08.2017 under the Chairmanship of Additional Secretary (Regulation) Finance Department wherein the case was considered and rejected the same that the request of the officer for regularization of contract period of service is not covered under the relevant Civil Servant Pension Rules and Government instructions."*

10. The reliance of the appellants, on the above letter of the Government, was not worth consideration because in the letter, the gap was to be covered only when the service is either temporary or officiating, whereas, the appellants were admittedly project employees therefore, they cannot claim the desired relief.

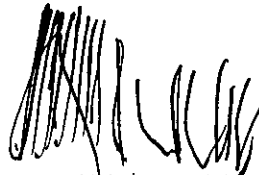
11. In view of the above discussion, instant service appeals are dismissed. Costs shall follow the event. Copy of this judgment be placed in the file of the connected service appeal. Consign.

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



KALIM ARSHAD KHAN

Chairman



MUHAMMAD AKBAR KHAN

Member (Executive)

S.A #.424/2017

ORDER

7th May, 2024

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

2. Vide our consolidated judgment of today placed on file, instant service appeal is dismissed. Costs shall follow the event. Copy of the judgment be placed in file of the connected appeal. Consign.

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



(Muhammad Akbar Khan)
Member (E)



(Kalim Arshad Khan)
Chairman