


FORM OF ORDER SHEET

Court of _____

Appeal No. _____

474/2024

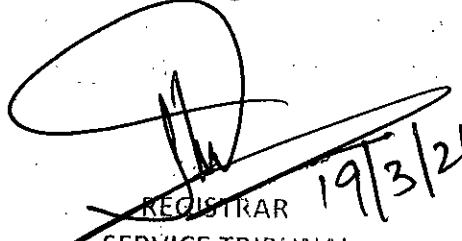
S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	01/04/2024	<p>The appeal of Mst. Shaheen Akhtar refied today by registered post through Mr. Muhammad Arshad Khan Tanoli Advocate. It is fixed for preliminary hearing before touring Single Bench at Abbottabad on 25.04.2024. Counsel for the appellant has been informed telephonically.</p> <p>By the order of Chairman</p>  <p>REGISTRAR</p>

Copy of appeal of MLC Saheeq Akhtar received today i.e on 19.03.2024 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

1. According to sub-rule-4 of rule-6 of Khyber Pakhtunkhwa Service Tribunal rules 1974 Respondent no.1 is un-necessary/improper party, in light of the rules ibid and in the written direction of the Worthy Chairman the above mentioned respondent number be deleted/struck out from the list of respondent.
2. Copy of appointment order is not attached with the appeal be placed on it.
3. Annexures of the appeal are unattested.
4. The documents that are to be provided must be readable/legible.

No. 608 15.1.

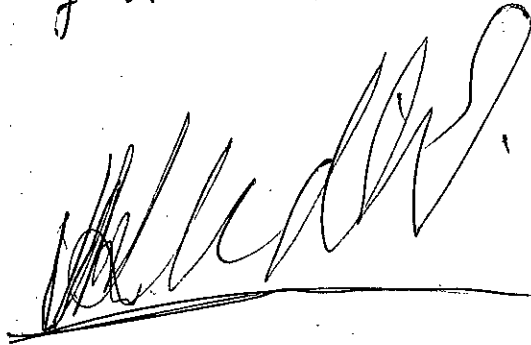
19/03/2024


19/3/24
REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Witness: Arshad Tanoli Adv.

Arshad Tanoli Adv.

Respondant ^{no.1} has been deleted
and copy of appointment
is attached at page 7 and
better thereof is attached at
Page 7A.



**BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR**

Service Appeal No. 474 2024

Shaheen Akhtar AT, GGHS Chamiali, District Mansehra.

....APPELLANT

V E R S U S

Director, Elementary & Secondary Education (E&SE), Khyber
Pakhtunkhwa, Peshawar and another.

...RESPONDENTS

SERVICE APPEAL

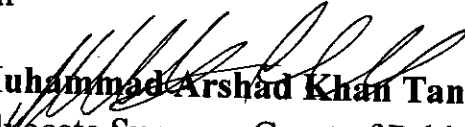
INDEX

S.#	Description	Page No.	Annexure
1.	Service appeal along with affidavit	1 to 6	
2.	Copy of appointment order dated 31/01/1996 and termination order dated 24/06/1997 of the appellant	7-8	"A"
3.	Copy of KP sacked employees Appointment Act 2012	9-12	"B"
4.	Copy of appointment order dated 26/03/2018 of the appellant	13	"C"
5.	Copy of department appeal	14	"D"
6.	Copy of judgment of KP service Tribunal and the Apex Court	15-23	"E"
7.	Wakalatnama	24	



...APPELLANT

Dated: ____/2024

Through


(Muhammad Arshad Khan Tanoli)
Advocate Supreme Court of Pakistan
at Abbottabad

&


(MUHAMMAD IBRAHIM KHAN)
Advocate High Court Abbottabad

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR

Service Appeal No. 474 2024

Shaheen Akhtar AT, GGHS Chamiali, District Mansehra.

....APPELLANT

V E R S U S

1. Director, Elementary & Secondary Education (E&SE), Khyber Pakhtunkhwa, Peshawar.
2. District Education Officer (Female) Mansehra.

...RESPONDENTS

**SERVICE APPEAL UNDER SECTION 4 OF
KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL ACT 1974 FOR DECLARATION
TO THE EFFECT THAT THE APPELLANT
WAS APPOINTED ON 31/01/1996 AND WAS
TERMINATED FROM SERVICE ON
24/06/1997. THEREAFTER, THE APPELLANT
GOT APPOINTMENT AS AT ON 26/03/2018,
AS PER KP SACKED EMPLOYEES
APPOINTMENT ACT 2012, BUT PREVIOUS
SERVICE W.E.F 31/01/1996 TO 24/06/1997**

AND 2012 TO 26/03/2018 HAS NOT BEEN
COUNTED TOWARDS CALCULATION OF
PENSION BY THE DEPARTMENT.

PRAYER: ON ACCEPTANCE OF INSTANT
SERVICE APPEAL, THE RESPONDENTS'
DEPARTMENT MAY GRACIOUSLY BE
DIRECTED TO COUNT PREVIOUS SERVICE
W.E.F 31/01/1996 TO 26/06/1997 AND 2012 TO
26/03/2018 OF THE APPELLANT TOWARDS
CALCULATION OF PENSION AND
COMMUTATION.

Respectfully Sheweth;-

The facts forming the background of the instant
service appeal are arrayed as under;

1. That the appellant got appointment in the
respondents' department on 31/01/1996 and his
service was terminated on 24/06/1997. Copy of
appointment order dated 31/01/1996 and
termination order dated 24/06/1997 of the
appellant is annexed as Annexure "A".

2. That, the Khyber Pakhtunkhwa announced KP Sacked Employees appointment Act 2012, wherein, the employees appointed in the year 1993-94 and were terminated in the year 1997-98 are to be re-instated in service. Copy of KP sacked employees Appointment Act 2012 is annexed as Annexure "B".
3. That, as per KP Sacked Employees appointment Act 2012, the appellant was appointed AT on the 26/03/2018, but their previous service w.e.f 17.01.1996 to 26.06.1997 and 2012 to 26/03/2018 has not been counted towards calculation of pension/commutation of the appellant. Copy of appointment order dated 26/03/2018 of the appellant is annexed as Annexure "C".
4. That, the appellant filed departmental appeal to respondents' department but of no avail. Copy of department appeal is annexed as Annexure "D". Hence, the instant service appeal is filed inter-alia on the following grounds.

GROUND:-

- a. That as per judgment of service tribunal as well as of the Apex Court protected period of service has been declared to be counted towards calculation of pension/commutation of the sacked employees. Therefore, the appellant is entitled to have the period w.e.f 31/01/1996 to 24/06/1997 AND 2012 to 26/03/2018 counted towards calculation of pension and commutation. Copy of judgment of KP service Tribunal and the Apex Court is annexed as Annexure "E".

- b. That, department was supposed to count the above mentioned period of the appellant towards calculation of pension etc on the analogy of similar and similarly placed employees.

- c. That the respondents' department is supposed to have one yard stick while dealing with the employees who are similarly placed. Besides, once a point of

law is decided by the Superior Courts that must be made applicable to all the employees who are similarly placed and no discrimination may be made out.

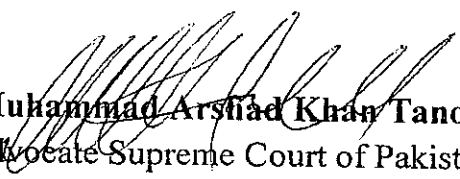
- d. That the matter in issue relates to the terms and conditions of service, therefore, the Honourable Tribunal has jurisdiction to entertain the lis under Article 212 of the Constitution.

It is therefore, very humbly prayed, that on acceptance of instant service appeal, the respondents' department may graciously be directed to count previous service w.e.f 31/01/1996 to 24/06/1997 and 2012 to 26/03/2018 of the appellant towards calculation of pension and commutation.

Sheheen
...APPELLANT

Dated; _____/2023

Through;


(Muhammad Arshad Khan Tanoli)
Advocate Supreme Court of Pakistan


&
(MUHAMMAD IBRAHIM KHAN)
Advocate High Court Abbottabad

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR

Service Appeal No. _____ 2023

Shaheen Akhtar AT, GGHS Chamiali, District Mansehra.

....APPELLANT

VERSUS

Government of Khyber Pakhtunkhwa through Secretary Elementary and Secondary Education, Khyber Pakhtunkhwa, Peshawar & others.

...RESPONDENTS

SERVICE APPEAL

AFFIDAVIT

I, *Kala Khan AT, Government Primary School Bandi Gulo No. 02, District Mansehra*, do hereby solemnly affirm and declare that the contents of foregoing appeal are true and correct to the best of my knowledge and belief and nothing has been concealed therein from this Honourable Court.

Shaheen
DEPONENT



10/17

[Handwritten signature]

DISTRICT EDUCATION OFFICER (Female) SECONDARY MANAGER

Copy of the above is forwarded to Mr. Shaheen Akhtar VI Govt. Girls Middle School Nokote for information.

Indgt. No. 2057

DISTRICT EDUCATION OFFICER (Female) SECONDARY MANAGER

Kindly advised this officer as to whether Shaheen Akhtar shall continue against VI Post as is not holding prescribed qualification or otherwise.

As present Mr. Shaheen Akhtar is working as Govt. VI Post.

It is stated that according to your letter dated 19.12.95 the required qualification for the appointment against VI Post is BA with Arabic as subject and Sand of Honorary Diploma, but Mr. Shaheen Akhtar D/O Akhtar Govt. VI Post is BA with Arabic as subject and Sand of Honorary Diploma, but Mr. Shaheen Akhtar is working as Govt. VI Post under reference is also BA with Arabic as subject and Sand of Honorary Diploma.

Reference your Office Order No. 20 dated 10.12.95 issued under Indgt. No. 1647-11/AT(R) dated 10.12.95 and O.O. No. 43 dated 10.12.96 issued under Indgt. No. 276-20/VI-I dated 10.12.96.

APPOINTMENT OF ARABIC TEACHER

The Divl. Director of Education (S), Hazara Division approved. The District Education Officer, (Female) Secondary Manager.

/A-11/Appro: of VI/ Dated Manabara the 21/5

Annex - A P-7

Subject:-

Memo:

To

From

No.

BETTER COPY

No. _____ /AA-II/Appt: or AT/Dated Mansehra the 31/01/1996

From

P-7A

The District Education Officer
(Female) Secondary Mansehra.

To

The Divl: District of Education (S)
Hazara Division Abbottabad

Subject: **APPOINTMENT OF ARABIC TEACHER**

Memo:

Reference your officer Order No. 30 Dated 31/01/1996 issued under Endst: No. 16407-11/AT(F) dated 31/01/1996 and O. O. No. 43 Dated 31/01/1996 issued under section 3776-30/N-X dated 31/01/1996.

It is stated that according to your letter No. 18 AE-X AT(F) dated 31/01/1996 the required qualification to the appointment against AT Post is BA with Arabic as subject Letter for Sanad of Shahdatul Alimia but Mst. Shaheen Akhter D/o Abdul Qayyum appointment as AT at GGHS. Baffa vide your order dated under reference is simply EA, B, Ed. From Karachi University .

At present Mst. Shaheen Akhtar is working in Nokote against AT Post.

Kindly advised this Office as to Whether Shaheen Akhtar shall continues against AT post (for which is not holding prescribed qualification) or otherwise.

**DISTRICT EDUCATION OFFICE
(FEMALE) SECONDARY MANSEHRA**

Endst: No. 2051

Copy of the above is forwarded to Mst: Shaheen Akhtar At Govt. Girls
Middle School Nokote for Information

**DISTRICT EDUCATION OFFICE
(FEMALE) SECONDARY MANSEHRA**

Office of the Director
Advanced Education Board
11/11/97

1. The Director shall have the authority to...
2. The Director shall have the authority to...
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15. The Director shall have the authority to...

Annex-A
p-8

No. 7097-0290

BETTER COPY 87 P-8

Divisional Directorate of Edu:
Hazara Division Abbottabad
O.O No. 12
Dated: 05/04/1997

To,

All the D.E.Os (M&F),
Hazara Division, Abbottabad.
All the Principals/ Headmasters/ Headmistresses,
GHSS, GGHSS, GHS, & GGHS in Hazara Division.

Subject: IRREGULAR APPOINTMENTS

I am directed to refer Director of Education, (secy) NWFP, Peshawar's No. 4392-438 dated 31/03/1997 and to say that all the irregular appointments made from 01/11/1993 to date have been terminated by this office and as well as pointed out by the enquiry committees and inspite of this if any irregular appointee has been left and detected later on, the concerned will be held responsible for the consequences. In case there is any ambiguity regarding regular or irregular appointee, the fact can be verified from this office within a week time.

Therefore, after all such efforts made by this office/ depart: if any irregular appointee is detected the concerned DDO will be held personally responsible for the consequences.

Sd/-
ASSISTANT DIRECTOR (ESTT)
DIVISIONAL DIRECTOR OF EDU: ATD.

Endst: No. 8297-99 / Dated 05/04/1997

Copy of:-

1. The Director of Edu: (Secy) NWFP, Peshawar w/r to his No. mentioned above.
2. ADE Local Directorate.
3. O.O File.

Sd/-
ASSISTANT DIRECTOR (ESTT)
DIVISIONAL DIRECTOR OF EDU: ATD.

Muhammad Aslam Khan Tagori
Advocate Supreme Court of Pakistan
Office # 33 Jinnah Plaza Adjacent to
Distt: Bar Abbottabad

Annex - B

D-9

THE KHYBER PAKHTUNKHWA
SACKED EMPLOYEES (APPOINTMENT) ACT, 2012.
(KHYBER PAKHTUNKHWA ACT NO. XVII OF 2012)

[first published after having received the assent of the Governor of the Khyber Pakhtunkhwa in the Gazette of Khyber Pakhtunkhwa (Extraordinary), dated the 20th September, 2012].

AN
ACT

to provide relief to those sacked employees in the Government service, who were dismissed, removed or terminated from service, by appointing them into the Government service.

WHEREAS it is expedient to provide relief to those sacked employees who were appointed on regular basis to a civil post in the Province of the Khyber Pakhtunkhwa and who possessed the prescribed qualification and experience required for the said post, during the period from 1st day of November 1993 to the 30th day of November, 1996 (both days inclusive) and were dismissed, removed, or terminated from service during the period from 1st day of November 1996 to 31st day of December 1998 on various grounds;

WHEREAS the Federal Government has also given relief to the sacked employees by enactment;

AND WHEREAS the Government of the Khyber Pakhtunkhwa has also decided to appoint these sacked employees on regular basis in the public interest;

It is hereby enacted as follows:

1. Short title, extent and commencement.---(1) This Act may be called the Khyber Pakhtunkhwa Sacked Employees (Appointment) Act, 2012.

(2) It shall apply to all those sacked employees, who were holding various civil posts during the period from 1st day of November, 1993 to 30th day of November, 1996 (both days inclusive).

(3) It shall come into force at once.

2. Definitions.--- In this Act, unless the context otherwise requires, the following expressions shall have the meanings hereby respectively assigned to them that is to say,-



P-10

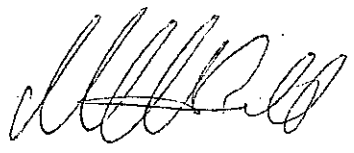
- (a) "civil post" means a post created by the Finance Department of Government for the members of civil service of the Province;
- (b) "Department" means the Department and the Attached Department as defined in the Khyber Pakhtunkhwa Government Rules of Business, 1985, including the Divisional and District Offices working thereunder;
- (c) "Government" means the Government of the Khyber Pakhtunkhwa;
- (d) "Prescribed" means prescribed by rules;
- (e) "Province" means the Province of the Khyber Pakhtunkhwa;
- (f) "rules" means the rules made under this Act; and
- (g) "Sacked employee" means a person who was appointed on regular basis to a civil post in the Province of the Khyber Pakhtunkhwa and who possessed the prescribed qualification and experience for the said post at that time, during the period from 1st day of November 1993 to the 30th day of November, 1996 (both days inclusive) and was dismissed, removed, or terminated from service during the period from 1st day of November 1996 to 31st day of December 1998 on the ground of irregular appointments;

3. Appointment of sacked employees--- Notwithstanding anything contained in any law or rule for the time being in force, on the commencement of this Act, all sacked employees subject to section 7, may be appointed in their respective cadre of their concerned Department, in which they occupied civil posts before their dismissal, removal and termination from service:

Provided that the sacked employees shall be appointed against thirty percent of the available vacancies in the said Department:

Provided further that the appointment of sacked employees shall be subject to the medical fitness and verification of their character antecedents to the satisfaction of the concerned competent authority.

4. Age relaxation--- The period during which a sacked employee remained dismissed, removed or terminated from service, till the date of their appointment shall be deemed to have been automatically relaxed and there shall be no further relaxation under any rules for the time being in force.



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5. Sacked employees shall not be entitled to claim seniority and other back benefits.— A sacked employee appointed under section 3, shall not be entitled to any claim of seniority, promotion or other back benefits and his appointment shall be considered as fresh appointment.

6. Preference on the basis of age.— On the occurrence of a vacancy in the respective cadre of the concerned Department of the sacked employee against the thirty percent available share, preference shall be given to the sacked employee who is older in age.

7. Procedure for appointment.—(1) A sacked employee, may file an application to the concerned Department within a period of six months from the date of commencement of this Act, for his appointment in the said Department:

Provided that no application for appointment received after the due date shall be entertained.

(2) The concerned Department shall maintain a list of all such sacked employees whose applications are received under sub-section (1) in the respective cadres in chronological order.

(3) If any vacancy occurs against the thirty percent available share of the sacked employee in any Department, the senior in age from such sacked employee shall be considered by the concerned Departmental Selection Committee or the District Selection Committee, as the case may be, to be constituted in the prescribed manner, for appointment:

Provided that no willingness or response is received within a period of thirty days, the next senior sacked employee shall be considered for appointment.

(4) The Concerned Departmental Selection Committee or District Selection Committee, as the case may be, will determine the suitability or eligibility of the sacked employee.

(5) If no sacked employee is available against thirty percent vacancy reserved in respective cadre in a Department, then the post shall be filled through initial recruitment.

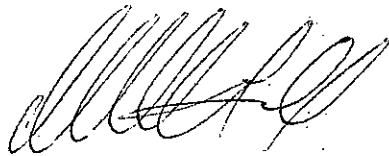
8. Removal of difficulties.— If any difficulty arises in giving effect to any of the provisions of this Act, the Chief Minister Khyber Pakhtunkhwa may issue such order not inconsistent with the provision of this Act as may appear to him to be necessary for the purpose of removing the difficulty:

Provided that no such power shall be exercised after the expiry of one year from coming into force of this Act.

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9. Act to override other laws.---Notwithstanding anything to the contrary contained in any other law or rules for the time being in force, the provisions of this Act shall have overriding effect and the provisions of any other law or rules to the extent of inconsistency to this Act, shall cease to have effect.

10. Power to make rules.--- Government may make rules for carrying out the purposes of this Act.



Annex-C

OFFICE OF THE DISTRICT EDUCATION OFFICER (FEMALE) MANSEHRA

P-13

NOTIFICATION

In pursuance of Khyber Pakhtunkhwa School Employees (Appointment) Act 2012 and decision passed by Peshawar High Court Abbottabad Bench and in compliance of writ petition no. 702 A/2014, 216-A/2015, 368 A/2016 COC No. 46 A/2016, 22 A/2016 & also after received the documents through Asstt; AAG Attd, the competent authority in the E&SE District Mansehra is pleased to order the appointment of the following sacked employee in BPS No. 15 (Rs: 16120-1330-56020) plus usual allowances as admissible under the rules against their posts as mentioned their names with immediate effect on the terms and conditions given:-

S#	Name	Father's Name	D.O.B	Name of School	Remarks
1	Shaheen Akhter	Abdul Qayyum	22/01/1954	GGMS Palsala	(AT) Post Ag: newly upgraded school
2	Shahida Bano	Wali Muhammad	29/04/1974	GGMS Palsala	(CT) .do.

TERMS & CONDITIONS:

- No TA/DA etc is allowed.
- Charge reports should be submitted to all concerned.
- Their appointment are subjected to the condition that their "Certificates/others documents be verified from the concerned institutions before release of their salary.
- They will be governed by such rules and regulations enforced and as may be prescribed by the government from time to time for the category of the government servants to which they belong.
- Their appointment have been made in pursuance of Khyber Pakhtunkhwa, sacked employees (Appointment) Act 2012. Hence under Section 4 of the said act the period during which they remain dismissed, removed or terminated from service, till the dated of their appointment should have been deemed automatically relaxed.
- They should obtain Medical Fitness certificate from the Medical Superintendent from King Abdullah Hospital Mansehra.
- In case they failed to assume the charge of their post within 15 days of their appointment, the candidature-ship will be stand automatically cancelled.
- They will be on probation for a period of one year extendable to another one year keeping in view the performance.
- They have not served in any other department/corporation/agency etc.
- The Principal/Head mistress/DDO should not release pay of the teacher till the verification of their documents.
- The Principal/Head Mistress/DDOs concerned is directed to submit their degrees/ certificates etc for verification from the concerned University/Board.
- In case their documents are found fake/bogus on verification from the issuing authority, their service shall be terminated and an FIR be lodged against the concerned teacher under the relevant law.
- Their services are liable to termination on one month prior notice from either side in case of resignation without prior notice her one month pay/allowance shall be forfeited to government treasury.
- In case of un-satisfactory performance, they will be proceeded under Govt: of Khyber Pakhtunkhwa E&D rules 2011.
- Their appointment is made on school based. They will have to serve at the place of posting and their service is not transferable to any other station.
- The competent authority has the right to rectify the errors/omission & if any noted/observed at any stage in instant order issued erroneously.
- As per judgment of Honorable High Court Peshawar Bench Abbottabad, In case of having less academic/professional qualification as required for the post, the candidates must qualify that within three years after issue of this appointment order, failing which their appointment order shall stand cancelled automatically, without any further notice.
- Their appointment have been made in pursuance of Khyber Pakhtunkhwa, sacked employees (Appointment) Act 2012. Hence under section 5 of the said act they shall not be entitled to claim any of seniority, promotion and other back benefits.

DISTRICT EDUCATION OFFICER
(FEMALE) MANSEHRA

Encls: No. 1318-35/Estt; Branch/AE-II/Sacked Employees

Dated 26/03/2018.

Copy of the above is forwarded to the:-

- Registrar Honourable High Court Peshawar Bench Abbottabad.
- Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.
- District Account Officer Mansehra.
- District Monitoring Officer Mansehra.
- Concerned Principal/Head Mistress.
- Concerned Teachers
- Office Copy.

DISTRICT EDUCATION OFFICER
(FEMALE) MANSEHRA

خدمت جناب ڈائریکٹر صاحب ایلیمنٹری اینڈ سیکنڈری ایجوکیشن، خیبر پختونخواہ پشاور

Annex - D

درخواست برائے ادائیگی سابقہ سروس و بقایا جات۔

عنوان:

P-119

جناب عالی!

گزارش ہے کہ سائلہ 31-01-1996 کو AT پوسٹ پر بھرتی کیا گیا اور پھر 26/07/1997 کو سائلہ کو ملازمت سے سیاسی بنیادوں پر برطرف کر دیا گیا تھا اور بعد ازاں حکومت نے Sacked Employees Act 2012 کا نفاذ کرتے ہوئے سائلہ 1993، 1994 میں بھرتی ہونے والے اور 1997، 1998 میں برطرف شدہ ملازمین کی بحالی کا حکم نامہ جاری کیا لیکن سائلہ کو بارہا درخواستیں دینے کے باوجود DEO مانسہرہ نے بمطابق قانون 2012 کے بحال نہیں کیا جسکی وجہ سے سائلہ نے پشاور ہائی کورٹ سٹریٹس W.P No. 516-A/2013 دائر کی جس کا فیصلہ 24/05/2016 کو سائلہ کے حق میں ہوا اور بعد ازاں سپری کورٹ آف پاکستان نے بھی 24/05/2017 کو ہائی کورٹ کے فیصلہ کو بحال رکھا۔ لہذا سائلہ کو بروئے حکم عدالت عالیہ مورخہ 26/07/2018 کو بحال کر دیا جبکہ سائلہ 2012 سے نوکری پر بحال کا حق رکھتی تھی اور یہ کہ وفاقی حکومت نے اپنے تمام ملازمین کو ٹرمینیشن کی تاریخ سے بحال کیا۔

لہذا استدعا ہے کہ سائلہ کو نوکری سال 1997 سے اور بعد 2012 سے 26/07/2018 پنشن

کے لیے کاؤنٹ کرتے ہوئے تنخواہ کے بقایا جات بھی ادا کئے جائیں۔

شاہین اختر (AT) GGHS (AT) جمالی ڈسٹرکٹ مانسہرہ۔۔۔۔۔ (سائلہ)

18/12/23

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RIGHT OF JUDGEMENT OF PESHAWAR HIGH COURT
APPOINTMENT ACT 2012, AS WELL AS IN THE
PAKISTUNKHWA SACKED EMPLOYEES
DATED 04/12/2017 UNDER THE KYBER
APPOINTMENT ORDER ENDST NO. 20672-702
WITH EFFECT FROM 04/12/2017 VIDE
APPELLANT WAS REINSTATED IN SERVICE
DECLARATION TO THE EFFECT THAT THE
SERVICE TRIBUNAL ACT 1974 FOR
SECTION 4 OF SERVICE APPEAL UNDER

ATTESTED
[Signature]

3/5/19
Re-submitted to -day
and filed

22/4/19
Re-submitted to -day
and filed

RESPONDENTS

1. Government of KPK through Secretary Elementary and Secondary Education, Peshawar.
2. Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.
3. District Education Officer (Male) District Manshara.

VERSUS

APPELLANT

Muhammad Haroon son of Khalil ur Rehman, GPS Phira District Manshara.

Service Appeal No. 572/2019

D-15



BEFORE THE SERVICE TRIBUNAL, KYBER
PAKHTUNKHWA, PESHAWAR

Annex D
P.R.

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 572/2019



Date of Institution ... 22.04.2019
Date of Decision ... 18.03.2021

Muhammad Haroon son of Khalil ur Rehman, G.P.S Phulra
District Mansehra.

(Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Secretary
Elementary & Secondary Education Peshawar and two others.

(Respondents)

Muhammad Arshad Khan Tanoli,
Advocate ... For appellant.

Riaz Khan Paindakheil,
Assistant Advocate General ... For respondents.

ROZINA REHMAN ... MEMBER (J)
ATIQU UR REHMAN WAZIR ... MEMBER (E)

JUDGMENT

ROZINA REHMAN, MEMBER: This judgment is intended to dispose of

04 connected service appeals which are:

1. Service Appeal No.572/2019
2. Service Appeal No. 573/2019
3. Service Appeal No. 574/2019
4. Service Appeal No. 575/2019

ATTESTED

EXAMINER
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR

In view of common questions of law and facts, the above captioned appeals are being disposed of by this order.

2. The relevant facts leading to filing of instant appeals are that appellants were appointed as C.Ts in the year 1993-94 and were terminated from service in the year 1997-98. After the announcement of Khyber Pakhtunkhwa Sacked Employees (Appointment) Act, 2012, they were required to be reinstated in service but the appellants were not appointed accordingly, therefore, they filed Writ Petition before the Hon'ble High Court for their appointment under the said Act and it was during the pendency of the Writ Petition when appointment orders were accordingly issued on 04.12.2017. Some of the employees under the said Act were appointed in 2012-13 but the appellants were appointed on 04.12.2017, therefore, they filed departmental appeal which was not responded to, hence the present service appeal.

3. We have heard Muhammad Arshad Khan Tanoli Advocate for appellants and Riaz Khan Paindakheil learned Assistant Advocate General for the respondents and have gone through the record and the proceedings of the case in minute particulars.

4. Muhammad Arshad Khan Tanoli Advocate learned counsel appearing on behalf of appellants, inter-alia, argued that the respondent No.3 was supposed to appoint appellants under the Khyber Pakhtunkhwa Sacked Employees (Appointment) Act, 2012 when the said Act was promulgated in the year 2012 but their appointment order was issued on 04.12.2017 which is against law and discriminatory.

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ATTESTED
[Signature]
EXAMINER
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
Peshawar

Learned counsel further argued that some of the employees who were juniors to appellants were appointed, whereas, appellants were reinstated later on which act is against the principle of equality and natural justice. He submitted that appellants are to be treated at par with other employees in the said Department and lastly, he submitted that similar employees were given benefit by the Apex Court by counting of their service for the protected period for payment of pensionary benefits, therefore, request was made for the stated relief.

5. As against that, learned A.A.G submitted that appellants were appointed as P.S.Ts but later on, their appointments were declared illegal and they were terminated. The Government of Khyber Pakhtunkhwa promulgated Khyber Pakhtunkhwa Sacked Employees (Appointment) Act, 2012 and the appellants were appointed as P.S.Ts under Khyber Pakhtunkhwa Sacked Employees (Appointment) Act, 2012 as well as upon the direction of august High Court Abbottabad Bench. He submitted that as per Section-5 of the Sacked Employees (Appointment) Act, 2012, sacked employees shall not be entitled to seniority and other back benefits and that such nature cases were dismissed by the Service Tribunal. He, therefore, requested for dismissal of instant service appeals.

6. From the record, it is evident that appellants and others who were appointed back in 1994-95 were terminated in 1996-97. Sacked Employees (Appointment) Act, 2012 was specifically promulgated to extend relief to such sacked employees. Appellants were not

ATTESTED

DEPUTY ATTORNEY GENERAL
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR

P-19

considered for the reason best known to the respondents. The respondents however, considered other similar cases just after promulgation of the Act ^{ibid} which was discriminatory on the part of respondents. It was upon the intervention of the Hon'ble Peshawar High Court that appellants were reinstated at a belated stage in 2017 but with immediate effect. The main concern of the appellants is that such employees would reach the age of superannuation before earning qualifying service for pensionary benefits. We have observed that appellants had possessed all the qualifications as prescribed in the Act like others. It is also on record that co-employees tried their level best for back benefits and their cases were dismissed by this Tribunal as their earlier stance, to get all service benefits. Feeling aggrieved from the judgment of this Tribunal CPLAs were filed in the Apex Court and relief of back benefits to co-employees was refused by the Apex Court too. However, Apex Court allowed counting of their service for the protected period for payment of pensionary benefits. The present appellants have a strong case as they had every right to be reinstated just after promulgation of the Act as they were having requisite qualification as prescribed in the Act. Their claim was accepted by the august High Court and reinstatement was ordered.

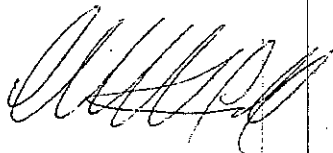
7. The present appellants have also prayed for all service back benefits with a request for counting of their service for the protected period in the light of judgment of the Apex Court which was passed in the case of co-employees. So, from the record, it is crystal clear that:

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M/S

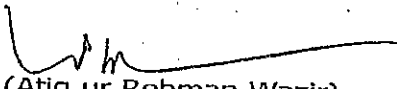
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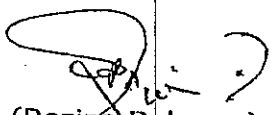
 Attester
 Director of Administration
 Government of Punjab
 Lahore



despite promulgation of an Act in the year 2012, appointment order of the appellants were issued in the year 2017 and that too, on the directions of the august High Court. No doubt, similar appeals of the sacked employees were dismissed regarding the back benefits but the Apex Court allowed the co-employees counting of their service for the protected period for payment of pensionary benefits only. Case of the present appellants is at par with those sacked employees who were granted this benefit by the Apex Court, therefore, these appeals are accepted to the extent that appellants are allowed counting of their services from the date of promulgation of the Khyber Pakhtunkhwa Sacked Employees (Appointment) Act, 2012 only for payment of pensionary benefits. No order as to costs. File be consigned to the record room.

ANNOUNCED.
18.03.2021

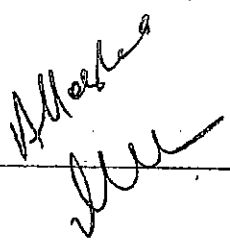

(Atiq ur Rehman Wazir)
Member (E)
Camp Court, Abbottabad

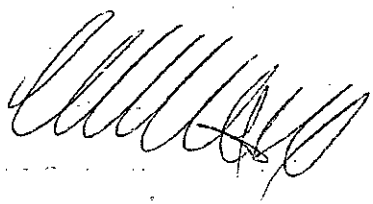

(Rozina Rehman)
Member (J)
Camp Court, Abbottabad

Certified to be true copy

Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 06/4/21
Number of Words 2000
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Total 20/-
Name of Applicant _____
Date of Completion of Copy 06/4/21
Date of Delivery of Copy 06/4/21





IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:
MR. JUSTICE GULZAR AHMED, HCJ
MR. JUSTICE IJAZ UL AHSAN

CIVIL PETITIONS NO. 468-P, 469-P, 471-P & 472-P OF
2016.

(Against the judgment dated 12.07.2016 passed by the Khyber Pakhtunkhwa
Service Tribunal Camp Court, Swat in Appeals No. 1202 and 1203 of 2019)

Muhammad Sheryar
(in CP 468-P/16)

Anwar Zeb
(in CP 469-P/16)

The Secretary to Education (E&S), Government of Khyber
Pakhtunkhwa, Peshawar and others
(in CPs 471-P & 472-P/16)

...Petitioner(s)

Versus

The Secretary to Education (E&S), Government of Khyber
Pakhtunkhwa, Peshawar and others
(in CPs 468-P & 469-P/16)

Muhammad Sheryar
(in CP 471-P/16)

Anwar Zeb
(in CP 472-P/16)

...Respondent(s)

For the Petitioner(s)

MR. M. ASIF, ASC
(For Petitioners in CPs 468-P & 469-P/16 &
For Respondents in CPs 471-P & 472-P/16)

Barrister Qasim Wadood, Addl.
A.G. KP
(in CPs 471-P & 472-P/16)

Date of Hearing

27.03.2020

ORDER

GULZAR AHMED, CJ: We have heard the learned
Additional Advocate General, Khyber Pakhtunkhwa appearing
for the Petitioners in Civil Petitions No. 471-P and 472-P of

Muhammad Sheryar

[Signature]

P 22

2016 as well as Mr. Muhammad Asif, learned ASC for the petitioners in Civil Petitions No. 468-P and 469-P of 2016. The petitioners in Civil Petitions No. 468-P and 469-P of 2016 (to be referred as the petitioners) were employed as PTC Teachers. Their services were terminated in the year 1997 against which they filed service appeals before the Khyber Pakhtunkhwa Service Tribunal ("the Tribunal") which vide judgment dated 04.01.2013 accepted the appeals with direction to the Respondents to consider their grievances. Pursuant to this direction of the Tribunal, the petitioners were reinstated in service, vide Office Order dated 05.07.2013 from the date of their taking charge but back benefits were not allowed to them for the period they remained out of service. The petitioners again filed service appeals before the Tribunal which vide impugned judgment dated 12.07.2016 accepted the appeals.

2. The learned counsel for the petitioners contends that the petitioners were entitled to grant of back benefits but we are unable to see as to how such back benefits could have been allowed to them more so when in the earlier judgment of the Tribunal dated 04.01.2013 no such relief was allowed to the petitioners and by the impugned judgment dated 12.07.2016 also apparently no such relief has been granted to them. He adds that some other similarly placed employees have been given back benefits.

Attal
 U.S.

3. We have asked the learned counsel for the petitioners to show us as to whether in the memo of appeal

before the Tribunal such point has been urged or any other ground in this regard was taken. He went through the memo of appeal and conceded that no such assertion in the memo of appeal was taken by the petitioners. The Tribunal has disallowed back benefits to the petitioners twice and it is obvious that such has been disallowed to the petitioners for the reason that they have not served the department for the said period and there is no material on record on the basis of which relief of back benefits could be allowed to them. There appears no illegality in the impugned judgment. Even otherwise, no substantial question of law of public importance in terms of Article 212(3) of the Constitution of the Islamic Republic of Pakistan, 1973 has been raised.

5. For what has been discussed above, all the listed petitions being devoid of merit stand dismissed and leave to appeal is refused.

6. It is however observed that the petitioners will be allowed counting of their service for the protected period for payment of pensionary benefits.



ISLAMABAD
 27-03-2020
 2R/
 Not Approved for Reporting



کوارٹ فیس

وکالت نامہ

Peshawar Service Tribunal KPIK Peshawar

Shahen Akhtar نام Court of KPIK عنوان:

Appellant / Petitioner منجانب:

Service Appeal نوعیت مقدمہ:

باعث تحریر آنکہ

مقدمہ مندرجہ میں اپنی طرف سے واسطے پیروی و جواب دی کل کاروائی متعلقہ آس مقام

ATO M. Arshad Khan Tanali Asc of Pakistan

کو وکیل مقرر کر کے اقرار کرتا ہوں کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا نیز وکیل صاحب موصوف کو کرنے راضی نامہ و تقرر ثالث و فیصلہ برحلف دینے اقبال دعویٰ اور بصورت دیگر ڈگری

کرانے اجراء وصولی چیک روپیہ و عرضی دعویٰ کی تصدیق اور اس پر دستخط کرنے کا اختیار ہوگا اور بصورت

ضرورت مقدمہ مذکور کی کل یا کسی جزوی کاروائی کے لئے کسی اور وکیل یا مختار صاحب قانونی کو اپنے ہمراہ اپنی

جگائے تقرر کا اختیار بھی ہوگا اور صاحب مقرر شدہ کو بھی وہی اور ویسے ہی اختیارات ہوں گے اور اس کا

ساختہ پرداختہ مجھ کو منظور و قبول ہوگا۔ دوران مقدمہ جو خرچہ و ہر جانہ التوائے مقدمہ کے سبب ہوگا اس کے

مستی وکیل صاحب ہوں گے۔ نیز بقایا رقم وصول کرنے کا بھی اختیار ہوگا۔ اگر کوئی پیشی مقام دورہ پر ہو یا

حد سے باہر ہو تو وکیل صاحب موصوف پابند ہوں گے کہ پیروی مقدمہ مذکورہ کریں اور اگر مختار مقرر کردہ میں

کوئی جز و بقایا ہو تو وکیل صاحب موصوف مقدمہ کی پیروی کے پابند نہ ہوں گے۔ نیز درخواست بمراد

استجارت ناش بیضہ مفلسی کے دائرہ کرنے اور اس کی پیروی کا بھی صاحب موصوف کو اختیار ہوگا۔

لہذا وکالت نامہ تحریر کیا تاکہ سند رہے۔

بمقام:

الرقوم:

M. I. BRATTIM

Accept

M. Arshad Khan Tanali
Asc of Pakistan