

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

BEFORE: **KALIM ARSHAD KHAN** ... **CHAIRMAN**
FAREEHA PAUL ... **MEMBER(Executive)**

Service Appeal No. 1559/2023

Date of presentation of Appeal.....24.07.2023
Date of Hearing.....05.06.2024
Date of Decision.....05.06.2024

**Mr. Syed Salman Hashmi, SST Bio/Chem (BPS-16),
Government High School No.2, Bannu(Appellant)**

Versus

1. **Government of Khyber Pakhtunkhwa** through Secretary, Elementary & Secondary Education, Peshawar
2. **Director, Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.**
3. **District Education Officer (Male) Bannu.....(Respondents)**

Present:

Mr. Waleed Adnan, Advocate.....For the appellant
Mr. Asif Masood Ali Shah, Deputy District Attorney ...For respondents

**SERVICE APPEAL UNDER SECTION 4 OF THE
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT,
1974 against the impugned appellate order dated 16.02.2023
whereby one annual increment has been stopped and the
intervening period has been considered as leave without pay.**

JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: Facts of the case of the appellant, as gathered from memorandum and grounds of appeal are that was initially appointed on contract basis as SST Bio/Chem (BPS-16) vide order dated 14.09.2018; that he was charge sheeted on the allegation of misconduct, resultantly, his contract appointment was discontinued vide order dated 02.11.2022; that feeling aggrieved, he filed departmental appeal (undated), which was accepted, however, penalty of stoppage of one annual increment was imposed upon the appellant and the intervening period from the date of withdrawal of

contract appointment order to the date of restoration of his contract appointment was considered as leave without pay vide order dated 16.02.2023; that the appellant's services were regularized vide order dated 22.06.2023; that the appellant, being aggrieved from the appellate order dated 16.02.2023, has filed the instant service appeal.

2. On receipt of the appeal and its admission to full hearing, the respondents were summoned, who 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 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 Deputy District Attorney controverted the same by supporting the impugned order(s).

5. In this case, the appellant's claim is for restoration of stopped annual increment as well as back benefits of intervening period between the discontinuation and restoration of contract service. Perusal of appointment order shows that appellant, along with others employees, were appointed as contractual employee, whose service was regularized after the passage of order of his restoration of contract period.

6. The order dated 02.11.2022 of discontinuation of contract of the appellant is as under:

"Consequent upon the report of DE (M) Bannu vide letter No.12540 dated 22.09.2022 and approval of the Competent


Authority, the contract based order of this office bearing No.569-75 dated 14.09.2018, the services of Mr. Syed Salman Hashmi SST (B/C) GHS No.2 Bannu, adhoc appointee, is hereby discontinued under section (11) (1) (iii) of the Khyber Pakhtunkhwa Civil Servants Act, 1973"

The said order shows that at the time of order of discontinuation of his service, he was contractual employee. While the appellate order dated 16.02.2023 also shows that he was contractual employee and the same fact has also been admitted by the appellant. The contractual period typically includes the duration of the contract or agreement, and excludes periods of leave without pay, suspension, or unauthorized absence etc. Therefore, the appellant cannot claim any increment or back benefits for the intervening period from 02.11.2022 to 16.02.2023.

7. In view of the above, we find no merit in this case, which is dismissed. Costs shall follow the event. Consign.

8. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 5th day of May, 2023.*


KALIM ARSHAD KHAN
Chairman


FAREEHA PAUL
Member (Executive)

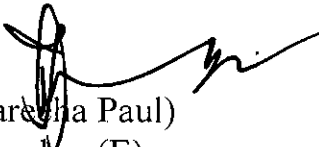
Mutazem Shah

S.A No.1559/2023

ORDER

5th June. 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 Peshawar and given under our hands and the seal of the Tribunal on this 5th day of June, 2024.*


(Fareeha Paul)
Member (E)


(Kalim Arshad Khan)
Chairman