

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL
PESHAWAR
AT CAMP COURT SWAT

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

Service Appeal No. 5676/2020

Date of presentation of Appeal.....29.04.2020
Date of Hearing.....03.06.2024
Date of Decision.....03.06.2024

Dr. Maryam Rehman, Women Medical Officer (BPS-17), RHC Sakhakot,
Tehsil Dargai, District Malakand.....(Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa, through Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
2. The Secretary Health Department, Khyber Pakhtunkhwa, Peshawar.
3. The Secretary Finance Department, Khyber Pakhtunkhwa, Peshawar.
4. The Director General Health Services Department, Khyber Pakhtunkhwa, Peshawar.....(Respondents)

UMER FAROOQ,
Advocate

--- For appellant.

UMAIR AZAM,
Additional Advocate General

--- For respondents

JUDGMENT

MUHAMMAD AKBAR KHAN, MEMBER (E):-The instant service appeal has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as under;

"That on acceptance of this appeal the respondents may kindly be directed to count the project service of the appellant towards regular service i.e. w.e.f. 31.05.2020 till 12.01.2017 with all back benefits in light of Rule 2.3 and Article 371 (A) (i) of the Civil Services Regulations. Any other remedy which

this august Service Tribunal deems fit that may also be awarded in favor of the appellant.”

02. Brief facts of the case are that the appellant was initially appointed as Women Medical Officer on contract basis for a period of two years in the project of Maternal, Newborn & Child Health Program, Khyber Pakhtunkhwa under the Control of Health Department vide order dated 31.05.2010; that on the recommendation of Khyber Pakhtunkhwa Public Service Commission, the appellant was appointed to the post of Women Medical Officer (BPS-17) on adhoc basis vide Notification dated 12.01.2017 and she was posted at RHC Sakhakot, District Malakand vide order dated 19.01.2017; that after promulgation of (Regularization of Service) Act, 2017 the services of the appellant alongwith her other colleagues were regularized vide Notification dated 26.05.2017 with immediate effect; that the appellant had served in the project of Maternal, Newborn & Child Health Program, Khyber Pakhtunkhwa for more than seven years but her pervious service rendered the project was not counted. Feeling aggrieved, the appellant filed departmental appeal on 01.01.2020 which was not responded hence preferred the instant service appeal on 29.04.2020

03. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions raised by the appellant in her appeal. We have heard arguments of learned counsel for the appellant, learned District Attorney for the respondents and have gone through the record with their valuable assistance.

04. The learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned Additional Advocate General, controverted the same by supporting the impugned order(s).

05. Scrutiny of record reveal that the appellant was appointed as Women Medical Officer on contract basis for a period of two years in the project Maternal Newborn & Child Health Program Khyber Pakhtunkhwa vide order dated 31.05.2010. Her contractual appointment was extended from time to time. The appellant tenderd resignation from the post of WMO and her resignation was accepted w.e.f 16.01.2017 vide order dated 01.12.2017. She was appointed as Women Medical Officer on adhoc basis through Departmental Selection Committee of the Health Department vide order dated 12.01.2017. Later on the services of the appellant alongwith other similar placed employees of the Health Department were regularized in accordance with the Khyber Pakhtunkhwa (Regularization of Services) Act, 2017 vide Notification dated 26.05.2017. The appellant has taken the plea that in accordance with Rule 2.3 of the West Pakistan Civil Service Pension Rules, 1963 she is entitled for her services rendered in the project post from 2010 to 2017. Rule 2.3 is reproduced below:-

Temporary and officiating service – Temporary and officiating service shall count for pension as indicated below: -

- (i) Government servants borne on temporary establishment who have rendered more than five years continuous temporary service shall count such service for the purpose of pension or gratuity; and*
- (ii) Temporary and officiating service followed by confirmation shall also count for pension or gratuity.*

06. We hold that rule 2.3 quoted above of the West Pakistan Civil Service Pension Rules, 1963 is not applicable to the case of the appellant as she had tendered resignation from service and then joined the adhoc service of

Women Medical Officer in the respondent department. Rule 2.11 of the West Pakistan Civil Services Pension Rules, 1963 provide as under:-

2.11 Forfeiture of Past Service – *A Government servant forfeits his past service in the following cases: -*

- (a) *Resignation from a post unless it is to take up another post service in which counts for pension.*
- (b) *Removal or dismissal form service.*
- (c) *Absence from duty without leave.*

07. We hold that since the appellant had tendered resignation from her earlier post which was accepted by the competent authority, therefore, her past services stand forfeited as per rules 2.11 (A) of the West Pakistan Civil Services Pension Rules, 1963 and she is not entitled for the benefits of her past temporary/contract service.

08. In view of above finding we dismiss the instant appeal. Costs shall follow the event. Consign.

09. *Pronounced in open court at camp court Swat and given under our hands and seal of the Tribunal on this 03rd day of June, 2024.*



(RASHIDA BANO)
Member (E)
Camp Court Swat



(MUHAMMAD AKBAR KHAN)
Member (E)
Camp Court Swat

ORDER

03rd June, 2024 1. Learned counsel for the appellant present. Mr. Umair Azam, Additional Advocate General for the respondents present. Arguments heard and record perused.

2. Vide our detailed judgment of today, separately placed on file, we dismiss the instant appeal. Costs shall follow the event. Consign.

3. *Pronounced in open court at camp court Swat and given under our hands and seal of the Tribunal on this 03rd day of June, 2024.*



(RASHIDA BANO)
Member (E)
Camp Court Swat



(MUHAMMAD AKBAR KHAN)
Member (E)
Camp Court Swat