

**BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL**  
**PESHAWAR**  
**AT CAMP COURT SWAT**

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

*Service Appeal No. 907/2023*

Date of presentation of Appeal.....02.05.2023  
Date of Hearing.....04.06.2024  
Date of Decision.....04.06.2024

Mr. Asif Ali, SST (Bio-Chem) (BPS-16), GHS Doag Payeen, Dir Upper.....(Appellant)

**VERSUS**

1. The Secretary, E&SE Department Khyber Pakhtunkhwa, Peshawar.
2. The Director, E&SE Department, Khyber Pakhtunkhwa, Peshawar.
3. The District Education Officer (M), District Dir Upper.
4. The District Account Officer, District Dir Upper.....(Respondents)

MIR ZAMAN,  
Advocate

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For appellant.

UMAIR AZAM,  
Additional Advocate General

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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 this august Tribunal may be pleased to:-*

- I. Modified/rectified the impugned orders dated 29.10.2021 and 06.11.2021 to the extent that the appellant be re-instated into service w.e.f. from 08.03.2019 with all back and consequential benefits.*

*II. Also modified/rectified the impugned regularization Notification dated 01.12.2022 to the extent that the appellant be regularized w.e.f. the date of 1<sup>st</sup> appointment i.e. 14.09.2018 in light of Rule-2.3 of the West Pakistan Pension Rules, 1963.*

*III. Any other relief which this august Tribunal deems appropriate may also be granted in favor of the appellant.”*

02. Brief facts of the case are that the appellant was initially appointed to the post of SST (Bio-Chem) BPS-16 on adhoc/contract basis vide order dated 14.09.2018. The appellant is basically aggrieved from the regularization Notification dated 01.12.2022 whereby the services of the appellant were regularized w.e.f. 29.10.2021 instead of his initial appointed i.e. 14.09.2018. He preferred departmental appeal against the impugned Notification 01.12.2022 on 21.12.2022 which was not responded, hence preferred the instant service appeal on 02.05.2023

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, learned Additional Advocate General 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 District Attorney, controverted the same by supporting the impugned order(s).

05. It is evident from the scrutiny of record that the appellant was appointed as SST on adhoc/contract basis for a specified period of one year w.e.f 20

September, 2018 to 19<sup>th</sup> September 2019 vide order dated 14.09.2018. After joining his duty the appellant remained absent from duty and was called explanation to which he replied and submitted medical documents and requested for medical leave. Due to his continuous absence the competent authority (Director Elementary & Secondary Education) discontinued the contract of the appellant vide order dated 08.03.2019. The appellant submitted departmental appeal which was accepted by the appellate authority vide order dated 29.10.2021 in the following manner:-

*In exercise of the powers conferred under the rule 17 (2)(b) of Efficiency & Discipline Rules, 2011, the appellate authority (Secretary E&SE) has been pleased to reserve the contractual appointment of Mr. Asif Ali as SST (Bio Chem) (BPS-16) in E&SE department District Dir Upper with immediate effect. The intervening period w.e.f. 08.03.2019 is hereby treated as leave without pay as provided under FR.54.*

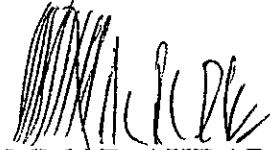
06. Subsequently in accordance with Khyber Pakhtunkhwa Teachers (Appointment and Regularization of Services) Act, 2022, the services of the appellant alongwith others were regularized vide order dated 01.12.2022 w.e.f the date of their initial appointment. However, in the regularization order dated 01.12.2022 the date of appointment of the appellant has been shown as 29.10.2021. We hold that the appellate authority had restored the contractual appointment of the appellant with immediate effect and regularized the intervening period w.e.f 08.03.2019 by treating the period as leave without pay. Since the contractual period of the appellant has been treated as leave without pay for which he cannot claim any monetary benefits but his date of first appointment remains the same i.e. 14.09.2018, therefore, the appeal is partially allowed and the respondents are directed to modify the regularization order

dated 01.12.2022 to the extent of initial appointment of the appellant accordingly. Costs shall follow the event. Consign.

07. *Pronounced in open court at camp court Swat and given under our hands and seal of the Tribunal on this 04<sup>th</sup> day of June, 2024.*



(RASHIDA BANO)  
Member (E)  
Camp Court Swat



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

ORDER

04.06.2024

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, the appeal is partially allowed and the respondents are directed to modify the regularization order dated 01.12.2022 to the extent of initial appointment of the appellant accordingly. 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 04<sup>th</sup> day of June, 2024.*



(RASHIDA BANO)  
Member (J)  
Camp Court Swat



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