

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL
PESHAWAR

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

Service Appeal No. 7721/2021

Date of presentation of Appeal.....03.11.2021
Date of Hearing.....12.06.2024
Date of Decision.....12.06.2024

Rozi Gul D/o Muhammad Iqbal, PST (BPS-12), Government Girls Primary School, Zanawar Cheena, District Momand, R/o Mohallah, Sheikh Abad, Rajjar, Tehsil & District Charsadda.....(Appellant)

VERSUS

1. The Director of Education, Newly merged District near Govt. High School No. Firdous Peshawar.
2. District Education Officer, Mohmand Tribal District, Mohmand.
3. District Accounts Officer, Mohmand, Tribal District, Mohmand.....(Respondents)

MUHAMMAD MAAZ MADANI,
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 the instant service appeal the inaction of the respondents by not allowing Pay Protection & not counting the previous service since from initial appointment dated 15.03.2004 may very kindly be declared illegal and the respondents may kindly be directed to allow Pay Protection

with all back and consequential benefits. Any other remedy which this august Tribunal deems appropriate that may also be awarded in favor of the appellant.”

02. Brief facts of the case are that the appellant was initially appointed as Primary School Teacher (BPS-07) on a project post at Female Communal School Ziarat Khaznia District Mohmand vide order dated 15.03.2004. Later on the post of the appellant was upgraded to BPS-12; that the services of other communal Teachers were regularized who were appointed later than the appellant vide order 25.04.2018 and they were allowed pay protection alongwith counting of their previous service. The services of the appellant were regularized vide order dated 31.05.2021 with immediate and not from the date of her initial appointment i.e. 15.03.2004. Feeling aggrieved the appellant filed departmental appeal which was not responded, hence preferred the instant service appeal on 03.11.2021.

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. During scrutiny of record it came to surface that similarly placed employees had filed Service Appeal bearing No. 1389/2019 titled “Shah

Hussain Versus Director Elementary & Secondary Education Department Peshawar and others”, alongwith 05 others connected service appeals which were dismissed by this Tribunal vide consolidated judgment dated 17.11.2023.

Para- 6 7 & 8 of the said judgment is reproduced below:-

6. *Perusal of record reveals that initially the appellants were appointed as Primary School Teacher (BPS-07) on contract basis in boy community schools vide order dated 02.06.2004, who were later on appointed against the regular PST post at Government Primary School Benay Arbab Kili, Bara vide order dated 11.07.2009. Appellants seek regularization of their contractual service by way of their pay fixation. Perusal of order dated 11.07.2009 reveals that it is a fresh appointment and not a regularization or adjustment of the appellant. Appellants were appointed on the basis of notification dated 11.05.2012 issued by Secretary Social Sector Department FATA Secretariat Peshawar which read as:*

The Governor of Khyber Pakhtunkhwa in his capacity of the competent authority has been pleased to approve the reappointment of Community School Teachers who qualify to be posted against the regular post of PST (BPS-07) in phased manner at the respective Agencies & FRs, purely on regular basis in accordance with the existing recruitment criteria but in relaxation upper age limit with immediate effect as specified below;

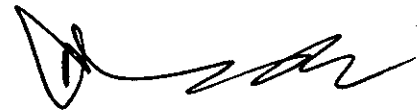
1. *The available regular vacant PST (BPS-7) posts in the primary/middle schools in FATA will be filled up from amongst the Community School Teacher and no fresh candidate considered for recruitment till all the eligible community School Teachers are absorbed against regular posts in their respective Agencies/FRs.*
2. *The non-local eligible Community School Teachers shall be consider re-appointment against the regular vacant posts of PST (BPS-7) adjustment of local qualified teacher.*

7. *Pay protection and fixation came into field when a civil servant who inducted in a civil service was already working in an autonomous body or project was getting/drawing more salary in the previous service than the present one, in such a situation he will be entitled for his pay fixation and protection under F.R 22. In the instant case appellant was getting pay of Rs. 3530/- on contract while his pay on his regular appointment in BPS-7 was also Rs.3530/- so pay in both the jobs/services were same. Therefore, provision of F.R 22 is not applicable to the case of appellant.*

8. *For what has been discussed above, instant appeal as well as connected service appeals are dismissed being devoid of merits. Costs shall follow the events. Consign.*

06. In view of the above judgment rendered by this Tribunal dated 17.09.2023 passed in Service Appeal bearing No. 1389/2019 titled "Shah Hussain Versus Director Elementary & Secondary Education Department Peshawar and others." The instant appeal is also dismissed. Costs shall follow the event. Consign.

07. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 12th day of June, 2024.*



(KALIM ARSHAD KHAN)
CHAIRMAN



(MUHAMMAD AKBAR KHAN)
MEMBER (E)

ORDER

12th 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, the instant appeal is also dismissed. Costs shall follow the event. Consign.

3. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 12th day of June, 2024.*



(KALIM ARSHAD KHAN)
CHAIRMAN



(MUHAMMAD AKBAR KHAN)
MEMBER (E)