

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**Service Appeal No. 2335/2021**

BEFORE: MRS. RASHIDA BANO ... MEMBER (J)
MISS FAREEHA PAUL ... MEMBER (E)

Mst. Razia Begum, LHW (BPS-5) W/O Roshan Khan R/O Mohabat Khel, Tehsil & District Peshawar.

.... (Appellant)

Versus

1. Government of Khyber Pakhtunkhwa, through Secretary Health, Peshawar.
2. Director General, Health Services, Khyber Pakhtunkhwa, Peshawar.
3. Provincial Coordinator for LHW's Program, Khyber Pakhtunkhwa, Peshawar.
4. Accountant General, Khyber Pakhtunkhwa, Peshawar.

.... (Respondents)

Mr. Javid Iqbal Gulbella
Advocate

... For appellant

Mr. Muhammad Jan
District Attorney

... For respondents

Date of Institution.....29.01.2021

Date of Hearing.....15.04.2024

Date of Decision.....15.04.2024

JUDGEMENT

RASHIDA BANO, MEMBER (J): The instant service appeal has been instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as below:

On acceptance of the instant service appeal the respondent department may graciously be directed to extend the ante-dated regularization since induction into service of the appellant, into respondent department with all back benefits. Any other relief not specifically asked for, may graciously be



extended in favor of the appellant, in circumstances of the case.”

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was appointed as Lady Health Worker (LHW) in the year 1994 on contract basis. Later on, services of the appellant was regularized vide order dated 19.09.2014 w.e.f 01.07.2012. She being the senior most employee, retired from service upon attaining the age of superannuation on 01.03.2018 without pension and pensionary benefits. Feeling aggrieved, she filed departmental appeal, which was not responded, hence the instant service appeal.

3. Respondents were put on notice who submitted their comments on the appeal. We heard the learned counsel for the appellant as well as learned District Attorney for the respondents and perused the case file with connected documents in detail.

4. 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.

5. Conversely, Learned District Attorney argued that appellant was appointed on contract basis on fixed pay and her services was regularized w.e.f. 01.07.2012 vide order dated 19.09.2014 with immediate effect. As such regular service of the appellant was 5 years and 8 months from the date of regularization. On attaining the age of superannuation she was retired from service on 01.03.2018, So, she was not entitled for pensionary benefits being her service less than 10 years from the date of regularization. He requested that the appeal may be dismissed.

6. Perusal of record reveals that appellant through instant appeal seeks grant of pensionary benefits. She was appointed as Lady Health Worker on contract basis vide order dated 29.09.1994. Her service was regularized vide order dated 19.09.2014 with effect from 01.07.2012. She retired from service on attaining the age

of superannuation on 01/03/2018, rendering 5 years and 8 months service, vide retirement order dated 19/03/2018. As far as pensionary benefits for the service rendered by the appellant is concerned, pension rules of the government are now clear after the verdict of apex court reported in 2021 SCMR 1546 that a minimum of 10 years of regular service makes a civil servant eligible for the same under the rules, a civil servant has to complete 10 years regular qualifying service for entitling him or her for pension and related benefits.

7. Learned counsel for the appellant relied upon the judgment of this tribunal handed down in service appeal No. 1970/2019 titled as "Bibi Razia Begum Vs. Secretary Health Department" dated 15/07/2021, wherein lady health worker having less than 10 year service was given the benefit of pension by this Tribunal. Although this tribunal has decided appeal of lady health worker having less than 10 years regular service but apex court of the country in 2021 SCMR1546 has held that 10 years regular qualifying service is must for grant of pension and pensionary benefits.

The relevant para of 2021 SMRC 1546 is reproduced here for ready reference;

Art. 371-A--- Contract employees subsequently regularized in service---Pension---Conditions of qualifying service--- Article 371 of Civil Service Regulations (C.S.R.) did not allow Government servants rendering temporary service in a temporary establishment for more than 5 years to be entitled for grant of pension rather such period could be counted towards calculation of pension only if otherwise entitled to pension by meeting the criteria of qualifying service---Where the services of a contractual employee were converted into regular employment the period spent in contractual employment subject to a minimum of five years could be included in calculating pensionary benefits but only




and only in a situation where the employee was otherwise entitled/eligible to receive pension subject to having rendered qualifying service (10 years) in permanent employment---Unless he met the criteria of having served for the duration of the qualifying period, the period spent in contractual employment could not be added to make up for any deficiency in qualifying service for the purpose of eligibility to receive pension.

Under Article 189 of Constitution verdicts of Supreme Court of Pakistan are binding on this Tribunal. Otherwise too, at the time of announcement of judgment by this Tribunal in service appeal No.1910/2019 on 15/07/2021, although case reported in 2021 SCMR 1546 was announced on 12/07/2021 just after three days before the decision of Bibi Razia case of this Tribunal, but was not reported and might not be in knowledge of our learned Bench which decided it. Had the same been in their knowledge then decision would have been otherwise. So appellant is not entitled for the relief claimed in her appeal, because qualifying service for grant of pensionary benefits was not completed and the stance of the appellant taken in the appeal is untenable.

8. In view of above discussion, we are unison to dismiss the appeal being fruitless. Cost shall follow the event. Consign.

9. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 15th day of April, 2024.*

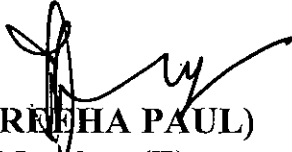

(FAREEHA PAUL)
Member (E)


(RASHIDA BANO)
Member(J)

ORDER

15.04.2024

1. Learned counsel for the appellant present. Mr. Muhammad Jan, learned District Attorney alongwith Mr. Mastan Ali Shah Litigation Officer for the respondents present.
2. Vide our detailed judgement of today placed on file, we are unison to dismiss the appeal being fruitless. Cost shall follow the event. Consign.
8. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 15th day of April, 2024.*



(FAREEHA PAUL)
Member (E)



(RASHIDA BANO)
Member(J)

03rd April, 2024 1. Junior to learned counsel for the petitioner present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present.

2. The file shows that amended appeal has been filed by the appellant but without permission, as the appellant was only permitted to make an application for amendment in the prayer of appeal with the observations that the application will be decided on its own merit. Without making such application, amended appeal has been filed, so the learned counsel for the appellant is put on notice to argue on the point whether in the circumstances his amended appeal should be accepted or not? To come up on 15.04.2024 before the D.B. Parcha Peshi given to the parties.

SCANNED
KIRAT
P

Counsel for the
appellant inform by
T. Phoon call on 8/4/24



(Rashida Bano)
Member (Judicial)



(Kalim Arshad Khan)
Chairman