

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.**

BEFORE: **KALIM ARSHAD KHAN ... CHAIRMAN**
AURANGZEB KHATTAK ... MEMBER (Judicial)

Service Appeal No.4987/2021

Date of presentation of appeal06.04.2021
Dates of Hearing.....25.07.2024
Date of Decision.....25.07.2024

Imran Sharif S/O Muhammad Sharif R/o Khas Ahmadi Banda, Bada Daud Shahi, District Karak.....(Appellant)

Versus

1. Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar.
2. Government of Khyber Pakhtunkhwa, through Secretary Elementary and Secondary Education Khyber Pakhtunkhwa Peshawar.
3. Director Elementary and Secondary Education, Khyber Pakhtunkhwa, Peshawar.
4. District Education Officer (Male), Karak.
5. District Coordinator Officer, Karak.
6. Executive District Officer, Karak.
7. Deputy District Officer, Karak.....(**Respondents**)

Present:

Mr. Muhammad Imran Khan, Advocate.....For appellant.
Mr. Muhammad Jan, District Attorney.....For respondents.

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SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974, BY DIRECTING THE RESPONDENTS TO ALLOW THE APPELLANT TO PERFORM HIS DUTY AND RELEASE THE SALARY AND OTHER ALLOWANCES OF APPELLANT AND NOT TO INTERFERE IN THE DUTY/TERMS AND CONDITIONS OF SERVICE OF APPELLANT WITHOUT DUE COURSE OF LAW.
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JUDGMENT

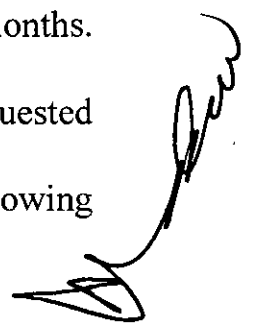
KALIM ARSHAD KHAN CHAIRMAN: According to the facts gathered from the record are that the appellant was appointed as a PST

Teacher in GGMS B.D Shah, Ahmadi Banda, on 31.03.2004.

According to the appellant, he was diagnosed with a severe illness shortly after his appointment, necessitating a request for extraordinary leave, which was granted. During his period of leave, another individual was deputed to fulfill his responsibilities. Following his recovery, the appellant submitted a request to rejoin his duties, accompanied by a medical fitness certificate. However, upon joining, he was met with administrative barriers concerning the release of his salary, which he alleges was unjustly withheld without proper cause. Feeling aggrieved, the appellant filed several applications, which were not responded, hence, he approached this Tribunal through filing of instant appeal for redressal of his grievance.

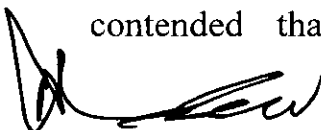
2. On receipt of the appeal and its admission to full hearing, the respondents were summoned. Respondents put appearance and contested the appeal by filing written reply raising therein numerous legal and factual objections. The defence setup was a total denial of the claim of the appellant.

3. Learned counsel for the appellant argued that in September 2004, the appellant was diagnosed with a severe medical condition requiring complete bed rest, therefore, he submitted an application for extraordinary leave, which was granted for a period of four months. He next argued that the appellant, through proper channel, requested an extension of his leave, which was duly sanctioned, thereby showing



that the respondents were aware and accommodating of his continued health issues. He further argued that upon recovery, on 20.05.2005, the appellant started performing his duty but he was not paid salary, therefore, the appellant filed multiple applications, however, the same were not responded. He also argued that in absence of any inquiry, evidence, or formal notice against the appellant before being barred from duty constitutes a clear violation of due process. He next contended that it is a fundamental principle, both in Islamic doctrine and legal practice, that no individual should be condemned without an opportunity to be heard, however the actions taken against the appellant contravene this principle, as he was not afforded the opportunity to defend himself against any alleged misconduct. In the last he argued that the actions of the respondents were not only unjust but also illegal, as they failed to adhere to the requisite legal standards and procedural norms, therefore, the appeal in hand might be accepted as prayed.

4. On the other hand, learned District Attorney for the respondents contended that the appellant remained absent from duty without any leave or permission of the competent authority, which constitutes a serious violation of departmental regulations. He next contended that the appellant was appointed purely on a contractual basis and was not granted any leave, therefore, his failure to report for duty resulted in the vacancy of the post, which was subsequently filled. He further contended that according to Section 2(b) ii of the Khyber



Pakhtunkhwa Civil Servant Act, 1973, the appellant does not qualify as a civil servant since he was employed on a contract basis, therefore, this Tribunal lacks jurisdiction to entertain the instant appeal. He also contended that claim of the appellant regarding submissions of applications is unsubstantiated, as no diary numbers are present on the mentioned applications, indicating that they were never properly submitted. He next argued that the appellant has not complied with the legal requirement to file a departmental appeal, which is a prerequisite as per service rules, thus rendering the current appeal invalid. He further argued that the appeal of the appellant before this Tribunal is badly time barred, hence liable to be dismissed in on this score alone.

5. We have heard the arguments of learned counsel for the parties and have perused the record.

6. Perusal of the record would show that the appellant was appointed as Primary School Teacher on 31.03.2004 at GGMS Banda Daud Shah district Karak purely on a contractual basis, he remained absent from duty without any sanctioned leave, therefore, his post was subsequently filled up by the respondent-department. The record further shows that the absence of the appellant was documented and supported by attendance records for GGMS Banda Daud Shah District Karak, which confirm that the appellant did not report for duty. It is established that the appellant was appointed on a contractual basis rather than as a permanent civil servant. According to Section 2(b)ii of

the Khyber Pakhtunkhwa Civil Servant Act, 1973, an individual employed under a contract does not fulfill the requirements to be classified as a civil servant. This distinction is critical as it directly impacts the jurisdictional authority of this Tribunal. The appellant claimed to have submitted applications regarding his absence, however, a thorough examination reveals an absence of requisite diary numbers on these applications. The lack of documentation suggests that these applications were never formally submitted, undermining the credibility of the appellant's assertions. Furthermore, the appellant has filed the instant appeal beyond the stipulated time frames as set forth in Section-4 of Khyber Pakhtunkhwa Service Tribunal Act, 1974. The delay in seeking judicial intervention is particularly concerning. The first formal request regarding the issues seems to have occurred around February 2021, which denotes significant passage of time almost 16 years without resolution. As a result, it is deemed time-barred and liable to be dismissed on this procedural basis. The appellant neglected to file a departmental appeal as required by Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 prior to bringing his case before this Tribunal. Such a step is a necessary procedural requirement that the appellant has failed to fulfill, further invalidating his current appeal. It is contention of the appellant that he has filed several applications to the department for redressal of his grievance. However, it is a well-established principle in service law that successive applications/departmental appeals are not allowed. Allowing successive departmental appeals would lead to

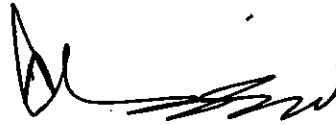


a never-ending cycle of appeals, causing undue delay and hindering the efficient functioning of the department.

7. In the light of the foregoing discussion, the appeal in hand is dismissed on the grounds of jurisdiction, lack of supporting documentation, procedural non-compliance, and being barred by time.

Cost shall follow the events. Consign.

8. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 25th day of July, 2024.*



KALIM ARSHAD KHAN
Chairman




AURANGZEB KHATTAK
Member (Judicial).


Adnan Shah, PA

ORDER

25th July, 2024

1. Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney for respondents present.
2. Vide our detailed judgement of today placed on file, the appeal in hand is dismissed on the grounds of jurisdiction, lack of supporting documentation, procedural non-compliance, and being barred by time. 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 25th day of July, 2024.


(Aurangzeb Khattak)
Member(Judicial


(Kalim Arshad Khan)
Chairman

Adnan Shah, P.A