

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.**

BEFORE: **KALIM ARSHAD KHAN ...CHAIRMAN**
RASHIDA BANO ...MEMBER (Judicial)

Service Appeal No.1173/2023

Date of presentation of appeal25.05.2023
Dates of Hearing.....11.07.2024
Date of Decision.....11.07.2024

**Muhammad Zakariya SST (BPS-16) R/o Mohallah Eid Gah Akora
Khattak, Nowshera.....(Appellant)**

Versus

1. The Secretary (E&SE) Khyber Pakhtunkhwa Peshawar.
2. The Director Education Khyber Pakhtunkhwa Peshawar.
3. The District Education Officer (Male) Nowshera.....(**Respondents**)

Present:

Syed Noman Ali Bukhari, Advocate.....For appellant.

Mr. Muhammad Jan, District Attorney.....For respondents.

.....
**SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974, AGAINST
THE ORDER 06.01.2020 RECEIVED BY THE APPELLANT WAS
RELIEVED FROM SERVICE AND NOT ALLOWING THE
APPELLANT TO REJOIN HIS DEPARTMENT (RETAIN LIEN
ON) AND AGAINST NOT TAKING ACTION ON THE
DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN
STATUTORY PERIOD OF NINETY DAYS.**
.....

JUDGMENT

RASHIDA BANO, MEMBER (JUDICIAL): Brief facts gathered from the memo and grounds of appeals are that the appellant was appointed as SST (BPS-16) vide order dated 11.11.2011; that the appellant was applied for the project post of Regional Electric Inspector (BPS-18) in Energy and Power



Department through proper channel and the appellant was appointed against the same post vide order dated 13.12.2016; that the appellant request to retain lien in Education Department which was entertained and the lien was retained by the department which was extended time to time; that the appellant was conditionally/provisionally regularized against the post of Deputy Electric Inspector (BPS-18) in light of the Peshawar High Court judgment in writ petition No. 3454-p/2019, 3552/2019 and 3479/2019 vide order dated 02.06.2021; that the regularization of the appellant was conditional for the reason that the department filed CPLA against the judgment of the Peshawar Court. The CPLA of the department was accepted on 19.01.2023, in light of which appellant was terminated from the service being temporary employee vide order dated 09.03.2023; that thereafter the appellant approached to his parent department on 27.01.2023 for joining his previous post as SST but the department refused to allow the appellant to join his post by stating that you are already relieved from the post your lien has terminated and handed over the order dated 06.01.2020, wherein the appellant was relieved from the post of SST; That the appellant feeling aggrieved, filed departmental appeal, which was not responded within statutory period of ninety days, hence, the instant service appeals.

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. We have heard learned counsel for the appellant and learned District Attorney for the respondents.



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(s).

5. Respondent\department relieved the appellant on the ground of expiry\ termination of his lien vide order impugned order dated 06.01.2020 which is against the settled law on the submitted as Supreme Court of Pakistan verdicts held that lien of a civil servant would be terminated only when he got confirmed in his new job to which as regular employee was appointed latter than the post upon which had refused lien. We place reliance on 1996 SCMR 284(b) Civil Petition no. 543-p of 2016 decided on 21.03.2019 which reads as:

Rr. 9(13), 13(b) & 14(a)(2)---Confirmed post office employee seeking jobs in other departments and joined employment of those departments on temporary basis---Civil servant in course of time having joined Supreme Court as Court Associate, his probation period was not extended---Civil servant applying to his parent department viz. post office for re-employment--Registrar of Supreme Court also recommended civil servant's re-employment in post office on the ground that his lien therein was not terminated---Post Office Department refused to re-employ civil servant on the pretext that he had resigned before joining service in other department--Civil servant's appeal before Service Tribunal was dismissed---Validity---Held in order to disentitle civil servant to reclaim his confirmed service, it would be essential to show that civil servant was confirmed in any of his new jobs which he got later in time-Civil servant having not been confirmed in any of his subsequent jobs, his lien with his parent

department remained intact throughout in spite of the fact that he joined service in other departments---Decision of Service Tribunal and Office Memorandum whereby civil servant was refused to be re-absorbed in service were set aside being without, jurisdiction---Civil servant was deemed to be in service but would not be entitled to back benefits: --[Civil service].

It was also held in 2005 SCMR 1212 that :

(b) civil service --- lien ---Termination --- lien of a permanent service could not be terminated even with his consent, unless he had been confirmed against some other permanent posts.

6. In our humble view, appellant lien was not terminated and impugned order is against the law and rules is hereby set aside by partially accepting appeal but appellant would not be entitled for back benefits. Costs shall follow the event. Consign.

7. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 11th day of July, 2024.*



KALIM ARSHAD KHAN
Chairman



RASHIDA BANO
Member (Judicial)

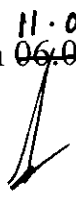
Adnan Shah, PA

26.06.2024

1. Appellant in person present. Mr. Muhammad Jan, District Attorney for the respondents present.

2. Appellant requested for adjournment on the ground that his counsel ~~for the appellant~~ is not available today. To come up for arguments on ~~06.09.2024~~ ^{11.07.2024} before D.B. P.P given to the parties.

SCANNED
KPST
Peshawar


(Muhammad Akbar Khan)
Member (E)


(Rashida Bano)
Member (J)

KABIRANULLIJI

ORDER


11.07.2024

1. Learned counsel for the appellant present. Mr. Muhammad Jan, learned alongwith Muhammad Rizwan, Assistant Director (Litigation) for official respondents present.

2. Vide our detailed judgment of today placed on file, appellant lien was not terminated and impugned order is against the law and rules is hereby set aside by partially accepting appeal but appellant would not be entitled for back benefits. Costs shall follow the event. Consign.

3. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 11th day of July, 2024.*


KALIM ARSHAD KHAN
Chairman


RASHIDA BANO
Member (Judicial)

M.Khan

09th May, 2024

1. Appellant is present in person. Mr. Muhammad Rizwan, Assistant Director (Litigation) alongwith Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present.

2. Counsel are on strike, therefore, the case is adjourned for 05.06.2024 for arguments before the D.B. Parcha Peshi given to the parties.



(Muhammad Akbar Khan)
Member (Executive)



(Kalim Arshad Khan)
Chairman

Naeem Amin

5th June, 2024

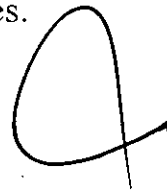
1. Junior to counsel for the appellant present. Mr. Arshad Azam, Assistant Advocate General for the respondents present.

2. Junior to counsel for the appellant seeks adjournment on the ground that learned senior counsel is not available today. Adjourned by way of last chance. To come up for arguments on 05.09.2024 before D.B. P.P given to the parties.

SCANNED
KPSGT
Peshawar



(Fareeha Paul)
Member(E)



(Kalim Arshad Khan)
Chairman

Adnan Shah P.A.