


pension and Provident Fund, along with the contributions made by Government to his account in the gratuity, be entitled to receive such amount contributed by him towards the Contributory said fund, in the prescribed manner:

The very Act on the strength of which their service were regularized says that the appellants are not entitled for pay protection and converting of their contractual service towards their pension or gratuity rather after their regular appointment, they will be entitled for C.P funds.

9. Government of Khyber Pakhtunkhwa Finance Department vide letter dated 18.03.2021 gives pay protection to employees appointed on regular basis wherein in clause No.5, it is clearly mentioned that *“the service rendered on contract basis shall not qualify for pension/gratuity.”* and in clause No.7, it is mentioned that *“the pay protection/fixation of pay will be admissible with immediate effect with regard to old/new cases which are fulfilling the pay protection criteria mentioned above.”*

10. For what has been discussed above, we are unison to dismiss the instant service appeal as well as connected service appeals. Costs shall follow the event. Consign.

11. *Pronounced in open court at Peshawar and given our hands and seal of the Tribunal on this 13th day of May, 2024.*


(FAREEHA PAUL)
Member (E)


(RASHIDA BANO)
Member (J)

7. Perusal of record reveals that appellants were appointed upon the recommendation of Departmental Selection Committee, as Medical Officer (BPS-17) in Health Department vide order dated 26.11.1995, 26.11.1995 and 29.11.1995, which contract was extended from time to time till the Khyber Pakhtunkhwa Civil Servants Act, was amended on 23.07.2005. Appellants were appointed as Medical Officer (BPS-17) on regular basis vide notification dated 07.09.2007. Finally, the services of the appellants were regularized vide notification dated 17.10.2017 w.e.f 01.07.2021 instead from the date of their initial appointment, against which the appellants again filed writ petition No.851-P/2018 which was dismissed on 26.09.2019 and against which the appellants have approached the Apex court.

8. Appellants approached respondents for converting of their contractual service for the purpose of pay protection and pension which is not given to them, therefore, now the appellants of all the four appeals seek the same relief from this Tribunal through instant appeals. Record further reveals that service of the appellants were regularized at the strength of Khyber Pakhtunkhwa Civil Servant (Amendment) Act, 2005, Section 19 deals with the pension & gratuity of the Civil Servants Sub-Section (2) of the same relates/deals to civil servant who's service were regularized on the basis of this Act, which reads as;

“(2) A person though selected for appointment in the prescribed manner to a service or post on or after the 1st day of July, 2001, till the commencement of the said Act, be deemed to have been appointed on a regular basis. All such persons and the Act, but appointment on contract basis, shall, with effect from the commencement of the persons appointed on regular basis to a service or post in the prescribed manner after the commencement of the said Act shall, for all intents and purposes be civil servant, except for the purpose of pension or gratuity. Such a Civil servant shall, in lieu of

filed departmental appeals, which were not responded, hence the present service appeals.

4. Respondents were put on notice who submitted written reply/comments on the appeal. We have heard learned counsel for the appellants and Mr. Muhammad Jan, District Attorney for the respondents and have gone through the record and the proceedings of the case in minute particulars.

5. Learned counsel for the appellants argued that the appellants have not been treated in accordance with law/rules and respondents had violated Articles 4 & 25 of the Constitution of Islamic Republic of Pakistan, 1973. He further argued that appellants are entitled to be given the benefit of previous contract service rendered by the appellants as per CSR-371-A and pension rules. He submitted that appellants have been deprived of their due rights without any omission or commission on their part in violation of the principle of natural justice. They requested that instant appeals might be accepted.

6. Conversely, learned District Attorney contended that the appellants have been treated in accordance with law and rules and no way violating Article 4 and 25 of the Constitution of Islamic Republic of Pakistan, 1973. He further contended that appellants were appointed as Medical Officer (BPS-17) on contract basis on 26.11.1995. Their services were regularized under Khyber Pakhtunkhwa Civil Servant (Amendment) Act, 2005 read with Act 2013 with effect from 01.07.2001. As regard their contract service from 26.11.1995 to 30.06.2001 is concerned it could not be regularized for the purpose of pension/seniority as per rules. He requested that instant appeal might be dismissed.



2. Through this judgment, we intend to dispose of the instant service appeal as well as connected service appeals having common questions of law and facts are involved, which are given as under:

1. **Service Appeal No.7591/2021**
2. **Service Appeal No.7592/2021**
3. **Service Appeal No.7799/2021**

3. Brief facts leading to filing of the instant appeals are that appellants were appointed as Medical Officer (BPS-17) on contract basis in Health Department vide order dated 26.11.1995, 27.11.1995 and 29.11.1995, which contract was extended from time to time till Khyber Pakhtunkhwa Civil Service Act was amended on 23.07.2005, after which the service of the appellants stood regularized however, the appellants were not extended the benefits. Thereafter, appellants approached the Worthy Peshawar High Court, Peshawar by filing writ petition No. 1510-P/2007 which was allowed vide judgment dated 18.11.2008. They were appointed as Medical Officer BPS-17 on regular basis vide notification dated 07.09.2007. Respondents even then were not ready to regularize the services of the appellants, so they again approached the Worthy Peshawar High Court by filing writ petition No. 1647-P/2013 which was disposed of on 09.02.2017 remitting the case to the committee for consideration. Finally, the services of the appellants were regularized vide notification dated 17.10.2017 w.e.f 01.07.2001 instead from the date of their initial appointments, against which the appellants again filed writ petition No.851-P/2018 which was dismissed on 26.09.2019 and against which the appellants have approached the apex court. Thereafter appellants again filed writ petition No.3337-P/2020 which was withdrawn vide order dated 27.05.2021 to proper forum. Appellants



BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No: 7590/2021

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

Dr. S.M Taimoor Shah S/o Pir Feroz Shah, District Health Officer, Torghar.

.... (*Appellant*)

VERSUS

1. The Government of Khyber Pakhtunkhwa through Secretary Health, Civil Secretariat, Peshawar.
2. The Director General Health Services Department, Khyber Pakhtunkhwa, Peshawar.
3. The Secretary Finance Department, Khyber Pakhtunkhwa, Peshawar.
4. Chief Secretary, Government of Khyber Pakhtunkhwa, Peshawar.

.... (*Respondents*)

Mr. Fazal Shah Mohmand
Advocate

... For appellant

Mr. Muhammad Jan
District Attorney

... For respondents

Date of Institution.....08.10.2021
Date of Hearing.....13.05.2024
Date of Decision.....13.05.2024

JUDGMENT

Rashida Bano, Member (J): The instant service appeals have been instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as below:

“On acceptance of this appeal the respondents may kindly be directed to count the previous contract service of the appellant w.e.f 27.11.1995 to 31.06.2001 rendered by him for the purpose of pay protection and pension etc. with all back benefits.”

