

BEFORE THE HONORABLE SERVICE TRIBUNAL PESHAWAR.

Appeal No. 2616/2023

Abdul qayyum..... Appellant.

Versus

District Education officer (M) District Khyber & Others... Respondents.

INDEX

S. No	Description of Documents	Annexure	Pages
1	Index		1
2	Comments		2-5
3	Affidavit		6
4	Authority letter		7
5	Notification of Ex-FAtA secretariat 11.05.2012	A	8
6	Shah hussain service appeal # 1389-2019, judgment - Date 17.11.2023	B	9-13

(Muhammad Uzair Ali)
District Education Officer (M)
Khyber at Jamrud

Dated 13/06/2024

sent date
31-7-24

BEFORE THE HONORABLE SERVICE TRIBUNAL PESHAWAR.

Appeal No. 2616/2023

Abdul qayyum..... Appellant.

Versus

District Education officer (M) District Khyber & Others... Respondents.

Para-wise Comments on behalf of Respondents No. 1 and 2.

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 13711

Dated 24-06-2024

Preliminary objections.

- That the appellant has got no cause of action/locus standi to file the instant appeal.
- The appellant was appointed to a project post of PTC for a specified period at a community school in Tirah, District Khyber, in 2005. However, all community teachers were terminated through a governor's notification in 2010.
- The Governor of Khyber Pakhtunkhwa, in his capacity as the competent authority, has approved the re-appointment of community school teachers who qualify for regular posts. This process will be carried out in phases at the respective Agencies and FRs, based purely on merit and in accordance with the existing recruitment criteria, as of May 11th, 2012 notification.

(Annexure-A)

- The appellant's turn for re-appointment came on July 20, 2016, in accordance with the notification from the EX-FATA Secretariat, Peshawar **(Annexure-A)**
- That the Khyber Pakhtunkhwa Service Tribunal Peshawar dismissed a similar ground appeal against Shah Hussian and others in service Appeal No. 1389/2019 on November 17, 2023

Annexure- B as well as anzar gul & other,(Total numbers of appeal 182 all of them were communal teachers)

- That the appellant has not come to this honorable tribunal with clean hands.
- That appellant concealed material facts from this honorable tribunal.
- That the appellant is estopped by his own to bring the present appeal.
- That the appeal is bad due to mis-joinder and non-joinder of necessary parties.
- That the appeal is barred by law and limitation.

Respectfully Sheweth;

ON FACTS.

1. Pertain to record.
2. The appellant was appointed as a PST Communal Teacher for a project-based post. Meanwhile they were terminated in 2010.


Subsequently, the Governor of Khyber Pakhtunkhwa issued a notification for re-appointment after termination, which was contingent upon personal verification and the submission of relevant documents.

The notification also stipulated that re-appointment would occur on a phased basis, subject to the availability of PST posts. The appellant remained on the waiting list until July 20, 2016, when he was re-appointed. **Annexed by the appellant**

3. Pertains to record.

4. Incorrect hence. Denied .The appellant was re-appointed on the post of PTC on regular basis on July 20th 2016 but that his appointment was to be considered as fresh appointment or re-appointment as mentioned in his appointment order. Therefore, he is not entitled for pay fixation. As elucidated in para 2.
5. The Khyber Pakhtunkhwa Service Tribunal Peshawar dismissed a similar appeals against Shah Hussain and others in Service Appeal No. 1389/2019 on November 17, 2023, as well as against Anzar Gul and others. In total, 182 appeals were dismissed, all of which were filed by communal teachers for pay fixation and back benefits. **(Annexure-B)**.
6. He is not entitled for pay fixation. The appellant case is badly time barred as he bring the instant appeal almost 10 years alter of his appointment. Hence, the instant appeal may be dismissed.

Ground;


- A. Incorrect. Hence denied. As elucidated in para-2, 4 and 5.
 - B. The respondent department treated the appellant strictly in accordance laws and rules.
 - C. Incorrect. Hence denied. The respondents scheduled the appointment based solely on merit, and the appellant was re-appointed from the waiting list on July 20, 2016.
 - D. Incorrect. Hence denied. As elucidated para 2,4 and 5.
- 

- E. Incorrect. Hence denied. The Khyber Pakhtunkhwa Service Tribunal Peshawar dismissed a similar ground appeal as elucidated in para 5.
- F. Incorrect. Hence denied. The respondent department has treated the appellant in accordance with laws and rules as elucidated in para 2,4 & 5.
- G. And the respondents also seeks of this Hon'ble Tribunal to advance other grounds at the time of hearing the case.


Pray:

In light of the above stated facts, it is submitted that the case of the appellant may be dismissed with cost.

Respondent No.1


(SAMINA ILTAF)
Director of E&SE
Khyber Pakhtunkhwa

Respondent No. 2


Muhammad Uzair Ali
District Education Officer (m)
District Khyber



BEFORE THE HONORABLE SERVICE TRIBUNAL PESHAWAR.

Appeal No. 2616/2023

Abdul qayyum..... Appellant.

Versus

District Education officer (M) District Khyber & Others... Respondents.

Affidavit

I, Muhammad Uzair Ali District Education Officer Khyber (M) do hereby solemnly affirm and declare that the contents of the accompanying para-wise comments submitted by the respondents is correct to the best of my knowledge and belief and nothing has been concealed from this honorable service tribunal. It is further stated under oath that respondent's defense was neither stuck off or nor ex-parte in the aforementioned instant case.



**(Muhammad Uzair Ali)
District Education Officer (M)
Khyber at Jamrud**

BEFORE THE HONORABLE SERVICE TRIBUNAL PESHAWAR.

Appeal No. 2616/2023

Abdul qayyum..... Appellant.

Versus

District Education officer (M) District Khyber & Others... Respondents.

Authority Letter

Mr. Munawar Khan focal Person of (Litigation) District education Officer Khyber is hereby authorized to submit para-wise comments in the court on the behalf of respondent.



(Muhammad Uzair Ali)
District Education Officer (M)
Khyber at Jamrud





FATA SECRETARIAT
Social Sectors Department
Warsak Road Peshawar

ONE A

P-8

Notification

No. SO(E)/SSD/CSTR/99-108/ The Governor Khyber Pakhtunkhwa in his capacity as the Competent Authority has been pleased to approve the re-appointment of Community School Teachers who qualify to be posted against the regular posts of PST (BS-7) in phased manner at the respective Agencies & FRs, purely on merit basis in accordance with the existing recruitment criteria but in relaxation of upper age limit with immediate effect as specified below.

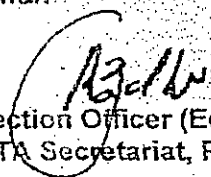
1. The available regular vacant PST (BS-7) posts in the Primary/Middle Schools in FATA will be filled up from amongst the Community School Teachers and no fresh candidate considered for recruitment till all the eligible Community School Teachers are absorbed against regular posts in their respective Agencies/FRs.
2. The non-local eligible Community School Teachers shall be considered for re-appointment against the regular vacant posts of PST (BS-7) after adjustment of local qualified teachers.
3. The services of the un-qualified teachers shall be dispensed with.
4. The Community Schools whose teachers are appointed and shifted to other schools against regular posts, would be closed down.
5. The respective Community Schools students would be shifted to nearby regular schools and no further recruitment of Community School teachers will be made.

Secretary
Social Sectors Department,
FATA Secretariat, Peshawar

Endst No. Even Dated Peshawar the 11/05/2012

Copy forwarded to the:-

1. Secretary to Governor, Khyber Pakhtunkhwa Peshawar.
2. Addl. Accountant General (PR) Sub Office Peshawar.
3. Director Education FATA, Peshawar.
4. All Political Agents in FATA.
5. DCO Peshawar, Kohat, Bannu, Lakki, D.I.Khan & Tank.
6. Agency/ District Accounts Officers concerned
7. All the Agency Education Officer in FATA
8. PS to Additional Chief Secretary FATA Peshawar.
9. PS to Secretary Social Sectors Department, FATA Secretariat, Peshawar.
10. PS to Secretary P&D, FATA Secretariat, Peshawar.


Section Officer (Edu) SSD
FATA Secretariat, Peshawar

Attested


KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1389/2019



BEFORE: MRS. RASHIDA BANO ... MEMBER (J)
MR. MUHAMMAD AKBAR KHAN ... MEMBER (E)

Mr. Shah Hussain, PST (BPS-12), GPS Mothray Dada, Tirah, District Khyber. (Appellant)

VERSUS

1. The Director Elementary & Secondary Education Department, Peshawar.
2. The Director Education Merged Area Districts, Merged Area Secretariat, Warsak Road, Peshawar.
3. The District Education Officer (M), Khyber.
4. The District Account Officer, District Khyber.

.... (Respondents)

Mr. Muhammad Kamran Khan
Advocate ... For appellant

Mr. Muhammad Jan
District Attorney ... For respondents

Date of Institution.....22.10.2019
Date of Hearing.....17.11.2023
Date of Decision.....17.11.2023

JUDGMENT

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 this appeal, the appellant may kindly be allowed/granted pay fixation w.e.f 02.06.2004 i.e from the date on which the appellant was appointed as Primary School Teacher by counting the previous contractual service of the appellant towards regular service.”

2. Through this judgment we intend to dispose of instant service appeal as well as connected service appeals which are:

ATTESTED
12/11/23
MEMBER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

1. Service Appeal No.1390/2019
2. Service Appeal No.1391/2019
3. Service Appeal No.1392/2019
4. Service Appeal No.1393/2019
5. Service Appeal No.1394/2019

In view of common questions of law and facts, the above captioned appeals are being disposed of by this order.

3. Brief facts of the case, as given in the memorandum of appeal, are that the Department of Education FATA, in order to raise literacy level, launched a project of Community Schools under FATA Annual Development Program in the year 1998 till 20.10.2010, wherein 956 schools were opened and 1912 PSTs were appointed since 2003 including the appellants after fulfillment of all codal formalities. Due to law and order situation in FATA, many schools were destroyed and being nonfunctional schools, it was decided to close the same as the teachers were getting salaries without performing their duties. In meeting of Standing Committee of SAFRAN held on 21.12.2011, it was decided that FATA Secretariat should regularize the services of Community School Teachers from their initial recruitment and communicated it to FATA Secretariat vide letters dated 16.01.2012 and 26.04.2012. After approval of summary by the Government of Khyber Pakhtunkhwa, the community school teachers were adjusted against regular post of PST BPS-07 and in this respect, the Secretary Social Sectors Department FATA issued notification on 11.05.2012 and they were subsequently regularized. Appellants filed departmental appeal for fixation of his pay w.e.f the date of initial appointment i.e 13.03.2005, which was not responded to, hence the instant service appeal.


ATTESTED

MEMBER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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

4. Learned counsel for the appellant argued that appellant has not been treated in accordance with law and rules and respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan, 1973. He further argued that by not fixing the pay of the appellants w.e.f 02.06.2004 by the respondents is against the law, facts and norms of natural justice as well as violation of Rule 2.3 of the West Pakistan Pension Rules, 1963. He submitted that respondents acted in arbitrary and malafide manner by not granting/allowing pay fixation to the appellant.

5. Learned District Attorney contended that the appellant has been treated in accordance with law and rules while doing so no provision of law has been violated. He further contended that initially the appellants were appointed as PST Community School Teacher on temporary basis under a project namely Community School Teacher project for three years only. Later on, on the recommendation of Departmental Selection Committee the appellants were regularly appointed on the post of PST but that was to be considered as fresh appointment as mentioned in their appointment order, therefore, they were not entitled for pay fixation. He submitted that the matter in the instant appeal is a closed transaction which has already been dismissed by the Hon'ble Peshawar High Court, Peshawar in W.P No. 4597-P/2018 on 30.10.2019, so appellants are not entitled for the pay fixation. He, therefore, requested that instant appeal might be dismissed.

ATTESTED

 EXAMINER
 Kayser P. Akhter
 Service Tribunal
 Peshawar

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 then the present one, in such a situation he will be entitled for his pay fixation and


ATTESTED
 EXAMINER
 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar

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.

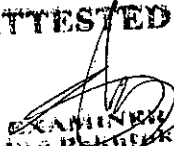
9. Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 17th day of November, 2023.


(MUHAMMAD AKBAR KHAN)
Member (E)


(RASHIDA BANO)
Member (J)

Kaleemullah

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

12/6/23
Date of Presentation of Application 12/6/23
Number of Words 5-P
Copying Fee 25/-
Urgent 5/-
Total 30/-
Name of Copy
Date of Copy 12/6/23
Date of Delivery of Copy 12/6/23