


ORDER

11.06.2024 1. Learned counsel for the appellant present. Mr. Muhammad Jan

learned District Attorney for the respondents present.

2. Vide our detailed judgment of today placed on file, the appeal in hand is hereby dismissed being devoid of merits. 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 11th day of June, 2024.*



(Fareeha Paul)
Member (E)


(Rashida Bano)
Member (J)

8. When it is held by the worthy High Court that orders of the High Court are always prospective in nature and appellant was appointed against vacant post upon its availability, when post became vacant the appellant being at merit at position 4 was rightly appointed from the date of availability of vacant post in accordance with orders of Peshawar High Court, appointment will always be against the vacant post. Appellant appointment cannot be antedated as at that time no vacant position was available.

9. Therefore, in our humble view the appeal in hand is hereby dismissed being devoid of merits. Costs shall follow the event. Consign.

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


(Fareeha Paul)
Member (E)


(Rashida Bano)
Member (J)

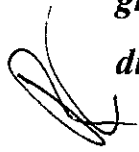
On the basis of which respondents issued appointment order of 8 petitioners on 30.11.2016, while appellant was appointed vide order dated 14.04.2017 with immediate effect. Appellant now want to ante-date his appointment from 14.04.2017 to 30.11.2016 when his colleagues were appointed.

7. It is also pertinent to mention here that appellantalongwith others approached Peshawar High Court in writ petition bearing No.268-B of 2018 with the prayer given below;

“On acceptance of instant petition, appropriate writ may very kindly be issued to respondents to the effect that back benefits may kindly be given to the petitioners from the date of first appointment i.e. 21.09.2013 till the date of appointment of the petitioners i.e. 30.11.2016 and 14.04.2017 respectively, on the worthy order of Hon’ble High Court and the respondents also should be restrained not make interference in the service of petitioner of conduct any inquiry against him. This Hon’ble Court may further be pleased.”

It was held in said writ petition that;

“4. The order passed in earlier writ petition No.408-B/2013 decided on 10.12.2015 does not reveal any direction for the appointment of petitioners from back dates or entitlement to back benefits. Orders of Courts are always perspective in nature and not retrospective unless the Court gives clear cut direction in this regard keeping in view the facts and circumstances of the case. Petitioners have failed to make out any case for entitlement to back benefits strictly observing the relevant rules and regulations. Mere verbal assertions of the petitioners could not be considered as a good ground for grant of back benefits. The instant writ petition failed, hence dismissed with no order as to costs.”



objections. The defense setup was a total denial of the claim of the appellant.

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

5. 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).

6. Perusal of record reveals that appellant applied for the post of Physical Education Teacher (PET) in response of publication advertised by the Agency Education Officer (Respondent No.3) on 28.04.2013, wherein appellant alongwith others appeared in test and interview, merit list was prepared and appellant was appointed on 21.09.2013, but due to complaints the then Political Agent, North Waziristan Agency took all record in his custody, as result of which merit list and other process was declared null and void which was challenged by the appellant alongwith others in writ jurisdiction of Peshawar High Court bearing No.408-B of 2013. The worthy Peshawar High Court, Bannu Bench decided writ petition No.408-B/13 vide order dated 10.12.2015 in these terms given below;

“The learned counsel for the petitioners as well as Assistant Agency Education Officer along with DAG present in court candidly stated that they will inquire about and will confirm the merit list as far as the merit of the petitioners are concerned and if they were found to be qualified on merit would be appointed, so it is directed that if the petitioners were on their merit and were eligible to be appointed, the respondents shall appoint them. So, this writ petition is disposed of accordingly.”



Date of Institution.....18.06.2020
Date of Hearing.....11.06.2024
Date of Decision.....11.06.2024

JUDGMENT.

RASHIDA BANO, MEMBER (J):-The instant service appeal has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974, against the impugned order of the respondent No. 3 dated 14.04.2017, whereby the appellant has not been appointed from the correct and proper date and the non decision of the respondent No. 1 to 3 on the departmental appeals of the appellant dated 05.04.2018 and 14.12.2019 with the prayer on accepting the appeal of the appellant, the respondents No.1 to 3 may be ordered to make necessary amendment/correction in the date of appointment of the appellant, so that his appointment could take effect from 30.11.2016.

2. Brief facts of the case are that the appellant applied for the post of Physical Education Teacher (PET) in response of publication advertised by Respondent No.3 on 28.04.2013, wherein appellant alongwith others appeared in test and interview, meritlist was prepared and appellant was appointed on 21.09.2013, but due to complaint all the process was declared null and void. Appellant alongwith others filed writ petition in Peshawar High Court, Bannu Bench which was decided in favour of the appellant. Respondents in compliance of the court orders appointed the appellant on 14.04.2017. Feeling aggrieved, he filed departmental appeal which was not responded to, hence the present service appeal.

3. 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



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**Service Appeal No.5808/2020**

BEFORE: MRS. RASHIDABANO --- MEMBER (J)
MISS FAREEHA PAUL --- MEMBER (E)

Mr. Aleemullah S/O Ghazi Muhammad, Physical Education Teacher (PET), of Government High School Ali Khel, R/O District Miran Shah, North Waziristan.

... (*Appellant*)

VERSUS

1. The Secretary to Government of Khyber Pakhtunkhwa, Elementary & Secondary Education Department, Civil Secretariat, Peshawar.
2. The Director, Elementary & Secondary Education Department, Peshawar.
3. The District Education Officer (Male), District Miran Shah, North Waziristan.
4. Akhtar Ali Khan S/o Syed Naik Khan, (PET), Government High School, Muhammad Khel, Tehsil DattaKhel, District North Waziristan.
5. Nomran Khan S/o Yaseen Khan (PET), Government High School, Muhammad Khel, Tehsil Datta Khel, District North Waziristan.
6. Rehman Zeb S/o Muhammad Rehan (PET), Government High School, Lund, Tehsil Datta Khel, District North Waziristan.
7. Shahid Ullah S/o Pasti Khan (PET), Government Middle School, Nizam Kot Lakka Village Dossali, District North Waziristan.
8. RasoolJehan Khan S/o Riaz Muhammad Khan (PET), Government Middle School, Gardi Rogha Dossali, District North Waziristan.
9. Abidur Rehman S/o SherGult, (PET), Government High School, Tall Village, Miranshah.
10. Kausar Iqbal S/o Gul Kem Khan (PET), Government High School, Spulga Miran Shah.
11. Ihsan Ullah S/o Noor Aslam (PET), Government Middle School, Saib Jan, Kot Shawa.

... (*Respondents*)

Syed Wilayat Shah
Advocate

--- For appellant

Muhammad Jan
District Attorney

--- For respondents.

