

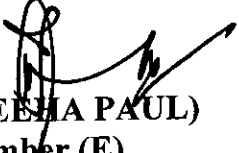
ORDER


18.04.2024

1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah, learned Deputy District for the respondents present.

2. Vide our detailed judgment of today placed on file, the instant review petition is not maintainable, hence dismissed. 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 18th day of April, 2024.*


(FAREEHA PAUL)
Member (E)


(RASHIDA BANO)
Member (J)


“(b) Power of review cannot be exercise by way of discretion, unless conferred upon a forum by some law or statue.

(c) Ss.3& 4—Exercise of power of review by Service T— Scope—No such power is conferred upon Service Tribunal as no such provision is available in the Punjab Service Tribunals Act, 1974.”

8. Learned counsel for the petitioner argued that this Tribunal entertained 12(2) petition, provision for which is also not provided by Khyber Pakhtunkhwa Service Tribunal Act, 1974, therefore, this Tribunal has got jurisdiction and power of review on the basis of same analogy in this respect. It is pertinent to mention herethat Supreme Court in its judgment held that Tribunal has got jurisdiction in 12(2) matter but in case of review, Supreme Court view is otherwise.

9. For what has been discussedabove, the instant review petition is not maintainable, hence dismissed. 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 18th day of April, 2024.*


(FAREEHA PAUL)
Member (E)


(RASHIDA BANO)
Member (J)

6. Learned Deputy District Attorney at the very outset raised the question of jurisdiction and maintainability of the review petition by arguing that review petition is not maintainable. While rebutting arguments of learned Deputy District Attorney, learned counsel for appellant argued that although there is no provision of review petition in the statute of Khyber Pakhtunkhwa Service Tribunal Act, 1974 but this Tribunal exercised power of review in Review Petition No. 449/2022 titled "Muhammad Sohail Vs. Government of Khyber Pakhtunkhwa through Chief Secretary" vide judgment/order dated 01.02.2022 and on the basis of that, this Tribunal had got power of review.

7. It is admitted fact that no provision of review was provided in the Khyber Pakhtunkhwa Service Tribunal Act, 1974. By no stretch of the imagination, this Tribunal could not guarantee jurisdiction, if the statute itself makes no such provision. No doubt, Service Tribunal exercised jurisdiction in review petition No. 444/2021 vide judgment dated 01.02.2022 but at the same time there is verdict of Supreme Court in clear words that this Tribunal has got no jurisdiction to entertain review petition. Then in such a situation, we under Article 189 of the Constitution are duty bound to follow the verdicts of Supreme Court in preference of view of any other forum including this Tribunal. Reliance is placed on 1987 SCMR 899 (b) and 2004 PLC (C.S) 527 (b&c) which are given for ready reference;

"(b) S.4- Service Tribunals (Procedure) Rules, 1974-Powers of Service Tribunal-Review-Service Tribunal, held, was not invested with powers to review its on orders under any circumstance---[Review]."



kindly be set aside and Notification dated 24.07.2023 may very graciously be upheld.

2. Brief facts leading to filing of the instant review petition are that respondent No.1 had filed Service Appeal No.2215/2023 before this Tribunal challenging posting/transfer notification dated 24.07.2023 with the prayer copied as below:

“That on acceptance of this appeal, the impugned notification dated 24.07.2023, may kindly be set aside and the appellant may kindly be allowed to perform his duties as Deputy Director (Establishment) at the Directorate of Higher Education, Khyber Pakhtunkhwa, Peshawar.”

Service appeal of the appellant was allowed on 28.11.2023, relevant para is reproduced for ready reference:

“In view of above findings of legal scrutiny we are constrained to intervene in the matter of posting/transfer of the appellant. The appeal in hand is accepted as prayed for and the impugned order dated 24.07.2023 stand set aside.”

4. We have heard learned counsel for the petitioner and learned Deputy District Attorney for the respondents and have gone through the record and the proceedings of the case in minute particulars.

5. Perusal of record reveals that petitioner through instant review petition seeks review of judgment/order of this Tribunal handed down in Service Appeal No.2215/2023 dated 28.11.2022 vide which service appeal of the appellant was accepted and the impugned notification dated 24.07.2023 was set aside.



KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Review petition No.67/2024 in S.A No:2215/2023

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

Fayaz Ahmad, Deputy Director Establishment (BPS-18), Directorate of Higher Education, Khyber Pakhtunkhwa, Peshawar.

.... (Petitioner)

VERSUS

1. Gohar Khan, Assistant Professor of Law (BPS-18) Government College Peshawar.
2. The Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar.
3. The Government of Khyber Pakhtunkhwa Secretary Higher Education, Civil Secretariat, Peshawar.

.... (Respondents)

Mr. Jawad Khan
Advocate

... For appellant

Mr. Fazal Shah Mohmand
Advocate

... For respondent No.1

Mr. Muhammad Jan
District Attorney

... For respondents No. 2 & 3

Date of Institution.....15.01.2024
Date of Hearing.....18.04.2024
Date of Decision.....18.04.2024

JUDGMENT

RASHID ABANO, MEMBER (J): The instant review petition has been instituted under section 7 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 against the order /judgment dated 28.11.2023, whereby service appeal No. 2215/2023 filed by the respondents No. 1 was accepted and notification /order dated 24.07.2023 was set aside with the prayer that on acceptance of this

review petition the order dated 28.11.2023 passed by this Hon'ble may very

