

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**  
**CAMP COURT, ABBOTTABAD**

**Service Appeal No. 1635/2022**

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

Saima Naz D/O Muhammad Irfan Secondary School Teacher (SST Female)  
 Government Girls Community Model School Faqir Abad Tajal Mansehra.  
 .....(Appellant)

Versus

1. District Accounts Officer Mansehra.
2. The Secretary, Government of Khyber Pakhtunkhwa, Finance Department, Peshawar.
3. Director Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar. ....(Respondents)

Mr. Muhammad Riaz Swati,  
 Advocate

... For appellant

Mr. Asif Masood Ali Shah,  
 Deputy District Attorney

... For respondents

Date of Institution.....	15.11.2022
Date of Hearing.....	25.07.2024
Date of Decision.....	25.07.2024

**JUDGEMENT**

**FAREEHA PAUL, MEMBER (E):** The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against impugned letter dated 27.06.2022 issued by the District Accounts Officer Mansehra, whereby unjustified recovery/deduction of over payment amounting Rs. 201237/-, on installment basis @ Rs. 13820/- per month, as a result of stoppage/withdrawal of annual increment, was made. It has been prayed that on acceptance of instant service appeal impugned stoppage of annual increment 2009/deduction order of District Accounts Officer Mansehra dated 27.06.2022 and revised pay slip dated 04.09.2019 showing the over



payment amounting to Rs. 201237/- might be set aside and the amount already deducted might be reimbursed to the appellant, alongwith any other relief which the Tribunal deemed appropriate.

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was appointed against the post of SST Female (Science-General) B- 16 on contract basis, as a stop-gap arrangement, by respondent No. 3 vide order dated 25.11.2008. Services of the appellant and others were regularized against the post of SST (Female) BPS- 16 w.e.f. 01.01.2009 under the Khyber Pakhtunkhwa Employees (Regularization of Service) Act, 2009 vide order dated 11.12.2009. The name of appellant stood at serial no. 235 of regularization order. Consequently, District Accounts Officer Mansehra issued pay slip in favour of appellant on 19.01.2009 and appellant continuously availed the annual increments due on Ist December of each Calendar year w.e.f 01.12.2009 onward. Appellant was awarded personal upgradation from BPS- 16 to BPS- 17 vide notification dated 04.09.2019. As a result of that upgradation to B- 17, District Accounts Officer Mansehra issued revised pay slip on 04.09.2019 with the entries on the body of pay slip that over payment amounting to Rs. 201237/- up to 08/2020 might be recovered from the pay of the official. Without any explanation/speaking order, District Accounts Officer Mansehra started recovery/deduction from the pay of appellant on monthly basis @ Rs. 13820/-, hence she approached the District Accounts Officer Mansehra with the request to refund the recovered amount or issue speaking order/justification regarding unexplained deduction. In response to the request of the appellant dated 22.06.2022, District Accounts Officer Mansehra issued the impugned



order/letter dated 27.06.2022 arguing that by virtue of clarification of Provincial Government, in the matter of grant of annual increments to those contract employee who had been regularized under Act 2009, were held not entitled to annual increment on 01.12.2009 which they had already drawn. Government of Khyber Pakhtunkhwa issued Civil Servants Regularization of Services (Amendment Ordinance 2009). Section 3 of the stated Ordinance stated as follows:-

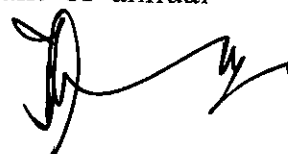
*“Notwithstanding anything contained in any law or rule for the time being in force, but subject to preferential right of appointment of a selectee of the Public Service Commission, if any, selected before commencement of this Ordinance, all employees holding appointment to a post on contract/adhoc basis in any department of Government immediately before the 1st day of January, 2009 shall be deemed to have been appointed on regular basis on the 1<sup>st</sup> day of January 2009.”*

Feeling aggrieved, the appellant preferred departmental appeal dated 25.07.2022 to respondent No. 2 against the impugned notification/ deduction of annual increment of 2009 from the salary of the appellant but the same was not replied; hence the instant service appeal.

3. Respondents were put on notice who submitted written reply. We heard the learned counsel for the appellant as well as learned Deputy District Attorney for the respondents and perused the case file with connected documents in detail.



4. Learned counsel for the appellant, after presenting the case in detail, argued that the services of appellant were regularized w.e.f. 01.01.2009 and stoppage of increment of 2009 and deduction of the so-called over payment of Rs. 201237/- was against the provision of the Act of 2009. He requested that the appeal might be accepted as prayed for.
5. Learned Deputy District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that that as per Rule 7 of the Khyber Pakhtunkhwa Civil Servants Pay Revision Rules, 1978, at least 06 months service was required for grant of annual increment on the 1<sup>st</sup> December of each year, whereas the condition of completion of service of six months did not fulfill in the instant case. He requested that the appeal might be dismissed.
6. Arguments and record presented before us transpire that the appellant was regularized against the post of SST w.e.f. 01.01.2009 vide an order dated 11.12.2009 issued by the office of Director Elementary and Secondary Education. The post of SST was upgraded from BS 16 to BS- 17 vide a notification dated 04.09.2011. While processing the salary after upgradation, the District Accounts Officer Mansehra ordered recovery of overpayment of Rs. 201237/- upto 8/2020 from the salary of the appellant on the ground that all contract employees of Provincial Government, who were in service as on 31<sup>st</sup> August 2008, stood regularized as civil servants from the date of promulgation of the Act of 2009, which was 24.09.2009. According to the DAO, the grant of annual increment to a civil servant was regulated by Rule 7 of the Khyber Pakhtunkhwa Civil Servants Pay Revision Rules 1978, according to which, at least six months service was required, at the pay stage, for grant of annual



increment on 1<sup>st</sup> December of a calendar year. In case of the appellant, the condition of completion of service of six months as civil servant for accrual of annual increment on 01.12.2009 did not fulfill and hence she was not entitled for that increment. The DAO Mansehra, therefore, under Rule 213, 214 and 224 of Treasury Rule (Vol. 1) started recovery of the overpaid amount.

7. Perusal of record showed that the DAO Mansehra relied on an advice tendered by the Establishment Department vide their letter dated 31.10.2013. While going through the contents of that letter, it was found that it was in response to some queries raised by the Accountant General Khyber Pakhtunkhwa in their letter dated 04.12.2012, on annual increment to persons appointed on contract/adhoc basis. According to that letter, comments of Finance and Law Departments were taken on the matter. Views of all the three departments, Establishment, Law and Finance, were consolidated and forwarded to the A.G Khyber Pakhtunkhwa with the advice to issue necessary instructions to its field offices to take corrective measures accordingly. In the light of that advice, contract employees were considered regularized from the date when the Act of 2009 was enforced on 24.09.2009. As stated by the Establishment Department in their views, annexed with their letter, the Ordinance for regularization of services was promulgated on 24.09.2009, which was subsequently repealed by the Act of 2009 and the Act was given effect from the commencement of the repealed Ordinance, hence the regularization took effect from that date.


8. The same matter was agitated before the Peshawar High Court in a Writ Petition No. 1053-B of 2019 titled "Mst. Hadia Noreen and others versus Government of Khyber Pakhtunkhwa and others". Vide its judgment dated




18.10.2022, the honourable court allowed that Writ Petition with a declaration that the original order of regularization, regularizing the services of the petitioners w.e.f. 01.01.2009, should hold the field and services of the petitioners were deemed to be regularized w.e.f. 01.01.2009. Moreover, it was also noted that the order issued by the Director Elementary and Secondary Education on 11.12.2009 was still in field according to which services of the appellants were regularized w.e.f 01.01.2009.

9. In view of the above discussion, there is no second opinion that services of the appellant stood regularized w.e.f. 01.01.2009 and she was entitled to all service benefits from the date of her regularization. The impugned order is, therefore, set aside and the appeal is allowed as prayed for, with the directions to the respondents, specially respondent No. 1, to immediately withdraw the order of recovery from the appellant and reimburse the amount already recovered on account of overpayment. Cost shall follow the event. Consign.

10. *Pronounced in open court at Camp Court, Abbottabad and given under our hands and seal of the Tribunal this 25<sup>th</sup> day of July, 2024.*

  
(FAREEHA PAUL)  
Member (E)  
(Camp Court, Abbottabad)


  
(RASHIDA BANO)  
Member (J)  
(Camp Court, Abbottabad)


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25<sup>th</sup> July, 2024 01. Mr. Muhammad Riaz Swati, Advocate for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present. Arguments heard and record perused.

02. Vide our detailed judgment consisting of 06 pages, there is no second opinion that services of the appellant stood regularized w.e.f. 01.01.2009 and she was entitled to all service benefits from the date of her regularization. The impugned order is, therefore, set aside and the appeal is allowed as prayed for, with the directions to the respondents, specially respondent No. 1, to immediately withdraw the order of recovery from the appellant and reimburse the amount already recovered on account of overpayment. Cost shall follow the event. Consign.

03. *Pronounced in open court at camp court, Abbottabad and given under our hands and seal of the Tribunal this 25<sup>th</sup> day of July, 2024.*

  
(FAREEHA PAUL)  
Member (E)  
(Camp Court, Abbottabad)

  
(RASHIDA BANO)  
Member (J)  
(Camp Court, Abbottabad)

\*Fazle Subhan PS\*