

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No: 8718/2020

BEFORE: MR. AURANGZEB KHATTAK ... MEMBER (J)
MRS. RASHIDA BANO ... MEMBER (J)

Date of Institution.....28.07.2020
Date of Hearing.....31.07.2024
Date of Decision.....31.07.2024

- 1. Mr. Rafi Ullah S/O Muqarrab Shah, Junior Clinical Technician (JCT), Radiology, Hayatabad Medical Complex, Peshawar.**
- 2. Mr. Alla ud Din S/o Guldad Shah, Junior Clinical Technician (JCT), Radiology, Hayatabad Medical Complex, Peshawar in Service Appeal No. 8719/2020.**

.... (Appellants)

VERSUS

1. Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar.
2. Government of Khyber Pakhtunkhwa through Secretary, Health Department, Civil Secretariat, Peshawar.
3. Government of Khyber Pakhtunkhwa through Secretary, Finance Department, Civil Secretariat, Peshawar.
4. Director General Health, Directorate General Services Khyber Pakhtunkhwa.
5. Chief Executive, Hayatabad Medical Complex, Peshawar.
6. Senior Manager HR, MTI, Hayatabad Medical Complex, Peshawar.

.... (Respondents)

.....

Lajbar Khan Khalil
Advocate

... For appellant

Mr. Asif Masood Ali Shah
Deputy District Attorney

... For respondents



CONSOLIDATED 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 instant appeal, this Hon’ble Tribunal may be pleased to declared the office order bearing No. 1966-68/E;VI dated 08.07.2020 issued by respondent No. 4, whereby the departmental appeal was turned down, as illegal, unlawful, without lawful authority, hence liable to be set aside and to direct respondents to allow the period of his service before regularization (from 30.09.1996 to 15.02.1999) by counting the same towards his pay protection and pensionary benefits. Furthermore, appropriate order may please be issued to declare the inaction of the respondents not counting the previous service (w.e.f 30.09.1996 to 15.02.1999) of the appellant towards pay protection, pensionary benefits and promotion as illegal, unconstitutional, arbitrary and exploitation of the past good service of the appellant to meet the ends of justice, principle of equity or any other remedy which deem proper, in the circumstances of the case may please be allowed. Furthermore, this Hon’ble Tribunal may be pleased to count the previous service of the appellant for the purpose of seniority as well.”

2. Through this judgment, we intend to disposed of the instant service appeal as well as connected Service Appeal No.8719/2020 titled “Alla ud Din Vs. Health Department” having common questions of law and facts are involved.
3. Brief facts of the case are that appellants were appointed as Dark Room




Assistants on contract basis in the year 1996. Later on, their services were regularized with immediate effect vide order dated 07.10.1998. The posts of appellants were upgraded as Junior Clinical Technician in the year 2005 and they were performing their duties upto the entire satisfaction of their superiors. The appellants have more than two years contract service on their credit, which were not counted towards their pay and pension, therefore, they filed writ petition bearing No. 5236-P/2019, which was disposed of by treating it as departmental appeal to respondent No.4 with direction to decide it within a month. Respondents regretted the departmental appeals of the appellants vide order dated 08.07.2020, hence the present service appeals.

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

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

6. 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).

7. The appellants through instant appeals seek counting of their previous contractual service towards pay protection and pensionary benefits. Record reveals that appellants were appointed as Dark Room Assistants on contract basis by the respondents in the year 2005 whose services were regularized vide order dated 07.10.1998. Unbreak contract/temporary service of the appellants

 was 2 years. Appellants claimed for counting of their temporary /contractual

service towards their pay and pensionary benefits is covered under Rule 2.3 of the West Pakistan Civil Servants Pension Rules, 1963, which is given as under:

i. "Government servants borne on temporary establishment who have rendered more than five years continuous temporary service shall count such service for the purpose of pension or gratuity" and

ii. Temporary and officiating service followed by confirmation shall also count for pension or gratuity.

In accordance with this rule, continuous temporary service in a temporary establishment rendered by a civil servant for more than five years, who was subsequently regularized on a permanent post shall have to be counted towards his pension or gratuity beside temporary/officiating service followed by confirmation shall also be counted for the purpose of pension and gratuity. So there are only two conditions which were required to be fulfilled by the appellants for counting of their temporary contractual service toward pension and pensionary benefits.

8. Admittedly, the appellants rendered continuous temporary service on a permanent post in a permanent establishment and their length of service was more than two years, which situation is covered under Sub Rule-2 of Rule 2.3 of the Pension Rules, 1963, which says temporary and officiating service followed by confirmation shall also count for pension and gratuity.

9. Their requested for counting period of contractual/temporary service was refused by the respondent on the ground that the same is covered under the rules. Rule 4.4 of Pension Rules 1963 refers to 10-years qualifying service for pension which read as:



“After a qualifying service of not less than 10 years, full Superannuation, retiring, invalid or compensation pension may be granted not exceeding the maximum limits prescribed below.”

Complete years of qualifying service	Scale of pension expressed as fraction of average emoluments	Maximum limit of pension per annum
10	10/50	2500
11	11/50	2800
12	12/50	3100
13	13/50	3400
14	14/50	3700
15	15/50	4000
16	16/50	4300
17	17/50	4600
18	18/50	4900
19	19/50	5200
20	20/50	5500
21	21/50	5800
22	22/50	6100
23	23/50	6400
24	24/50	6700
25 and over	25/50	7000

10. Appellants have rendered till now regular service of 21 years and 8 months which means that they had already rendered qualifying service of 10 years which is condition pre-requisite as per verdict of Supreme Court of Pakistan for counting of their contractual service towards pension and pensionary benefits. Therefore, in the circumstance refusal of the respondents for counting contractual service of the appellants towards his pension and pensionary benefits is not in accordance with rules.

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11. The appellants have also requested for counting of contractual temporary service and for fixation of pay as per judgment of august supreme court of Pakistan delivered in CPLA No. 1197-L of 2022 titled Secretary to Government of Punjab Vs. Syed Kashif Raza dated 08.07.2022, wherein it has been held that:

“It has now been settled by this court that regularization has to be with immediate effect and that regularization means fresh appointment to the post in question”

When regularization is considered fresh appointment then in such a situation temporary service rendered by the appellant could not be counted towards pay fixation of the appellant. Appellants also seek pay protection, upon query of this Tribunal appellants replied that his graded pay after regularization was more than his pay of the temporary service at the time of his regularization. Thus no pay protection could be granted to the appellants, because the question of pay protection will raised in a case where pay of temporary/contract service is more than regular graded pay.

12. For what has been discussed above, we are unison to partially accept the appeals to the extent of counting their temporary/contractual service towards their pension and pensionary benefits, while rest of the claims are dismissed. Costs shall follow the event. Consign.

13. *Pronounced in open court at Peshawar and given our hands and seal of the Tribunal on this 31st day of July, 2024.*


(AURANGZEB KHATTAK)

Member (J)


31/07
2024


(RASHIDA BANO)

Member (J)

ORDER
31.07.2024

1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah, learned Deputy District Attorney for the respondents No.1 to 4 present and Mr. Mansoor Tariq, Advocate for respondent No.5&6 present.
2. For what has been discussed above, we are unison to partially accept the instant appeal to the extent of counting his temporary/contractual service towards his pension and pensionary benefits, while rest of the claims are dismissed. Costs shall follow the event. Consign.
3. *Pronounced in open court at Peshawar and given our hands and seal of the Tribunal on this 31st day of July, 2024.*


(AURANGZEB KHATTAK)
Member (J)


(RASHIDA BANO)
Member (J)

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