

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 568/2023

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

**Anzar Gul, PST (BPS-12), GPS Gherat Shah Kaly, BQK, Tehsil Bara,
District Khyber.**

.... (Appellant)

VERSUS

1. The Secretary Elementary & Secondary Education Department, Civil Secretariat, Peshawar.
2. The Director Elementary & Secondary Education Department, Peshawar.
3. The District Education Officer (M), Khyber.

.... (Respondents)

Mr. Arbab Saiful Kamal

&

Mr. Zartaj Anwar

Advocate

... For appellants

Mr. Muhammad Jan

District Attorney

... For respondents

Date of Institution.....23.10.2023

Date of Hearing.....19.04.2024

Date of Decision.....19.04.2024

CONSOLIDATED 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 impugned order dated 29.08.2018 may kindly be set aside and respondents be directed to act in the matter in accordance with rules and to



count the previous service of the appellant for the purpose of pension, increment, pay protection etc. with all back benefits.”

2. Through this judgment we intend to disposed of instant service appeal as well as connected service appeals which have common questions of law and facts,

1. Service Appeal No.2099/2023	2. Service Appeal No.2100/2023
3. Service Appeal No.2101/2023	4. Service Appeal No.2102/2023
5. Service Appeal No.2103/2023	6. Service Appeal No.2104/2023
7. Service Appeal No.2105/2023	8. Service Appeal No.2106/2023
9. Service Appeal No.2107/2023	10. Service Appeal No.2108/2023
11. Service Appeal No.2109/2023	12. Service Appeal No.2110/2023
13. Service Appeal No.2111/2023	14. Service Appeal No.2112/2023
15. Service Appeal No.2113/2023	16. Service Appeal No.2114/2023
17. Service Appeal No.2115/2023	18. Service Appeal No.2116/2023
19. Service Appeal No.2117/2023	20. Service Appeal No.2118/2023
21. Service Appeal No.2119/2023	22. Service Appeal No.2120/2023
23. Service Appeal No.2121/2023	24. Service Appeal No.2122/2023
25. Service Appeal No.2123/2023	26. Service Appeal No.2124/2023
27. Service Appeal No.2125/2023	28. Service Appeal No.2126/2023
29. Service Appeal No.2127/2023	30. Service Appeal No.2128/2023
31. Service Appeal No.2129/2023	32. Service Appeal No.2130/2023
33. Service Appeal No.2131/2023	34. Service Appeal No.2132/2023
35. Service Appeal No.2133/2023	36. Service Appeal No.2134/2023

37. Service Appeal No.2135/2023	38. Service Appeal No.2136/2023
39. Service Appeal No.2137/2023	40. Service Appeal No.2138/2023
41. Service Appeal No.2139/2023	42. Service Appeal No.2140/2023
43. Service Appeal No. 2141/2023	44. Service Appeal No.2142/2023
45. Service Appeal No.2143/2023	46. Service Appeal No.2144/2023
47. Service Appeal No.2145/2023	48. Service Appeal No.2146/2023
49. Service Appeal No.2147/2023	50. Service Appeal No.2148/2023
51. Service Appeal No.2149/2023	52. Service Appeal No.2150/2023
53. Service Appeal No.2151/2023	54. Service Appeal No.2152/2023
55. Service Appeal No.2153/2023	56. Service Appeal No.2154/2023
57. Service Appeal No.2155/2023	58. Service Appeal No.2156/2023
59. Service Appeal No.2157/2023	60. Service Appeal No.2158/2023
61. Service Appeal No.2159/2023	62. Service Appeal No.2160/2023
63. Service Appeal No.2161/2023	64. Service Appeal No.2162/2023
65. Service Appeal No.2163/2023	66. Service Appeal No.2164/2023
67. Service Appeal No.2165/2023	68. Service Appeal No.2166/2023
69. Service Appeal No.2167/2023	70. Service Appeal No.2168/2023
71. Service Appeal No.2169/2023	72. Service Appeal No.2170/2023
73. Service Appeal No.2171/2023	74. Service Appeal No.2172/2023
75. Service Appeal No.2173/2023	76. Service Appeal No.2174/2023
77. Service Appeal No.2175/2023	78. Service Appeal No.2176/2023
79. Service Appeal No.2177/2023	80. Service Appeal No.2178/2023
81. Service Appeal No.2179/2023	82. Service Appeal No.2180/2023
83. Service Appeal No.2181/2023	84. Service Appeal No.2182/2023
85. Service Appeal No.2183/2023	86. Service Appeal No.2184/2023



87. Service Appeal No.2185/2023	88. Service Appeal No.2186/2023
89. Service Appeal No.2187/2023	90. Service Appeal No.2188/2023
91. Service Appeal No.2189/2023	92. Service Appeal No.2190/2023
93. Service Appeal No.2191/2023	94. Service Appeal No.2192/2023
95. Service Appeal No.2193/2023	96. Service Appeal No.2194/2023
97. Service Appeal No.2195/2023	98. Service Appeal No.2196/2023
99. Service Appeal No.2197/2023	100. Service Appeal No.2198/2023
101. Service Appeal No.2199/2023	102. Service Appeal No.2200/2023
103. Service Appeal No.475/2024	104. Service Appeal No.476/2024
105. Service Appeal No.477/2024	106. Service Appeal No.478/2024
107. Service Appeal No.479/2024	108. Service Appeal No.480/2024
109. Service Appeal No.481/2024	110. Service Appeal No.482/2024
111. Service Appeal No.483/2024	112. Service Appeal No.484/2024
113. Service Appeal No.485/2024	114. Service Appeal No.486/2024

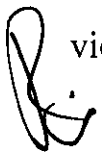
3. Brief facts of the case, as given in the memoranda of appeals, are that the Department of Education FATA, in order to raise literacy level, launched a Project of Community Schools under FATA Annual Development Program in the year 1998 till 20.10.2010, wherein 956 schools were opened and 1912 teachers were appointed. Appellants were also appointed as PST (BPS-7) on contract fixed pay at different places in the erstwhile FATA. Due to law and order situation in FATA, many schools were destroyed and being non-functional schools, it was decided to close the same as the teachers were getting salaries without performing their duties. In meeting of Standing

Committee of SAFRON 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 representation before the Director Education FATA Secretariat, Peshawar on 22.03.2017, which was regretted vide notification dated 29.08.2018. Thereafter, they filed writ petition bearing No. 4597-P/2018 before Worthy Peshawar High Court, Peshawar on 17.09.2018, which was transmitted to this Tribunal vide judgment dated 03.11.2022, hence the instant service appeals.

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

4. Learned counsel for the appellants argued that appellants have 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 from their initial appointment 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 appellants.

5. Conversely, learned District Attorney contended that the appellants have 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 Community School Teachers in a Project/ contract basis, however, the said project was closed on 31.12.2010. 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 afresh appointments as mentioned in their appointment order, therefore, they are not entitled for pay fixation. He, therefore, requested that instant appeals might be dismissed.

6. Perusal of record reveals that initially the appellants were appointed as Primary School Teacher (BPS-07) on contract basis against the project post in boys Community Schools, who were later on appointed against the regular PST post. Appellants seek regularization of their contractual service by way of their pay fixation. Perusal of appointment orders dated 11.07.2009 reveals that it is a fresh appointment and not a regularization or adjustment of the appellants. 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 re-appointment 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;

- i. 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.*
- ii. 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. Appellants in the instant appeals requested for counting their contractual temporary service towards regular service for the purpose of pay protection and its fixation, its counting towards pension and pensionary benefits in accordance with rule 2.3 of Pension Rules 1963. Appellants prayer in the departmental appeals filed by them on 22.03.2017 was for regularization of their contractual service alongwith all back benefits from the date of their first appointments and for payment of arrears.

لہذا مندرجہ بالا شواہد و حقائق کے روشنی میں ان اساتذہ کی سابقہ سروس معہ سروس بحالی اور بقایا جات ادائیگی کے احکامات صادر فرما کر انصاف کا بول بالا کیا جائے۔

8. So, prayer in respect of counting of temporary service towards pension and pensionary benefits was not made by the appellants to their departmental

authority. In accordance with Section 4 Khyber Pakhtunkhwa Service Tribunal Act 1974 and Rule 22 of Khyber Pakhtunkhwa Service Tribunal Rules, filing of departmental appeal is prerequisite to file appeal in this tribunal, which to the extent of request for counting of temporary service towards pension and pension any benefit is missing and same cannot be entertained being not maintainable.

9. Now come towards departmental appeal which was filed by the appellants jointly which in accordance with Rule-3 Explanation (2) of Appeal Rules, 1986 every aggrieved civil servant will have to file separate departmental representation or appeal, so on this score too, appeal before this tribunal is not maintainable.

10. Pay protection and its fixation come into field when a civil servant who was inducted in a civil service was already working in an autonomous body or project was getting/drawing more salary in the previous service than the present one, in such a situation he will be entitled for his pay fixation and protection under F.R 22 but in the instant case pay of the appellants while serving temporarily is not more than their graded pay therefore, they are not entitled for pay protection and its fixation.

11. Learned counsel for the appellant argued that appellants were regularized against the post upon which they were appointed temporarily on fixed pay. Therefore, appellants are entitled for considering their contractual temporary service towards regular for the purpose of pay. In this respect it is pertinent to mention here that appellants were freshly appointed in phased manner and their services were not regularized but for the sake of arguments in



our humble view, it has now been settled by Supreme Court of Pakistan that regularization has to be with immediate effect and that regularization means fresh appointment to the post in question. Reliance is placed on Vice Chancellor Agriculture University Peshawar and others versus Muhammad Shafiq and others (2024 SCMR 527), Deputy Director Food Faisal Abad Division, Faisalabad and others Vs. Muhammad Tauqir Shah and others (2021 SCMR 760) and Province of Punjab through Secretary Livestock and Dairy Development Department, Government of Punjab, Lahore and others Vs. Dr. Javed Iqbal and others (2021 SCMR 767). Thus regularization is fresh appointment and service render before regularization will not be counted for the purpose of fixation of pay or seniority etc.

12. For what has been discussed above, we are unison to dismiss the instant service appeal as well as connected service appeals being devoid of merits. Costs shall follow the events. Consign.

13. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 19th day of April, 2024.*

SCANNED
KPST
Peshawar


(FAREEHA PAUL)
Member (E)


(RASHIDA BANO)
Member (J)


ORDER

19.04.2024

1. Learned counsel for the appellant present. Mr. Muhammad Jan learned District Attorney for the respondents present.
2. Vide our detailed judgement of today placed on file, we are unison to dismiss the appeal in hand being devoid of merits. Costs shall follow the events. Consign.
3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 19th day of April, 2024.*

SCANNED
KPSI
Peshawar


(FAREEHA PAUL)
Member (E)


(RASHIDA BANO)
Member (J)

Kalecmullah