

**BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

Service Appeal No. 14050/2020

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

Mr. Inayat Ullah S/O Abdul Ajab Khan R/O Tor Dhand, Tehsil & District Karak.  
EPI Technician, DHO, Karak.

.... (Appellant)

**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. Additional Director General Health (HRM), Directorate General Services Khyber Pakhtunkhwa.
6. Deputy Director EPI, Khyber Pakhtunkhwa, Peshawar.

.... (Respondents)

Mr. Ashfaq Ahmad Daudzai  
Advocate ... Forappellant

Mr. Muhammad Jan  
District Attorney ... Forrespondents  
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Date of Institution.....09.11.2020

Date of Hearing..... 31.07.2024

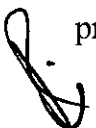
Date of Decision..... 31.07.2024

**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 instant appeal, the impugned order dated 03.11.2020 may kindly be set aside and /set at naught and not counting the previous service (w.e.f 02.11.2005 to 22.05.2013) of the appellant towards pay protection and pensionary benefits be declared as illegal, unconstitutional, arbitrary and exploitation of the past good service of the appellant. Further the respondents be directed to grant full pay protection and pensionary benefits of the previous service w.e.f 02.11.2005 to 22.05.2013 to the appellant for the ends of justice, or any other remedy deem proper, in the circumstances of the case may please be ordered.”**

2. Brief facts leading to filing of the instant appeal are that appellant was appointed as EPI Technician BPS-5 on contract basis vide order dated 02.11.2005. Later on his service was regularized vide order dated 22.05.2013 with immediate effect. Appellant approached the respondents and submitted representation through proper channel vide diary No. 204 dated 28.01.2020 for counting of his contract service w.e.f 02.11.2005 to 22.05.2013 which was not accepted. That having no other remedy, the appellant constrained to file the instant 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 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 Deputy District Attorney controverted the same by supporting the impugned order(s).

6. Perusal of record reveals that appellant through instant appeal seeks counting of his previous contractual service towards pay protection and pensionary benefits. Record further reveals that appellant was appointed as EPI Technician on contract basis by the respondents vide order dated 21.11.2005, whose services were regularized vide order dated 01.04.2013. Unbreak contract/temporary service of the appellant is 7 years and 5 months. The claim of the appellant for counting of his temporary /contractual service towards his 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

appellant for counting of his temporary contractual service toward pension and pensionary benefits.

7. It is admitted fact that appellant rendered continuous temporary service on a permanent post in a permanent establishment and his 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.

8. Appellant's claim 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

9. Appellant in the instant case had rendered till now regular service of 11 years and 4 months which means that he had already rendered qualifying service of 10 years which is condition pre-requisite as per above referred verdict of supreme court of Pakistan for counting of his contractual service towards pension and pensionary benefits. Therefore, in the circumstance refusal by the respondents for counting contractual service of the appellants towards his pension and pensionary benefits is not in accordance with rules.

10. Appellant also requested for counting of contractual temporary service and for fixation of pay as per judgment of august supreme court of Pakistan has delivered in CPLA No. 1197-L of 2022 titled Secretary to Government of Punjab Vs. Syed Kashif Raza dated 08.07.2022, wherein it was had 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. Appellant also seek pay protection, upon query of this Tribunal appellant 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 appellant because the question of pay protection will arise in a case, where pay of temporary/contract service is more than regular graded pay.

11. For what has been discussed above, we are unison to partially accept the appeal in hand with direction to the respondents to count temporary/contractual service of the appellant towards his pension and pensionary benefits, while rest of the appeal is dismissed. Costs shall follow the event. Consign.

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

  
(AURANGZEB KHATTAK)  
Member (J)

  
(RASHIDA BANO)  
Member (J)

11<sup>th</sup> July, 2024 1.

Learned counsel for the appellant present. Mr. Muhammad Jan, District attorney for respondents present.

2. Learned counsel for the appellant requested for time to file amended appeal. He may do so within a week. To come up for amended appeal as well as arguments on 31.07.2024 before D.B. P.P given to the parties.

SCANNED  
KPST  
Peshawar



(Rashida Bano)  
Member (J)



(Kalim Arshad Khan)  
Chairman

\*Adnan Shah, P.A.\*

**Order**

31.07.2024 1. Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney alongwith Mr. Hashmat Ullah, Superintendent, for the respondents present.

2. Vide our detailed judgment of today placed on file, we are unison to partially accept the appeal in hand with direction to the respondents to count temporary/contractual service of the appellant towards his pension and pensionary benefits, while rest of the appeal is 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 31<sup>st</sup> day of July, 2024.*



(AURANGZEB KHATTAK)  
Member (J)

\*Kaleemullah



(RASHIDA BANO)  
Member (J)