

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, AT CAMP COURT SWAT

Service Appeal No.1278/2022

BEFORE: MR. KALIM ARSHAD KHAN ... CHAIRMAN
MRS. RASHIDA BANO ... MEMBER (J)

Mr. Muhammad Israr, Headmaster (BPS-17) (Now retired), R/O Skhakot, Tehsil Dargai, District Malakand.

.... (*Appellant*)

VERSUS

1. The Secretary Elementary & Secondary Education Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. The Secretary Finance Department, Khyber Pakhtunkhwa, Peshawar.
3. The Director Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Secretariat, Peshawar.

... (*Respondents*)

Umar Farooq Mohmand
Advocate

... For appellant

Mr. Umair Azam
Additional Advocate General

... For respondents

Date of Institution.....15.08.2022
Date of Hearing.....04.09.2024
Date of Decision.....04.09.2024

JUDGMENT

RASHIDA BANO, MEMBER (J): The instant appeal instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as below:

“On acceptance of this service appeal, the appellant may please be awarded arrear of annual increment its arrear and subsequent pay fixation /graded pay in accordance with the true essence of



August Court's verdict as endorsed by the respondents department vide letter dated 20.03.2009, for the period from 20.09.1974 to 13.08.1986 during which the appellant remained as un-trained teacher with all back and consequential benefits."

2. Brief facts of the case are that appellant was initially appointed as Pupil Teacher (untrained) in the respondent department vide order dated 20.09.1974. Later on he was appointed as Certified Teacher BPS-16 on regular basis in Education Department vide order dated 13.08.1986. He was promoted to the post of Senior English Teacher (BPS-16) vide order dated 01.02.1990. He was further promoted to the post of Head Master (BPS-17) vide order dated 01.07.1998. In light of Government of N.W/F.P Finance Department (Regulation Wing) letter dated 30.03.2009, appellant filed departmental appeal for pay fixation and grant of annual increments for the untrained period w.e.f 20.09.1974 to 13.08.1986 which was not responded, hence the present service appeal.

3. Respondents were put on notice who submitted written replies/comments on the appeal. We have heard the learned counsel for the appellant, learned counsel for private respondents as well as the learned Additional Advocate General and perused the case file with connected documents in detail.

4. Learned counsel for the appellant argued that inaction of the respondents by not allowing pay fixation and annual increment to the appellant for the period he remained untrained teacher is against the law, facts and norms of natural justice; that the appellant has not been treated in accordance with law and rules and respondents violated Article 4 and 25 of the Constitution of Islamic Republic of

Pakistan; that respondents acted in arbitrary and malafide manner by not allowing

annual increments and subsequent pay fixation/graded pay of the appellant during the untrained period of service.

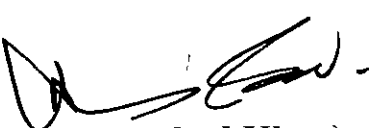
5. Conversely, learned Additional Advocate General contended that appellant has been treated in accordance with law and rules. He further contended that notification dated 30.03.2009, annual increments/running pay was allowed to the teaching staff with the pre-condition & provision that no arrear shall however, be admissible prior to the date of issuance of this order, whereas, the appellant is seeking for grant of arrears w.e.f 20.09.1974 to 13.08.1986 which is out of the ambit of the aforesaid notification. He further submitted that no departmental appeal was filed by the appellant, hence the instant appeal might be dismissed.


6. Perusal of record reveals that appellant through instant service appeal requested for award of annual increments and its arrears and subsequent pay fixation in accordance with notification dated 30.03.2009 with effect from 20.09.1974 to 13.08.1984, during which, he allegedly remained as untrained teacher with all back and consequential benefits. Perusal of initial appointment order reveals that appellant was appointed as Pupil Teacher on fixed pay purely on temporary basis on 26.09.1974. Appellant was appointed as CT vide order dated 21.08.1986, which is a new appointment to a new post that is Certified Teacher as per notification dated 30.03.2009, in respect of grant of annual increment in running pay to untrained teacher. In light of Supreme Court judgment, annual increments were allowed to untrained teachers from the date of their regular appointment as appellant was not regularly appointed to the post of Pupil Teacher, therefore, he cannot claim benefits of annual increments on the ground of untrained teachers, because, he was appointed freshly to the new post. So, the very first condition which appellant will have to fulfilled is the production of his regular

appointment order, in absence of regular appointment order, appellant could not claim benefits of annual increments for the period of untrained teachers as per notification dated 30.03.2009.

7. For what has been discussed above, the appeal in hand is dismissed being devoid of merits. Costs shall follow the event. Consign.

8. *Pronounced in camp court at Swat and given under our hands and seal of the Tribunal on this 4th day of September, 2024.*


(Kalim Arshad Khan)
Chairman
Camp Court, Swat


(Rashida Bano)
Member (J)
Camp Court, Swat