

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,PESHAWAR
AT CAMP COURT, ABBOTTABAD

BEFORE: **KALIM ARSHAD KHAN** ... **CHAIRMAN**
FAREEHA PAUL ... **MEMBER(Executive)**

Service Appeal No. 619/2022

Date of presentation of Appeal.....24.06.2022

Date of Hearing.....23.09.2024

Date of Decision.....23.09.2024

Nisar Ahmad S/O Ghulam Gilani, R/O Village Shadi, Hattar,
Tehsil & District Haripur.....(**Appellant**)

Versus

1. **Government of Khyber Pakhtunkhwa** through Secretary, Elementary & Secondary Education, Peshawar
2. **Director**, Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
3. **District Education Officer (Male)** Haripur.....(**Respondents**)

Present:

Mr. Muhammad Arshad Khan Tanoli, Advocate.....For the appellant
Mr. Asif Masood Ali Shah, Deputy District AttorneyFor respondents

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE DECISION OF RESPONDENT NO.3 ISSUED VIDE HIS OFFICE LETTER NO.4157-60/F/NO.7-8/E.B/RETIR; CASE, DATED 23.07.2020, WHEREBY THE APPELLANT HAS NOT BEEN HELD ENTITLED TO PENSIONERY BENEFITS AND GRATUITY AND APPEAL IN THIS RESPECT WAS DISMISSED.

JUDGMENT



KALIM ARSHAD KHAN CHAIRMAN: Facts of the case of the appellant, gathered from memorandum and grounds of appeal are that appellant was appointed in the year 1995 as TT; that his services were terminated in the year 1996; after announcement of Khyber Pakhtunkhwa Sacked Employees (Appointment) Act, 2012, he was required to be reinstated in service but the appellant was not appointed accordingly,

therefore, a Writ Petition was filed before the Peshawar High Court for his appointment under the said Act; that during the pendency of the said writ petition, he was reinstated in service in the year 2017 but his previous service benefits were denied by the respondents; that feeling aggrieved, he filed departmental appeal, but fiasco, hence, the instant service appeal.

2. On receipt of the appeal and its admission to full hearing, the respondents were summoned, who 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.

3. We have heard learned counsel for the appellant and learned Deputy District Attorney for the respondents.

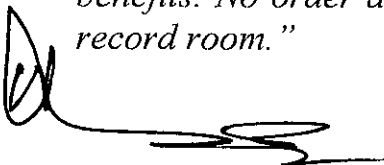
4. The learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned Deputy District Attorney controverted the same by supporting the impugned order(s).

5. This Tribunal in a number of cases has decided the same issue. The Tribunal vide its consolidated judgment passed in Service Appeal No.572/2019 titled "Muhammad Haroon VS. Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Peshawar & others" decided on 18th March, 2021, while dealing with almost similar case, has found as under:

"6. From the record it is evident that appellants and others who were appointed back in 1994-95 were terminated in 1996-97. Sacked Employees (Appointment) Act, 2012 was specifically promulgated to

extend relief to such sacked employees. Appellants were not considered for the reason best known to the respondents. The respondents, however, considered other similar cases just after promulgation of the Act *ibid* which was discriminatory on the part of respondents. It was upon the intervention of the Hon'ble Peshawar High Court that appellants were reinstated at a belated stage in 2017 but with immediate effect. The main concern of the appellants is that such employees would reach the age of superannuation before earning qualifying service for pensionary benefits. We have observed that appellants had possessed all the qualifications as prescribed in the Act like others. It is also on record that co-employees tried their level best for back benefits and their cases were dismissed by this Tribunal as their earlier stance was to get all service benefits. Feeling aggrieved from the judgment of this Tribunal CPLAs were filed in the Apex Court and relief of back benefits to co-employees was refused by the Apex Court too. However, Apex Court allowed counting of their service for the protected period for payment of pensionary benefits. The present appellants have a strong case as they had every right to be reinstated just after promulgation of the Act as they were having requisite qualification as prescribed in the Act. Their claim was accepted by the august High Court and reinstatement was ordered.

7. The present appellants have also prayed for all service back benefits with a request for counting of their service for the protected period in the light of judgment of the Apex Court which was passed in the case of co-employees. So, from the record, it is crystal clear that after promulgation of an Act in the year 2012, appointment order of the appellants were issued in the year 2017 and that too, on the directions of the august High Court. No doubt, similar appeals of the sacked employees were dismissed regarding the back benefits but the Apex Court allowed the co-employees counting of their service for the protected period for payment of pensionary benefits only. Case of the present appellants is at par with those sacked employees who were granted this benefit by the Apex Court, therefore, these appeals are accepted to the extent that the appellants are allowed counting of their services from the date of promulgation of the Khyber Pakhtunkhwa Sacked Employees (Appointment) Act, 2012 only for payment of pensionary benefits. No order as to costs. File be consigned to the record room."




Service Appeal No.619/2022 titled "Nisar Ahmad -vs- Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education, Peshawar and others" declared on 23.09.2024 by Division Bench comprising of Mr. Kalim Arshad Khan, Chairman, and Miss. Fareeha Paul, Member Executive, Khyber Pakhtunkhwa Service Tribunal, Peshawar at Camp Court, Abbottabad.

6. As the prayer of the appellant in the present service appeal is also the same as was in the above-mentioned service appeals, which had been granted to those appellants vide the above mentioned judgment, therefore, the appellant of this service appeal is also entitled for counting of service for protected period and for payment of pensionary benefits only. Case of the present appellant is at par with those sacked employees who were granted this benefit by the Apex Court, therefore, this appeal is accepted to the extent that the appellant is allowed counting of his service from the date of promulgation of the Khyber Pakhtunkhwa Sacked Employees (Appointment) Act, 2012 only for payment of pensionary benefits. Costs shall follow the event. Consign.

7. *Pronounced in open Court at Abbottabad and given under our hands and the seal of the Tribunal on this 23rd day of September, 2024.*



KALIM ARSHAD KHAN
Chairman
Camp Court, Abbottabad



FAREEHA PAUL
Member (Executive)
Camp Court, Abbottabad

Mutazem Shah


24th June 2024


1. Appellant in person present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present.

2. Appellant submitted an application that his counsel could not appear because of his involvement in a criminal case. He, however, submits that he will arrange counsel on the next date of hearing. Adjourned. To come up for arguments on 23.09.2024 before D.B at Camp Court, Abbottabad. P.P given to the parties.

SCANNED
KPOT
Peshawar

Adnan Shah


(Aurangzeb Khattak)
Member (J)
Camp Court, Abbottabad


(Kalim Arshad Khan)
Chairman
Camp Court, Abbottabad

S.A #.619/2023


ORDER

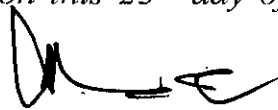
23rd Sep. 2024

1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for respondents present. Heard.

2. Vide our detailed judgment of today placed on file, this appeal is accepted to the extent that the appellant is allowed counting of his service from the date of promulgation of the Khyber Pakhtunkhwa Sacked Employees (Appointment) Act, 2012 only for payment of pensionary benefits. Costs shall follow the event. Consign.

3. *Pronounced in open Court at Abbottabad and given under our hands and the seal of the Tribunal on this 23rd day of September, 2024.*


(Falcha Paul)
Member (E)


(Kalim Arshad Khan)
Chairman

Mutazem Shah