

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL AT CAMP COURT ABBOTTABAD

Service Appeal No.16404/2020

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

Ahsan Ali S/O Gul Hussain, SST Bio/Chemistry GHSS Gali Badral,
Mansehra.

.... (Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education ,Peshawar.
2. Director Elementary & Secondary Education Department, Khyber Pakhtunkhwa Peshawar.
3. District Education Officer (M), Mansehra.
4. Noman Saeed, SST Bio/Chemistry GHSS No.1, Mansehra.
5. Muhammad Irfan, SST Bio/Chemistry GHS Oghi Mansehra.
6. Haseeb Rehman, SST Bio/Chemistry GCMS Dadar Mansehra.
7. Bilal Ahmad, SST Bio/Chemistry GCMS Dadar Mansehra.
8. Muhammad Ijaz, SST Bio/Chemistry GHSS Behali, Mansehra.

.... (Respondents)

Ahmad Farooq Khan
Advocate`

... For appellant

Ahsan Ali
Advocate

... For private respondents

Asif Masood Ali Shah
Deputy District Attorney

... For official respondents

Date of Institution.....14.12.2020

Date of Hearing.....22.07.2024

Date of Decision.....22.07.2024

CONSOLIDATED 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 the instant service appeal, the impugned order dated 06.05.2019 may please be declared as illegal, without jurisdiction, without lawful authority, based on malafide and collusion and liable to be cancelled /struck down and appointment order of the appellant dated 14.09.2018 may kindly be restored or any other relief which this Hon’ble Tribunal deems fit and appropriate in the circumstances of the case may also be issued/passed”.

2. Through this judgment we intend to disposed of the instant service appeal as well as connected service appeal No. 16405/2020 titled “Ahmad Ibrar Khan Vs. Education Department” as in both the appeals common question of law and facts are involved.

3. Brief facts of the case are that respondent department invited application for appointment against different posts including the post of SST BIO/Chemistry in BPS-16 on the terms and conditions mention therein. Appellants having requisite qualification applied for the same, competed with others and appointed on 14.09.2018. Appellants after having appointment, took over the charge of the post and withdrew salaries for about nine months, however, his appointment order was subsequently withdrawn. Feeling aggrieved, he filed writ petition No. 601-A/2019 which was disposed of with direction to approach proper forum. Thereafter, they filed departmental appeal, which was not responded to, hence the instant service appeal.

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, learned counsel for private respondents and learned Deputy District Attorney for the official 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 Deputy District Attorney controverted the same by supporting the impugned order(s).

7. Perusal of record reveals that appellant applied for the post of SST BIO/Chemistry (BPS-16) as response to advertisement issued in December, 2017. Appellant was recommended for appointment as he possessed the requisite qualification of chemistry and biology by DSC on the basis of which appointment order of the appellants were issued on 14.09.2018. Appellants had taken charge of their posts and serving the department when vide notification dated 06.05.2019, the appointment orders of the appellants were withdrawn and respondent No.4 to 8 were appointed.

8. Respondents filed departmental appeals on 09.05.2019 which were not decided by respondents within statutory period of ninety days. Appellants filed instant appeals U/S-4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 which reads as:

“Any civil servant aggrieved by any final order, whether original or appellate, made by a departmental authority in respect of any of the terms and conditions of his service may, within thirty days of the communication of such order to him, prefer an appeal of the appeal having jurisdiction in the matter.”




Appellants were required to file instant service appeals within 30 days after expiry of ninety days of statutory period on or before 09.09.2019 but instant service appeals were filed on 14.12.2020 after considerable delay of one year and two months. Appellants alleged that they filed writ petition and time was consumed there in litigation. Record further reveals that appellants filed writ petition No.601-A/2019 which was dismissed in limine vide order dated 11.02.2020 on the ground of bar of jurisdiction contained in Article-212 of the Constitution of Pakistan, 1973, however, appellants were left at liberty to seek their relief before appropriate forum, if so advised. The Worthy Peshawar High Court had not condoned the period consumed in litigation over there. For condonation of delay the appellants will have to explain each and every day but they failed to explain it reasonably. Filing of writ petition and consumption of time over there is no reason and excuse for condonation of delay of one year and two months. So applications for condonation of delay are dismissed.

9. Appellants alleged that respondents No.4 to 8 were not qualified to be promoted as they lack qualification i.e. Biology, which is necessary as per publication/advertisement. Perusal of advertisement reveals that it was for school based adhoc appointment and a person can apply for five schools as appointment in school will be made on the basis of merit position obtained by the candidates applied for it. Record further reveals that appellant Ahsan Ali applied for three schools i.e. GHSS Gali Badral, GHSS Darband (New) GHS Chattar Plain while appellant Ahmad Ibrar applied for two schools i.e. GHS


Maithal Jabbori and GHS Chandore and he was appointed as SST at GHS Maithal Jabbori vide order dated 14.09.2018. Respondent No.4 was appointed at GHSS No.1 Mansehra. Respondent No.5 at GHS Oghi, respondent No.6 Government Centennial Model School Dadar, respondent No.7 Government Centennial Model School Dadar and respondent No.8 at GHSS Behali, Mansehra which means that someone else appointed in the schools for which appellants applied and appointed as it was school based adhoc appointment, therefore, appointments of private respondents will not affect appellants as in their school after having high merit position were appointed. Moreover, it is admitted fact that private respondents are at high merit position as compared to the appellants who were dropped due to the fact, that were not having Biology. The equivalency certificate was provided by them during appeal on the basis of which they were appointed in their respective schools for which they applied. If appellants have some reservations about equivalence certificate, then they could approach proper forum for it, because this Tribunal is neither Higher Education Commission, nor a Civil Court.

10. For what has been discussed above, we are unison to dismiss the instant service appeal as well as connected service appeal being barred by time. Costs shall follow the event. Consign.

11. *Pronounced in open court at Abbottabad and given under our hands and seal of the Tribunal on this 22nd day of July, 2024.*


(Fareeha Paul)
Member (E)

*kaleemullah Camp Court, Abbottabad


(Rashida Bano)
Member (J)

Camp Court, Abbottabad

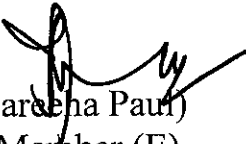
ORDER

22.07.2024

1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah learned Deputy District Attorney for the official respondents present. Learned counsel for private respondents present.

2. Vide our detailed judgment of today placed on file, we are unison to dismiss the appeal being barred by time. Costs shall follow the event. Consign.

3. *Pronounced in open court at Abbottabad and given under our hands and seal of the Tribunal on this 22nd day of July, 2024.*



(Faraeha Paul)
Member (E)

Camp Court Abbottabad



(Rashida Bano)
Member (J)

Camp Court Abbottabad