

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

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

Service Appeal No. 4679/2020

Lal Zada S/O Saotar Khan, PST GPS Yousaf Baba, District
Mohmand.....Appellant

Service Appeal No. 4680/2020

Taj Muhammad S/O Sheikh Muhammad, PST GPS Karkana, District
Mohmand.....Appellant

Service Appeal No. 4681/2020

Bakht Zada S/O Shahzada, PST GPS Dewo Derai, District
Mohmand.....Appellant

VERSUS

1. The Government of Khyber Pakhtunkhwa through Chief Secretary,
Khyber Pakhtunkhwa, Peshawar.
2. The Secretary Elementary & Secondary Education Department,
Peshawar.
3. The Director Education Merged Area Districts, Merged Area
Secretariat, Warsak Road, Peshawar.
4. The District Education Officer (M), District Mohmand at Ghallani.

.... (Respondents)

Mr. Hamad Hussain
Advocate ... For appellant

Mr. Muhammad Jan
District Attorney ... For respondents

Date of Institutions.....19.05.2020
Date of Hearing.....12.09.2024
Date of Decision.....12.09.2024



CONSOLIDATED JUDGMENT

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

“On acceptance of these appeals, the in action on the part of respondents and not counting the previous service of the appellants towards pay protection and pensionary benefits may declared as illegal unconstitutional arbitrary and exploitation of the past good service of the appellant. Furthermore, the respondents please be directed to allow full pay protection and pensionary benefits of the past service to the appellants to meet the end of justice of equity and by treating them at par with the appellants of the above referred judgments. Any others remedy which this august tribunal deems appropriate may also be awarded in favour of the appellant.”

2. Brief facts of the case, as given in the memoranda of appeals, are that appellants were initially appointed as Primary School Teachers in the Project Community Schools in the year 2004 but the said schools were closed in the year 2010. In the meanwhile, the Governor of Khyber Pakhtunkhwa, vide notification dated 11.05.2012, accommodated the appellants by re-adjusting/appointing them against the substantive posts. The services of the appellants were regularized with effect from 01.09.2013. On 25.01.2020, the appellants filed departmental appeals for counting their contractual service towards regular service for the purpose of pension, which were not responded, hence, the instant service appeals.



3. Respondents were put on notice, who put appearance but failed to submit written reply and their right for submission of written reply was struck off. We have heard the learned counsel for the appellants as well as the learned District Attorney for the respondents and perused the case file with connected documents in detail.


4. Learned counsel for the appellant argued that appellant has not been treated in accordance with law and rules and respondents violated Article 2-A, 9, 25 and 38 of the Constitution of Islamic Republic of Pakistan, 1973. He further argued that inaction of the respondents and not counting their previous service towards pay and pension is against the principle of natural justice, fair play and equality. He further argued as per pension rules, temporary and officiating service followed by confirmation/regularization shall be counted towards pay and pension.

5. Learned District Attorney contended that the appellant has been treated in accordance with law and rules. He further contended that initially the appellant was appointed as PST Community School Teacher on temporary basis under a project namely Community School Teacher project for three years only. 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 fresh appointment as mentioned in their appointment order, therefore, they were not entitled for pay fixation.



6. Perusal of record reveals that initially the appellants were appointed as PTC (BPS-07) on contract basis at project post ADP No. 259 in different schools vide order dated 03.03.2004. Services of the appellants were terminated due to law & order situation on 31.12.2010. In this respect the Deputy Director (P&M), FATA Secretariate issued memo dated 30.12.2010 in which all the Agency Education Officers were directed to close all the community schools in FATA w.e.f 31.12.2010. The Governor of NWFP approved re-appointment of Community School Teachers who qualified to be appointed against regular post of PST (BPS-7), on merit, in accordance with existing recruitment criteria, with upper age relaxation, vide notification dated 11.05.2012. Appellants were re-appointed on 09.12.2011 against regular vacant posts, purely on contract basis (non-pensionable) being selected by the DSC. Later on, their services were regularized w.e.f their first appointment. Appellants through instant appeal seeks seniority and regularization of contract service from the date of their first appointment with all back benefits with request to convert the post pensionable.

7. Perusal of first initial appointment order of the appellants reveals that appellants were appointed against project post. Said project was completed and ended in the year 2010 vide notification dated 13.12.2010 with effect from 31.12.2010, therefore, services of the appellants were ended with the project. They were re-appointed freshly against a regular post vide appointment order dated 09.12.2011 by the Agency Education Officer on the basis of arrival of



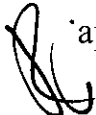
teachers who were present in the interview taken by the scrutiny committee. Appellants were appointed on the basis of notification dated 11.05.2012 issued by Secretary Social Sector Department, FATA Secretariat, Peshawar which read as:

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 considered re-appointment against the regular vacant posts of PST (BPS-7) adjustment of local qualified teacher.

8. Learned counsel for the appellant argued that appellants were re-

 appointed and regularized against the posts upon which they were

appointed temporarily on fixed pay. They were thus entitled for regularization of their services from the date of their initial appointment to the said post, he added. In this respect it is pertinent to mention here that appellants were freshly appointed in a phased manner and their services were not regularized but for the sake of arguments in our humble view. It is 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).

9. Appellant requested for fixation of their seniority from the date of their first initial appointment. Seniority of a civil servant is determined in accordance with section-8 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 which is reproduced as under:

"8. Seniority:- (1) For proper administration of a service, cadre or [post], the appointing authority shall cause a seniority list of the members for the time being of such service, cadre or [post] to be prepared, but nothing herein contained shall be construed to confer any vested right to a particular seniority in such service, cadre or [post] as the case may be.

(2) Subject to the provisions of sub-section (1), the seniority of a civil servant shall be reckoned in relation to other civil



servants belonging to the same service or 6 [cadre] whether serving the same department or office or not, as may be prescribed.

(3) Seniority on initial appointment to a service, [cadre] or post shall be determined as may be prescribed.

(4) Seniority in a post, service or cadre to which a civil servant is promoted shall take effect from the date of regular appointment to that post; Provided that civil servants who are selected for promotion to a higher post in one batch shall, on their promotion to the higher post, retain their inter-se-seniority as in the lower post.


(5) The seniority lists prepared under sub-section (1), shall be revised and notified in the official Gazette at least once in a calendar year, preferably in the month of January."

10. Seniority will always be determined on the basis of regular appointment prescribed in the rules and appellants were appointed on 09.12.2011, therefore, their seniority will not be reckoned from the date of their contractual initial appointment because at that time they were not civil servants, who were later on freshly appointed.

11. For what has been discussed above, we are unison to dismiss the instant service appeal as well as connected service appeals having no force in it. Costs shall follow the event. Consign.

12. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 12th day of September, 2024.*



(KALIM ARSHID KHAN)
Chairman



(RASHIDA BANO)
Member (J)

10th Sep. 2024

1. Learned counsel for the appellant present. Mr. Naseer Ud Din Shah, Assistant Advocate General for the respondents present.

2. Being not prepared, learned counsel for the appellant requested for a short adjournment in order to prepare the brief. Being an old case of the year 2020, the same is adjourned to day after tomorrow i.e. 12.09.2024 for hearing, before D/B. P.P given to the parties.


(Rashida Bano)
Member (J)


(Kalim Arshad Khan)
Chairman

Mutazem Shah

ORDER

12.09.2024

1. Learned counsel for the appellant present. Mr. Muhammad Jan learned Deputy Attorney for the respondents present.

2. Vide our detailed judgment of today placed on file, the instant service appeal is dismissed having no force in it. Costs shall follow the event. Consign.

3. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 12th day of September, 2024.*


(KALIM ARSHID KHAN)
Chairman


(RASHIDA BANO)
Member (J)