

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No: 12456/2020

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

Mst. Nargis (PTC) D/O Nazar Hussain W/O Zalib Gul R/O Mohallah
Sra Maila, Village Bosti Khel, Darra Adam Khel, FR Kohat.
.... (Appellant)

VERSUS

1. District Education Officer, KDA, Gate No.2, Kohat.
2. Director, Elementary & Secondary Education Department, Khyber
Pakhtunkhwa, Peshawar.
3. Government of Khyber Pakhtunkhwa through Secretary, Elementary &
Secondary Education, Civil Secretariat, Peshawar.
4. Government of Khyber Pakhtunkhwa through Chief Secretary, Civil
Secretariat, Peshawar.

.... (Respondents)

Muhammad Asif
Advocate ... For appellant

Mr. Asif Masood Ali Shah
Deputy District Attorney ... For respondents

Date of Institution.....21.10.2020
Date of Hearing.....11.06.2024
Date of Decision.....11.06.2024

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 instant appeal, the respondent may kindly be directed to regularize and award seniority from the 1st date of appointment with all back benefits.”


2. Through this judgment, we intend to disposed of the instant service appeal as well as connected 1. Service Appeal No.12457/2020 titled “Nargis Parveen Vs Education Department” 2. Service Appeal No.12458/2020 titled “Sidra Vs Education Department” 3. Service Appeal No.12459/2020 titled “Shabina Ayub Vs Education Department” 4. Service Appeal No.12460/2020 titled “Saeeda Zulfi Vs. Education Department” 5. Service Appeal No.12461/2020 titled “Humera Malik Vs. Education” 6. Service Appeal No.15693/2020 titled “Samina Khatoon Vs. Education Department” 7. Service Appeal No.15694/2020 titled “Amina Bibi Vs. Education Department” 8. Service Appeal No.15695/2020 titled “Rabia Mushtari Vs Education Department” 9. Service Appeal No.15696/2020 titled “Samina Noreen Vs. Education Department” 10. Service Appeal No.15697/2020 titled “Mehnaz Vs. Education Department” 11. Service Appeal No.15698/2020 titled “Haleema Gul Vs. Education Department” as in all these appeals common question of law and facts are involved.

3. Brief facts of the case are that appellants were appointed as PTC in Education Department on different dates and in different schools (mentioned in the respective appeals) on the project post Community Base School. The Government started short time course for in-service untrained PTC teachers for summer zone schools, which was held at CECT (F) Jamrud w.e.f. 15.05.2008 till 15.08.2008. Appellant alongwith others attended the classes and passed the exam. Unfortunately, due to terrorism in

PTC teachers for summer zone schools, which was held at CECT (F) Jamrud w.e.f. 15.05.2008 till 15.08.2008. Appellant alongwith others attended the classes and passed the exam. Unfortunately, due to terrorism in FATA, the girls schools were closed due to threats of Taliban. On 13.12.2010, they received a notice from FATA Education Department vide which their services were terminated w.e.f 31.12.2010. The appellants were appointed against the vacant post of PST on different dates and in different schools (mentioned in the respective appeals). Feeling aggrieved, they filed departmental appeals for reappointment and regularization from the date of their first appointment, which were not responded, hence the present service appeals.

4. Respondents were put on notice, who submitted written reply/comments on the appeal. We have heard learned counsel for the appellants and Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents and have gone through the record and the proceedings of the case in minute particulars.

5. Learned counsel for the appellants argued that appellants have not been treated in accordance with law and rules. He further argued that fresh appointment order issued by the respondents instead of issuing the re-appointment and regularization order is against the law and fact, hence not tenable in the eyes of law. He further argued that appellants have neither resign or left the job nor have refused to work but in fact schools were closed due to terrorism in the area. He requested that instant appeals might be accepted.



6. Conversely, learned Deputy District Attorney contended that the appellants have been treated in accordance with law and rules. He further contended that the appellants have not been employees of the respondent department in a regular capacity nor any such record is available prior to their regularization in service against the noted post. He further contented that appellants were project employees and after closure of the project, their services were terminated by the competent authority. He submitted that departmental appeals of the appellants are barred by time, therefore, instant appeal might be dismissed.

7. Perusal of record reveals that the appellants were appointed as PTC against the project posts at Female Community Schools upon recommendation of Village Education Committee, endorsed by Agency Education Officer. Appellants passed their PTC examination from Allama Iqbal Open University, Islamabad and services of the appellants were terminated due to law & order situation on 31.12.2010. That Governor of NWFP approved re-appointment of Community School Teachers who qualify to be posted 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 09.04.2013 against regular vacant post purely on contract basis (non-pensionable) being selected by the DSC. Appellants through instant appeals seek seniority and regularization of her contract service from the date of his first appointment with all back benefits with request to convert the post pensionable.



8. 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 ended with the project. They were re-appointed afresh against a regular post vide appointment order dated 09.04.2013 by the Agency Education Officer 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 consider re-appointment against the regular vacant posts of PST (BPS-7) adjustment of local qualified teacher."

9. Learned counsel for the appellants argued that appellants were re-appointed and regularized against the post upon which they were appointed temporarily on fixed pay. They are entitled for regularization of their services from the date of their initial appointment to the said post. 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 has now been 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 Faisalabad 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).

10. Appellants requested for fixation of their seniority from the date of their first initial appointment. Seniority of a civil shall be determined in accordance with section-8 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Transfer & Promotion) Rules, 1989, are 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 appellant was appointed on 15.10.2014, 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. In view of the above, the instant service appeal as well as connected service appeals are dismissed having no force in it. Costs shall follow the event. Consign.

12. *Pronounced in open court at Peshawar and given our hands and seal of the Tribunal on this 11th day of June, 2024.*


(FAREEHA PAUL)
Member (E)


*Kaleemullah



(RASHIDA BANO)
Member (J)

07th June, 2024

SCANNED
Peshawar

1. Junior to counsel for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present.
2. Junior to counsel for the appellant seeks adjournment on the ground that learned senior counsel is not available today. Adjourned. To come up for arguments on 11.06.2024 before the D.B. Parcha Peshi given to the parties.



(Fareeha Paul)
Member (Executive)



(Kalim Arshad Khan)
Chairman

Nawaz Amin

ORDER
11.06.2024

1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah learned Deputy Attorney for the respondents present.
2. Vide our detailed judgment of today placed on file, we are unison to dismiss the appeal having no force in it. no force in it. Costs shall follow the event. Consign.
3. *Pronounced in open court at Peshawar and given our hands and seal of the Tribunal on this 11th day of June, 2024.*


(FAREEHA PAUL)
Member (E)


(RASHIDA BANO)
Member (J)

*Kaleemullah