

SA 2820/2021

02.10.2024 01. Mr. Fazal Shah Mohmand, Advocate for the appellant present. Mr. Muhammad Jan, District Attorney for the respondents present. Arguments heard and record perused.

02. Vide our detailed judgment consisting of 03 pages, the appeal is dismissed being groundless. Cost shall follow the event. Consign.

03. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 02nd day of October, 2024.*


(FAREEHA PAUL)
Member (E)


(KALIM ARSHAD KHAN)
Chairman

Fazle Subhan PS

Government of Pakistan in 2003. He joined the Provincial Government in 2005. Through the instant service appeal he has requested for counting of his previous contract service from 21.11.2003 to 16.03.2005 rendered by him in the Government of Pakistan for the purpose of pay protection and pension etc. In this regard West Pakistan Civil Services Pension Rules, 1963 are extremely clear when they state in Rule 2.1 as follows:-

“Condition of Qualification - The service of a Government Servant does not qualify for pension unless it conforms to the following three conditions:-

First - The Service must be under Government.

Second - the service must not be non-pensionable.

Third - the service must be paid by government from the Provincial Consolidated Fund.”

05. In the light of the above rules, that government service qualified for pension which had been paid by the Government from the Provincial Consolidated Fund. In the case of the appellant, the contract service from 21.11.2003 to 16.03.2005 was in the Government of Pakistan and hence he could not claim for any benefit for the period while serving the Provincial Government.

06. In the view of the above discussion, the appeal is dismissed being groundless. Cost shall follow the event. Consign.

07. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 02nd day of October, 2024.*


(FAREEHA PAUL)
Member(E)

Fazle Subhan, P.S


(KALIM ARSHAD KHAN)
Chairman

16.03.2005 rendered by the appellant for the purpose of pay protection and pension etc., with all back benefits.

02. Brief facts, as given in the memorandum of appeal, are that the appellant was appointed as Medical Officer (BPS- 17) on contract basis in the Ministry of Health, Government of Pakistan vide order dated 21.11.2003 initially for a period of one year or till the availability of regular incumbent. In the meanwhile, the Provincial Government advertised the post of Medical Officer and the appellant applied for the same through proper channel. He was accordingly appointed as Medical Officer (BPS- 17) in March 2005 where he reported arrival on 16.03.2005 after he was relieved by the Federal Government vide letter dated 15.03.2005. Consequent to the amendment in Section 19 of the Civil Servants Act 1973, the services of the appellant, alongwith others, were regularized w.e.f 16.03.2005 vide notification dated 09.04.2008. The department was reluctant to count the contract service of the appellant for the purpose of pay protection and pension etc. which was violation of law, rules and numerous judgments of the Honourable High Court as well as the Apex Court of the country. The appellant filed a departmental appeal for the purpose but to no avail; hence the instant service appeal.

03. Respondents were put on notice who submitted written reply/comments. We heard the learned counsel for the appellant and learned District Attorney for the respondents and perused the case file with connected documents in detail.

04. From the arguments and record presented before us, it transpired that the appellant was appointed as Medical Officer in the Ministry of Health



**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.**

BEFORE: MR. KALIM ARSHAD KHAN ... CHAIRMAN
MISS FAREEHA PAUL ... MEMBER(E)

Service Appeal No. 2820/2021

Dr. Tahir Aziz, Senior Medical Officer (BPS- 18) District Headquarter
Hospital, Haripur.(Appellant)

Versus

1. Government of Khyber Pakhtunkhwa through Secretary, Health Department Peshawar.
2. Director General Health Services Khyber Pakhtunkhwa, Peshawar.
3. Government of Khyber Pakhtunkhwa through Secretary, Finance Department, Peshawar.
4. Chief Secretary, Government of Khyber Pakhtunkhwa, Peshawar.
..... (Respondent)

Mr. Fazal Shah Mohmand,
Advocate

... For appellant

Mr. Muhammad Jan,
District Attorney

... For respondent

Date of Institution.....16.02.2021

Date of Hearing.....02.10.2024

Date of Decision..... 02.10.2024

JUDGEMENT

FAREEHA PAUL, MEMBER (E): The service appeal has been instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against non-counting of the previous contract service of the appellant w.e.f 21.11.2003 to 16.03.2005 towards protection of pay and pension etc. It has been prayed that on acceptance of the appeal, the respondents might be directed to count the previous contract service w.e.f. 21.11.2003 to

