

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL  
PESHAWAR.

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

Service Appeal No. 5698/2021

Muhammad Zubair, Certified Teacher (BPS- 15) GHS Ormar Miana,  
Peshawar. ....(Appellant)

Versus

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

Mr. Fazal Shah Mohmand,  
Advocate ... For appellant

Mr. Muhammad Jan,  
District Attorney ... For respondents

Date of Institution.....21.05.2021  
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 the letter dated 05.04.2021 communicated to the appellant on 30.04.2021, whereby departmental appeal of the appellant for counting of previous service was rejected. It has been prayed that on acceptance of the appeal, the impugned order dated 05.04.2021 might be set aside and the respondents be directed to count the previous service of the appellant for pay protection, pension and seniority etc., with all back benefits.



2. Brief facts, as given in the memorandum of appeal, are that the appellant was initially appointed as Key Punch Operator (BPS- 10) against the newly created post in the office of District & Sessions Judge Peshawar on 29.05.2003. In pursuance of Peshawar High Court, Peshawar letter No. 485/Admn, the appellant was placed as K.P.O at the disposal of Hon'ble Peshawar High Court Peshawar on 15.01.2004. He remained punctual and worked to the entire satisfaction of his high ups during his service. He requested for grant of study leave which was not accepted whereafter on 17.05.2010, he tendered resignation for the purpose of further education, which was accepted on 26.10.2010, with effect from 01.06.2010. Experience certificate was granted to the appellant on 22.06.2010 by the Hon'ble Peshawar High Court, Peshawar which reflected the service of the appellant w.e.f. September, 2003 to May 2009. Moreover, the character certificate was also issued by the office of District & Sessions Judge Peshawar on 01.12.2010. The appellant was appointed against the vacant post of Certified Teacher (BPS- 15) in the GHS Urmar Miana, Peshawar, on contract basis, initially for one year by the Provincial Government on 13.05.2016, and later on his services were regularized. The appellant filed departmental appeal for the purpose of counting of his previous service towards the seniority, pay protection and pensionary benefits etc. on 20.02.2021 which was rejected/filed by the respondent No. 1 on 05.04.2021, communicated to the appellant on 30.04.2021; 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



Assistant Advocate General for the respondents and perused the case file with connected documents in detail.

04. Arguments and record presented before us transpired that the appellant was appointed initially as Key Punch Operator in the office of District & Sessions Judge Peshawar in 2003. He tendered resignation from that service in 2010 which was accepted. Later on, he joined the Provincial Government as C.T in the Elementary & Secondary Education Department in 2016. Through the instant service appeal, he has prayed to count his previous service rendered in the office of District & Sessions Judge, Peshawar for the purpose of pay protection, pension and seniority, with all back benefits. In this regard reference is made to West Pakistan Civil Services Pension Rules 1963. Rule 2.11 and 2.12 are reproduced as follows:-

***“2.11 Forfeiture of Past Service – A Government servant forfeits his past service in the following cases: -***

- (a) Resignation of a post unless it is to take up another post in service which counts for pension.*
- (b) Removal or dismissal from service.*
- (c) Absence from duty without leave.*

*Note - The authority which sanctions the pension may commute retrospectively periods of absence without leave into extraordinary leave.*

*Note - In case of a civil servant, who, with the proper concurrence of the competent authority leaves service under the Government of Khyber Pakhtunkhwa and seeks absorption/employment under an autonomous, semi-autonomous/local body, where service is pensionable, the Government, if it is so requested, will be liable to share pensionary liability for the period of service rendered by such civil servant under the Government in accordance with the Government rules.*

***2.12 Condonation of interruptions and deficiencies.*** - (1) *The Administrative Department may for purposes of pension condone all gaps between [periods of qualifying service] of a Government Servant.*



*(2) The Administrative Department may condone deficiency in qualifying service for pension up to six months provided the service is meritorious and the condonation, if allowed will bring the service up to 25 completed years of qualifying service."*

05. In case of the appellant, he tendered resignation from his service in the office of District & Sessions Judge in 2010 to pursue his study and later on joined the provincial government in the year 2016 after lapse of six years. In the light of rules mentioned above, he does not qualify for any benefit of his past service rendered in the office of District & Sessions Judge, Peshawar as there is a break of more than six years whereas condonation of such a long period is not covered under the referred rules.

06. In view of the above discussion, the appeal in hand is dismissed being devoid of merit. 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 02<sup>nd</sup> day of October, 2024.*

  
(FARZEHA PAUL)  
Member(E)

  
(KALIM ARSHAD KHAN)  
Chairman


\*Fazle Subhan, P.S\*

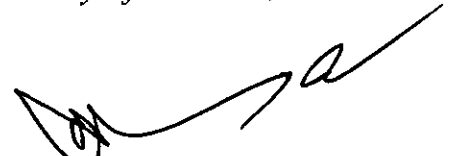
SA 5698/21

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 04 pages, the appeal in hand is dismissed being devoid of merit. 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 2<sup>nd</sup> day of October, 2024.*

  
(FAREEHA PAUL)  
Member (E)

  
(KALIM ARSHAD KHAN)  
Chairman

\*Fazle Subhan PS\*