

**BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR**

**BEFORE: MR. AURANGZEB KHATTAK ... MEMBER (J)**  
**MRS. RASHIDA BANO ... MEMBER (J)**

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Service Appeal No. 7429/2021  
Date of Institution 25.08.2021  
Date of Decision 03.10.2024

**Mr. Mohabbat Shah** S/o Sohrab Shah R/o Wali Baba Jamrud District Khyber.....**Appellant.**

Service Appeal No. 7430/2021  
Date of Institution 25.08.2021  
Date of Decision 03.10.2024

**Mr. Shahid Khan** S/o Badsha Khan R/o Wali Baba Jamrud, District Khyber.....**Appellant.**

**VERSUS**

1. The Additional Chief Secretary, New merged area Secretariat, Peshawar.
2. The Director Education new merged area, Peshawar.
3. The District Education Officer, District Khyber.
4. The Political Agent, District Khyber.

.... (*Respondents*)

Mr. Roeeda Khan Advocate..... For appellant.

Mr. Naseer ud Din Shah, Assistant Advocate General.....For respondents

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**CONSOLIDATED JUDGMENT**

**RASHIDA BANO, MEMBER (J):** Through this single judgment we intend to dispose of two service appeals captioned above filed against the same impugned order dated 31.12.2010 as common question of law and facts are involved in them.



2. Both the appeals have been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as below:

**“On acceptance of this service appeal the impugned orders dated 31.12.2010, may kindly be set aside and the appellant may kindly be reinstated on his service alongwith all back benefits, any other remedy which this Tribunal deems fit may also be granted in favor of the appellant.”**

3. Brief facts of the cases are that the appellants were appointed as PTC Teachers (BPS-7) on 31.07.2003 and 2006, respectively, at the Community School in District Khyber. Initially, the appellants were appointed to project posts on a contractual basis, and their contracts were subsequently renewed until the promulgation of the Khyber Pakhtunkhwa Civil Servant (Amendment) Act, 2005, and the Khyber Pakhtunkhwa Employees (Regularization of Service) Act, 2009. These legislative measures regularized all contractual and ad hoc employees by operation of law. However, due to the prevailing law and order situation in the area, the competent authority terminated the appellants' services following the closure of the Community School on 31.12.2010. The appellants submitted departmental appeals against the termination order dated 31.12.2010, but their appeals were unsuccessful, leading to the present service appeals.

4. On receipt of the appeals and its admission to full hearing, the respondents were summoned. Respondents put appearance and contested the appeals by filing written replies raising therein numerous legal and factual objections. The defense setup was a total denial of the claim of the appellants.


5. We have heard learned counsel for the appellants and learned Assistant

Advocate General for the respondents.

6. The learned counsel for the appellants reiterated the facts and grounds detailed in the memo and grounds of the appeals, while the learned Assistant Advocate General controverted the same by supporting the impugned order(s).

7. The perusal of the record reveals that the appellants were appointed as PTC (BPS-7) on 31.07.2003 and 2006, respectively, at the Community School in District Khyber to project posts on a contractual basis, and their contracts were subsequently renewed but the competent authority terminated the appellants' services following the closure of the Community School on 31.12.2010.

8. According to Section 2(b) of the Khyber Pakhtunkhwa Civil Servants Act, 1973, a civil servant is defined as a person who is a member of the civil service of the province or holds a civil post in connection with the affairs of the province. Importantly, this definition does not include individuals employed on a contract or work-charged basis. Since contract-based employees do not fall under the definition of civil servants, they are generally not entitled to file appeals under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974. This means that if a contract employee faces termination or any adverse action, they cannot seek redress through the Service Tribunal. The courts have consistently upheld this interpretation, emphasizing that the right to appeal under the Service Tribunal Act is reserved for regular civil servants. For instance, in the case of Faraz Ahmed v.

 Federation of Pakistan, it was noted that a contractual employee must

demonstrate a statutory basis for regularization to seek relief, which further supports the notion that contract employees lack the standing to appeal under the Service Tribunal Act.

9. The record further reveals that impugned order was issued on 31.12.2010, while the appellants have filed departmental appeals in January 2011 before the appellate authority, which was not responded. The service appeals have to face the issue of limitation for the reason that the same have been filed after 10 years 2 months and 25 days at a belated stage on 25.08.2021, which appellant was required beyond the period of 30 days after waiting for statutory period of 90 days provided for filing service appeal before this Tribunal.

10. Furthermore, Section-4 of the Service Tribunal Act, 1974 also gives the period for filing departmental appeal as thirty days. The same is reproduced below:


*“4. Appeal to Tribunals.--- 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 [or within six months of the establishment of the appropriate Tribunal, whichever is later,] prefer an appeal of the Tribunal having jurisdiction in the matter.”*

11. For what has been discussed above, we are unison to dismiss both the service appeals being barred by time, hence, not maintainable in the eyes of

law and the same are dismissed accordingly. Costs shall follow the events.  
Consign.

*12. Pronounced in open court at Peshawar and given under our hands  
and seal of the Tribunal on this 03<sup>rd</sup> day of October, 2024.*

  
(AURANGZEB KHATTAK)  
Member (J)

  
(RASHIDA BANO)  
Member (J)

\*M.KHAN

**ORDER**

- 03.10.2024 1. Learned counsel for the appellant present. Mr. Naseer ud Din Shah, learned Assistant Advocate General for respondents present.
2. Vide our detailed judgment of today placed on file, we are unison to dismiss the instant service appeal being barred by time, hence, not maintainable in the eyes of law and the same is dismissed accordingly. Costs shall follow the events. Consign.
3. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 03<sup>rd</sup> day of October, 2024.*

  
(AURANGZEB KHATTAK)  
Member (J)

  
(RASHIDA BANO)  
Member (J)

\*M.KHAN